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Additional Criminals To Corporations As An Efforts To Create Criminal Impact With Decision*

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Abstract

Corporations are always a problem when asked for criminal responsibility. In addition to their own separate ways, separate regulations are needed to examine and prosecute corporations that carry out criminal acts. Like the case that has occurred, the KPK has positioned PT NKE as a legal subject to hold criminal liability. Prosecutors prosecute, and necessary crimes also provide additional penalties for a ban on participating in state auctions for six months. The study was conducted in a descriptive analysis and literature review approach. This study examined philosophically historically the existence of additional crimes to provide a conviction that pledged perpetrators. The conclusion that can be obtained from studying different criminal offences other than the main criminal to the corporation as a legal breakthrough in conducting regular excavation from existing regulations to create a criminal punishment that has a deterrent effect on the corporation that commits a criminal offence.

Keywords: Additional Crimes; Corporations; Deterrent Effects.

Abstrak

Korporasi selalu menjadi masalah ketika dimintai pertanggungjawaban, selain diperlukan cara tersendiri juga diperlukan regulasi tersendiri dalam upaya memeriksa dan mengadili korporasi yang melakukan tindak pidana. Seperti kasus yang telah terjadi, KPK telah memposisikan PT NKE sebagai subyek hukum sehingga dapat dimintai pertanggungjawaban pidana. JPU melakukan penuntutan selain pidana pokok juga memberikan pemidanaan tambahan berupa larangan mengikuti lelang negara selama enam bulan. Penelitian dilakukan secara deskriptif analisis dan pendekatan kajian pustaka serta dalam penelitian ini mengkaji secara historis filosofis adanya pidana tambahan sehingga dapat memberikan pemidanaan yang menjera pelaku. Kesimpulan yang dapat diperoleh dari penelitian penjatuhan pidana tambahan selain pidana pokok kepada korporasi sebagai upaya terobosan hukum dalam melakukan penggalan hukum dari peraturan yang telah ada untuk menciptakan pemidanaan yang memiliki efek jera kepada korporasi yang melakukan tindak pidana.

Kata Kunci: Pidana Tambahan; Korporasi; Efek Jera.

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A. INTRODUCTION

Following current developments, law enforcers prosecute defendants for corporate crimes in Indonesia, making studies related to a punishment more interesting. PT. Nusa Construction Engineering (PT NKE) used to be PT Duta Graha Indah became the first corporation to be tried by the KPK because it had committed corruption by enriching itself or as a corporation.³

The demand from the public prosecutor from the KPK against PT NKE in the form of paying a fine of 1 billion and additional punishment by paying replacement money of Rp. 188,732,756,416 as well as additional punishment in the form of revocation of auction rights for goods/services held by the government for two years. An interesting study on the sentencing decision is that there are additional penalties that are specifically given to corporations that commit criminal acts of corruption.

From this case, there were efforts made by the prosecutor and a verdict was handed down by the judge with the revocation of the right to the corporation to participate in the auction for the procurement of goods/services at a government agency. The basis for the claim for revocation of rights is Article 35 paragraph (1) number 6 which is the general reference and Article 18 paragraph (1) of the Anti-Corruption Law as a specific reference. Where in addition to the principal and additional penalties, additional penalties may be imposed.

The purpose of the sentencing is to be a lesson and an example for other corporations not to commit the same act or as a risk that must be taken if a corporation commits a criminal act of corruption, the corporation may lose some of its activities. So that corporations should be more careful in carrying out work that is sourced from government funds, because it causes losses from the work so that it has an impact on state losses which are included as elements of corruption.⁴

The imposition of additional penalties, in this case, is positioned as a legal breakthrough (rule-breaking) as an effort to create a decision that brings a fair sentence⁵. The existence of existing laws and regulations, especially those related to corporate crimes, is considered to be able to escape from legal bondage due to a legal vacuum that assumes what kind of punishment for perpetrators of crimes committed by corporations.

³ Dylan Aprialdo Rachman, "Perjalanan Kasus PT NKE, Korporasi Pertama Yang Divonis Korupsi Halaman All - Kompas.Com," last modified 2019, accessed December 17, 2020, <https://nasional.kompas.com/read/2019/01/04/06115311/perjalanan-kasus-pt-nke-korporasi-pertama-yang-divonis-korupsi?page=all>.

⁴ Renny Gladis Karina, "Pemidanaan Terhadap Penganal Sekaligus Pecandu Dalam Perspektif Tujuan Pemidanaan," *Badamai Law Journal* 4, no. 1 (2019): 354–368.

⁵ Umar Boki, "Ratio Decidendi Terhadap Putusan Perampasan Aset Oleh Negara Dalam Perkara First Travel (Studi Putusan Nomor : 3096 K / Pid . Sus / 2018) Ratio Decidendi toward Confisted Good Verdict by the State on First Travel Case (A Case Study Number : 3096 K / Pi," *Halu Oleo Legal Research* 2, no. 3 (2020): 295–308.

It takes a progressive view to be able to create a law whose punishment reflects a sense of justice for the community.⁶ Law enforcers need to explore the deeper values contained in a regulation, not only seeing it as a building of statutory regulations. It takes hard work from law enforcement in exploring the law so that it can provide punishment that provides a deterrent effect to the perpetrators and also brings justice in society so that the form of public trust in the performance of the law is still in its position, namely imposing punishment on those who make mistakes⁷. The following article will discuss how additional penalties for corporations that commit criminal acts have a deterrent effect?

B. METHODS

This study uses a descriptive analysis approach that is adapted to the objectives and philosophy of the existence of the punishment while still paying attention to the applicable regulations. This research was conducted by literature study⁸. Provide an overview by reviewing the philosophical objectives of sentencing with the aim of revisiting the purpose of the sentencing.

C. RESULTS AND DISCUSSION

According to Van Bemmelen, crime is an act that is harmful or destructive and social that has a negative impact on the community so that members of the community have the right to denounce and reject that resistance to the perpetrator is by giving misery or suffering to the perpetrator of the crime⁹. So that in principle crime is a label given to certain actions that qualify as despicable acts.

In criminology, crime can be said as a behaviour that harms the community and behaviour that gets social reactions that come from the community¹⁰. These social reactions can be in the form of formal reactions and informal reactions. Form a formal reaction that becomes a study related to how criminal law works in society. While the form of non-formal reactions or also referred to as the general public's reaction to crime with the aim of providing a paradigm and community response to behavior or symptoms that appear in the community so that it is labelled as behavior that endangers the community because it is an act that harms the community, but has not been regulated. in the laws and regulations. From this method, studies related to criminalization and decriminalization are obtained.¹¹ As an effort to solve crime

⁶ Efraim Mbomba Reda, I Nyoman Putu Budiarta, and I Made Minggu Widyantara, "Konsepsi Hukum Progresif Dalam Pengaturan Tindak Pidana Korupsi Di Indonesia," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 35–39.

⁷ Kurniasih Bahagiati, "Filsafat Pidana Terhadap Penyalah Guna Narkotika Bagi Diri Sendiri Dalam Perspektif Hukum Positif Dan Hukum Pidana Islam," *Era Hukum-Jurnal Ilmiah Ilmu Hukum* 18, no. 1 (2020): 111–137.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

⁹ Stephan Hurwitz, *Kriminologi (Diterjemahkan Oleh Moelyatno)* (Jakarta: Bina Aksara, 1986). 4.

¹⁰ Muhammad Mustafa, "Kriminologi" (Depok: Fisip UI Press, 2007). 16

¹¹ I S Susanto, *Kriminologi* (Yogyakarta: Genta Publishing, 2011). 12.

problems in the form of criminalization and decriminalization or depenalization with legal policies/penal policies or taking advantage of criminal law methods. Using the penal policy as a strategy to reduce and resolve criminal acts.¹²

Barda Nawawi positioned penal policy as an approach in reducing crime by providing punishment which is the longest method. Meanwhile, according to H.L. Packer explained that the control of criminals who use the imposition of punishment/sanctions on the perpetrators is a social problem that has an important legal dimension¹³. There are at least four reasons for the need for punishment, namely:

1. As a tool to realize the harmonization of physical and cultural relations. This harmonization can be carried out structurally and substantially which can be realized in the form of synchronization of the criminal justice administration mechanism for a structural approach and for a substantive approach through the applicable laws and regulations. Meanwhile, culturally, it is carried out by way of appreciation of the philosophy, perspective and attitude which as a whole becomes the basis for the operation of the criminal justice system.¹⁴
2. As a basis for the purpose of the punishment which has a control objective and provides a philosophical basis, rationality and can also realize a clear and directed motivation for punishment.¹⁵
3. As the purpose of the punishment which is clearly known to function as a supporter of the function of criminal law so as to create welfare and protect the community.¹⁶
4. As Roeslan Saleh explains the reasons for the need for criminal law, namely: criminal influence or punishment is not only for perpetrators but with the main aim of influencing people who are not criminals by complying with the norms that apply to society.¹⁷

The formulation of the reason for the purpose of punishment is what makes the sentence must have a purpose in every sentencing so that it not only affects the perpetrator but can also create conducive conditions in socializing the community. The imposition of punishment on perpetrators who are closer to legalistic-positivistic or only fixated on texts written in-laws and regulations creates a climate for law enforcement to stagnate or stagnate. An effort is needed from law enforcement to create a healthy legal climate by changing the way the field or seeing the law is needed and in accordance with the values of justice in society.

¹² Ibid.

¹³ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Citra Aditya Bakti, 1998). 155-156.

¹⁴ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995). Hal 1-2.

¹⁵ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2016). Hal. 152.

¹⁶ Ibid. Hal 153.

¹⁷ Roeslan Saleh, *Stelsel Pidana Indonesia* (Jakarta: Jajasan Badan Penerbit Gadjah Mada, 1962). Hal 27.

Legal breakthroughs as innovative and creative works in responding to the need for imposing punishment on the paran so that the punishment is appropriate and does not injure the community's sense of justice. Seeing that the law needs to be realized progressively, which is always dynamic, does not become a final and absolute rule, but the law as a process, law in the making.¹⁸

The punishment itself can have an impact on living a just and happy society both for the perpetrator and the victim, meaning that the imposition of sanctions is not fully oriented to the perpetrators but also sees the values or feelings contained in the community¹⁹. So that punishment is not a rule that is only objective by thinking about its interests, but becomes something wider by bringing prosperity, happiness and human glory. Therefore, when there are problems with the law, it must be the law itself that needs to be reviewed and corrected, not for people who have to be forced to follow and enter into a deviant legal structure.

The existence of a paradigm of liberation in law enforcement as the progressive legal teachings of Satjipto Rahardjo, the paradigm of liberation provides a flow of thought or the basis for the importance of reasons for the purpose of imposing a sentence. To reach criminal acts that are always dynamic, an approach method that separates from legalistic-positivistic approaches, perspectives, principles and theories is needed.

Leading to the discussion of additional punishment, if viewed from its history, it turns out that the concept of additional criminal has been in effect since Roman law known as *infamia* and by France was adopted in the Penal Code with the term *Peines Infamantes*, DNA and so this concept was also a reference by the drafters of the Criminal Code in that time.²⁰ The term *infamia* is an institution that has the function of reducing a person's dignity, in its role of doing *deminutio existimationis* or can be interpreted as revoking certain rights because the person has committed a disgraceful act or crime. According to Roman law, a person's dignity is lowered not on the basis of a court decision but happens by itself so that the effect can last for life unless the person concerned can restore his or her own dignity.²¹

The purpose of *infamia* is only limited to putting pressure on those who do not deserve to be respected by eliminating some civil rights and public law. This method is a *peines infamantes* contained in the French Penal Code which explains that people who commit crimes are automatically subject to additional penalties in the form of a decrease in their dignity as human beings.²²

In the criminal law in force in France, criminal acts are classified as a crime, namely *ipso jure* or behaviour which is automatically considered an *infamantes* or an act which naturally reduces his dignity as an honourable human being. So that *inframantes*

¹⁸ Faizal, *Menerobos Positivisme Hukum* (Yogyakarta: Rangka Education, 2010). Hal. 70.

¹⁹ Karina, "Pemidanaan Terhadap Pengedar Sekaligus Pecandu Dalam Perspektif Tujuan Pemidanaan."

²⁰ P A F Lamintang, *Hukum Penitensier Indonesia* (Jakarta: Penerbit Armico, 1984). Hal. 85.

²¹ *Ibid.*

²² *Ibid.*

lose their rights as complete human beings, such as losing their rights to become police officers, lecturers, members of the council and so on.

In the Criminal Code, the concept of *inframentes* is not accepted because the role of the institution is subjective and arbitrary, although historically in Dutch Criminal Law, *inframentes* was imposed on Dutch people because at that time the law used using the French Penal Code was enforced in the Netherlands. but since 1886 with the enactment of *Wetboek van Strafrecht (WvS)*, the practice of *inframentes* has not been carried out again because the punishment actually triggers the perpetrator to commit his evil deeds again to fulfill the basic needs of life because as a former perpetrator he is attached to a criminal label which makes him unable to work normally.²³

The existence of an institution for revocation of rights is not found in *WvS*, but there is a classification of the types of rights that can be revoked, limited to the nature of rights and criminal acts that have been committed by the perpetrator. It is assumed that if someone commits a criminal act, he has abused his honor so that the perpetrator does not deserve to be given certain rights because it has been used for wrong actions.

Infamie legale has officially been revoked with the enactment of *WvS*, the model of revocation of certain rights can and/or does not make it an additional punishment and is not attached to certain main crimes or crimes, but must be imposed through a court decision.

The imposition of punishment, in addition to the principal punishment, is also imposed with an additional penalty, namely the revocation of the right to auction referring to Article 35 paragraph (1) number 6 of the Criminal Code which is the basis for the *lex generalis* in the formulation of additional penalties. The regulation describes several provisions that can be revoked through a court decision as follows:²⁴ 1). Revocation of the right to hold certain positions; 2). Revocation of the right to become a member of the military; 3). Revocation of the right to vote and being elected in elections; 4). Revocation of rights as legal advisors or executor of court decisions, guardians, supervisory guardians, supervisors or supervisory supervisors for people who are not their own children; 5). Revocation of the right to exercise power, exercise guardianship or guardianship over one's own child; 6). Revocation of the right to carry out certain livelihoods or jobs.

As the basis for *lex specialis*, it uses the provisions of Article 18 paragraph (1) of Law 31 of 1999 to provide additional penalties with reference to the Criminal Code. There are several additional penalties that can be given to corporations that commit corruption, namely:²⁵

1. The confiscation of tangible or intangible movable property or immovable property is used for or obtained from corruption, including the corporation owned by the convict where the corruption act was committed as well as from the goods that replace the goods;

²³ Ibid.

²⁴ Moeljatno, *KUHP : Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 1999).

²⁵ Ibid.

2. Replacement money is charged with the amount of the assets obtained from the proceeds of corruption;
3. A partial or complete closure of a business or corporate activity is carried out for a certain period of time;
4. Partial or complete revocation of certain rights or the elimination of all or part of certain benefits which have been or may be granted by the Government to the convict.

In the preamble to the Supreme Court Regulation which regulates the procedure for handling criminal cases by corporations, it is explained that the existence of a corporation is an entity or legal subject in legal actions or its business activities that have an influence on national economic growth, but can also have a detrimental impact on the state due to using corporation to commit a crime²⁶. In reality, the corporation becomes a safe place as a place to hide wealth obtained from criminal acts so that it is very difficult for law enforcement to reach and be held accountable.

Even though there are many regulations that position corporations as legal subjects and can be held criminally responsible, cases related to corporations are still quite small because the process of completing the investigation is still unclear, on this matter the Supreme Court issued Perma No. 13 of 2016 which serves as a guide for law enforcement in placing the corporation as a legal entity that can be held criminally responsible.

The phenomenon of revocation of auction rights as an additional penalty imposed on PT NKE is an answer to the creative and innovative efforts of law enforcement. Exploring the philosophical values of criminal law regulations that provide indictments and prosecutions and see the building of these regulations progressively²⁷. The legal construction to be built has the aim that the convict's rights can be revoked by a judge's decision, which is realized by revoking certain livelihoods. The regulation can also be interpreted that corporations that commit corruption on jobs obtained from the government, due to misuse so that it causes state losses, are given a separate sanction as an opportunity to improve themselves from the side of the perpetrators and give warnings to other corporations not to take the same action.

Taking a deeper look at the PT NKE incident, the laws and regulations have provided space for prosecutors to make the formulation of charges against these criminal actors more deterrent. In detail, there are several additional penalties that can be given to criminal offenders as follows:

1. The imposition of compensation, the concept of compensation has actually long been known in Indonesian law, codified in several legal products, such as in the civil law contained in Article 1365 of the Criminal Code which explains the imposition of compensation for those who cause harm to other people or who

²⁶ Mahkamah Agung RI, *Peraturan Mahkamah Agung Republik Indonesia Nomor 13 Tahun 2016 Tentang Tata Cara Penanganan Perkara Tindak Pidana Oleh Korporasi*, 2016.

²⁷ Reda, Budiarta, and Widyantara, "Konsepsi Hukum Progresif Dalam Pengaturan Tindak Pidana Korupsi Di Indonesia."

commit acts against the law. If the Spatial Planning Law, which is Article 75, explains that it is obligatory to compensate the perpetrators who violate the criminal provisions in the spatial planning regulations by filing a civil lawsuit. Likewise, Article 1 number 22 of the Criminal Procedure Code also introduces the existence of compensation, where the imposition of compensation is charged to the state in this case law enforcers if the process of arresting, prosecuting and trying someone is not based on regulations or violates the provisions of the Criminal Procedure Code itself.

2. Carrying out obligations that are neglected, regulated in the Life Protection and Management Law regarding the imposition of this obligation can be given to corporations that do forest destruction so that punishments can also be given to repair damaged forests due to the actions of the corporation and can also apply to corporations that do not pay tax, the judge in his decision can add the corporation to pay the tertanggung tax.
3. Improvements to the consequences of corporate criminal acts, in addition to forcing them to carry out obligations that are negligible in the Law on environmental protection and management, additional penalties are regulated in Article 119 which regulates the correction of the consequences that have been carried out by the corporation if the act falls into the category of a criminal act.
4. The confiscation of goods or profits obtained illegally, in addition to being regulated in environmental protection and management regulations, this additional criminal provision is also contained in the provisions of the mineral and coal mining regulations if the corporation is found to have violated the provisions written in the regulation.
5. Fulfillment of customary obligations, this additional criminal arrangement can specifically be applied to villages that are categorized as traditional villages. In this case, corporations that commit criminal acts must not only be held accountable by Indonesian law, corporations are also examined and tried through customary courts. The existence of this customary obligation is accommodated in the provisions of the Village Law and the Papua Province Special Autonomy Law.
6. Revocation of permit, if the corporation violates the provisions related to the Building Law, its building permit can be revoked as a form of administrative sanction.
7. Prohibition of doing certain actions, there are additional penalties related to the prohibition to carry out certain actions because the legality that allows corporations to carry out certain legal actions has been revoked for violating legal provisions. Provisions related to the formulation can be found in the provisions of Article 163 of the Mineral and Bantubara Mining Law and Article 142 paragraph (2) of the Limited Liability Company Law.
8. The dissolution of the corporation may be subject to additional penalties if according to the judge the corporation has committed a criminal offence, the

judge may in addition to imposing the main punishment impose additional penalties by dissolving the corporation so that the corporation must conduct liquidation.

9. Announcement of the court's decision, this additional penalty is contained in the formulation of Article 10 letter b and Article 43 of the Criminal Code, in which case the corporation that commits a criminal act may be given an additional penalty to announce the court's decision as an additional crime.
10. Closure of part or all of a corporation's business, the addition of this penalty can be given to corporations that violate the provisions of the Law on Prevention and Eradication of Forest Destruction. In addition to the principal crime, corporations may be given additional penalties in the form of partial or complete closure of a business or corporate activity.
11. The freezing of assets, whether part or all of a corporate business or activity, based on the provisions of Article 7 paragraph (2) of the Law on the Prevention and Eradication of the Crime of Money Laundering provides additional sanctions in addition to fines to corporations by freezing part or all of the corporation's business.
12. The burden of job training for workers, as written in Article 13 paragraph (1) of the Manpower Law which explains the obligation of corporations to incur costs related to improving the quality of their work through job training. In this rule, no criminal threats are found, if the corporation does not commit the acts referred to above, but it can be resolved by means of industrial relations.

From the description of the types of additional penalties that can be given to this corporation, if we examine more deeply, there are disparities that vary depending on the type of crime so that the criminal sanctions are also different. There are at least 80 laws that regulate basic crimes related to corporations that commit criminal acts. Starting from the Emergency Law on Hoarding of Goods, it became the first legal product to regulate the punishment of corporations.

With the existence of additional penalties in addition to the main crime, it can present a deterrent effect to the corporation so that it can rethink committing a criminal act. However, with the spread of additional qualifications for punishment, there will be a variety of punishments and of course, it would be better if the unification of criminal regulations related to punishment was made into one colour so that the purpose of the punishment would be clear whether it was imposed with absolute or relative objectives. And from the punishment given, it can provide education for others not to commit similar acts.

D. CONCLUSION

From the settlement of the PT NKE case, we get a new reference regarding legal entities that can be held criminally responsible by positioning them as legal subjects. In addition to being subject to a basic sentence, corporations that commit criminal acts can

also be given additional penalties whose purpose is to provide punishment that has a deterrent effect. when referring to the purpose of the criminal, besides bringing suffering, it also brings learning or education to the perpetrator so that he does not realize that the act he has committed is included in a prohibited act and causes harm to other parties.

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