

**CORPORATE CRIMINAL LIABILITY IN FINANCIAL CRIME CASES
(CASE STUDY PT GARUDA INDONESIA (PERSERO) Tbk)**

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ABSTRACT

The purpose of this research is to determine the roles and responsibilities of company management regarding financial crimes committed by their subordinates. To find out the challenges faced in enforcing corporate criminal liability in financial crime cases. To find out cooperation between law enforcement officials in handling financial crime cases. The nature of the research used is descriptive analysis leading to normative juridical legal research. The data sources obtained in this research come from secondary data, secondary data in the research comes from revelation data, primary legal materials, secondary legal materials, tertiary legal materials. Data collection tools in legal research usually use document studies. Based on research results, forms of financial crimes committed by corporations are Defrauding the Public (deceiving the public), Conspiracy in fixing prices, advertising products in a misleading way (misrepresentation of products), Defrauding the Government (deceiving the government), Transfer Pricing, Under Invoicing, Over Invoicing. The mode of financial crimes committed by PT. Garuda Indonesia Tbk, manipulated financial reports by recording sales transaction reports as compensation income for the rights to install connectivity and entertainment service equipment on board aircraft. In the end, Garuda Indonesia's financial report recorded a net profit. Criminal liability for financial crimes committed by PT. Garuda Indonesia Tbk was In the end, the Indonesian Stock Exchange (BEI) gave a written warning III and imposed a fine of IDR 250 million on Garuda Indonesia, as well as demanding the company to correct and present financial reports. Not only that, the Financial Services Authority (OJK) imposed a fine of IDR 100 million each on Garuda Indonesia and all members of the board of directors. OJK also requires companies to correct and restate their 2018 financial reports.

Keywords: Criminal Liability, Corporation, Financial Crime.

A. Introduction

Based on the doctrine of representative responsibility, the corporation and its management may also be held jointly accountable by referring to the articles of

corporate unity. Imposing criminal liability on a company may be done by identifying criminal acts committed by people who have a direct relationship, status and/or certain authorities of the company. The things that are known for certain are the actions, perpetrators, responsibilities and mistakes of the company. Law no. 31 of 1999 concerning the Eradication of Corruption Crimes has additional special regulations regarding prosecution. Special indictment arrangements are regulated in Cases 34 to 38 of Law no. 31 of 1999 concerning the Eradication of Corruption Crimes and Article 37, Article 37A, Article 37B and Article 37C of Law no. 20 of 2001 concerning Amendment of Law no. 31 of 1999 concerning Eradication of Criminal Crimes. Additional regulations apply and are binding on every public prosecutor who accuses the Rasuah Crime.

One example of a corporation committing financial crimes is with the help of a financial record application, PT Garuda Indonesia (Persero) Tbk claims to have recorded brilliant financial achievements in 2018, with a net profit of US\$ 809 thousand or around Rp. 11.33 billion. However, the two company commissioners were reluctant to sign the financial report because they believed there were irregularities in recording transactions to compile the 2018 annual financial report. The two commissioners did not agree with one of the cooperation transactions with PT Mahata Aero Teknologi, a start-up company that provides WiFi technology on-board, which is recorded as income by management. The chronology is that Mahata collaborates directly with PT Citilink Indonesia, a subsidiary of Garuda Indonesia which is considered profitable to the tune of US\$ 239.9 million. In this collaboration, Mahata is committed to covering all costs for providing, installing, controlling and maintaining connection service equipment. Mahata actually did not pay a cent of the agreed compensation amount until the end of 2018, but the management still recorded the report as compensation income for the right to install connectivity and entertainment service equipment on board the aircraft. Finally, Garuda Indonesia's financial report recorded a net profit. However, this has been noticed by supervisors.

Finally, the Indonesian Stock Exchange (BEI) issued a warning with letter III and imposed a fine of IDR 250 million on Garuda Indonesia, and demanded that the company correct and publish its financial reports. Not only that, the Financial Services Agency (OJK) imposed a fine of IDR 100 million each on Garuda Indonesia and all members of the steering body. OJK also requires companies to correct and restate their 2018 financial reports. For Public Accounting Firms (KAP), OJK has frozen the Registration Certificate (STTD) for 1 year for KAP Kasner Sirumapea. On the other hand, the Ministry of Finance also suspended AP Kasner Sirumapea's permit for 12 months. The financial scandal experienced by Garuda Indonesia is an example of a case of financial statement fraud or fraudulent statement type fraud.

The Regional Court, as one of the executors of judicial power within the framework of the Supreme Court, has the power to carry out examinations, trials and make decisions in crime and civil cases at the first level. In the context of criminal cases, the Regional Court's powers cover all types of criminal acts, except military crime cases which fall under the jurisdiction of military justice. Meanwhile, in civil cases, the District Court has the authority to hear general civil cases, except for certain civil cases which are under the jurisdiction of the Religious Courts.

The principle of corporate responsibility was first regulated in 1951, namely in the Law on Stockpiling of Goods, and became more widely known in Law no. 71 Drt 1955 concerning Economic Crime. In the latest developments, apart from being perpetrators, corporations can also be held responsible for criminal acts, Law no. 15 of 2002 concerning the Crime of Conversion of Haram Money adheres to this model. Other laws that also adhere to this model include Law no. 23 of 1997 concerning the Environment, Law no. 31 of 1999 together with Law no. 20 of 2001 concerning Corruption Crimes. Then to approach and eradicate corporate crime

Based on the description above, the author is interested in conducting an investigation with the aim of "Responsibility of Corporate Crime in Financial Crime Cases (PT Garuda Indonesia (Persero) Tbk Case Study)".

B. Research Methods

A research cannot be said to be research if it does not have a research method.¹ Research methods are one of the factors of a problem that will be discussed.² The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

C. Analysis And Discussion

1. Forms of Financial Crimes Committed by Corporations

As a perpetrator of a crime, corporate responsibility is not as easy as you think. This problem depends on the principle of no crime without error. Mistakes are mens rea or an attitude of the heart, which only natural humans possess, and therefore only humans can be punished. Due to the principle of no crime without error, the Criminal Code does not provide a place for corporations as subjects of criminal law. Bodies are seen as having no soul and no will, as a result they are not considered capable of committing crime. Crime law may only be granted to the subject of a person's law as characterized by a crime defined by the phrase "hij die" meaning "anyone".

The recognition of companies as subjects of criminal law has many theoretical obstacles, different from the recognition of subjects of law as individuals. There are two reasons why this situation occurs.

First, the strong influence of fictional theory which was the originator of Von Savigny, namely that the personality of law as a human unit is the result of imagination. Second, mastery of the principle of non-potest delinquere, which means that legal entities may not commit criminal acts in the criminal law systems in many countries.

The subject of corporate crime law has not yet been widely seen, but following its development as a subject of corporate crime law it continues to be optimized. In

¹ Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

² Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

crime law, academic experts and practitioners alike, it is generally accepted that typical crimes involving companies are usually called corporate crimes. There are many names for corporate crime, which is also called organizational crime. This is different from corporate crime because of what is meant by organizational crime.

The definition of corporation in this case refers to Article 1 paragraph (1) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which states that "a corporation is a group of people who are neatly arranged and/or have the same wealth. whether there is a statutory entity or not a statutory entity."

Corporations that can be recalled are the subject of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in bribery cases regulated in Article 1 paragraph (1), Article 5 paragraph (1). , Case 5 points (2), Case 6 points (1), Case 6 points (2), Case 11, Case 12.

We can also see in the formulation of Article 20 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes "If Corruption Crimes are committed by people based on work or other relationships. acting in a company, either individually or jointly." This influences the development of accountability for criminal acts of fraud in corporate crime today.

2. Mode of Financial Crimes Committed by PT. Garuda Indonesia Tbk Visi dan Misi Ditlantas Polda Sumatera Utara

The types of crimes carried out by companies are very diverse and vary with their field of business or form of activity. Therefore, the meaning, formulation and scope of corporate crime are very diverse. Apart from the purpose, formulation and scope of corporate crime, JE Sahepaty explained, "Types of corporate crime are used in various contexts and names. It is not surprising that in the United States, each country creates its laws, there are approximately 20 formulations relating to corporate crime." At that time it is necessary to remind that the term corporate crime is used in the context

of white collar crime, organizational crime, planned crime, georganiseerde misdaad, groepsriminaliteit, misdaad onderneming, business crime, syndicate crime."³ White collar crime is sometimes carried out by companies. Luckily, the results of this white collar crime were widely felt by companies, even though the action was actually carried out by corporate administrators who had personal interests. Corporate crime is organizational crime and organizational crime is interrelated and very complex. Therefore, the term "corporate crime" is also called "organizational crime".

3. Criminal Liability for Financial Crimes Committed by PT. Garuda Indonesia Tbk

The existence of a mistake is an element that must be present if the perpetrator of a criminal act is to be held criminally accountable. Crime liability is created to determine the fault of the crime committed. Criminal responsibility means that someone who has committed a criminal act must not be punished immediately. He must be held accountable if there is an element of error in his actions, because criminal acts consist of actions and errors. These actions and errors are the basis for criminal liability. Criminal liability can only be determined after he has committed a previous crime. So, criminal acts are separated from criminal responsibility.

The first accountability system explains that criminal acts committed by corporations are only limited to individuals (naturlijk persons) in their criminal responsibility, so that criminal acts are carried out within the scope of the corporation, so that corporate management is responsible. In this case, corporate management is subject to certain obligations. In this first system, management that does not fulfill corporate responsibilities can be said to be responsible.

The second system of criminal responsibility is characterized by the recognition in the enactment of the law that criminal acts are committed by corporations, but responsibility is borne by corporate management. Over time, criminal responsibility shifted from management experts to those who directed them if they failed to take the

³ Lilik Shanty. "Aspek Teori Perundangan dalam Jenayah Korporat". Semakan Undang-undang Pakuan, Jld.3. No. 1. 2017. Muka surat 62

organization seriously. In this accountability system, corporations may commit criminal acts, but those responsible are the corporate management, as long as this is proven in the corporation's regulations. What is meant here is management whose powers have been regulated in the articles of association. The nature of this deed makes the crime personal. The person who heads the corporation is criminally responsible, whether he knows or does not know what he is doing.

This third system of criminal responsibility is the beginning and motivation of showing the development of the corporation itself, that in certain mistakes the corporate administration is determined to be inadequate support. In economic crime cases, it is not a matter of punishment in the form of fines imposed on management versus fines imposed on corporations. Corporate management crime is not sufficient to constitute a crime against the corporation. Therefore, it is necessary to criminalize the companies, and their administrators or administrators alone.

Based on this provision, the agency is responsible for internal monitoring of applicable violations and criminal acts and also resolving them themselves. If the corporation can resolve the problem then the corporation will not be subject to criminal liability, if seen otherwise, the corporation in question will be held criminally liable.⁴ Therefore, corporate criminal responsibility regarding bribery and other types of corruption is regulated broadly in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, many of which contain criminal laws that material, in some parts. which provides special legal regulations, especially for corporate crime.

Legal regulations regarding statutory remedies for legal remedies against interlocutory decisions in the high court can be found in Article 156 of the Criminal Code. The mechanism for further examination of the main case if there is an annulment of the interim decision through legal action is as follows: High Court: If the interim

⁴ Kristian. 2018. Sistem Tanggungjawab Jenayah Korporat dalam Kes *Jenayah Rasuah Selepas Terbitan PERMA RI No 13 Tahun 2016*. Jakarta: Grafik Sinar. muka surat 54

decision is canceled by the high court through the process of legal action, the case will be re-examined at the level of the high court with an upward examination mechanism on the merits of the case. The high court will review all aspects of the case, including the evidence and arguments put forward by the parties. High Court: If the interim decision is overturned by the high court through a legal action process, the case will be re-examined at the high court level with an upward review mechanism on the merits of the case. After the Judge read and examined the statement of the letter belonging to Mangsa Witness Edy Ronald Simbolon, SE, he linked it with the statement of the letter belonging to the Defendant, in the opinion of the Panel of Judges, to the problem between Mangsa. Witnesses Edy Ronald Simbolon, SE, and Defendan regarding ownership disputes within the scope of the Civil Law. which is the authority of the Regional Court, therefore it must be decided first according to civil law to find out who the legal owner is, thus the Panel of Judges is of the opinion that the Defendant's actions in this case are not criminal acts. However, they are civil acts, this is in line with the Decision of the Supreme Court of the Republic of Indonesia No. : 449 K/Pid/2001 dated 17 May 2001; Considering, it has become permanent jurisprudence of the Supreme Court of the Republic of Indonesia that ownership disputes are civil disputes which must be decided first according to civil law to determine the legal owner; Based on the considerations above, the Defendant's/Defender's Lawyer's objection regarding the actions carried out by the Defendant was not a criminal act but was within the scope of civil law should be declared accepted.

C.Conclusion

Forms of financial crime committed by the company are Fraud on the Public (cheating the public), Conspiracy in determining prices (price fixing), advertising products in a misleading way (misrepresenting the product) Cheating the Government (cheating the government), Crimes of Cawal Celia that violate regulations government such as Falsification of financial reports, Tax violations, Corruption of government officials either directly or indirectly to obtain tenders and protection from Regulations,

Transfer Prices, Under Invoices, Over Invoices, to influence their duties and authority. Companies may be drawn into the subject of Law Number 20 of 2001 jo. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in bribery cases is regulated in Article 1 paragraph (1), Article 5 paragraph (1), Article 5 paragraph (2), Article 6 paragraph (1), Article 6 paragraph (2), Case 11, Case 12.

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