

The Corporation as One of the Actions in Narcotics

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Abstract--- *Corporate crimes are often referred to as organizational crimes or crimes committed by legal entities. Corporations can be criminally accounted for, because crimes committed by corporations have a huge loss to society, the environment and the country. In fact, some corporate cases are not only as a means to commit crimes, but are used as a means to collect proceeds of crime so that corporations benefit from the proceeds of crime. Indonesian criminal law has recognized corporations as subjects of criminal law since the emergence of Emergency Law No. 17 of 1951 concerning the Stockpiling of Goods, and Law No. 7 of Emergency of 1955 concerning Economic Criminal Act (Wet Economic Delichten). However, the Indonesian Criminal Code (KUHP) has not explicitly regulated corporate responsibility as a criminal offender. Therefore in practice law enforcement has a different interpretation of the corporation. In the context of narcotics distribution, corporations can act as producers, the container and those who distribute narcotics to the public. To ensnare corporations as narcotics awareness offenders, Article 130 of Law 35 of 2009 concerning Narcotics may be subject. These provisions can revoke business licenses and company management can also be given other legal actions.*

Keywords--- *Corporations, Perpetrators, Circulation, Narcotics, Indonesia.*

I. INTRODUCTION

The development of narcotics circulation from time to time shows an increasing trend. Until now, narcotics circulation has spread to all countries, both developed and developing and poor countries, even narcotics distribution has touched various levels of society, not only in urban areas, but has touched the rural layers. Therefore, it is not wrong if the crime of narcotics distribution is categorized as organized crime, white collar crime, corporate crime, and transnational crime because these crimes are organized, systematic and widespread (United Nations Office on Drugs and Crime, 2017). Narcotics crime ranks 20th in the world ranking as the cause of death of humanity (Morgan, 2013). *The United Nations Office on Drugs and Crime (UNODC) estimates that around 200 million people worldwide have used this type of narcotics illegally* (Jenner, 2011). According to UNODC, narcotics in Indonesia enter through syndicates from West Africa, Europe, India, Iran and China (Armaghani, 2018). Judging from its type, the types of narcotics that are widely circulating in Indonesia are methamphetamine or methamphetamine originating from Eastern Europe and Western Europe, such as from Poland, the Netherlands, China and Myanmar (Sekretariat DPR RI, 2017).

In its report, UNODC said that drug abuse in Indonesia is more than that of Amphetaminetype stimulants (ATS) such as crystalline methamphetamine or methamphetamine and ecstasy (United Nations Office on Drugs and Crime, 2013). This fact is also supported by data from the National Narcotics Agency (BNN) which states that the amount of evidence and confiscation of methamphetamine and ecstasy that was successfully confiscated by BNN officers exceeds other types of drugs. Methamphetamine and ecstasy products circulating in Indonesia enter from

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Iran, Germany, the Netherlands, Belgium and China through Singapore and Malaysia as transit countries before being sent to Indonesia via Medan and Jakarta. (United Nations Office on Drugs and Crime, 2017).

Surprising fact that in 2018, the ranks of the Directorate General of Customs and Excise (DJBC) in collaboration with the Police of the Republic of Indonesia (Polri), the Indonesian National Armed Forces (TNI) and the National Narcotics Agency (BNN) conducted the arrest of drug carrying vessels with a number of 1.6 tons more in the Riau Islands region. Recorded until March 2018, the DJBC staff working together with the National Police, the TNI and BNN succeeded in cracking down on 80 cases of drug smuggling, with a total number of drugs being secured as much as 2,876 tons (Sakti, 2018). All illicit goods are in the position via land, sea and air. However, as much as 80 percent of drugs enter through the sea. The mode of smuggling through the sea remains a favorite of drug syndicates because of the vast area of the ocean and the large number of islands in Indonesia which have become a weak point exploited by drug syndicates (Sakti, 2018).

World bodies such as the United Nations (UN) through the United Nations Office on Drugs and Crime (UNODC) reported that there were an estimated 3.7 million to 4.7 million narcotics users in Indonesia. The number is detailed by the type of narcotics that 1.2 million people are users of crystalline methamphetamine and around 950,000 people use ecstasy. Meanwhile there are 2.8 million cannabis users and around 110,000 heroin addicts. It was stated that narcotics abuse throughout 2014 was estimated at 33.8 million people and in 2015 research conducted by BNN in collaboration with the University of Indonesia's Health Research Center estimated that narcotics users reached 5.8 million (Primantari, 2013).

Although there is no definitive data on the number of drug abuse cases in Indonesia, it is estimated that in the last few years the number of drug abuse cases tends to increase, even the actual number is estimated as an "iceberg phenomena", where the number of cases there are far more greater than cases reported or collected. According to data from the National Narcotics Agency (BNN) during 2016 there were 807 narcotics cases and 1,238 people were named as suspects with details of 1,217 Indonesian citizens and 21 foreign nationals (Saputra, 2017). However, in 2017, the number of handling drug cases increased to 46,537 cases (Adhitia, 2017).

According to his qualifications, corporate crime is classified as a white collar crime that uses a sophisticated modus operandi and can also have a transnational dimension which is carried out across countries and territories. The combination of the two qualifications results in a broad scope of crime and a very large loss impact. It is said so because the victims caused by crimes committed by corporations include the general public, consumers who use the products produced, corporations that act as competitors, and unprotected employees or workers. Even the State can become a victim of corporate crime where corporate criminal acts cause financial losses to the State or the economy of the State.³ To secure its economic policies, the government should expand regulations governing business activities, both through new regulations and tougher enforcement⁴ especially those related to accountability corporate law offenders.

The issue of corporate responsibility for criminal offenses is not a simple matter, considering that corporations are legal entities. This problem stems from the existence of the principle of no criminal without error. The mistake is mens rea or heart attitude which naturally only exists in natural people. Mens rea is a difficult

element to prove from a corporation that is considered to have committed a crime because the corporation can only carry out actions through the organs of directors. Corporations can be considered criminal offenses based on acts committed by those who control the management of the corporation. Juridical construction used to say that a corporation has committed a crime is if the crime was committed by a corporation's management or employees who are still within the scope of their authority and for the benefit of the corporation.

II. METHOD

This type of research is legalistic, doctrinal or normative. According to Rowe, normative research aims to find, explain, assess, analyze and systematically state facts, principles, concepts, theories, laws so as to find new knowledge and ideas to be suggested as a change or renewal. (Rowe, 2009). In this research, all documents, references, facts, theories, doctrines and laws relating to corporations as criminals in narcotics distribution in Indonesia will be examined.

According to Mandi Zahraa, normative research is "A fresh, diligent, systematic, inquiry or investigation of the factual data and theoretical concepts of the rules and principles of a particular legal issue in an attempt to discover, revise or improve the relevant concepts, theories, principles and application (McCrudden, 2006)." Normative research means doing a new, thorough, systematic, research on facts, data, concepts, principles, theories, particular legal issues to make discoveries, reviews and changes to concepts, theories, principles, formulas and models. In addition, normative research can also be conducted on issues concerning the overlap of a law, between a conflicting law and the existence of ambiguity or ambiguity in a law.

The approach used in legalistic research can be in the form of a statute approach, a historical history, a case analysis approach and a legal comparison approach. (*comparative approach*) (Diantha, 2017). However, this study only uses a legal approach with the aim of analyzing laws relating to the regulation of narcotic crimes, especially those relating to corporate regulations as perpetrators of narcotics distribution in Indonesia..

III. LITERATURE REVIEW

Corporate crime is sometimes called organizational crime. Etymologically the word corporation is a translation of corporatie (Dutch), corporation (English) and corporation (German) which gives meaning as a body or body, or in other words a body made as a person, a body obtained by human actions as opposed to human beings that occurs according to nature. The term corporation is a term commonly used among criminal law experts to refer to what is commonly used in other laws, especially in the field of civil law, as a legal entity or in Dutch referred to as a recht persoon or in English referred to as legal entities or corporations (Budianto, 2012). However, at present developments, corporations do not have to be interpreted only as legal entities, but must be interpreted more broadly, namely as an organized collection of people or wealth, whether they are legal entities or non-legal entities. Thus, in addition to being a limited liability company, a cooperative, a foundation can also be a firm, limited partnership without the rights of legal entities and associations, associations and others. (Muladi, 1995).

At first the corporation was very difficult to incur criminal liability, therefore many obstacles in determining the form and actions of the corporation were to blame in the concept of criminal law. The problem of

the absence of physical form. As stated by William William that: corporation has "no soul to be damned, no body to be kicked" and the corporation cannot be ostracized because "*they have no soul*" (Nwator, 2013). This is a reflection of the slogan of criminal law, i.e. *the deed does not make a man guilty unless his mind be guilty* (*Actus non facit reum, nisi mens sit rea*) (QC, 2008). However, this slogan does not last long because there are many systems in various countries, the court has begun to place the essence of the human element into a corporate arrangement that benefits the corporation through the actions of human intermediaries, then it is certain that, if the company can benefit from expertise their human elements, they must also bear the burden arising from the crimes committed by these humans, not only on the basis that they act for the company (vicarious liability), but they act as companies.

Corporate placement as a legal subject in criminal law is inseparable from social modernization, according to Satjipto Rahardjo, social modernization must first be recognized that the more modern the society, the more complex the social, economic and political systems contained there, the need for a life control system that is formal will become even greater. Social life can no longer be left to a relaxed pattern of rules, but rather a more neatly organized, clear and detailed arrangement is needed. Even though such methods might meet the growing needs of community life, the problems that arise are far greater.

If, corporations can be categorized as legal subjects, the corporation or business entity can be held criminally liable. In the aspect of criminal law, criminal liability towards corporations as perpetrators of crime is not stated explicitly and explicitly in the Criminal Code (KUHP). However, the basic legality is regulated in special regulations or laws outside the Criminal Code, including:

Article 15 Emergency Law Number 7 of 1955 concerning Investigation, Prosecution and Judgment of Economic Crimes;

1. Article 20 of Law Number 31 of 1999 yo Number 20 of 2001 concerning Eradication of Corruption Crimes;
2. Article 6.7 and 9 of Law Number 18 of 2010 concerning Criminal Acts of Money Laundering;
3. Article 13–16 of Law 21/2007 concerning the Eradication of the Criminal Act of Trafficking in Persons;
4. Article 70 of Law Number 5 of 1997 concerning Psychotropics;
5. Article 130 of Law 35 of 2009 concerning Narcotics;
6. Articles 17 and 18 of Law No. 15 of 2003 concerning Terrorism;
7. Law Number 40 of 2007 concerning Limited Liability Companies,

Criminal offense to the perpetrators of criminal offenses regulated in the regulation above, based on an error (liability based on fault). This is in accordance with the principle "*nulla poena sine culpa*", which means there is no criminal without error. This condition is difficult if applied to corporations. As a corporate legal entity it has no soul, so it is impossible to make mistakes. The doctrine of liability based on fault cannot be applied to corporations as perpetrators of crime. But theoretically it is possible for deviations from the principle of error using the doctrine of strict liability (absolute responsibility), vicarious liability (substitute accountability). As a consequence, corporations as perpetrators of criminal offenses are difficult to face.

The non-conviction of corporations as perpetrators of criminal acts was followed by Tangerang District Court Decree Number 30/Pid.B/1990/PN/TNG dated August 1, 1990 concerning poison biscuits, where the convicted person was the director of CV Gabisco both as a person and his capacity as a Director. Whereas in the Decision of the Supreme Court of the Republic of Indonesia Number 2239K / Pid.Sus / 2012 concerning the tax evasion case of PT. Asian Agri Group (AAG). Corporations are convicted even though in their prosecution the Public Prosecutor did not prosecute the corporation. In both decisions the perpetrators of criminal acts are preferred by humans, not yet touching legal entities or corporations.

IV. RESULT AND DISCUSSION

In Law No. 35 of 2009 concerning Narcotics, states that narcotics can only be used for the benefit of health services and / or the development of science and technology. Based on this provision, narcotics is something that may be used or utilized as long as it is used or utilized for the benefit of health services, or for the development of science and technology, so that narcotics circulation must be monitored or controlled by the government (Kiaking, 2017).

In general, Law No. 35 of 2009 concerning Narcotics regulates several aspects, namely the procurement (production) of narcotics, distribution (distribution) of narcotics, use (consumption) of narcotics. In the law, there are 38 articles that regulate and prosecute perpetrators of criminal offenses with various penalties in accordance with the role and actions of his speech. For example, Article 111 of Law No. 35 of 2009 concerning Narcotics determines that:

Any person who is without the right or violates the law to plant, maintain, possess, store, control, or provide Narcotics Group I in the form of plants, shall be sentenced to a maximum of 4 (four) years in prison and a maximum of 12 (twelve) years and a criminal fine of at least Rp. 800.000.000.00 (eight hundred million rupiah) and a maximum of Rp. 8.000.000.000.00 (eight billion rupiah);

In the case of the act of planting, maintaining, possessing, storing, controlling, or providing Narcotics Group I in the form of plants as referred to in paragraph (1) weighing more than 1 (one) kilogram or exceeding 5 (five) trees, the perpetrators shall be criminally convicted life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

One type of narcotics that is widely circulated and consumed by the public is cannabis (marijuana). Cannabis is a type of Narcotics Group I plant that grows wild like grass. Marijuana plants are easy to grow and thrive in tropical regions like Indonesia, so that in some areas in Sumatra, cannabis plants grow and are very high quality. Marijuana is usually used by local residents to become a food seasoning (Kiaking, 2017). The mode of abuse of cannabis related to the provisions of this Article has developed in such a way that it is found to grow marijuana in the yard, plantations, in flower pots, grow marijuana in apartments and elsewhere.

Crimes according to Article 114 of Law No. 35 of 2009, stated as follows:

Any person without the right or unlawfully offering to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging or submitting Type I Narcotics, shall be sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a criminal fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000.00,000.00 (ten billion rupiah);

In the case of acts offering to sell, sell, buy, become intermediaries in buying and selling, exchanging, delivering, or receiving Narcotics of Group I as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) trees or in the form of non-plant ask 5 (five) grams, the offender is sentenced to capital punishment, life imprisonment, or a maximum imprisonment of 6 (six) years and a maximum of 20 (twenty) years and a maximum criminal penalty as referred to in paragraph (1) plus 1/3 (one third).

Criminal provisions in Article 114 are more directed at narcotics abusers for business purposes or motives, namely to sell, offer, exchange, and so on. Group I Narcotics against Narcotics abusers are determined by criminal threats in Article 127 of Law No. 35 of 2009 determines the following:

Every User:

1. Narcotics of Group I shall be personally sentenced to a maximum imprisonment of 4 (four) years;
2. Narcotics of Group II for themselves shall be sentenced to a maximum imprisonment of 2 (two) years;
3. Narcotics of Group III for themselves shall be sentenced to a maximum imprisonment of 1 (one) year.
4. In deciding the case as referred to in paragraph (1), the Judge must pay attention to the provisions referred to in Article 54, Article 55, and Article 103.
5. In case the abuser as referred to in paragraph 91) can be proven or proven to be a victim of Narcotics abuse, the Abuser must undergo medical rehabilitation and social rehabilitation.

In narcotics abuse, there are several roles that cause the offense. For example there are those who produce narcotics, distribute or distribute da tones also only as users or connoisseurs of these illicit goods. However, the Narcotics Act and the Psychotropic Act explicitly do not explain the meaning of "Narcotics / Psychotropic dealers". Implicitly and narrowly it can be said that, "Narcotics / Psychotropic dealers" are those who carry out distribution and submission of Narcotics / Psychotropics. However, the broad definition of "dealer" can also be done and oriented to the dimensions of the seller, buyer to be circulated, transported, stored, controlled, provided, carried out the act of exporting and importing "Narcotics / Psychotropics".

In the provisions of the Narcotics Act the "dealer" is regulated in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125. Furthermore, in the Psychotropic Law governed in Article 59 paragraph (1) letters a, c, Article 60 paragraph (1) letters b, c, paragraph (2), (3), (4), (5), Article 61 and Article 63 paragraph (1) letters a Psychotropic Law. However, in essence, the policy on the formulation of criminal sanctions for "Distributors" and "Users" of the Indonesian Narcotics Act substantially in this study is emphasized against violations of the Narcotics Act and the Psychotropic Law. M. Cherif Bossouni stated that there were 3 (three) policies, namely formulative / legislation policies, applicative / judicative policies and administrative / execution

policies. Formulative policy is a policy that is strategic and decisive, because mistakes in the legislative policy will affect the applicable / judicative policies (Bossouni, 1978).

Next up is narcotics users. Users are people who use substances or medicines that come from plants, both synthesis and semi-synthesis that can cause a decrease or change of consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached in the Act Narcotics / Psychotropics.

In the provisions of the Narcotics Act, "users" are regulated in Articles 116, 121, 126, 127, 128, 134, and in the Psychotropic Law regulated in Articles 36, 37, 38, 39, 40, 41, 59 paragraph (1) letters a, b and Article 62 of the Psychotropic Law. Juridical implications of the provisions of Article 4 letter d, Article 54 and Article 127 of the Narcotics Act to determine the narcotics users of victims or perpetrators, namely narcotics users as perpetrators of crime and at the same time as victims.

Next is the narcotics dealer. Basically, drug "dealers" in legal terminology are categorized as perpetrators (daders), but "users" can be categorized as either "perpetrators and / or victims". As victims, drug users are citizens who must be protected, respected and respected in their rights both in the legal process and in the health and social dimensions.

Crime according to Law No. 35 of 2009 also includes corporate crimes, namely crimes involving or using a business entity or legal entity such as a Limited Liability Company to abuse Narcotics, as determined in Article 130 paragraphs, that:

In the case of a criminal offense as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120. Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 are committed by corporations, in addition to imprisonment and fines against their management, penalties that can be imposed on corporations in the form of fines with weights of 3 (three) times from fines as referred to in these articles;

In addition to the fines as referred to in paragraph (1), corporations may be subject to additional penalties in the form of revocation of business licenses and / or revocation of legal entity status.

Law Number 35 of 2009 concerning Narcotics also includes criminal charges, namely:

Article 70 explains that if a psychotropic crime as referred to in Articles 60, 61, 62, 63, and 64 is committed by a corporation, in addition to the conviction of a criminal offense, the corporation is subject to 2 (two) criminal penalties for the fine applied to the crime and additional criminal sanctions may be in the form of revocation of business license;

Article 71 states that anyone who conspires or agrees to commit, carry out, assist, order to take part in committing, advocating or organizing a criminal act as referred to in Article 60, 61, 62, or Article 63 in the criminal offense as a conspiracy against criminal threats plus a third of the criminal applicable to the crime;

Article 72 states that if a psychotropic crime is carried out by using a child who is not yet 18 (eighteen) years old and not married or a person is under control or when committing a crime has not passed two years after completing all or partially imprisoned to him, a criminal threat plus a third of the applicable crime for the crime.

In judicial practice, the logical consequence of the normative formulation of the Narcotics / Psychotropic Law is that both the "dealer" and the "user" are convicted of punishment. It is natural, if the narcotics "dealer" is dropped the punishment is relatively heavier in proportion to the level of his conduct. In the Narcotics Act, "dealers" are threatened with imprisonment, fines to the death penalty.

Penalties also apply to corporations. For example, if criminal penalties range from Rp.1,000,000.00 (one million rupiahs) to Rp.10,000,000,000.00 (ten billion rupiahs), then crimes committed by corporations may be subject to 3 (three) folds of weight from the fines that are threatened and for imprisonment ranging from 1 (one) year to 20 (twenty) years.

Criminal Law Policy related to criminal sanctions, crimes, actions and burdens in Law Number 35 Year 2009 concerning Narcotics is (Susanti, 2018):

Sanctions used in the form of criminal sanctions and sanctions acts (maatregel)

For criminal sanctions covering the main penalties in the form of: capital punishment, life imprisonment, imprisonment with a certain time limit, imprisonment, fines and additional penalties in the form of: revocation of certain rights against corporations in the form of revocation of business licenses and / or revocation of legal entity status .

For sanctions actions (maatregel) in the form of: medical and social rehabilitation and expulsion and prohibition on entering Indonesian territory for foreign nationals who commit criminal acts in Indonesia after undergoing criminal sanctions.

Difficult to dismantle the practice of psychotropic circulation, Law No. 5 of 1997 specifically regulates the agreement of evil. There are several modus operandi found that dealers (business owners such as pharmacies, drug depots and clinics or other types of business) with consumers work together so that drugs classified as psychotropic are easily sold freely to the public. Article 71 of the Psychotropic Law stipulates that conspiracy is limited to conspiracy or agreement to commit, assist, order, participate in committing, advocating or organizing a criminal act referred to in Article 60, Article 61, Article 62 or Article 63.

Pursuant to Article 72 of the Psychotropic Law, if conspiracy involves immature children, it will still be aggravated like an adult, namely the crime plus a third of the penalties applicable to Article 160 through Article 63 of the Psychotropic Law. In addition to establishing the basic crime, the Psychotropic Law also provides additional crimes. However, not all perpetrators of crimes in the field of Psychotropics can be subject to additional crimes, because these crimes are only directed at corporations and foreigners.

For corporations that commit the crime, in addition to being subject to a principal crime that is a fine of two criminal penalties under Article 60, Article 61, Article 62, Article 63 and Article 64, additional penalties may also

be subjected to under Article 70 in the form of revocation of business license and company management can other legal measures are also provided (Sasangka, 2003). Therefore, criminal liability against corporations can be applied to people as administrators of the agency as well as to the corporation itself.

V. CONCLUSION

Regulations in Law No. 35 of 2009 concerning Narcotics not only regulates narcotics abuse but the law also regulates illegal production and distribution. Illegal production and distribution or distribution of narcotics is not only done by someone but it can also be done by corporations. Corporate crime is a crime involving or using a business entity or legal entity such as a Limited Liability Company (PT) to abuse Narcotics, but it can also be done by smaller business entities such as hospitals, health clinics and pharmacies ... in the legal aspect, corporations that carry out acts criminal distribution of narcotics may be subject to Article 130 of Law Number 35 of 2009 concerning Narcotics.

Corporations that commit crimes can be convicted with various criminal criteria. Corporations may be subject to principal penalties, namely a fine of two penalties based on Article 60, Article 61, Article 62, Article 63 and Article 64, but corporations may also be subject to additional penalties under Article 70 in the form of revocation of business licenses and company management can also be given legal action the other. Therefore, criminal liability against corporations can be applied to people as administrators of the agency as well as to the corporation itself.

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