

CORPORATE CRIMINAL LIABILITY NOT FULFILL THE RIGHTS OF PERSONS WITH DISABILITIES



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This research aimed to review a corporate action which contains the elements of a criminal act that do not fulfill the rights of Persons with Disabilities and liability as stated in Constitutions Number 8 of 2016 concerning Persons with Disabilities. This research using normative law method, the approach that used is statute and conceptual approach. This research shows that the elements of corporate actions that have implications for criminal acts in this law are actions of corporate management acting on behalf of the corporation or the policies of the corporation that have ignored or prohibited persons with disabilities from obtaining their rights as stated in the law. The corporation accountability in Constitution Number 8 of 2016 concerning disability person there are 2 kinds, administrative sanctions and second, cumulative criminal sanctions, namely in the form of imprisonment and fines. Whereas, the concept of criminal liability against corporations used in this law is the corporation as a responsible policy maker and administrator, in the sense that the criminal act according to this law is violated by the corporation, the corporate management will be responsible according to the cumulative criminal sanctions contained in the law.

Keywords: Criminal Sanctions; Corporate Crime; Corporate Criminal Liability; Persons with Disabilities.

Introduction

Director General of Social Rehabilitation, Ministry of Social Affairs, Republic of Indonesia, Dr. Ir. Harry Wisdom, M.Si deliver based on the National Economic Social Survey (Susenas) in 2018, there are 14,2 % percent of Indonesia's population with disabilities or 30.38 million people.

While the integrated social welfare data as of January 2020 can be describe the economic social status which in essence is needed to deal with various socio-

economic problems, vulnerability and welfare problems. But, this data is limited 40 % of lowest socioeconomic status. The Integrated social welfare data is a system that can be used for program planning and identifying the names and addresses of recipients. From this data, there are 1.3 million people with disabilities¹.

While the Minister of Manpower (Menaker) Ida Fauziyah stated the participation of workforce of people with disabilities in Indonesia is still low. This is influencing with the job vacancy limitation and discrimination with stigma for disability people in the world of work. Based on the Central Bureau of Statistics (BPS) data on February 2020 recorded the total population of working age persons with disabilities is 17.74 million people².

Meanwhile, as many as 7.8 million people entered the workforce, which means that the Labor Force Participation Rate (TPAK) for Persons with Disabilities is only around 44 percent, far below the National TPAK rate of 69 %. Whereas, the total of disability people who work as many as 7.57 million people and the number of open unemployed persons with disabilities of 247 thousand people with an Open Unemployment Rate (TPT) of 3 %.

There are the availability of employment for persons with disabilities is more in the service and retail sectors than in the industrial sector. The lower participations in the industrial sector influenced by some problems are unavailability of accessibility in the work environment, social disparities, and non-inclusive educational training. However, in the midst of a world labor situation which full of pressure as a result of the COVID 19 pandemic, there is one thing that opens up opportunities for people with disabilities to contribute to the world of work. The opportunity is the use of technology that is able to create diversification of skills, which can be utilized by persons with disabilities³.

Based on the data above, there is clearly that there are still many companies that have not provided access for persons with disabilities. Whereas the right to obtain work has been guaranteed by the state as referred to the Article 27 paragraph

¹ Ansori, "Jumlah Penyandang Disabilitas Di Indonesia Menurut Kementerian Sosial."

² Priyanto, *Kebijakan Legislatif Tentang Sistem Pertanggungjawaban Korporasi Di Indonesia*.

³ Santia, "Pekerja Penyandang Disabilitas Di Indonesia Masih Rendah, Ini Penyebabnya."

(2) of the 1945 Constitution («UUD 1945»): «Every citizen has the right to work and a decent living for humanity».

Article 38 of Law Number 39 Year 1999 concerning Human Rights («Law 39/1999») also regulates this, namely:

1. Every citizen, according to his talents, abilities and abilities, has the right to decent work.

2. Everyone has the right to freely choose the job he likes and the right to just terms of employment.

3. Everyone whether male or female who performs the same, comparable, equal or similar work, is entitled to the same wages and terms of employment agreement.

4. Everyone whether male or female, in carrying out work that is commensurate with human dignity is entitled to a fair wage in accordance with his achievement and can guarantee the survival of his family.

The regulation of Article 5 Number 13 of 2003 concerning employment («Labor Law») stipulated that every employment has the same chance without discrimination to get work. In the explanation of Article 5 Labor Law explained that every employee has the right and the same chance to obtain work and the decent living without distinction of sex, tribe, race, religion, and political stream in accordance with the interests and abilities of the workforce concerned, including the equal treatment of persons with disabilities. In the regulation above explained that every employee has the same chance without discrimination to obtained work including persons with disabilities though.

Constitution Number 4 of 1997 concerning People with disabilities («UU 4/1997») is the further realization from the Article Number 5 of Labor Law especially for the disability people. However, Law 4/1997 has been repealed and declared no longer applicable by Constitutions Number 8 of 2016 concerning the Disability («Disability Law»).

Disability people according in the Article 1 point 1 Disability Law is everyone who experiences physical, intellectual, mental, and sensory limitations for a long

period of time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights.

Methodology

This research type that used is Normative Juridical (Legal Research) with using statute approach and conceptual approach. The data that used in this research is the data which obtained from the library research in the form of legal materials consist of: 1) The 1945 Constitution of the Republic of Indonesia and the Regulations related to corporate liability and criminal acts. 2) Literature books, papers, articles, research results, and other scientific works related to this research. 3) Tertiary Legal Materials, which consists of: General Indonesian Dictionary such as Legal Dictionary, English-Indonesian dictionary, and Encyclopedias.

The analysis of legal materials was carried out in a descriptive qualitative way, meaning that the legal materials were presented descriptively and analyzed qualitatively, namely analyzing the legal materials based on the quality and correctness of the legal materials and then drawing conclusions which were the answers to the problems in this study.

Literature Study

a. Definition of Disability

The terminology that represents people with different abilities continues to evolve over time. Soekarno era was referred to as «Disabled Persons,» then became «disabled» in the Soeharto era⁴. The terminology of «Persons with Disabilities» and «Persons with Disabilities» is no longer used because it degrading and discrediting people with different abilities. This is similar to that stated by Fakhri⁵ that the labeling «disabled» for those who only loses or damage one of their limbs or senses is considered abnormal, which is then interpreted as disabled. This labeling eventually became the cause of injustice, discrimination and oppression.

After Indonesia ratified the convention on the rights of persons with disabilities

⁴ Salim, "Perspektif Disabilitas Dalam Pemilu 2014 Dan Kontribusi Gerakan Difabel Indonesia Bagi Terbangunnya Pemilu Inklusif Di Indonesia."

⁵ Fakhri, *Analisis Gender Dan Transformasi Sosial*.

through Law no. 19 of 2011, then began to use the term «Persons with disabilities. «The word» disability «comes from the English uptake, namely» Disability « (plural: Disabilities) which means disability or disability. However, the term disability in the Big Indonesian Dictionary has not been listed. Disability is a condition that results from the interaction between people who have functional limitations (physical, mental, intellectual and sensory) and the environment and attitudes that hinder their full and effective participation in society on an equal basis with others (Inclusion City Indicator Seminar and Workshop Material Yogyakarta, SAPDA 24 October 2016).

According to Dethmers (2010: 9), disability cannot be seen just a mental or physical limitation, but very closely related to the interaction of a person with a disability with their environment which is influenced by culture, religion, policy and society. *International Classification of Functioning, Disability and Health/ICF* – WHO, 2001 (in Reckinger, 2010: 21), disability is looked from health from physical perspective, individual and social. ICF adding the environmental and privacy factors admit the fact that the disability people in opportunity and limiting, inhibiting experiences.

The definition is similar contained in the DIY Regulation No. 4 of 2012 concerning the Protection and Fulfillment of the Rights of Persons with Disabilities, namely persons with disabilities or referred to by other names are any people who experience disorders, disorders, damage and / or loss of function of physical, mental, intellectual or sensory organs within a certain period of time or permanently and face physical and social environmental barriers.

b. Variety of Disabilities People

There is kind or group of disability people (Seminar and Workshop on Inclusion City Indicators Yogyakarta, SAPDA 24 October 2016):

1) Persons with Physical Disabilities, namely people who have impaired movement, such as amputation; paralyzed withered or stiff; paraplegy; cerebral palsy (CP); due to stroke; the result of leprosy; and the little guy.

2) Persons with Intellectual Disability namely the disruption of the function of thought because the level of intelligence is below average, including: slow learning; mental disabilities; and Down syndrome.

3) Persons with Mental Disability namely disruption of thought, emotional and behavioral functions which include: psychosocial (schizophrenia, bipolar, depression, anxiety and personality disorders); and developmental disabilities that affect social interaction skills (autism and hyperactivity).

4) People with Sensory Disabilities, namely the disruption of one of the functions of the five senses, such as Netra; Deaf or Talking.

5) Persons with Multiple Disabilities, namely persons with disabilities who have two or more different types of disabilities, such as deaf or deaf.

c. Disability Theory

The expert of knowledge concerning disability people describes four historical and social models of disability that have been summarized by Reckinger (2010: 43), as follows:

- 1) Disability model in moral; admit disability as the result of sinful deeds;
- 2) Medical model admit disability as defect or diseases that must be treated through medical intervention;
- 3) Rehabilitation model admit disability as a deficiency that must be corrected by a professional rehabilitation professional
- 4) Disability model admit the disability problem as dominating attitude exhibited by professionals and others, inadequate support services when compared to society at large, and attitudinal, architectural, sensory, cognitive and economic barriers as well as a strong tendency for people to generalize about all persons with disabilities and ignore their magnitude. Diversity in the community with disabilities.

d. Disability and Poverty

Persons with disabilities are a pluralistic community and society, complete with various complexities. Joni Yulianto in (Salim, *et al.* 2015: 48)⁶ reveals that disability people are not compared as the state did them in the past with the disability category. However, directly or indirectly, people with disabilities still experience marginalization and discrimination in various sectors of life.

It is not uncommon for the inherent and long-lasting stigma about the

⁶ Salim, "Perspektif Disabilitas Dalam Pemilu 2014 Dan Kontribusi Gerakan Difabel Indonesia Bagi Terbangunnya Pemilu Inklusif Di Indonesia."

vulnerability of persons with disabilities to take part in neglecting the rights to participate and space of expression for groups of people with disabilities. The causes of this stigma developed are one of the strong hegemony of the medical perspective where people with disabilities are seen as helpless and incapable people because they have various deficiencies both physically and mentally / intellectually. According to Salim, et al. (2015:53)⁷, medical perspective only focuses the way of looking to the individual aspect than the social aspect or policy of country. Means that disability people and several issue which around not seem in comprehensive.

Then, according to Winarno and Dethmers⁸, disability people are part of other susceptible group, namely poverty community both in the metropolis and villagers. Both relationships is often illustrate as the difficult separated circle where the poverty and disability is strengthen each other. The cycle above illustrate how the disability and poverty is gives the influences each other. As it explained in the figure above:

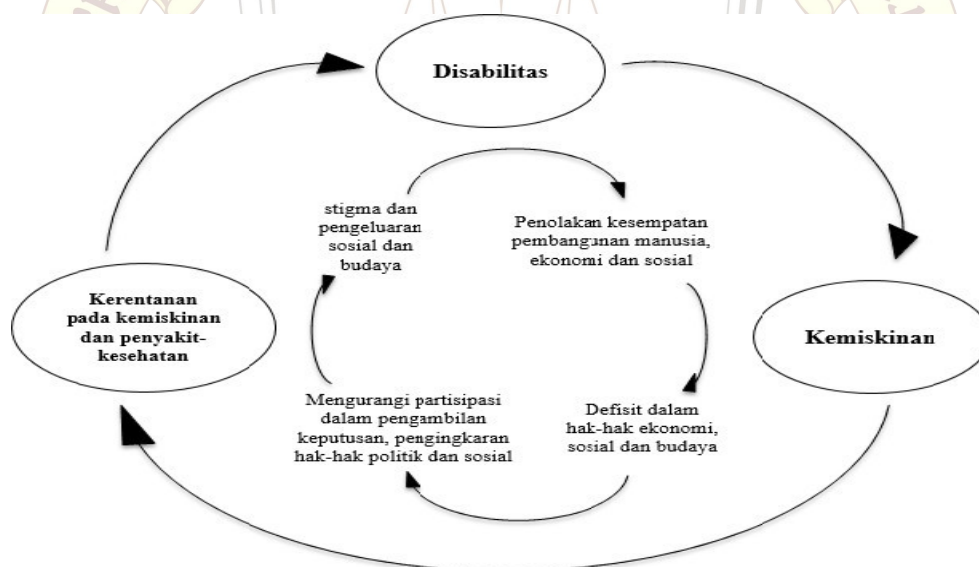


Figure 1. Poverty and Disability Circle

Sources: *Department for International Development, U.K (2000, in Winarno and Dethmers, 2010: 99⁹).*

Result and Discussion

Corporation Accountability in Indonesia

From the observation of the regulation of corporate criminal liability in these various laws can be concluded, that the regulation pattern is varies and not has the

⁷ Ibid.

⁸ Dethmers and Winarno, *Disabilitas Dan Perangkap Kemiskinan Dalam Carole Reckinger & M.Y Winarno (Eds.), A Bridge Over Troubled Water: Toward an Inclusive Society in Indonesia.*

⁹ Ibid.

standard pattern¹⁰. There is a uniform and consistent corporate criminal code regarding: 1) when is the corporation implementing committing a criminal act and when it can be accounted for (some formulate and some do not); 2) Who can be accounted for (some are formulated and some are not); 3) Types of sanctions (some regulate only basic crimes, some are basic and additional crimes, and some are added with disciplinary action); 4) Formulation of sanctions (some formulate alternative, cumulative, and combined cumulative alternatives); 5) There are those that regulate penalties in lieu of fines that are not paid by the corporation and some do not¹¹.

Realizing the violence of corporation is complex besides the character as *crimeby powerful* so the law enforcers must has extra abilities and is mentally tough¹². Moreover, it is not easy for Law enforcement officials in determining corporations as legal subjects of criminal offenders and the judges successfully convicted a criminal conviction. If it is means that the new things and can be categorized as a progressive law enforcement measures¹³. As it implemented by attorney General's Office which published the Regulation of the Attorney General of the Republic of Indonesia Number Per-028 / A / JA / 10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects; and the Supreme Court which issued the Supreme Court Regulation (Perma) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

In the Article 2 (Perma) Supreme Court Regulation No.13 of 2016 explains that purpose and objectives creates the procedures for handling criminal cases by the Corporation aimed to:

1. Become guidance for law enforcer in handling of criminal cases with corporate actors and / or management;
2. Fill in the legal void, especially the criminal procedure law in handling criminal cases with corporate actors and / or executives;
3. Push the effectiveness and optimalization in handling of criminal cases

¹⁰ Muladi and Sulistyani, *Pertanggungjawaban Pidana Korporasi (Corporate Criminal Responsibility)*.

¹¹ Arief, *Kapita Selekta Hukum Pidana*.

¹² Muladi and Sulistyani, *Pertanggungjawaban Pidana Korporasi (Corporate Criminal Responsibility)*.

¹³ Suhariyanto, "RESTORATIF JUSTICE DALAM PEMIDANAAN KORPORASI PELAKU KORUPSI DEMI OPTIMALISASI PENGEMBALIAN KERUGIAN NEGARA."

with corporate actors and / or management.

If a criminal act implemented or even only ordered by corporate management. Corporation which implemented criminal should be subject to a criminal return of assets ¹⁴ related to the system of a criminal responsibility system itself, there are several criminal liability systems that can be applied according to B. Mardjono Reksodiputro, there are:

1. The corporate manager as the maker and the manager are responsible;
2. Corporations as responsible makers and managers;
3. The corporation as a maker and also as a responsible person.

When viewed from the imposition of accountability, there are four possible systems that can be implemented, namely¹⁵:

1. The management of a corporation that has committed a criminal act and it is the management who is liable for the crime;
2. Corporations that have committed a criminal act and the management that is liable for the crime;
3. It is the corporation that has committed a criminal act, and it is the corporation that is liable for criminal responsibility;
4. Managers and corporations that have committed criminal acts, and corporations and their managers who are charged with criminal responsibility.

The system of accountability of corporate criminal liability in the constitution of Corruption Eradication in the Article 20 Paragraph (1) stated «In the event that a criminal act of corruption is committed by or on behalf of a corporation, prosecution and criminal conviction can be made against the corporation, then charges and criminal charges can be made against the corporation and / or its management. The management representing the corporation is represented by another person».

In the relationship which implemented the terrorism criminal act, the law on the eradication of the criminal act of terrorism has given the sign how is the system of criminal accountability in the Article 17 Paragraph (1) in explicit stated «In the event that a criminal act of terrorism is committed by or on behalf of a corporation, the

¹⁴ Toruan, "PERTANGGUNGJAWABAN PIDANA KORUPSI KORPORASI."

¹⁵ Sjahdeini, *Pertanggungjawaban Pidana Korporasi*.

charges and criminal charges will be carried out against the corporation and / or its management». Based that regulation of law if the corporation is implementing the terrorism criminal acts so it is must accountability on the criminal acts is only corporation.

Basic of error (*geen straf zonder*) is the fundamental principle in conviction. Although, people has implementing criminal acts is not always conviction. People which implementing the criminal acts will be convicted if the person is at fault, with accountability of Criminal Corporation in criminal penalty needs to notice as follows¹⁶:

1. Basic of error still left with construction of corporation construction errors of the corporation is taken from the mistakes of the management or members of the board of directors;

2. Basic of Error is not absolutely applicable with based on the *adagium res ipsa loquitur*.

With imposed a very high fine so the corporate criminal will burden the enormous cost economic risk and must issue so as to exceed the target of his crime. Expected the conviction has the large influence for corporate criminal in philosophy contradicting with the values of justice of society, sociologically not wanted by society and victimologically cause a lot of loss to others¹⁷.

Then, the corporation accountability in criminal law is appears not through the study of the expert but as causes from the tendencies from legal formalism. The corporation acts through the agents to one side is often causes the enormous losses in society, so the presence of criminal sanctions expected to be able avoid from the repeating his action¹⁸.

Doctrines of respondent superior producing are three models of accountability of corporation crime namely *direct corporate criminal liability*, *strict liability*, and *vicarious liability*¹⁹. *Direct corporate criminal liability* closely related with identification doctrine which stated that basically admit that the Actions of certain

¹⁶ Weissmann and Newman, "Rethinking Criminal Corporate Liability."

¹⁷ Stephens, "The Amorality of Profit: Transnational Corporations and Human Rights."

¹⁸ Moohr, "On the Prospects of Deterring Corporate Crime."

¹⁹ Reid, *Criminal Law*; LaFave and Scott Jr, *Criminal Law*.

agents of the corporation, as long as those actions are related to the corporation, are considered as actions of the corporation itself²⁰.

Strict liability means as criminal acts with does not require the perpetrator to be guilty of one or more of *actus reus* ²¹. *Strict liability* is the accountability without mistake (*liability without fault*). So, it is not related with *mens rea* because the basic element *strict liability* is *actus reus* (acts) so must be proofed as *actus reus* (acts) not *mens rea* (mistake)²².

Vicarious liability (the liability of the replacement) means as the accountability according to law of someone on the mistakes that done by someone else²³. The theory only limited on the certain condition where the corporate only accountability on the responsible for the wrongdoing of the employee who is still within the scope of his work²⁴. Rationality of theory application is corporate have control and power over them and the benefits they get are directly owned by the employer (corporation)²⁵.

Reorientation and reformulation of accountability of conviction can be said as criminal acts on victims of corporate crime include, among other things, the provisions regarding:

1. The regulation related to when a criminal act can be said to be a criminal act which implemented by corporation;
2. Who can be prosecuted and convicted for crimes committed by the corporation;
3. The types of sanctions in accordance with the subject of the criminal act in the form of a corporation which oriented to the compensation to the victim.

Peter Gillies stated that «*in most cases the punishment visited upon the corporation will be fine*» (many cases of criminal which can be imposed on a corporation are only a criminal fine). This is line with **Loebby Loqman** which stated that: «*Not all types of crime contained in the criminal law and regulations can be applied to corporations. Basically, death penalty, imprisonment and imprisonment*

²⁰ Colvin, "Corporate Personality and Criminal Liability."

²¹ Heaton, *Criminal Law Textbook*.

²² Hanafi, "Strict Liability Dan Vicarious Liability" Dalam "Hukum Pidana."

²³ Reid, *Criminal Law*.

²⁴ Clarkson, *Understanding Criminal Law*.

²⁵ Clarkson.

cannot be imposed on a corporation. What may be imposed on the corporation is a criminal fine. However, in addition to criminal fines, actions can also be taken to restore conditions such as before there was damage by a company. In accordance with its development, compensation can also be imposed on corporations as a new type of crime. This compensation can be in the form of compensation for the victim, it can also be in the form of compensation for the damage that has been caused.»²⁶

Based on the Regulation of Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations in the Article 25 paragraph (3) stated that Tree crime that can be dropped on the corporation is criminal fine. The Regulation of the Supreme Court makes in order to a reference for law enforcers in solving in settling matters with corporations as it subject. However, although PERMA No. 13 of 2016 has stated that principal crime can be dropped by Judge to corporation is in the form of fine or additional penalties in the Article No 4 Paragraph (1) Regulation of Supreme Court stated that «Corporations can be held liable for crimes in accordance with the criminal provisions of the Corporation in the law governing Corporations». This Article is given the explanation that Regulation of Supreme Court No. 13 of 2016, although it is specifically regulates the procedures for handling criminal acts by corporation and stated that the principal crime which dropped to corporation only in the form of criminal fine, still following the regulation which the criminal provisions that exist in the law relating to the corporation as the subject.

Accordance with Article No. 4 Paragraph (2) Regulation of Supreme Court 13 of 2016 in dropping criminal on the corporation, judges assess the Corporation's errors, among others, by parameters as follows:

1. Corporation can obtain the profit or benefit from the crime or criminal act is implemented for corporation interest;
2. The corporation allows criminal acts to occur and;
3. The corporation is not implementing the steps that needed to avoid the greater impact and ensure compliance on the applicable legal provisions avoid the

²⁶ Kristian, "JENIS-JENIS SANKSI PIDANA YANG DAPAT DITERAPKAN TERHADAP KORPORASI."

criminal acts happened.

Realizing the nature of the Corporation as a legal subject in the form of artificial person so in the Article 5 Regulation of Supreme Court 13 of 2016 has stipulated that in the event that one or more Corporate Managers quit, or die, it does not result in the loss of any liability for the Corporation. Moreover, in the article 23 Regulation of Supreme Court 13 of 2016 which also stated that Judge can be dropped on the corporation or manager both alternatively or cumulative.

Thus, so the application of corporation accountability, there are the sanctions or laws can be dropped on the corporation according to the guidance which stipulated in the Article 25 paragraph (1) Regulation of Supreme Court 13 of 2016 is principal crime or additional penalties. The principal crime which can be dropped on the corporation is criminal fine. Whereas, the additional penalties which dropped on the corporation according in the regulation in the other legal regulations namely in the Article 10 KUHP and provisions of other types of crimes that are spread in other laws as *lex specialis* from KUHP which is *legi generali*.

Based on the explanation above, can be concluded that the accountability of corporation in Indonesia can be may be subject to cumulative criminal sanctions namely with principal crime in the form of criminal fine, with the additional penalties in the form of criminal fine, so the penalty on the corporation which accepting the criminal penalties can be given criminal sanctions with fines that are heavier than the value of the crimes incurred, in order to the corporation is repeating his actions and become a lesson for other corporations.

Corporate Criminal Liability that does not fulfill the rights of Persons with Disabilities

As it including in the Constitution No. 39 of 1999 concerning Human Right that the citizen has the accountability to respect the rights of Persons with Disabilities. Respect, Protection and Fulfillment of the rights of Persons with Disabilities are the obligations of the state. The Disability people has experienced discrimination causes the implementation of the rights of Persons with Disabilities

has not been fulfilled²⁷.

Based on the data from PUSDATIN Ministry of Social Affairs Republic of Indonesia with adjusted based on the survey result which obtained National Socio-Economic Survey Agency (Susenas) in 2018 found 14,2 % Indonesian residents which is disability or equal to 30.38 million people in Indonesia. Whereas, from the information system data on persons with disabilities as of March 2020 found 197,582 people with disabilities in Indonesia²⁸. In the past, until now, people with disabilities are considered a vulnerable group the accident causes the position as the disability people who have physical limitations and get different treatment (minorities) from the community and the State apparatus system.

The obligation of country as the guidance (*the obligation to protect*) for citizens with disabilities are an obligation that is not only focused to the effort of protection from the violations committed by the state, but also on the violations or actions committed by other (non-state) entities or parties that would interfere with the protection of the rights of persons with disabilities. Including in the protections which country is implemented for avoid disability people from threats of waste, neglect or exploitation and so on²⁹. While, obligation to fulfilling (*the obligation to fulfill*) is the obligation of country to take the steps of legislative, administrative, judicial and practice, which needed to fulfilling the guaranteed rights of persons with disabilities by constitutions or regulation of law, this country must be served several physical and non-physical facilities especially for the guarantee of especially the guarantee of permanent maintenance and welfare for persons with disabilities from the heavy category. In theoretical that the concept of legal protection concept aimed to realizing the civil society in order to achieving a just and prosperous society that is equally, both materially and spiritually in the era of economic democracy based on the Pancasila and Constitution of 1945³⁰.

In Indonesia there is some regulation of law referred as the basic regulation to

²⁷ Penjelasan umum Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas.

²⁸ Ansori, "Jumlah Penyandang Disabilitas Di Indonesia Menurut Kementerian Sosial."

²⁹ Stephens, "The Amorality of Profit: Transnational Corporations and Human Rights."

³⁰ Zuhairi, "KONSTRUKSI PERLINDUNGAN HUKUM BAGI PENGADU/PELAPOR KERUGIAN KONSUMEN DARI TUNTUTAN PENCEMARAN NAMA BAIK OLEH PELAKU USAHA/PRODUSEN."

respect, protect and fulfill the rights of persons with disabilities, namely Constitutions No 8 of 2016 concerning the Disability people No 4 of 1997 concerning Persons with Disabilities, for whom this Law is not considered to have a human rights perspective, and is more compassionate (*charity based*) and fulfillment the right still assess as the social problem which the policy of fulfillment of their rights is only in the form of social security, social rehabilitation, social assistance and social welfare improvement. The constitution No 8 of 2016 stipulated related the rights from the disability people which must protected and respected not only by government but society in general and companies in Indonesia. In several regulation of law, the criminal act in Indonesia can be said that the explanation corporation is the group organization from people or property, whether it is a legal entity or not³¹.

There are the mistakes are the absolute element which can causes the asking for criminal responsibility of the perpetrator of the offense. The accountability on the criminal acts which implemented by someone determining the mistake from the criminal acts that implemented. The accountability of crime or criminal responsibility means that someone who implemented the criminal acts does not meet to be convicted. The perpetrator must account for the actions he has done if an element of error is found in him³². Because of criminal acts, it is consisting of *a criminal act (actus reus)* and *a criminal intent (mens rea)*. *Actus reus* or guilty act and *mens rea* or guilty mind are absolute to for criminal liability. The exception to the principle of *actus reus* and *mens rea* is a strict liability offense, where *mens rea* does not need to be proven³³.

As it stated in the Chapter XI the Criminal Provisions for the Law on Persons with Disabilities in the Article 144 stated that «Anyone who commits an action which impacts on the increase, decrease, or loss of ownership rights of Persons with Disabilities without obtaining an order from the district court as referred to in Article 142 shall be sentenced to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)».

³¹ Setiyono, *Kejahatan Korporasi: Analisis Viktimologis Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*.

³² R.M, *Hukum Pidana Materiil: Unsur-Unsur Objektif Sebagai Dasar Dakwaan*.

³³ Geary, *Understanding Criminal Law*.

The criminal element in the Article 144 Constitutions No. 8 of 2016 which shall be sentenced to imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah), there are:

1. Everyone which implemented criminal acts.
2. This has impact on the increase, decrease, or loss of ownership rights of Disabilities Persons without obtaining stipulation from District Court as it stipulated in the Article 142.

The elements of Article 144 can be explained as follows:

1. Everyone Who Implemented Crime

This element are the elements of the subject of a criminal act, subject of a criminal act in the Article 144 is «everyone» as it stipulated in the Article 1 point 17 Constitution No.8 of 2016 where it can be said that every person is an individual or corporation, either with legal entity or not. Thus, the subject of criminal act in the Article 144 Constitutions No. 8 of 2016 concerning:

- a. Individual; and
- b. Corporation, both either with legal entity or not.

The subject of criminal act has different in Who has the impact, increase, decrease or loss of ownership right of disability people without obtaining stipulation from district court in a broader sense than the subject of a criminal act in the Criminal Code,

Subject of criminal acts admitted by KUHP is Human (*natuurlijk person*). The consequences which can be perpetrator of a criminal act is human, this can be seem in the formulation of offenses in the Criminal Code starting with the words «whoever», this is clearly designate people or people not legal. So it can be concluded that in the general provisions of the Indonesian Criminal Code used to date, Indonesia still believes that an offense can only be committed by humans³⁴. Thus, the perpetrators of criminal acts in the Constitutions No. 8 of 2016 are no longer limited to individuals or human beings alone, but the perpetrator can also be a corporation.

³⁴ Mahrus, *Dasar-Dasar Hukum Pidana*.

2. Which has an impact on the increase, decrease, or loss of ownership rights of Persons with Disabilities without obtaining an order from the District Court as referred to in Article 142

This element has an impact on the increase, decrease, or loss of ownership rights of Persons with Disabilities without obtaining an order from the District Court as referred to in Article 142. Referred to the opinion of S. R. Sianturi, as briefly the elements of a crime there are:

- a. There is a Subject;
- b. There is an element of error;
- c. The act is against the law;
- d. A forbidden acts or required by law/legislation and those who violate it are liable to punishment;
- e. In a certain time, place and circumstances.

This element means that the disability people have the same right with the other society non-disability, if it is determined by the stipulation of District Court which limited the right from disability people. This element limited in the room of Article 142 Constitution No. 8 of 2016 which stated that «Any person appointed to represent the interests of Persons with Disabilities is prohibited from taking actions that have the effect of increasing, decreasing, or losing the ownership rights of Persons with Disabilities without obtaining an order from a district court.» The party which represented the disability people which means as «relevant stakeholders», namely Government, Local Governments, communities, organizations of persons with disabilities, community organizations, and legal entities.

Whereas in the Article 145 stated that: «Anyone who obstructs and / or prohibits Persons with Disabilities from obtaining the rights referred to in Article 143 shall be punished with imprisonment of up to 2 (two) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)».

The element of criminal acts in the Article 145 Constitutions No.8 of 2016 which who is threatened with a maximum jail term of 2 (two) years and a maximum fine Rp. 200,000,000.00 (two hundred million rupiah) there are:

1. Everyone.

2. Which obstructs and / or prohibits Persons with Disabilities from obtaining the rights referred to in Article 143.

The elements of Article 145 can be described as follows:

1. Everyone

This element is the subject of criminal acts, the subject of criminal acts in the Article 145 is «everyone» as it stipulated in the article 1 point 17 Constitutions No. 8 of 2016 which stated that, everyone is individual or corporation, both legal entities and non-legal entities. Everyone is individual of corporation, both legal entities and non-legal entities. Thus, the subject of criminal acts in the article 145 Constitution No. 8 of 2016 including:

- a. Individual and;
- b. Corporation, both legal entities and non-legal entities.

The subject of criminal acts is different, in a broader sense than the subject of a criminal act in the KUHPidana (Criminal Code). Concerning with Mahrus Ali can be said that.

The subject of criminal acts recognized by KUHP is human (*natuurlijk person*). The consequences become the perpetrator of a criminal act is human. This can be seen in the offense formulation in the KUHP which started with the word of «whoever», this is clearly shows people or human, not legal entity. So, it can be concluded that in the general provisions of the Indonesian KUHP (Criminal Code) that applied, Indonesia still holds that an offense can only be committed by humans³⁵. Thus, the perpetrators of criminal acts in the Constitutions No. 8 of 2016 no longer limited to individuals or humans, but the perpetrators also can get a corporation.

2. Which obstruct and prohibit Disabilities Persons from obtaining rights which is referred to the Article 143

This element stated the forbidden acts which is the act of «obstructing» and/or «prohibiting» of Disability people to obtain the right as it stipulated in the Article 143 concerning what is meant by «obstruct» must first be seen from a grammatical point

³⁵ Mahrus.

of view (grammatical interpretation). In Indonesian dictionary gives the information related to the word of «obstruct» it means that «obstruct/inhibit» means the act of obstructing or covering up.

The other act that is punishable by criminal in the Article 145 Constitutions No. 8 of 2016 is the acts of «forbid». Related the word of forbid in the Indonesian Dictionary gives the information that the act of «forbid» is the action that is more explicit and clear its purpose, the example is a cinema entrepreneur prohibits a paralyzed person with a wheelchair from entering the theater because it is seen as blocking the way for other spectators.

In the Article 143 Constitutions No. 8 of 2016 stated the prohibition to obstruct or forbid the Disability person to obtain the right which stated that in the Article 143 point a into r. the right of Disability person which stated in the Article 143 point a to point r which stipulated in details in the Article 10 to Article 26 and Article 28 Constitutions No. 8 of 2011.

With the Article 144 and Article 145 in the Constitutions No. 8 of 2016 concerning Disability person, so it can be said that the criminal acts to the disability person not only can be implemented by individual but also it can be implemented by corporation. The Corporate criminal responsibility for the rights of persons with disabilities in the Law on Persons with Disabilities is inseparable from this corporation acts which violates the legal provisions of the Law on Persons with Disabilities. This means before the corporation is demand of the responsibility, it must be understood first on the form of acts which implemented by corporation and the reason of corporation can be said as the perpetrators of criminal acts and later a question will arise whether the actions committed can be held accountable.

The corporation itself becomes one of the subjects of criminal acts in the Constitutions of Disability person with the regulation of Article 1 Point 17 concerning the understanding related «everyone» which means as individual or corporation, both corporations with legal status and corporations that are not legally incorporated. The explanation related to the corporation as the subject also in the Article 1 point 15 related to the explanation «Employer», namely an individual,

entrepreneur, legal entity, or other entity that employs workers by paying wages or other forms of remuneration.

But, in the Constitutions of Disability Person concerning with if the criminal act is committed by a corporation, it is not stated who should be responsible later, liability in the Criminal Provisions of the Law on Persons with Disabilities is the criminal sanction with cumulative system, it means if there are several types of principal offenses threatened in a provision of criminal law. The judge must drop the entire, where the sanction in both article is imprisonment is accompanied by a fine, this becomes a problem, because corporations are not likely to be imprisoned. Mahrus Ali gives two statements. First, corporation is unable implemented to an acts so corporation or as a functional action. Second, as consequences from the statement, corporation can be implemented acts based on the intermediary of his manager³⁶.

Related with the Article 144 and Article 145 Constitutions of Disability people can seem that Constitutions of Disability People is adhering to system of «Corporations as makers and managers are responsible». This because the cumulative criminal sanctions contained in the Criminal Provisions in the Law are imprisonment and fines. Because, the corporation is not subject to imprisonment for not having a «body», so can be said that responsible if has the mistaken in the Constitution of Disability person is the manager of corporation. In the Constitutions of Disability person is not mentioned at all on what to do when a claim is made against a corporation. Even in the fact of corporation is as the factual subject in the Disability people constitutions. This will make the burden of corporate responsibility shift to corporate management. The model of accountability of corporation crime where the corporation as the maker and manager is responsible, affirms that the corporation is the maker of the crime. The corporation management then referred as the responsible for the actions carried out by the corporation, where this action is what is done by the complementary tools of the corporation itself, it is based on the authority or basic fund of corporation. Thus, the criminal acts which implemented by corporation can be said as the criminal act which implemented by someone from corporation. The nature of the

³⁶ Mahrus, *Asas-Asas Hukum Pidana Korporasi*.

act that makes the criminal act is on-person, that is, the person who leads the corporation is responsible for the crime, regardless of his knowledge of the act.

Thus, the concept of corporate criminal responsibility as in the Law on Persons with Disabilities, it can be concluded that it is a form of criminal responsibility. The corporation is not fulfilling the Disability People can be may be subject to cumulative criminal sanctions in the form of principal and additional criminal sanctions, as it contained in the Law on Persons with Disabilities of cumulative criminal sanctions in the form of imprisonment and fines. Because the corporation is cannot be subject to imprisonment, hence the cumulative criminal sanction cannot be subject to imprisonment; hence the cumulative criminal sanction it means the criminal penalties imposed on corporations with the main punishment in the form of fines, and additional crimes also in the form of fines, in which the criminal sanctions imposed are fines heavier than the value of the resulting losses.

Conclusion

The accountability of corporation crime which stipulated in the Article Constitutions No. 8 of 2016 concerning the Disability People using the nature of criminal responsibility in the form of the corporation as the maker or perpetrator of a criminal act, but the management of corporation must be responsible. The criminal act has Article 144 of Law no. 8 of 2016 has a criminal sanction with imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah) and Article 145 of Law No. 8 of 2016, he is punished with imprisonment of 2 (two) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

This can be seen in the form of punishment in this law is in the form of cumulative punishment, namely imprisonment and fines. It is better if the formulation of criminal regulation in the Constitutions of Disability People follow what is in the Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning the Procedures for Handling Crime by the Corporation, to interpret criminal sanctions which dropped to corporation with the main penalty in the form of a fine, and additional punishment also in the form of a fine, in which the criminal sanction of fines is imposed more than the value of the loss caused. In order to not

repeat by concerning corporation and be a lesson for other corporations.

Suggestion

As it stipulated in the Article 144 and 145 in Constitution of Disability People found the cumulative criminal sanctions, which is imprisonment and fines. In fact, the corporation cannot get the sanction of imprisonment, so the corporation's inability to accept imprisonment has been stipulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning the Procedures for Handling Criminal Cases by Corporations in the Article 25 Paragraph 3 which stated that the corporation only dropped the main punishment can be imposed in the form of a fine.

Thus, the researcher is suggestion to drop the cumulative criminal sanction on the corporation as in the Article 144 and 145 of Constitutions of Disability people in accordance to PERMA No 13 of 2016 with become imprisonment and fines are the main and additional criminal sanctions in the form of fine. So, fines imposed on the corporation in this case as a form for add or increase or increase the fine penalty against the corporation in lieu of imprisonment that cannot be imposed on the corporation.

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Кримінальна відповідальність юридичних осіб за порушення прав осіб з обмеженими можливостями

Статтю присвячено дослідженню дій юридичних осіб, які порушують права людей з обмеженими можливостями, що містять елементи злочину і відповідальності, передбачених у збірці законів № 8 від 2016 р. про осіб з обмеженими можливостями. Зокрема, у збірці основну увагу приділено зміцненню правової та інституційної бази, а також вдосконаленню механізму їх реалізації. Вона містить загальні положення, а також встановлює санкції за їх порушення. У ході дослідження використано нормативно-правовий метод, а також статутний і концептуальний підходи. Показано, що елементи дій юридичних осіб, що порушують кримінально-правові норми, передбачені цією збіркою законів, відносяться до дій органів управління юридичної особи, що діють від її імені, а також до директив юридичної особи, на підставі яких особам з обмеженими можливостями відмовляють у реалізації їхніх законних прав. Збірка законів № 8 від 2016 р. про осіб з обмеженими можливостями передбачає два види відповідальності юридичної особи: адміністративну і сукупну кримінальну відповідальність у вигляді позбавлення волі та штрафів. Відповідно до концепції кримінальної відповідальності, юридична особа притягується до відповідальності як директивний та адміністративний орган. Його керівники несуть відповідальність відповідно до передбачених законом сукупних санкцій за порушення кримінального законодавства їх юридичними особами.

Ключові слова: кримінальні санкції; злочини, вчинені юридичними особами; особи з обмеженими можливостями.

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Уголовная ответственность юридических лиц за нарушение прав лиц с ограниченными возможностями

Статья посвящена исследованию действий юридических лиц, нарушающих права людей с ограниченными возможностями, содержащих элементы преступления и ответственности, предусмотренными в своде законов № 8 от 2016 г. о лицах с ограниченными возможностями. В частности, в своде основное внимание уделяется укреплению правовой и институциональной базы, а также совершенствованию механизма его реализации. Закон содержит общие положения, а также устанавливает санкции за их нарушения. В данном исследовании используется нормативно-правовой метод, а также статутный и концептуальный подходы. Показано, что элементы действий юридических лиц, нарушающие уголовно-правовые нормы, предусмотренные данным сводом законов, относятся к действиям органов управления юридического лица, действующих от его имени, а также к директивам юридического лица, на основании которых лицам с ограниченными возможностями отказывают в реализации их законных прав. Свод законов № 8 от 2016 г. о лицах с ограниченными возможностями предусматривает два вида ответственности юридического лица: административную и совокупную уголовную ответственность в виде лишения свободы и штрафов. В соответствии с концепцией уголовной ответственности, юридическое лицо привлекается к ответственности как директивный и административный орган. Его руководители несут ответственность в соответствии с предусмотренными законом совокупными санкциями за нарушение уголовного законодательства их юридическими лицами.

Ключевые слова: уголовные санкции; преступления, совершенные юридическими

лицами; лица с ограниченными возможностями.

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