

## LEGAL MEASURES IN HANDLING CRIMINAL ACTS IN CORPORATE PERSPECTIVE LAW NO. 20 OF 2021 CONCERNING CRIMINAL ACTS OF CORRUPTION

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### Abstract

Corruption is a culture that is very difficult to get rid of, especially related to corporations and government agencies which are very vulnerable to occur and this is an action that is very detrimental to the state and has a lasting effect on future regeneration, especially in Indonesia which is no stranger to experiencing corruption problems. This can be considered a problem. Corruption is an ordinary crime problem, this is a wrong statement for ordinary people who think this is normal. But we need to underline that corruption is an act that has a very large negative impact compared to other criminal problems, whatever the form of the problem that leads to criminal acts of corruption, it is certain that it is very fatal and cannot be tolerated. According to the large legal dictionary which states that corruption is included in the realm of extraordinary crime, it is an extraordinary crime that is special in handling and by law it overrides general legislation. If we relate it to the criminal law system that we have, in dealing with corruption problems that occur in the corporate area, we also experience the same thing, namely difficulties in application and implementation, why is that? requires the ability to think intelligently and a strict system and is required to have a pattern of good thinking.

**Keywords:** *Corruption, Corporations, Law no. 20 of 2001*

### A. Introduction

Corruption has become the most important phenomenon in Indonesia and has always been a hotly discussed issue. Responding to this phenomenon, successive governments always make the phrase eradicating corruption the main agenda of their activities. Various instruments of law and all implementing regulations related to corruption have been made as evidence of the seriousness of the authorities in eradicating criminal acts of corruption in Indonesia.<sup>1</sup> Criminalization, decriminalization or depenalization are efforts to deal with crime problems within the scope of criminal law policies, commonly known as penal policies. The penal policy is one of the strategies that contains policies in the context of tackling criminal acts (criminal policy), besides there are also non-criminal law policies (non-penal policy). The difference is that the penal policy approach is more reactive and repressive, while the nonpenal policy approach is more anticipatory and preventive. <sup>1</sup> Still related to penal policy,<sup>2</sup> Barda Nawawi Arief also stated that overcoming crime by using criminal

<sup>1</sup>Agustia Ayu Budhiyani and Ardi Alvianto Prihandoyo, Juridical Review of the Urgency of Corruption Eradication in Indonesia, (Semarang: Recidivist Journal Vol. 3 No. 1, 2014), p. 36

<sup>2</sup>Yasmirah Mandasari Saragih, The Authority of Wiretapping in Eradicating Corruption Crimes, (Jakarta: Faculty of Law, Trisakti University, 2019), p. 45

sanctions is the oldest method, as old as human civilization itself. Meanwhile, Herbert L. Packer<sup>2</sup> argues that controlling anti-social acts by using punishment against someone who is guilty is a social problem that has implications for legal dimensions.<sup>3</sup>

Related to eradication efforts Corruption is clearly not easy, the difficulties can be seen from the more complicated, because corruption really seems to have become a culture at various levels of society so that the government stipulates corruption as an extraordinary crime. In legal research it is said that Indonesia is one of the countries most involved in corruption cases. The development of corruption also encourages the enforcement of anti-corruption laws. However, until now there has been no certainty in eradicating corruption, a complete and clear settlement, there are many corruption cases that have not been examined and tried. This reflects the slow and weak judicial process in Indonesia in dealing with corruption cases.

Even so, there has been no relevant solution in eradicating corruption, but various legal efforts are still being made, so that corruption can be eliminated, or at least it can be reduced. The consequences of the state establishing corruption as an extraordinary crime must be synchronized with extra steps to eradicate corruption in the form of an extraordinary system and also every element of the state must also move together in efforts to eradicate corruption. The Criminal Code is viewed from the regulatory framework invitation (statutory rule's) serves as a general rule / general rule. The Basic Principles or the so-called General Principles of the Criminal Code still refer to the Principles in the Penal Code based on the Closing Rules of article 103 of the Criminal Code or known as the Principle of *Lex Specialis de rogat Lex Generalis*, the provisions of the Law apply outside the Criminal Code, especially the Laws and Regulations concerning Corruption Crimes<sup>4</sup>.

In line with the development of society, the Laws and Regulations concerning Corruption Crimes continued to change until the newest Law, namely Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 on Corruption Eradication<sup>5</sup>. But if we relate it to corruption that occurs in the corporate area, the legal basis is an example such as the KUHAP which is based on law in the prosecution and prosecution of the KPK which only regulates legal subjects in the form of people only and the author considers that such a legal basis has not fulfilled the elements of the problem in the corporate area and there is no there are the right elements in setting it up. And the authors assess that until now there has been no precise regulation regarding the handling or legal remedies against corruption from the way of investigation and prosecution of the corporation.

Therefore, the author took the initiative to raise research on corruption in the corporate area and look for further detailed definitions and to dig up actual information from the method and process of legal remedies given and the sanctions attached to the perpetrators of corruption in the corporate area. We hereby raise a theme entitled "Legal Efforts in Handling Corruption Crimes in corporations".

## B. Formulation Of The Problem

1. What are the legal remedies for handling criminal acts of corruption in the corporate area from the perspective of Law no. 20 Year 2001?

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<sup>3</sup>Yasmirah Mandasari Saragih and Ariansyah, Policy Guidelines for Punishment Against Corruption Offenders, (Medan: Journal of Social Economics and Humanities, 2015), p. 115

<sup>4</sup>Yasmirah Mandasari Saragih, Juridical Analysis of the Authorities of the Corruption Eradication Commission (KPK) as Prosecutors of Corruption Crimes, (Jakarta: Kuningan University, 2018), p. 124

<sup>5</sup>R. Saputra, Corruption Criminal Accountability in Corruption Crimes, (Jakarta: Cita Hukum Journal, Vol. 2 No. 2, 2015), p. 69

2. What are the criminal sanctions given to corporations that commit criminal acts of corruption from the perspective of Law no. 20 Year 2001?

### C. Research Methods

The research method is a procedure used by actors of a scientific discipline. The research method is basically a method that must be followed or guided when carrying out a study referring to solving a problem for which no solution is found by collecting data or samples that have been studied. The research method must be carried out in a systematic, thorough and considerate manner in achieving its objectives. This research approach method uses normative juridical research methods. Normative legal research (legal research) or doctrinal legal research, and can be called legal research literature or secondary data research (besides the existence of sociological or empirical research that mainly examines primary data),<sup>6</sup>.

### D. Results and Discussion

#### 1. Legal remedies for handling criminal acts of corruption in the corporate area from the perspective of Law no. 20 Year 2001

##### a. Corporate Crime in Corruption Crimes Perspective of Law no. 20 of 2001

Before we know the essence of legal remedies in dealing with criminal acts of corruption in corporations, it would be nice to know the definition of the corporation first. In the field of civil law is called a legal entity (rechtsperson). Satjipto Rahardjo provides a definition that a corporation is an entity created by law. The body he creates consists of a corpus, namely the physical structure and into which the law incorporates the animus element which gives the body a personality. Thus, the corporation is referred to as a legal entity. Because a legal entity is a legal creation, except for the creator, his death is also determined by law<sup>7</sup>.

In the Criminal Code, the corporation as a subject of criminal law is not recognized. This is because the Criminal Code is a legacy of the Dutch government. The acceptance of corporations in terms of legal entities or the concept of functional actors (functional *daderschap*) in criminal law is a very advanced development by shifting the doctrine that characterizes the *Wetboek van strafrecht* (KUHP), namely legal entities cannot commit crimes. However, legal developments outside the Criminal Code, namely in the form of the Special Crimes Act, have adhered to the corporate principle as one of the subjects of criminal acts. We can see in the formulation of Article 20 paragraph 2 of the Law on the Eradication of Corruption Crimes "If the Corruption Crime is committed by people based on work relationships, or other relationships, acting within the corporation either individually or together. With this affecting the development of corporate criminal liability in corporate crime at this time.

Regarding the Criminal Law Policy in Corporate Criminal Responsibility in Indonesia at this time, which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning Eradication of Corruption Crimes. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law. which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning Eradication of Criminal Acts of Corruption. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law. which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning

<sup>6</sup>Suratman and Phillips Dillah, *Legal Research Methods*, (Bandung: Alfabeta, 2015), p. 45

<sup>7</sup>Satjipto Rahardjo, *Law Studies*, (Bandung: Alumni, 1986), p. 110

Eradication of Criminal Acts of Corruption. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law.

In the case of a corporation suspected of committing a crime of corruption, it is necessary to have a procedural law that regulates the procedures for carrying out the investigation process, this issue is important because without clear rules on this matter, law enforcement officials will experience confusion or doubts in continuing legal proceedings against corporations. Technically the existence of such arrangements is certainly necessary. If investigated, it will be found that several criminal laws outside the Criminal Code that have regulated corporate criminal responsibility do not regulate the legal aspects of criminal procedure at all. On the other hand, we can also find several laws that have regulated aspects of procedural law, especially who must represent the corporation in criminal proceedings.

That is the explanation that has resulted in the law not being detailed regarding corruption issues regarding handling and procedures for settlement in the corporate area, does not provide a definition of this matter and is still abstract in nature so that the ambiguity in the law needs to be questioned. The following is an example of regulatory arrangements in Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the eradication of Corruption Crimes has regulated this matter in the provisions of article 20, as follows:

- a. Paragraph 3: In the event that a criminal charge is made against a corporation, the corporation is represented by the management.
- b. Paragraph 4: The management representing the corporation as referred to in paragraph (3) may be represented by another person.
- c. Paragraph 5: The judge can order the management of the corporation to appear before the court himself and can also order the management to be brought before the court.
- d. Paragraph 6: In the event that a criminal charge is made against a corporation, the summons to appear and delivery of the summons is conveyed to the administrator at the administrator's residence or where the administrator has an office.

Instead, a legal rule is formulated which stipulates that all provisions of the general criminal procedural law apply to corporations, unless there are special rules. This is to avoid mistakes that still often occur in practice, for example all investigative processes and minutes produced are made in the personal name of the management, but the indictment is made in the name of a corporate defendant.

- b. Legal Measures in Handling Corruption Crimes for Corporations
  - a. Corporate anti-corruption program: Internal efforts to prevent corruption

In handling this, corporations create separate programs based on: anti-corruption programs, GCG compliance programs, anti-bribery management systems, integrity systems and so on. And in essence, one of the objectives is to protect corporations from corruption acts and problems. Leading figure John Sandage in his book entitled "Corruption and Corporations" states the importance of the role of the private sector in the fight against corruption by taking into account the situation and conditions, namely developing policies and steps -Strong internal anti-corruption measures and support the country in developing and strengthening public anti-corruption infrastructure.

The anti-corruption program provides benefits to corporations. Globally, the trend of implementing anti-corruption in corporations is increasing to mitigate legal risk, commercial risk and reputation risk. Anti-corruption programs are useful in demonstrating corporate



responsiveness regarding legal obligations and responsibilities in reducing corruption risks and demonstrating the company's commitment to doing business in a clean manner. If this is done openly and transparently, it can provide benefits:

- 1) Sustainable growth,
- 2) Cost saving,
- 3) Reducing the risk of punishment or har

Corporate Anti-Corruption Program: Collaborative Action and Cooperation The anti-corruption program that has been developed internally by the corporation is not sufficient to reduce the risk of corruption. World Bank (2008) states that there are three approaches that can be used in building an anti-corruption program so that a business environment with a low level of risk can be realized, namely through:

- 1) internal approach through risk assessment, implementation of anti-corruption policies and compliance programs and provision of anti-corruption rules.
- 2) external approach, namely sharing policies, experiences, *best practices* with stakeholders.
- 3) collective action approach, by reaching out to other business partners in the same industry and other stakeholders through joint activities. Collective action is needed because internal programs implemented by corporations are faced with a competitive environment, financially risky, which cannot affect the business environment, so collective action is needed to help create a common understanding in creating a business environment with low corruption risk.<sup>8</sup>

## **2. Criminal sanctions given to corporations that commit criminal acts of corruption from the perspective of Law no. 20 Year 2001**

If the corporation is proven to have committed a criminal act of corruption, the sanctions that can be imposed are additional principal crimes. The main sanction that can be imposed on corporations is fines for losses suffered by the state due to corruption. Meanwhile, additional sanctions that can be imposed vary, such as revocation of a business location permit or revocation of legal entity status. Other sanctions that can be imposed are disciplinary measures such as confiscation of profits derived from criminal acts or placing the company under guardianship for a certain period of time.

The following are the sanctions imposed for corruptors in accordance with the legal basis taken in the Criminal Code:

- a. Article 20 paragraph (7) of Law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes which reads "The main sentence that can be imposed on corporations is only a fine, with the maximum sentence being added 1/3 (one third)."
- b. In addition to the fines referred to in paragraph 7, corporations may be subject to additional penalties in the form of:
  - 1) Revocation of business license
  - 2) Revocation of legal entity status
  - 3) Deprivation of profits derived from criminal acts
  - 4) Closure of all or part of the place of business and/or activity
  - 5) Correction due to crime
  - 6) The obligation to do what is neglected without rights
  - 7) Placement of the company under the guardianship of a maximum of 3 years
  - 8) Dissolution or prohibition of the corporation
  - 9) Confiscation of corporate assets for the state

<sup>8</sup>Dwi Siska Susanti, et al, Indonesian Corporations Against Corruption: Prevention Strategies, (Jakarta: Journal of Integrity, Vol. 4 No. 2, 2018), p. 216-219

10) State takeover of corporations.

The sanctions given to corporations if they do not act cooperatively in carrying out corruption criminal sanctions are as follows:

- 1) In the event that the cooperative is unable to pay the fine as referred to in the paragraph above, the fine is replaced by confiscation of the assets belonging to the corporation or corporation control personnel whose value is the same as the fine sentence imposed.
- 2) In the event that the sale of the confiscated corporation's assets, as referred to in the first point, is not sufficient, confinement sanctions in lieu of fines are imposed on the corporation's control personnel taking into account the fines already paid.<sup>9</sup>

The provisions on sanctions as stipulated in Article 20 paragraph (7) above, have the same consequences as a single formulated criminal sanction, because there is no other alternative if the fine is not paid by the corporation. This will cause problems during implementation, namely what actions can be taken if the fine is not paid by the corporation. If this fine is imposed on a person it does not cause a problem, because Article 30 of the Criminal Code stipulates what if the fine is not paid, namely: "could be subject to imprisonment in lieu of a fine". So if the specific criminal law does not regulate this matter, then according to the provisions of Article 103 of the Criminal Code, the provisions of the Criminal Code are used. The problem that arises, what if it is a corporation, it is clear that imprisonment in lieu of this fine cannot be imposed on a corporation. To overcome this problem, the PTPK Law must make special provisions what if the fine is not paid by the corporation, for example by revoking the business license for a certain period of time, or perhaps by confiscating property.

According to Barda Nawawi Arief, in addition to fines, actually several types of additional punishment in Article 18 paragraph (1) of Law No. 31 of 1999, can be used as the main punishment for corporations or at least as additional punishments that can be imposed independently. If imprisonment is the main punishment for "persons", then the main punishment that can be identified with the crime of deprivation of liberty is a sanction in the form of "closure of a company/corporation for a certain time" or "revocation of business license rights".<sup>10</sup> In the draft Criminal Code of 2018 there are rules regarding the implementation of fines in Paragraph 6 of Article 82 which reads:

- 1) Fines can be paid in installments within a period of time in accordance with the judge's decision and
- 2) If the fine as referred to in paragraph (1) is not paid in full within the stipulated time period, the unpaid fine can be taken from the wealth or income of the convict.

After the implementation of fines, there are also provisions regarding penalties in lieu of fines for corporations contained in Paragraph 9 in Article 85 which reads: "If the taking of wealth or income as referred to in Article 82 paragraph (2) cannot be carried out, then corporations are subject to substitute punishment in the form of revocation of business license or dissolution of the corporation." This provision can be used as a reference in formulating corporate crimes in the future.

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<sup>9</sup>Working Group Team, Procedures for Handling Corporate Criminal Cases, (Jakarta: KPK, 2017), p. 94-96

<sup>10</sup>Abdurrahman Alhakim and Eko Soponyono, Corporate Criminal Accountability Policy Against Corruption Crime Eradication, (Yogyakarta: Journal of Indonesian Legal Development Vol. 1 No. 3, 2019), p. 322

## E. CLOSING

### 1. Conclusion

Based on the description previously described, the writer can conclude that:

- a. Legal action taken against corruption that occurs in the corporate area, by implementing a corporate anti-corruption program that focuses on internal efforts to prevent corruption in which corporations handle separate programs based on: anti-corruption program, GCG compliance program, anti-bribery management system, integrity system and others etc. And in essence, one of the goals is to protect the corporation from acts and problems of corruption. And implementing the Corporate Anti-Corruption Program: Collaborative and Cooperation Actions where the anti-corruption program has been developed internally by the corporation but is not complete in handling it, so programs related to action and cooperation within corporate unions are carried out.
- b. If the corporation is proven to have committed a criminal act of corruption, the sanctions that can be imposed are additional principal crimes. The main sanction that can be imposed on corporations is fines for losses suffered by the state due to corruption. Meanwhile, additional sanctions that can be imposed vary, such as revocation of a business location permit or revocation of legal entity status. Other sanctions that can be imposed are disciplinary measures such as confiscation of profits derived from criminal acts or placing the company under guardianship for a certain period of time. By law no. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, only the principal crimes that can be imposed on corporations are fines, with the provision that the maximum penalty is added 1/3 (one third) and in addition to corporate fines, an additional penalty can be imposed. Regarding the Criminal Law Policy in Corporate Criminal Responsibility in Indonesia at this time, which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning Eradication of Corruption Crimes. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law. which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning Eradication of Criminal Acts of Corruption. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law. which is regulated in Law Number 31 of 1999 Juncto Law Number 20 of 2001 Article 20 paragraph 2 concerning Eradication of Criminal Acts of Corruption. However, the law does not explain what is meant by the notions of "work relations" and "other relations", which results in confusion. This is one of the weaknesses of the Corruption Law.

### 2. Suggestion

- a. Efforts in dealing with criminal acts of corruption in the corporate area are still very generally regulated in criminal law books and there is no specific regulation relating to criminal acts of corruption and still use the old laws. There is a need to update the law, why is that? In detail, there is a specialization in the corporate sector in the regulation of laws so that it is clear and can be assigned to appropriate handling procedures and judges are not confused in giving decisions on corruption issues in the corporate area.

- b. Sanctions given to perpetrators of corruption are regulated in Law no. 20 of 2001 only focuses on the severity of the punishment or sanctions given but does not provide a formal explanation and is confused about the law. The author provides input that the law should not be in accordance with the conditions and situations that must be amended to the law which can be said to be a form of non-compliance in the eyes of the law and the basis for the change taking into account the juridical, sociological and philosophical foundations.

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