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The Legal Substance of Normative Ambiguity in Corporate Criminal Liability for Corruption

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Abstract, *The corporate criminal culpability concept is point by point in Article 20, passage (1) of Law Number 31 of 1999 on the Annihilation of Debasement, as revised by Law Number 20 in 2001. Concurring to this article, on the off chance that a enterprise locks in in debasement, both the organization and/or its administration can confront criminal charges. The term "and" implies a cumulative approach, holding both the corporation and its management accountable simultaneously, whereas "or" implies an alternate method, holding either the corporation or its management answerable. The usage of "can" generates ambiguity because its application is dependent on the interpretation of prosecutors and judges. Authoritative, conceptual, and case think about techniques were utilized to conduct the investigate. The information infer that Article 20, passage (1) of the PTPK Law is subject to numerous elucidations, coming about in regulating equivocalness. This is aggravated by the absence of precise standards for determining criminal responsibility for either the organization, its management, or both. This leads to conflicting legal applications by judges, resulting in legal confusion. Hence, it is required to reexamine the corporate risk demonstrate for debasement charges beneath Article 20, passage (1) of the PTPK Law.*

Keywords; *Ambiguous norms, corruption, corporate criminal liability*

1. INTRODUCTION

Corporations can engage in criminal activities themselves or be used as instruments for such actions (corporate crime). In terms of corruption, corporations frequently play a significant role in inflicting financial and economic harm on a country, typically through their business operations for their own advantage. [1] The controls for holding organizations responsible for debasement are laid out in Article 20 of Law Number 31 of 1999 concerning the Destruction of Debasement, as revised by Law Number 20 of 2001 (known as the Anti-Corruption Law). Article 20, section (1), states that enterprises and/or their directors can be held obligated in the event that debasement is committed for the good thing about the organization. Paragraph (2) specifies that if an individual has no employment or other connection with the corporation, their corrupt actions cannot be attributed to the corporation.[1] Hasbullah F. Sjawie clarifies that Article 20, passage (1) of the Anti-Corruption Law lets prosecutors select to charge either fair the administration, fair the organization, or both.[2] Hasbullah F. Sjawie clarifies that Article 20, passage (1) of the Anti-Corruption Law licenses prosecutors to choose whether to charge the administration alone, the enterprise alone, or both. Similarly, Ermansjah Djaja emphasizes that the phrase "corporation

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and/or management" in this article provides a flexible approach. Prosecutors can address corruption cases involving corporations by charging: 1) both the corporation and its management; 2) only the corporation; or 3) only the management.[3]

In the event that a enterprise commits a wrongdoing, Article 20, section (1) of the Anti-Corruption Law specifies three methods for assigning criminal responsibility: 1) only the corporation; 2) only the management; or 3) both the corporation and its management. Kristian refers to these methods as the "Corporate Criminal Liability System," suggesting that penalizing only the management still constitutes corporate liability. The use of "and/or" in the article allows for these three forms of accountability, all of which are regarded as corporate criminal liability. [4] Additionally, Article 20 paragraph (2) of the Anti-Corruption Law is vague, as it doesn't define what "employment relationship" or "other relationship" means. [5] The law also doesn't clearly explain the phrase "acting within the scope of the corporation either individually or jointly.".

This impacts how the law is applied. In many corruption cases involving corporations, only the management is held accountable, not the corporations themselves. For instance, in the Bank Century case, the CEO was imprisoned, but the corporation, which received government funds, was not held responsible. Similarly, in the Hambalang case, companies like PT. Adhikarya, frequently mentioned as winning bidders, were never named as suspects. [6] To address the need of particular directions for corporate criminal strategies, the Lawyer General's Office issued Circular Letter No. B-36/A/Ft.1/06/2009 on Enterprises as Suspects/Defendants in Debasement Violations (*Tindak Pidana Korupsi (SEJA)*) and Lawyer Common Direction No. Per-028/A/JA/10/2014 on Rules for Taking care of Criminal Cases Including Organizations (*PERJA*). The Preeminent Court taken after with Control No. 13 of 2016. However, these guidelines are limited and not as binding as laws. [7] Moreover, the DPR has presented a modern Criminal Code, Law No. 1 of 2023 (the Modern Criminal Code). This unused code brought noteworthy changes, counting clearer arrangements on corporate criminal obligation. Article 45 of the Modern Criminal Code states that enterprises can be subjects of violations, with subtle elements in Articles 46-50. [8] While the New Criminal Code does not specifically define corporations, it covers both legal and non-legal entities as per Article 45 paragraph (1). The Anti-Corruption Law and the New Criminal Code regulate corporations similarly, but the New Criminal Code provides more detailed descriptions, whereas the Anti-Corruption Law lacks clear definitions of corporate crimes.

This situation has implications for law enforcement, driving to irregularities or distinctive medicines within the application of the law by judges in courts dealing with debasement cases including enterprises such as punishing the corporation after its management has been convicted with a final verdict, Punishing the corporation without charging the management and Rebuffing the enterprise based on the prosecutor's request without the enterprise being a respondent. These issues raise several concerns, For examples, if the corporation is sentenced after its executives have already been convicted and the conviction has become legally binding (*inkracht*), there is a risk of conflicting with the principle of double jeopardy (*nebis in idem*). Then, Sentencing a corporation without its executives being prosecuted raises questions about situations where an executive's actions are purely in the corporation's interest and not for personal gain. How should the losses caused by an executive's actions be addressed if the executive is absolved of guilt because their actions were on behalf of the corporation? The last, on the off chance that an organization is indicted based on the open prosecutor's prosecution without being named as a respondent, it may lead to procedural abnormalities. Concurring to Article 143 of the Criminal Strategy Code (KUHAP), disappointment to clearly distinguish the respondent (formal deformity) might negate the prosecution. This omission could deny the corporation the right to defend itself from the initial stages of investigation, prosecution, and trial.

Based on the above discussion, Article 20 of the Corruption Eradication Law (UU PTPK), which governs corporate liability, has led to inconsistencies or differing treatments in judicial application among courts handling corruption cases involving corporations. Therefore, this study will address these issues in its title. "The Legal Substance of Normative Ambiguity in Corporate Criminal Liability for Corruption".

2. LITERATURE REVIEW

Legitimate Substance

Legitimate substance is the elemental component that decides the viable execution of a law. It incorporates choices and unused rules defined by those inside the legitimate framework. This substance includes not as it were the codified laws but moreover the living law. In our nation, which transcendently takes after the Respectful Law Framework or Mainland European Framework (though a few laws too follow to the Common Law or Anglo-Saxon System), law is considered to be composed directions, whereas unwritten rules are not recognized as law. [9] According to Lawrence M. Friedman, the legal system is entrained from three sub-systems, namely, the sub-system of legal substance, the sub-system

of legal structure, and the sub-system of legal culture. The substance of law includes legal material that is outlined in laws and regulations. Meanwhile, the legal structure itself concerns the institution (institution) of law enforcement, the authority of institutions, and personnel (law enforcement officials). Meanwhile, legal culture concerns the behavior (law) of the community. These three elements affect the success of law enforcement in a society (state), which synergizes with each other to achieve the goal of law enforcement itself, namely justice.[10]

A substance component, or legal substance, is a tangible result published by an existing legal institution as part of the legal system. This tangible result is in the form of general rules that are realized by the formation of laws and regulations by the authorized body through the formulation or legislation process. Therefore, this process is also referred to as the "in abstacto" law enforcement stage by the law-making body. In this case, Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (PTPK Law), substantially regulates two groups of criminal acts. First, the group of corruption crimes; and second, the group of crimes related to corruption crimes. The first group (corruption crimes) is regulated in Chapter II concerning Corruption Crimes, totaling 13 (thirteen) articles described in 30 (thirty) forms of corruption crimes, where there are between Articles 2 and 20 of the PTPK Law. From the perspective of legal substance, there are no clear parameters in the provisions governing corporate criminal liability, while the element of error is the basis of criminal liability.

Ambiguous Norms

When identifying legal rules, we often face issues such as legal gaps, conflicts between legal norms, or ambiguous and unclear norms. In such cases, judges interpret the laws to clarify the applicable rules. This interpretation by judges helps ensure that the law is applied in a way that society finds acceptable. Interpretative methods are tools used to determine the meaning of the law.[11] In addition, the use of positive law related to the norm can also be found in almost every legislative product in various forms and levels. Vage norms in practice can "give birth" to discretion by state administrative officials in the form of state administrative actions that are not based on definite legal norms. In other words, vage is the norm as a source of law from discretion. Such actions are dilemmatic because, on the one hand, it seems that the action is not in accordance with the principles of the state of law, but on the other hand, the action must be carried out in order to carry out the tasks of the public interest.

Discretion can cause acts of abuse of authority and arbitrariness because state administrative officials can use their interpretation in the application of the vage norm. However, it must be admitted that in a modern legal state, taking into account the active nature and breadth of government affairs, the norm can give birth to flexibility for administrative officials to carry out their actions according to the needs and developments that occur.[12]

Corporate Criminal Liability

Indonesian law recognizes both legal and non-legal entities as subjects of criminal law, as long as they possess an organizational structure and assets.[13] There are different views in legal literature on the doctrines of corporate criminal liability, with some identifying 4, 5, or 6 types.[14] Here are the main doctrines, The First doctrine is Identification Doctrine, This doctrine considers a company capable of possessing mens rea. The law identifies the key individuals behind the company and attributes their actions to the company itself, viewing them as the embodiment of the company rather than merely employees. The second doctrine is Strict Liability Doctrine, Under strict liability, there is no requirement to prove fault. Sutan Remy Sjahdeini explains that this doctrine holds individuals criminally responsible without the need to establish intent or negligence, which is why it is also known as absolute liability.[15] The third doctrine is Vicarious Liability Doctrine, Sutan Remy Sjahdeini defines vicarious liability as holding one person accountable for the criminal actions of another. In such cases, the prosecutor is required to prove mens rea. Regarding the Aggregation Doctrine, this principle combines the faults of multiple individuals to attribute criminal liability to the corporation. It treats the actions and mental states of different individuals within the company collectively, as if they were performed by a single person.[16] The Fourth is Corporate Cultural Model Doctrine, This doctrine scrutinizes both explicit and implicit policies of a company that influence its operations. The corporation may face criminal liability if it can be demonstrated that an individual committing an illegal act believed that someone with authority in the company had authorized or permitted the act. The last one is Delegation Doctrine, This convention states that a enterprise can be held criminally at risk on the off chance that specialist was assigned from one individual to another to carry out certain activities. [15] The development of corporations as subjects of criminal law that can be held criminally accountable is increasingly numerous and diverse, which are regulated by various laws and regulations outside the Criminal Code. Positive law in Indonesia has placed legal entities and non-legal entities as subjects of criminal law, as

long as the legal entity and the non-legal entity have an organizational structure and have assets both separate and non-separate.[13]

The accommodative status of corporations as the subject of criminal law in the New Criminal Code is based on the consideration that progress has occurred in the fields of finance, economics, and trade, especially in the era of globalization and the development of organized criminal acts both domestic and transnational, so the subject of criminal law cannot be limited only to natural humans but also includes corporations, namely organized collections of people and/or wealth, both legal and non-legal entities. In this case, a corporation can be used as a means to commit a criminal act and can also profit from a criminal act. With the understanding that corporations are the subject of criminal acts, it means that corporations, both as legal entities and non-legal entities, are considered capable of committing criminal acts and can be accounted for in criminal law.

3. METHOD

This consider utilizes a regulating lawful approach to completely look at the standards and rules concerning corporate criminal duty in debasement cases, particularly alluding to Law No. 31 of 1999 on the Destruction of Debasement, reexamined by Law No. 20 of 2001. The methodology involves a detailed review of relevant laws, doctrines, and statutes to identify shortcomings, propose legal changes, and provide insights to improve law enforcement, particularly concerning corporate accountability in corruption. Additionally, the research incorporates legislative, case study, and conceptual approaches to offer a comprehensive analysis.

4. RESULT AND DISCUSSION

Policies on Corporate Liability in Corruption Crimes

The controls concerning corporate obligation for debasement are nitty gritty in Law No. 20 of 2001, correcting Law No. 31 of 1999 on Debasement Annihilation (UU PTPK). Articles 1, 2, 3, and 20 of UU PTPK indicate that debasement can be executed by or on sake of a organization and/or its administration. These laws set up that any substance classified as a enterprise (comprising organized bunches of individuals and/or resources, whether they are legitimate substances or not) can be criminally at risk for offenses related to debasement. [17] This section will particularly focus on Article 20 of UU PTPK. Article 20(1) specifies that a

corporation and/or its management can be held responsible if a corruption crime benefits the corporation. This provision allows corporations to be taken to court for crimes they commit, alongside their management. Legally, "management" includes those who officially or practically manage the corporation and are involved in decision-making that leads to corruption.[18]According to Ermansjah Djaja, the phrase "corporation and/or management" in Article 20(1) of UU PTPK allows for prosecution and punishment to target: 1) both the corporation and its management; 2) only the corporation; or 3) only the management. Be that as it may, UU PTPK does not give clarification on the terms "individuals based on working connections or other connections" or "acting inside the enterprise". Sutan Remy Sjahdeini explains that "people based on working relationships" refers to managers, employees, or individuals operating under a power of attorney agreement within the corporation.. [19]

According to Article 20, paragraph (2) of UU PTPK, a corporation can be held responsible for corruption offenses committed within its environment either by its employees (for example, the CEO as specified in the corporation's bylaws) or by individuals with other affiliations to the corporation, such as those authorized to represent or carry out tasks for the corporation. The term "individuals based on other connections" alludes to people who are not representatives but have the specialist to act on sake of the organization. In case somebody without such specialist commits a debasement offense, the organization cannot be held at risk. Ermansjah Djaja explains that corruption committed by a corporation can occur when in these conditions, First, When The Employees act alone within the corporation. Second, When The Employees act together within the corporation. Third, When The Authorized individuals act alone within the corporation. Fourth, When The Authorized individuals act together within the corporation.

Article 20, paragraph (2) incorporates the doctrines of identification and aggregation. The doctrine of aggregation is evident in the clause "if the crime is committed... either individually or collectively." Hasbullah F. Sjawie further explains that this article applies the identification doctrine and the functional theory. This means that a corporation can be held accountable for corruption offenses committed by individuals closely associated with it, thereby sidestepping debates about corporate mens rea.[19]

The Ambiguity of Legal Norms in Corporate Accountability for Corruption Offenses

In applying the model of corporate criminal liability, especially in understanding the cumulative-alternative liability construction in Article 20 paragraph (1) of UU PTPK, judges often have different interpretations in court rulings on corporate corruption cases. On one hand, some judges have interpreted Article 20 paragraph (1) of UU PTPK to mean that, even

if only one legal subject (the individual or manager) is charged during the investigation process, the enterprise can still be held at risk and rebuffed amid the indictment and sentencing stages. This elucidation is upheld by the Preeminent Court's choice No. 787K/Pid.Sus/2014 dated July 10, 2014, which states: "Based on Article 20 passage (1) of UU PTPK, Duty is doled out to the organization and/or its officials. This demonstrates that the law takes after a cumulative-alternative approach in indictment and sentencing, which applies to both the enterprise and its administration . Therefore, even if the prosecutor does not specifically charge the corporation (PT IM2), since the defendant is charged in his capacity as the CEO of PT IM2, additional penalties such as restitution can be imposed on the defendant as the CEO of PT IM2 and/or on the corporation PT IM2."

Another interpretation is seen in decision No. 29 PK/Pid.Sus/2015 dated September 8, 2016, which states: "Article 20 of the UU PTPK law states that if an individual commits corruption on behalf of a corporation, both the corporation and its management can be prosecuted and sentenced.. However, this rule is part of substantive criminal law, not procedural law, as enacted in UU PTPK." According to this rationale, the judges in this decision believe that only the party named as the defendant by the prosecutor can be punished, with the clarification by the judge that "if the prosecutor only names the director as the defendant in the indictment, as in this case, it means that only the director is chosen as the defendant, and it should not be interpreted to include the corporation, since the corporation is not identical to the director.""".

Besides debating whether Article 20 paragraph (1) of UU PTPK is substantive or procedural law, the main issue with corporate criminal liability is the meaning of the cumulative-alternative phrase "and/or" in Article 20 paragraph (1). The article states, "In occasions where debasement is carried out by or on sake of a organization, both the organization and/or its administration can confront indictment and sentencing." Decisions like No. 787K/Pid.Sus/2014 and No. 29 PK/Pid.Sus/2015 show that this "and/or" phrase allows judges to sentence both the management and the corporation, even if only the management is officially the defendant, to ensure justice, public protection, and recovery of state financial losses.[20] Theoretically, cumulative liability is justified because corporate actions are seen as more than just the sum of individual actions within it; both management and the corporation are responsible for different parts of the wrongdoing.[21]

The distinction in responsibility between corporate management and the corporation itself stems from the different nature of their actions in corruption cases. According to Andrew Weissmann, individual criminality involves evaluating the person's intent, actions, and voluntariness, whereas corporate criminality depends on how the corporation responds to its employees' criminal behavior, affecting whether criminal penalties are imposed.[22] This distinction should be clearly outlined in the indictment and proven during the trial. Mardjono Reksodiputro suggests that the way a defendant is positioned in the indictment will correlate with the elements of wrongdoing to be proven in court. This ensures that judges can appropriately assign different criminal liabilities to the distinct legal entities involved.

Besides distinguishing between corporate and management liability, there is also the combined liability of both entities. However, this doesn't mean sentencing can occur without a fair legal process.[23] Procedural justice is compromised if a corporation isn't individually examined and defended, but instead is sentenced alongside its management based on the judge’s discretion. This issue is exacerbated when judges exempt managers from additional penalties like restitution and instead impose these on the corporation, which is seen as benefiting from the crime. This method of cumulative-alternative liability often leads to legal controversies. It’s questionable why prosecutors, confident of the corporation’s guilt in corruption, only charge the managers while imposing restitution on the corporation. Prosecutors could use the indictment separation mechanism, or splitshing, as per Article 142 of the Criminal Procedure Code, allowing them to prosecute each defendant separately in cases involving multiple suspects and crimes.

In the case of PT. Karya Putra Tunggal Jaya (PT. KPTJ), as evidenced by verdict number 07/Pid.Sus-TPK/2017/PN.Mam, the doctrine of identification was applied, focusing on the pivotal figure of corporate control, namely the Commissioner of PT. KPTJ. This was due to the delegation of authority from the CEO to the Commissioner to act on behalf of PT. KPTJ in participating in the tender for procurement projects in Majene Regency. After winning the tender, the Commissioner continued to represent PT. KPTJ during the project implementation phase. Consequently, when corruption occurred involving the Commissioner and a civil servant acting as the Project Procurement Officer (PPK), resulting in financial losses for the state and benefiting both the Commissioner and PT. KPTJ, the corporation PT. KPTJ was held criminally accountable. In light of this case, in instances where corporate corruption has been identified and the corporation bears responsibility, criminal accountability should be allocated differently from that of its executives, and the case files should be split accordingly. In this approach, both the corporation and its executives would

be separately charged in the indictment, allowing for separate trials. This guarantees that the application of corporate criminal risk models, both substantively and procedurally, can be successfully accomplished without damaging procedural laws.

The detailing of Article 20 section (1), within the author's see, adjusts with Article 51 of the Dutch Corrective Code, which states that on the off chance that a criminal act is committed by a lawful substance, indictment and criminal sanctions can be forced both on the administration mindful for denied acts and on the legitimate substance itself. This clarifies that in cases of corporate wrongdoing, discipline can be connected to both the organization and its pioneers mutually. Be that as it may, in hone, there emerges an issue of how to recognize between corporate risk and the obligation of corporate officials. Article 20 of the Anti-Corruption Law (UU PTPK) does not clearly define the boundaries of what constitutes corporate versus executive wrongdoing. There should be a reformulation to separate the accountability of corporations and their executives as individual subjects because the basis of their culpability for actions is not always identical. The existence of corporations must be protected by the law because they engage in economic activities aimed at profit, while also benefiting third parties such as shareholders who are not actively involved in business operations, as well as consumers and employees. Corporations should not be unfairly held responsible for the mistakes of their executives or automatically held accountable for all unlawful acts related to the corporation, and vice versa.

5. CONCLUSION

The control with respect to corporate obligation for debasement offenses is stipulated in Law Number 20 of 2001, which alters Law Number 31 of 1999 concerning the Destruction of Debasement. Article 20, section (1) of the Anti-Corruption Law addresses debasement offenses committed by organizations, permitting for corporate and/or administration obligation in case a debasement offense is committed for the corporation's advantage. The term "and/or" in Article 20, paragraph (1) creates a cumulative-alternative liability framework, often leading to varied judicial interpretations in corruption cases involving corporations. Some court panels interpret Article 20, paragraph (1) to mean that even if only one legal entity, such as an individual manager, is implicated during the investigation, another legal entity, namely the corporation, can also be held accountable and penalized during prosecution and sentencing. This interpretation allows for judicial discretion to issue

cumulative convictions against both the manager and the corporation, even if only the manager is initially tried. This approach aims to uphold justice, protect society, and recover state financial losses. However, there is a need to reformulate the law to separate the responsibilities of the corporation and its managers as individual subjects. The bases for their culpability are not indistinguishable, and recognizing between their duties guarantees compelling execution of corporate criminal risk models in both substantive and procedural equity, without circumventing or damaging procedural laws.

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