IJRS International Journal Reglement & Society
Volume: 3 Issue: 2, May-August 2022: Page 68-74
http://jurnal.bundamediagrup.co.id/index.php/ijrs
ISSN ONLINE: 2745-8350

Criminal Liability Against Corporations in Payment of Wages Under the Provisions of Legislation

Ida Hanifah
Universitas Muhammadiyah Sumatera Utara
E-mail: idahanifah@umsu.ac.id

Abstract

As a legal subject, corporations have responsibilities as regulated in Law No. 13 of 2003. Manpower is either a legal entity or not. In the Manpower Act, corporate responsibility consists of two, namely; administrative sanctions as well as criminal sanctions. The criminal sanctions applied are in the form of imprisonment and fines. The criminal liability of corporations used by the law is in the form of "Corporations act, responsible management", due to the cumulative criminal sanctions that exist in the law. The means of renewal in the context of development can be interpreted as channeling human activities that lead to development. So, the community has directions for channeling development in the manpower sector in order to realize national development which will be aimed at supervising, fostering, and regulating all activities in the workforce so that justice is achieved. This supervision is based on appropriate labor legislation and adjustments to the rapid growth and development of development in order to anticipate the pressure on the supply of labor, and the level of protection of the workforce.

Keywords: Liability, Criminal, Corporate, Wages.

How to cite:
Hanifah, I. (2022). "Criminal Liability Against Corporations in Payment of Wages Under the Provisions of Legislation", IJRS: Internasional Journal Reglement Society 3, No.2, Pages: 68-74.

A. Introduction

Today's global developments encourage increased mobility of the world's population which causes various impacts, both beneficial and detrimental to the interests and lives of the nation and state of the Republic of Indonesia.[1] Parties in labor law are very broad, namely not only employers and workers but also other related parties such as companies and the government. Manpower according to Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act) essentially has two elements, namely the element of people who work and the element of receiving wages or other forms of remuneration. For workers, the legal relationship with the employer is civil, that is, it is made between parties who have a civil position. The legal relationship between the two parties is not only regulated in the work agreement they signed (autonomous law) but also regulated in laws and regulations made by the authorized agency/institution (heteronomous law).[2]

Workers are part of workers/labor, namely workers who work in an employment relationship, under the orders of the employer (can be individuals, entrepreneurs, legal entities, or other entities) and for their services in working the person concerned receives wages or other forms of remuneration. . In other words, workers are referred to as workers if they carry out work in an employment relationship and under the orders of others with receive wages or other forms of remuneration. Workers who work under the orders of others by receiving wages or other forms of remuneration but are not in an employment relationship, such as shoe shiners or hairdressers, are not workers.[3]

Entrepreneurs are, in principle, those who run the company, whether they are self-owned or not. In general, the term entrepreneur is a person who does a business (entrepreneur). The term used in the previous statutory regulations was employer, namely the person or entity that employs workers. Some employers' employers are employers in relation to the workforce. On the other hand, the entrepreneur

[1] Rachmad Abduh, "*Dampak Sosial Tenagakerja Asing (TKA) Di Indonesia*", dalam Jurnal Sosial dan Ekonomi: Volume 1 No 1, 2020.
[2] Ridita Aulia, I Made Mahartayasa, "PertanggungaJawaban Pengusaha Atas Tidak Terpenuhinya Pemberian Upah Minimum Bagi Tenaga Kerja", Karya Ilmiah, Fakultas Hukum Universitas Udayana, halaman. 5.
[3] *Ibid.,* halaman. 6.

who runs a company that does not belong to him is a worker in relation to the owner of the company or shareholders because he works by receiving wages or other forms of remuneration. It is also necessary to distinguish between entrepreneurs and companies because there are entrepreneurs who are also the owners of the company and some are not.[4]

In accordance with Law Number 11 of 2020 concerning Job Creation, in principle, employers are prohibited from paying workers wages lower than the minimum wage. On the other hand, employers are obliged to pay wages to workers in accordance with the agreement which cannot be lower than the amount determined by legislation. The governor is obligated to determine the UMP and may determine the UMK with certain conditions, the value of which must be higher than the UMP. The UMP and UMK are determined based on economic and labor conditions. It should be noted that the minimum wage applies to workers with less than 1 year of service at the company concerned. Meanwhile, wages above the minimum wage are set based on an agreement between employers and workers.[5]

The research conducted in this paper is included in normative legal research by conducting library research. Library research, namely research on written documents[6] In accordance with the type and nature of the research, the data source used is secondary data.[7] The data includes primary legal materials, secondary legal materials and tertiary legal materials.[8] This legal material will also serve as an interesting literature review and evaluate a variety of different sources including academic articles, and professional journals, books, and web-based resources.[9] The procedure used to collect data in this study is in the form of documentation, namely: guidelines used in the form of notes or quotes, searching legal literature, books and others related to identification of problems in this research both offline and online.[10] Analysis of legal materials is carried out using the content analysis method (centent analysis method) which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion,[11] through a statutory approach, namely formulating a legal definition based on legal principles from the results of a study of legislation by looking at various opinions of experts and writers related to the issues discussed.[12]

B. Discussion

Wages received by workers/ laborers indicate the income received by them in return for the work they do. In order to provide protection for laborers, a minimum wage policy must be adopted by the government due to pressure from within and outside the country. These pressures arise as a result of concerns about labor conditions in Indonesia. The minimum wage policy is intended as an effort to protect new workers/laborers with low education, no experience, working period of less than 1 (one) year and single or unmarried. The aim is to prevent the arbitrariness of entrepreneurs as wage providers in providing wages to workers/ laborers who have just entered work. The minimum wage regulated by the government was originally a safety net for companies to pay at least affordable wages, but in reality the minimum wage is still far from the basic needs of workers, so it has not succeeded in creating industrial relations as expected.[13]

---

[4] *Ibid.,*
[5] Tri Jata Ayu Pramesti, "Langkah Hukum Jika Upah Di Bawah Standar Minimum", melalui, *https://www.hukumonline.com/klinik/a/langkah-hukum-jika-upah-di-bawah-standar-minimum-lt4c85f88b626af* , Diakses Pada 26 Januari 2022.
[6] Rahmat Ramadhani, "Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) dalam Kegiatan Pendaftaran Peralihan Hak Atas Tanah", Iuris Studia: Jurnal Kajian Hukum 3, No. 1, (2022): p. 46.
[7] Rahmat Ramadhani, "Eradication Of Soil Mafia In The Post- Covid-19 Pandemic Based On National Law And Islamic Law ", Proceeding International Seminar on Islamic Studies 3, No. 1, (2022): p. 681.
[8] Rahmat Ramadhani, "Analisis Yuridis Penguasaan Tanah Garapan Eks Hak Guna Usaha PT. Perkebunan Nusantara II Oleh Para Penggarap", Seminar Nasional Teknologi Edukasi Sosial dan Humaniora 1, No. 1, (2021): p. 859.
[9] Rahmat Ramadhani, "Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat", Seminar Nasional Kewirausahaan, 2, No. 1, (2021): p. 280.
[10] Rahmat Ramadhani, "Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemic Covid-19", Seminar Nasional Hukum, Sosial dan Ekonomi (SANKSI), 1, No. 1, (2022): p. 3.
[11] Rahmat Ramadhani dan Ummi Salamah Lubis, "The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes", IJRS: International Journal Reglement & Society 2, No. 3, (2021): p. 138.
[12] Rahmat Ramadhani, "Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia", IJRS: International Journal Reglement & Society 2, No. 2, (2021): p. 89.
[13] *Ibid.,*

The burden of liability on corporations is based on the doctrine of respondeat superior, a doctrine which states that corporations themselves cannot commit crimes and have faults. Only agents acting for and on behalf of corporations can commit crimes and be guilty of wrongdoing. Therefore, corporate responsibility is a form of accountability for the actions of other people/agents (vicarious liability), in which he is responsible for the crimes and mistakes of the agents. This doctrine is taken from civil law which is applied to criminal law. Vicarous liability usually applies in civil law regarding the torts of law based on the doctrine of respondeat superior.[14]

As a follower of a dualistic view on the issue of corporate criminal liability, Moeljatno in Agus Rusanto introduces Herman Kontorowichz's dualistic view by saying, for the existence of conditions for imposing a crime against the maker (starfvoraussetzungen) it is necessary to first prove the existence of a criminal act (starfbare handlung), then it must be proven subjective error of the maker (schuld). Two conditions must be met to impose a criminal on someone, namely the element of a forbidden outward act/criminal act (actus reus) as an objective requirement and an element of inner attitude.

evil, evil thoughts, despicable (mens rea) as subjective conditions. Although later known the strict liability doctrine and vicarious liability doctrine which can justify corporate criminal liability without questioning or not requiring proof of guilt (mens rea) of the corporation.In this case, the problem is that lab or law often when in contact with an entrepreneur who is a corporation, it is recognized that

The implementation of corporate criminal responsibility initially faced a number of legal problems, especially regarding the principle of no crime without fault (gen strap zonder schuld). Because between an act (actus reus) and an error (mensrea) must be contained in one body, while in a corporation between actus reus and mensrea there can be several people, for example those who commit criminal acts (actus reus) are subordinates to entrepreneurs, while those who have bad intentions/errors (mesn rea) are superiors, in this case corporate criminal liability is often different from criminal liability committed by individuals.[15]

The condition for not being accountable for the maker is when the maker commits a crime, due to factors within the maker and factors outside the maker. A person who has committed a crime will not be punished if in such circumstances as described in the MvT. If a maker does not have conditions as regulated in the MvT, the maker is the person responsible for being punished.[16]

The principle of legality of Indonesian criminal law as regulated in Article 1 paragraph (1) of the Criminal Code states that a person can only be said to have committed a criminal act if the act is in accordance with the formulation in the criminal law law. Although that person may not necessarily be subject to a criminal law, because it still has to be proven whether his guilt can be accounted for. In order for a person to be sentenced to a crime, he must fulfill the elements of a criminal act and criminal responsibility.

A maker in committing a crime in determining the existence of accountability there must be an unlawful nature of a criminal act which is the most important characteristic of a criminal act. The nature of being against the law is related to the psychological state (soul) of the maker of the crime he has committed, which can be intentional (opzet) or due to negligence (culpa). According to criminal law experts, there are 3 (three) forms of intent (opzet), namely:

1. Intentional as Intent. This intentionality is purposeful, the perpetrator can be accounted for and if this kind of intentionality is in a criminal act, the perpetrator deserves to be punished.
2. Willingness with Sure Conviction. This intentional existence exists if the perpetrator (doer or dader) with his actions does not aim to achieve the result that is the basis of the offense and knows for sure or is sure that apart from the intended effect, another result will occur.
3. Willingness with Possible Realization (Dolus Eventualis). This intentionality is also called intentional with awareness of the possibility, that a person performs an action with the aim of causing a certain result. However, the perpetrator is aware that there may be other consequences which are also prohibited and threatened by law.[17]

[14] Parningotan Malau, 2019, "Pertanggungjawaban Pidana Korporasi Dalam Hal Tidak Dilaksanakannya Perlindungan Keselamatan dan Kesehatan Kerja Pekerja/Buruh Di Tempay Kerja", Disertasi Fakultas Hukum Universitas Sumatera Utara, halaman. 295.
[15] *Ibid.,* halaman. 239.
[16] Agus Rusianto. 2016. *Tindak Pidana Dan Pertanggungjawaban Pidana*. Jakarta: Prenadamedia Group, halaman 1.
[17] Leden Marpaung. 2017. *Asas-Teori-Praktek Hukum Pidana*. Jakarta: Sinar Grafika, halaman 15.

Negligence (culpa) is divided into 2, namely:

a. Negligence with consciousness (bewuste schuld). In this case, the perpetrator has imagined or suspected that an effect would arise, but even though he tried to prevent it, it still occurred.
b. Negligence without awareness (onbewuste schuld). In this case, the perpetrator does not imagine or suspect that there will be a result that is prohibited and threatened with punishment by law. While he should take into account the emergence of a consequence.[18]

Van Hamel in Eddy OS does not provide a definition of criminal responsibility, but provides an understanding of accountability. Van Hamel stated in full: "Accountability is a normal state of psychic and skill that brings three kinds of abilities, namely: Being able to understand the meaning and real consequences of one's own actions; Able to realize that these actions are contrary to public order; Able to determine the will to do.[19]

Further explanation is needed regarding the three abilities stated by van Hamel, namely the will to do. When it comes to the will to do something with mistakes as the most important element of accountability, then there are three opinions. First, indeterminism which states that humans have free will in their actions. Free will is the basis of volitional decisions. If there is no freedom of will, then there is no fault. Thus there is no reproach so there is no punishment.[20]

Criminal responsibility (strafrechtelijk veranwoodelijkheis, criminal responsibility) explicitly stipulates Article 37 paragraph (1) of the Criminal Code Bill which states: "no one who commits a crime will be punished without fault". The doctrine/principle of Geen Straf Zonder Schuld or Keine Straf Ohne Schuld which in English legal doctrine is formulated as an act does not make some one's guilty unless his mind blameworty or actus reus.[21]

The nature of being against the law and wrongdoing, in the criminal law that applies in Indonesia, especially the Criminal Code which until now is still in effect adheres to the monistic theory which states that the nature of being against the law (wederrechtelijkheid) and error (schuld) is an element of a criminal act (strafbaar feit). To fulfill an act as a criminal act, the Criminal Code requires the main elements that must be met, namely against the law (wederrechtelijkheid) and error (schuld). The nature of being against the law always includes a criminal act, whether the nature of being against the law is explicitly stated in the formulation of a crime or not explicitly stated in the formulation of a crime, except in the formulation of a crime there is an element of negligence. In order to fulfill an act as a crime, it must meet the elements of being against the law and error. The monistic theory is widely followed by several Dutch criminal law experts, and several criminal law experts in Indonesia, for example according to van Hamel that a crime is a human behavior that is formulated in law, against the law, which should be punished and done wrong.[22]

There are two general exceptions with regard to granting criminal liability to corporations. First, corporations cannot be found guilty of various criminal acts whose sanctions are only in the form of corporal punishment. Second, corporations cannot be held criminally responsible if the crime is naturally impossible for the corporation to commit, such as bigamy or rape.[23]

Employment criminal law enforcement can use several theories of corporate criminal responsibility, namely: First, Strict Liability Theory. In common law countries, the theory of strict liability or liability without fault is found in offenses regulated by law (statutory offenses or regulatory offenses), which are generally offenses against public welfare. Meanwhile in the Netherlands, since the existence of Wateren Melkarrest in 1916, this teaching is no longer justified. Since the mid-19th century, the principle of strict liability has been introduced, at least in some cases, most of which are related to environmental and food safety/health risks, including consumer protection, in addition to public order, slander or pollution. good name, and contempt of court, as well as traffic violations. In other words, strict liability is intended to overcome public welfare offenses which are minor criminal acts that are punishable by a fine.

Strict liability or absolute liability or liability without fault is defined by Black's Law Dictionary as: "Liability that does not depend on actual Negligence or intent to harm, but that is based on the breach

[18] *Ibid.*, halaman 26.
[19] Eddy O.S. Harriej. 2016. *Prinsip-Prinsip Hukum Pidana.* Yogyakarta: Cahaya Atma Pusaka, halaman 155-156.
[20] *Ibid.*
[21] M. Ali Zaidan. 2015. *Menuju Pembaruan Hukum Pidana*. Jakarta: Sinar Grafika, halaman 371.
[22] *Ibid.*, halaman 2.
[23] *Ibid.*,

of an absolute duty to make something safe. Strict liability most often applies either to ultra hazardous activities or in pmducts liability case."

The concept of strict liability in common law countries is defined as:

absolute liability associated with the occurrence of the damage. One of the main features of absolute responsibility is that there is no requirement of fault; in the sense that there is no need for proof of fault, and it is sufficient to prove that the perpetrator has committed actus reus, namely an act that is prohibited by the provisions of criminal law. In other words, a person is responsible for any possible harm to others as a result of his actions. Even so, if the company can prove its seriousness to prevent the prohibited things from happening or the lack of sincerity is with people who are not part of the company's incarnation, it is an escape liability for the company in question.

So in this case, when an entrepreneur who is a corporation has actually committed a labor crime in accordance with the formulation of the offense and as a result his actions have harmed the worker/laborer, the entrepreneur can be punished without having to prove the element of guilt/mensrea.

Second, the Vicarious Liability Theory. This theory is basically to answer the question, whether someone can be accounted for. Criminally for a crime committed by another person. This question arises because basically criminal liability is a personal matter. Vicarious liability is defined as: "liability that a supervisory party (such as an employer) bears for the action able conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties." In general, it is not possible to request criminal responsibility for a person for a crime committed by another person because criminal responsibility is personal and a person is convicted as a result of his own fault and not due to the fault of others.

Criminal liability which generally can only occur if the maker has an element of error, with vicarious liability an exception is given, where someone else is responsible for the actions of another person. For example, an employer is declared criminally responsible for criminal acts committed by his employees even though the entrepreneur does not know, or does not give authority, or does not participate in criminal acts committed by his subordinates or which arise because of the delegation relationship between a business license holder and the person who organizes it. his efforts. The employer in question can be a natural person, it can also be in the form of a corporation. So, the responsibility in vicarious liability is not aimed at the fault of another person, but against the "relationship" with that person.

This vicarious liability doctrine, which is also called respondent superior, is actually the result of the adoption of the existing principles in civil law, namely against acts against the law, where there is a known principle that the employer will be responsible for unlawful acts committed by his employees, as long as the employee acts within the scope of his work. This doctrine developed based on the consideration that because the employer benefits from the work of his subordinates, the employer should also be responsible for the actions of his subordinates. In the field of criminal law, this theory is seriously considered to deviate from the doctrine of mens rea because this theory holds that one's fault can automatically be attributed to another party who does not have any faults, even though in criminal law the element of error is an absolute element for accountability. One of the reasons that the theory of unlawful acts in the field of civil law is imported into criminal law is because the courts cannot develop theories that answer why developments in civil law cannot be implemented in the field of criminal law.

So if one of the subordinates who commits a crime and the act is committed is still within the scope of work given by his superior, then the superior can be punished based on this vicarious liability concept.

Third, Identification Theory. Against the doctrine that a limited liability company is an independent legal entity, it will cause legal problems if it meets the part of the law that applies to natural persons, which requires an assessment of a person's mental state, in relation to the imposition of liability. In this case, the court has taken the path of applying the organ theory, which equates a legal entity like a human being with its organs, one of which is the center of the mind or brain.

By using the organ theory, the court can wisely set and. treat the state of mind of the senior officers of the company as being the state of mind of the company. Thus, the directing mind theory seems to represent a middle ground between strict liability and no liability. The application of organ theory to corporations in this regard shows that something is real, capable of doing acts that harm other parties in a criminal sense. This theory is called identification theory, where according to this theory corporations can commit criminal acts directly through people who are very closely related to the corporation and are seen as the corporation itself, as long as the actions taken are related to the corporation, carried out by people with the capacity or authority to do so and it is done intravires.

The doctrine of identification means that the company is considered to have menses. The law is tasked with finding and identifying who is the "brain" and mind of the company, whose actions can and should be attributed or linked to the company. The relationship is not because the person is a "servant" of the company, but because by law they are considered and identified as a company itself. So that if a company/corporation commits an employment crime according to this identification theory, it can be punished, because the company/corporation is considered an organ that has a superior who is considered the brain of the corporation who proves that they are friendly and has subordinates who are considered to be the hands or feet of the corporation that proves their existence. actus reus of the corporation.[24]

C. Conclusion

The main difference in placing corporations and humans as subjects of criminal law lies in the party who will be held accountable for the crime committed. As a consequence, the types of sanctions that can be imposed on the two cannot be equated with each other. In other words, corporations may only be sued and sentenced to criminal sanctions if imprisonment and fines in the law the law is determined as an alternative criminal sanction (meaningselected by the judge). If the two criminal sanctions are alternative, then the person concerned can only be sentenced to imprisonment, or a fine, or both sanctions are imposed cumulatively. Meanwhile, the corporation is only imposed with the main criminal sanction in the form of a fine because it is impossible for the corporation to undergo imprisonment.

References

Abduh, Rachmad. (2020). "*Dampak Sosial Tenagakerja Asing (TKA) Di Indonesia*", dalam Jurnal Sosial dan Ekonomi: Volume 1 No 1.

Aulia, Ridita & I Made Mahartayasa. (tt). "PertanggungaJawaban Pengusaha Atas Tidak Terpenuhinya Pemberian Upah Minimum Bagi Tenaga Kerja", Karya Ilmiah, Fakultas Hukum Universitas Udayana.

Harriej, Eddy O.S. (2016). *Prinsip-Prinsip Hukum Pidana.* Yogyakarta: Cahaya Atma Pusaka.

Malau, Parningotan. (2019). "Pertanggungjawaban Pidana Korporasi Dalam Hal Tidak Dilaksanakannya Perlindungan Keselamatan dan Kesehatan Kerja Pekerja/Buruh Di Tempay Kerja", Disertasi Fakultas Hukum Universitas Sumatera Utara.

Marpaung, Leden. (2017). *Asas-Teori-Praktek Hukum Pidana*. Jakarta: Sinar Grafika.

Pramesti, Tri Jata Ayu. (2022). "Langkah Hukum Jika Upah Di Bawah Standar Minimum", melalui, *https://www.hukumonline.com/klinik/a/langkah-hukum-jika-upah-di-bawah-standar-minimum-lt4c85f88b626af* , accessed 26 Januari.

Ramadhani, Rahmat dan Ummi Salamah Lubis (2021). "The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes", IJRS: International Journal Reglement & Society 2, No. 3.

Ramadhani, Rahmat. (2021). "Analisis Yuridis Penguasaan Tanah Garapan Eks Hak Guna Usaha PT. Perkebunan Nusantara II Oleh Para Penggarap", Seminar Nasional Teknologi Edukasi Sosial dan Humaniora 1, No.

Ramadhani, Rahmat. (2021). "Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia", IJRS: International Journal Reglement & Society 2, No. 2.

Ramadhani, Rahmat. (2021). "Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat", Seminar Nasional Kewirausahaan, 2, No. 1.

Ramadhani, Rahmat. (2022). "Eradication Of Soil Mafia In The Post- Covid-19 Pandemic Based On National Law And Islamic Law ", Proceeding International Seminar on Islamic Studies 3, No. 1.

Ramadhani, Rahmat. (2022). "Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) dalam Kegiatan Pendaftaran Peralihan Hak Atas Tanah", Iuris Studia: Jurnal Kajian Hukum 3, No. 1.

Ramadhani, Rahmat. (2022). "Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemic Covid-19", Seminar Nasional Hukum, Sosial dan Ekonomi (SANKSI), 1, No. 1.

[24] *Ibid.*, halaman. 243.

Rusianto, Agus. (2016). *Tindak Pidana Dan Pertanggungjawaban Pidana*. Jakarta: Prenadamedia Group.

Zaidan, M. Ali. (2015). *Menuju Pembaruan Hukum Pidana*. Jakarta: Sinar Grafika.