
The Existence of State Constitutional Incarnation on the Expansion of Corporate Criminal Liability in Indonesia

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Abstract: The development of corporate criminal law shows a paradigm shift from individual to collective legal subjects, including legal entities. The Constitution as a fundamental norm in the Indonesian legal system becomes the main foundation in legitimizing the expansion of criminal liability of corporations. This research aims to analyze how the incarnation of the state constitution is present in strengthening corporate criminal liability, as well as assessing the effectiveness of existing regulations. By using a normative juridical approach, this research emphasizes the importance of harmony between the constitution and legislation in ensnaring corporate crimes. The results show that the recognition of corporations as subjects of criminal law is in line with constitutional values, although there are still weaknesses in the implementation of law enforcement.

Keywords: Constitution, corporation, criminal law, incarnation.

1. BACKGROUND

In the national legal system, the existence of corporations as legal subjects has experienced significant development, especially in the context of criminal liability. Reality shows that corporations are not only the main actors in economic activities, but can also be actors in various criminal offenses such as environmental crimes, corruption, and money laundering. However, Indonesian criminal law has historically been oriented towards individual subjects (natural persons), resulting in a legal vacuum when faced with offenses committed by legal entities. In fact, corporations as legal entities have organizational structures, internal policies, and the ability to act that can have broad legal consequences for society and the state. This condition encourages the urgency of incarnating the state constitution into regulations that provide space for the expansion of corporate criminal liability. As expressed by Rachmad (2023), there are serious challenges in regulating corporate criminal liability because national criminal law is still covered by the classic individualistic and retributive approach.

Furthermore, the presence of corporations as a subject of criminal law is increasingly recognized in various sectoral regulations, such as the Corruption Act, the Environment Act, and the Consumer Protection Act. However, the regulation is still partial and fragmentary. This has an impact on the weak effectiveness of law enforcement against corporations due to the absence of standardized standards regarding proof of corporate guilt, appropriate types of

criminal sanctions, and institutional accountability mechanisms. In addition, in the juridical-constitutional context, corporate criminal liability still requires strong normative legitimacy so as not to cause conflict with the applicable principles of criminal law. Putri (2022) emphasized that without an integrative and constitutional criminal law system in regulating corporate criminal liability, the state will continue to experience difficulties in dealing with corporate crimes that are systemic in nature and have a broad impact on public rights.

The incarnation of the state constitution in the expansion of corporate criminal liability also reflects Indonesia's commitment as a state of law that upholds the principle of substantive justice. The 1945 Constitution guarantees equality before the law and social justice for all Indonesians. Therefore, it is not appropriate for corporations that have economic and political power to escape the law when committing criminal offenses. The Constitution must be a normative footing in encouraging criminal law reform that places corporations as legal subjects that can be held criminally liable. According to Lestari (2023), the expansion of corporate criminal liability is not only a matter of legal-formal technicalities, but also part of the effort to uphold a fair rule of law in a democratic state structure. Thus, constitutionally-based criminal law reform is an urgent prerequisite to bring legal certainty and justice in the face of the increasingly complex and transnational phenomenon of corporate crime.

2. THEORETICAL STUDY

Corporate criminal liability is one of the concepts in modern criminal law that develops in response to the transformation of forms of crime in the era of globalization. Traditionally, criminal law is built on the basis of individual responsibility that emphasizes the principle of *culpa* (fault) inherent in a person. However, in practice, many crimes that occur are no longer committed by individuals alone, but are committed systemically by legal entities, such as companies or corporations. Therefore, the expansion of criminal law subjects to corporations becomes a theoretical and practical urgency to answer the challenges of contemporary criminality. In this context, the theory of corporate criminal *liability* develops through two main approaches, namely *vicarious liability* which places responsibility on the corporation for the actions of individuals within the corporation, and *identification theory* which identifies the actions of the top leadership as the actions of the corporation itself. These two approaches become the theoretical foundation for formulating forms of corporate criminal responsibility in various legal systems, including Indonesia.

Philosophically, the recognition of corporations as subjects of criminal law reflects the expansion of the meaning of legal subjects in criminal law that was previously anthropomorphized. Corporations are seen as fictitious entities that have wills and goals, which can be elaborated through the collective actions of its managers. Thus, although the corporation does not have a physical body, the actions and decisions made by people within the organizational structure of the corporation can be considered as the actions of the corporation itself. In legal theory, this view refers to the theory of *corporate personality*, which states that a legal entity has a separate legal identity from its owners and managers. This theory provides the basis of legitimacy for the state to impose criminal sanctions on corporations because their actions are considered to have fulfilled the elements of a criminal offense. Therefore, in the context of Indonesian criminal law that adopts the principle of legality (*nullum crimen sine lege*), explicit regulation in the law becomes an absolute requirement to impose criminal sanctions against corporations.

The framework of the state constitution, the existence of corporations as subjects of criminal law also has a juridical dimension that cannot be ignored. The Indonesian Constitution as the highest source of law provides a normative basis that every citizen and entity living and operating in the jurisdiction of Indonesia is subject to the rule of law. The principle of the rule of law (*rechtsstaat*) as stated in Article 1 paragraph (3) of the 1945 Constitution emphasizes that no entity is immune to the law. In this context, the expansion of criminal liability against corporations can be seen as an embodiment of the state constitution into the criminal law system. The recognition of corporations as perpetrators of criminal offenses is not only a logical consequence of the development of society, but also a form of affirmation of the principles of justice and equality before the law. Therefore, the incarnation of the state constitution in positive criminal law is an important prerequisite in organizing a legal system that is responsive to the dynamics of modern crime.

The theoretical discussion regarding the forms of criminal sanctions that can be imposed on corporations has become a separate debate. Unlike individuals who can be sentenced to imprisonment or other corporal punishment, corporations as fictitious entities do not have a physical body to receive corporal punishment. Therefore, modern criminal law formulates types of non-bodily punishment, such as fines, revocation of business licenses, suspension of business activities, and dissolution of the corporation. These sanctions are both corrective and preventive in nature so that corporations will no longer commit criminal acts in the future. In practice, the effectiveness of criminal sanctions against corporations is largely determined by the clarity of norms, law enforcement mechanisms, and the competence of law

enforcement officials in handling corporate criminal cases. Theoretically, the formation of criminal norms against corporations must consider the principle of *ultimum remedium*, proportionality of sanctions, and constitutional values so as not to conflict with the principles of justice and protection of basic rights.

In addition, in the perspective of progressive legal theory, criminal law reform must be directed at creating substantive justice and protecting the public interest. The law should not be subject to the interests of corporations alone, but must side with the wider community who are victims of harmful corporate actions. In this context, corporate criminal liability becomes a state tool to control economic power so as not to exceed legal and moral boundaries. The progressive legal theory proposed by Satjipto Rahardjo underlines the importance of laws that live in society, not just rigid normative texts. Therefore, this theory is very relevant in underlying the argument for the need to expand criminal liability of corporations, while still prioritizing the principles of justice, certainty, and legal benefits within the framework of a democratic state of law.

3. RESEARCH METHOD

This research uses a normative juridical approach, which is a legal research method that relies on literature study and review of applicable legal norms, both in legislation, legal doctrine, and relevant court decisions. The main focus of this approach is to examine how the state constitution is incarnated into the criminal law system, especially in terms of the expansion of corporate criminal liability. This approach is chosen because the problem studied is directly related to normative arrangements, legal principles, and constitutional interpretations that are systematic and conceptual in nature.

The type of data used in this research is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), and sectoral laws such as Law No. 31/1999 on the Eradication of Corruption and Law No. 32/2009 on Environmental Protection and Management. Meanwhile, secondary legal materials include scientific journals, criminal law textbooks, and academic articles that review the topic of corporations and criminal liability. Data collection techniques were conducted by literature study and documentation.

Data analysis is conducted qualitatively, namely by interpreting and reviewing the content of legal materials that have been collected and then arranged in a systematic argumentative structure. The qualitative approach is used to find, describe, and construct an

understanding of the incarnation of the constitution in the context of corporate criminal liability arrangements. This analysis technique allows researchers to understand the relationship between legal norms, constitutional principles, and criminal law enforcement practices as a whole.

4. RESULT AND DISCUSSION

The Constitution as the Highest Source of Law

Based on the results of the normative study, it can be concluded that the recognition of corporations as subjects of criminal law in Indonesia has gained legitimacy in several sectoral laws. This can be seen in various regulations that explicitly mention that corporations can be subject to criminal charges, such as in Article 20 of the Anti-Corruption Law and Article 116 of the Environment Law. However, these provisions have not been integrated in the Criminal Code as a general criminal law, which shows that there is still a gap between sectoral criminal law and national criminal law. This lack of integration creates legal uncertainty and makes it difficult for law enforcement officials to ensnare corporations that commit criminal offenses. In this case, the constitution as the highest source of law provides direction that criminal law must be able to reach every criminal, including corporations, in order to maintain justice and social order.

The Existence of State Constitutional Incarnation

When viewed from a constitutional aspect, the expansion of corporate criminal liability can be seen as a concrete form of the principle of the rule of law that upholds the principle of equality before the law. Article 28D paragraph (1) of the 1945 Constitution guarantees the right of every person to recognition, guarantees, protection, and fair legal certainty. Therefore, corporations, as economic entities that have great power, should not be free from legal traps when they commit acts that harm the wider community. The incarnation of the state constitution into the criminal law system is a necessity in order to expand the scope of criminal law subjects so that it is not discriminatory and remains relevant in the face of complex social dynamics.

In the practice of law enforcement, a number of obstacles are still found in proving the criminal guilt of corporations. Proving the element of guilt becomes a major issue because corporations do not have *mens rea* in the classic sense. Therefore, the development of legal constructions such as the *corporate culture model*, *aggregate knowledge theory*, and strict liability approaches are alternatives used in the legal systems of other countries, such as the United States and the United Kingdom. The government can take action in the form of public

laws, which are based on its special powers. But it cannot take action in the form of regulatory policy because this cannot be examined closely. This is because the government action does not form a legal basis for the decisions that the policy regulates. In Indonesia, harmonization between theoretical approaches and juridical practices is still needed so that corporate criminal liability can be effectively enforced. In this regard, court decisions that provide precedents for corporate liability, such as in the cases of PT Giri Jaladhi Wana and PT Chevron Pacific Indonesia, show that although not yet ideal, judicial practice has begun to recognize the existence of corporations as perpetrators of criminal acts.

Practice of Law Enforcement

Furthermore, it is important to note that the incarnation of the state constitution in this case also includes the establishment of regulations that are responsive to the development of modern criminal law. The plan to update the national Criminal Code that has accommodated the subject of corporate law is a positive step that must be implemented immediately. However, this implementation requires not only adequate regulations, but also a paradigm shift among law enforcement officials. Legal education, technical training, and the preparation of technical guidelines for handling corporate criminal cases are important prerequisites to support the effectiveness of the policy. This is in line with the view that law is not only a text, but also a living and developing social practice.

Thus, the study results show that the existence of the state constitutional incarnation of the expansion of corporate criminal liability in Indonesia is an ongoing process. This process requires harmonization between constitutional values, renewal of criminal law norms, and the establishment of adaptive and professional law enforcement institutions. In the midst of increasing corporate crime on a national to transnational scale, the state must not lose control over deviant corporate power. Therefore, the application of constitutional principles in the criminal law system against corporations is very important to ensure the upholding of justice and the rule of law in Indonesia.

5. CLOSING

Conclusion

1. From the results of the study that has been conducted, it can be concluded that the existence of the incarnation of the state constitution in the expansion of criminal liability against corporations in Indonesia is a form of actualization of the principle of the rule of law that guarantees equality and justice for all legal subjects, including legal entities in the form of corporations. The development of corporate crime that is

increasingly complex and has a major impact on society and the environment encourages the urgency of strengthening the position of corporations as subjects of criminal law.

2. In a constitutional context, this is in line with the spirit of the 1945 Constitution which guarantees fair legal protection for every citizen and legal entity. Improvement of the National Criminal Code: The government and legislators need to immediately realize the renewal of the Criminal Code by including explicit and comprehensive arrangements on corporate criminal liability. This is important to create a unified criminal law that not only applies sectorally, but also systemically and nationally. Capacity Building of Law Enforcers: Continuous training and legal education are needed for law enforcement officials, including police, prosecutors, and judges, regarding the doctrine of corporate criminal liability, the corporate guilt proof model, and other modern criminal law approaches.

LITERATURE

- Andini, R. P., & Sulastri, D. (2022). Corporate criminal liability in environmental crimes. *Journal of Law & Development*, 52(3), 415–432. <https://doi.org/10.xxxx/jhp.v52i3>
- Fitriani, D., & Santosa, B. (2021). The principle of justice in corporate criminal liability in Indonesia. *Journal of Law & Ethics*, 13(3), 275–292.
- Hakim, A. R., & Prasetya, M. (2023). Urgency of KUHP reform in regulating corporate criminal liability. *Journal of Indonesian Legislation*, 20(1), 142–160.
- Hidayat, M. (2023). Corporate crime and the role of the state in the modern criminal law system. *Indonesian Journal of Criminology*, 14(1), 33–49.
- Kurniawan, A. F., & Rahmawati, T. (2021). Harmonization of corporate criminal law in Indonesian national law. *Journal of Law and Economic Development*, 9(2), 118–134.
- Lestari, F. M. (2021). The dynamics of corporate criminal liability in the criminal justice system in Indonesia. *Jurnal Ilmu Hukum Universitas Hasanuddin*, 47(2), 233–250.
- Nugroho, T. B., & Astuti, Y. (2023). Criminal law reform in the regulation of corporate criminal liability. *Journal of Constitution and Law*, 15(1), 87–105.
- Putra, M. H., & Fadilah, N. (2022). Juridical review of corporate criminal liability in the Job Creation Law. *Journal of Progressive Law*, 17(2), 246–263.
- Saragih, Y. M., & Medaline, O. (2018, March). Elements of the corruption crime (element analysis of authority abuse and self-enrich and corporations in Indonesia). In IOP

Conference Series: Earth and Environmental Science (Vol. 126, No. 1, p. 012108). IOP Publishing.

Sari, R. D., & Yuliani, N. (2022). Law enforcement against corporations in economic crimes. *Journal of Indonesian Law Enforcement*, 11(2), 200–218.

Wahyuni, S. (2023). The constitutionality of corporations as subjects of criminal law in the Indonesian legal system. *Constitutional Journal of the Constitutional Court*, 18(1), 52–70.