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# The Concept of Corporate Liability in the Law on Information and Electronic Transactions

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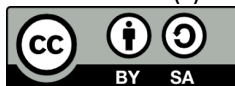
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## ABSTRACT

The development of cybercrime gives birth to new facts that corporations can become perpetrators of criminal acts, therefore it is necessary to impose criminal responsibility on the corporation. The purpose of this research is to find out the criminal responsibility of corporations in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions. The type of research in writing this journal is normative or doctrinal by using a statutory approach and taking primary and secondary legal materials. Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions adopts the doctrine of identification in imposing criminal liability on corporations. In addition, actions against the law by the management and / or staff of the corporation can be subject to criminal liability based on the doctrine of vicarious liability.

## KEYWORDS

*Criminal Liability; Corporation; Cyber Crime*

## 1 INTRODUCTION

Today's civilization has undergone significant changes in line with reforms and innovations in the fields of information, communication and media technology. Relationships regardless of distance and time that unite all technology users cause the birth of a new culture in social, economic, and other spheres of life. However, it cannot be denied that the existence of information and communication technology can also be a double-edged sword, which means that on the one hand technology helps humans in carrying out all their activities, but on the other hand technology can turn into a tool to commit actions that harm other parties illegally. Acts against the law are cybercrime or information and technology crimes.

In the world of cybercrime, actions against the law can be committed by any legal subject, either individuals (*natuurlijk persoon*) or corporations (*corporatie*). Thus, it is necessary to have regulations in law to protect users of information technology and at the same time limit actions that are prohibited from being committed, namely actions against the law in the form of cybercrimes. The making of criminal provisions in technology and information law must also include the imposition of crimes against corporations, not just liability to people (*natuurlijk persoon*). Moreover, the state is very open in the establishment of each corporation and provides legality to its existence. Although corporations are formed with economic objectives.

Making regulations concerning all corporate actions needs to be regulated and included in every statutory regulation. The criminal provisions governing the formulation of the elements of a criminal act and a criminal sanction must also include criminal liability against a corporation that is proven to have committed a criminal act. If you look at the criminal law that is currently in effect, the Criminal Code (KUHP) does not provide provisions for criminal liability against corporations. Therefore, legislators realize that it is necessary to include articles on criminal detention against corporations in special criminal law, namely criminal provisions in laws outside the Criminal Code.

One of the laws that regulate corporate criminal liability is Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions. The regulation in this law determines the concept of criminal liability against corporations that commit criminal acts of information and electronic transactions. Based on the description as mentioned above, the main problem in this research is what is the concept of corporate criminal liability in Law Number 11 of

2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions?

## 2 MEHTOD

The research methodology in writing this legal journal uses a type of normative or doctrinal legal research, namely research that presents a systematic explanation based on rules that classify certain laws by examining the relationship between regulations and proposing predictions of future application of the law (Marzuki, 2010: 32). The approach is taken by using a statutory approach, namely conducting research on the basis of legal products of legislation (Nasution, 2008: 81). While the types and sources of research data using primary and secondary law library materials.

## 3 RESULT AND DISCUSSION

The formation of Law Number 11 of 2008 concerning Electronic Information and Transactions was motivated by the need for legal certainty in maintaining cyber security in every activity that covers it. A legal approach is an absolute step to overcome security problems in electronic or computer systems for the actions of certain individuals who deliberately and without rights or against the law harm the owner of an electronic or computer system. The drafting of this law is to provide protection for every user of electronic systems and computers in cyber space.

By adjusting the Decision of the Constitutional Court Number 50 / PUU-VI / 2008, Number 2 / PUU-VII / 2009, Number 5 / PUU-VIII / 2010, and Number 20 / PUU-XIV / 2016, an amendment was made to Law Number 11. Of 2008 concerning Electronic Information and Transactions with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. However, the changes in it do not change the concept of criminal liability against corporations that commit criminal acts of information and electronic transactions.

Before discussing criminal liability against corporations in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, the author will first elaborate a discussion of the meaning of corporate crime. The idea of corporate crime was originally put forward by Edward Ross (1907) as criminaloid. Ross highlighted the immoral behaviour by corporate leaders who like to bribe government officials to avoid tax bills. These corporates

enjoy immunity from their position and position in the corporation to cover up all the crimes they have committed (Sahetapy, 1994: 14).

Then in 1939, Edwin H. Sutherland developed the idea of a corporate crime called white collar crime, which is crimes committed by white collar groups. In the annual convention of the American Sociological Society, Sutherland raised the problem that there are behaviours on behalf of corporations in America that deliberately violate the law to gain benefits for both the company and the pockets of its officials. In essence, Sutherland found the fact that there were violations of criminal law by people who had positions in the corporation while carrying out their jobs (Reksodiputro, 1994: 66).

According to Quinney and Clinard, the meaning of white-collar crime in terms of its evil behaviour is divided into two, namely occupational criminal behaviour and corporate criminal behaviour. Occupational criminal behaviour is a crime committed on the basis of a person's behaviour. Meanwhile, corporate criminal behaviour is a corporation as a criminal and committing acts against the law on behalf of the corporation (Djajamihardja, 1991: 4).

Returning to Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, the provisions regarding criminal provisions are regulated in Chapter XI starting from Article 45 to Article 52. The criminal provisions in these articles refer to Chapter VII concerning Prohibited Acts covers Article 27 to Article 37. In both chapters, criminal liability is addressed to the element "Person". Whereas what is meant by "Person" as stipulated in Article 1 point 21 of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions is an individual either an Indonesian citizen or a foreign citizen, and also a legal entity.

Subekti argues that a legal entity has a characteristic as an association that can have rights and carry out an act like an individual, and have its own assets, can file a lawsuit and be prosecuted before a judge (Ali, 1987: 19). Based on this opinion, it can be seen that a corporation is a legal entity legal subject (*recht persoon*) which embodies the legal subject of an individual and can hold legal rights and obligations. Basically, the imposition of criminal responsibility against a corporation is that it cannot be sentenced to a crime depriving the body of liberty, both imprisonment and imprisonment. However, Persons who are part of the corporation, including the management in it acting on behalf of the corporation, can be criminally liable for depriving the body of liberty. The concept of corporate criminal responsibility of this

kind is adopted by Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions.

From the above explanation, it can be concluded that the legal subjects of corporations according to Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions can be held liable for crime. This criminal liability can be addressed to the corporation itself or to individuals acting on behalf of the corporation. Then the next step is the duty of the legislators to formulate the requirements that must be met in order to classify the corporation as committing a criminal act. In addition, under what conditions can a corporation be prosecuted by asking for criminal responsibility against it. Furthermore, any parties who can be held responsible for the crime are subsequently subject to criminal sanctions.

Criminal liability against corporations in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions is regulated in Article 52 paragraph (4). In this law it is determined that corporations that commit criminal acts as the formulation of actions prohibited in Article 27 to Article 37 of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions are threatened with a criminal burden. by adding two-thirds of the principal crimes as stipulated in the criminal provisions in Article 45 to Article 51 of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions.

Whereas regarding the qualifications of corporate criminal responsibility that has committed a criminal act by fulfilling the elements of a criminal act as referred to in Article 27 to Article 37 of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions described in the Elucidation of Article 52 paragraph (4). Criminal liability for corporations that fulfil the elements of prohibited acts as stipulated in Article 27 to Article 37 shall be borne by the corporation itself and / or the management and / or staff who have the capacity to:

- 1) Representing the corporation;
- 2) Making decisions in corporations; and
- 3) Supervising and controlling the corporation; and / or carry out activities for the benefit of the corporation.

Based on the provisions of Article 52 paragraph (4) of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions, the concept of corporate criminal liability in this law is included in the

"concept of identification". Evidence of the application of the concept of corporate criminal liability is that the perpetrator of the crime is the corporation itself. On the other hand, there is a universal principle of criminal law, namely "*actus non facit reum, nisi mens sit rea*" (Mulasari, 2012: 116).

The application of the universal principle "there is no crime without any fault" or "*actus non facit reum, nisi mens sit rea*", as a consequence of this adage that only things that have a heart alone can be given the burden of criminal responsibility. Because only humans have *mens rea* or heart, while *mens rea* is considered non-existent in corporations, corporations should not be subject to criminal liability. However, modern criminal law including those applied in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions changes its position even though the corporation is deemed to have no heart, but in itself the corporation can impose a burden of criminal liability based on the concept identification.

The concept of identification (concept of identification) which is applied in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions is one of the concepts or doctrines applied to become the justification for imposing criminal liability on corporations even though Basically a corporation cannot do it alone and *mens rea* is not found because the nature of the heart is not in the corporation. In order to apply the concept of identification, the following conditions are required:

- 1) There is an assignment to the personnel of the cooperative to carry out a job;
- 2) Does not include fraudulent acts against the cooperative that provides the task; and
- 3) The purpose of the crime is to get results that benefit the corporation.

The consequence of the concept of identification on criminal liability against the corporation is that the public prosecutor must prove that the perpetrator of the crime is really a corporation or an individual on behalf of the corporation. Individuals who can be subject to criminal sanctions for corporate liability in accordance with the Elucidation of Article 52 paragraph (4) are managers and / or staff who have the capacity to represent the corporation, make decisions in the corporation, supervise and control in the corporation, and / or carry out activities for the benefit of the corporation. This provision is based on the concept of identification with the following reasons:

- 1) Even though a corporation is a civil law capable of carrying out legal actions, the corporation has no physical strength and therefore the corporation is deemed

unable to take certain actions or has the intention to do anything, except through the management and / or staff of the corporation concerned.

- 2) Placing the status of a corporation as the legal object of an individual (*natuurlijk persoon*) in accordance with the general law principle "all are equal before the law" or the principle of equality before the law.
- 3) The justification for the concept of substitute liability is the basis for imposing criminal liability on the corporation. Because in this concept, a person can be held liable for criminal acts committed by other people, so that if this concept is linked to a corporation, criminal liability can be borne by the corporation for criminal acts committed by the management, staff and / or powers that act on it. the name of the corporation and is responsible for the corporation concerned.

The concept of criminal liability against corporations in Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions is in accordance with the purpose of imposing criminal responsibility. Elliot and Quinn argue that there are reasons that require criminal liability to the corporation, including: criminal liability against the corporation to avoid releasing corporate responsibility for the behaviour of its managers and / or staff; criminal prosecution against a corporation is easier than for the management and / or staff of the corporation; the corporation has more financial capacity so that it does not encounter difficulties in the payment of criminal fines; corporations that have benefited from a criminal act must share the burden of imposing the crime.

#### **4 CONCLUSION**

The regulation of corporate criminal liability for criminal acts of information and electronic transactions is contained in Article 52 Paragraph (4) of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions. The concept of corporate criminal liability in these provisions is the concept of identification, that is, even though the corporation does not have a heart, it does not eliminate criminal liability against the corporation. There is also a substitute liability concept, namely the corporation is responsible for criminal acts of information and electronic transactions as prohibited in Articles 27 to 37 committed by the management and / or staff of the corporation concerned. Requirements for management and / or corporate staff who can be held liable for corporate criminal responsibility are management and / or staff who have the capacity to represent the corporation, make decisions in the corporation, supervise and control in the

corporation, and / or carry out activities for the benefit of the corporation. A corporate perpetrator who is proven to have committed a criminal act as stipulated in Article 27 to Article 37 shall be punished with the main penalty plus two thirds. This paper suggests that it is necessary to optimize law enforcement against criminal acts committed by corporations, both legal entities and non-legal entities, because so far there have been no criminal cases of information and electronic transactions for which corporate criminal responsibility is required in accordance with Article 52 paragraph (4) of Law Number 11. Year 2008 in conjunction with Law Number 19 Year 2016 concerning Electronic Information and Transactions. Every corporation in Indonesia must apply good ethics in behaving in the world of technology and information so as not to commit criminal acts of information and electronic transactions, including one way to provide legal and ethical education to corporate management and / or staff.

## 5 DECLARATION OF CONFLICTION INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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## Quote

Arguing that you don't care about the right to privacy because you have nothing to hide is no different than saying you don't care about free speech because you have nothing to say.

**Edward Snowden**