

The Philosophical Foundation Of The Corporation As A Legal Subject In Environmental Crime

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Abstract : The number of environmental cases and their consequences in various parts of the world, including Indonesia, proves that corporations can engage directly or indirectly in pollution and environmental destruction. Unlawful acts which result in harm to the interests of the people and the state. Research Objectives To know and understand the philosophical foundations of corporations as legal subjects in environmental crime. this type of research is normative juridical research. Normative juridical research is a method of legal research conducted by examining library materials or secondary materials only. The results showed that setting the philosophical foundation of the corporation as a legal subject and as a subject of criminal law has not been regulated thoroughly in the existing legislation. This raises doubts and ambiguities about the status of the corporation as a subject of law and as a subject of criminal law.

Keywords : corporation, subject of criminal law, environment

1. INTRODUCTION

The role of corporations to promote economic growth of a country, such as increasing tax revenues and living standards of society, create jobs, and contribute positively to the growth of a country. In fact, in some aspects the role of corporation exceeds the role and influence of a State. (Sutan Remi Syahdeini, 2007). Corporations have been known in the business world for centuries. Initially, the corporation was merely an ima working container of some people who had capital, to gain mutual benefit and not yet as exclusively as today's corporations.

Nowadays corporations that fall into the category of giant corporations or multinational corporations have grown in many countries. They not only built the empire in their home country, but also in other countries, especially developing countries like Indonesia in order to gain greater profit. In 1978 the two largest corporations in the United States, General Motors and Exxon, each had sales exceeding \$ 60 billion, an amount that far exceeds the total income of any US state and most countries in the world. (Sutan Remi Syahdeini, 2007). The data shows how much corinational power is multinational at the moment. Currently, according to Chinard and Yeager, it has been proven that multinational corporations have exercised political influence both on the government at home and abroad where the corporation operates. (Sutan Remi Syahdeini, 2007).

Corporations are no longer the same as they used a simple system. Various systems and methods in running their business continue to be developed in order to gain the maximum profit. Almost all aspects of human life involve corporations in it.

Corporations are commonly used in criminal law experts to refer to what is common in the field of civil law referred to as a legal entity (rechts person), meaning persons (persons) created by law. (Chancellor and Christine Kansil) Legal entities are distinguished in public legal entities and private legal entities. Public legal entities, ie countries, Level I and II Regions, Municipalities and Villages. Private legal entities such as Limited Liability Companies, Foundation, Institution, Cooperative, Mosque and Church. Legal entities have the tools (organs) of people as supervisors who act as a mere tool of the legal entity. Because the tools are people or human beings, it is necessary that the requirements of the laws of law inherent in the human body, such as the subject's fault, the unlawful act may also be fulfilled by the corporate bodies (corporations). An unlawful act committed by a human being, who happens to be a tool of the corporation, may be regarded as a direct act of the corporation. Surely that person should act as a tool of the corporation, meaning that he should not get out of the corporate work environment and act on a corporate charter.

The main problem of any modern society is not to want a large corporation, but what can be expected against such a large corporation to serve the public interest in the effort to realize the ideals of a nation that is a just and prosperous society. The public expects the corporation not only to run its business on the economic principle of seeking great profits but also having the obligation to comply with the laws of the economy and the environment. Some of the expected role of corporations in the

process of modernization or development, among them pay attention and foster the preservation of natural resources and environmental capabilities. Aligning between development and the environment is not an easy thing, for it needs to be implemented environmentally sustainable development.

Sustainable development with an environmental perspective requires solid alignment and coordination between the utilization of human resources and natural resources over time, space, and coordination to be effective, effective and efficient. This principle has been recognized since the Stockholm environmental conference in 1972, in which one of its declarations stated that, in the context of more rational resource management to improve the quality of the environment, an integrated and coordinated approach to environmental sustainability development planning was decided. (Aca Sugandhy and Rustam Hakim, 2007) With this principle, it is hoped that development will be in accordance with the efforts of environmental protection and enhancement, in order to be beneficial to the community, and to the people themselves.

Human beings in principle have the ability to carry out sustainable development, thus ensuring the fulfillment of human needs for today, without diminishing the rights of future generations to meet their needs for natural resources. Sustainable development is a process of development that optimizes the benefits of natural resources and human resources in a sustainable way, by harmonizing human activities in accordance with the ability of natural resources that support it in a space of land, sea and air as a whole. (Aca Sugandhy and Rustam Hakim, 2000).

The use of natural resources must be harmonious, harmonious and balanced with environmental functions. As a consequence, development policies and plans must be imbued with the obligation to manage the environment. Environmental management departs from the basis stated in the 1945 Constitution of the Republic of Indonesia (UUD NRI) as the constitutional basis of the state in Article 33 paragraph (3) which mandates that the earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people.

The Republic of Indonesia is known by the world as the country with the largest natural resources in the world, covering both natural resources on land and natural resources at sea. Under these conditions Indonesia should not deserve the title as a developing country. The country's natural resource potentials such as oil, coal, gold, silver and copper and natural resources in the form of tropical forests contain economic value that enables Indonesia to become a developed country in the world.

The abundant natural resources in Indonesia has been given by God to be utilized by humans for their survival, even though human beings are given unlimited legalities, but are expected to utilize natural resources wisely in order to preserve the function of the environment for present and future generations as the next generation the ideals of the Indonesian nation.

The utilization of natural resources must be implemented based on the carrying capacity and the capacity of the environment by taking into account the continuity of environmental processes and functions, the sustainability of life productivity and the quality of life and welfare of the people.

Law Number 32 Year 2009 on Environmental Protection and Management (hereinafter abbreviated as PPLH Law Year 2009) in general explanation emphasizes Indonesia's environment must be protected and managed properly based on the principle of state responsibility, the principle of sustainability, and the principle of justice. In addition, environmental management should be able to provide economic, social and cultural benefits based on prudent principles, environmental democracy, decentralization, and recognition and respect for local wisdom and environmental wisdom.

In the 1950s, many major cities in the world, such as Los Angeles, experienced smoke-fog environmental problems from vehicle exhaust gases and factories. Smoke and fog that envelops the city can last for days, thus disrupting health, especially the respiratory tract and damaging plants. In Japan at the end of 1953 there was a terrible disease in Minamata bay due to methylmercury and cadmium poisoning, which came to be known as "minamata disease". The disease is caused by consumption of contaminated fish by methylmercury which is sourced from mercury containing (Hg) wastes from some chemical plants that money into Minamata Bay. (Otto Soemarwoto, 1991). A similar disease occurred again in 1964-1965, which afflict the fishermen and their families living around the island of Nigata located on the North Sea Coast of Japan, Tokyo. Then, the "explosion" of the three similar diseases occurred in 1973 in Goshonoura, Amakusa Island which is faced with Minamata Bay. In addition, in the 1960s in Japan there has also been a cadmium metal poisoning (Cd) disease from a zinc mining company (Zn) owned by Mikioki Corporation in Toyama Prefecture, later known as Itai-itai Disease. (Otto Soemarwoto, 1991)

Then between 1984-1987 there has been a crisis or environmental cases that hit the world. For example, droughts in Africa, India and Latin America, and floods all over Asia, parts of Africa and the Andes region in Latin America, have resulted in millions of people suffering. Leakage of a pesticide factory in Bhopal, India, has killed more than 2,000 people and injured and caused blindness to more than 200,000 others. The explosion of a liquid gas tank in Mexico City has killed 1,000 people and left thousands homeless. Then, the explosion of the nuclear reactor Chernobyl, Russia, has sent nuclear dust throughout Europe, increasing the risk of cancer in humans. Agricultural chemicals, solvents and mercury spilled into the Rhine when there was a fire in a warehouse in Switzerland, killing millions of fish and contaminating drinking water in the Republic of Germany and the Netherlands. (Bambang Sumantri, 1988).

In the Association of Southeast Asian Nation (ASEAN) region, environmental problems occurred in Sarawak, Malaysia, when the area was attacked by malaria epidemic. To combat this malaria disease is used DDT, but some other animals that are not a target of spraying such as lizards and cats are also dead. The extinction of this cat has caused the jumping population of mice, which ultimately transmit tipes disease. (Siahaan, 1987). Other frequent environmental problems in the EAN region include illegal logging and air pollution due to roots or forest burns that disrupt neighboring countries, such as Malaysia and Singapore.

Similarly in Indonesia, environmental problems are also not new. The problems of the national environment in the form of pollution and environmental destruction in its development continue to occur, even tended to get worse, especially after the reform era and regional autonomy. Some cases of environment that reached the green table, among others the Cendrawasih Bird, Irian Jaya (1984), the case of Waste Tahu and Pig Waste, Sidoarjo East Java (1989), PT Inti Indorayon Utama case, North

Sumatra (1989), PT Sarana case Surya Sakti, Surabaya (1991). There are several cases occurring in the era of regional autonomy such as Pollution of Way Seputih, Central Lampung (2002), Wildlife Wildlife trade in South Sumatera and Lampung (2003), and Buyat Bay case by PT Newmont Minahasa Raya (2004), PT Freeport (2005-2006), and the case of the Sidoarjo Hot Mud (PT Lapindo Brantas) that occurred since 2006. However, with the weaknesses of existing legal structures and substances, the cases in their resolution have not met expectations. (Siahaan, 1987)

New hope arose when the judges of the district court Meulabo, Aceh Regency sentenced the director of PT Kalista Alam eight months in prison and a fine of . 150.000.000 IDR (One hundred and fifty Million tiah) subside three months imprisonment, through decision No. 132 / Pid. B / PN MBO. In the verdict of the judges' judgment, the judge assessed PT Kalista Alam as guilty of clearing palm oil plantation on peatland of Tripa Swamp in Darul Makmur Sub-district, Nangan Raya District without permission. PT Kalista Alam decided to violate Article 46 paragraph 2 of Law no. 18 Year 2004 on Plantation. The crime committed by Kalista Alam has resulted in heavy losses to the management of natural resources in Aceh. Losses are not only material, but also environmental losses that impact tremendous to the next life so it needs to do environmental restoration. (Sinar Harapan, Monday August 18, 2014).

On January 8, 2014 the Meulaboh District Court granted the civil lawsuit of the Ministry of the Environment to PT Kalista Alam and sentenced the palm oil corporation to pay material compensation and environmental recovery costs of Rp. 366 billion more because it was proven to open the land by burning illegally in the Peat Swamp, Aceh Province. The judge mentioned PT. Natural Kalista proved to be unlawful for burning 1000 hectares of peatland in Suaq Bahong, Darul Makmur District, Nagan Raya District 2009-2012. For the mistake that PT. Natural Kalista must pay material compensation in cash to KLH as plaintiff through State treasury account of Rp. 114,333,419,000. The oil palm plantation company must also pay a fee for environmental restoration measures against the burned land of Rp. 251,765,250,000. PT. Natural Kalista proven to pollute and destroy the environment and it must be overcome by way of recovery on burning land. (Sinar Harapan, Monday August 18, 2014).

The number of environmental cases and their consequences in various parts of the world, including Indonesia, proves that corporations can engage directly or indirectly in pollution and environmental destruction. Unlawful acts which result in harm to the interests of the people and the state. By looking at the phenomenon of pollution and environmental destruction as well as the violations of the law which can be done by the corporation as mentioned above, which has a very wide negative impact on every part of the society's life then the position of corporation began to be considered not only subject to civil law but also subject in criminal law, so as to prosecute and be punished or criminal liability for criminal acts that have occurred. Based on the background as described above, then more concretely the problem in this research can be formulated as follows: What is the philosophical foundation of the corporation as a legal subject in environmental crime?

Research purposes

To know and understand the philosophical foundations of corporations as legal subjects in environmental crime.

2. RESEARCH METHOD

A. Types of Research

Understanding legal research according to Peter Mahmud Marzuki is a process to find the rule of law, legal principles, and legal doctrines to address the legal issues faced. (Peter Mahmud Marzuki, 2006). Moving from the understanding, then this type of research is normative juridical research. Normative juridical research is a method of legal research conducted by examining library materials or secondary materials only. (Soejono Soekanto and Sri Mamudji).

B. Problem Approach

This research is a normative or doctrinal legal research completed with empirical data, which will examine and analyze corporate legal responsibility to environmental pollution in Indonesia.

The approach used in the study adapted to the problems to be studied. The first problem is using normative legal research with a philosophical approach to examine and analyze the philosophical foundations of corporations as legal subjects in environmental crime.

C. Source of Legal Material

The source of legal material in this research comes from library research, where library research uses primary legal materials, secondary law materials and tertiary legal materials. The primary legal material is a material that is binding because it is issued by a government or an authoritative institution. And secondary sources of law are materials in the form of books and other printed materials, as well as software, that is by accessing some data through the internet (download) various books, scientific journals and research results, as well as tertiary legal materials are legal materials of a nature supporting primary law materials and secondary legal materials (Devi K. G Sondakh, 2009).

D. Data Collection Technique

In this study, data collection techniques used are primary legal materials and secondary legal materials. The research materials in the form of primary legal materials and secondary legal materials referred to in this study are :

1. The 1945 Constitution of the State of the Republic of Indonesia
2. Law No. 8/1981 on the Criminal Procedure Code
3. Law no. 32 of 2009 on the protection and management of the environment
4. Law no. 18 of 2013 on forestry
5. Law no. 39 Year 2014 on plantations
6. Law no. 4 of 2009 on MINERBA

Secondary legal materials include materials that support primary legal materials such as textbooks, articles in various scientific magazines or research journals in the field of law, papers presented in various forms of meetings such as discussions, seminars, workshops, and others.

3. RESULT AND DISCUSSION

A. Corporations Are the Subject of Law

Etymologically, corporative sense in other terms is known as *corporatie* (the Netherlands), *corporation* (English), *corporation* (Germany), derived from the Latin word "*corporatio*". "*Corporatio*" as a noun (*substantivum*) is derived from the verb "*coporare*" which is widely used in medieval or later times. "*Corporare*" itself comes from the word "*corpus*" (body), which means giving the body or mixing. (Muladi and Dwidja Priyatno, 1991). Thus, finally "*corporatio*" means the result of comparative work, in other words the body of the person, the body acquired by human action as opposed to the human body, which occurs according to nature".

According to Rahardjo, the body he created consisted of the *corpus*, the physical structure and into which the law incorporates elements of *animus* that make the body has a personality. Since this legal entity is a legal creation, except for its creation, its death is also determined by law, the corporation can act as human in general, only, concerning corporations such as rights, obligations, and responsibilities are governed by law. With the regulation of corporations as legal subjects, it is expected that corporations that perpetrate such crimes may be held accountable by law.

There are several definitions put forward concerning corporations. According to Sutan Remi Sjahdeini, the corporation can be seen from its narrow meaning, as well as its broad meaning. Then Sutan Remi Sjahdeini revealed that: (Sutan Remi Sjahdeini, 2007)

"According to its narrow meaning, namely as a legal entity, a corporation is a legal figure whose existence and authority to be able or authorized to perform legal acts are recognized by civil law. That is, it is the constitutional law that recognizes the "existence" of the corporation and gives it "life" to be able to exercise legal action as a legal figure. Likewise, the "death" of corporations, a corporation is only "dying" legally if the "death" of the corporation is recognized by law".

Furthermore, Sjahdeini (Sutan Remi Sjahdeini, 2007), suggests the meaning of corporations in a broad sense can be seen from the definition of corporations in criminal law. According to him, in criminal law, corporations include both legal entities and non-legal entities. Not only are legal entities such as limited liability corporations, foundations, cooperatives or associations authorized as legal entities classified as corporations under penal law, but also firm, partnership or CV, and partnership or *maatschap*, civil law is not a legal entity. From the description, it can be seen that there is a difference of understanding of corporation in the field of civil law with the definition of corporation in the field of criminal law. In the field of civil law, the meaning of corporation is a legal entity, whereas in the field of criminal law that is meant by corporation is not only legal entity, but also non-legal entity.

The term corporation in Indonesian law or commonly known as Civil Company is known only in the Civil Code. In Article 1654 of the Civil Code, it is stated that the Corporation may be defined as: "A civil company is an agreement between two or more persons, pledging to enter into the company for the purpose of obtaining profit from the enterprise they are. "Based on this explanation, the corporation has been recognized in civil law since its inception and has been placed as the subject of law. There are two kinds of legal subjects in terms of civil law are:

- a. *Natuurlijke Persoon* (natural person) is a personal person (Article 1329 Civil Code).
- b. *Rechtspersoon* (legal entitle) is a legal entity (Article 1654 KUH Perdata).

Therefore the concept of corporation in civil law has equal / equaled with human being as subject of law. Hence against the person and corporation as a legal entity may prosecute and or be prosecuted legally. This confirms that the constitutional law has established corporations as legal subjects.

According to the opinion of the author In fact not only individuals or individuals who are able to have rights and obligations but there are also other parties who have rights and obligations of the corporation, where in conducting corporate business activities aim to gain the maximum profit in various ways including by fighting the law by exploring and exploiting the environment without thinking about the impact of the small / small to the environment and society for it needs to regulate the corporation as a legal subject in order to realize the order of a peaceful society, *sejahtera*, and provide legal certainty, security, peace, or a harmonious life will can be realized.

In Article 1 Sub-Article 1 of Law Number 31 Year 1999 concerning the Eradication of Corruption Act states that the corporation is an organized group of people and / or wealth, whether it is a legal entity or non-legal entity.

What is meant by a body incorporated association is a company which is due to its nature is liable with limited responsibilities limited to the capital invested. While a non-legal entity is defined as a company which by its nature and form has a broad responsibility personally. (Zainal Asikin, 2014). Non-legal partnership consists of :

a. Individual Company

A sole proprietor is established simply by administering SIUP (Trade Trading License) at the trading office, as well as taking care of the Taxpayer Identification Number (NPWP) at the tax office. For those who establish individual companies of more than one person then they must enter into agreements on the company to be established by a written deed or an authentic deed. (Zainal Asikin, 2014).

b. The Civil Guild

A civil fellowship shall be governed by the provisions of Article 1618 of the Civil Code which state that maatschap is a covenant with which two or more persons commit themselves to enter something in fellowship with a view to dividing the profits derived therefrom. So a civil partnership or a civil company is a form of cooperative agreement. Civilian fellowship is the simplest form of partnership, because :

- 1) In the case of capital, there is no stipulation of "magnitude" of capital;
- 2) In the event that an income in a partnership or maatschap, other than money or goods, may contribute only to labor;
- 3) The work field is not restricted, nor in the field of trade;
- 4) No announcement to third parties as done in the firm. If otherwise stipulated in the agreement or agreement, this cooperation shall enter into force upon the date of approval.

Agreements in civil fellowship generally contain the following:

- 1) Profit sharing. If the profit sharing is not regulated, then the provisions of the law shall apply;
- 2) The purpose of cooperation;
- 3) Time and duration;

The establishment of a civil partnership (maatschap) can be done through a simple agreement, and there is no formal submission or no governmental approval is required. Its stand can be verbally but may also be based on the deed of establishment, either by written or verbal agreement.

Dissolution and completion of maatschap by itself dispersed or expired in the event of:

- 1) The passage of time specified in the maatschap agreement;
- 2) The loss of goods or the completion of the act which is the subject of the partnership;
- 3) at the sole and some will or a partner, but the will is based on good faith;
- 4) If one of the partners is dead or placed under the capability or declared bankrupt.

c. Fellowship Firm (Fa)

Firm is a civil partnership established to run a company with a common name or firm. So the firm has the following elements:

- 1) The civil union (Article 1618 Civil Code)
- 2) Running company (Article 16 KUHD)
- 3) By joint name or firm (Article 16 KUHD)
- 4) The responsibilities of allies are personal to the whole (Article 18 KUHD).

Firm is established with an authentic deed made before a notary (Article 22 KUHD). The deed of incorporation contains the articles of association of the firm consisting of :

- 1) The full name, occupation and residence of the allies;
- 2) A joint name or firm's resident;
- 3) Firm is general or limited to running a certain field of business;
- 4) The names of allies who are not authorized to sign an agreement for the firm;
- 5) At the start and end of the firm;
- 6) Third party provisions on third parties against allies.

The deed of incorporation of the firm shall be registered with the Registrar of the District Court whose jurisdiction covers the domicile of the relevant firm (Article 23 KUHD). Then the deed of establishment must be published in the State Gazette or Supplementary State Gazette (Article 28 KUHD).

Firms are incorporated into non-legal entities because :

- 1) There is no separation of property between communion
- 2) with personal allies, every ally
- 3) be personally responsible for the whole;
- 4) There is no requirement of ratification of the deed of establishment by the Minister of Justice.

Firm ends if: the time period applied in the household budget, before the expiry of the period (because there are allies who resign or dismiss allies).

The dissolution of the firm shall be carried out by an authentic deed made before the notary, registered to the local District Court Army and announced in the State Gazette. This omission of registration and announcement resulted in no resignation of the firm, resignation or dismissal of any allegiance or amendment of the articles of association to a third party.

d. Fellowship Commanders (CV)

According to Article 19 of the Civil Code, a CV is a company to run a company formed by one person or several Persero Persons who bear responsibility for all (solidary responsibility) on one side, and one or more persons as a *geldscheiter* other parties.

The regulation of CV in KUHD is only contained in three articles namely Article 19, 20 and 21 KUHD. The location of the arrangement is in the midst of the rules regarding the firm. This is understandable considering that principally the partnership partnership is also a firm-specific partnership of *firma*. The specificity lies in the commanding partnership, which in the firm there is no such arrangement. In the firm fellowship there are only "firmant" allies while in a partnership alliance consisting of allied labor and allied partners, ie non-employed allies (allies giving income only do not take care of the company). Thus, the allies in a commanditarian alliance consist of:

- 1) Allied work (active) companies called complementary allies;
- 2) The allies are not the (passive) employment of the so-called commander's partners.

Both active allies and passive allies each provide money, physical or mental inputs on the basis of co-financing, that is, the profit is shared between the allied employee and the partner's allies, even though the responsibilities of a limited partner ally are limited to the enabling capital to be included.

Establishment of CV must be made by an authentic deed as a deed of incorporation by a notary authorized in the territory of the Republic of Indonesia. The deed of establishment was then registered at the Registrar of the District Court where the partnership of the association was domiciled. Then the summary of the deed of establishment of the partnership is published in the State Gazette of the Republic of Indonesia.

The matters contained in the deed of establishment are as follows :

- 1) The name of the association and its legal status;
 - 2) The purpose and purpose of the establishment of the fellowship;
 - 3) The start and end of the fellowship;
 - 4) Equity capital;
 - 5) The appointment of who is an ordinary ally and associate ally;
 - 6) Rights, obligations, responsibilities of the respective allies; and
 - 7) Distribution of profits and losses company partnership.
- A legal entity shall consist of:

1. Limited Liability Company (PT)

Limited Liability Company (PT) was previously regulated in Articles 35-36 KUHD and Ordinance *Indonesische Maatschaoij Op Anndelen (IMA)* S.1939 No. 569 jo 717. Then through the legal development program the government succeeded in making the Law of Limited Liability Company namely Law no. 1 of 1995 concerning Limited Liability Company which entered into force on 7 March 1996, and refined by Law Number 40 Year 2007.

Limited Liability Company (PT) is a legal entity which is a capital alliance, established under the agreement, engages in business activities with the authorized capital wholly divided into shares and meets the requirements stipulated in this law and its implementing regulations.

The characteristics of a Limited Liability Company are:

- 1) A legal entity has a separate property with personal property;
- 2) Capital consists of shares so that the shareholder's liability is limited to a number of shares it enters;
- 3) The system is more closed so that all technical operations, dissolution and other rules are regulated under the Act.

The establishment of a Limited Liability Company shall be by notarial deed and have a statute and a household budget to be ratified by the Minister of Law and Human Rights, and the obligation to register, announce to be in the board of directors. Subsequently registered to the Ministry of Industry and Trade and announced in the Supplement of the State Gazette.

In practice, certain types of Limited Companies are known: 1) Limited Liability Company Closed PT is a company where not everyone can participate in their capital by giving one or more shares. The criteria in a closed company is that its share certificates are issued entirely on behalf of PT. 2) Open Limited Company Open Limited Liability Company is a company that is open to everyone. A person can participate in his capital by purchasing one / more share certificates typically not written on behalf of. 3) General Limited Liability Company Public Company is an open company, whose capital needs are obtained from the public by selling its shares in the stock (capital market). 4) Individual Limited Liability Company A limited liability company can not be established by just one person, because the company is an agreement, and agreements are only possible by at least two persons. However, once a limited liability company stands, it is possible that all shares fall in one hand so that only one shareholder becomes the director.

Article 1 paragraph 2 of the Limited Liability Company Law stipulates the organ of the Limited Liability Company namely:

1) General Meeting of Shareholders (GMS)

GMS are organs of corporations that have powers that are not granted to the Board of Directors or the Board of Commissioners within the limits specified in this law and / or the articles of association. (Article 1 number 4 UUPT).

2) Board of Directors

The Board of Directors shall be the organ of the company which is fully responsible for the management of the Company for the purposes and purposes of the Company and to represent the Company within and outside the Court in accordance with the Articles of Association.

3) Commissioners.

The duties of the commissioners under the Limited Liability Company Law are to supervise the policies of the Board of Directors in running the Company and to provide advice to the Board of Directors of the Company.

Limited Liability Company may be dissolved due to the following reasons:

- 1) Based on the resolutions of the GMS;
- 2) Since the establishment period specified in the articles of association has expired;
- 3) Based on the court's determination;
- 4) With the revocation of bankruptcy based on the decision of the commercial court that has had permanent legal force, the bankruptcy property of the company is not sufficient to pay
- 5) the cost of bankruptcy;
- 6) Since the bankruptcy of the Company which has been declared bankrupt is in an insolvency state as regulated in the Law concerning Bankruptcy and Suspension of Payment Obligations, or
- 7) Due to revocation of the Company's business license requiring the Company to liquidate in accordance with the provisions of the law.

a. Cooperative

Understanding cooperatives based on Article 1 Act No. 25 of 1992 on Cooperatives is a business entity consisting of a person or legal entity cooperative with the basis of its activities based on the principle of cooperatives as well as a people's economic movement based on the principle of kinship.

Cooperative capital is sourced from members either in the form of principal savings, mandatory savings, and voluntary savings. Whereas the establishment of cooperatives should be done by making the Articles of Association (AD) passed by the local Trade and Cooperative Office and announced in the Supplement of the State Gazette of the Republic of Indonesia.

Cooperative organs consist of meetings of members as holders of supreme authority, administrators as managers of day-to-day cooperatives and supervisors who act to supervise the actions of cooperatives.

b. Foundation

Foundation is a legal entity consisting of wealth separated and destined to achieve certain goals in the social, religious, and humanitarian fields. The Foundation may undertake business activities to support the achievement of its aims and objectives by establishing a business entity and / or participating in a business entity. The regulation on the foundation is regulated in Law Number 28 Year 2004 regarding Amendment to Law Number 16 Year 2001 regarding Foundation.

The foundation of the foundation is done by notarial deed and made in the Indonesian language. Whereas the ratification of the deed of establishment is submitted by the founder or proxy by submitting a written application to the Minister of Justice and Human Rights.

The organs of the foundation consist of the builder who is the organ of the foundation having authority not handed over to the board and supervisor by the Act or AD, the board which is the organ of the foundation that carries out the stewardship of the foundation and the supervisor who is the organ of the foundation in charge of supervising and giving advice to the board in running foundation activities.

c. State Owned Enterprises (SOEs)

Law Number 19 Year 2003 on State-Owned Enterprises is a Law on State-Owned Enterprises which was born after the reformation therefore according to the Act, the type of BUMN has also changed from previously State-Owned Enterprise (Perum), Company Nrgara Bureau (Perjan) and Perusahaan Negara Persero (Persero), so that with Law Number 19 Year 2003 the type of BUMN consists only of :

1). The Company (Persero)

The Limited Liability Company is a State-Owned Enterprise in the form of a Limited Liability Company (PT) whose capital / share is at least 51% owned by the government, with the aim of pursuing profit. The characteristics of Persero are: a. The establishment of a state shall be proposed by the minister to the President; b. Implementation of the establishment is done by the minister by observing the law; c. Its status is a limited liability company regulated by law; d. Capital in the form of shares; e. A part or all of the odalnya is the state property of separated state property; f. Company organs are GMS, directors and commissioners; g. The designated Minister has the power of holder b) shares owned by the government; a. If all shares are owned by the government, then the Minister shall be a GMS; b. GMS act as the highest authority of the company; c. Persero led by directors; d. Annual reports submitted to GMS for approval; e. Not receiving state facilities; f. The ultimate goal of making a profit; g. Business relationships are regulated in civil law; h. The employees are private employees.

2). Public Company (Perum)

Perum is a state company that aims to serve the public interest, but at the same time seeking profit. The characteristics of Public Companies (Perum) are :

- a. Serving the interests of the general public;
- b. Led by a director / director;
- c. Owning his own wealth and moving in the private sector (Perum is free to make contracts with all parties);
- d. Managed with government capital separate from state assets;
- e. The employee is a private company employee;
- f. Cultivate profits to fill state coffers.

B. Corporations as the subject of Criminal Law

The subject of the law is anything that can have the right (Right is power, authority granted by law to legal subject) and obligation (Liability is the burden given by law to the subject huk) to act in law. While the Object of law is all things are useful to the subject of law and can be the subject of a legal relationship undertaken by the subject of law. Based on this understanding can be studied further about the corporation as the subject of criminal law

Corporations began to enter the scope of Criminal Law as the subject of law since the emergence of corporate crime phenomenon. This phenomenon began to emerge in the developed world in the 19th century. Corporate Crime itself can be defined as: (See excerpt from The Law Reform Commission of New South Wales in Wikipedia, the free encyclopedia, Corporate Crime) "... crimes committed either by a corporation (ie, a business entity having a separate personality from the natural persons that manage its activities), or by individuals that may be identified with a corporation or other business entity. "

The crimes committed by Corporations themselves often occur on a large scale and harm the public. As quoted from The Law Reform Commission of New South Wales, Australia: (Wikipedia, the free encyclopedia, Corporate Crime).

"Corporate crime poses a significant threat to the welfare of the community. Given the pervasive presence of corporations in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action, the potential for both economic and physical harm caused by a corporation is great."

Seeing this phenomenon then appears the demand for corporate liability (corporate liability) in the field of Criminal Law. According Mardjono Reksodiputro there are two things that must be considered in determining corporate crime that is 8: (Mardjono Reksodiputro, 2007) 1). On the conduct of the board (or other person) to be constructed as a corporation act and secondly to the errors in the corporation. In his opinion, the first thing to be constructed in an act of management is also the act of the corporation then the "identification principle" is used. With this principle, the capability of the management or employees of a corporation is identified (equalized) with the actions of the corporation itself. 2). It is true that in criminal law the image of the perpetrator of crime is still often associated with the actions physically done by the maker (fysieke dader) but this can be overcome by the teaching of "functional performer" (functionele dader). With we can prove that the actions of the board or the corporate officer in the traffic of the society apply as the actions of the corporation concerned then their mistake (dolus or culpa) should be regarded as a corporate fault.

The current Penal Code does not regulate corporate criminal liability in the sense of not knowing corporations as a subject of crime, but some special laws outside the Criminal Code have recognized corporations as subjects of criminal offenses other than persons. Some legislation outside the Criminal Code that has governed corporations as a subject of criminal offenses, among others, Emergency Law no. 17 of 1951 on Landfill which is the first positive law to use the principle that corporations can become perpetrators of criminal acts.

The law is then followed by other laws such as Law no. 7 / Drt. 1955 on Economic Crimes, Law no. 5 of 1984 on Industry, Law no. 6 of 1984 on Post, Act no. 9 of 1985 on Fisheries as amended by Law no. 31 of 2004, Law no. 7 of 1992 concerning Banking as amended by Act no. 10 of 1998, Law no. 8 of 1995 concerning Capital Market, Law no. 10 of 1995 on Customs, Law no. 5 of 1997 on Psychotropic, Law no. 22 of 1997 on Narcotics, Law no. 23 of 1997 on Environmental Management, Law no. 5 of 1999 concerning Prohibition of Monopoly and Unfair Business Competition, Law no. 8 of 1999 on Consumer Protection, Law no. 31 of 1999 on the Eradication of Corruption as amended by Act no. 20 of 2001, Law no. 15 Year 2002 on the Crime of Money Laundering as amended by Act no. 25 Year 2003. (Barda Nawawi Arief, 2003).

Based on the above explanation, there is a misappropriation of the legal formulation of a corporation as a legal subject justified by legislation. In the general provisions of the Penal Code clearly does not include corporations as legal subjects. However, in some legislation outside the Criminal Code, corporations listed corporations as legal subjects.

Something can be a subject of law because 1) has rights and obligations, 2) possesses legal competence, and 3) is legally recognized by law. The problems that are found will be different when talking about the corporation because at the moment, there is no regulation on corporations in the Criminal Code which is the basis of violation and criminal sanctions. So it is unreasonable to equate the corporation with "who", "whoever" or "anyone" is contained in the Criminal Code to impose corporal punishment on behalf of the corporation.

In the Indonesian criminal system, an act constitutes a criminal offense or violation of criminal behavior only when a criminal provision has determined that the act is a crime. This is in conformity with the validity of the legality principle as defined in Article 1 paragraph (1) of the Criminal Code, which reads: "No act shall be liable to be criminal except on the basis of criminal law in the legislation which before the act has been committed."

This provision assures that a person can not be prosecuted under the prevailing law provisions. This provision is also supported by his spirit in Law no. The principle of legality can also be found in Article 6 paragraph (1) of the Law, which reads: "No one can be brought before the courts, except the law of deciding otherwise."

So based on the above explanation the meaning of a criminal offense is a behavior that violates the criminal provisions that apply when the behavior is done, whether the behavior in the form of performing certain acts that are prohibited by criminal provisions or not perform certain acts required by criminal provisions. Whereas such conduct shall be done by human being as a legal subject known in the Criminal Code, but in this case under Article 59 of the Criminal Code, the corporation as the subject of the law is not known, the complete runtime of Article 59 of the Criminal Code is: "In cases where the offense is determined the penalty is threatened to management, members of the management board or commissioner of the commissioner, shall not be convicted of a board member, commissioner or commissioner who does not interfere with the offense. "

In the Indonesian Criminal Code, there is not a single article that determines the perpetrators of non-human criminal acts. The establishment of the Criminal Code that only human beings who can be burdened with criminal responsibility is due to the existence of adagium *actus non facit reum, nisi mens sit rea* meaning "no crime without error", this adage is universally embraced in criminal law. This adage argues that one must have a state of mind or a *mens rea* that is directly related to the act. It is this view which then holds that corporations without heart can not be burdened with criminal responsibility. But as you know, corporations exist not only for granted, but certainly there are those who founded the corporation, and who founded the corporation that later had the heart. This thought then gave rise to the opinion that corporations can also serve as perpetrators of criminal acts. And along with human and social development of society also, the law must also seek new ways to cover the gaps that may occur that can cause economic instability, social and cultural society considering the law is as an umbrella for the justice seekers.

The development of this law is also in line with the development of criminal law in other countries. In special crime laws such as Law no. 5 Thn 1997 on Psychotropic, Law No. 15 thn 2002 jo Law no. 25 thn 2003 on Money Laundry, Law No.31 year 1999 jo Law no. 20 thn 2001 on the Eradication of Corruption. And in the Draft Law of the Indonesian Criminal Code 2004 (RUU KUHP at the Directorate General of Legislation, Department of Law and Human Rights, 2004) it also appears to have given its understanding to the corporation listed in Article 166 as follows: "The corporation is an organized collection of persons and / or wealth, whether legal entities or non-legal entities ". All of the above laws have provided an understanding of the corporation derived from the notion of corporation in the Criminal Code Bill.

Barda Nawawi Arief, quoting from Nico Keijzer, wrote about the conditions that would place corporations as perpetrators of criminal acts, according to some legal rules in some countries as in: (Barda Nawawi Arief, 2002)

a. American Model Penal Code (MPC) - section 2.07. (1): 1

- 1) Where the intent of the legislator to impose liability to the corporation is clearly visible and the act is committed by a corporation agent acting on behalf of the corporation within the scope of position / task or occupation; or.
- 2) If the offense is a waiver / violation of a special obligation imposed on the corporation by law; or
- 3) In the event of a crime it is justified / authorized, requested, ordered, executed, or tolerated recklessly by the board of directors or by top management agents acting on behalf of the corporation within the scope of the task / job.

b. Dutch Case Law (Dutch Jurisprudence):

- 1) In the event of a violation of the provisions of the law specifically aimed at the corporation, for example the corporation does not meet the conditions of a permit granted to it. Therefore, the corporation is not considered to have committed a criminal offense in terms of the provisions of the Act specifically addressed to individuals.
- 2) Where the corporation is obliged to prevent the occurrence of a crime, but fails to do so (eg discrimination).
- 3) If the offense is related to the business field of the corporation concerned. For example a few days pollution caused by the sewage drain of a chemical company.

The opinions above explain that along with the progress of legislation, law enforcers are also looking for new rules in order to enforce these laws in all aspects.

Where in the present, corporations mentioned can also be held accountable and can be used as perpetrators of crime. Thus, in the development of Indonesian criminal law, there are three systems of corporate status as the maker and accountability of corporations in criminal law, namely: (1) Corporate management as responsible maker and management, (2) Corporations as responsible makers and managers, (3) Corporations as the maker and the responsible. (Reksodiputro B Mardjono, 1989) Here's an explanation:

To further clarify the 3 systems of corporate standing as the maker and accountability of corporations in criminal law, the authors will explain further among others;

a. Corporate Management As Responsible Builder and Board

This system of accountability is a system adopted by the Criminal Code. The Criminal Code has the view that corporations can not be held liable for criminal liability because corporations have no heart and no guilty mind, corporations who have hearts as *naturlijk persoon* who can commit crimes, then corporate administrators can be given criminal liability. The establishment of this Penal Code is set forth in Article 59 of the Criminal Code. The provision that the criminal act is only committed by human is Article 53 jo Article 55 of the Criminal Code and Article 372 jo Article 374 of the Criminal Code, where Article 53 reads:

- 1) The trial of committing a crime shall be liable to a criminal, if the intention of committing the crime is evident, with the commencement of the offense and the act not being solved only by reason which is independent of his own will.
- 2) The maximum penalty that is threatened for the crime is reduced by a third in the case of the trial.
- 3) If the crime is punishable by a dead *pidan* or life imprisonment, then a fifteen year jail sentence shall be imposed.

4) For the crime that has been resolved and the trial of committing the crime, the same additional criminal.

Article 55 of the Criminal Code reads:

1) Sentenced as the maker of any offense:

a) the person committing, ordering or committing the act;

b) persons with wages, covenants, misuse of power or dignity, resort to coercion, threats or deceit by giving opportunity, endeavor or information, deliberately inciting the act to be committed.

2) As for the person referred to in sub 2 that, which may be accountable to him is only a deliberate act persuaded by him and the consequences of that action.

Article 372 of the Criminal Code reads:

Whoever intentionally and unlawfully owns the goods, wholly or partly belonging to another person, and which is not to him of crime, is convicted of embezzlement, with a maximum imprisonment of four years or a fine, up to a maximum of nine hundred rupiah

Article 374 of the Criminal Code reads:

The embezzlement done by the person who holds the goods because of his own position or because of his job or for receiving money, is punished with imprisonment for five years.

5. CONCLUSION

The setting of the philosophical foundation of the corporation as the subject of law and as the subject of criminal law has not been regulated thoroughly in the existing legislation. This raises doubts and ambiguities about the status of the corporation as a subject of law and as a subject of criminal law.

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