Criminal Liability in Corruption Crimes by Corporations

By:
[1] Mustofa Abidin , [2] Nuryanto A. Daim , [3] Suwarno Abadi
[1] Advocate in Surabaya
[2.3] Master of Laws at Wijaya Putra University, Surabaya
Email: [1] mustofa.abidin@yahoo.com , [2] nuriyanto@uwp.ac.id , [3] suwarnoabadi@uwp.ac.id

Abstract
In the development of industrial society which continues to increase from year to year, the role of corporations in life is very large and broad. Therefore, the impact is that corporations as a legal subject have a very large contribution in improving the economy and national development. However, along with the great influence of the existence of corporations, this cannot be separated from the development of crime, including crimes committed by corporations. Thus, the existence of corporations in human life and social life does not always have a positive impact. In achieving its goal of getting the maximum profit, corporations can monopolize the market, can easily commit fraud, can easily commit tax evasion, commit various frauds (deceit), misrepresentation (mispresentation), concealment of facts (concealment of facts). manipulation and so on. This research is included in normative juridical research related to conflicts between norms both horizontally and vertically and conflicts between norms and reality in the reality of legal practice. In this study several approaches were used, including: 1) statutory approach, 2) Conceptual Approach, and 3) Historical Approach, and 4) Case Approach). The research aims to analyze corporate responsibility in acts of corruption. In this study it was concluded that corporate criminal responsibility for acts of corruption committed by corporations can be carried out by corporations, administrators or administrators and corporations. The indicator of a corporation committing a criminal act of corruption has been regulated in Article 20 paragraph (2) of the UPTPK, namely if a criminal act of corruption is committed by people based on work relations or other relationships, acting within the corporation either individually or together.
Keywords: *Criminal liability, Corruption, Corporations*

A. INTRODUCTION

1. Background

Initially, legislators believed that only humans (people or individuals) could become legal subjects of a crime. This can be seen from the history of the formulation of the provisions of Article 59 of the Criminal Code (KUHP),

especially from the way the offense was formulated with the phrase "hij die" which means "whoever". In its development, legislators when formulating offenses also take into account the fact that humans also sometimes take actions within or through organizations in civil law or outside of that matter, so that arrangements arise for legal entities or corporations as legal subjects in criminal law.[1]

This phenomenon occurs because crime develops according to the development of society, in a sense, in an agrarian society crime is different from industrial society, especially in the current era of information technology. Here it can also be analyzed that crime develops in harmony with the necessities of life and the context of the problems faced. Likewise with the perpetrators of criminal acts, initially those who were seen as perpetrators and could be accounted for in criminal law were only natural persons, but in the development of corporations (juridical persons), they could also be seen as capable of committing crimes, and subsequently subject to punishment.[2]

In the development of industrial society which continues to increase from year to year, the role of corporations in life is very large and broad. Therefore, the impact is that corporations as a legal subject have a very large contribution in improving the economy and national development. However, along with the great influence of the existence of corporations, this cannot be separated from the development of crime, including crimes committed by corporations. Thus, the existence of corporations in human life and social life does not always have a positive impact. Conversely, the existence of a corporation whose existence cannot be separated from people's lives can actually have a negative impact. In achieving its goal of getting the maximum profit, corporations can monopolize the market, can easily commit fraud, can easily commit tax evasion, commit various deceits, *misrepresentation* , *concealment* of *facts* . manipulation and so on [3].

Corporate crime is a white-collar crime, but of a special type. Corporate crime is actually an organizational crime that occurs in the context of complex relationships and expectations among officials and officials both institutionally and personally from the board of directors, executives and managers on the one hand, and between parent companies, branch companies, and subsidiaries, on the other hand.[4]

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[1]Eddy OS Hiariej, *Principles of Criminal Law* , Light Atma Pustaka, Yogyakarta, 2015, h. 195

[2] M. Arief Amrullah, *Development of Corporate Crime* , 1st print, Prenadamedia Group, Jakarta, 2018, p. 1

[3]H. Dwidja Priyatno and Kristian, *Corporate Criminal Accountability System Formulation Policy* , Sinar Graphic, Jakarta, 2017, h. 27

[4]M. Arief Amrullah, *Op.Cit* , h. 51

Corporate crime in Indonesia is a problem that is quite concerning and even very difficult, especially in terms of criminal liability and its consequences, it is precisely these corporations that are heavily involved in business crimes that greatly affect economic life and development, which involve environmental aspects, energy sources, politics, foreign policy and so on.

After such a complex role of the corporation in the life of modern society. In addition, in the administration of the state, it is required to apply the concept of democracy, where freedom and community participation must be encouraged. Along with this democratization phenomenon, it also has an impact on the strengthening of the role of corporations in political and social life, so that this phenomenon can be categorized as a symptom of corporatocracy, namely the phenomenon of the increasingly strengthening role of corporations in the life of society and the state.

Starting from the fact that corporate crime has developed, corporate crime has entered various aspects of social and state life, including corruption. then, both in developed countries and in developing countries including Indonesia. In fact, the development of the problem of corruption in Indonesia is currently so severe and has become a very extraordinary problem because it has infected and spread to all levels of society.

If in the past corruption was often identified with government officials or apparatus who had misused state finances, in its current development the problem of corruption has also involved members of the legislature and judiciary, bankers and conglomerates, as well as corporations. This has the impact of bringing enormous losses to state finances.[5]

The need to link corporations with criminal acts of corruption because the modus operandi of corruption in Indonesia has been increasing lately, including:

Bribery in various sectors;
Illegal levies (pungli) in all public sectors;
Mark up (inflating) funds on various government projects;
Bad credit and burglary at banking institutions; And
Embezzlement of state funds.[6]

[5]Edi Yunara, *Corruption &. Corporate Criminal Responsibility* , Citra Aditya Bakti, Bandung, 2012, h. 1

[6]*Ibid* ., h. 23

From the modes of corruption mentioned above, it can be seen that those who were involved as perpetrators of corruption were not only limited to officials and businessmen, but also involved corporations.

Former KPK deputy chairman Busro Muqoddas stated that corruption outbreaks are increasingly worrying in Indonesia. The Corruption Eradication Commission (KPK) said that the movement of corruption is like an octopus. Corruption has also spread among the younger generation. Corruption is experiencing a movement that increasingly needs to be scrutinized and also needs to be addressed. Corruption is increasingly systemic, rampant, and brutal. [7]Therefore efforts to eradicate corruption through more serious law enforcement must be a priority for the government.

In practice in the field, the application of corporate criminal acts in corruption is indeed felt to be not optimal and not as expected. This was revealed in a national seminar organized by the Faculty of Law, University of Riau on "Synergy to Eradicate Corruption Crimes by Corporations in Indonesia," indicating the existence of academic anxiety from the initiator of the seminar as expressed in the terms of reference (TOR), that is, even though the corporation has been declared as the subject of criminal law in Law Number 31 of 1999 as amended by Law Number 20 of 2001. However, in the realm of criminal acts of corruption, only administrators can be held criminally liable, minus the corporation.[8]

As one example of criminal acts of corruption committed by corporations can be found in the case of criminal acts of corruption in the Riau forestry sector in 2008. In this case, it was revealed that 17 (seventeen) companies were involved in criminal acts of corruption committed by TAJ. Everything was decided in Court Decision Number: 06/PID.B/TPK/2008/PN.JKT.PST and in this decision it can be seen that the punishment imposed was only aimed at individuals (natural humans) not directly aimed at corporations. Even though the state losses caused by corporate crimes are far greater when compared to state losses from corruption crimes committed by individuals. In addition, corruption by corporations is a crime that is carried out in such an organized way that it even involves 17 (seventeen) companies (corporations).[9]

Whereas what cannot be denied in law enforcement on criminal acts of corruption by corporations is the unclear formulation of the corporate

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[7]DetikNews, *KPK: Corruption Is Increasingly Brutal* , accessed on 4 June 2018 from https://news.detik.com/berita/1894191/kpk-korupsi-makin-bruta

[8]M. Arief Amrullah, *Op.Cit* , h. 20

[9]Kristian, *Corporate Criminal Responsibility System* , Sinar Graphic, Jakarta, 2018, h. 9

criminal responsibility system in the corruption law. Criminal law practitioner Maqdir Ismail believes that the provisions regarding corporate criminal responsibility in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corporate Crime (Tikor Law), need to be clarified so that it is right on target. According to Maqdir, the corporate criminal provisions regulated in Article 20 of the Corruption Law do not clearly regulate the size of corporate involvement. Meanwhile, not all forms of law violations committed by company leaders can be used as a basis for imposing punishment on corporations.[10]

Indonesia, as a constitutional state must always act on a legal basis, including its citizens. Various laws and regulations have included provisions regarding corporations as perpetrators of criminal acts, including regulations in the environmental sector, limited liability companies, taxation and others. No exception, namely in the law on corruption, corporations can become legal subjects in it.

Law enforcement against corruption by corporations so far has been minimal. The corporate responsibility system does not yet have clear rules to be applied easily in a case involving corporations. So that the enforcement of criminal acts of corruption by corporations is still much concerned with the punishment of corporate officials as a form of corporate responsibility.

In an effort to fill the regulatory vacuum regarding corporate crime enforcement procedures, the Supreme Court (MA) finally issued MA Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations. Chief Justice of the Supreme Court (MA) M. Hatta Ali in a press statement regarding the MA's year-end reflection at the MA Office said that this Perma had been highly anticipated by law enforcers. This is because corporate punishment has been regulated in various laws, but there is no procedure yet. For this reason, the Supreme Court issued a Perma to outline how the procedure should be if a corporation commits a crime.[11]

With the issuance of the Perma above, KPK Spokesperson Febri Diansyah gave a positive response and thanked the Supreme Court for issuing Supreme Court Regulation (Perma) Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations. The KPK is grateful to the Supreme Court because the Perma is important for eradicating corruption. Not only for the KPK, but also for prosecutors and police, because with the issuance of Perma No. 13 of 2016, law enforcers and judges in corruption

[10]Kompas, *Corporate Corruption Criminal Rules Assessed Not Yet Having Clear Measures* , accessed on 5 June 2018 from https://nasional.kompas.com/read/2017/07/26/22245311

[11]Kompas, MA Issues Perma 13/2016, These are *Sanctions for Corporations Involved in Crime* , accessed on 5 June 2018 from https://nasional.kompas.com/read/2016/12/28/15502151

courts have standards in dealing with indications of corruption involving corporations.[12]

> Although the publication of this Corporate Crime Regulation is expected to overcome all obstacles and difficulties for law enforcement officials in their efforts to ensnare corporations so far, academics consider that the Supreme Court Regulation (Perma) Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations is expected to still cause problems in practice. On the other hand, law enforcement officials, such as the Supreme Court (MA), the Corruption Eradication Commission (KPK) and the Attorney General's Office say they are optimistic that the Corporate Crime Regulation can be implemented effectively.

2. Formulation of the problem

Based on the background above, the authors draw the formulation of the problem: Can corporations be held accountable for criminal acts of corruption?

3. Research methods

This research is included in normative juridical research related to conflicts between norms both horizontally and vertically and conflicts between norms and reality in the reality of legal practice. In this study several approaches were used, including: 1) the statutory approach *, which* according to Peter Mahmud Marzuki: "In the statutory approach method researchers need to understand the hierarchy and principles in statutory regulations" . [13]2) Conceptual Approach (*Conceptual Approach),* in a conceptual and theoretical approach, what is used as a reference is legal concepts, legal theories and legal principles found in the views of experts or legal doctrines. 3) Historical Approach (*Historical Approach*) *,* The historical approach is carried out in order to track the history of legal institutions from time to time. This approach really helps researchers to understand the philosophy of legislation from time to time. In addition, through this approach researchers can also understand changes and developments in the philosophy that underlies certain laws and regulations. [14]3) Case Approach (*Case Approach*) *,* the case approach in this study is in the form of *ratio decidendi* (Latin) which means legal reasons used

[12]Kompas, *MA Publishes Corporate Criminal Regulations, This is KPK's Response* , accessed on 5 June 2018 from https://nasional.kompas.com/read/2016/12/28/22185771/

[13]Peter Mahmud Marzuki, 2013, *Legal Research* , Jakarta; Prenada Media, Print eight, h. 137;

[14]Marzuki, *Op. cit* , 2010, h. 166;

by judges to provide a basis for deciding the cases they face. The term *ratio decidendi* is used in legal society which refers to the legal, moral, political, social principles used by the court so as to make a decision.

B. DISCUSSION

Corporate criminal responsibility cannot be separated from the definition of criminal acts in general. Although in the sense of criminal acts, accountability is not meant as an element in it, because criminal acts only indicate the prohibition of an act and it is not determined who is responsible for it.[15]

The above view is in line with the opinion put forward by Moeljatno, who clearly distinguishes "can be punished for actions" (*de strafbaarheid van het feit or het verboden zjir van het feit*) and "people can be punished" (*strafbaarheid van den persoon*), and in line with he separates between the notions of "criminal act" (*criminal act*) and "criminal responsibility" (*criminal responsibility* or *criminal liability*).[16]

Because these things are separated, the definition of a criminal act does not include criminal liability. This view is called a dualistic view of criminal acts. This view is a deviation from a monistic view, among others, put forward by Simons who formulated " *strafbaar feit* " namely: " *een strafbaar gestelde, onrechtmatige met schuld verband staande handeling van een toerekeningsvatbaar person* ". So the elements *of strafbaar feit* are:

1) Human actions (positive or negative; doing or not doing or allowing);
2) Threatened with criminal (*strafbaar gesteld*);
3) Against the law (*onrechtmatige*);
4) Done with errors (*met schuld in verband stand*);
5) By a person who is capable of being responsible (*toerekeningsvatbaar person*).[17]

In this case, Simons mixes objective elements (actions) and subjective elements (actors).

The so-called objective elements are:

a. people's actions;
b. The visible result of the act;

[15] Dwidja Priyatno, *Op. Cit* ., h. 30- 34

[16] Moeljatno, in Sudarto, *Criminal Law I* , Printing II, Semarang; Sudarto Foundation, 1990, p. 40;

[17] *Ibid.*

c. There may be certain circumstances that accompany the act as in Article 281 of the Criminal Code the nature of "openbaar" or "in public".

Subjective aspect of *strafbaar feit* :

a. Responsible people;
b. The presence of errors (*dolus* or *culpa*). [18]

This error can be related to the consequences of the act or to the circumstances under which the act was committed. In using the term "crime" it must be certain for other people about what is meant according to a monistic or dualistic view. For those who have a monistic view, someone who commits a crime can already be punished, while for those who have a dualistic view, the conditions for being punished are not at all sufficient because they must be accompanied by conditions of criminal responsibility that must be held by the person who committed it.[19]

The notion of a crime in the sense of "all the conditions for a crime" (*der inbegriff der voraussetzungen der strafe*), this dualistic view provides benefits. What is important is that it must always be realized that in order to impose a sentence certain conditions are required. All the necessary conditions for the imposition of a sentence must be complete.

Thus, the punishment of a person is not enough if a person's actions have fulfilled the element of offense in the law, but there are still other conditions that must be met, namely that the person who committed the act must have a fault or be guilty. In other words, the person must be accountable for his actions or when viewed from the point of view of his actions, the action must be accountable to that person. So here the principle of " *Geen Straf Zonder Schuld* " (no crime without fault) applies. This principle is not stated in the Indonesian Criminal Code or other regulations, however, the application of this principle is no longer in doubt because it would be contrary to the sense of justice, if someone is sentenced to a crime even though he is completely innocent. Because the main principle of criminal responsibility is error, new problems arise with the acceptance of corporations as subjects of criminal law.

In connection with the acceptance of corporations as subjects of criminal law, this means that there has been an expansion of the meaning of who is the perpetrator of a crime (*dader*). The problem that immediately arises is related to corporate criminal liability. The main principle in criminal responsibility is that there must be a mistake (*schuld*) on the perpetrator. Next, the mistakes of a corporation must be constructed.

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[18] *Ibid* ., h. 41.
[19] *Ibid.* h. 45.

The teachings that are widely adhered to today separate between acts that are against the law (according to criminal law) and criminal responsibility according to criminal law. Acts against the law by corporations are now possible. It is conceivable that in a corporation there is an element of error (both intentional or *dolus* and negligence or *culpa*). In the event that the perpetrator is a human being, this error is associated with reproach (*verwijt baarheid; blameworthiness*) and therefore is related to the mentality or *psyche* of the offender.[20]

Corporations act and act through humans (which can be administrators or other people). So thus the first problem is the legal construction that the actions of the management (or other people) can be declared as corporate actions that are against the law (according to criminal law).

The second problem is related to the legal construction that corporate actors can be declared to have made mistakes and therefore be held accountable according to criminal law. This problem becomes more difficult when it is understood that Indonesian criminal law has a very basic principle, namely: that "no punishment cannot be given if there is no mistake" (in the sense of reproach).

Regarding some of the problems mentioned above, in order to be clearer, we must first know the corporate criminal responsibility system in criminal law, where for this criminal responsibility system there are several systems, namely:

1) Corporate management as the maker and administrator who is responsible ;
2) Corporations as creators and administrators who are responsible ;
3) The corporation as maker and also as responsible ;

1. Corporate Managers As Responsible Makers and Administrators

This system is in line with the development of the corporation as a subject of criminal law phase I. Where the drafters of the Criminal Code still accept the principle of " *society/universitas delinquere non potest* " (legal entities cannot commit crimes). This principle actually applied in the past century to all of continental Europe. This is in line with individual criminal law opinions from the classical school that was in effect at that time and then also from the modern school in criminal law.[21]

[20]Mardjono Reksodiputro , *Progress on Economic Development and Crime, Collection of First Books* , Jakarta, Center for Justice Services and Legal Services, 1994, h. 102.

[21] Dwidja Priyatno, *Op. Cit.,* h. 53.

That being the subject of the crime is in accordance with the explanation (MvT) of Article 59 of the Criminal Code, which reads: "a crime can only be committed by humans". [22]Von Savigny once put forward a fiction theory , in which corporations are legal subjects, but this was not recognized in criminal law, because the Dutch government at that time was not willing to adopt the teachings of civil law into criminal law. [23]The provisions in the Criminal Code that describe the acceptance of the principle of " *society/university delinquere non potest* " are the provisions of Article 59 of the Criminal Code. This article also stipulates the reasons for criminal punishment (*strafuitsluitingsgronden*). namely the management, board of directors or commissioners who are found not to have interfered in committing the violation, cannot be punished.

2. Corporations As Responsible Makers and Administrators

This accountability system is regulated in the provisions of legal norms outside the Criminal Code, as it is known that in criminal laws that are spread outside the Criminal Code, it is regulated that corporations can commit criminal acts, but the responsibility for this is borne by the management (for example Article 35 Law Number 3 1982 concerning Mandatory Company Registration). Then another variation emerged, namely those who were responsible were "those who gave orders" and/or "those who acted as leaders" (Article 4 paragraph (1) of Law Number 38 of 1960 concerning the Use and Determination of Land Areas for Certain Plants). Then another variation emerges, namely those responsible are: administrators, legal entities, active partners, foundation administrators, representatives or proxies in Indonesia from companies domiciled outside the territory of Indonesia, and those who deliberately lead the actions in question (Article 34 of the Law). Law Number 2 of 1981 concerning Legal Metrology).[24]

3. Corporations As Makers And Also Responsible

This accountability system has seen a shift in view, that corporations can be accounted for as actors who act, in addition to natural humans (

[22] Sudarto. *Op. Cit* ., h. 61.

[23]Hattrick, Hamzah, *Corporate Responsibility Principles in Indonesian Criminal Law (strict liability and vicarious liability),* Jakarta; Raja Grafindo Persada, 1996, p. 30.

[24]Mardjono Reksodiputro , *op cit* , h. 70.

natuurlijke person). So the rejection of corporate punishment based on the doctrine *of the university delinquere non potest* , has undergone a change by accepting the concept of a functional actor (*functioneel daderschap*).[25]

In this third accountability system, it is the beginning of direct accountability from the corporation. As for the things that can be used as justifications that the corporation is the creator and at the same time responsible are as follows: First, because in various economic and fiscal crimes, the profits obtained by the corporation or the losses suffered by the community can be so great that it cannot be balanced if the punishment is only imposed on administrators. Second, by only punishing the management, there is no guarantee that the corporation will not repeat the crime again. By convicting the corporation of the type and severity according to the nature of the corporation, it is hoped that the corporation will comply with the regulations in question.[26]

The laws and regulations in Indonesia that initiated the placement of corporations as subjects of criminal acts and can be directly accounted for are Law Number 7 Drt of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes, specifically in Article 5 paragraph (1) which stipulates that:

> If an economic crime is committed by or on behalf of a legal entity, a company, an association of other people or a foundation, then a criminal charge is made and criminal penalties and disciplinary measures are imposed either against the legal entity, the company, the association or the foundation, whether against those who gave orders to commit the economic crime or who acted as leaders in said act or omission or to both.

Subsequent developments were the birth of various other laws and regulations outside the Criminal Code, which regulate similar matters, for example: Article 39 of Law Number 3 of 1989 concerning Telecommunications, Article 24 of Law Number 2 of 1992 concerning Insurance Business, Article 20 of Law Law Number 31 of 1999 concerning Corruption Crimes, and others.

In connection with the acceptance of corporations as perpetrators of criminal acts and can be accounted for, then speaking of corporate criminal responsibility, there are several doctrines regarding corporate criminal responsibility, including:

1) Identification Doctrine;

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[25] Muladi, In H Setiyono, *op cit,* h. 16.

[26] *Ibid* ., h. 15;

2) Substitute Responsibility Doctrine (*vicariousliability*);
3) The Doctrine of Strict Statutory Liability

1) Identification Doctrine

In order to hold corporations criminally responsible, in Anglo Saxon countries like England, the concept of *direct corporate criminal liability* or the doctrine of direct criminal responsibility is known. Criminal liability according to this doctrine, the principle of " *mens rea* " is not ruled out, where according to this doctrine the inner actions or attitudes of senior corporate officials who have a " *directing mind* " can be considered as corporate attitudes. This means that the mental attitude is identified as a corporation, and thus the corporation can be directly accounted for.[27]

The same thing was also stated by Richard Card, that; " *the acts and state of mind of the person are the acts and state of mind of the corporation* " (the actions or will of the director are the actions and will of the corporation). This liability is different from *vicarious liability* and *strict liability* , where in this identification doctrine, the principle of " *mens rea* " is not ruled out, while in the *vicarious liability* and *strict liability doctrines the principle of " mens rea* " is not required. , or the principle of " *mens rea* " does not apply absolutely .[28]

The principle of identification can cause several problems, including:

a. The bigger and more business fields of a company, the more likely it is that the company will avoid responsibility. The example of the Tesco case, which has more than 800 branches, was charged with committing a crime under " *The Trade Description Act 1968* " which was committed by the store's branch manager. In this case *the House of Lords* decided that the branch manager is another person who is the hands and not the brains of the company, there has been no delegation by the directors in the form of delegation of their managerial functions in connection with the company's affairs with the branch manager. He has to comply with the general rules of the company and take orders from his superiors at the regional and district level, therefore his actions or omissions are not the fault of the company.
b. The company is only responsible if the person is identified with the company, namely himself, who is individually responsible because he has the " *mens rea* " to commit a crime. If there are several " *superior officers* "

[27] Muladi, *Op. Cit* , h. 21.
[28] *Ibid* .

involved, then each of them may not have the level of knowledge required to constitute the " *mens rea* " of the crime.[29]

Companies can be held liable if things that are known jointly by company officials are sufficient to constitute " *mens rea* ". With respect to senior officers, for legal purposes senior officers usually consist of the board of directors, managing directors and other senior officers who perform management functions and speak and act for the company.

Lord Morris shows the person whose responsibility represents/symbolizes the executor of " *the directing mind and will of the company* " Viscount Dilhorne uses the same words, including: "... *in my view, a person who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company for the manner in which be discharges his duties in the sense of being under his orders, is to be viewed as being a senior officer* " .[30]

The inner attitude of certain people who have a close relationship with the management of corporate affairs is seen as the inner attitude of the corporation, these people can be referred to as " *senior officers* " of the company. [31]Senior officers " *senior officers* " are someone who actually controls the running of the company.

2) The Doctrine of Vicarious Liability

Alternate liability is the accountability of a person without personal fault, being responsible for the actions of another. According to the *vicarious liability* doctrine , a person can be held responsible for the actions and mistakes of others. Such accountability is almost entirely aimed at statutory *offenses* . In other words, not all offenses can be committed vicariously. The courts have developed a number of principles in this regard. One of them is the " *employment principle* ".[32]

According to this doctrine, the employer *is* the main person responsible for the actions of the workers/employees who commit the act within the scope of their duties/work. In Australia there is no doubt that " *the vicar's criminal act " (acts in vicarious* offenses) and " *the vicar's guilty mind "* (mistakes/evil attitudes in *vicarious offenses*) can be linked to the employer or maker (

[29]Barda Nawawi Arief, *Sari Lecture Comparative Criminal Law* , Edition 1. printing 1, Jakarta, Raja Grafindo Persada, 2002, p. 159.

[30]Peter Gillies, *op. cit.* , h. 137,

[31]Hanafi, *op. cit.* , h. 33.

[32] Barda Nawawi Arief, *Sari Lecture, op cit* , h. 151;

principal). It is different in England, " *a guilty mind* " can only be connected (with the employer) if there is *a relevant "delegation" of powers and duties* according to law.[33]

Furthermore, in cases where a person can be held accountable for the actions of others:

a. The general provisions that apply according to *common law* are that a person cannot be vicariously held accountable *for* a crime committed by his servant/worker. This is seen in the case of Rv Huggins (1730); where Huggins (X) a prison warden is accused of killing an inmate (Y), who was actually killed by Huggins' servant (Z). In this case Z was found guilty, while X was not because Z's actions were committed without X's knowledge. From this case it can be seen that in principle an employer cannot be held accountable for the acts (crimes) committed by his servants. However, there are exceptions, namely in terms of *public nuisance* (i.e. an act that causes substantial disturbance to the population or poses a danger to life, health and property), and also *criminal libel* . In both of these crimes an employer is responsible for the actions of his servant/worker even though he is directly innocent.
b. *statute* law , *vicarious liability* can be accounted for in terms of: 1) A person can be held accountable for the actions committed by other people, if he has delegated (*the delegation principle*). For example, in the case of Allen V. Whitehead (1930), X is the owner of a restaurant. Management of the restaurant was handed over to Y (*manager*). Based on the warning from the police, X had instructed/forbade Y to allow prostitution in that place which Y had violated. X was held accountable under the *Metropolitan police act* 1839 (Article 44). Construction of the penalty thus "X has delegated its obligations to Y (*manager*). By delegating the business wisdom to the manager, the manager's knowledge is the knowledge of the restaurant owner. An employer can be held responsible for an act that is physically/physically carried out by the worker/worker if according to the law the act of the worker is seen as an act of the employer (*the servant's act is the mater's act in law*). So if the worker is a material/physical maker (*auctor physicus*) and the employer is an intellectual maker (*auctor intellectualis*).[34]

According to Marcus Fletcher, in a criminal case there are 2 (two) important conditions that must be met in order to apply a criminal act with substitute liability, these conditions are:

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[33] *Ibid.,* h. 151-152;

[34]Dwidja Priyatno, *Op. Cit* ., h. 102-103;

(1) There must be an employment relationship, such as the relationship between an employer and an employee/worker;
(2) The criminal act committed by the employee or worker is related to or is still within the scope of his work.[35]

In addition to the 2 (two) conditions mentioned above, there are 2 (two) principles that must be met in applying *vicarious liability* , namely the delegation principle *and* the servant *'s act is the mater's act in law.*).

3) Strict Liability Doctrine

Romli Atmasasmita stated that English criminal law, in addition to adhering to the principle of " *actus non facit reum nisi mens sit rea* " (*a harmful act without a blameworthy mental state is not punishable*), also adheres to the principle of absolute responsibility without having to prove the presence or absence of an element of guilt on the part of the criminal. criminal offenders. The principle of liability is known as *strict liability crimes* . [36]This principle of liability is known as *strict liability* . In Black's Law Dictionary, the definition of *Strict-liability crimes* is stated that: *a crime that does not require a mens rea element, such as speeding or attempting to carry a weapon aboard an aircraft* (crime or criminal action, while the responsibility is called strict liability).[37]

This principle of absolute criminal responsibility according to the British Criminal Law only applies to cases of minor offenses, namely violations of public order or public welfare. Included in this category are the violations mentioned above:

a. *Contempt of court* or violation of court rules;
b. *Criminal libel* or *defamation* or defamation of a person's reputation; And
c. *Public nuisance* or disturbing public order.[38]

The principle of absolute liability in England or *strict liability crimes* (should be *strict liability*), applies only to acts that are minor violations and not to serious violations. According to Barda Nawawi Arief, this strict criminal liability can also be solely based on the law, namely in the event that a corporation violates or does not fulfill certain obligations/conditions/situations determined by law, for example the law stipulates an offense for:

- Corporations that run their business without a permit;

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[35] Hanafi, *Op. Cit* ., h. 34;

[36] Romli Atmasasmita, 1996, *Comparison of Criminal Law* , Print I, Bandung, Mandar Maju, h. 76;

[37]Black, *Op. Cit* ., h. 1422;

[38]Romli Atmasasmita, *Op. cit.* , h. 77.

- Corporation holding a permit that violates the terms (conditions/situation) specified in the permit;
- Corporations that operate uninsured vehicles.[39]

C. CONCLUSION

Corporate criminal responsibility for acts of corruption committed by corporations can be carried out by corporations, management or administrators and corporations. The indicator of a corporation committing a criminal act of corruption has been regulated in Article 20 paragraph (2) of the UPTPK, namely if a criminal act of corruption is committed by people based on work relations or other relationships, acting within the corporation either individually or together. Criminal penalties that can be imposed on corporations are only fines , and if the fines are not paid, sanctions can be imposed in the form of closing the entire corporation (*corporate death penalty), while* sanctions in the form of all forms of restrictions on corporate activities are essentially the same as imprisonment or confinement (*corporate imprisonment*). In addition, additional punishment can also be imposed in the form of announcing a judge's decision, which is the sanction most feared by corporations.

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