

# HANDLING CORPORATE CRIMES IN INDONESIA AMIDST THE COVID-19 PANDEMIC

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**Abstract**--Covid-19 Corporate crime is a difficult concept to understand and determine whether the corporation or management is held responsible for a crime. Especially during the COVID-19 pandemic, many aspects should comply with the complicated processes, including law enforcement. This paper aims to analyze corporate crimes handling in Indonesia amidst the pandemic. This is normative legal research with data being collected through a literature study. The results show that a substantial amount of corruption cases are still processed amidst the pandemic. However, several things need to be adjusted, specifically the Corruption Eradication Commission procedures, by applying the working from home (WFH) approach, conducting trials through video conference if a face-to-face trial is not possible, and issuing the Circular Letter Number 8 of 2020 concerning the Use of Budget for the Procurement of Goods and Services in the Context of the Corona Virus Disease 2019 (COVID-19) Handling Acceleration to prevent corruption in corporations. The government must immediately form a legal construction for handling crime, especially those committed by corporations amidst the pandemic. An appropriate legal construction will be able to guarantee the principle of certainty in handling crimes.

**Keywords:** Corporate Crime, Corporate corruption, Covid-19 Pandemic

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## INTRODUCTION

The activity of corporates as legal entities (artificial person) has been integrated into various aspects of society.[<sup>1</sup>] As entities or legal subjects that greatly contribute to economic growth and national development, corporations are not exempt from crimes that negatively impact the state and society.[<sup>2</sup>] In facing competition, corporations utilize new technological inventions, marketing techniques, and other efforts to expand or dominate the market. This situation can prompt corporations to spy, imitate, falsify, steal, bribe, and conspire against rivals to gain the edge on prices or territory. In short, to win the competition, corporations may commit criminal acts to achieve their goals.

Corporate crime is classified as a white-collar crime that uses a sophisticated modus and may be transnational. The combination of these two qualifications results in wide scope with a very large impact. The victims may include the general public, consumers, competitors, and unprotected employees. Even a state can become a victim of corporate crime that can cause losses to state finances or the economy.[<sup>3</sup>]

As a criminal act, corporate crime is an inseparable part of corruption. Corporations are classified as legal subjects as regulated in Article 20 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning the Amendments to Law Number 20 of 2001 concerning the Eradication of Corruption.[<sup>4</sup>] Corruption is an acceptable action to some parties even though it affects human rights, state ideology, economy, national finances, national morals, and so on. Therefore, corruption is a malicious behavior that is difficult to overcome. The difficulty in overcoming corruption resulted in the number of acquittals and sentences which are not proportional

to the crime committed. This is very detrimental and hinders the development of a nation. Continuous occurrences of such long periods can negate the public sense of justice and trust in the laws and legislations.<sup>[5]</sup>

Recognizing corporations as subjects of criminal law indicates that criminal liability can be imposed. Muladi and Dwidja Priyatno state that in the Indonesian positive law, corporations as perpetrators of criminal acts can be criminally liable and subject to punishment.<sup>[6]</sup> This is evidenced by the regulation of corporate crime in special laws and regulations, such as Law Number 31 of 1999 Jo, Law Number 20 of 2001 concerning Eradication of Corruption, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 8 of 2010 concerning Eradication of Money Laundering, and other special laws and regulations. However, both the Criminal Code (KUHP) and Law Number 8 of 1981 concerning Criminal Procedure Law or known as the Criminal Procedure Code (KUHAP) do not establish corporations as subjects in criminal law.

In response to this, the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Corporate Crime was issued. This is one of the efforts to formulate a criminal law against corporate crimes. However, the regulation is not properly in handling criminal acts committed by corporations, especially amidst the pandemic. The COVID-19 pandemic has spread and affected various sectors all around the world. The rapid spread of the virus has claimed many lives. As of Wednesday, September 29, 2020, there were 282,724 confirmed cases, with 61,686 patients being treated, 10,601 deaths, and 210,437 recoveries in Indonesia.<sup>[7]</sup> The mortality rate is increasing, yet there are other sectors affected by the virus, such as the social, political, cultural, economic, and legal sectors.

To maintain economic policies, the government should expand the regulations governing business activities, especially those related to corporate legal liability for criminal offenses, both through developing new regulations and strong enforcement.<sup>[8]</sup> The Head of the Corruption Eradication Commission (KPK), Firlu Bahuri, emphasized that the institution will act decisively in finding corporate crimes committed by state administrators amidst the pandemic. Firlu strongly emphasized that he will not hesitate to impose the death penalty for corruptors amidst the pandemic. "Corruption is detrimental to the state and national finance. Moreover, if corruption is committed amidst a pandemic, it is considered as a serious crime and can be subject to the death penalty".<sup>[9]</sup>

The President of Indonesia, Joko Widodo, also states that legal actions must be carried out so that law enforcement officials do not apprehend innocent officials which in turn will spread fear to other innocent officials. Firlu adds that the KPK always enforces the law strictly and effectively to ensure that others are intimidated to obey the law.<sup>[10]</sup>

## 1. PROBLEMS

Based on the subject of study, there are two problems as formulated below :

1. How is the existence of Corporate Criminal for Corruption Acts in the Legislation?
2. How is corporate crime handled in Indonesia amidst the COVID-19 Pandemic?

## 2. RESEARCH METHOD

This is normative legal research using legal, conceptual, and case approaches. The data consist of secondary data in the form of primary, secondary, and tertiary legal materials which were obtained through literature study and analyzed using qualitative analysis with systematic interpretation. Systematic interpretation is the interpretation of laws as part of the legislation system in connection to other laws. In this study, the law is conceptualized as what is written in statutory regulations or as a standard rule or norm for appropriate human behavior.

## 3. DISCUSSION

### 1. The existence of Corporate Criminal Liability for Corruption Acts in the Legislation

Initially, lawmakers consider that only an individual human can become a legal subject of criminal acts. Over time, in formulating offenses, lawmakers also consider that individuals can act within or

through organizations in or outside civil law which causes the emergence of regulations for legal entities or corporations as legal subjects in criminal law.<sup>[11]</sup>

However, to date, the Criminal Code has not put corporations as subjects of criminal law. Instead, various laws and regulations outside the Criminal Code have done so.<sup>[12]</sup>

Specifically for corruption cases, corporations are considered as legal subjects of criminal law in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Corruption Eradication. Liabilities and sentences are regulated in detail with the following statement: “For acts of corruption committed by or on behalf of a corporation, the criminal charges and convictions can be made against the corporation and its management (vide Article 20 paragraph (1) of the Law on Corruption Eradication).

Technically, if a criminal charge is made against a corporation, the corporation is represented by its management. The management representing the corporation can be represented by another person (vide Article 20 paragraph (3) jo, Article 20 paragraph (4) of the Law on Corruption Eradication). Nonetheless, the judge may order the corporate management to be brought to court to appear personally at the trial (vide Article 20 paragraph (5) of the Law on Corruption Eradication). When a criminal charge is made against a corporation, the summons is conveyed to the residence or office of the management. The main punishment that can be imposed against a corporation is fine, with the maximum penalty being added by one third (vide Article 20 paragraph (6) and paragraph (7) of the Law on Corruption Eradication).

These are material regulations, while formal regulations are regulated in the Supreme Court Regulation Number 12 of 2016 concerning Procedures for Corporate Crime Handling. Previously, based on Law Number 13 of 2016, corporate crime is defined as “*criminal acts committed by Corporations are committed by individuals based on a work or other relationships, either individually or collectively acting for and on behalf of the corporations inside or outside the corporate environment*”.

Indicators of corporate errors have been regulated in Article 4 paragraph (2) of Law Number 13 of 2016. It is emphasized that in imposing a crime against a corporation, judges can determine corporate errors from three aspects, namely;

1. Corporations can gain or benefit from the criminal act or it is committed for the benefit of the corporation. In this case, Supreme Court Regulation Number 13 of 2016 does not further explain the benefits that can be categorized as corporate profits, whether or not these benefits are directly obtained from a member of its management committing a criminal act. Even though, for example, a corporation does not know about the criminal acts committed by its management, it also indirectly benefits the corporation;

2. The corporation allows criminal acts to occur. In this case, the Supreme Court Regulation Number 13 of 2016 also does not provide further explanation regarding the definition or meaning of allowing criminal acts to occur. Concerning corporate error, it can be seen whether or not a corporation, in running its operations, always distances itself from crime. In other words, it should be determined if the corporation previously calculated its actions which could result in a criminal act in the future; and,

3. The corporation does not take the necessary steps to take precautions, to prevent a bigger impact, and to ensure compliance with applicable legal provisions to avoid criminal acts. In this case, the Supreme Court Regulation Number 13 of 2016 also does not provide further clarification regarding preventive measures that can be categorized as part of a corporate crime as well as the specified legal compliance principles. When discussing the principle of legal compliance, two things are questioned, namely (a) the principle of legal compliance by the management towards policies issued by the corporation, or (b) the principle of legal compliance by corporations towards laws and regulations.

Based on the information above, the determination of errors in corporate criminal liability regulated in the Supreme Court Regulation Number 13 of 2016 still causes confusion and legal debate. This is because, in addition to the element of *actus reus* (action), there is also an element of *mens rea* (error) which is also very essential and is closely related to criminal liability.<sup>[13]</sup> In handling such cases, the first thing to be done is the examination of the corporation and its management as a suspect in the

investigation and prosecution process, either individually or collectively after the summoning process is carried out. The summons consists of: corporation name, location, nationality, and status in the criminal crime (witness/suspect/defendant), and also the time and place of the examination and the summary of the alleged criminal incident.

The contents of the indictment refer to Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), including;

1. Corporation name, location, establishment date and/or article of association number/deed of establishment/regulation/document/agreement as well as recent changes, location, nationality, type, activity, and the identity of the representative management; and
2. An accurate, clear, and complete description of the criminal offense by stating the time and place of the crime.

In proving its legality, this Supreme Court Regulation still refers to the proof system in the Criminal Procedure Code and the special procedural law regulated in other laws. This Supreme Court Regulation also provides guidelines for the judges in deciding and imposing direct sentences on corporations or management or both.<sup>[14]</sup>

On the other hand, regarding the authority to prosecute and sentence the corporations, Article 22 of the Supreme Court Regulation Number 13 of 2016 states that “*The authority to prosecute and sentence corporations is abolished because it has expired as stipulated in the Criminal Code (KUHP)*”. Based on the provision above, the authority to prosecute crimes remains valid until the case is expired.

Also, there are still laws that regulate corporate criminal liability but they are rarely processed and sentenced in court. This is because most cases proved that company actions were carried out by the management and the corporation as a legal entity is inseparable from its role. Therefore, all forms of loss and criminal liability need to be fully implemented with the issuance of the Supreme Court Regulation Number 13 of 2016.<sup>[15]</sup>

The issuance and enactment of Supreme Court Regulation Number 13 of 2016 are intended to fill the legal vacuum, especially regarding criminal procedural law in handling criminal cases involving corporates and/or its management. This can be used as a guideline for law enforcers to ensure the effective and optimal handling of such cases.

## 2. Handling Corporate Crime in Indonesia Amidst the Covid-19 Pandemic

In general, the handling of both a general and special crime follow similar steps with certain differences in handling special crimes.<sup>[16]</sup> During the pandemic, adjustments are urgently needed in all fields, including economic, social, environmental, and legal fields (law enforcement officials). Based on existing regulations and the current pandemic, this topic is suitable for in-depth and systematic studies or discussions to ensure corporate crime handling without any problems amidst the pandemic. In addition, the issuance of Presidential Decree Number 11 of 2020 concerning the Determination of the Spread of COVID-19 Non-Natural Disaster as a National Disaster proves that no social or state aspect is not affected by the pandemic, and the efforts of law enforcement, namely the eradication of corruption must also be adjusted.

Adjustments to the pandemic condition are performed in the procedures of the Corruption Eradication Commission (KPK), the trial for corruption cases at the Corruption (Tipikor) Court, the participation of KPK to prevent corruption by procuring goods and services to overcome the pandemic, the election of high-ranking officials of KPK and discussion related to the release of corruptors.<sup>[17]</sup> First, KPK has participated in implementing the work from home (WFH) approach for their employees, which was initially extended from March 18-31 to April 21, 2020, and was extended again to June 4, 2020.<sup>[18]</sup> Face-to-face public services that are temporarily closed include information centers, libraries, and gratuity reporting. Meanwhile, suspected crimes can be reported via the website, e-mail, or call center.

However, some clerical tasks still need to be conducted in the office and cannot be abandoned, such as the handling of cases that affects the detention period of a suspect or defendant. For such cases, trials can be requested to be postponed or conducted through video conferences. Visits for

detainees at the KPK remand center is also postponed until 21 April 2020. However, visits can be conducted through teleconferences on Mondays and Thursdays from 10:00 to 12:00 Indonesian Western Time. There was no schedule for witness examination at KPK for several days. In the event of such cases, several procedures must be followed. The staff at the KPK lobby will check the temperature of the witnesses and/or the person being questioned and report to the examiner. If high body temperatures are detected, the examination will be rescheduled. Before entering the examination room, both witnesses and suspects must clean their hands. For fieldwork, KPK officers are also required to wear masks and bring hand sanitizers.<sup>[19]</sup>

Second, the proceedings of corruption trials are also conducted through video conferences (vicon). This is following the Supreme Court Circular Letter Number 1 of 2020. This circular letter obligates all leaders, judges, judicial apparatus, and related judicial bodies to take steps in preventing the spread of COVID-19. In cases where the defendant is being detained and the detention cannot be extended such as criminal cases, military, and Islamic criminal jurisprudence, trials are still conducted. However, if the detention period can be extended, the trial will be postponed until the end of the COVID-19 spread prevention period.<sup>[20]</sup>

In cases where the examination period is limited by statutory provisions, the judge may postpone the examination even if the period has passed. If the extension of detention is no longer possible, criminal case proceedings can be held in remand centers/prisons, open to the public via the internet (live streaming), or can be held through video conferences. *An example of an online trial is the lawsuit of a former member of the House of Representatives Commission XI of 2014-2019 from the fraction of Partai Amanat Nasional (PAN), Sukiman, in the case of accepting bribes related to the budget allocation for the Pegunungan Arfak Regency on April 1, 2020.*<sup>[21]</sup> The trial was held via a video conference. The panel of judges was at the Jakarta Corruption Court, the public prosecutor of KPK was at the KPK Merah Putih building, while the advisor and defendant of Sukiman were also in another room in the KPK building.

Technical problems can occur especially when the trial is held in rural areas with tech-illiterate court operators. The trial finally started at 14:20 Indonesian Western Time and ended at 14.30 Indonesian Western Time. "It was easier to go to Pekanbaru than conducting such trials because the operators at the State Court were not tech-savvy", said one of the KPK staff in charge at the trial. However, there are also other matters aside from technical ones. The lawyer of the defendant raised objections to the online trial. The lawyer for the former President Director of PT Garuda Indonesia Emirsyah Satar, Luhut MP Pangaribuan, admitted that he had filed an objection against a teleconference trial because it violates the provisions of the law.<sup>[22]</sup>

According to Luhut, the trial violates several rules, including direct cases in the judicial process according to the Criminal Procedure Code (KUHAP). Besides, the provisions of Article 181 paragraph (1) and (2) of KUHAP clearly state that all evidence must be shown to the defendant and if deemed necessary, the evidence must also be shown to the witnesses. A trial examination can't be conducted through teleconference and still be understood and observed concretely by the defendant while also showing evidence to the defendant and witnesses. Luhut is also worried that the facilities for online trials are inadequate and will cause problems such as audio interference, poor internet connection, and low image resolution.<sup>[23]</sup> The author also agrees with Luhut as each court has a limited system and facilities, causing, for instance, unclear audio. The author also observed that several trials were conducted through video conferences at the Court of Medan. There were still obstacles, such as the aforementioned audio problems.

Third, the participation of KPK in the COVID-19 Task Force to prevent corruption in the procurement of goods/services in the context of COVID-19 handling acceleration. The chairman of KPK, Firli Bahuri, stated that he has assigned members of the Deputy of Prevention in the task force. KPK has also issued a Circular Letter Number 8 of 2020 concerning the Use of Budget for the Procurement of Goods and Services in the Context of the Corona Virus Disease 2019 (COVID-19) Handling Acceleration to prevent corruption. Some of the principles in the Circular Letter include the implementation of the procurement of goods and services that must always be based on the prevailing

laws and regulations, including rules specifically issued by the Lembaga Kebijakan Pengadaan Barang dan Jasa Pemerintah (LKPP) or also known as the National Public Procurement Agency (NPPA). KPK also encourages the Chief Executive of the COVID-19 Task Force to ensure that the procurement of goods and services in the context of COVID-19 handling acceleration at the national and regional levels is carried out effectively, transparently, and accountably following the concept of value for money.<sup>[24]</sup> In this case, the author considers that KPK, as one of the law enforcement agencies in handling corruption, is very enthusiastic in responding to the current conditions with the issuance of Circular Letter Number 8 of 2020. KPK is not only carrying out their duties to prosecute but also to prevent corruption, especially those committed by corporations in the procurement of goods and services. The issuance of Circular Letter Number 8 of 2020 has become a system to control and regulate companies to reduce errors in the management of a company.<sup>[25]</sup> This principle also involves several aspects, namely transparency, accountability, responsibility, and independency.<sup>[26]</sup>

This proves that the handling of corporate crime in Indonesia amidst the COVID-19 pandemic is still running as it should be. Law enforcement officials are quite enthusiastic in responding to the current conditions, and we should support this to reduce corruption in Indonesia, especially those committed by corporations. Therefore, the handling of corporate crime can run effectively, transparently, and accountably.

### CONCLUSION

1. Corporations have been made as an accountable legal subjects, as regulated in the Corruption Act (Article 20) and the formal rules have been stipulated in Supreme Court Regulation Number 13 of 2016 concerning Procedures for Settlement of Criminal Cases by Corporations, this Supreme Court Regulation still refers to The evidential system in the Criminal Procedure Code and the form of special procedural law regulated in other regulations and this Supreme Court Regulation also provides guidance to judges in deciding and imposing sentences on corporations or management or both directly.

2. Corruption cases continue to be handled amidst the pandemic. However, several things need to be adjusted, specifically the Corruption Eradication Commission work procedures, for instance by applying the working from home (WFH) approach and conducting trials through video conference if a face-to-face trial is not possible. Even if obstacles are still present in some cases, such as unclear audio, it can still be made since it is more effective to prevent the spread of COVID-19. KPK has also issued Circular Letter Number 8 of 2020 concerning the Use of Budget for the Procurement of Goods and Services in the Context of the Corona Virus Disease 2019 (COVID-19) Handling Acceleration to prevent corruption, affirming the prevention of corruption committed by corporations. All of these efforts are intended to reduce corporate crime because if there are fewer cases of corporate crimes, they become easier to be monitored and processed properly.


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