

**THE PROSECUTOR'S OFFICE IN PRE-PROSECUTION OF  
CORRUPTION CASE FILES WITH THE SUBJECT OF CORPORATE  
LAW**

**Muhammad Iqbal, Alvi Syahri, Sunarmi, M. Ekaputra**

Email: [iqbal@gmail.com](mailto:iqbal@gmail.com)

Universitas Sumatera Utara

**ABSTRACT**

This study examines the role of the Prosecutor's Office in the pre-prosecution stage of corruption cases involving corporate legal entities and analyzes the mechanism for assessing formal and material completeness as a basis for prosecution feasibility. The increasing involvement of corporations in corruption cases poses challenges in proving corporate criminal liability and linking individual actions to corporate responsibility. This research uses normative legal methods with a statutory and conceptual approach through the analysis of the Criminal Procedure Code, the Law on the Eradication of Corruption, Supreme Court Regulation Number 13 of 2016, prosecutorial guidelines, and the doctrine of corporate criminal liability. The results of the study show that the Public Prosecutor plays a role as *dominus litis* in ensuring the completeness of the formal and material case files, including verification of corporate legality, fulfillment of criminal elements, attribution of liability, and sufficiency of legal evidence. The procedural law orientation that still focuses on individual actors is the main challenge. Therefore, the effectiveness of the pre-prosecution stage greatly determines the success of prosecution and legal certainty in corporate corruption cases.

**Keywords: Prosecutor's Office, Pre-Prosecution, Criminal Justice System, Corruption Crimes, Corporate Criminal Liability.**

**A. Introduction**

Corruption is a criminal act that by several laws and opinions of experts in the field of criminal law is qualified as an *extraordinary crime* that has a systemic impact on the country's economy, governance, and public trust. Along with the development in the practice of these crimes, corruption crimes are seen not only as committed by individuals or individuals, but also involve corporations as legal subjects who can be proven to have benefited from these unlawful acts.

With the alleged increase in corruption cases with corporate criminal actors, it certainly requires the ability and professionalism of law enforcement officials, especially from the Prosecutor's Office through the Prosecutor as the Public Prosecutor who has the duty and authority to prosecute corruption cases involving the Corporation.

It is not an easy task for the Prosecutor in handling cases of corruption crimes with the corporate actors, because corruption cases with corporate actors are still very limited to be

handled, especially prosecutors in areas that require different experience and understanding from criminal cases committed by individuals.

One very important phase to ensure that corruption cases with corporate actors can be forwarded to be further processed or not in the law enforcement process, namely, Pre-Prosecution. Pre-prosecution is an activity that is the authority of the Prosecutor as the Public Prosecutor to examine the results of the Investigation by the Investigator as stated in the case file, in order to determine whether the results of the Investigation are complete or not.

To check the results of the investigation of corruption criminal cases with individual perpetrators, generally the Prosecutor as the Public Prosecutor has equally had the ability and understanding to examine the case file to determine whether the results of the investigation are complete or not. But of course, when examining corruption case files with corporate actors, they have different complexities and focuses. In addition to the need for experience for a Prosecutor as a Public Prosecutor in handling corruption cases with corporate actors, from the aspect of understanding how to conduct an examination of corruption case files with corporate actors which must have this complexity.

At this stage, the Prosecutor's Office plays a strategic role in providing guidelines in the implementation of Pre-Prosecution authority to ensure that the case file of corruption crimes with corporate actors is complete in terms of formal completeness and material completeness. However, the author conducted this study not to assess the quality or quantity of the guidelines in the implementation of the Pre-Prosecution authority on corruption case files with corporate actors, but to try to provide color or other perspectives.

## **B. Research Methods**

A study cannot be called research if it does not have a research method.<sup>1</sup> Research methods are one of the factors of a problem that will be discussed.<sup>2</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>3</sup> The literature materials used in writing this research are several references originating from

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<sup>1</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>2</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>3</sup> Simatupang, R. S. A. (2024). The Implementation of the Juvenile Criminal Justice System in Indonesia from the Perspective of Justice Values. *Journal of Juridical Studies*, 11(1), 54-63.

research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>4</sup>

### **C. Discussion**

#### **Pre-Prosecution Corruption Case File with Suspect Corporate Pre-Prosecution Action**

Legally, this Pre-Prosecution action is regulated in several laws and regulations, including:

- 1) Law Number 8 of 1981 concerning the Criminal Procedure Code, also known as the Criminal Procedure Code (KUHAP), Article 14 letter b; and
- 2) Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Explanation of Article 30.

Based on Article 14 letter b of the Criminal Code, it is stated that the Public Prosecutor has the authority to hold a Pre-Prosecution if there are deficiencies in the Investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of improving the Investigation from the Investigator. Although the Criminal Code does not provide an explanation of what is meant by the term Pre-Prosecution, through Article 14 letter b of the Criminal Procedure Code, we can understand that Pre-Prosecution is an authority possessed by the Public Prosecutor given by the Law outwardly to provide a clue to an Investigation activity in order to improve the Investigation activity.

Compare with the term Pre-Prosecution mentioned in the Explanation of Article 30 of Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which states as follows:

*"In carrying out prosecutions, the prosecutor can conduct pre-prosecution. Pre-prosecution is the action of the Prosecutor to monitor the progress of the Investigation after receiving the notification of the start of the Investigation from the Investigator, study or research the completeness of the case file as a result of the Investigation received from the Investigator and provide instructions to be completed by the Investigator to be able to determine whether the case file can be transferred or not to the prosecution stage."*That is why

If in Article 14 letter b of the Criminal Code, the Pre-Prosecution action is carried out against the lack of Investigation, after being associated with Article 110 paragraph (3) and paragraph (4), there is a term for the results of the Investigation, then the Pre-Prosecution is

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<sup>4</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

carried out against the lack of Investigation results. Then what are the results of the Investigation?, to understand the actions taken by the Prosecutor as the Public Prosecutor, it must be connected with the provisions of Article 138 paragraph (1) and paragraph (2) of the Criminal Code.<sup>5</sup>

Article 138 paragraph (1) of the Criminal Code reads: "*The Public Prosecutor after receiving the results of the Investigation from the Investigator shall immediately study and examine it and within seven days shall notify the Investigator whether the results of the Investigation are complete or not*". Article 138 paragraph (2) of the Criminal Procedure Code reads: "*In the event that the investigation is incomplete, the Public Prosecutor returns the case file to the Investigator with instructions on what must be done to be completed and within 14 days from the date of receipt of the file, the Investigator must submit the case file back to the Public Prosecutor*". Based on these articles, the Prosecutor as the Public Prosecutor is said to receive the "results of the Investigation" when receiving something from the Investigator, then using the term "case file" when returning it to the Investigator, so that it can be concluded that the results of the Investigation in question are identical to the case file.

Then to this Pre-Prosecution action, such as obtaining an expansion of authority based on the Explanation of Article 30, by taking action to monitor the progress of the Investigation, so that the scope of the Pre-Prosecution becomes:

- 1) monitoring the progress of the investigation;
- 2) study the completeness of the case file as a result of the investigation; and
- 3) provide instructions on the completeness of the case file.

In an investigation conducted by an investigator, in practice very rarely or even never, the Prosecutor as the Public Prosecutor is directly involved in every investigation process after the start of the investigation action. It is common in practice, the Prosecutor as the Public Prosecutor is more active in carrying out pre-prosecution actions after receiving the case file from the Investigator. The submission of this case file is divided into two stages as stipulated in Article 8 paragraph (3) of the Criminal Code, namely:<sup>6</sup>

- a. In the first stage, the investigator only submits the case file; and when complete,

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<sup>5</sup>Osman Simanjuntak, *Prosecution Techniques and Legal Remedies*, (Jakarta, 1994), p. 9.

<sup>6</sup>Ratna Sari, *Investigation and Prosecution in Criminal Procedure Law*, (Medan: Law and Society Study Group, Faculty of Law, USU, 1995), p.84.

- b. In the second stage, the investigator handed over responsibility for the suspect and evidence to the Public Prosecutor.

Regarding the submission of the first stage of the file, the Prosecutor as the Public Prosecutor then examined and studied the case file. What is examined and studied is the formal completeness and material completeness of the case file, then the Prosecutor as the Public Prosecutor determines the attitude based on the examination of the case file, whether the formal and material requirements of the case file have been met, and if based on the examination, the Prosecutor concludes that the case file is incomplete, then the Prosecutor gives written instructions to the Investigator to complete the case file.

In this pre-prosecution process, prudence is needed from the Prosecutor as the Public Prosecutor in examining criminal case files that are the results of the investigation conducted by the Investigator, both the completeness of the formal requirements and the completeness of material requirements, because the completeness of the results of the Investigation in one criminal case file, is very decisive for the success of the prosecution. The Public Prosecutor is required to be really thorough and observant in studying and researching the criminal case file, because if the Public Prosecutor as the Public Prosecutor is not careful in studying and researching the criminal case file, then the incompleteness of the results of the investigation that passes the less careful examination, will become a weakness and is a "defect" that will be carried to the prosecution stage, so that in itself it is also a weakness in carrying out prosecution a criminal case.

At the stage of examining this case file, there are at least 3 (three) possible research results, namely:

1. The Prosecutor as the Public Prosecutor argued that the case file was complete and met the formal completeness and material completeness.
2. The Prosecutor as the Public Prosecutor is of the opinion that the case file is incomplete, this means that the corruption case file with the Corporate Suspect has not met the formal completeness and material completeness in accordance with the provisions that are the Prosecutor's guide or guideline in examining the case file.
3. The prosecutor as the Public Prosecutor argued that the case file was not a criminal act, especially a criminal act of corruption. This happens if from the results of the examination of the case file, the Prosecutor as the Public Prosecutor is of the opinion

that the case that ensnared the Corporate Suspect is not a criminal act but a civil act.<sup>7</sup>

### **Formulating Guidelines for Examining the Completeness of Formal and Material Corruption Case Files with Corporate Actors**

The Pre-Prosecution mechanism also applies in the examination of corruption case files with corporate actors. The Internal Prosecutor's Office has long provided guidance in conducting an examination of the first stage of case files provided by the Investigator as an implementation of Article 8 paragraph (3) of the Criminal Procedure Code, namely through the Jamipum Letter, Number: B-401/E/9/93 dated September 8, 1993 concerning the Implementation of Pre-Prosecution Duties.

The action of checking the files received at this first stage is focused on: <sup>8</sup>

- 1) Formal Completeness, which includes everything related to formalities/requirements, Investigation procedures that must be completed with Warrants, Minutes of Proceedings, Permits/Approval of the Chief Justice. In addition to checking the quantity of completeness of formal requirements, it is also necessary to examine the quality of the completeness, namely its validity according to the provisions of the Law;
- 2) Material Completeness, namely the completeness of information, data, facts and evidence necessary for the purpose of proof. Criteria that can be used as a benchmark for material completeness include:
  - a. What happened (criminal offense along with qualifications and articles violated)
  - b. Who is the perpetrator, who sees, hears, experiences the event (suspects, witnesses/experts);

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<sup>7</sup>Aristo M.A. Pangaribuan, Arsa Mufti, Ichsan Zikry, *Introduction to Criminal Procedure Law in Indonesia, Op. Cit.* p. 118.

<sup>8</sup>*Association of Manuscript Procedures and Technical Guidelines for the Settlement of General Criminal Cases of the Attorney General's Office of the Republic of Indonesia*, (Jakarta: Deputy Attorney General for General Crimes of the Attorney General's Office of the Republic of Indonesia, 2006), p.11.

- c. How the act is done (modus operandi);
- d. Where the act was committed (locus delictie);
- e. When an act is committed (tempus delictie);
- f. What consequences it causes;
- g. What to achieve with the act (motivation);

This guide is also referred to as a technical guide in conducting Pre-Prosecution which has been used for case files with Individual Actors. As we know so far, the mention of Suspect and Defendant in the Criminal Code is aimed at individuals as perpetrators of criminal acts, so in examining the completeness of the case file from both formal and material aspects, of course, the approach used is oriented to the legal subject of the individual.

Some of the guidelines, guidelines and even regulations used to conduct research on corruption case files with the subject of corporate law include:

1. Circular Letter of Jampidum, Number: B-401/E/9/93 dated September 8, 1993 concerning the Implementation of Pre-Prosecution Duties.
2. Letter of the Attorney General Number: B-036A/Ft.1/06/2009 dated June 29, 2009 concerning Corporations as suspects/defendants in corruption crimes.
3. Regulation of the Attorney General of the Republic of Indonesia No.PER-028/A/JA/10/2014 dated October 1, 2014 concerning Guidelines for Handling Criminal Cases with Corporate Actors.
4. Supreme Court Regulation (PERMA) No. 13 of 2016 dated December 29, 2016 concerning Procedures for Handling Crimes by Corporations.

**Examination of corruption case files with corporate suspects formal requirements for corporate suspects.**

The Prosecutor as the Public Prosecutor who examines the case file, must first understand the form of the Corporation that is the Suspect in the case file. Law on Corruption

Number 31 of 1999 jo. Law of the Republic of Indonesia Number 20 of 2001 and in Supreme Court Regulation (PERMA) No. 13 of 2016 dated December 29, 2016, has stated that a Corporation is a collection of people and/or property that is organized, whether it is a legal entity or a non-legal entity.

Corporations called legal entities can refer to those who regulate them, including:

- a. Limited Liability Company, based on Article 1 number 1 of Law of the Republic of Indonesia Number 40 of 2007;
- b. Foundation, based on Article 1 number 1 of Law of the Republic of Indonesia Number 16 of 2001;
- c. Cooperatives, based on Article 1 number 1 of the Republic of Indonesia Law Number 17 of 2012;

Then what about State-Owned Enterprises?, there are indeed 2 (two) forms of SOEs regulated by Law Number 19 of 2003, namely:

1. Company (*Persero*); and
2. Public Company (*Perum*).

The Company or abbreviated as *Persero* is a State-Owned Enterprise in the form of a Limited Liability Company (PT), so its formation or establishment follows the provisions in Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (see also Article 4 paragraph (2) of Law of the Republic of Indonesia No. 45 of 2005), the characteristics of its shares which are wholly or at least 51% owned by the State, and the main goal is to pursue profits. While a Public Company or also called *Perum*, its formation or establishment is not stated to follow the provisions in the Limited Liability Company Law, only it is stated that *Perum* has obtained the status of a legal entity since the promulgation of the Government Regulation on the Establishment of *Perum* (see Article 35 of Law Number 19 of 2003).

Law on Corruption Number 31 of 1999 jo. Law of the Republic of Indonesia Number 20 of 2001 and in Supreme Court Regulation (PERMA) No. 13 of 2016 dated December 29, 2016 does not distinguish between a corporation that aims to pursue profits such as Persero or aims for the public benefit such as Perum, so that Perum can also be called a Corporation which is a collection of people and/or wealth that is organized and can be the subject of law in a criminal case.

Furthermore, Corporations that are not legal entities, refer to the forms of business entities regulated by BW Indonesia and the Commercial Code,<sup>9</sup> including:

1. Civil Partnership (*maatschaap*), regulated in Articles 1618 – 1652 of the Indonesian Civil Code;
2. Firm (*Fa*), regulated in Articles 16 – 35 of the Criminal Code; and
3. Communion of Commanders (*CV*), regulated in Articles 19 – 21 of the Criminal Code.

For corporations that are not legal entities, the wealth of the business entity is integrated with the wealth of the owner, the profits obtained by this business entity are the profits of the owners. Furthermore, by using the check list format, the formal completeness requirements of the Corporation that must be met or completed include the following:

- 1) Corporate Identity Check. The identity of this Corporation is obtained from the document of the Deed of Incorporation of the Corporation along with amendments to the Deed if any, which also contains the Articles of Association and other information related to the establishment.<sup>10</sup> So that the document of the Deed of Incorporation and amendments to the Deed if any, must be confiscated and become one of the

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<sup>9</sup>Asep Supriadi, *Traffic Accidents and Corporate Criminal Liability in the Perspective of Indonesian Criminal Law*, (Bandung: PT. Alumni, 2014), p.41.

<sup>10</sup>R.I., *Law Number 40 of 2007*, concerning "Limited Liability Companies", Article 8, paragraph 1.

requirements for the formal completeness of the corruption case file with the Corporate Suspect.

- 2) Examination of Corporate Suspects. Examination of the Corporate Suspect outlined in the form of the Examination Minutes is absolutely necessary, considering that the criminal acts alleged to the Corporate Suspect are identical acts of the Corporation, not the acts of individual criminal offenders, even though in its implementation the Corporation's acts are represented by the Corporation's organ called the management.
- 3) Confiscation of Property/Corporate Property. With the Corporation as a Suspect, the crime that can be imposed on the Corporation must be in accordance with the nature of the Corporation as a collection of people or a collection of wealth. In contrast to individual criminal offenders (*natuurlijke persoon*), although in principle the Corporation can be held criminally responsible, the Corporation cannot be subject to the death penalty, imprisonment and imprisonment, but rather financial *impact* or financial impact, in this case a fine is the only principal crime that can be imposed on the Corporation.<sup>11</sup>

### **Material Requirements of Corporate Suspects.**

Using the material completeness check list format, the Prosecutor as the Public Prosecutor then examines the acts committed by the Corporation and meets the criminal formulation in the Corruption Crime Law.

To answer problems related to the material completeness requirements of a case file with the Corporate Suspect, obtained from the evidence in the case file. In the crime of corruption, evidence known in Article 184 paragraph (1) of the Criminal Code, namely, Witness

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<sup>11</sup>Working Group Team on the Preparation of Corporate Criminal Liability Guidelines, Procedures for Handling Corporate Criminal Cases, (Jakarta: National Library of the Republic of Indonesia, 2017), p.166.

Statements, Expert Statements, Letters, Instructions and Defendant Statements, can also be obtained from:<sup>12</sup>

- a. Other evidence in the form of information spoken, sent, received, or stored electronically with optical devices or similar; and
- b. Document, which is any recording of data or information that can be seen, read, and/or heard that can be issued with or without the help of a means, whether contained on paper, any physical object other than paper, or electronically recorded, in the form of writing, sound, image, map, design, photograph, letter, sign, number, or perforation that has meaning.

**1. The article or formulation of the alleged corruption offense must be in accordance with the facts of the acts committed by the Corporate Suspect.**

Articles in the Corruption Crime Law that are categorized as material offenses:

- a. Article 2 paragraph (1); and
- b. Article 3.

With the formulation of formal offenses, namely delinquency in the Corruption Crime Law which focuses on prohibited acts, without proving the element of state financial loss. The articles in the Corruption Crime Law which are categorized as formal offenses are as follows:

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1. Related to Bribery:

- a. Article 5 paragraph (1) letter a;
- b. Article 5 paragraph (1) letter b;
- c. Article 6 paragraph (1) letter a;
- d. Article 6 paragraph (1) letter b; and

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<sup>12</sup>R.I., *Law No. 20 of 2001*, concerning "Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption", Article 26 A.

<sup>13</sup>Corruption Eradication Commission, *Understanding to Eradicate (Handbook to Understand Corruption Crimes)*, (Jakarta: KPK, 2006), p.16.

e. Article 13.

2. Related to Fraudulent Acts :

f. Article 7 paragraph (1) letter b;

g. Article 7 paragraph (1) letter c; and

h. Article 7 paragraph (1) letter d.

3. Related to other criminal acts related to corruption:

i. Article 21; and

j. Article 22.

For the completeness of the material requirements in the corruption case file, the criminal acts of the Corporate Suspect must meet the formulation of corruption crimes in the Corruption Crime Law, whether the criminal act causes losses to state finances or not. As an example, in a corruption case file with a Corporate Suspect, it is suspected that a criminal act violates or meets the formulation of the corruption offense Article 2 paragraph (1) of the Corruption Crime Law Number 31 of 1999 jo. Law Number 20 of 2001, with the following chronology: <sup>14</sup>

- a. Around November 2010, SW as the President Director of PT. PRIVATE ordered the marketing manager, namely AYE to participate in the auction for the procurement of "medical equipment packages at the Sumatra Provincial Health Office to overcome diseases and improve health services at local hospitals", with a procurement value of Rp. 26 billion.
- b. SW as President Director of PT. PRIVATE, conveyed to AYE as the marketing manager, if PT. PRIVATE has definitely been won by the procurement committee, because the procurement auction planning documents in the form of specifications of medical devices and HPS used, come from PT. PRIVATE with a price that has been

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<sup>14</sup>Commission on the Eradication of Corruption, *Technical Guide, Op. Cit.*, pp.51-52. The author recreates a hypothetical case (not an actual case), with a crime mode that has often occurred in a government procurement activity.

marked-up or increased by 40% of the price usually sold by PT. PRIVATE to other customers. This can happen because SW as the President Director of PT. PRIVATE knows BS, as the Head of the Health Office who is also the Commitment Making Officer (PPK) in the procurement and BS promised to 'oversee' the procurement auction so that PT. PRIVATE as the winner.

- c. In the implementation of the procurement auction, AYE prepared the necessary administrative requirements including a price offer letter signed by SW as the President Director of PT. PRIVATE, with the price offered is Rp. 25 billion, with an estimated profit of 40%, because since the beginning the procurement price of Rp. 26 billion has been mark-up.
- d. In addition, AYE also prepared the loan of flags for several companies, namely PT. ABC, PT. DEF, PT. GHI and PT. JKL which will be used as a companion participant in the procurement auction and prepare several quotation letters from the bid price of PT. PRIVATE. AYE as the marketing manager always reports its activities in the procurement auction process to SW, including how AYE coordinates with the Procurement Committee so that PT. PRIVATE INDIVIDUALS meet the formal requirements to become winners. This is a common practice and is often carried out by PT. PRIVATE to win the procurement auction.
- e. PT. PRIVATE was then designated as the winner of the procurement auction and SW as the President Director of PT. The private sector signed the procurement contract.
- f. PT. PRIVATE has carried out the work and has received all payments under the contract in December 2010, although the delivery of the goods was late and only handed over in full in January 2011. This happens because AYE has arranged the process of handing over goods in a formality with the Goods Receiving Committee and the payment process according to SW's direction.

g. SW as President Director of PT. PRIVATE SECTOR also ordered AYE to hand over funds of 20% of the contract value, which was used for:

1. 10% (Rp.2.5 billion) for the Head of the Health Office as well as PPK.
2. 5% (Rp.1.25 billion) for the Procurement Committee.
3. 3% (Rp.750 million) for the Committee of Goods Recipients and Treasurer.
4. 2% (Rp.500 million) for the flag loan fee to PT. ABC, PT. DEF, PT. GHI and PT. JKL.

h. That in the case file, there are results of the calculation of state financial losses carried out by the Indonesian Financial Supervisory Agency, at least 40% of the value of the work contract.

Based on the case of this position, the Prosecutor as the Public Prosecutor determines, which is a criminal act of the Corporate Suspect?, and whether the criminal act of the Corporate Suspect meets the criminal formula in Article 2 paragraph (1) of the Corruption Crime Law?, as follows:

1. Criminal acts of the Corporation.
  - a. That from the chronology of the case, SW as the President Director of PT. PRIVATE together with the marketing manager, namely AYE has committed acts or criminal acts of corruption by participating in auction engineering together with BS, as the Head of the Health Office who is also the Commitment Making Officer (PPK) and the Procurement Committee.
  - b. That the purpose of SW and AYE to conduct auction engineering is so that PT. The private sector won the auction and got the procurement project with a work value of Rp. 25 billion.
  - c. That PT. PRIVATE SECTOR received payment for the implementation of the procurement project in accordance with the value of the work and money received

by PT. The private sector was then divided by SW and AYE to parties who participated in jointly engineering the auction to get the work project, which is a criminal act of giving bribes.

- d. That SW and AYE committed the corruption crime based on a 'working relationship' with PT. PRIVATE, namely SW as the President Director of PT. PRIVATE and AYE as marketing managers, and these acts are carried out for and on behalf of and in the interests of PT. PRIVATE and carried out within the framework of the Corporation.
- e. So it can be concluded that the criminal acts of corruption committed by SW and AYE as material perpetrators are criminal acts of corruption by the Corporation and PT. PRIVATE is designated as a Corporate Suspect because it qualifies as an element of "everyone" in the Corruption Crime Law.

2. Fulfills delicate formulas.

- f. That the criminal act of corruption by the Suspect PT. PRIVATE is a criminal act of corruption committed by SW and AYE as material perpetrators who commit the crime of corruption based on the 'employment relationship' with PT. PRIVATE, namely SW as the President Director of PT. PRIVATE and AYE as marketing managers.
- g. That the criminal acts of corruption committed by SW and AYE have fulfilled the elements of corruption offenses in Article 2 paragraph (1) of the Corruption Crime Law, so that the Suspect PT. PRIVATE, it is right to suspect the same article, namely Article 2 paragraph (1) of the Corruption Law.
- h. That to prove the actions of the Suspect PT. PRIVATE SECTOR as a corporate actor who fulfills the elements of corruption offenses is based on all the evidence

used in proving the acts of corruption committed by SW as the President Director of PT. PRIVATE and AYE as marketing managers, including from: <sup>15</sup>

- i. Documents, statements and other evidence that prove the 'working relationship' between AYE and SW with PT. PRIVATE, such as: Deed of establishment, GMS, registration letter of the composition of the Board of Directors to the Ministry of Law and Human Rights, organizational structure, personnel list of PT. PRIVATE, employment agreements, appointment decrees, *job desc*, payment of salaries/incentives/remuneration, etc (with the intention of proving the employment relationship).
- j. Work and financial plans, quotation documents and procurement auctions, minutes of the meeting of the Board of Directors/Employees of PT. Related PRIVATE, financial records of PT. PRIVATE, communication recordings of AYE, SW with the Directors/employees of PT. Other PRIVATE INDIVIDUALS and information explaining winning the auction engineering to win PT. PRIVATE SECTOR in procurement auctions and giving bribes (proving that the act was done for the benefit and on behalf of the Corporation).
- k. That as a result of the criminal acts of corruption from the Suspect PT. The private sector has enriched the Corporation, namely the Suspect PT. PRIVATE SECTOR itself and also enriching other parties, namely:
  1. Rp.2.5 billion was given to the Head of the Health Office as well as the PPK.
  2. Rp.1.25 billion was given to the Procurement Committee.
  3. Rp.750 million was given to the Committee of Goods Recipients and Treasurer.
  4. Rp.500 million for the flag loan fee was given to PT. ABC, PT. DEF, PT. GHI and PT. JKL.

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<sup>15</sup>*Ibid*, p.57.

1. That for the alleged acts of corruption against the Suspect PT. The private sector has resulted in state financial losses of 40% of the value of the employment contract based on the results of the calculation of state financial losses carried out by the Indonesian Financial Supervisory Agency.
3. Instructions on the completeness of material requirements for Corporate Suspects.
- m. That in the case file of the corruption crime, against the Suspect PT. PRIVATE SECTOR as the perpetrator of corporate crimes, is suspected of Article 2 paragraph (1) of the Corruption Law Number 31 of 1999 jo. Law Number 20 of 2001, which is the formulation of material crimes that require that there must be state financial losses.
- n. However, there were other acts committed by the Suspect PT. PRIVATE, namely the act carried out by SW as the President Director of PT. PRIVATE SECTOR and AYE as marketing managers in the form of criminal acts of giving bribes to other parties, namely: the Head of the Health Office as well as PPK, the Procurement Committee, the Committee for Receiving Goods and the Treasurer, as well as the provision of fees for the loan of flags by PT. ABC, PT. DEF, PT. GHI and PT. JKL.
- o. That the criminal act of giving bribes committed by SW and AYE was based on the 'working relationship' with PT. PRIVATE, and the act was carried out for and on behalf of and in the interests of PT. PRIVATE, so that the Suspect PT. PRIVATE INDIVIDUALS can be subject to Article 13 of the Corruption Law Number 31 of 1999 jo. Law Number 20 of 2001.

- p. Based on these instructions, the Investigator can apply Article 13 of the Corruption Law Number 31 of 1999 jo. Law Number 20 of 2001 in the case file of corruption crimes for the Suspect PT. PRIVATE.

### **Application of Acts of Participation to Corporate Suspects.**

This act of participation is regulated in Articles 55 and 56 of the Criminal Code. Article 55 paragraph (1) of the Criminal Code states: <sup>16</sup> being punished as the perpetrator of a criminal act:

1. Those who do, order to do, or participate in doing the deed;
2. Those who by giving, promising something, misusing power or dignity, by force, coercion or threat or misleading or by giving an opportunity, effort or information, deliberately persuade that the act be committed.

Article 56 of the Criminal Code states, as an assistant to commit a crime, punishable:

1. Those who deliberately help when crimes are committed;
2. Those who deliberately give the opportunity, effort or information to commit the crime.

So based on Articles 55 and 56 of the Criminal Code, there are 2 (two) forms of participation acts, namely:<sup>17</sup>

1. The makers or *daders* in Article 55 of the Criminal Code are classified as:
  - a. Perpetrators/those who commit (*pleger*);
  - b. Telling to do/ make do (*doenpleger*)
  - c. Participate / participate in (*medepleger*)
  - d. Organizers/persuaders (*uitlokker*)

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<sup>16</sup>Leden Marpaung, *Criminal Law (Principles-Theory-Practice)*, (Jakarta: Sinar Grafika, 2017), pp.77-78.

<sup>17</sup>Teguh Prasetyo, *Criminal Law*, (Jakarta: RajaGrafindo Persada, 2010), p.205.

2. Helpers or *medeplichtigheid* are regulated in Article 56 of the Criminal Code.

If participation in a corruption crime involves 2 (two) or more corporate actors, the act of participation can be applied to the corporations. This is illustrated through the Supreme Court Regulation which states: <sup>18</sup> "In the event that a criminal act is committed by a Corporation involving the parent Corporation and/or a subsidiary corporation and/or a corporation that has a relationship can be criminally accounted for in accordance with their respective roles."

With the phrase "in accordance with each role", it can be understood that the concept of participation can be applied in determining criminal liability if a criminal act involves more than one Corporation that acts as a parent company and subsidiary companies or other corporations that have a relationship with each other. On the one hand, this provision accommodates collective criminal liability that can be applied to the perpetrators of criminal acts involving companies that are members of a corporate group.

Instructions on the completeness of material requirements for the act of participation of the Corporate Suspect. If in the case file of a corruption crime, the Suspect PT. PRIVATE SECTOR is suspected of the act of participation, namely together with the material perpetrator of committing a criminal act of corruption, so that the Investigator improves the completeness of the material requirements, because the Suspect PT. PRIVATE INDIVIDUALS cannot be subjected or suspected of acts of participation or together with material perpetrators on legal grounds that the quality of conduct is different, especially in terms of wujub acts and criminal imposition.

### **Determining the Criminal Liability of Corporate Suspects**

Regarding this material requirement, the Prosecutor as the Public Prosecutor must know the form of criminal liability of the corporate actor. The basis for criminal liability is "mistake".

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<sup>18</sup>R.I., *Supreme Court Regulation Number 13 of 2016 dated December 21, 2016*, concerning Procedures for Handling Criminal Cases by Corporations, Article 6.

In a narrow sense, mistakes can be intentional (*opzet*) or negligent (*culpa*). Talking about mistakes means talking about accountability. Thus, criminal liability is the fundamental basis of criminal law and fault is the heart of criminal law.<sup>19</sup> In the criminal law in Indonesia there is a principle that is written, "not punished if there is no mistake", which is the basis for the conviction of the perpetrator.<sup>20</sup>

Committing a criminal act does not always mean that the maker (such as the corporate actor) is guilty of it. To be able to account for everyone in criminal law, conditions are needed to be able to impose a criminal offence against him, for committing the criminal act. Thus, in addition to having committed a criminal act, criminal liability can only be prosecuted when the criminal act was committed by mistake.<sup>21</sup>

So between criminal acts and accountability in criminal law, there is a close relationship as is the case with the act and everyone who commits the act. A new criminal act means that there is no liability on the other hand, on the contrary, there can be no accountability, if there is no criminal act. Mistakes are an element, even an absolute requirement for accountability in the form of criminal imposition.<sup>22</sup> In the development of criminal law, there are teachings or doctrines that justify the existence of criminal liability from the Corporation, including:

a. *Strict Liability*

According to this strict liability teaching, criminal liability can be imposed on the perpetrator of the criminal act concerned without the need to prove that there is a mistake (intentional or negligence) on the part of the perpetrator.

b. *Vicarious Liability*

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<sup>19</sup>H.M. Rasyid Ariman and Fahmi Raghil, *Criminal Law*, (Malang: Setara Press, 2015), p.205.

<sup>20</sup>Roeslan Saleh, *Criminal Acts and Criminal Responsibility (Two Basic Meanings in Criminal Law)*, (Jakarta: Aksara Baru, 1983), p.75.

<sup>21</sup>Chairul Huda, *From No Crime Without Fault to No Criminal Responsibility Without Fault, (A Critical Review of the Theory of Separation of Crime and Criminal Responsibility)*, (Jakarta: Kencana Prenada Media, 2006), p.6.

<sup>22</sup>Moeljatno, *Criminal Acts and Accountability in Criminal Law*, (Yogyakarta: Bina Aksara, 1983), p.25.

According to this doctrine, a person who commits an act through another person is considered himself to have committed the act provided that the act done by another person is an act within the framework of a given task. In other words, the employer is the main person responsible for the actions of the worker or employee who performs the act within the scope of his duties or work.<sup>23</sup>

The principle of *vicarious liability* is also found in Article 38 paragraph (2) of the 2006 Criminal Code Draft which reads: "in the event determined by the Law, everyone can be held liable for criminal acts committed by others".<sup>24</sup>

### c. Identification

According to this doctrine, a corporation can commit a criminal act directly through a "*senior officer*" so that the actions of the senior officer can be identified as the act and will of the company or the corporation itself.<sup>25</sup>

Based on this identification theory, an act can be considered as a criminal act committed by a Corporation only if the criminal act is committed by the Corporation's personnel who have the authority or authority to be able to act as a *directing mind* such as a senior officer of the Corporation and act within the scope of his position, the Corporation is only not responsible if the act is committed in his personal capacity. In general, the senior officials in question are the company's controllers, namely Directors and Managers.<sup>26</sup>

In examining a criminal case file with the Suspect Corporation, finding criminal liability from the Corporation is difficult for the Prosecutor as the Public Prosecutor, but the Prosecutor who conducts the criminal liability examination of the Corporation should as much as possible refer to the following information:

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<sup>23</sup>*Ibid*, p. 61.

<sup>24</sup>Mahmud Mulyadi and Feri Antoni Surbakti, *Op. Cit.*, p.62.

<sup>25</sup>Kristian, *Op. Cit.*, p.176.

<sup>26</sup>Mahmud Mulyadi and Feri Antoni Surbakti, *Op. Cit.*, pp.57-58.

1. Whether the management or other relevant organs of the Corporation or parties based on the employment relationship with the Corporation, perform acts or deeds for and on behalf of the interests of the Corporation?;
2. What are the actions or deeds for and on behalf of the interests of the Corporation carried out by the management or other relevant organs of the Corporation or parties based on the employment relationship with the Corporation?;
3. Whether actions or deeds for and on behalf of the interests of the Corporation carried out by the management or other relevant organs of the Corporation or parties based on the employment relationship with the Corporation, are not in accordance with good and correct principles in accordance with laws and regulations?;
4. What are the results or benefits obtained by the Corporation as a result of the actions or deeds of the management or other organs of the Corporation related or parties based on the employment relationship with the Corporation?;
5. Has the Corporation (through the Internal Supervisory Unit (SPI) or the Corporate Law and Compliance section) sanctioned the actions of the management or other relevant organs of the Corporation or parties based on the employment relationship with the Corporation, which are clearly not in accordance with good and correct principles in accordance with laws and regulations?;
6. Why does the Corporation not immediately report criminal acts of corruption committed by the management or other relevant organs of the Corporation or parties based on the employment relationship with the Corporation to law enforcement?;

7. Has the Corporation implemented policies in the form of anti-corruption Corporate guidelines to prevent the occurrence of corruption crimes within the Corporation?

Based on this, against the Suspect PT. PRIVATE INDIVIDUALS can be proven guilty and can be charged with criminal liability as follows: <sup>27</sup>

1. That the suspect PT. Private SECTOR has benefited or benefited from the actions taken by SW as the President Director of PT. PRIVATE and AYE as marketing managers. This is known from:
  - a. Letter Evidence such as documents, Witness Statement Evidence, Expert Statement, Corporate Suspect Statement, and other evidence related to the operational and financial project of PT. PRIVATE and procurement/contract documents that won PT. PRIVATE SECTOR and the profits it receives (proving the benefits received by the Corporation is a clue to error).
2. That the suspect PT. PRIVATE has allowed SW as the President Director of PT. PRIVATE SECTOR and AYE as marketing managers committed the act or criminal act of corruption. This is known from:
  - b. Letter Evidence such as documents, Witness Testimony, Expert Testimony, Corporate Suspect Statement, and other evidence that explains that the practice of auction engineering and giving bribes to win procurement auctions is a practice usually carried out by PT. PRIVATE, as well as evidence of communication history between AYE and SW with the Board of Directors and/or other employees (proving the neglect/lack of supervision of the criminal act).

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<sup>27</sup>*Ibid.*, pp.58-59.

3. That the suspect PT. The private sector does not make efforts to prevent corruption from occurring within the Corporation, namely PT. PRIVATE. This is known from:
  - c. Letter Evidence such as documents, Witness Statement Evidence, Expert Testimony, Corporate Suspect Statement, and other evidence that explains the absence of an internal supervision system and programs, implementation, evaluation of corruption prevention and internal control at PT. PRIVATE (prove whether there is or is not an effort to prevent corruption).
4. That the suspect PT. PRIVATE SECTOR does not take adequate measures (as required by law), to avoid greater losses/impacts. This is known from:
  - d. Letter Evidence such as documents, Witness Statement Evidence, Expert Testimony, Corporate Suspect Statement, and other evidence that explains the attitude of PT. PRIVATE, there are no adequate steps to prevent a greater impact after knowing that the auction engineering and bribery were carried out by AYE and SW (proving what the company has done after the crime occurred).

Alvi Syahrin explained about criminal liability and the reasons for the Corporation's forgiveness as follows: <sup>28</sup>

- 1) The corporation is criminally responsible for the conduct of its management or employees, if there is an obligation to take precautions, either directly or indirectly, as determined by law, or there is tolerance carried out by the directors or managers at a high level (*senior officers*) who act on behalf of the Corporation within the scope of its duties, (this is related to Article 4 paragraph (2) c of PERMA No. 13 of 2016 dated

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<sup>28</sup>Alvi Syahrin, Corporate Criminal Liability, July 13, 2014, <http://alviprofdr.blogspot.com>., (accessed June 18, 2019, at 7:30 p.m.)

December 29, 2016). However, if the act expressly harms the Corporation or violates the obligations set by the Corporation, then the Corporation may submit an excuse that removes the element of fault.

- 2) The corporation is criminally responsible for the following acts:
  - a. Which is done by the persons responsible for carrying out the Corporation's operations, but the Corporation can avoid criminal liability by submitting the argument that the violation was committed without the knowledge and not in the interest of the Corporation (this can be attributed to Article 4 paragraph (2) a of PERMA No. 13 of 2016 dated December 29, 2016);
  - b. Which is done by the directors, managers, secretaries or other officers of the Corporation who are responsible for the management of the Corporation. However, if the act is done by the directors, managers, secretaries or other officers of the Corporation who are responsible for the management of the Corporation, not as an act to control or manage the Corporation, and the Corporation does not benefit from the act (this can be attributed to Article 4 paragraph (2) a of PERMA No. 13 of 2016 dated December 29, 2016), the Corporation may submit a reason for forgiveness based on the *avas (afwezigheid van alle schuld)* or also called "no mistake at all/ without precepts.

The Corporation is criminally responsible for the acts committed by the persons responsible for the Corporation's operational activities. However, the Corporation can propose an excuse to remove the blame for the actions committed by the persons responsible for the operations of the Corporation by putting forward the argument that the act is a violation of the obligations set by the Corporation (this can be attributed to Article 4 paragraph (2) c of PERMA No. 13 of 2016 dated December 29, 2016), so that the Corporation suffers losses for the action and the Corporation does not suffer losses for the action and the Corporation does not suffer losses for

the action and the Corporation does not suffer losses for the action and the Corporation does not suffer losses for the action and the Corporation does not suffer benefit from the act (this can be attributed to Article 4 paragraph (2) a of PERMA No. 13 of 2016 dated December 29, 2016). If the Corporation has taken reasonable action in controlling the conduct of its employees to carry out what is required by law, the Corporation may propose an excuse for forgiveness based on *avas* (*afwezigheid van alle schuld*) or also called "no fault at all/ without precepts".

#### **D. Conclusion**

The implementation of Pre-Prosecution emphasizes the strategic role of the Prosecutor as a case controller in the criminal justice system. Based on the results of the research, the implementation of Pre-Prosecution shows that the Public Prosecutor has a central position in ensuring the quality of case handling before being delegated to the prosecution stage. The prosecutor not only functions administratively in examining the completeness of the case file, but also exercises juridical control over the legal construction prepared by the investigator. In the case of corruption crimes with corporate actors, this role becomes increasingly important because the prosecutor must be able to ensure that the elements of the Corporation's criminal acts and responsibilities have been formulated appropriately, so that the indictment prepared has a strong evidentiary basis and does not cause legal loopholes in the trial. The orientation of the Criminal Procedure Code No. 8 of 1981 to individual actors poses challenges in the practice of Pre-Prosecution of Corporate cases. Normatively, the Criminal Procedure Code No. 8 of 1981 regulates more individual legal subjects, so in practice the Prosecutor needs to make a more progressive interpretation when dealing with cases involving Corporations. These challenges include determining who represents the will of the Corporation, how to relate individual acts or actions to the Corporate entity, and how to formulate the appropriate criminal

liability construction. This condition requires more in-depth legal analysis skills from the Prosecutor so that there are no mistakes in determining the legal subject or in formulating charges

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