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Corporate Criminal Liability for Criminal Acts of Corruption: A Comparison of State Criminal Law Systems and Civil Law Systems

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ABSTRACT

This study examines corporate criminal liability in corruption cases within the civil law system, comparing the legal frameworks of Indonesia and France. The civil law system, adopted by both countries, relies on codified laws rather than judicial precedents. In Indonesia, corporate liability for corruption is regulated under Law No. 31 of 1999, as amended by Law No. 20 of 2001, while in France, it is governed by the French Penal Code (Code Pénal Français). Findings show that neither country provides a single explicit provision detailing which corruption offenses corporations can commit, requiring semiotic and systematic interpretations to determine applicable liability. In France, corporations may be held liable for active and passive bribery, influence peddling, unlawful benefit-taking, and favoritism in procurement, as stipulated in Articles 433-1, 435-1, 432-11, 432-12, and 432-14 of the Code Pénal Français. Similarly, Indonesia allows corporate liability for bribery, misuse of authority, unlawful enrichment, obstruction of justice, and related offenses, though certain crimes involving personal duties such as abuse of office remain limited to natural persons. Despite regulatory differences, both systems emphasize that only offenses feasibly committed by corporations may incur liability, highlighting the need for clearer procedural guidelines and legal harmonization.

Keywords: *Corporate Criminal Liability, Corruption, Civil Law System, Indonesia, France*

1. INTRODUCTION

The Civil Law System is a legal system that has several characteristics, one of which includes codification, judges who are not bound by precedents, the use of statutory laws as the primary source of law, and a judiciary system that is inquisitorial in nature [1]. The civil law system is the most widely adopted legal system in the world. A legal system itself refers to a set of codes and procedures used to implement the law. The civil law system spread through the establishment of the French Napoleonic Code in 1804 and the German Civil Code in 1900. In general, courts within the civil law system are more "inquisitorial" in nature. In an inquisitorial trial, judges play a significant role by supervising and shaping every part of the proceedings. The civil law system is a rule-based system, meaning that judges do not rely on past decisions to guide their rulings.

Historically, the civil law system predates the common law system, which makes the foundation of each system different. While civil law countries trace the origins of their codes back to Roman law, most common law countries trace theirs to English case law. The common law system was initially developed using jurisprudence. In contrast, the civil law system focuses on written legal codes and requires judges to act as fact-finders, determining whether a party has violated those codes. The common law system, on the other hand, emphasizes jurisprudence, requiring judges to interpret laws and respect decisions made by previous and higher courts.

This paper focuses on discussing the civil law system. Countries that adopt this legal system include France, Germany, the Netherlands, and former Dutch colonies such as Indonesia [2]. Speaking of the civil law system in Indonesia, numerous legal issues arise within it, one of which concerns corporate criminal liability in corruption cases.

Looking further into corporate criminal liability, Indonesia has regulated this matter since 1951 through Law Number 17 of 1951 on the Hoarding of Goods. Meanwhile, the existence of corruption crimes has been recognized long before the establishment of the United Nations Convention Against Corruption through the enactment of Law Number 31 of 1999 on the Eradication of Corruption Crimes, which was later amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 on the Eradication of Corruption Crimes. However, the issue that arises is that until 2017, there had only been one corruption case that applied the corporate criminal liability approach, namely the PT Giri Jaladhi Wana case [3].

The challenges often encountered regarding this matter involve procedural law, the scope of corruption offenses that corporations can commit and be held accountable for, as well as proving corporate fault. Concerning procedural law, the issue lies in the technical aspects of examining the process of corporate law enforcement from investigation and prosecution to court decisions—which are still not well-established. Therefore, further guidelines regarding procedural law are needed to enforce laws on corporations. Furthermore, when discussing the scope of criminal acts that a corporation can commit, it refers to which offenses can and cannot be carried out by a corporation. In Indonesia, the Corruption Crime Law, similar to the Code Pénal in France, does not explicitly specify in a single article the forms of corruption crimes that corporations can commit. This lack of clarity often leads to misinterpretations among law enforcers, assuming that all forms of corruption crimes under the law can be committed and thus held accountable by corporations. This problem creates difficulties in the initial identification during investigation and inquiry stages, as well as challenges in the application of legal provisions when drafting indictments and formulating charges during court proceedings.

2. METHODS

This study employs a comparative legal research method using a normative juridical approach to analyze corporate criminal liability for corruption within the civil law systems of Indonesia and France. The research relies on secondary legal materials, including statutory regulations, legal doctrines, court decisions, and scholarly literature, particularly focusing on the Indonesian Corruption Eradication Law and the French Penal Code (Code Pénal Français). Data were collected through document analysis and literature review to identify similarities and differences in the regulation of corporate liability between the two jurisdictions. The analysis was conducted using semiotic interpretation, which examines the meaning of legislative wording, and systematic interpretation, which explores the correlation among legal provisions and related legislations. This approach enables a comprehensive understanding of the scope of corruption offenses applicable to corporations, the limitations of liability, and the challenges faced in law enforcement practices.

3. RESULTS AND DISCUSSION

3.1 Civil Law System Related to Criminal Acts of Corruption in Indonesia and France

Regarding the scope of corruption crimes, it can be stated that under the Law on the Eradication of Corruption Crimes, not all offenses stipulated therein can be committed and made accountable to corporations. This is similar to the legal system in France, which also limits the types of offenses for which corporations can be held liable. In this regard, France does not yet have a specific law dedicated to combating corruption crimes.

In France, corruption crimes and other related offenses are regulated under the French Penal Code (Code Pénal Français), which includes crimes such as active and passive bribery, influence peddling, and favoritism in procurement [4]. All offenses listed under the Code Pénal Français may

be subject to corporate liability as stipulated in Article 121-2 of the French Penal Code, provided they meet the criteria for liability. These criteria state that a legal entity, with the exception of the State, can be held criminally responsible for offenses committed by its organs or representatives, as regulated under Articles 121-4 and 121-7. However, from a theoretical perspective, corporations are excluded from offenses that can only be committed by natural persons, i.e., human individuals.

Based on these provisions, the scope of corruption crimes that corporations can commit and be held accountable for includes:

1. Active bribery as stipulated in Article 433-1 and passive bribery regulated under Articles 435-1 of the French Penal Code;
2. Influence peddling as stipulated in Article 432-11, Articles 435-2, and Articles 435-4 of the French Penal Code;
3. Unlawful benefit-taking regulated under Articles 432-12 and 432-13 of the French Penal Code;
4. Favoritism in procurement as stipulated in Article 432-14.

Based on the scope of corruption crimes as described in the Code Pénal Français, the French legal framework is quite similar to the Indonesian Law on the Eradication of Corruption Crimes. Both do not explicitly provide a single article detailing which offenses corporations can commit and be held accountable for. Therefore, semiotic and systematic interpretations are necessary to establish clear parameters for determining offenses applicable to corporate liability. Semiotic interpretation is conducted by limiting the interpretation of legislative wording, as explained by Markus Rehberg regarding legislative interpretation within the civil law tradition. On the other hand, systematic interpretation involves examining correlations between articles and related legislations across the legal system as a whole [5].

Following this approach, semiotic interpretation emphasizes defining the scope of the subject, while systematic interpretation correlates the usage of the subject (the perpetrator) within offenses stipulated under the Law on the Eradication of Corruption Crimes and other relevant laws. Article 1(1) of the Indonesian Law on the Eradication of Corruption Crimes defines a corporation as "*A corporation is an organized group of people and/or assets, whether it constitutes a legal entity or not.*"

This definition broadens the scope of corporate liability beyond companies to include associations and non-company entities, whether legally incorporated or not. Consequently, a corporation can also be understood to include organizations such as foundations. Furthermore, Article 1(3) of the same law includes corporations under the definition of "every person," stating *"Every person is an individual or a corporation."*

By systematically correlating the provisions of this law, it can be concluded that offenses including the term "every person" within their provisions encompass the following:

1. Acts of unlawfully enriching oneself or another party, which cause losses to the state's finances or economy;
2. Abuse of power or authority resulting in state financial losses;
3. Acts of bribery; and
4. Giving gratuities related to positions or offices.

These are specifically regulated under Articles 2, 3, 5(1), 6(1), 7(1), 13, and 14 of the Indonesian Law on the Eradication of Corruption Crimes. Additionally, aiding and abetting or conspiring to commit corruption crimes, as regulated under Articles 15 and 16, are also included. Other corruption-related offenses include acts of obstructing, interfering with, or preventing investigations, prosecutions, and examinations either directly or indirectly as regulated under Article 21, as well as providing false or misleading information as regulated under Article 22 of the same law. However, corporate liability for these latter offenses remains unclear since the Indonesian Criminal Procedure Code (KUHAP) does not yet provide specific provisions governing it.

By continuing with a systematic interpretation, it becomes evident that not all offenses referring to "every person" within their elements can be committed or attributed to corporations, as certain actions are inherently human-specific. For example, abuse of office, which causes financial losses to the state, is regulated under Article 3 of the Indonesian Law on the Eradication of Corruption Crimes, stating *"Every person who, with the intent to benefit themselves, another person, or a corporation, abuses authority, opportunity, or means available due to their position or office, causing financial losses to the state or the national economy, shall be punished with life imprisonment or a minimum of 1 (one) year and a maximum of 20 (twenty) years imprisonment, and/or a fine of at least Rp. 50,000,000 (fifty million rupiah) and at most Rp. 1,000,000,000 (one billion rupiah)."*

The element of "position or office" in this provision inherently pertains to natural persons rather than corporations, as corporations themselves cannot hold a position. Thus, even though the provision includes the phrase *"every person"*, corporations cannot be classified under this offense due to the explicit limitation within the phrase *"due to their position or office."* Similarly, Article 7(1)(b) of the same law, concerning fraudulent acts during supervision of construction or procurement, states *"...b. any person assigned to supervise construction or delivery of building materials who deliberately allows fraudulent acts as referred to in letter a; under certain circumstances, criminal liability may be imposed on corporations."* Here, the phrase "assigned to supervise" implies a natural person holding a delegated supervisory role, rather than a corporation.

CONCLUSION

Based on the explanations outlined, it can be concluded that there are differences in regulations relating to the qualifications of criminal acts that can be committed and held criminally accountable by corporations between France and Indonesia. In France, there is a specific provision for bribery of foreign officials, in addition to France also includes crimes that can be committed and held criminally accountable by corporations in the form of trading in influence, obtaining illegal benefits, and taking sides in procurement. Meanwhile, in Indonesia, in addition to bribery, it also includes unlawful acts that can harm state finances, fraudulent acts, giving gifts, and other crimes claimed to be corruption. The differences between the two countries can be seen both in the model of the regulation of the crime and the substance of the crime, but the similarity is that the crime must and must be a crime that can be committed by corporations, not crimes that can only be committed by humans.

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