

## Corporate Criminal Law Liability in Corruption Crimes Based on Perma RI Number 13 of 2016

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### ABSTRACT

**Keywords:** criminal law; In Indonesian law, both individuals and legal entities such as corruption crime; corporations are recognized as legal subjects. Corporations, corporate corruption; which are governed by civil law, are now increasingly associated with crime, particularly Corporate Crime. perma RI no. 13/2016. Although initially disputed, it is now accepted that legal entities can be involved in criminal acts and that corporations should be held accountable for their unlawful actions. Corporate Crime encompasses situations where corporations break the law for their benefit, often in disregard of applicable regulations and norms. This development marks a shift in criminal law from targeting individuals to also holding corporations accountable. Therefore, principles such as Vicarious Liability and Strict Liability become the basis for establishing legal liability for corporations. These principles ensure that corporations are responsible for their actions, similar to the liability imposed on individuals. Since the legal construction in Perma RI No. 13 Year 2016 is different from individuals, corporations require specific legal principles to regulate their liability. Concepts such as Vicarious Liability, Strict Liability, and others become important pillars in imposing responsibility on corporations. Recognizing corporations as perpetrators of criminal acts shows the evolution of the legal system to adjust to the complexity of modern business practices and uphold justice in an ever-changing society.



### Introduction

In social life, the subjects of law in the Indonesian legal system are individuals (people) and legal entities (corporations). Regarding corporations, it is part of the field of civil law. Corporations are terminology that is closely related to "legal entity" (rechtspersoon) and "legal entity" is a terminology that is closely related to or used in civil law (SETIAWAN, 2019).

According to criminal law, it has been accepted among academics and practitioners, that a special crime involving companies is called Corporate Crime (corporate crime). Previously, many parties or circles could not accept if a company was considered to be

able to commit a criminal act. They cling to the adage of "university delinquent non potest" (legal entity cannot be criminalized) because a legal entity/company does not have mens rea (malicious intent), and the legal entity is not a person (NASHRUDDIEN MS, 2024). In its development, it has been accepted that a legal entity, including a company, can be assumed to have committed a criminal act so that as a consequence a legal entity can be criminalized. A country no longer considers corruption crimes as a new problem in legal and economic issues because the problem of corruption has existed for thousands of years, both in developed and developing countries, including in Indonesia (Sjawie & SH, 2017).

Some corruption incidents that occur in Indonesia do not only involve individuals or individuals, but nowadays it can be easy to find corruption cases involving a limited liability company, which according to Article 1 number 1 jo. Article 7 paragraph (4) of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UUPT Number 40) is a legal entity. Several corruption cases that are still under investigation or that have been decided by the court show that not a few corporations in the form of limited liability companies are involved in corruption crimes (Sjawie & SH, 2018).

In the record the history of the struggle against corruption from various eras to the new era of the current government. The fact is that corruption crimes are actually becoming more rampant and even carried out in increasingly sophisticated and systematic ways (Suhariyanto, 2017). One of the ways or modus operandi of corruption crimes carried out today is to use corporations as a means, subject, or object of corruption crimes. Corruption crimes committed can be categorized as corporate crimes. Corporations that are entangled in corruption cases, in development, have become an extraordinary crime. Corruption is often identified with officials or civil servants who abuse state finances, in its development now corruption has also involved members of the legislature, judiciary, bankers, conglomerates, and corporations (Alfianto, 2022). In the latest journey, to complement the weaknesses of the corporate criminal liability system in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of corruption, the Supreme Court of the Republic of Indonesia Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations has been issued. With the issuance of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, the author is interested in conducting research entitled "Corporate Criminal Law Accountability in Corruption Crimes Based on PERMA RI Number 13 of 2016".

This research is expected to provide new insights into legal science and researchers to improve and develop knowledge in the field of criminal acts, especially related to corruption crimes by corporations. The results of this study are expected to be considered and provide input for law enforcement in solving criminal problems, especially in handling corruption cases committed by corporations. Thus, the purpose of this research is to explain and describe the forms of corruption that can be committed by corporations and how legal liability is applied to corporations involved in corruption crimes.

## Research Methods

The research method used in this paper is normative juridical, which is based on laws and regulations or legal norms relevant to the issue discussed, namely PERMA RI Number 13 of 2016 and the Criminal Procedure Code. According to Marzuki (2006), research sources consist of two types, namely primary and secondary legal materials. Primary legal materials include applicable laws and regulations related to the issues discussed, such as PERMA RI Number 13 of 2016, the Criminal Procedure Code, the Criminal Code, and other regulations. In addition, the primary material also includes court decisions related to corporate crimes. Secondary legal materials include literature books, journals, scientific papers, and print media that are relevant to the topic discussed. The step of analyzing legal materials is carried out by deductive reasoning, namely by examining legal materials such as laws and regulations, judges' decisions, legal doctrines, and legal experts' opinions as general provisions, then applying them to the problem being researched to produce an answer. After the review, the next step is to identify the problem with the materials that have been collected, and then analyze the legal materials to find the answers to the problems identified. The last stage is to summarize the conclusion of the answer to the problem.

## Results and Discussion

Criminal acts in the Criminal Code (KUHP) are known as *Strafbaarfeit* and the literature on criminal law often uses the term *delicacy*, while lawmakers formulate a law using the term criminal event or criminal act or criminal act (Sinaga, 2017). In the Dutch language for criminal acts, namely, *staffbaarfeit*, which consists of the words *strafbaar* meaning punishable and *feit* meaning part of reality, so *staffbaar feit* means part of reality that can be punished (Saputra, 2015).

The term criminal act as a translation of *strafbaar feit* shows the meaning of a person's behavior. Regarding the obligation to do but not do, which the law stipulates in Article 164 of the Criminal Code, the provisions in this article require a person to report to the authorities if a crime arises, if he does not report then he can be subject to sanctions.

The elements of a criminal act in the Law consist of objective elements and subjective elements, the objective element focuses on elements that are outside the perpetrator. While the subjective element focuses on the elements that are inside the perpetrator, regarding behavior or deeds. The elements of error and illegality are listed, and often not listed, at all are not listed is about the element of the ability to be responsible.

The formulation of the crime of corruption according to Law Number 31 of 1999 as amended by the Indonesian Republik Law Number 20 of 2001, is contained in Articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B, 13, 14, 15, 16, 20, 21, 22, and 23, in addition to expanding the definition of acts that can be qualified as corruption, the law also emphasizes that the return of state finances or the state economy does not remove the conviction of the perpetrators of corruption (Article 4).

Corporations in carrying out their operations are always directed at achieving the goals that have been set. For profit-oriented corporations, the main goal is to obtain

maximum profits in the hope of business continuity. This profit or profit is vital for corporations because it can show the level of success and maintain the continuity of the company's business. Beyond the target to get the expected profit so that the business continuity is maintained, the company must also continue to prioritize the use of assets to get more effective, efficient and profitable benefits. Every activity carried out by the company always requires funds, both funds from loans and capital. Kasmir (2010:210) states that the fund is usually. Used for two things. First, it is used for investment purposes. So that these funds are used to buy or finance fixed and long-term assets that can be used repeatedly, such as the purchase of land, buildings, machinery, vehicles, and other fixed assets. Second, funds are used to finance working capital, which is capital used for short-term financing, such as purchasing raw materials, paying salaries and wages, and other operational costs.

In addition, corporations also need to pay taxes. Taxes are mandatory contributions and must be paid by taxpayers, individuals or corporations. Corporate tax itself is included in direct taxes where it must be paid directly by the taxpayer himself and is usually paid periodically (Suhariyanto, 2018a). Taxes are so important for the state because it is one of the sources of state revenue that aims to meet the needs of a country (Jane Frecknall-Hughes, 2017). Taxes are the main vein to keep the country standing and finance development for the welfare of its people, despite the many obstacles faced (Greve, 2022, Morel & Palme, 2018). Every taxpayer has the responsibility to fulfil all tax obligations in payment or reporting accurately and on time (Lesejane, 2021).

Taxpayer compliance includes compliance in recording or recording business transactions, compliance in reporting business activities by applicable regulations, and compliance with all other tax rules Taxpayer compliance is an action that reflects compliance and awareness of order in tax obligations, namely, taxpayers make payments and report on the periodic and annual taxation of the taxpayer concerned, either for a group of people or capital as business capital by applicable tax provisions (Wadesango, Mutema, & Mhaka, 2018). Some taxpayers have poor compliance by not making and submitting periodic business activity reports correctly, completely and clearly, both monthly or periodic or annual reports. This should be a more serious concern for the government so that this problem can be overcome and supervised, one of which is by assessing the testing of taxpayer compliance that has been carried out (Wadesango et al., 2018).

In a corporation, competition is also inevitable. Business competition is a term that often appears in various literature that write about the legal aspects of business competition (Suhariyanto, 2018b). Competition is when organizations or individuals compete to achieve desired goals such as consumers, market share, survey rankings, or resources needed. In the world of marketing, it will never be separated from the element of competition. Business competition can also be found in Law No. 5 of 1999 concerning the prohibition of monopoly practices and unfair competition. In general, business competition is a feud or rivalry between business people who independently try to get

consumers by offering good prices with good quality goods or services. Usually, there is no single business, which freely enjoys sales and profits.

The part that affects law enforcement is the Law and Law Enforcement, including in terms of irregularities or corruption. Regarding corruption, this has had special arrangements through Law No. 31 of 1999 concerning the Eradication of Corruption which was amended through Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Crimes. Corporate accountability in corruption crimes can be read in Article 20 of Law Number 31 of 1999 and Law Number 20 of 2001, although not much can be known from that provision because of the lack of formulation, Article 20 contains several provisions. Three things that must be understood by legal practitioners in determining the subject of corporate law that commits corruption crimes, namely:

1. indicators of when a corruption crime has occurred by a corporation;
2. in a manner that regulates the procedural law;
3. regarding the imposition of criminal responsibility.

By Article 20 of 2001 in the Law. No. 31 of 1999 jo. As amended into Law No. 20 of 2001 concerning the Eradication of Corruption, Article 2 paragraph 1, an act that unlawfully enriches oneself, or another person, or a corporation that can harm the State's finances or the State's economy. The Law No. 5 of 1999 related to Business Competition states that the prohibition of monopoly practices and unfair competition is not good. It is stated that business competition is a feud or rivalry between business people who independently try to get consumers by offering good prices with good quality goods or services.

In every company, it is necessary to pay attention to the dynamics that occur so that they can participate in the competition so as not to lose in the competition in the market. In business competition, it is known as competition dynamics, which means changes that occur to the competition that occurs in companies in competing for customers in certain periods.

The Crime of Money Laundering as an Independent Crime can be represented if a systematic interpretation is carried out between Article 3, Article 4, and Article 5, as well as Article 69 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Meanwhile, in Article 3, Article 4, and Article 5 of the Law there is one element of the offence that cannot be separated from a money laundering offence, namely "known or reasonably suspected to be the result of a criminal act as referred to in Article 2 paragraph (1)". Article 69 projects a partial part of the money laundering fraud-proof model.

The provisions of the criminal act refer to the construction of Article 38 of the KUP Law which essentially describes the forgetfulness (*culpa*) committed by "every person" about the submission of the Annual Tax Letter with incorrect and incomplete content so that the act is seen as resulting in state losses in the form of reduced revenue or state revenue from the tax sector with criminal threats in the form of fines, or imprisonment. The regulation of criminal acts in the KUP Law refers to the elements of mistakes, both

forgetfulness and intentionality committed by taxpayers, where based on Article 1 of the KUP Law, the taxpayer in question includes individuals and legal entities or corporations. In the explanation of Article 38, violations committed by taxpayers for errors arising due to their negligence such as negligence, not waiving obligations can cause a loss to the state. The negligence in question resulting in state losses is a repetition or not an act for the first time. Meanwhile, the provisions in the construction of Article 39 of the KUP Law outline the intentionality (*dolus*) carried out by "everyone" related to not registering the NPWP, using it carelessly or using it without confirming tax debts, not reporting tax returns, and refusing to examine their actions that are considered detrimental to the state, so that they can be threatened with imprisonment and/or fines.

The explanation of Article 39 *a quo* explains that the probationary arrangement is held to overcome the repetition of criminal acts committed by taxpayers in the field of taxation that have not passed the deadline of one year, then sanctions in the form of imprisonment and fines heavier than those specified in Article 38 of the KUP Law can be imposed. If examined more comprehensively, the formulation in the construction of Article 38 and Article 39 of the KUP Law *a quo* always begins with the element of "everyone" and can cause ambiguity and multiple interpretations related to the subject of corporate or corporate tax.

In the Criminal Code (KUHP), human beings are recognized as subjects of criminal law, as well as the Criminal Procedure Law, both the old (HIR) and the new one, namely Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP) which is now in force, it turns out that there are also regulations regarding the prosecution of human beings. In the Criminal Code, there is no regulation regarding the prosecution of perpetrators of criminal acts in the form of corporations.

The existence of corporations does bring many benefits to the community and the state, such as an increase in state cash income from taxes and foreign exchange, creating jobs, increasing technology transfer and so on. However, in addition to the benefits or positive impacts mentioned above, the existence of corporations can also have negative impacts, such as environmental pollution (water, air, soil), exploitation or depletion of natural resources, fraudulent competition, tax manipulation, exploitation of workers/labourers, producing substandard or defective products that endanger consumers and so on. The emergence of this negative impact is due to corporations chasing too large profits.

In criminal law, it has been recognized that corporations are the subjects or perpetrators of criminal acts, but liability in criminal law is still dual. In the Criminal Code (KUHP), corporate crimes cannot be netted, because corporations are not included in the subject of law or perpetrators. In the Criminal Code, the subject of law is only human beings/people. However, several laws and regulations that are outside the Criminal Code, including Law No. 7 of 1955 concerning Economic Crimes, Law No. 2 of 1992 concerning Insurance Business, Law No. 11 of 1995 concerning Excise, Law on Environmental Management and laws regulating the eradication of corruption have formulated that corporations are expressly recognized as being legal subjects or actors

and can be accountable in criminal law. However, other laws are unclear about the direction of corporate criminal liability, showing that there is doubt from the lawmakers to place corporations or legal entities as subjects or actors who can be burdened with criminal liability. Accountability of corporations that are inconsistent in their supervision will make it difficult for law enforcement officials.

According to the Criminal Code (KUHP), corporate crimes cannot be netted, because corporations are not included as legal subjects or perpetrators. Several laws and regulations that are outside the Criminal Code, including Law No. 7 of 1955 concerning Economic Crimes, Law No. 2 of 1992 concerning Insurance Business, Law No. 11 of 1995 concerning Excise, Law on Environmental Management and laws regulating the eradication of corruption have formulated that corporations are expressly recognized as being legal subjects or actors and can be held accountable in criminal law.

In the process of corporate management as a maker, the manager will be responsible. This limits the nature of criminal acts committed by corporations to only individuals (*natuurlijk persoon*). If a criminal act is committed in a corporate environment, then the person who commits the criminal act is the administrator. Fault cannot be imposed on legal entities or corporations but on human beings (*individualization*). In Law No. 4 of 2004 concerning Judicial Power, Article 6 paragraph (2) states that: no person can be sentenced to a crime, unless the court, due to a valid means of proof according to the law, is convinced that a person who is considered to be responsible, has been guilty of the act charged against him. The principle of error is an absolute principle in criminal law, namely as a basis for imposing a criminal offence. According to Suprpto, corporations can be blamed if intentionality negligence or forgetfulness exists in people who are tools of corporations. The mistake is not an individual but a collective. This is in line with the opinion of Van Bemmelen and Rimmelink who stated that corporations can still make mistakes with the construction of faults of the management or members of the board of directors.

According to Roeslan Saleh, the principle of error in corporations is not applicable, but it is enough to base it on the adagio *res ipsa loquitur* (facts speak for themselves). This is familiar because in Anglo-Saxon countries the principle of *mens rea* (inner attitude) is known with exceptions to certain delicacies, namely what is known as strict liability and vicarious liability. Strict liability is criminal liability without the need to prove wrongdoing. The principle of responsibility that views mistakes as irrelevant is to be questioned whether they exist or do not exist. Meanwhile, Vicarious Liability is a criminal liability imposed on a person for the actions of others. It is indeed necessary for corporations to be held accountable based on these two doctrines in their development. Because of the development of technology, it is not easy to get adequate evidence of mistakes from corporate owners. In this regard, Barda Nawawi Arief stated that the two doctrines mentioned above need to be considered to the extent that they can be taken over. In connection with several current criminal acts that are closely related to developments and advances in the fields of technology, economics and trade which involve many legal entities or corporations. Especially if the consequences caused by these delicacies concern

the public interest. It is very difficult to prove that there is a mistake in a corporation because in general, the one who has the fault is the person.

## **Conclusion**

The existence of a variety of criminal acts committed by corporations, known as Corporate Crimes, shows that over time the development of business carried out by corporations that are profit-oriented with their greedy nature (value risk taking). Corporations that gain trust in doing business from the government often do not comply with applicable laws and regulations, because by violating the trust given by the government, corporations commit acts known as corporate crimes emphasized in the criminal law. This has led to a shift in the function of criminal law, which was initially only aimed at individuals with moral standards (as in the Criminal Code), now shifts to utility standards, where criminal law is also used to protect the community and the state as victims. Corporations are also subject to criminal law and can commit various criminal acts related to business interests to achieve great profits. According to Clinard and Yeager, one form of this is "Crime for Corporations." Criminal liability for corporations is a consequence of criminal acts committed by corporations for their benefit. Therefore, corporations must be held accountable for these actions to be subject to criminal sanctions. Corporations as legal entities are certainly different from natural human liability, so legal principles are needed as the basis for liability, such as the principles of Vicarious Liability, Strict Liability, Identification Theory, Functional Daderschap, and the theory of delegation that has been explained earlier.



## Bibliography

- Alfianto, Dwi. (2022). Pertanggungjawaban Pidana Korporasi Pada Korupsi Pengadaan Barang/Jasa Pemerintah Berdasarkan Perma RI No. 13 Tahun 2016. *Hukum Pidana Dan Pembangunan Hukum*, 5(1), 25–40.
- Lesejane, L. A. (2021). *An assessment of tax compliance costs among Small Medium and Micro enterprises in South Africa*. North-West University (South Africa).
- NASHRUDDIEN MS, IBNU ABURIZAL. (2024). *Pertanggungjawaban hukum pidana korporasi dalam tindak pidana korupsi berdasarkan PERMA RI Nomor 13 Tahun 2016*. UNIVERSITAS PELITA HARAPAN.
- Saputra, Roni. (2015). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi (Bentuk Tindak Pidana Korupsi yang Merugikan Keuangan Negara Terutama Terkait Dengan Pasal 2 Ayat (1) UU PTPK). *Jurnal Cita Hukum*, 3(2), 95573.
- SETIAWAN, HAFIZ. (2019). *Analisis Yuridis Problematika Penyelenggaraan Pemilihan Umum Presiden Dan Legislatif Tahun 2019 Di Kecamatan Depok, Sleman, Di Yogyakarta*. Universitas Islam Indonesia.
- Sinaga, Christine Juliana. (2017). Kajian Terhadap Pidana Penjara Sebagai Subsidair Pidana Tambahan Pembayaran Uang Pengganti Dalam Tindak Pidana Korupsi. *Jurnal Wawasan Yuridika*, 1(2), 191–208. <https://doi.org/10.25072/jwy.v1i2.134>
- Sjawie, Hasbullah F., & SH, L. L. M. (2017). *Direksi perseroan terbatas serta pertanggungjawaban pidana korporasi*. Prenada Media.
- Sjawie, Hasbullah F., & SH, L. L. M. (2018). *Pertanggungjawaban Pidana Korporasi pada TIPIKOR*. Prenada Media.
- Suhariyanto, Budi. (2017). Pertanggungjawaban Pidana Korporasi Berdasarkan Corporate Culture Model dan Implikasinya Bagi Kesejahteraan Masyarakat. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6(3), 441–458.
- Suhariyanto, Budi. (2018a). Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi (The Role Of Regulation Of The Supreme Court Number 13 Year 2016 In Overcoming Obstacles Of Corporate Criminal Infringement). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 9(1), 101–120.
- Suhariyanto, Budi. (2018b). Urgensi Pidanaan Korporasi Pelaku Tindak Pidana Perikanan Menggunakan Peraturan Mahkamah Agung Nomor 13 Tahun 2016. *Jurnal Kebijakan Perikanan Indonesia*, 10(1), 25–32.
- Wadesango, Wadesango, Mutema, Mutema, & Mhaka, Mhaka. (2018). The Impact Of Self-Assessment System On Compliance Levels Of Small And Medium

Enterprises: Case Study-Van Sales Company. *Academy of Entrepreneurship Journal*, 24(3).