

Company Loans in Procurement of Goods Services Government Corruption Perspectives

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**Company Loans in Procurement of Goods Services Government
Corruption Perspectives**

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Abstract: *The purpose of this research is to analyze criminal acts committed by legal subjects who commit criminal acts of corruption in the procurement of goods and services of government agencies, namely by analyzing the subject in cases of corruption and criminal liability in terms of borrowing companies for the procurement of goods and / services for the government. This study uses a prescriptive normative legal research to find solutions to problems. The results of the research are: in criminal acts committed by the PT.MA corporation, which are asked to be criminally responsible for the Corporation or the Management, or the Corporation and the Management. If the corporate management of PT.CSL knows the intentions or actions committed by PT.MA employees, resulting in a criminal act of corruption, and PT.CSL benefits from these actions, then of course PT.CSL can be held criminally responsible, but if the management of PT.CSL do not know and the act of getting any benefit from acts of corruption committed by employees of PT.MA, then PT. CSL cannot be held criminally responsible.*

Keywords : *Corporate Borrowing; Procurement of Goods and Services; Corruption Crime*

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INTRODUCTION

The current national development has the aim of increasing the welfare and prosperity of the Indonesian people in a fair and equitable manner, as well as developing community

life and the administration of an advanced and democratic country based on Pancasila and the 1945 Constitution. This national development is not only carried out at the center. but also in the region and throughout Indonesia.

Since the reform era, there has been a paradigm shift that demands changes in governance and development, including demands for transparency and accountability and the involvement of all stakeholders in the course of governance and development. All of that is in order to achieve the welfare of society.

In the implementation of development, the government needs partners from the private sector and the community in terms of procurement of goods and services needed by the government in the implementation of the development. For this reason, the government has issued Presidential Regulation Number 54 of 2010 which was then updated with Presidential Regulation Number of 2015 and then revised again with Presidential Regulation Number 16 of 2018.

The government's policy to issue Presidential Regulation (Perpres) Number 16 of 2018 is in an effort to reduce the leakage rate. budget. This is because the costs incurred from the APBN and APBD for the procurement of goods and services are very large¹. One of the reasons for this leakage is the mark-up of the price of goods up to 30% of the market price during the auction. if the practice is not ended immediately, it is feared that it will weaken business competition in the future. Presidential Regulation Number 16 of 2018 is expected to abolish the practice while at the same time reducing the high cost economy in all government agencies and increasing fair competition.

Presidential Regulation Number 16 of 2018 also provides opportunities for small en-

trepreneurs to participate in the procurement of goods and services in a professional manner. Moreover, there has been a simplification of procedures to make it easier for them to participate in tenders. The main objective of the issuance of Presidential Regulation Number 16 of 2018 is to obtain goods/services needed by Government Agencies which are partially or wholly financed from the APBN and APBD in sufficient quantities, with quality and prices that can be accounted for, in a certain time and place effectively. In this study, the discussion that will be carried out is limited to the process of procuring goods and services by "using a provider of goods and services".

In this article, the discussion that will be carried out is limited to the process of procuring goods and services by using goods and service providers who borrow other people's company names. Thus, the legal basis for the procurement of government goods and services uses Presidential Regulation No. 16 of 2018. The process of procurement of goods and services is carried out through several methods, including: The process of procuring goods and services is carried out through several methods, including first construction or other physical forms that technical planning and technical specifications are determined by the users of goods and services, both services of professional expertise in various fields which include construction planning services, construction supervision and other professional services in order to achieve certain targets whose output is in the form of software that is systematically compiled based on a framework of reference that is set by the service user. In some cases, there are government goods/services procurement companies that borrow other companies in the process of

¹ Eko Sri Darminto, "Akibat Hukum Peminjaman Badan Usaha Dalam Lelang Pengadaan Barang/Jasa Pemerintah Ditinjau Dari Keputusan Presiden No.80 Tahun 2003 Di Provinsi Jawa Tengah" (Program Pascasarjana Magister Kenotariatan Universitas Diponegoro, 2006),4

participating in the auction until they become the winner and carry out the project.

For example, in the case of procurement of medical equipment in Balangan Regency, in the procurement it is the company that wins in the procurement of the medical device set that participates in the auction following the stages of the procurement auction, not the Director or representing the company PT. CSL, but the one who made the bid to become the winner of the auction was the UKNM, which is a sales or marketing company PT. MA, which is a parturition device, a set of medical devices, won the procurement.

Based on the author's search, there are several articles that raise the same theme but differ in substance, namely: an article written by Ibsaini and Mahdi Syahbandir with the title: *Corporate Accountability in Corruption Crimes Procurement of Government Goods and Services (A Research in the Legal Area The Corruption Court of Banda Aceh)*.² differs from the author in that it relates to criminal liability in terms of borrowing companies for the procurement of goods and / services for the government. Likewise, Zaenal Arifin's article entitled: *Corruption Crimes in the Procurement Process of Government Goods and Service*³, is also different from the author's article. Then Febby Fajrurrahman's article with the title: *Application of Government Procure-*

*ment of Goods/Services Law as a State Administrative Dispute*⁴. Based on some titles in the article is different from this article. The formulation of the problem in this paper is how is criminal liability in terms of borrowing companies for the procurement of goods and / services for the government?

METHOD

This type of research is normative law research. According to Peter Mahmud, legal research is to find the truth of coherence, namely whether there are legal rules according to legal norms and are there norms in the form of orders or prohibitions in accordance with legal principles, and whether someone's actions are in accordance with legal norms (not only according to legal rules) or legal principles.⁵ In this normative research, the author analyzes the crime of corruption in the procurement of goods and services in government agencies. The type of this research is to use the type of legislation and the type of concept approach.

ANALYSIS AND DISCUSSION

Criminal liability in the Case of Company Loans for the Procurement of Goods and / Services for the Government

Accountability for perpetrators of criminal acts in Criminal Law requires conditions to be able to impose sanctions on perpetrators, for committing the crime. Thus, in addition to having committed a crime, criminal liability can only be prosecuted if the crime was

² Ibsaini and Mahdi Syahbandir, "Pertanggungjawaban Korporasi Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa Pemerintah (Suatu Penelitian Di Wilayah Hukum Pengadilan Tipikor Banda Aceh)," *LEGITIMASI Jurnal Hukum Pidana dan Politik Hukum* 7, no. 1 (2018): 67–90, <https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/3965>.

³ Zaenal Arifin, "Tindak Pidana Korupsi Dalam Proses Pengadaan Barang Dan Jasa Pemerintah," *Jurnal Hukum Responsif* 5, no. 5 (2017): 54–63, <https://journal.pancabudi.ac.id/index.php/hukumresponsif/article/view/162/>.

⁴ Febby Fajrurrahman, "Implementation Of Government Procurement Of Goods / Services Law As A State Administrative Dispute," *Jurnal Hukum Peratun* 2, no. 2 (2019): 191–212, <https://jurnalhukumperatun.mahkamahagung.go.id/index.php/peratun/article/view/141>.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Surabaya: Kencana, 2014), 74

committed in error. That is, criminal liability is determined based on the fault of the maker (liability based on fault). Ruslan Saleh said that it is impossible to think about the existence of intentional or negligence, if the person is not capable of being responsible, therefore it cannot be thought about the reason for forgiveness, if that person is not able to take responsibility and there is no intention or negligence.⁶

Accountability for a person in criminal law does not only mean that it is legal to impose a sentence on that person, but also it can be fully believed that it is in the right place to ask for criminal responsibility for the crime committed. Criminal responsibility does not only mean “rightfully sentences” but “rightfully accused” first of all, it is a condition that exists in the maker when he commits a crime and connects the state of the maker with the actions and sanctions that should be imposed⁷. The maker when committing a crime and linking the condition of the maker to the actions and sanctions that should be imposed by⁸

Sudarto, stating that a person’s punishment is not sufficient if that person has committed an act that is contrary to the law or is against the law. Conditions are still needed for punishment, that the person who commits an act that is contrary to the law must be guilty or guilty (the principle of no crime without error applies “Geen straf zonder schuld” or nulla poena sine culpa).

Noyon, said that the issue of error should

⁶ Ruslan Saleh, *Perburuan Pidana Dan Pertanggung Jawaban Pidana Dua Pengertian Dasar Dalam Hukum Pidana* (Jakarta: Aksara Baru, 1983),36

⁷ Mahmud Mulyadi and Feri Antoni Surbakti, *Politik Hukum Pidana Terhadap Kejahatan Korporasi* (Jakarta: Sofmedia, 2010), 36

⁸ *Ibid.*

be discussed regarding matters relating to the application of positive law. Whereas generally the characteristics of errors related to positive law are as follows:

- 1) That the perpetrator knows or must be able to know the nature of his behavior and the circumstances that accompany the behavior (as long as the circumstances are related);
- 2) That the perpetrator knew or should have suspected that his behavior was contrary to the law.
- 3) That his behavior was carried out, not because of an abnormal mental condition (Vide Article 44 of the Criminal Code).
- 4) That his behavior was carried out, not because of the influence of an emergency or coercion.⁹

Simon argues that the ability to be responsible can be interpreted as a psychological state, which justifies the application of a criminal effort both from a general point of view and from the person. A person is able to be responsible, if his soul is healthy, namely if:

- a) Able to know or realize that his actions are against the law,
- b) Can determine his will in accordance with that awareness.

The ability to be responsible, according to Van Hamel is a state of psychic normality and maturity (intelligence) which brings 3 (three) abilities including:

- a) Being able to understand the value of the consequences of one’s own actions,
- b) Being able to realize that his actions are not allowed in the view of society,
- c) Able to determine his will for his actions.¹⁰

⁹ EY Kanter and SR Sianturi, *Asas-Asas Hukum Pidana Dan Penerapannya* (Jakarta: Stora Grafika, 2002),162

¹⁰ Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 1981), 93

The formulation of the ability to be responsible, the Criminal Code does not provide a formulation that is only found in *Memorie van Toelichting* which negatively states, the meaning of the ability to be responsible, there is no ability to be responsible for the maker. In *Memorie van toelichting*, only see 2 (two) things that people can accept *ontoerekeningsvatbaar* to the maker, namely:

- 1) In the event that the maker is not given the freedom to choose between doing or not doing what the law is prohibited or ordered, in other words in terms of the act. forced,
- 2) In the event that he is in a certain condition, so that he cannot realize that his actions are against the law and he does not understand the consequences of his actions.¹¹

Thus, based on the above opinion, to see the ability to be responsible includes 2 (two) things, namely: First, the ability to distinguish between good and bad deeds is a factor of reason (intellectual factor) which is able to distinguish between actions that are permissible and those that are not. Second, the ability to determine his will according to his conviction about the merits of the act is *avolitional factor*, namely being able to adjust his behavior with the realization that what is allowed and what is not.¹²

Of course, seeing from the 2 (two) things above, then a person who is not able to determine his will according to his conviction, such a person cannot be held accountable. The problem of this ability to be responsible in the provisions of the Criminal Code is con-

tained in Article 44 paragraph 1 of the Criminal Code which reads:

Whoever commits an act that is not accountable to him because his soul is disabled in growth or is disturbed because of a disability, will not be punished.

It cannot be accounted for because the soul is not normal, so it must pay attention to whether 2 (two) conditions have been fulfilled, namely:

- 1) Psychiatrist requirements, namely the defendant must have less than perfect intellect or change of mind, namely a state of insanity, which may have existed since birth or due to a mental illness. and this state must continue.
- 2) Psychologist requirements, namely mental disorders must be at the time the perpetrator commits a criminal act.

In Presidential Regulation Number 16 of 2018 there is nothing to regulate or prohibit providers of goods/services from transferring responsibility for all or part of the main work by subcontracting to other parties or subcontracting to specialist goods/service providers.

Furthermore, within 14 (fourteen) days from the signing of the contract, the user of goods and services will issue a Work Start Order (SPMK) which states when the work starts and when the work is completed. With the SPMK, providers of goods and services can start carrying out chartering services and consulting services according to the signed contract. If the sub-contract work or borrowing the name of another company in completing the work goes according to the rules and the work is completed on time and there are no problems, then of course it will not be a problem.

The problem that arises is if the provider of goods and services as the winner of the auc-

¹¹ E. Utrecht, *Pengantar Dalam Hukum Indonesia* (Jakarta: Universal, 1986), 292

¹² Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002), 178

tion and has signed the contract in carrying out his work turns out to have committed a criminal act of corruption, for example, specifications that are not in accordance with the contract

Using someone else's company name, starting from bidding to the winner made by the name UKNM sales or marketing company PT.MA. In the procurement, it is the Company that becomes the winner in the procurement of the Partus set of medical devices that participates in the auction following the stages of the procurement auction, not the Director or representing the company PT. CSL, but the one who made the bid to become the winner of the auction was the UKNM, which is a sales or marketing company PT. MA, which is a parturition device, a set of medical devices, won the procurement. So the company that borrows the name of another company.

Based on Article 78 of the Presidential Regulation Number 16 of 2018 Article 78 paragraph (1), namely: The actions or actions of election participants who are subject to sanctions in the implementation of the selection of providers are: (a) submitting false/incorrect documents or information to fulfill the requirements specified in the election documents;

Then in Presidential Decree Number 16 of 2018 Article 78 paragraph (4) states that: "The actions or actions as in paragraph (1), paragraph (2) and paragraph (3) are subject to:

- a. Sanctions are aborted in the election;
- b. Sanctions for disbursement of guarantees;
- c. Blacklist sanctions;
- d. Sanctions for compensation and/or
- e. fines

Then in paragraph (5) states that: Violations of the provisions as referred to in: (a)

paragraph (1) letters a to c are subject to sanctions for being disqualified in the election, sanctions for disbursing bid guarantees, and sanctions blacklisted for 2 (two) years. In the provisions of Article 81 of the Presidential Regulation Number 16 of 2018 states that: "In the event of a violation as referred to in Article 78 paragraph (1) letters a to c and Article 80 paragraph (1) letters a to c, UKPBJ shall report criminally.

The legal subject of criminal acts of corruption is that everyone is an individual or a corporation based on Article 1 point 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (simply called UUPTPK). So corporations are legal subjects in corruption crimes. Then in the PTPK Law Article 20 paragraph (1) in the case of a criminal act of corruption committed by or on behalf of a corporation, criminal charges and penalties can be made against the corporation and or its management. So the corporation and its management can be punished.

In relation to the case in this article, the business entity that signed the contract only borrowed its name, so it must be seen in the case of its position, whether the company borrowed by PT.CSL has the same purpose as the sales or marketing department called UKNM from PT.MA. If the management of PT.CSL has the same intention or knows and is physically involved in the process from bidding to the winner of the actions of UKNM sales or marketing PT.MA, then of course the two PT.CSL companies can be held accountable as participants, and the PT. Supreme Court as the perpetrator as regulated in Article 55 paragraph (1) 1 of the Criminal Code. However, if PT.CSL does not have the same intention as that of UKNM, only to lend the name

of the company PT.CSL, and does not have the same intention or desire as intended by UKNM sales marketing from PT.MA, then of course PT. CSL cannot simply be held criminally responsible, because the condition for being convicted is the intention in the form of intent in Article 55 paragraph (1) 1 of the Criminal Code.

Likewise with regard to the provisions of Article 56 of the Criminal Code paragraph (1) those who intentionally provide assistance when a crime is committed; and paragraph (2) those who intentionally provide opportunities, means or information to commit the crime. So the emphasis is whether the company being lent, namely PT. CSL provides loans intentionally to facilitate or provide opportunities for SMEs sales marketing PT. MA perpetrators to commit criminal acts, if that is the case, of course it can be categorized as meeting the provisions of Article 56 of the Criminal Code, but if the loan is the company by PT CSL does not intend or there is no desire to provide assistance or opportunity for corruption to occur, then PT. CSL cannot be blamed, in accordance with the principle in criminal law, namely there is no crime without error (*Geen Straf Zonder Schuld*).

The losses suffered by the business entity whose name was borrowed were quite large because in addition to material losses, the good name of the business entity became bad and lost the opportunity to be able to participate in auctions for procurement of goods and services carried out by other governments because they were blacklisted.

Using other companies to participate in the procurement of government goods and services is common. The practice still exists today. The act of borrowing the name of another company to participate in a tender for the pro-

urement of goods and services (PBJ) is often also called borrowing the flag of another company. Unfortunately, there are no explicit and detailed rules prohibiting borrowing flags from other companies when participating in tenders.

Borrowing flags can occur because each of them is an affiliated company or is controlled by someone who is a *beneficialowner*, if it is true that the borrowed management is actually PT. CSL, then of course the beneficial owner can be held criminally responsible. But it can also happen because the name of a certain company has won the tender too many times, so to trick the auctioneer, borrow the name of another company. It can also happen because the bidder does not meet the number requirements, so that the name of another company is used to fulfill the requirements.

However, it does not mean that the act of borrowing the flag does not contain the potential for violating the law¹³. In the procurement of goods and services, it is explained that borrowing flags violates three provisions. First, violating the principles and ethics of procurement as regulated in Articles 6-7 of Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services. Article 7 requires all parties involved in the Procurement of Goods and Services (PBJ) to comply with ethics, including preventing waste and leakage of state finances. Second, violating the prohibition on making and giving false statements or providing false information, according to LKPP Regulation No. 9 of 2019. Third, hit the prohibition on trans-

¹³ Muhammad Yasin, "Hati-Hati Meminjamkan 'Bendera' Perusahaan Dalam Pengadaan Barang-Jasa," *Hukum Online*, last modified 2020, <https://www.hukumonline.com/berita/baca/lt5f4656e4575ab/hati-hati-meminjamkan-bendera-perusahaan-dalam-pengadaan-barang-jasa>.

ferring all or part of the work to other parties, as regulated in LKPP Regulation No. 9 of 2018 concerning Guidelines for Procurement of Government Goods/Services.

Based on the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it is expressly stated that corporations as legal subjects can be held criminally responsible. Based on Article 4 paragraph (2) of Perma No. 13 of 2016, the corporation can be blamed if the corporation (a) obtains profits or benefits from a certain criminal act or a crime is committed for the benefit of the corporation, (b) allows a criminal act to occur, or (c) does not take the necessary steps to prevent the crime. prevention, preventing a greater impact, and ensuring compliance with applicable legal provisions in order to avoid the occurrence of criminal acts. So the actions of UKNM as sales marketing of PT. MA that result in state financial losses, if it is systematically structured on behalf of and interests of the company, and the company makes a profit, and the company does not try to prevent the occurrence of criminal acts, then based on Perma Number 13 of 2016, the Company must be responsible, namely PT.MA.

David O. Friedrichs defines a corporate crime as a crime committed by a corporation's management for the benefit of the corporation or a crime committed by the corporation itself (*offences committed by corporate officials for their corporation at the offences of the corporation itself*)¹⁴

. 13 of 2016, a corporate crime is defined as a crime committed based on a work relationship or other relationship, acting indi-

vidually or jointly for and on behalf of the corporation inside and outside the corporate environment.¹⁵ While the working relationship in question is the relationship between the corporation and its workers or employees based on an agreement that has an element of work, wages. In other words, the relationship between workers and corporations occurs after an agreement is made, namely an agreement regarding the ability of employees to receive wages and the corporation is able to employ workers or employees by paying wages. So in the case in this article, UKNM as a sales marketing employee commits a crime on behalf of the corporation, then of course UKNM and corporate management must be held responsible.

Corporate crime is not only related to work relations, but also takes the form of other relationships, namely the relationship between the management and the corporation or with other corporations so that the other party acts for the benefit of the first party based on an agreement, both written and unwritten. As Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in article 20 paragraph 2 reads “ *A criminal act of corruption is committed by a corporation if the crime is committed by people both based on work relationships or based on other relationships, acting within the corporate environment either individually or jointly.* ” So, there are two things that must be considered in corporate crime, namely there are criminal acts committed based on work relations and crimes committed based on other rela-

¹⁴ David O. Friedrichs, *Trusted Criminals: White Collar Crime In Contemporary Society* (USA: Wadsworth, 2010), 7

¹⁵ Budi Suhariyanto, “Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi,” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 1, <https://jurnal.dpr.go.id/index.php/hukum/article/view/855>.

tionships. The person who can be said to be the manager or controller of the corporation if we refer to the organ theory is the person who controls the company, either alone or jointly which in this case is seen as controlling the company which consists of directors and managers. It is different if we refer to Article 1 number 2 of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) which defines the company's organs as consisting of the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners.

The indicator of corporate error has been regulated in Article 4 paragraph (2) of Perma No. 13 of 2016.¹⁶ It is emphasized that in imposing a criminal offense against a corporation, judges can assess a corporation's faults from three aspects, namely:

1. Corporations can obtain benefits or benefits from criminal acts or criminal acts committed for the benefit of the corporation. In this case, Perma No. 13 of 2016 does not further explain what kind of benefits can be categorized as corporate profits, whether these profits are directly or indirectly obtained by the corporation from one of its management organs who commits a crime. Even though, for example, the corporation does not know about the crime committed by its management, the crime also indirectly benefits the corporation;
2. Corporations allow criminal acts to occur. In this case, Perma No. 13 of 2016 also does not provide further explanation re-

garding the definition or meaning of a corporation having allowed a criminal act to occur.

3. The corporation does not take the necessary steps to prevent, prevent a bigger impact, and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

With regard to the element of error contained in Article 4 paragraph (2) letters a and b of Perma No. 13 of 2016 which leads to *vicarious liability*. Barda Nawawi Arief argues that in vicarious liability, a person can be held accountable for the actions and mistakes of others. Accountability can be requested if the mens rea of a person associated with a corporation commits a crime intentionally and aims to benefit the corporation. Basically, the *vicarious liability* is based on the *employment principle*, which means in this case the employer is the main person responsible for the actions of the workers or employees. If the employee has been proven to have committed a criminal act with the aim of benefiting the corporation, the corporation must be responsible without the need to prove an order from the corporate management in committing the crime¹⁷. This is because the corporation has been positioned as an employer who is vicariously responsible for the actions of its subordinates. Thus, based on the vicar's responsibility, it is possible for a corporation to be held criminally responsible for the actions of its employees, proxies, or mandates, or any-

¹⁶ Sutan Remy Sjahdeini, *Ajaran Pidana Tindak Pidana Korporasi & Seluk Beluknya* (Jakarta: Kencana, 2017), 244 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)* (Jakarta: Prenadamedia Group, 2016), 246.

¹⁷ Fitriani Rahmadia, Hari Sutra Disemadi, and Nyoman Serikat Putra Jaya, "Criminal Liability in Environmental Crimes Committed by Corporations after the Supreme Court Regulation Number 13 of 2016 at Indonesia," *Unram Law Review* 4, no. 1 (2020): 3, <https://unramlawreview.unram.ac.id/index.php/ulrev/article/view/86>.

one who is responsible for the corporation.¹⁸ A corporation can only avoid responsibility if it can prove that the corporation has made appropriate efforts to prevent the occurrence of the crime. Through the approach to the offense of failing to prevent it, the employee's error becomes the fault of the corporation so that the management's mens rea is the corporate mens rea. In other words, the mens rea of workers or employees is attributed to the corporation.¹⁹

Below are the procedures for handling corruption based on Article PERMA NO. 13 of 2016 namely:

Article 3

Criminal acts by corporations are criminal acts committed by people based on work relationships, or based on other relationships, both individually and collectively who act for and on behalf of the Corporation inside and outside the Corporate Environment.

Article 4

- (1) Corporations may be held criminally liable in accordance with the provisions on Corporate crimes in the law governing Corporations.
- (2) In imposing a crime against a Corporation, the Judge may assess the guilt of the Corporation as referred to in paragraph (1) including but not limited to:
 - a) The corporation may gain or benefit from the crime or the crime is committed for the benefit of the Corporation;
 - b). Corporations allow criminal acts to occur; or
 - c). The corporation does not take the

necessary steps to prevent, prevent a greater impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts.

Article 5

In the event that one or more Corporate Management quits, or dies, it does not result in loss of Corporate responsibility.

Article 6

In the event that a criminal act is committed by a corporation involving the parent corporation and/or subsidiary corporations and/or related corporations, they can be held criminally accountable according to their respective roles.

Article 7

1. In the event of a merger or consolidation of Corporations, criminal liability is imposed to the extent of the value of the assets or assets placed against the Corporation that receives the merger or the Corporation resulting from the consolidation.
2. In the event of a separation of the Corporation, criminal liability is imposed on the separated Corporation and/or the Corporation that performs the separation and/or both in accordance with the roles performed.
3. In the event that the Corporation is in the process of being disbanded, criminal liability will still be imposed on the Corporation that will be dissolved.

Article 8

- (1) belonging to the Corporation which are suspected of being used to commit a crime and/or constitute the proceeds of a crime, law enforcement is carried out in accordance with the mechanism as stipulated in the legislation.

¹⁸ *Ibid.*

¹⁹ Kristian, "Urgensi Pertanggungjawaban Pidana Korporasi," *Jurnal Hukum & Pembangunan* 44, no. 4 (2014): 575–621, <http://jhp.ui.ac.id/index.php/home/article/view/36>.

(2) assets paragraph (1) may be filed against the former management, heirs or third parties who control the assets of the disbanded Corporation.

Article 9

- (1) Summons to the Corporation are addressed and delivered to the Corporation to the address where the Corporation is domiciled or the address where the Corporation operates.
- (2) In the event that the address as referred to in paragraph (1) is not known, the summons shall be addressed to the Corporation and delivered through the address where one of the Management resides.
- (3) In the event that the residence or place of residence of the Management does not it is known, the summons is submitted through one of the printed or electronic mass media and affixed to the announcement place in the court building authorized to hear the case.

Article 10

The contents of the summons to the Corporation shall at least contain:

- a. the name of the Corporation;
- b. domicile;
- c. Corporate nationality;
- d. Corporate status in criminal cases (witness suspect/defendant);
- e. the time and place of the inspection; and
- f. summary of alleged criminal events related to the summons.

Article 11

- (1) Examination of a corporation as a suspect at the investigation level is represented by an administrator.
- (2) Investigators conducting an examination of a Corporation summon the Corporation represented by the Management as referred to in paragraph (1) with a valid

summons.

- (3) The management who represents the Corporation in the examination as referred to in paragraph (1) and paragraph (2) must attend the examination of the Corporation.
- (4) In the event that the Corporation has been properly summoned to be absent, refuses to attend or does not appoint the Management to represent the Corporation in the examination, the investigator determines one of the Management to represent the Corporation and summons again with an order to the officer to bring the Management in by force.

Based on the description of Perma Number 13 of 2016 it can be concluded that in criminal acts committed by the PT.MA corporation, those who are asked to be criminally responsible for the Corporation or the Management, or the Corporation and the Management. If the corporate management of PT.CSL knows the intentions or actions committed by PT.MA employees, resulting in a criminal act of corruption, and PT.CSL benefits from these actions, then of course PT.CSL can be held criminally responsible, but if the management of PT.CSL do not know and the act of getting any benefit from acts of corruption committed by employees of PT. MA, then PT. CSL cannot be held criminally responsible.

The provisions of Article 25 of the Supreme Court Number 13 of 2016 in paragraph (1) concerning the imposition of criminal charges against corporations and/or against management in the form of principal and/or additional penalties. Then for paragraph (2) the principal penalty that can be imposed on the Corporation as referred to in paragraph (1) is a fine. Paragraph (3) Additional penalties are imposed on the Corporation in accordance

with the provisions of the legislation. Article 28 paragraph (1) states: In the case of a fine imposed on the Corporation, the Corporation is given a period of 1 (one) month from the date the decision has permanent legal force to pay the fine. In paragraph (2) it is stated: If the convict of the Corporation does not pay the fine as referred in paragraph (1) and paragraph (2), then the property of the Corporation may be confiscated by the prosecutor and auctioned off to pay the fine. While Article 29 paragraph (1) states: In the event that a fine is imposed on the Management, the Management is given a period of 1 (one) month from the date the decision has permanent legal force to pay the fine. In paragraph (2) it is stated: If the fine is not paid in part or in full, the Management shall be sentenced to imprisonment in lieu of a fine which is calculated proportionally.

CONCLUSION

Corporate liability in criminal acts committed by the PT.MA corporation, which is asked to be criminally responsible for the Corporation or the Management, or the Corporation and the Management. If the corporate management of PT.CSL knows the intentions or actions committed by PT.MA employees, resulting in a criminal act of corruption, and PT.CSL benefits from these actions, then of course PT.CSL can be held criminally responsible, but if the management of PT.CSL do not know and the act of getting any benefit from acts of corruption committed by employees of PT. MA, then PT. CSL cannot be held criminally responsible.

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