



# The Influence Ethics on Corporate Crime Within The Scope Business Crime

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## ***Abstract***

The Influence of Business Ethics on Corporate Crime in the Scope of Business Crime". The corporate sector that is able to play a positive role in national development is the corporate sector which is a national asset and not a corporation which is only a burden and a parasite of society. This corporate sector group is a group that complies with business ethics, for example, adheres to good corporate governance, obeys the rules of the game of healthy business competition, and applicable laws and regulations. In other words, this positive role in national development refers to corporations that are able to practice the principles of business ethics and also the principles of good corporate governance in carrying out their business activities. There is a tendency to punish corporations more using the "Subsidiarity" principle, namely criminal law is placed in the position of "Ultimate Remedium". However, as an effort for the Deterrence Effect, for the punishment of corporations, it is possible to place criminal law as "Primum Remedium", because corporate crimes can damage the joints of economic life and endanger the survival of a nation.

**Keywords:** Business Ethics, Corporate Crime

## **1. Introduction**

The development of corporations at the beginning of the modern era was influenced by the increasingly complex nature of the trading business. England since the XIV century has become the center of the wool and textile trade which is exported to mainland Europe. This progress was also marked by the establishment of several Turkish trading businesses. The formation of several trading businesses/companies is the embryo of today's corporations.

Corporate growth in the country is increasing in various businesses. Many products and services are produced in large quantities, and thousands and even millions of people are involved in corporate activities. By marketing As a result, corporations influence and participate in determining people's choices in meeting the needs for goods and services, because in reality it is not producers who have to adjust to consumer demand, but on the

contrary it is consumers who will adjust their needs to the products produced by corporations.

The rapid development of this corporation is mainly influenced by changes and developments in society itself, namely the development of an agrarian society to an industrial society and (international) trade in this last decade. The characteristic of industrial society is the emergence of corporations as economic actors or legal subjects. Corporations in their development can obtain rights (and obligations) that are owned by humans, such as being able to make a contract, can sue and be sued, but corporations are still different from the subject of human law, namely in their nature that they do not have a life span, in the sense that they can live forever.

## **2. Theoretical Basis**

### **2.1 Corporate Crime**

First of all, it is necessary to know the origin of the word "corporation" before entering into the substance of understanding corporate crime. The word corporation or *Corporatie* (Dutch), *Corporation* (English) comes from the Latin "*Corporatio*", as a noun (substantivum) which comes from the verb "*Corporare*". *Corporare* itself comes from the word "*Corpus*" (Indonesia = *Badan*) which can be interpreted as a member of the body or body. So the word "*corporatio*" means the result of physical work, in other words the word body made into a person, namely a body obtained by human actions. as opposed to the human body, which occurs according to nature. (Soetan and Malikoel, 2010:82).

Several opinions were put forward to better understand the existence of a corporation as a legal entity, including the opinion: SudiknoMertokusumo: explaining what is meant by a legal entity is an organization or group of people who have certain goals that can carry rights and obligations (Sudikno, 2012: 53)

Corporation, which is an association of people who have interests, where these people are members of the corporation and members who have power in corporate regulation in the form of member meetings as the highest power tool in corporate regulations. As an entity founded with economic motives, its main objective is to seek profit, so that corporations in this case will enter businesses that can generate profits.

The definition of a corporation or legal entity can be broken down into 2 (two) groups when viewed from the perspective of how to establish and the laws and regulations that govern it, namely:

a. *Selfish Corporation*

Namely a corporation that organizes the interests of its members, especially assets, for example Limited Liability Companies, Labor Unions.

b. *Alturistic Corporation*

Namely corporations that do not serve the interests of their members, such as associations that pay attention to the fate of blind people, tuberculosis, heart disease, people with disabilities, and so on (Chidir Ali, 2012:74).

The term crime in this paper contains a distinctive meaning, because the spectrum of understanding is wider than just linking it with criminal law. In this case Clinard and

Yeager stated that: “A corporate crime is any act committed by corporations that is punished under administrative, civil, or criminal law.” (Clinard and Yeager, 1980:16).

Corporate crime shows that economic progress also gives rise to new forms of crime that are no less dangerous and have a large number of victims. Within the scope of corporate crime, victims of criminal acts committed by corporations can no longer be qualified as victims who have nothing to do with the perpetrators (*unrelated victims or non-participating victims*), but there is an *inter-relationship* between the perpetrator and the victim. Victims of corporate crime include parties including:

a. Rival companies (*competitors*)

As a result of corporate crimes that violate intellectual property rights, unfair competition, monopolistic practices, actions that harm other companies. In the face of competition, corporations are faced with the invention of new technologies, marketing techniques, efforts to expand or dominate the market. This situation can result in corporate actions to spy on rivals, imitate, falsify, seek, bribe or conspire about prices or marketing areas. This is further exacerbated by the development of an idea to implement a strategy in corporate competition (*corporate conflict*) which has core values: *maneuver, objective, offense (attacking the enemy or competitor), surprise, economy of force, mass, unity of command, simplicity, security.* (Ramsey, 1987:xvii).

b. State

To secure its economic policies, the government does this by, among other things, expanding the regulations governing business activities, either through new regulations or through tougher enforcement. In dealing with such circumstances, corporations can do so by violating existing regulations, such as providing illegal campaign funds to politicians in exchange for promises to repeal regulations that harm corporations or grant certain projects, illegally exporting, and so on.

c. Employees (*employees*)

As a result of corporate crime in the form of an unhealthy and unsafe work environment, restrictions on the right to form labor organizations, non-fulfillment of minimum wages, layoffs that violate the law.

d. Consumers

As for corporate actions against consumers that can lead to corporate crimes, for example misleading advertisements, false labeling, selling expired goods, creating toxic and dangerous products, and so on.

e. Society (*public*)

As a result of environmental pollution and destruction, tax evasion and evasion. These losses in relation to environmental pollution and destruction can cause losses in the form of physical suffering to death, resulting in a shift in the definition of economic crime or corporate crime. (Box, 1983:33).

## 2.1 **White Collar Crime**

Corporate crimes are almost certainly committed by actors who have a high level of education (*welleducated*) and have an economic status at the upper middle level (*high*

social status), in other words, the perpetrators of corporate crime usually come from people who are and work in their fields (*Skills and Experts* ).

Albert Morris presents an influential assumption, namely: *"Because of the respectability and high social status of White Collar".offenders, some scholars have suggested that many individuals are not really criminals at all. They claim that it is paradoxical that the leaders of community could also be its criminal.*

This is further emphasized by E.H. Sutherland in his book *White Collar Crime: The Uncut Version* which states that: *White Collar Crime may be defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation.*(Sutherland, 1983:15-17).

Therefore, corporate crimes occur because of the sophisticated equipment used and the expertise possessed by the perpetrators in carrying out their crimes, so this kind of crime is often called *Multi Dimensional Crimes*.

C.F. Welford and B.L. Ingraham classify *White Collar Crime* into 3 groups, namely:

- a. *Business and Professional Crimes*
- b. *Occupational crimes*
- c. *Individual Fraud. (Welford, 1994).*

Meanwhile, Croall stated that there are 8 (eight) characteristics of *White Collar Crime*, namely:

- a. *Low visibility*
- b. *Complexity*
- c. *Diffusion of responsibility*
- d. *The diffusion of victimization*
- e. *Difficult to detect and to prosecute*
- f. *Lenient sanctions*
- g. *Ambiguous laws*
- h. *Ambiguous criminal status. (Croall, 1992:12-16).*

In particular, point 4 describes the difference between victims of conventional crimes which are easy to identify, compared to victims of corporate crimes which are often abstract, such as governments, other companies or consumers, which are numerous but difficult to detect. In this regard, it is interesting to observe the opinion of Clinard and Yeager who stated that: *"Victims of corporate crimes..., are often unaware that they have been taken. Examples are stakeholders who receive a falsified balance sheet, consumers who have paid an inflated price for a product as a result of antitrust collusion, or consumers who have accepted with confidence the misleading advertising claims made for a product without knowledge of its financial or health effects on them.*(Clinard and Yeager, 1980:7).

## **2.2 Business Crime**

The definition of the term "business crime" was formulated by John. E. Conklin as: *"Business crime is an illegal act, punishable by a criminal sanction, which is committed by an individual or a corporation in the course of a legitimate occupation or pursuit in the industrial or commercial sector for the purpose of obtaining money or property, avoiding*

*the payment of money or the loss of property or personal advantage*".(Conklin, 1977:11-13).

The formulation of "business crime" above shows one of the patterns of non-conventional crime that is very prominent today because it becomes a problem in almost all countries, especially developing countries that are very dependent on their economic development and growth and are closely related to transnational trade.

Sociologically, the notion of "business crime" shows a real situation that occurs in activities in the business world. But on the other hand, it also shows that business activities are no longer 'friendly' (*unfriendly business atmosphere*) or as if there is no longer anyone who can be trusted among business people. Business activities should run in a healthy manner even though they are competitively competitive.

Substantially, according to RobintanSulaiman, business crimes contain elements, namely:

- a. Its corporate nature means that it is carried out in groups, each of which plays a role with their respective expertise, forming synergies and strategic alliances which become an independent force and are very difficult to break through by the hands of the law. Business crimes are also organized crimes.
- b. Business crimes in committing crimes using sophisticated instruments or equipment such as computers, satellites and others so that they can occur any time, anytime and anywhere.
- c. This multi-dimensional business crime has an impact not only on people or legal entities that are harmed but also harm the community and even the state.

Still according to RobintanSulaiman, the factors that cause business crimes include 3 (three) things, namely:

- a. NBusiness crimes were designed when the business was created, and that means there is a need for it
- b. This business crime arises because of the fast growing business development and creates opportunities for the perpetrators. So when this business was created or started there were no plans to carry out business activities
- c. Business crimes committed by people outside of business actors who are technologically savvy and can use technology to commit crimes. These three things are all economic/commercial (profit oriented) and the pressing need to get as much money as possible in a short time is the main motive in business crime. (RobintanSulaiman, 2011:8-12).

This motive is also owned by corporations that justify any means to gain profits so that the invested investment does not suffer losses (this is known as "Anomie Theory").

One of the causes of Indonesia's economic downturn is that the conglomerates in Indonesia in carrying out their business do not serve the national interest, but instead plunder the people's property and even take them abroad. This is because since the beginning of running their business, the conglomerates did not base their economic and business activities with strong business ethics.

Entrepreneurs on one occasion sometimes suggest that the solution to corporate crime is to regulate it in a better way through a code of business ethics. In this case, law plays less role, ethics plays more role because corporations have their own culture in their relationships between corporations which is called the "Inner Order of Business Society", which can be interpreted: if there is a violation, then it will be resolved first by the business community, and if it is not possible then legal action is taken.

A person's adherence to the code of ethics must receive adequate rewards, considering that sanctions for violating the code of ethics are still weak, in contrast to legal sanctions.

### **2.3 Business Ethics**

Ethics or morals according to Liek Wilardo, is the study of considerations to approve or disapprove of human attitudes and/or actions based on right-wrong or good-bad attitudes and/or actions. The terms "ethics" and "morals" are considered the same because they have the same meaning, ethos (Greek) and mores (Latin) both mean customs. (Liek Wilardjo, 2012: 4).

The Black's Law Dictionary defines Ethic: Of or relating to moral action, conduct, motive character; as ethical emotion, also treating of moral feelings, duties or conduct, containing precepts of morality. (Henry Campbell, 1990).

The concept of business ethics as expressed by Sony Keraf, which contains the principle of autonomy, the principle of honesty, the principle of not doing evil, the principle of justice and the principle of respect for oneself, is clearly a universal concept for civilized human beings, and it should be such a concept. become a "guidelines" in everyday business interactions.

Still quoted by Sony Keraf opinion of Richard T de George, where business ethics specifically concerns 4 (four) kinds of activities, namely:

- a. Application of general ethical principles to cases or practice cases in business.
- b. The application of business ethics does not only apply ethics in business activities, but also relates to corporate social responsibility
- c. business ethics also highlights the morality of the economic system in general and the economic system of a particular country; and fourth: business ethics also concerns a field that usually extends beyond the field of ethics. (Sony Keraf, 1993:9-12).

Meanwhile, according to Keith Davis and Robert L. Blomstormas quoted by Wells, there are 7 (seven) "Principles of Business Conduct", namely:

- a. To maintain (maintain human dignity and human nature).
- b. To earn (income on the basis of fair profit)
- c. To merit (appreciating the trust of consumers/suppliers as well as rival companies).
- d. To support (help and care for social problems).
- e. To fulfill (fulfill responsibilities towards society and the state).
- f. To require (prevent from disgraceful actions).
- g. To perpetuate (serve the integrity of the company). (Wells, 1994)

Ideally, in modern society expected business activities should meet the following expectations:

- a. a better place for investment, in this case of course the corporation is expected to be a good and pleasant place to do business
- b. a better place to work, besides the corporation, it is also a good place to work and earn a decent income
- c. better supporter of ethical ideals, being a supporter in implementing and applying the ideal work ethic and ethic
- d. better company to buy from, to become a corporation whose products are reliable
- e. better to sell to, have quality products both nationally and internationally
- f. better taxpayer and supporter of government, become a good tax contributor and can generate foreign exchange for the government
- g. better neighbor in community, in addition to being a good neighbor to the community around the corporate environment (eg not polluting and polluting local residents)
- h. better contributor to social goals, public interest, and human progress, able to make a contribution and benefit to the development process. (Blomstrom, 1985:58-59).

Economic actors/business actors should know that based on research results, it has been proven that large companies that have survived hundreds of years until now are companies that adhere to business ethics. The things that need to be considered so that business activities run well are:

- a. Business ethics can only play a role in a moral community, it is not an individual commitment, but is contained in a social framework.
- b. Business ethics ensures the continuity of business activities in the long term, not only focusing on short term profits.
- c. Business ethics will increase employee satisfaction, which is an important stake holder to pay attention to.
- d. Business ethics bring business people to enter into international business. (Johannes and Lindawaty, 2014:36,37).

The explanation above shows that if you are committed to becoming a business actor in this modern era, you must continue to pay attention to and uphold the values of business ethics in order to survive and develop.

### 3. Result and Discussion

Negative corporate culture in the form of profit prioritization in the form of growth, market control and so on as organizational goals (organizational goals), unlimited personal ambition of corporate leaders, weak law enforcement, weak supervision, immoral subcultures that plague society will increase the rise of corporate crime in modern society. (Box, 1983:64).

Often healthy business ethics are ignored and actions that harm fellow business associates are commonplace as a tool to

achieve goals (unusual business practices). Several factors triggering corporate crime based on the results of research conducted by Clinard stated that top management behavior, competition and greed, types of corporations with low profit margins or highly competitive types of corporations, corporate social history, unfair trade practices. from rival companies, lack of understanding of business ethics are criminogenic factors of corporate crime. (Clinard, 1983:53-70).

The use of criminal law facilities that are *primumremedium* is considered more suitable and appropriate in resolving these legal cases. Related to this, public morality and social morality require collective protection. An example is a criminal act with an economic motive such as a corporate crime. In-depth analysis is needed to determine whether a violation contains elements of fraud (deceit), misrepresentation, concealment of facts, manipulation, breach of trust (breach of trust), subterfuge or evasion. regulations (illegal circumvention), or indeed an act of breaking a promise or "default".

Through the results of research conducted by Soedarmadji, it is known that the most violations committed by corporations and have been decided by the Court are related to environmental pollution. This is of course. This is because the corporation does not apply the principles of business ethics in carrying out its business activities.

From 2010 to 2014 it was found that the cases decided by the District Court because the company disposed of liquid waste from industry amounted to 6 (six) cases, the company disposed of waste into the air amounted to 1 (one) case, and the company disposed of waste liquid and gas amounting to 1 (one) case. All liquid waste from the industry is discharged into the Brantas and Mas rivers.

Water pollution caused by liquid waste disposal is the main cause of river water pollution. There are 23 (twenty three) cases that are suspected of being criminal acts in environmental cases, but only 10 cases have been decided by the court (Soedarmadji, 2013: 21).

So far, court decisions in environmental cases have been very disappointing and many of the perpetrators have been acquitted, or even if they were imposed, the decisions would have been very light and not commensurate with the damage and losses that have been caused.

#### **4. Conclusion**

From the results of the analysis obtained the following conclusions:

- a. The corporate sector that is able to play a positive role in national development is the corporate sector which is a national asset and not a corporation which is only a burden and a parasite of society. This corporate sector group is a group that complies with business ethics, for example, adheres to good corporate governance, obeys the rules of the game of healthy business competition, and applicable laws and regulations. In other words, this positive role in national development refers to corporations that are able to practice the principles of business ethics and also the principles of good corporate governance in carrying out their business activities.
- b. Companies that want to record success in business need 3 (three) main things, namely: good and quality products, smooth management and ethics. Good products

and smooth management are things that can be achieved by utilizing all modern science and technology tools, as well as using economics and management theory, while attention to ethics in business is still very minimal or it can be said that it does not get serious attention.

- c. Legal reform can create incentives or incentives for the public to pay attention to corporate behavior. In this case, the community as a stakeholder of the corporation can also be a means of monitoring the violations committed by the corporation.
- d. For the perpetrators of the White Collar Crime, punishment or criminal prosecution and detention can result in a reproach or social condemnation. Loss of reputation may be more important to perpetrators than loss of money due to heavy fines, so widespread publicity bearing the names of individuals convicted of business crimes can be an effective deterrent to such behavior in the future.
- e. Various laws and regulations that are required in order to conduct business activities in Indonesia, currently only regulate

Concerning aspects of civil relations between parties conducting transactions in the business sector which are regulated by law and do not contain criminal provisions in it. Many obligations imposed by the provisions of certain laws are not sanctioned (criminal) if these obligations are violated. Thus, the objectives achieved by the establishment of the relevant law will be ineffective.

6. There is a tendency to punish corporations more using the "Subsidiarity" principle, namely criminal law is placed in the position of "Ultimate Remedium". However, as an effort for the Deterrence Effect, for the punishment of corporations, it is possible to place criminal law as "Primum Remedium", because corporate crimes can damage the joints of economic life and endanger the survival of a nation.

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