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Article

Asset Recovery as a Fundamental Principal in Law Enforcement of Corruption by Corporations

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Abstract

Corruption is one of the most widespread and chronic crimes in Indonesia. Therefore, handling corruption is a very important priority for law enforcement. Perpetrators of corruption are not only individuals but also corporations. The crime is done for the benefit of the corporation itself. Today corruption committed by corporations have started to be a concern of law enforcement officials even though the implementation is not yet optimal. This paper discusses the assets recovery as a fundamental principal in criminal punishment against a corrupt corporation. This research is using a dogmatic legal method by analyzing legal materials. From the research conducted it can be concluded that law enforcement of criminal acts of corruption carried out by corporations should be prioritized in the asset recovery principal and not only aiming to punish criminal offenders. So, it is recommended to law enforcement officials to use asset recovery approach in handling corruption cases committed by corporations, including in pairing the indictment with money laundering regime.

INTRODUCTION

Corruption is a behavior that is very detrimental to the social life of the community. In Indonesia, corruption is one of the most widespread and chronic crimes. According to Transparency International, although the corruption perception index in Indonesia has increased, it is still very poor ("Global Corruption Barometer," 2020). Based on the 2020 report from Transparency International, Indonesia still ranks 102nd out of 180 countries, with an index of only 37 from the maximum of 100. From the results of the survey, it can be concluded that Indonesia is still very vulnerable to corrupt practices.

Corruption can be found in all elements of the state starting from the executive, legislative and judicial branches. Based on the handling of corruption cases committed by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK) in 2018, there were 23 cases of corruption committed by the legislature, 22 cases of corruption committed by executives, and 4 cases of corruption committed by law enforcement officials. This shows that corruption is very common in all aspects in Indonesian ("TPK Berdasarkan Instansi," 2018). Even law enforcement officials who are supposed to be the spearhead in handling corruption also commit these crimes (*Laporan Tahunan KPK*, 2018).

Efforts in reducing the corruption can be done by making efforts to prevent the crime and by repression after the crime occurred. These two efforts are very important to go hand in hand. According to a survey conducted by the KPK, the cause of corruption according to the

public's perception is due to the low sanction given to corruptors and the weak law enforcement against corruption. Therefore, the handling of corruption should be a very important priority for law enforcement in Indonesia.

In practice, the perpetrators of corruption are not only individuals but can also be committed by corporations. Nowadays, the criminal acts of corruption committed by corporations or sometimes referred to as corruption in the private sector have started to become a concern of law enforcement officials even though in the implementation of these efforts is not yet optimal. Until now there are around fifteen cases of corruption committed by corporations that have been and are being handled by law enforcement officials. One of the cases that became a heated discussion was a corruption case committed by PT. NKE, which was previously named PT. DGI. This case is the first corruption case to be handled by the KPK. In this case, PT. NKE was sentenced by the judge to pay a criminal fine of Rp. 700 million and the replacement money of around 85 billions rupiah ("Jelang Vonis PT NKE dan Momentum Berantas Koorporasi Korup," 2019).

From this case, it can be seen that the conviction of corporations in a corruption case is very important, not only to deter the perpetrators, but also very important in terms of recovering state financial losses. The principle of recovering state financial losses is very important in the corruption case. This is clearly stipulated in Chapter V of the 2004 United Nations Convention Against Corruption (UNCAC) on Asset recovery. This principle specifically stated in Article 51 of UNCAC. The UNCAC also encourages all state participants to cooperate optimally in achieving the objectives in the asset recovery (*United Nations Convention against Corruption*, 2004).

From the UNCAC explanation can be concluded that asset recovery is a very important principle in law enforcement of corruption. Asset recovery is increasingly important if the crime is committed for the benefit of the corporation or in other words carried out by the corporation. But in the implementation of asset recovery as a goal in corporate punishment as a criminal offense is not yet optimal. This paper analyzes the asset recovery as a fundamental principle in corporate criminal acts of corruption. There are three questions that will be answered in this paper, first, how is the corporate criminal liability issues in corruption, second, what are the objectives of the corporate punishment in corruption cases, and the third is related to the implementation of asset recovery against corruption committed by corporations in Indonesia.

This paper is arranged in five parts. In the first part is the introduction, the second part discusses corruption acts committed by corporations, the second part analyses the purpose of criminal punishment against corporations, the third part examines asset recovery in corporate criminal acts of corruption, and the fourth part is the conclusion part.

METHOD

To answer the research questions mentioned above, the research method used is dogmatic legal method supported with interviews with some law enforcement officials. Normative research is conducted to answer the general principles of asset recovery and criminal acts of corruption committed by corporations. While interviews were conducted with various related parties such as the KPK and the Center for Reporting and Analysis of Financial Transactions (Pusat Pelaporan dan Analisis Transaksi Keuangan/PPATK), in order to clarify the handling of cases involving corporations in criminal acts of corruption.

RESULT AND DISCUSSION

Corruption Conducted by Corporations

Nowadays the corporation is one of the social and economic actors who have a significant role in modern society. It is undeniable that corporations have contributed greatly to the economic growth of a country, even the world. In carrying out its activities the corporation can also be involved in various activities that are detrimental to the community, even some of these harmful acts can be classified as criminal acts. For example, criminal offenses in the environmental field, criminal offenses in the field of taxation, criminal offenses in the field of consumer protection or criminal offenses related to unfair business competition. Among the several criminal acts that can be committed by corporations are criminal acts of corruption. Unlike corruption committed by individuals, corruption committed by a corporation is carried out in a coordinated action by several members of the corporation. This action is done for the benefit of the corporation itself (Aven, 2015). Because the scope of corporate activities is very broad and large, the impact of the crime committed is also very broad and large in terms of the number of victims or the amount of loss caused to either the social order or the environment.

Corporations as legal subjects that can be accountable in criminal law have become a long debate among academics and criminal law practitioners. Even though after a long debate about the distribution of criminal acts (*actus reus*) and mental condition or guilty mind (*mens rea*) from corporations, the corporation was finally accepted as a subject that can be accountable in criminal law in most parts of the world. Although not all countries in the world accept corporate criminal liability such as Germany and Hong Kong (Aritonang et al., 2017).

Indonesia is one of the countries that have accepted corporations as subjects that can be liable with criminal liability for certain special criminal acts. This acceptance is regulated in several laws outside the Criminal Code (specialized criminal law). One form of criminal acts that can be carried out by corporations and which have been regulated in Indonesian law is corruption. Article 20 of Law No. 31 of 1999 on the Eradication of Corruption Crimes states that if a criminal act of corruption is carried out by or on behalf of a corporation, criminal prosecution and enforcement can be committed against the corporation or its management. Furthermore, in the same article, the Law on the Eradication of Corruption Acts explains that a criminal act of corruption is carried out by a corporation if the crime is committed by people both based on work relations or based on other relationships, acting within the corporate environment both alone and jointly (Undang-Undang (UU) Tentang Pemberantasan Tindak Pidana Korupsi, 1999).

The first case that convicted a corporation of a criminal act of corruption was in the case of PT. GJW in South Kalimantan. South Kalimantan High Prosecutors' Investigators indicted PT. GJW as a corporate suspect for playing a role and also enjoying the benefits of the development and management of the Banjarmasin Antasari Sentra Market. PN Banjarmasin through decision No. 812 / Pid.Sus / 2011 / PN.BJM dated June 9, 2011, stated that PT. GJW has been proven legally and convincingly guilty of continuing criminal acts of corruption as in the primair indictment Article 2 (1) Jo. Article 18 Jo. Article 20 of the Law on Combating the Corruption, Jo. Article 64 (1) of the Criminal Code (KUHP). The judge in this decision sentenced a criminal fine of Rp. 1,3 Billion and sentenced an additional sanction in the form of a temporary closure of PT. GJW for 6 (six) months. This decision has permanent legal force and was executed (*Indonesia vs PT. Puguk Sakti Permai Putusan Mahkamah Agung RI No. No. 1360 K/PID.SUS/2017*, 2017).

After the corruption case committed by PT. GJW, law enforcement officers for quite long time did not include the corporation in a corruption case even though there were some indications that the crime was committed by or on behalf of the corporation. This is because there are still no provisions that provide clear direction for law enforcement officials in prosecuting and constructing corporate criminal liability. In some cases, law enforcement officials convicted the directors but included the corporations for the imposition of sanctions, such as in the case of PT Asian Agri Group (Jakarta) and PT Indosat Mega Media (IM2) (Jakarta) (Mulyati, 2018). The confusion of law enforcement officer in handling corporation was then sought to be resolved by the Attorney General's Office and the Supreme Court by issuing the Attorney General's Regulation No. RI No. PER-028/A/JA/10/2014 concerning Guidelines for the Handling of Criminal Cases with Corporate Legal Subjects (hereinafter referred to as PERJA concerning Corporate Law Subjects) and at the end of 2016 the Supreme Court issued Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Corporate Criminal Cases (Suhariyanto, 2018).

Several cases of criminal acts of corruption committed by corporations handled by the general attorney after the release of PERJA include: PT Puguk Sakti Permai (Bengkulu), PT Beringin Bangun Utama (Bengkulu), PT Putra Papua Perkasa (Papua Barat), PT Kakas Karya (Papua Barat), PT Proxima Convex, PT. Shalita Citra Mandiri, PT Mitra Multi Komunic, and PT Ekspo Kreatif Indo (Sumatera Utara) (Syarif, 2017).

Furthermore, in 2018 the KPK has also begun to see the importance of involving corporations in the settlement of a corruption case involving a corporation. The corruption case committed by the corporation handled by the Corruption Eradication Commission is related to corruption in the construction of the Hospital at Udayana University and several other projects that are still related to the corruption case committed by Nazaruddin. The panel of judges in this case stated that PT. Nusa Konstruksi Enjiniring Tbk (NKE) which was previously named PT. Duta Graha Indah Tbk (DGI) has been proven legally and convincingly guilty of committing a criminal act of corruption and fined Rp.700 million, replacement money of Rp.85.49 billion and additional crimes in the form of revocation of the right to participate in a government project auction for 6 months. In this case, PT. The NKE was sentenced by a judge to pay a criminal fine of Rp.700 million and a replacement money of around 85 billion.

Furthermore, in mid-2019, the KPK also succeeded in proving the corruption of PT Putra Ramadhan or PT Tradha related to the bribery case of procurement of goods and services in the Kebumen Regency 2016 budget year. In the corruption case committed by PT. Tradha, the KPK charged it not only with corrupt acts as regulated in the Corruption Prevention Act, but also charged PT. Tradha with Money Laundering (Yuliani, 2022).

Currently there are also a number of corporations that have been named as suspect by the KPK. Namely PT. Nindya Karya (PT. NK) and PT. Tuah Sejati (PT. TS), who was named as a suspect in corruption related to the loading and unloading charity project in the Free Trade Zone and the Sabang Free Port ("Jelang Vonis PT NKE Dan Momentum Berantas Koorporasi Korup," 2019). The project was carried out using the State Budget (APBN) from 2006-2011, which is thought to be detrimental to the state budget of around Rp.313 billion. So, there are a total of about fifteen corporations that have and are dealing with the law for committing criminal acts of corruption, and the trend continues to increase along with the increasing awareness of law enforcement officials about the importance of criminal corporations in criminal acts of corruption.

In constructing corporate responsibility in a criminal act of corruption, it can be seen that there are differences in the model of corporate criminal responsibility held by the Law on the Eradication of Corruption, Peraturan Jaksa Agung (PERJA/Attorney General's Regulation)

on the Corporate Legal Subjects and Peraturan Mahkamah Agung (PERMA/Supreme Court Regulation) on corporate criminal cases. The Law on the Eradication of Corruption in Article 20 paragraph (2) describes three important elements in the attribution of corporate criminal responsibility, namely: a) carried out by people who are either based on work relationships or based on other relationships; b) in a legal entity environment; c) individually or together. According to Pieth and Ivory, The model of corporate criminal responsibility in the Law on Eradicating Corruption is very clearly adhering to the doctrine of strict vicarious liability, where mistakes from all levels of corporate members are not a problem to be attributed to the corporation (Pieth & Ivory, 2011). In addition, it is sufficient with the fact that there has been a criminal offense within the corporation committed by the corporation's management without seeing whether the act was carried out to provide benefits of the corporation or not, causing the corporation to be held accountable.

Furthermore, the PERJA on the Corporate Legal Subjects in the appendix provides clearer criteria in the elaboration of criteria for actions which may be subject to criminal liability to the corporation as follows: a) Performed for the benefit of the corporation whether due to work or other relationships; b) Actions that use human resources, funds and / or all forms of support or other facilities from the corporation; c) Acts carried out by third parties at the request or order of the corporation or the management of the corporation; e) In the context of carrying out daily business activities of the corporation; d) Profit the corporation; e) Actions received / usually accepted by corporations; f) Corporations actually accommodate the results of criminal acts. PERJA on the Corporate Legal Subjects does not strictly adopt one type of corporate criminal liability doctrine. PERJA adheres to the doctrine of identification extensively and adds several other criteria that can be considered as acts that can be held accountable to the corporation. The criteria used by PERJA on the Corporate Legal Subjects are also quite advanced by identifying that corporations can play a role in a criminal offense as a party that facilitates criminal offenses when corporate resources are used to commit a criminal offense and in the case of corporations acting as a holding party proceeds of crime.

Furthermore, regarding the construction of corporate criminal liability regulated in PERMA on Corporate Criminal Acts, the attempt is to separate between the finding of *actus reus* and *mens rea* from the corporation. Provisions regarding the fulfillment of actus reus stated in Article 3 of the PERMA explained that a criminal offense is committed by a corporation if: it is carried out by a person based on an employment relationship, or based on other relationships, both individually and jointly acting for and on behalf of the corporation in or outside the corporate environment.

Regarding the discovery of mistakes (*mens rea* or blameworthiness), PERMA on Corporate Criminal Acts began to abandon the conventional understanding of corporations that are seen as fiction but seen as a reality of an independent legal subject. Corporations are independent subjects that are independent of certain behaviors of humans within them. This can be seen from the stipulation of Article 4 (2) PERMA which states that the *mens rea* of a corporation can be seen from: a) The corporation obtains benefits or benefits from the crime, or the crime is committed in the interests of the corporation; b) Corporations allow criminal acts to occur; c) Corporations do not take the necessary steps to prevent criminal offenses, or corporations do not prevent wider impacts, or corporations do not ensure compliance with applicable legal provisions to avoid criminal offenses.

The subjective element of *mens rea* is usually found in the perpetrators of crime. PERMA does not associate the *mens rea* of the corporation with certain individuals within the corporation but rather looks at the organization and management system of the corporation itself. So, it can be concluded that PERMA began to adhere to the imposition of criminal

liability to the corporation directly (direct liability); where *actus reus* and *mens rea* are not associated with actus reus and the *mens rea* of certain human subjects within the corporation, but the corporation is considered to have an independent system that can have *mens rea* of its own. Furthermore, PERMA also places restrictions on the corporate criminal liability model that has so far been adopted by most special laws in Indonesia, where the accepted doctrine is the strict vicarious liability doctrine. PERMA seems to be inclined to accept qualified vicarious liability which allows a defense regarding due diligence, and also accommodates corporate culture doctrine, one of which is a component of efforts to prevent criminal acts (preventive faults) and the steps needed in responding to criminal acts (reactive corporate faults) (de Maglie, 2005).

In law enforcement of corruption committed by corporations in general law enforcement officials will refer to the three models of accountability above, the model of corporate criminal responsibility that is regulated in the Law on Eradicating Corruption, the PERJA on the Corporate Legal Subjects and the PERMA on Corporate Criminal Acts. Although there is no uniformity in the corporate criminal liability model governed by the three provisions, but in its application law enforcement officials use it to complement one another in accordance with the case at hand.

Criminal Sanction and Criminal Sentencing Against Corporations

Corporate acceptance in its ability to be the subject of a criminal offense and accountable for a criminal offense, followed by justification in imposing sanctions or punishment on the corporation. So, it is very important in the next discussion to analyze what criminal sanctions are governed by statutory regulations for corporate legal subjects. Punishment according to Immanuel Kant are unpleasant things that are imposed to the conduct of a despicable act, where the level of criminal liability depends on the level of free will of the perpetrators at the time of committing such despicable acts; the greater the degree of freedom a person has when committing a crime, the greater the criminal responsibility that can be asked of that person (Murphy, 1987).

Criminal justice system is very important, because it will have broad consequences, both for the perpetrators themselves, for the victims or for the community (Muladi & Priyatno, 2010). In addition, punishment that is carried out through a fair legal process is very important to avoid punishments carried out arbitrarily or by vigilantism by the community (Joyce, 2006).

Traditionally, two different responses will be given to answer the question of what the purpose of is giving a criminal sentence. The justification for giving a criminal sentence against someone or something is an interaction between the desire to provide a deterrence for the repetition of the same crime in the community, by making someone who, if released, will commit a crime that is more serious than what he has done (incapacitation) or rehabilitate people who have committed crimes (rehabilitation) and retribution, which explains that people who have committed crimes have committed an immoral act so that they must be punished to compensate for these immoral actions (Singer & Fond, 2007).

Likewise in the case of sanctions imposed on a corporation, if a corporation can be blamed for an action or for a negligence they have committed, it is very important to prevent the corporation from committing the same crime in the future, and prevent other corporations from making the same mistakes (Erskine, 2003), if possible, rehabilitate the corporation to become a better legal subject in the future (Henning, 2009). The aim of convicting corporations in this case is that corporations in conducting their business can adopt a responsible corporate culture, especially in terms of transparency and anti-corruption culture (*Anti-Corruption Instruments and the OECD Guidelines for Multinational Enterprises*, 2003).

In criminal law theory in Indonesia, types of criminal sanctions can be grouped into basic criminal sanctions, additional criminal sanctions, and actions. The types of basic criminal sanctions currently accepted in Indonesia are regulated in Article 10 of the Criminal Code, consisting of capital punishment, imprisonment, confinement, criminal fines and closing penalties. Of all the basic criminal sanctions available, penalties are the most likely to be given to corporations because the other basic criminal sanctions are more corporal punishment which can only be given to human law subjects (Suhariyanto, 2012). In addition, criminal fines with a profit paradigm that emphasizes the calculation of profit and loss is the most common type of sanction applied to corporations, especially profit-oriented corporations (Fisse & Braithwaite, 1994). The Law on the Eradication of Corruption also explicitly stipulated in Article 20 paragraph (7) that the principal criminal sanction that can be given to corporations are only criminal fines with the criminal sanction maxim to be added 1/3 (one-third).

Some experts doubt the effectiveness of criminal fines in corporations, that criminal fines do not provide guarantees that other perpetrators or corporations will be deterred from committing the same crime. The amount of fines given is often far less than the impact of damage caused by these corporations, so it can be said the amount of fines given is only part of the cost of doing business (Mulyati, 2018).

However, according to US Department of Justice, in criminal punishment against corporations there is also concern that excessive criminal sanctions can actually have additional consequences (collateral consequences) that is not expected from the criminal process against the corporation ("Crime Without Conviction: The Rise of Deferred and Non Prosecution Agreements," 2005). Penalties against corporations may have an adverse effect on innocent shareholders, creditors, employees or consumers (Boisvert, 1999). Penalties for corporations allow an innocent party to be convicted along with the person who committed the crime (Luna, 2009). So, it is indeed very important to apply the precautionary principle in granting crimes to corporations. This precautionary principle is also emphasized in the UK Guidance Sentence so that judges in providing criminal fines must pay attention to their impact on workers and other effects on society such as disruption to public services (Wells, 2011).

In addition to general sanction, according to Article 10 of Penal Code, Indonesian criminal law also recognizes additional sanctions, which consist of revocation of certain rights, confiscation of goods, and announcements of judges' decisions. Furthermore, the Law on the Eradication of Corruption in Article 18 clarifies some additional forms of sanctions that can be given to perpetrators of corruption, including: a) seizure of tangible or intangible movable or immovable property used for or obtained from criminal acts of corruption, including convicted companies where the criminal acts of corruption were committed; b) Payment of substitute money in the same amount as much as assets obtained from criminal acts of corruption; c) closure of all or part of the company for a maximum period of 1 (one) year; d) revocation of all or part of certain rights or the elimination of all or part of certain benefits, which have been or can be given by the Government to the convicted person.

Asset Recovery in Corruption Conducted by Corporations

One of the important and fundamental objectives of UNCAC as explained in Article 1 (b) is to promote, facilitate and support international cooperation and technical assistance in preventing and eradicating corruption, including in recovering assets from the proceeds of corruption. Each country is expected to reduce the likelihood that financial institutions accommodate the wealth obtained from criminal proceeds by creating a good mechanism to track and prevent this from being done. Furthermore Article 51 also provides a reaffirmation related to the fundamental principle of UNCAC itself is asset recovery and the importance of

cooperation between countries to achieve these goals. Where in Article 46 UNCAC encourages mutual legal assistance in the return of assets that are the result of criminal acts of corruption.

From the provisions described above, it can be concluded that UNCAC emphasizes effective mechanisms to prevent laundering, transfer, tracing, confiscation of the results of criminal acts of corruption committed, including international cooperation for the return of these assets. In addition, Article 53 of the UNCAC also reiterates that in the case of a criminal act of corruption, the state is the victim of the crime so that repayment of state financial losses is important. It is related to the provisions on the eradication of corruption in Indonesia, it is also explicitly explained in Articles 2 and 3 of the Indonesian Law on the Eradication of Corruption. In addition to UNCAC, another international instrument that also emphasizes the importance of asset recovery in the enforcement of corruption is the OECD anti-corruption instrument.

But in practice, the process of being able to recover the financial losses of the country is not easy. Asset recovery is a relatively new thing in handling corruption. In addition, in the case of confiscating and repatriating the proceeds of crime is very difficult, because of the provisions of bank secrecy and the differences between the legal framework for asset recovery in each country. Jurisdiction sets different thresholds for the level of assistance provided in connection with the coercive measures of search and seizure. Most countries require states that ask not to just show reasonable reasons to believe that a violation has been committed and that evidence can be found in the possession of a person or entity that is the target of a forced attempt (“Anti-Corruption Initiative for Asia Pacific ,” 2020). In its implementation, the effort to be able to carry out asset recovery requires an efficient and effective criminal justice system, a strong preventive policy and transparent financial regulation.

Various approaches can reduce these difficulties, among others, relating to due diligence requirements for financial institutions and systems for reporting suspicious transactions, coupled with financial intelligence units that have good resources, will prevent money laundering more effectively. Freezing assets will be much easier if more countries have foreign detention orders enforced by direct registration in domestic courts; Today, only a small number of countries in the region do have the mechanism.

In convicting corporations in a criminal act of corruption, law enforcement officials consider the possibility of recovering state financial losses. Even before proceeding with the legal process, law enforcement officials will consider whether it is more effective to indict individuals without involving the corporation or whether it is better to convict the corporation. Like for example in the Nazaruddin case, the KPK was more inclined to indict Nazaruddin, because by charging Nazaruddin who controlled several companies at the same time more effectively rather than convict the corporation one by one. Unlike the corruption case committed by the NKE, in this case, the NKE is a publicly listed company that has many shareholders, so that corporal punishment in this case would be more beneficial for the country. Not only because the wealth that can be confiscated is clearer because the separation of wealth between management, owner and corporation is given very clearly, but also because convicting this corporation can have business implications especially related to the company's good name and the company's stock price.

Furthermore, using money-laundering provisions (Tindak Pidana Pencucian Uang/TPPU) as one of the options to be paired with a criminal act of corruption also provides a more effective implication in terms of asset recovery. Because by using TPPU, it is clearer the flow of funds from the proceeds of corruption. So that the use of TPPU will greatly assist the expected return of assets. In this case, law enforcement officials can work together with the Financial Transaction Reports and Analysis Center (PPATK) to be able to use its international

network to track the flow of funds obtained from the results of criminal acts of corruption. But indeed, there is still a little reluctance from law enforcement officials to use the TPPU because it is considered that TPPU will provide a surge of people and enormous wealth. Given the TPPU Law regulates very broadly the potential of TPPU perpetrators.

CONCLUSION

There are at least fifteen corporations that have and are dealing with the law due to corruption. This trend will continue to increase given the increasing awareness of law enforcement officials to also include corporations in a criminal act of corruption. In declaring corporations responsible for corrupt acts, law enforcement officials refer to three criminal liability models, namely: The Eradication of Corruption Act, Peraturan Jaksa Agung (PERJA/Attorney General's Regulation) on the Corporate Legal Subjects and Peraturan Mahkamah Agung (PERMA/Supreme Court Regulation) on corporate criminal cases. The objective of criminal punishment against corporations is in principle to provide a deterrent effect both for the corporation concerned and for other corporations so as not to commit the same crime. In addition, the goal of rehabilitation for corporations that commit criminal acts of corruption is expected to have an anti-corruption culture and to ensure a conducive and good business atmosphere. However, in every law enforcement of corruption by corporations, the fundamental principle that is used is the asset recovery to state financial losses. This has been explicitly stated in various international instruments such as UNCAC and OECD anti-corruption instruments. The principle of assets recovery is what makes law enforcement officials consider the corporate punishment. Consideration whether it is better to convict an individual person or involve his corporation will be based on the interests of fulfilling the principle of assets recovery. In addition, another effort to streamline the principle of assets recovery in corruption is to bundle corruption charges with TPPU (Tindak Pidana Pencucian Uang/Money Laundering). So that in knowing the flow of funds resulting from criminal acts of corruption can be more effective, it can even be traced to third parties who enjoy the proceeds of corruption.

REFERENCES

Anti-corruption Initiative for Asia Pacific. (2020). Retrieved August 3, 2022, from oecd.org website: https://www.oecd.org/corruption/anti-corruption-initiative-for-asia-pacific.htm

Anti-Corruption Instruments and the Oecd Guidelines for Multinational Enterprises. (2003). Paris.

Aritonang, R., Anindito, L., Fatoni, M. I., Wachjoe, S., Novariza, & Sutomo, I. O. (2017). *Tata Cara Penanganan Perkara Pidana Korporasi*. Jakarta: KPK Bekerjasama Mahkamah Agung RI.

Aven, B. L. (2015). The Paradox of Corrupt Networks: An Analysis of Organizational Crime at Enron. *Organization Science*, *26*(4), 980–996. https://doi.org/10.1287/orsc.2015.0983

Boisvert, A.-M. (1999). *Corporate Criminal Liability*. Montreal.

Crime Without Conviction: The Rise of Deferred and Non Prosecution Agreements. (2005, December 28). Retrieved August 3, 2022, from corporatecrimereporter.com website: https://www.corporatecrimereporter.com/news/200/crime-without-conviction-the-rise-of-deferred-and-non-prosecution-agreements-2/

de Maglie, C. (2005). Models of Corporate Criminal Liability in Comparative Law. *Washington University Global Studies Law Review*, *4*(3), 547–566.

Erskine, T. (2003). Introduction: Making Sense of 'Responsibility' in International Relations - Key Questions and Concepts. In *Can Institutions Have Responsibilities?* (pp. 1–16). London: Palgrave Macmillan UK. https://doi.org/10.1057/9781403938466_1

Fisse, B., & Braithwaite, J. (1994). *Corporations, Crime and Accountability*. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9780511659133

Global Corruption Barometer. (2020).

Henning, P. J. (2009). Corporate Criminal Liability and the Potential for Rehabilitation. *The American Criminal Law Review*, *46*.

Indonesia vs PT. Puguk Sakti Permai Putusan Mahkamah Agung RI No. No. 1360 K/PID.SUS/2017. (2017). Jakarta.

Jelang Vonis PT NKE dan Momentum Berantas Koorporasi Korup. (2019, January 3). Retrieved August 3, 2022, from cnnindonesia.com website: https://www.cnnindonesia.com/nasional/20190103142320-12-358222/jelang-vonis-pt-nke-dan-momentum-berantas-koorporasi-korup

Joyce, P. (2006). *Criminal Justice: An Introduction to Crime and the Criminal Justice System*. Devon: Willan Publishing.

Laporan Tahunan KPK. (2018). Jakarta: Komisi Pemberantasan Korupsi (KPK).

Luna, E. (2009). The Curious Case of Corporate Criminality. *American Criminal Law Review*, *46*. Retrieved from https://scholarlycommons.law.wlu.edu/wlufac/94

Muladi, & Priyatno, D. (2010). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana.

Mulyati, N. (2018). *Pertanggung Jawaban Pidana Korporasi*. Depok: Raja Grafindo Persada.

Murphy, J. G. (1987). Does Kant Have a Theory of Punishment? *Columbia Law Review*, *87*(3), 509. https://doi.org/10.2307/1122669

Pieth, M., & Ivory, R. (2011). Emergence and Convergence: Corporate Criminal Liability Principles in Overview. In *Corporate Criminal Liability* (pp. 3–60). Dordrecht: Springer Netherlands. https://doi.org/10.1007/978-94-007-0674-3_1

Singer, R. G., & Fond, J. Q. La. (2007). *Criminal Law (The Examples & Explanations Series)* (4th Editio). Austin: Wolters Kluwer.

Suhariyanto, B. (2018). Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi (The Role Of Regulation Of The Supreme Court Number 13 Year 2016 In Overcoming Obstacles Of Corporate Criminal Infringement). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, *9*(1). https://doi.org/10.22212/jnh.v9i1.855

Syarif, M. (2017, March 6). Kejagung Ancam Tindak Tegas Korporasi Korupsi. Retrieved August 4, 2022, from neraca.co.id website: https://www.neraca.co.id/article/81980/kejagung-ancam-tindak-tegas-korporasi-korupsi

TPK Berdasarkan Instansi. (2018, December 31). Retrieved August 4, 2022, from acch.kpk.go.id website: https://acch.kpk.go.id/id/statistik/tindak-pidana-korupsi/tpk-berdasarkan-instansi

Undang-undang (UU) tentang Pemberantasan Tindak Pidana Korupsi. (1999). Indonesia: LN. 1999/ No. 140, TLN NO.3874, LL Setneg.

United Nations Convention against Corruption. (2004). Geneva.

Wells, C. (2011). Corporate Criminal Liability in England and Wales: Past, Present, and Future. In *Corporate Criminal Liability* (pp. 91–112). Dordrecht: Springer Netherlands. https://doi.org/10.1007/978-94-007-0674-3_3

Yuliani, P. A. (2022, August 3). Pertama Kali, KPK Tetapkan Korporasi Sebagai Pelaku Pencucian Uang. Retrieved August 3, 2022, from mediaindonesia.com website: https://mediaindonesia.com/politik-dan-hukum/161697/pertama-kali-kpk-tetapkan-korporasi-sebagai-pelaku-pencucian-uang