



CORPORATE RESPONSIBILITY AS A PERSON FOR ECONOMIC CRIME IN INDONESIAN CRIMINAL LAW

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ABSTRACT

It is possible for corporations to carry out their activities to commit crimes and of course, the impact on victims is so wide-ranging as a result of corporate crime, so it is only natural that corporations are also responsible for all their actions. Efforts to position the corporation as a party that must be responsible for actions that cause victims and also losses to other parties are not easy, because a corporation is not a person, but an association (whether with a legal entity or not). To realize corporate responsibility, what needs to be done is criminalization. The purpose of this study is to formulate a form of corporate responsibility. To realize corporate responsibility, what needs to be done is criminalization. It can be expanded, namely expanding criminal responsibility, expanding the types of criminal and criminal sanctions (both in the form of crimes and actions: the author), as well as efforts to make administrative law sanctions into criminal sanctions

Keywords: Responsibility, Corporations, criminal sanctions.

INTRODUCTION

Occurrences of air pollution that causes disease (Acute Respiratory Infection) due to factory smoke, hospital services that lead to unhealthy or death of patients, due to inappropriate services, the emergence of chronic diseases, as a result of consuming counterfeit traditional herbal medicine, and incidents other that causes loss on the other hand, becomes a separate legal problem.

The legal problems will revolve around the problem of who should be held accountable for events that result in harm to other parties, both physically and psychologically, and what is the measure. To answer this problem, of course, is not easy, because factory smoke causes ISPA, inaccuracies in hospital services that result in illness or death of the person, and the emergence of chronic diseases as a result of consuming traditional herbal medicine, does not happen immediately, the victims are only categorized as victims. future (Potential Victim).

In another context, factories that emit smoke and have ARI for other people, hospitals that provide inappropriate services and result in unhealthy or death of patients, and companies that produce herbal medicine and result in chronic illness for those who consume them, all of which have legalization to operate, besides these victims never feel victimized.

The events above have changed and resulted in a paradigm shift in understanding criminal law. This paradigm shift is intended so that anyone who commits an act and causes harm to another party must be held accountable. From a traditional/classical perspective, talking about the scope of criminal law includes discussions about criminal acts, perpetrators of criminal acts, and criminal responsibility.

Criminal acts are acts that are categorized as crimes by law. The perpetrator of a criminal act is the act of someone who commits acts that the law refers to as a crime. Criminal liability is a legal consequence that must be accepted by a person who commits an act that is referred to as a crime by law.



The scope of such criminal law has received criticism from various parties because it overrides the rights of victims of crime, and the definition of crime stated in the law is very narrow and limited.

According to critical criminology,¹ the occurrence of a crime can indicate losses and victims. This means, even though an act is not referred to as a crime by law, if the consequences of the act cause victims and losses, the act can already be called a crime.

Departing from the above understanding, it can be understood that to be punished for an act does not only depend on whether or not there is a law declaring the act a crime but if the act has caused victims and losses, then the act can be referred to as a crime. Common sense will admit that in substance an act that can cause victims and also harm on the other hand is an act that should not be done (which means it is an evil act).

The addition of crime victims as part of the scope of criminal law was conveyed by Iswanto. According to Iswanto, studying criminal law in accordance with the view of justice in the mid-20th century (of course in the coming centuries: author) includes prohibited acts, perpetrators of crimes, victims, and punishments which are referred to as the four main issues of criminal law in the following order: prohibited, the perpetrators of criminal acts, victims and criminals²

The forms of losses and also victims due to corporate crime cannot be felt immediately (actual victims), but can only be felt and seen at a later time (potential victims).³ According to Muladi, victims of corporate crime include competitors, the state, employees, consumers, the public, and shareholders.⁴

By looking at the wide range of victims caused by corporate crime, it is only natural that corporations are also responsible for all their actions. Efforts to position the corporation as a party that must be responsible for actions that cause victims and also losses to other parties are not easy, because a corporation is not a person, but an association (whether with a legal entity or not).

To realize corporate responsibility, what needs to be done is criminalization. According to Muladi, criminalization is not only an attempt to make an act that was not previously a criminal act into a criminal act (which is further stipulated in the Law: Author) but can be expanded, namely expanding criminal responsibility, expanding the types of crimes, and criminal sanctions. (both in the form of crimes and actions: the author), as well as efforts to turn administrative law sanctions into criminal sanctions⁵

RESEARCH METHODS

This study uses a positivistic paradigm. Law is conceptualized as norms (commands and prohibitions) which are products of law-forming institutions that are binding (law in books) or specifically laws that are positive norms in the national legislation system. In addition, in this study, the law is also interpreted as a judge's decision/determination, namely the determination of corporate responsibility. Thus, the approach uses a normative/doctrinal approach. The data includes secondary data as the main data and primary data as supporting data. Data collection techniques are carried out by conducting documentary studies and literature studies and interviews to get primary. The analysis in this study uses qualitative analysis with an interactive model. The object of this research is the implementation of corporate responsibility.

DISCUSSION

¹ I.S Susanto, *Kriminologi*, Genta Publishing, Yogyakarta, Mei, 2011, Hlm. 133-135

² Rena Yulia, *Victimologi, Perlindungan Hukum Terhadap Korban Kejahatan*, Graha Ilmu, 2010, Hlm. 49-50

³ Iswanto, *Restitusi kepada korban mati atau luka berat sebagai pidana bersyarat pada tindak pidana lalu lintas* (Disertasi), Universitas Gadjah Mada, Yogyakarta, 1995, hlm 21

⁴ Muladi, *Demokratisasi, Hak Asasi Manusia dan Reformasi Hukum di Indonesia*, The Habibie Center, Jakarta, 2002, Hlm 148-149.

⁵ Muladi, *Perkuliahan hukum pidana korporasi, Program Magister Ilmu Hukum*, Universitas Diponegoro, Semarang, 1 Agustus 2003



1.1. Economic crime and economic criminal law.

If you pay attention, the Criminal Code (KUHP) does not recognize the term criminal act/economic crime. The Criminal Code only recognizes the term crime against property. Even so, many crimes are not formally aimed at wealth, but the motive is wealth. This second-mentioned crime is usually carried out more frequently and the perpetrators always use the intermediate goal and the final goal is to unlawfully control and possess other parties' assets.

Crime develops according to the development of society. Likewise with the perpetrators of crimes, initially only people (natural), but in the development of corporations (juridical persons), even in the final development of groups (groups) are subjects of criminal law. Nevertheless, some people still view real crime as a conventional crime⁶

The statement: "some people still think that real crimes are conventional crimes", is true. This fact is the result of media discrimination in reporting crimes to the public. One can see with one's eyes how proud a policeman is to handcuff a thief's hands, while at the same time, one can witness the intimate relationship between law enforcement officials and the owner of a company which in its operations is detrimental to the general public. This kind of condition can lead people to say that crimes are those that violate the Criminal Code.

According to Hartiwiningsih, the age of crime is as old as humans/Crime is an old man. According to him, crime is old in age but young in the news. According to Hartiwiningsih, following Benedict S Alper's opinion, crime is the oldest social problem, in this connection 80 international conferences have been recorded from 1825 to 1970 which discussed efforts to tackle crime. Still, according to Hartiwiningsih who cites Kimball's opinion, crime is not a natural phenomenon, but what has been stated in the Law, so what has been determined by the legislators as a crime is a crime.⁷

Referring to the opinion above, people understand crime, its size is only the law, so if the law does not mention it as a crime, then it is not called a crime. Such a conception of evil, not only can mislead but can legalize actions that are not evil to become evil. The value of crime is only seen based on the norms which at the time of formation were conditional on interests. In this context, whether or not a person is evil is not determined by his actions, but by law.

In its further development in relation to economic crimes, the starting point is not based on the Criminal Code, but on laws outside the Criminal Code. Then in identifying victims, it is not only individuals but society as a whole. By quoting several sources, Marwan Effendy provides several definitions, the scope of characteristics, and specificities of economic crimes as follows:⁸

1. Economic crimes are all forms of criminal acts related to the economy that have an impact on life, society, the nation, and the state, both micro and macro, originating in financial activities, trade, capital markets, natural resources, and others.
2. In a narrow sense, economic crimes/economic crimes are limited to actions that are prohibited and punishable by applicable regulations as mentioned in Article 1 of Law No. 7 Darurat 1955 concerning economic crimes.
3. In a broad sense, economic crimes/crimes are criminal acts under economic regulations other than those contained in the 1955 Darurat Law concerning economic crimes.
4. According to Mardjono Reksodiputro, economic crimes are equated with economic crimes which only include the actions listed in Law No. 7 Darurat 1955 concerning economic crimes. In this context, according to Mardjono, there are three categories of economic crimes, namely: (a) Relating to the regulations stated expressly in Article 1 of Law No. 7 Darurat 1955; (b) Related to Articles 26, 32, and 33 UUTPE; and (c) Which gives authority to the legislature to name an act as a crime.

⁶ Hartiwiningsih, *Diklat Perkuliahan Hukum Pidaha Ekonomi (Kejahatan Korporasi)* Program Doktor Ilmu Hukum, Fakultas Hukum, Universitas Sebelas Maret, Surakarta, 2012, tanpa Halaman

⁷ Ibid

⁸ Marwan Effendy, *Hukum Pidana Ekonomi*, Diklat Perkuliahan Hukum Pidana Ekonomi, Program Doktor Ilmu Hukum, Program Pascasarjana Universitas Sebelas Maret, Surakarta, 2012, Hlm 10-19.



5. There are three characteristics of economic crime, namely: (a) The perpetrator uses a modus operandi that is difficult to distinguish from the modus operandi of economic activities in general; (b) This crime usually involves businessmen who are successful in their field; (c) This crime requires special handling or control by law enforcement officials.

6. In the handling of economic crimes there are various specificities, including (a) A cumulative sentence can be imposed, that is, a combination of two principal corporal punishments and a fine which is impossible to apply in ordinary crimes; (b) A trial may be held in absentia, with the aim of saving state losses; (c) Can impose a sentence on a deceased defendant in the form of confiscation of evidence of proceeds of crime; (d) Legal subjects consist of people and legal entities; (e) In economic crimes, attempted violations can be punished; and (f) Orderly action can be imposed as an additional punishment.

7. According to Edi Setiadi, economic crimes contain at least the following elements: (a) The act is carried out within the framework of economic activity which is basically normal and legal; (b) The act violates or harms the interests of the state or society in general, not only individual interests; (c) The action also includes actions in the business environment that are detrimental to other companies or individuals.

8. According to the Encyclopedia of Crime and Justice, there are three types of economic crimes, namely: (a) Property crimes, which have a broad understanding of the meaning in Article 362 of the Criminal Code, which includes objects controlled by individuals as well as those controlled by the state; (b) Regulatory crimes, namely any action that constitutes a violation of government regulations relating to business in the trade sector or violation of provisions regarding standardization in the business world. Examples of the prohibition of the illegal marijuana trade, violating the provisions on labor wages and the prohibition of monopoly; (c) Tax Crimes, namely actions that violate the provisions regarding liability in the field of taxes and the requirements stipulated in the tax law. Example of tax evasion.

In the literature, the term business crime is known, which the American BAR Association defines as a form of illegal and non-violent activity that basically involves elements of deception, misrepresentation, concealment, manipulation, breach of trust, denial, or illegitimate excuses.

The use of the term economic crime is actually an attempt to differentiate it from the term white-collar crime. At the same time, economic crimes are also known to use a moral and political approach, namely violating the interests of the state or civil society. If many companies have good prospects but the reality is different, then there is an economic crime in it. In formulating economic crimes, there are at least elements (1) Committed within the framework of economic activities which are basically normal and legitimate business activities; (2) It is a crime that violates the interests of the state and society; (3) The crimes include those directed at other companies or individuals

According to Muladi, economic crimes essentially contain three elements, namely:

1. An economic crime is a crime committed within the scope of economic activity, which itself constitutes or at least is considered a legal and reasonable business activity. Does not include activities that are illegal, such as gambling, drug trafficking, or prostitution.

2. An economic crime is a crime that is not only an individual victim but also harms the interests of the state or society in general. Economic crime is a business crime, although it does not mean that all business crimes are economic crimes. Ordinary cases of fraud or embezzlement are not included in this category.

According to Edi Setiadi and Rena Yulia Citing the opinion of Finn and Allan Hoffman, Sunaryati Hartono pointed out that the development of crime in the economic field has led to what is called white collar crime⁹ (of which one part is a corporate crime: Author) and in further developments, Muladi argued, that economic crimes have reached what is called socio-economic-crime. Furthermore, Edi Setiadi and Rena Yulia emphasized that in further developments, corporations absolutely must become the subject of criminal law, bearing in mind the development

⁹ Edi Setiadi dan Rena, *Hukum Pidana Ekonomi*, Graha Ilmu, Yogyakarta, 2010, Hlm 35

of increasingly sophisticated economic crimes.¹⁰ Making a corporation a subject of criminal law is carried out through stages. The first stage is marked by efforts to limit the nature of offenses from corporations to individuals. If a crime occurs within a corporate environment, the crime is deemed to have been committed by the corporation's management. In this stage, the emphasis is on the discharge of duties from the assignment of administrators to the administrators. The second stage emerged after the end of the first world war which introduced the doctrine that criminal acts can be committed by corporations with a note that responsibility is borne by the management. In the third stage, the possibility of suing corporations and holding them accountable according to criminal law has begun.

Talking about economic crimes/crimes, of course, cannot be explained by talking about economic criminal law. The reason is, through economic criminal law, economic activities can run. Likewise, through economic criminal law, legal problems resulting from economic activities can be resolved.

1.2. White Collar Crime and corporate crime.

Talking about corporations, cannot be separated from talking about White Collar crimes. Broadly speaking, white collars can be grouped into:¹¹

- (a) Crimes committed by professionals in carrying out their work, such as doctors, notaries, lawyers, and so on.
- (b) Crimes committed by the government or its apparatus, such as corruption and other acts of abuse of power, such as abuse of citizens' rights, arrest or detention that violate the law.
- (c) Corporations.

The existence of corporations as business actors was known several centuries ago, although at first the emphasis was placed on cooperation (association) rather than the aim of utilizing the provision of capital (in the form of shares) as usual. M.B. Clinard & P.C Yeager, Corporate Crime as quoted by I.S Susanto emphasized that the emergence of the industrial revolution had encouraged the development of corporations as legal entities and economic entities. Perhaps the VOC which was founded by the Dutch in 1602 can be seen as a pioneer of modern corporations (businesses) built with fixed share capital. For more than three centuries, the foundations and characteristics of corporate law were developed such as a body recognized by the state, which has the right to own property for general purposes, the right to sue and be sued, and its existence that extends beyond the lifetime of its members.

Through legislation, today's corporations are accepted as legal subjects and treated the same as other legal subjects, namely humans (naturally). Thus, corporations can act like humans in general. However, as a legal subject whose existence is determined by legislation, matters relating to corporations, such as rights, obligations, actions, and responsibilities are determined by the determiner, namely the law. Difficulties arise due to the lack of vision of the one who determines corporate affairs besides the difficulties obtained from the construction of the law itself, not only for ordinary people but also for law enforcement officers in dealing with corporate behavior that is detrimental to society. For example, regarding corporate products that cause people to get sick or die, because the actions of this corporation must be evaluated by a court, the handling becomes more complex and technical when compared to if this is done by human legal subjects.

Corporate crimes are corporate actions that can be subject to sanctions, both criminal, administrative, and civil sanctions, in the form of illegal abuse of economic power, such as industrial products that endanger health and life, fraud against consumers, labor violations, misleading advertisements, environmental pollution, and tax manipulation.¹²

¹⁰ Ibid, Hlm 40

¹¹ Is.Susanto, *Kriminologi*, Fakukltas Hukum Universitas Diponegoro, Semarang, 1995, Hlm. 83

¹² Dwidja Priyatno, dalam Kristian & Christine Tanuwijaya, *Kebijakan Formulasi Pidana Terhadap Korporasi Sebagai Pelaku Tindak Pidana Pencucian Uang Dalam Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang*, Jurnal Mimbar Justitia, Vol. II No. 01 Edisi Januari-Juni 2016, hlm. 697

Other theories that explain corporations as subjects of criminal law and corporate criminal responsibility include the Identification Theory. According to the identification theory, the actions of management or employees as personnel of a corporation are identified as corporate actions.¹³

Criminal liability in the form of strict liability can provide a solution to this problem, whereas full corporate criminal liability (strict liability) states that criminal liability can be requested against corporations with the following criteria: corporations that run businesses without permits and corporations holding permits which violates the conditions specified in the permit, but still refers to the principle of legality.¹⁴

Conceptually, crimes involving corporations are divided into (a) corporate crimes, namely those committed by corporations in an effort to achieve corporate goals to gain profit; (b) bad corporations, namely corporations whose sole aim is to commit crimes (in this case the corporations are used as tools or cover for committing crimes); and (c) crimes against corporations, such as theft or embezzlement of corporate property; here the victim is actually the corporation itself. From the three concepts of corporate crime, based on the second concept, it can be seen that the notion of corporate crime is corporate actions that are carried out illegally in order to gain profit.¹⁵

Acceptance of corporations as subjects of criminal law, allows corporations to act like humans, and have rights and obligations, actions and responsibilities are determined by law. Even though it has been regulated in many laws, corporation determination of corporations as legal subjects raises pros and cons.¹⁶ Vicarious liability is only limited to certain circumstances where the employer (corporation), is only responsible for the wrongdoing of workers who are still within the scope of their work¹⁷

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1.3. Considerations and types of punishment for corporations.

Broadly speaking, the forms of losses that will be experienced by victims of corporate crimes include (a) economic or material losses; (b) losses in the field of mental health; and (c)

¹³ Sigid Soeseno, *Hukum Pidana Indonesia, Perkembangan dan Pembaharuan (Implikasi Teori Pertanggungjawaban Pidana Korporasi dalam Perundang-undangan Pidana dan Praktik Peradilan Pidana Indonesia)*, Bandung, PT. Remaja Rosdakarya, 2013, hlm 207-216

¹⁴ Yudi Krismen, *Pertanggungjawaban Pidana Korporasi Dalam Kejahatan Ekonomi*, Jurnal Ilmu Hukum, Volume 4 No. 1. 2013, hlm. 159

¹⁵ I.S Susanto, dalam Linelejan B. Davadi, *Pertanggungjawaban Tindak Pidana Korporasi Yang Dibebankan Kepada Pengurus Korporasi Dalam Pasal 59 Kuhp*, Jurnal Lex et Societatis, Vol. V/No. 7/Sep/2017. Hlm. 81

¹⁶ Puteri Hikmawati, *Kendala Penerapan Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Korupsi The Obstacles Of Implementing The Criminal Liability Of The Corporation As A Criminal Of Corruption*, Jurnal Negara Hukum: Vol. 8, No. 1, Juni 2017, hlm. 135

¹⁷ Dwidja Priyatno, dalam Kristian & Christine Tanuwijaya, *Kebijakan Formulasi Pidana Terhadap Korporasi Sebagai Pelaku Tindak Pidana Pencucian Uang Dalam Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang*, Jurnal Mimbar Justitia, Vol. II No. 01 Edisi Januari-Juni 2016, hlm. 697

¹⁸ I.S Susanto, *Kejahatan Korporasi*, Badan Penerbit Universitas Diponegoro, Semarang, 1995, Hlm 21-24

social and moral losses. As is known, the doctrine known in the flow of positivism is only oriented to three points (criminal law), namely criminal acts, criminal responsibility/perpetrators of criminal acts/persons, and criminal sanctions. The three main problems are only oriented toward the actor (*dader*).

At present, the criminal law doctrine only recognizes *daderstrafrecht*. In *daderstrafrecht*, there is no place for victims. The ambiguity of the place for victims will lead to injustice, because as mentioned earlier that according to critical criminology, there is an indication that a crime has occurred in which there have been victims and also losses.

According to critical criminology, there is no crime without a victim. Understanding of victims who are real and happening now (actual victim) and victims who are not visible now in place for some time to come (potential victim). Crimes that cause indirect victims (potential victims) include organized crime, top hat crime, white collar crime, cybercrime, illegal abuse of economic power, illegal abuse of public power, and so on.

Against these potential victims, people sometimes don't feel they are victims. Ignorance of the public as victims of this corporate crime, should not be used as an excuse not to convict corporations. This is important to put forward because corporations through their management have committed acts (whether they did or did not do) that have caused victims and losses to other parties.

Barda Nawawi Arief introduced several theories related to corporate responsibility, Direct liability doctrine, or identification theory.¹⁹ According to this theory, the actions/mistakes of senior officials (senior officers) are identified as corporate actions/mistakes. This theory is also called alter ego theory/doctrine or organ theory. In a narrow sense (English), only the actions of senior officials (the brains of the corporation) can be accountable to the corporation. In another sense (the USA) is not only senior officials/directors but also agents under them.

2. The doctrine of vicarious liability.

This theory is based on the employment principle, that the employer is the main person responsible for the actions of the worker/employee, so the servants set the mater's set law. Starting from the employment principle, in relation to vicarious liabilities, Peter Billes provides the following notes:

- a. A company (as is the case with humans as actors/entrepreneurs) can be alternately responsible for actions carried out by employees. Such accountability arises for the moment that it is vicariously capable of being carried out.
- b. In relation to the employment principle, most or all of these offenses are summary offenses related to trade.
- c. The position of the employer within the scope of his work is irrelevant according to this doctrine, is not important for the employer, either as a corporation that is naturally capable (individually), has not directed or given instructions/orders to employees to commit violations of criminal law. In some cases, vicarious liability is imposed on the employer even if the employee commits an act contrary to instructions, based on the reason that the employee's actions are seen as having committed the said action (within the scope of the case). Therefore, when a company is involved, accountability arises even if the act was committed without guidance from a senior person within the company.

Friedmann argues that the reason underlying responsibility for the loss is essentially the penalty for negligence for the cause of the loss. Then shift from a view that is morally flawed to social responsibility by expanding the general principle of unfair responsibility for losses due to carelessness or acts that are not careful. Here regulations were born that protect the public, such

¹⁹ Barda Nawawi Arief, *Masalah tindak pidana dan pertanggungjawaban pidana korporasi* (bahan kuliah), Fakultas Hukum Universitas Swadaya Gunung Jati (Unswagati), Cirebon, 2002, Hlm. 3-14

as the special law on the direct responsibility of motorized vehicle drivers. Then shift again with the expansion of the concept of negligence to be no different from direct responsibility²⁰

3. The doctrine of strict liability under the law (Strict Liability).

Corporate responsibility is also not solely based on the law, namely in the event that the corporation violates or does not fulfill certain obligations/conditions/situations by the corporation which is then known as "companies offenses situational offenses or strict liability offenses", for example, the law as following:

- a. Corporations that run their business without a permit;
- b. Corporations holding permits that violate the conditions (conditions/situations) specified in the permit;
- c. Corporations that operate uninsured vehicles on public roads.

4. Doctrine/Theory of Economic Culture (Company culture theory)

According to this doctrine/theory, corporations can be accounted for in terms of their procedures, operating system, or culture (the procedures, operating system, or culture company). Corporate errors are based on (internal decision making structures).²¹

According to Muladi, that company is related to difficulties in convicting corporations, because it started with a debate that stemmed from the position of the corporation as a legal fiction and the ultra vires doctrine which must be specifically stated in the corporate charter. Furthermore, it is also related to the absence of menswear which is needed in criminal responsibility as well as the ability of corporations, according to Muladi, is the nature of criminalizing corporations, considering that criminal sanctions have been designed to convict people.

According to Muladi, there are several theories that can be applied to convict corporations, namely:²²

1. The doctrine of the superior respondent or vicarious liability. According to this theory, the actions of a subordinate will be associated with the corporation, the development of this theory gave rise to a replacement theory called the identification theory. In the theory of vicarious liability, a person can be responsible (accountable) for the actions of others.
2. The identification (identification theory). According to this theory, all acts or criminal acts are committed by people who can be identified with the organization or those who are called who constitute its directing mind, namely individuals such as officials or employees who have a manager level, who in their duties are not under orders or directives from other superior authorities are organizations, can be identified as or actions carried out by corporations.
3. The delegation (the delegation theory). According to this theory, the circle of individuals who must be responsible is broadened to include a combination of the board of directors, the managing director, the superintendent manager, and any person who is delegated from the board of directors to run the corporation.

Lacabucci provides several categories of what is called the authority to determine the nation or directing mind. as follows:

- a. Authority to make decisions in relevant corporate activities, including the authority to design and oversee the implementation of corporate policies.
- b. The capacity to make decisions in the framework of corporate policy, is more than just providing operational policy effects, both at the head office and in various branches.
- c. The determination must be based on a case-by-case approach (case-by-case analysis).
- d. Corporations cannot be held accountable as long as the person who committed the crime does not have the authority to develop corporate policies that must be implemented.

²⁰ Friedman, W, *Legal Theory* Terjemahan Rajawali, *Teori & Filsafat Hukum & Masalah-Masalah Kontemporer (Susunan III)*. Jakarta: Rajawali Press, 1990, Hlm. 47-48.

²¹ Barda Nawawi Arief, Op Cit Hlm. 251

²² Muladi, *Penerapan tanggungjawab korporasi dalam hukum pidana* (makalah) Program Magister Ilmu Hukum, Universitas Diponegoro, Semarang, 2003, Hlm. 2-5.

e. The corporation cannot be held accountable if the person who has the directing mind is involved in corporate fraud (founded), while the corporation does not gain any profit from this action.

Seeing corporations as part of white-collar crime means that the scope is very complex, so in dealing with unruly corporations, criminal law enforcement does not have to look for the main and first focus point, but utilization to reduce the opportunity for a corporation to commit deviance, must be made minimized (even if possible eliminated altogether). All obligations are to seek that work is worship so that deviant thoughts must become something that does not exist in the minds of corporate executives, what is isolated is a work ethic that is based on noble ethics.

The author agrees with Muladi, that in dealing with a corporate crime it is necessary to consider a culture of self-regulation, consideration of administrative sanctions, in criminal law fines are given, and efforts to realize criminal offenders.

Then alternative prevention, apart from being criminal, should be cultivated by every profession to have a social responsibility, obey the code of ethics, and have a pioneering spirit. Then also accompanied by cooperation between the government, authorities, and society as well as professionals. Taking into account the interests of workers and consumers accompanied by prudential principles, according to Muladi, the types of penalties that can be imposed on corporations are:

- a. Imprisonment, in the sense that corporate activities are temporarily suspended.
- b. Capital punishment, in the sense that corporate activities are terminated/closed
- c. Restrictions on movement, in the sense of reducing the rights of corporations, announcements by relevant institutions regarding violations committed (including the announcement of judge's decisions), and others
- d. Imposition of fines, which are followed by the rules of implementation.
- e. Supervision, in the sense that for a certain period of time, a corporation is under the supervision of the authorities.

CONCLUSION

The basis for considering that a corporation that commits a crime can be punished is the loss and victims of the crime. Victims of corporate crime include competitors, the state, employees, consumers, the public, and shareholders. Several theories/doctrines that can be used as punishment for corporations include identification theory, vicarious liability doctrine, strict liability doctrine, the delegation theory Economic Culture Doctrine/Theory (Company culture theory) Types of punishment for corporations can be imposed on management and/or on the corporation. For administrators, crimes that can be imposed include imprisonment and/or fines For corporations, the penalties that can be imposed include criminal penalties, aggravated fines (plus 1/3), additional penalties in the form of a. Confiscation of certain items; b. Announcement of judge's decisions; c. Payment of compensation d. Orders to stop certain activities that cause consumer losses; e. Obligation to withdraw goods from distribution; f. Revocation of business licenses; and g. Revocation of legal entity status.

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