

## Legal Review of Corporate Crime Against Sanctions as Substitute for Fines (District Court of Serang, Banten, Indonesia)

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### Article Info:

| Submitted: 26 January 2022

| Revised: 2 August 2022

| Accepted: 5 August 2022

### Recommended Citation: *Chicago Manual of Style 17<sup>th</sup> edition (full note)*

Reine Rofiana, "Legal Review of Corporate Crime Against Sanctions Substitute for Fines (At Serang District Court)", *Jurnal Nurani Hukum : Jurnal Ilmu Hukum*, Vol. 5 No. 2, (December, 2022)", P.137-147

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### ABSTRACT

*This study aims to examine, analyze and understand the concept of corporate criminal responsibility and the reformulation of alternative criminal penalties against corporations for unpaid fines. Several criminal cases that have been resolved at the Serang District Court until 2020 have not found a single corporation that has been tried and convicted for committing a corporate crime. The judge is only passive, the judge's authority is only to examine, hear and decide cases based on the indictment made by the public prosecutor. Return of court case files to the prosecutor's office only if the indictment does not meet material requirements. PERMA Number 13 of 2016 does not regulate if the criminal fine cannot be paid by the corporation due to insufficient or non-existent corporate assets. This research was conducted in a normative juridical manner so that the disclosure was bound by a method based on the requirements of deductive logic, prioritizing literature studies with secondary data bases, namely primary, secondary and tertiary legal materials. In terms of evidence in court, if the fact is found that the corporation should also be a legal subject who can be held criminally responsible, the public prosecutor should have made a separate indictment for the legal subject of the corporation so that the corporation does not escape its responsibility. The provisions in PERMA No. 13 of the Year should regulate corporate assets if they do not pay the fines enough or even do not have the assets to pay the fines. Law enforcement officials should investigate the assets of the corporation first.*

**Keyword:** *Corporate Liability, Indictment, Substitute Criminal*

## **ABSTRAK**

Penelitian ini bertujuan untuk mengkaji, menganalisis dan memahami konsep pertanggungjawaban pidana korporasi dan perumusan kembali alternatif pidana denda terhadap korporasi atas denda yang belum dibayar. Beberapa perkara pidana yang telah diselesaikan di Pengadilan Negeri Serang belum ditemukan satu pun korporasi yang telah diadili dan dipidana karena melakukan tindak pidana korporasi. Hakim hanya bersifat pasif, kewenangan hakim hanya untuk memeriksa, mengadili dan memutus perkara berdasarkan surat dakwaan yang dibuat oleh penuntut umum. Pengembalian berkas perkara pengadilan ke kejaksaan hanya jika surat dakwaan tidak memenuhi syarat materiil. PERMA Nomor 13 Tahun 2016 tidak mengatur jika pidana denda tidak dapat dibayar oleh korporasi karena harta kekayaan korporasi tidak mencukupi atau tidak ada. Penelitian ini dilakukan secara yuridis normatif sehingga pengungkapannya terikat dengan metode yang didasarkan pada persyaratan logika deduktif, dengan mengutamakan studi kepustakaan dengan basis data sekunder yaitu bahan hukum primer, sekunder dan tersier. Hakim seharusnya diberikan kewenangan untuk mengembalikan berkas perkara ke kejaksaan, terutama mengenai siapa subjek hukum yang harus bertanggung jawab. Ketentuan dalam PERMA No. 13 Tahun 2016 seharusnya mengatur harta kekayaan perusahaan apabila tidak cukup membayar denda atau bahkan tidak memiliki harta kekayaan untuk membayar denda. Aparat penegak hukum harus menyelidiki aset korporasi terlebih dahulu..

**Kata Kunci:** *Tanggung Jawab Korporasi, Dakwaan, Pidana Pengganti.*

## Introduction

Corporations play a major role in the interests of society and the interests of the state. The existence of corporations is inseparable for social life to meet the needs of mankind, while in the interests of the state it plays a role in the national economy in increasing the growth of the country's economy. In addition, corporations also generate income for the community and the state, such as state revenues in the form of taxes and foreign exchange, as well as creating employment opportunities, increasing technology transfer, and so on.

However, in addition to reaping profits that have a positive impact on society and the state, corporations can also cause negative consequences that lead to criminalization of corporations, this thing happens when corporations pollute water, air and land, exploit or drain natural resources that do not care about the environment, competition, and manipulation.

Taxes and fraud, exploitation of workers without payment for their rights, products or defects that are below standard can harm consumers. Criminalization of corporations can also be applied to corporations that commit criminal acts of excise, corruption or money laundering, which can harm individuals or society at large, which in the end will also harm the state.<sup>1</sup>

Initially, corporations or so-called civil companies were only known in civil law, so the principle of corporate liability in Indonesia is not regulated in the current general criminal law (KUHP). The subject of criminal law in the Criminal

Code which can be seen in prisoner could be punished.

The formulation of criminal liability in the article does not adhere to the principle of corporate liability, which means that corporations are not considered as subjects of criminal law, therefore there is no punishment for corporate crimes, but this understanding is developing because in criminal law, corporations can be legal entities or not legal entity. As a collection of people and/or assets that are organized whether they are legal entities or not, corporations certainly have differences with individuals.

Subekti and Tjitrosidibio stated that what is meant with *corporatie* or corporation is a company which is legal entity. While Rudi Prasetyo stated: "The word corporation terms commonly used in criminal law experts to mention what is common in law others, particularly in the field of civil law, as a legal entity, or in Dutch is known as *rechtspersoon*, or the one in English called legal entities or corporations."<sup>2</sup>

In Indonesia, corporations are known as criminal law subjects. However, currently there is uncertainty regarding the concept of the corporation as a subject of criminal law and what entities can be accounted for in criminal law. In addition, the regulation regarding the imposition of criminal liability for corporations is still very minimal, especially regarding the separation of corporate criminal responsibility and management (human subjects) when a crime occurs within the corporation.<sup>3</sup>

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<sup>1</sup> Parangan Stevy Nathaniel Isser, Konoras Abdurrahman, and Kumendong Wempie Jh., "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Cukai," *Lex Privatum* 9, no. 7 (2021): 98, <https://ejournal.unsrat.ac.id/index.php/lex-privatum/article/view/34709/32557>.

<sup>2</sup> Misbahul Huda, "Politik Hukum Tindak Pidana Korporasi Di Indonesia," *IBLAM Law Review* 1, no. 2 (June 30, 2021): 45-62, <https://doi.org/10.52249/ilr.v1i2.23>.

<sup>3</sup> Abdurrakhman Alhakim and Eko Soponyono, "Kebijakan Pertanggungjawaban Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi," *Jurnal Pembangunan Hukum*

In the Court, the Judge is only passive, the Judge's authority is only to examine, hear and decide cases based on the indictment made by the Public Prosecutor. The return of the case file from the court to the prosecutor's office is only if the indictment does not meet material requirements. Article 143 paragraph 2 of the Criminal Procedure Code states that the indictment must contain the full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect. Because it could happen in court based on existing legal facts that corporations are considered legal subjects who can be held criminally accountable. An important part of the criminal system is to establish a sanction. Sentencing can be interpreted as the stage of determining sanctions and also the stage of imposing sanctions in criminal law.

What is the purpose of punishment cannot be separated from the purpose of law in general, namely the achievement of material and spiritual community welfare and unwanted actions, namely unwanted actions, namely actions that bring harm to society. Determining the purpose of sentencing is quite a problem, because punishment has several purposes which can be classified based on theories about sentencing.<sup>4</sup>

The main criminal sanctions in various laws for corporate crimes that commit criminal acts are only fines. The Supreme Court Regulation (PERMA) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations only stipulates that if the corporation does not pay the fine, the corporate property can be confiscated by the prosecutor and auctioned off to pay the fine, but does not regulate if the fine

cannot be paid. Paid by the corporation because the corporation's assets are not sufficient to pay the fine or even have no more property to pay the fine.

Regulations regarding corporate sanctions still have to be regulated more fully and clearly so that later it will not become a problem in its implementation.

### Methodology

This research is a legal research. Legal research is a scientific activity, which is based on certain methods, systematics and thoughts that aim to study one or several certain legal phenomena, by analyzing them. This legal research is included in the category of legal science regarding basic understanding (*Begriffen wissenschaft*) which tends to limit itself to legal rules from a legal perspective that is aspired to and examines legal subjects, rights and obligations, legal events including their elements, legal relations as well as legal objects.

As an example, the *Begriffen Wissenschaft* study examines the scope of legal subjects (namely supporters of rights and obligations), types of legal subjects (natural persons, legal persons and officials or figures). in law is based on legal dogmatic or normative juridical.

Normative juridical is theoretically rational so that its disclosure is bound to a method based on the requirements of deductive logic. In addition, normative juridical discusses doctrines or principles in the science of law.

This study uses a normative juridical approach, namely how corporate responsibility and alternative reformulation of fines against corporations are made for unpaid fines.

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Indonesia, 2019, <https://doi.org/10.14710/jphi.v1i3.322-336>.

<sup>4</sup> Hidayat Chusnul Chotimah, Muhammad Ridha Iswardhana, and Tiffany Setyo Pratiwi, "Penerapan Military Confi

Dence Building Measures Dalam Menjaga Ketahanan Nasional Indonesia Di Ruang Siber," *Jurnal Ketahanan Nasional* 25, no. 3 (December 30, 2019): 331, <https://doi.org/10.22146/jkn.50344>.

## Discussion

Criminal liability is to impose penalties on the maker of because of an act that violates the prohibition or creates a situation that forbidden. Criminal liability therefore concerns the transition process punishment for the crime against the maker. Accountability punishment is determined based on the fault of the maker and not just by the fulfillment of all elements of the crime. Thus the error is placed as a determining factor for criminal liability and not only seen just a mental element in a crime.<sup>5</sup>

To determine that a Corporation or a proven corporation committing an act that prohibited has a fault, it must be confirmed First, the corporate crime used as the theoretical basis to determine whether or not a corporation or corporation is the actor's theory functional or identification theory. It is important to note is Based on the traditional view of the Criminal Code, which is still dominant today, influenced by the principle of "*societas delinquere non-potest*", as a result it is impossible for corporations to there is a fault in him because he has no heart.

After that, a criminal act committed by a corporation must be an act that is against the law and without any reason that removes the unlawful nature of an act. In the corporation there must also be things that come to a conclusion that he is a perpetrator who has the ability to be criminally responsible for crime committed.<sup>6</sup>

Criminal or *straf* can be interpreted as suffering a mere tool to achieve sentencing purposes. Punishment or punishment in essence is setting the law for an event. Criminal law is a law

that is included in the realm of law public. For this reason, the criminal law contains rules that determine actions that should not be carried out accompanied by threats in the form of criminal (misery) and determine the terms of the criminal can be imposed. As rules accompanied by a threat, criminal law cannot be separated from human values, so that criminal law is often described as a sword which is double-edged, on the one hand, criminal law aims to uphold values humanity, but on the other hand, the enforcement of criminal law actually imposes sanctions It's a shame for humans who violate it.<sup>7</sup> In criminal law there are elements or characteristics of criminal, namely:

- 1) The crime is essentially an imposition of suffering or distress or other unpleasant consequences;
- 2) The punishment was given intentionally by a person or entity who have power; and
- 3) The punishment is imposed on someone who has committed an act criminal law according to law.

Of these three elements, experts have formulated several theories regarding punishment, which is the legal basis and purpose of sentencing (*Strafrecht* Theory), namely:

- 1) *De Vergelding Theori* (Theory of absolute or vengeance);
- 2) *De Relative Theori* (Relative theory or goals);
- 3) *De Verenigings Theori* (Combined Theory); and
- 4) Integrated Theory of Criminal Punishment integrated)

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<sup>5</sup> Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis," *Jurnal Hukum Positum* 5, no. 2 (2021): 13, <https://journal.unsika.ac.id/index.php/positum/article/view/5556>.

<sup>6</sup> Herlina dan Riki Yanto Pasaribu Manullang, *Pertanggungjawaban Pidana Korporasi*, LPPM UHN Press, 2020.

<sup>7</sup> Yuyuk Uruk Suyono, *Teori Hukum Pidana Dalam Penerapan Pasal Di KUHP* (Surabaya: Unitomo Press, 2019).

Hart, whose opinion was quoted by Packer, stated: five characteristics that must exist from a "punishment", namely: According to Hart's view that a crime must contain suffering or normal unpleasant consequences. The punishment must be aimed at a violation of the rules law. Criminals must be imposed to prove to the violator about the offense he has committed, and the punishment must be imposed by a competent body in a legal system due to a criminal act.<sup>8</sup>

Regulations regarding the punishment of corporations are regulated separately, namely in the Supreme Court Regulation No. 13 of 2016 concerning procedures for handling criminal cases by corporations. The contents of Article 4 of the PERMA are:

- 1) Corporations can be held criminally responsible 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 Corporation's faults as referred to in paragraph (1), among others:

The corporation may obtain profits or benefits from the crime or the crime is committed for the benefit of the corporation;

- 1) Corporations allow criminal acts to occur; or
- 2) 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.

Although it has been affirmed normatively that corporations are a legal subject and can be accounted for, not many corporations have been criminalized. The reality is that many criminal processes stop at the management and not many follow up to ensnare and carry out criminal proceedings against their corporations.

Until 2020, no corporation has been tried and tried in a criminal case at the Serang District Court. A member judge at the Serang District Court, Guse Prayudi, explained that the court only examines and hears cases, which means that the court's authority if the case is transferred to the court, the court has the authority to examine, meaning that the court cannot look for cases and cannot determine a person or a legal entity that is proposed as a defendant so that the court is passive, only accepting case files submitted from the prosecutor's office.

To determine a person or corporation as the defendant in a criminal case, it is the police and the prosecutor's office. Therefore, until now the court has only criminalized the directors or management. Judges in examining and deciding cases are still guided by the indictment.

The application of criminal sanctions to corporations so far has never been imposed by judges, because no corporations have been prosecuted by the prosecutor's office for trial. As a result, corporations which, if indicated to have committed a crime, can still move freely. Corporations use natural persons as tools of crime with the intention of benefiting the corporation, but those who are convicted are only criminals only corporate managers.

Article 143 paragraph (2) of the Criminal Procedure Code states that the indictment must contain the full name,

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<sup>8</sup> Joko Sriwidodo, *Kajian Hukum Pidana Indonesia Teori Dan Praktek* (Kepel Press, 2019).

place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect. The public prosecutor must also describe carefully, clearly and completely regarding the criminal act that is being charged. Some of these identities are not appropriate if they are addressed to corporations or companies. For example, gender and religion, because corporations don't have it all.

Thus, the Criminal Procedure Code does not regulate corporate identity as a human legal subject in Article 143 paragraph (2) of the Criminal Procedure Code, but it can be addressed by looking at the corporate identity of the AD/ART.

The indictment is the basis criminal case investigation law the judge. Therefore, the defendant can only be convicted if proven to have committed a crime that mentioned in the indictment. If defendant in the judge's opinion proven to have committed a crime but not mentioned in the letter charges, then he can be sentenced criminal.<sup>9</sup>

In terms of evidence in court, if the fact is found that the corporation should also be a legal subject who can be held criminally responsible, the public prosecutor should have made a separate indictment for the legal subject of the corporation so that the corporation does not escape its responsibility. This is something that must be understood further by law enforcement so that corporations as perpetrators of criminal acts can be made defendants and prosecuted in court.

The regulation of corporate crime, must include options for criminal sanctions and or disciplinary actions as additional penalties which alternatively and or cumulatively can be imposed on the corporation and this includes fines,

forfeiture of profits, expropriation, temporary closing of buildings, temporary or permanent closure of corporations, revocation of license, announcement of judge's decision, temporarily or permanently prohibiting certain actions.

The purpose of the application of these sanctions is broad, namely general prevention, special prevention, conflict prevention, rehabilitation, rendering incapacity and can be regarded as retaliation. Apart from looking at the various provisions in the law regarding corporate responsibility, on the other hand, human resources (HR) must be improved so that they are reliable, especially HR at the prosecutor's office as public prosecutors and the judiciary who hears and decides cases. All of this is very necessary in eradicating crime, especially regarding corporate liability, while corporations have been known to be difficult to hold accountable for when an act can be charged to a corporation, and when an act cannot be charged to a corporation.

The paradigm shift that corporations can be held criminally accountable has consequences regarding the types of crimes that are appropriate to be applied to corporations because not all types of existing crimes can be given to corporations. In the special criminal law, the criminal sanction of a fine is the only principal crime that can be imposed on a corporation that commits a crime or violation, so that the imposition of a criminal fine on a corporation is a must (imperative).

High fines plus the existence of a criminal fine for corporations will be meaningless if it is not accompanied by rules for implementing criminal penalties or substitute penalties. The penalty

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<sup>9</sup> Hasanal Mulkan, "Status Terdakwa Setelah Surat Dakwaan Dinyatakan Batal Demi Hukum Dalam Perkara Pidana," *Jurnal Hukum Doctrinal* 5, no. 1 (2020): 47-61,

<https://jurnal.um-palembang.ac.id/doktrinal/article/view/2516>.

substitute for the fine serves so that the corporation cannot be separated from criminal responsibility as a subject of criminal law.

The Supreme Court Regulation (PERMA) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations was issued with the consideration that many laws in Indonesia regulate corporations as subjects of criminal acts that can be held accountable, but cases with corporate legal subjects are filed in criminal proceedings are still very limited. PERMA Number 13 of 2016, article 25, namely:

- 1) The judge imposes a sentence on the Corporation in the form of a principal and/or additional penalty;
- 2) The principal penalty that can be imposed on the Corporation as referred to in paragraph (1) is a fine;
- 3) Additional penalties are imposed on the Corporation in accordance with the provisions of the laws and regulations of PERMA Number 13 of 2016, article 28 paragraph 3, namely: If the convict of the Corporation does not pay the fine as referred to in paragraphs (1) and (2), the property of the Corporation may be confiscated by the prosecutor and auctioned off to pay the fine.

The main criminal sanctions against corporations can only be subject to fines. Corporations are not people who can be sentenced to death, imprisonment or imprisonment. The PERMA rule only stipulates that if the corporation does not pay the fine, the corporation's assets can be confiscated by the prosecutor and auctioned off to pay the fine, but does not regulate if the criminal fine cannot be paid by the corporation because the corporation's assets do not pay the fine or even have no money. property again to

pay the fine. So far, the handling of criminal acts by corporations has not been fully regulated in the special criminal law but is still regulated in the Attorney General's Regulations and the Supreme Court Regulations. PERMA should have comprehensively regulated criminal sanctions for corporations, especially regarding fines that are not paid enough or cannot be paid because the corporation no longer has the property to pay the criminal fine.

Law enforcement officers should investigate corporate assets when it is indicated that the corporation is involved in committing a crime. Investigators can freeze or confiscate corporate assets so that there is no longer any reason that the corporation no longer owns the assets. So that when the corporation is sentenced to a fine and the corporation cannot pay, the Prosecutor can immediately execute the criminal sanction of the fine by auctioning it off corporate property to pay a criminal fine.

However, if the corporation from the beginning of the investigation does not have property and if the corporation is imposed with a fine, it can be alternatively punished with a punishment in the form of dissolution or closure of the company.

Thus, the issuance of PERMA is a challenge for law enforcement officers in ensnaring corporations as perpetrators of criminal acts, which so far are still a debate about the procedures for implementing them. Regulations regarding corporations still have to be regulated more clearly in the draft KUHP which is being discussed in the DPR because PERMA was a transitional product before the RKUHP was enacted.

So far, the handling of criminal acts by corporations has not been fully regulated in the special criminal law but is still regulated in a Supreme Court Regulation. PERMA should have comprehensively regulated criminal sanctions for corporations, especially



regarding fines that are not paid enough or cannot be paid because the corporation no longer has the property to pay the criminal fine. Law enforcement officers should investigate corporate assets when it is indicated that the corporation is involved in committing a crime. Investigators can freeze or confiscate corporate assets so that there is no longer any reason that the corporation no longer owns the assets.

So that when the corporation is sentenced to a fine and the corporation cannot pay, the Prosecutor can immediately execute the criminal sanction of the fine by auctioning the corporate property to pay the criminal fine.

However, if the corporation has been investigated from the start and if the corporation has been sentenced to a fine, it can be alternatively punished with a punishment in the form of disbanding or closing the company. Thus, the issuance of PERMA is a challenge for law enforcement officers in ensnaring corporations as perpetrators of criminal acts, which so far are still a debate about the procedures for implementing them. Regulations regarding corporations still have to be regulated more clearly in the draft KUHP which is being discussed in the DPR because PERMA was a transitional product before the RKUHP was enacted.

### **Conclusion**

Several special criminal laws outside the Criminal Code do not provide a complete explanation of who is responsible when there is a crime involving corporations so that law enforcement officers find it difficult to determine who should be responsible. The reality is that many criminal processes stop at the management and not many follow up to ensnare and carry out criminal proceedings against their corporations. Several criminal cases that have been resolved in the Serang District

Court have not yet been found by a single corporation that has been prosecuted and tried and sentenced for corporate crimes. Judges are only passive, the judge's authority only examines, hears and decides cases based on indictment made by the Public Prosecutor.

The return of the case file from the court to the prosecutor's office is only if the indictment does not meet material requirements. Article 143 paragraph 2 of the Criminal Procedure Code states that the indictment must contain the full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect. Judges should be given the authority to be able to return case files to the prosecutor's office, especially regarding who the legal subject should be responsible for.

The legal subject, whether in the form of a person or a corporation, is indicated to be involved in a criminal act, so that the sanctions imposed are right on those who should be responsible so that there is conformity between the legal subjects in the indictment and the legal subjects who were sentenced to crime. In terms of evidence in court, if the fact is found that the corporation should also be a legal subject who can be held criminally responsible, the public prosecutor should have made a separate indictment for the legal subject of the corporation so that the corporation does not escape its responsibility.

The Criminal Procedure Code does not regulate corporate identity as a human legal subject in Article 143 paragraph (2) of the Criminal Procedure Code, but it can be addressed by looking at the corporate identity from the Articles of Association or Bylaws. This is something that must be understood further by law enforcement so that corporations as perpetrators of criminal acts can be made defendants and prosecuted in court.

The paradigm shift that corporations can be held criminally

accountable has consequences regarding the types of crimes that are appropriate for applied to corporations because not all types of existing crimes can be given to corporations.

The position of criminal fines which is the main crime for corporations causes criminal sanctions to be able to prevent corporations from committing criminal acts again or prevent other corporations from committing criminal acts, so there needs to be a distinction between sanctions for corporations and criminal sanctions for people (humans). High fines plus an increase in criminal fines for corporations will be meaningless if they are not accompanied by rules for implementing fines or criminal penalties his replacement. The penalty in lieu of the fine serves so that the corporation cannot be separated from criminal responsibility as a subject of criminal law.

The Supreme Court Regulation (PERMA) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations only stipulates that if the corporation does not pay the fine, the corporate property can be confiscated by the prosecutor and auctioned off to pay the fine, but does not regulate if the fine cannot be paid. paid by the corporation because the corporation's assets are not sufficient to pay the fine or even have no more property to pay the fine.

The issue of corporate property should also be regulated if it is not enough to pay the fine or even does not have the property to pay the fine. Law enforcement officers should first investigate whether the property or assets of the corporation still exist or no longer exist. After arriving at the investigation stage, the investigator must immediately freeze or confiscate the corporate assets so that the corporation does not escape its responsibility by transferring assets to hard-to-reach places or the corporation pretends not to have property or wealth anymore. If the corporation is guilty and is found to still have property, the frozen

or confiscated property can be immediately confiscated for the state if the corporation is sentenced to a fine.

However, if the corporation is found guilty and is found to have no more assets, the appropriate sanction is in the form of dissolution or closure of the company. The problem of determining sanctions in criminal law, regardless of the type and form of sanctions, must be based on and oriented to the purpose of punishment. After the purpose of punishment is determined, then the type and form of sanctions that are most appropriate for the perpetrators of the crime are determined. Regulations regarding corporate sanctions still have to be regulated more fully and clearly so that later it will not become a problem in its implementation.

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