LEX JOURNAL : KAJIAN HUKUM DAN KEADILAN, 2025
Vol. 9, No. 1, 80-91
E-ISSN: 2580-9113 | P-ISSN: 2581-2033
Open access at: https://ejournal.unitomo.ac.id/index.php/hukum

Check for updates

Type: Research Article

Corporate Criminal Liability in the Field of Taxation

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ABSTRACT

Criminal law enforcement against corruption by corporations in the taxation sector in Indonesia has not yet had a maximum impact in creating a deterrent effect. This article examines the obstacles to law enforcement against corporations that commit tax crimes using Lawrence Meir Friedman's legal system theory. The method used is normative legal research with legislation, legal theory, and case studies. The study results show a mismatch between legal substance, legal structure, and legal culture in criminal law enforcement efforts against corporations. Juridical obstacles include the absence of explicit provisions in the Criminal Code and KUP Law that explicitly regulate corporate criminal liability. In addition, the corporate criminal liability model still emphasizes the individual administrators, not the corporate entity. In conclusion, there is a need for legal reforms that clarify the position of corporations as subjects of criminal law and the application of the principles of strict liability and vicarious liability to strengthen the effectiveness of law enforcement in the field of taxation.

KEYWORDS

Law Enforcement;
Corporation;
Taxation Crime

INTRODUCTION

Criminal law enforcement against corruption by corporations in the taxation sector does not seem to have an adequate impact in preventing taxpayers from committing tax violations and crimes, such as tax avoidance and evasion. Although there has been reform in the field of taxation since 1983, the deterrent effect on the perpetrators is still not optimal. According to the legal system theory proposed by Lawrence Meir Friedman, a sociologist of law from Stanford University, the success of law enforcement is largely determined by three main elements in the legal system, namely Legal Content (*Legal Substance*), *Legal Structure* (*Legal Structure*), and Legal Culture (*Legal Culture*).[1] Friedman emphasized that these three aspects together form the foundation to assess whether law enforcement can run well or not. In the context of taxation, the relationship between adequate legal content, efficient legal structure, and legal culture that supports integrity and justice is crucial to increase the effectiveness of law enforcement against corruption by corporations in the field of taxation. The non-optimality of criminal law enforcement against corporations involved in corruption in the taxation sector is caused by several obstacles. These obstacles involve aspects of substance, apparatus, and existing legal culture. These obstacles are a serious challenge in enforcing the law effectively, given its complexity at various levels, both in the context of legal material, the performance of law enforcement officials, and the values and norms in the developing legal culture.

Based on the perspective of legal substance or statutory material, it can be explained that Law Number 6 Year 1983 on General Provisions and Tax Procedures, Article 38, which was last amended by Law Number 16 Year 2009 (KUP Law), provides provisions regarding legal consequences for violations of tax obligations. The article states that a violation of a tax obligation committed by a taxpayer, particularly related to tax administrative actions, may be subject to administrative sanctions through the issuance of a Tax Assessment Letter and Tax Collection Letter.[2] However, when the violation is in the form of a tax crime, the sanction applied is criminal. Therefore, punishable acts are acts that are not only administrative offenses but also considered criminal offenses in the field of taxation. This refers to acts that violate tax laws and regulations and can cause state financial losses, and the perpetrators can be criminally punished.[3]

The law explicitly distinguishes between administrative sanctions and criminal sanctions, focusing on acts or actions that are considered criminal offenses in the field of taxation. This shows that criminal penalties are imposed for acts that go beyond administrative aspects and are more law enforcement in nature against tax crimes, which have the potential to cause state financial losses. About Corporations, according to Komariah Emong Saparjaya, it was initially difficult to accept the concept that Legal Entities can be involved in criminal offenses, considering that legal entities are not legal subjects in the context of criminal law. Since the making of the Criminal Code, it is clear that the subject of criminal law only includes private individuals (natural). This difficulty stems not only from the

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1 Lawrence M Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975).
2 *Ibid*.
3 *Ibid*.

formulation of criminal offenses in the KUHP, which begins with the phrase "whoever," but is also related to the provisions of Article 59 of the KUHP, which specifically limits itself to the management or commissioners personally.[4] The article states that if an offense results in punishment of the management, members of the management body, or commissioners, then individuals who are not directly involved in the offense will not be punished.

Oemar Seno Adjie and Jono Supriyanto argue that the Indonesian Criminal Code still holds the general principle that criminal offenses can only be committed by humans (*natuurlijk person*), so the concept of legal entity (*rechts person*) does not apply in the realm of criminal law, unless some laws and regulations regulate otherwise outside the Criminal Code.[5] Furthermore, Criminal Code Article 59 confirms that in determining the punishment for offenses involving the management, members of the management body, or commissioners, the punishment will not be imposed on the management or commissioners if it is proven that the offense was committed outside of their responsibility. Lawrence Meir Friedman's theory of legal structure or legal institutions has an important role in determining the effectiveness of legal implementation. Currently, there are deviations from the main principles of general criminal law in tax legislation.[6] One form of such deviation is tax amnesty or bleaching. Tax amnesty refers to the act of taxing something that should have been declared invalid under the law. This process involves providing an opportunity within a certain period for taxpayers to report unlawfully acquired property, so that the property can be designated as a tax object without any criminal investigation.

The discussion on the application of the theory of corporate criminal responsibility with the doctrine of fault as the main focus of analysis is a crucial aspect. Corporate crime, as part of *white-collar crime*, is not always as easily visible to the public as criminal offenses in general. Determining the guilt (*mens rea*) of the corporation is a challenge because the activities of corporations can be reflected by the actions of owners or shareholders, top managers, and employees. However, determining the guilt (*schuld/mens rea*) of the corporation becomes complex due to the complicated relationship in organizational crime between the board of directors, executives, and managers on the one hand, and the parent company and subsidiaries on the other, which form a very complex structure. Ernest Freund argued that corporate crime should be based on collective guilt and only accepted if such guilt can be proven. In those days, the notion that there was a collective fault was probably easier to accept than it is now. [7]

Criminal law enforcement against corporations as perpetrators of corruption in the taxation sector in Indonesia has not yet reached the optimal level as expected, because it is faced with various obstacles, both in terms of substance, apparatus, and legal culture. To explore and analyze the core of the problems related to criminal law enforcement against corporations involved in criminal acts of corruption in the

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4 *Ibid*.

5 Henry Alejos et al, "Pertanggungjawaban Korporasi Terhadap Korban Kejahatan" (2021) 3:1 J RECTUM Tinj Yuridis Penanganan Tindak Pidana 100–113, online: <http://www.albayan.

6 Lawrence Meir Friedman, *Teori-Teori Hukum Klasik dan Kontemporer* (Jakarta: Ghalia Indonesia, 2011).

7 *Ibid*.

field of taxation, as previously stated, a conceptual framework analysis tool is used based on the Legal System Theory proposed by Lawrence Meir Friedman, a sociologist of law from Stanford University. According to Friedman, the success of law enforcement is determined by three key elements in the *legal* system, namely *legal substance*, *legal* structure, and legal *culture*.

METHOD

This research uses a normative *legal* research method, which focuses on analyzing the applicable legal norms related to corporate criminal liability in tax crimes. The approaches used are the *statute approach*, the *conceptual* approach, and the *case* approach. The data used is secondary data, which includes primary legal materials in the form of laws, secondary legal materials in the form of legal literature, scientific journals, and other tertiary legal materials. Data collection techniques are carried out through literature studies by tracing relevant legal sources. Data analysis is carried out qualitatively, by reviewing, interpreting, and compiling legal data to be analyzed using Lawrence Meir Friedman's legal system theory as the main analytical tool. This research aims to provide a comprehensive understanding of the effectiveness of criminal law enforcement against corporations in the taxation sector in Indonesia.

RESULT & DISCUSSION

Satjipto Rahardjo defines a corporation as an entity formed by law. This created entity, as previously explained, includes not only private individuals but also legal entities or corporations that have tax obligations. In the current legal context and literature, the term "Legal Entity" consists of two elements, namely "*corpus,*" which refers to its physical structure, and the element "animus," which adds a legal dimension that gives the entity a personality. A legal entity is therefore considered a legal creation, and both its creation and its termination are governed by law.[8]

In Indonesia, the discussion related to corporate criminal liability as a subject of criminal law has three models identified by Mardjono Reksodiputro.[9] First, the criminal liability model involves corporate management as policy makers and responsible management. Second, a model that places the corporation as a policy maker and is responsible for management. Third, a model where the corporation acts as a policy maker and is also responsible for the action. These models are related to the stages of development of corporations as subjects of criminal law previously described. The order of this criminal liability model reflects the stages of corporate development. The management of the corporation that acts as a policy maker and manager is also responsible for the action. At this level, the corporate management is burdened with certain obligations, even though these obligations belong to the corporation. If the management does not fulfill these obligations, it can be subject to criminal sanctions. This model is reflected in the current Indonesian Criminal Code. The contents of the Criminal Code do not explicitly regulate corporate criminal offenses, but rather criminal offenses committed by corporate

[8] Satjipto Raharjo, *Ilmu Hukum* (Bandung: Alumni, 1986).
[9] *Ibid*.

officers and their criminal liability.[10] The emphasis on this first model shows that the current Indonesian Criminal Code is more directed towards individual liability, especially corporate officers, in the context of corporate criminal offenses. Further developments in regulation may consider a more comprehensive model of criminal liability for corporations as subjects of criminal law.[11]

The next development that can be considered in regulation is to involve corporations as subjects of criminal law directly. In the second model identified by Mardjono Reksodiputro, the corporation is considered a policy maker, and its management is responsible for the action. This model reflects the next step in the evolution of corporate criminal liability, where the focus increasingly shifts from individual officers to the corporate entity as a whole. Finally, the third model emphasizes dual responsibility, where the corporation is not only a policy maker but also responsible for the actions taken. This model reflects the understanding that corporations as legal entities have a significant role in determining policies and are responsible for the implementation of these policies.[12]

In the context of applicable regulations, the understanding of corporate criminal liability in Indonesia can continue to evolve along with legal changes that may occur. The awareness of the need to involve corporations as subjects of criminal law can encourage reforms in the law, ensuring proportional and effective accountability for criminal acts involving corporations. Until now, the Criminal Code does not have provisions that regulate or emphasize that corporations or legal entities can be the subject of criminal acts that can be subject to criminal charges and sanctions. The fundamental difference between human individuals and legal entities lies in the fact that humans have the freedom to do everything that is not prohibited by law, while legal entities are only allowed to do things that are explicitly or implicitly permitted by the law or its basic regulations.

In terms of legal substance, criminal law enforcement against corporations as perpetrators of corruption in the field of taxation experiences juridical obstacles. One of the main obstacles is the absence of regulations that comprehensively recognize companies or corporations as subjects of tax crimes since the enactment of the Dutch Criminal Code in 1818. Through the principle of concordance and Law of the Republic of Indonesia Number 73 Year 1958, the recognition of companies or corporations as subjects of criminal acts has not been thoroughly emphasized. The phrase "whoever" in the Criminal Code does not explicitly include companies or corporations as subjects that can commit and be punished. This definition becomes clearer in KUHP Article 59, which, although it does not explicitly recognize corporations as "subjects of criminal law," provides a legal loophole for corporate criminal liability. The question also arises as to whether the applicability of Article 59 can be applied to the current legal structure of limited liability companies, which have corporate organs such as the General Meeting of Shareholders (GMS), Board of Directors, and Board of Commissioners. The incompatibility of Article 59 of the Criminal Code, which was born in 1818, with the current legal status of limited liability companies is also the reason why Article 155 of Law Number 40 of 2007 on

[10] *Ibid*
[11] *Ibid*
[12] Arief, *supra* note 7.

Limited Liability Companies regulates liability in criminal law as a form of imposition of more comprehensive liability in both civil and criminal law.

In the National Criminal Code, the criminal subject has been expanded in the definition of "Person," which previously only included natural individuals or natural persons (*natuurlijk persoon*), now also includes Corporations. This change is stated in Chapter V on 'definition of terms' Article 145 of the National Criminal Code, which states that "Every Person is a natural person, including Corporations." Corporations are given equal standing with natural persons, and this also affects the definition of a Corporation set out in Article 146 of the National Criminal Code. The definition of a Corporation, according to the National Criminal Code, includes groups of people and/or assets, both those with legal entity status and those without legal entity status. This definition has a broader scope compared to the definition of Corporation in other laws and regulations. Thus, Corporations are considered legal subjects equivalent to natural individuals or natural persons in the National Criminal Code.

This change has significant implications, where the opportunity to assign general criminal offenses to Corporations becomes more open and not limited to special criminal offenses only. For example, Article 47 of the National Criminal Code states that Corporations can be held responsible for criminal acts if (a) the act falls within the scope of business or activities stipulated in the articles of association or other provisions applicable to the Corporation, (b) it provides benefits that are contrary to the law and recognized as Corporation policy, (c) the Corporation does not take the necessary preventive measures to avoid greater impact and ensure compliance with applicable legal provisions, and (d) the Corporation allows criminal acts to occur. If the Corporation meets these conditions, the consequence is that the Corporation is treated as an individual criminal offender, by Article 49 of the National Criminal Code. This article emphasizes that the legal position of the Corporation is equal to other criminal offenders, such as administrators with functional positions, commanders, controllers, and/or beneficial owners of the Corporation.

Corporate criminal responsibility in Indonesia has been recognized since 1955 through Law No. 7/DW1955 in conjunction with Law No. 1/1961 on the Investigation, Prosecution and Trial of Economic Crimes, and this remains valid until now. The placement of corporate criminal responsibility in criminal laws outside the Criminal Code is a concrete step to overcome the doubts and restrictions contained in Criminal Code Article 59, as stated at the beginning of this paper. Since corporations were recognized as subjects of criminal acts in the Emergency Law (Drt Law), several other special criminal laws (*lex specialis*) also stipulate corporations as subjects of criminal acts. Although factually, corporations have been accepted as subjects of criminal law by considering the development of society, their existence as subjects of criminal acts has recently begun to be recognized. For example, in the United States, corporations were considered as subjects of criminal law since 1909 in the case of New York Central and River R.R. v. United States.[13] The liability of a corporation as a subject of criminal offense can be explained and accounted for based on abstract-logical thinking, which refers to the empirical experience that corporations are often used as a tool to carry out or accommodate

[13] Hasbullah F Sjawie, *Pertanggungjawaban Pidana Korporasi pada Tindak Pidana Korupsi* (Jakarta: Prenada Media, 2015).

the results of a criminal offense. In this context, corporations are considered to benefit from criminal acts that harm the interests of other parties or other corporations. This view is a development that revokes the classic doctrine of "*universitas delinquere non potest*" (legal entities cannot sin) and further strengthens the identification theory or functional perpetrator theory (*functionele dader*).[14]

This thinking is reflected in criminal legislation, where the notion of "every person" includes both private individuals and corporations, whether incorporated or not. Therefore, in the Indonesian criminal law system, corporations are explicitly recognized as subjects of criminal acts, and there is no longer any doubt about it. This development in the Indonesian criminal law system is based on the recognition that corporations are often used as a "cover" or shield for criminal acts. Corporations can be a tool used to carry out criminal acts or be an entity that accommodates the proceeds of these criminal acts.

Corporations can engage in acts that can be considered reprehensible, so it is natural for corporations to be held criminally responsible. In this context, the criminal law doctrine recognizes two forms of corporate criminal liability, namely "*respondeat superior*" and "*vicarious liability,"* based on the theory of identification. In addition to these two forms of liability, corporate actions that are "*ultra vires*" can also be interpreted as actions that violate civil law (*onrechtmatige daad*) or, within the framework of government organizations, are referred to as acts against government law (*onrechtmatige overheids daad*). Thus, the form of corporate criminal liability is not only limited to the principles of "*respondeat superior*" and "*vicarious liability*," but also includes an evaluation of corporate acts that may be considered as violations of civil law or, in the context of government, as acts that violate government law.

Growth in the understanding of corporate criminal liability, both in the context of corporations and *corporate* crime, has increased. The term "corporate criminal *liability*" refers to the concept of criminal *liability* in criminal law, which initially only involved humans as subjects of criminal acts. This means that only individual humans can be prosecuted and sentenced to criminal sanctions. However, in Indonesia, the development of thought has shown that it is not only individual humans who can be subject to criminal sanctions, but also corporations. In a narrow sense, a corporation is considered a legal entity or business entity, while in its broadest sense, the concept of corporation includes not only legal entities but also organized groups. In examining corporate crime or corporate criminal acts, the question arises whether this opens up the possibility of prosecuting and punishing individuals, including administrators or managers, in addition to the legal entity itself. Nonetheless, the role of those humans or individuals is still considered important, and therefore, they can still be the target of prosecution.

Article 23A of the Constitution of the Republic of Indonesia, Year 1945, after being amended, mandates that "Taxes and State revenues that are compulsory for State purposes are based on the Law." In the context of tax law, the recognition of corporations is regulated in Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax

[14] *Ibid*.

Procedures (KUP Law). Article 1, point 2 of the KUP Law explains that "Taxpayers are individuals or entities who, according to the provisions of tax laws and regulations, are determined to carry out tax obligations, including the collection or withholding of certain taxes." Article 1 point 3 of the KUP Law states that "Entity is a group of people and/or capital that constitutes a unit both conducting business and not conducting business which includes other companies, state or regional owned enterprises with any name and in any form, firms, partnerships, cooperatives, pension funds, partnerships, associations, foundations, mass organizations, social organizations."

Although corporations have a significant role in economic development, especially in their contribution to tax revenue, no legislation explicitly regulates sanctions against corporations if they are involved in tax crimes. Although special attention is directed at increasing the social responsibility of corporations related to tax payments, there are no legal provisions that explicitly mention the sanctions applied to corporations in the context of tax crimes. The criminal provisions in the KUP Law, which are regulated in Articles 38 through 39A, do not include specific sanctions for corporations. Although corporations can act as taxpayers, no article in the KUP Law explicitly states who is responsible for criminal offenses in the tax sector and the types of crimes that can be imposed on corporations. This also applies in the Criminal Code, where no article expressly regulates this matter.

The lack of clarity in the laws and regulations related to criminal sanctions for corporations involved in tax crimes creates confusion and uncertainty. Although corporations are recognized as taxpayer subjects, the absence of provisions that expressly stipulate sanctions for tax violations by corporations is an obstacle. Related to this point, it is necessary to discuss whether the imposition of sanctions on corporations should include the closure or termination of corporate activities. This is due to the potential for significant social and economic impacts if such sanctions are applied. In this context, there is a concern that laborers working in the corporation will be directly affected. In addition, there needs to be special attention to the aspect of criminal liability in tax law. So far, the KUP Law has not provided clear provisions regarding who is responsible for criminal offenses in the tax sector and what types of crimes can be imposed on corporations. The absence of these provisions can provide room for diverse interpretations and interpretations, adding to the complexity of law enforcement in the tax sector. In addressing the regulatory vacuum and lack of clarity, it is necessary to evaluate and revise the legislation to ensure that corporations can be subject to appropriate criminal sanctions if involved in tax crimes. This is in line with the principles of justice and effective law enforcement to encourage tax compliance from the parties involved. The third system of liability, in which the corporation acts as the author of the criminal offense and is also responsible, marks the beginning of the direct responsibility of the corporation. In this system, the possibility of prosecuting the corporation and holding it accountable under criminal law is open. Several reasons can be used as justification or basis for corporate liability:

First, in economic and fiscal crimes, corporate profits or public losses can be so great that punishment of only the management will not be balanced. Second, by only punishing the management, there is no guarantee that the corporation will not repeat criminal acts. By imposing sanctions on corporations by their nature, it is

hoped that corporations will comply with applicable regulations. State losses can be calculated as a result of unlawful acts, either due to negligence or intentionality, which come from State levies that are not paid or deposited into the State treasury by the perpetrators of criminal acts in the field of taxation. Article 39 paragraph (3) states that every person who attempts to commit a criminal offense, misuses or uses without a Taxpayer Identification Number or confirmation of a taxable entrepreneur, or provides untrue or incomplete information to apply for restitution or make tax compensation or tax crediting.

These acts of negligence and deliberation result in the State not being able to collect money under the provisions of the Tax Law, thus hurting State revenues. This has implications for the implementation of national development aimed at achieving people's prosperity and social justice for all Indonesian people. Crimes in the field of taxation may involve acts or omissions by the provisions of tax legislation. Therefore, acts or omissions in the field of taxation can be considered as crimes in the field of taxation if they fulfill the formulation of tax law rules. To then be able to recognize or avoid actions as a form of crime in the field of taxation requires fundamental analysis or in-depth knowledge to understand more clearly. First, actions taken contrary to the principles of tax law can be considered crimes in the field of taxation. For example, taxpayers perform actions such as submitting a notification letter, but the substance is incorrect, incomplete, unclear, or unsigned.[15]

Secondly, when no action is taken, but still complies with the provisions of the tax law, it can also be categorized as a crime in the field of taxation. For example, taxpayers do not pay taxes for a certain period or tax period for each type of tax.[16] If a crime in the field of taxation fulfills the elements of a tax offense, this indicates that the perpetrator of the crime must be subject to criminal sanctions under the provisions of tax law. When looking at criminal sanctions as a threat of punishment aimed at criminals who fulfill the formulation of tax law rules, the sanctions are limited to imprisonment, confinement, and fines. These three types of punishment are included in the category of basic punishment. The application of criminal instruments in the KUP Law is a special law outside the Criminal Code, and this cannot be separated from the principle of ultimum remedium, or as a last resort, if other legal sanctions are no longer considered effective in enforcing tax evasion.[17]

The regulation of tax crimes involves subjective and objective elements. The subjective element is related to the guilt or ability to be held responsible, while the objective element includes the formulation of unlawful acts that harm the public interest in the laws and regulations. The concept of corporate crime can conceptually be understood as active and/or passive misconduct involving the corporation and/or corporate personnel and controllers in their obligations and duties, both inside and outside the corporation, to fulfil corporate goals.

Corporate crime policy must consider the application of the principles of *strict liability* and *vicarious liability* in legislation. The principle of *strict liability* relates to corporate punishment without proving the element of guilt for unlawful acts. Meanwhile, the principle of *vicarious liability* relates to corporate punishment based on unlawful acts of personnel or corporate controllers for delegating relevant

15 Djafar, *supra* note 2.
16 *Ibid*
17 *Ibid*.

authorities and obligations. The regulation of criminal offenses in the KUP Law emphasizes the element of fault, both negligence and intentionality, committed by taxpayers, which includes individuals and legal entities, or corporations. Article 38 and Article 39 of the KUP Law detail the provisions regarding the negligence and willfulness of taxpayers, threatening them with fines imprisonment, or imprisonment. However, the construction using the phrase "every person" in Article 38 and Article 39 of the KUP Law may cause ambiguity and multiple interpretations regarding corporate tax subjects.

Conceptually, tax crime involves two main elements, namely subjective and objective. The subjective element concerns guilt or the ability to be responsible, while the objective element relates to the formulation of unlawful acts that harm the public interest in the context of laws and regulations. In regulating corporate criminal offenses, it is important to consider the application of certain principles. The principle of *strict liability* emphasizes corporate punishment without proof of the element of fault for unlawful acts. On the other hand, the principle of *vicarious liability* highlights corporate punishment based on unlawful acts committed by personnel or controllers of the corporation, depending on the relevant delegation of authority and obligation. In the KUP Law, the regulation of criminal acts focuses more on the element of fault, both in the form of negligence and intentionality, committed by taxpayers. The definition of taxpayer includes individuals and legal entities, or corporations. Article 38 and Article 39 of the KUP Law detail the provisions regarding the negligence and willfulness of taxpayers, with criminal penalties in the form of fines, confinement, or imprisonment. However, the construction of the phrase "any person" in Article 38 and Article 39 of the KUP Law may lead to ambiguous interpretations regarding corporate or corporate tax subjects. Therefore, the regulation of tax crimes needs to be clarified so as not to cause ambiguity and multiple interpretations, especially in the context of corporations as subjects of criminal law, clarified so as not to cause ambiguity and multiple interpretations, especially in the context of corporations as subjects of criminal law.

CONCLUSION

The concept of corporate criminal liability has developed rapidly in Indonesia. There is an understanding that corporations, as legal entities or business entities, can be the subject of criminal acts and be subject to criminal sanctions. This thinking goes beyond the initial concept that only relates criminal liability to individual humans. This development is reflected in the use of the term "criminal liability," which, in the context of criminal law, now includes the possibility of prosecuting and punishing corporations. The definition of a corporation is not limited to legal entities only, but also includes a broadly organized group. In the face of corporate crime, such as acts against civil law or government, the corporation can be considered the perpetrator, and not only the individuals within it, can be prosecuted. Corporations as legal subjects have long been recognized in the realm of civil law, but in criminal law, there is still debate over whether corporations can be considered legal subjects. The Criminal Code does not expressly mention corporations as subjects of criminal law; if a corporation is involved in a criminal offense, responsibility is usually demanded on its individuals or administrators, by the *university* doctrine *of delinquere non*

potest. Although the Criminal Code does not regulate it, the recognition of corporations as legal subjects can be found in laws outside the Criminal Code, such as the KUP Law. Although UU KUP recognizes corporations as taxpayers, the relevant articles, such as Articles 38 to 39A, do not explicitly include sanctions for corporations that commit tax crimes. Corporations that violate may be subject to administrative sanctions by Article 13 of the KUP Law, but the deterrent effect on corporations that commit tax crimes is still questionable.

In the effort to overcome crimes in the field of taxation, the application of criminal law aims to create cohesiveness in legal policy. However, it is necessary to pay attention to the principle of subsidiarity, where heavier types of punishment are only used if other criminal sanctions are considered insufficient or do not support the purpose of punishment. Although tax criminal sanctions are regulated in Articles 38 to 43A of KUP Law, it has not been fully able to provide a deterrent effect against corporations involved in tax crimes, considering the rampant cases of using corporations as a "shield" for crimes. Nevertheless, the role of humans or individuals in corporations is still considered significant, and can still be the target of prosecution. In conclusion, the recognition of corporate criminal liability reflects the evolution of legal thinking in Indonesia, emphasizing that not only legal entities, but also individuals within them, can be held responsible and punished for criminal acts committed by corporations.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

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