

CORPORATE RESPONSIBILITY FOR CRIMINAL ACTIONS OF SONG COPYRIGHT UNDER THE 28 LAW OF 2014

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Abstract: *Research entitled "Corporate Responsibility for Crime of Song Copyright According to Law Number 28 of 2014" aims to analyze how copyright crimes are regulated in Indonesian positive law and to analyze corporate responsibility for copyright infringement according to the Copyright Law Number 28 of 2014. This research is normative legal research, which examines laws and regulations in a coherent legal system and unwritten legal values that live in society, which are related to corporate responsibility for copyright infringement according to the law 28 of 2014. The results of the study stated that copyright crimes, including song copyrights, are regulated in the Copyright Act as part of Indonesian positive law. Article 112 of the Copyright Law Number 28 of 2014 states that everyone who without rights commits the acts referred to in Article 7 paragraph (3) and/or Article 52 for commercial use, shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of 300,000,000.00 (three hundred million rupiah). Because legal entities are equated with people, legal entities that commit criminal copyright infringements can also be punished under this article as a form of responsibility. Criminal acts by Corporations are regulated in Article 3 of MA RI Regulation 13/2016 which are criminal acts committed by people based on work relationships, or based on other relationships, both individually and jointly acting for and on behalf of Corporations inside and outside Corporate Environment.*

Keywords: *Corporation; Crime; Copyright.*

1. INTRODUCTION

The development of crime along with the increasingly rapid growth of corporations in the field of economic activity has given rise to another form of crime which is known as corporate crime. Corporate crime is an extraordinary crime because the impact of the losses it causes is very broad in various aspects of life in the country, not only for a moment but for a very long time, in addition to this corporate crime is also part of white collar crime. The definition of corporate crime according to Braithwaite is an act of a corporation, or its employees acting for the corporation, where the act is an unlawful act. Hasbullah said corporate crime, "..... acts committed by directors and or employees

of a corporation at every level who carry out their duties and functions and can be considered acting on behalf of the corporation which can result in criminal responsibility, both to the corporation and together with the employees personally.” (Hasbullah, 2022)

One form of crime that changes with the times is a crime classified as an extraordinary crime. Although these crimes have existed since ancient times with forms and patterns that are different from today's times, extraordinary crimes appear in the same form and nature, but the ways of committing them and the media for committing these crimes are growing. Some of these extraordinary crimes were committed by utilizing information and communication technology so that these crimes can be committed by traveling through space and time in both the real world and the virtual world. (Alan Rugman, 2000)

The form of extraordinary crime now develops dynamically following changes in government, economy and politics in a country, is a universal phenomenon that is rapidly increasing not only in quantity but in quality so that it is getting higher from time to time. Moreover it is said that besides being a universal problem and happening continuously, extraordinary crimes also have a negative impact on the development of human civilization.

Corporation is a subject of criminal law, meaning that corporations can be held accountable. This also means that both among academics and practitioners, a special crime called corporate crime is considered a crime for which the perpetrators (corporations) can be held accountable in criminal law

2. METHODS

This research is normative legal research, using a statutory law approach that focuses on primary legal material, namely the Copyright Law Number 28 of 2014. The nature of the qualitative descriptive analysis, the primary legal material is Law Number 28 of 2014 concerning Copyright and Regulations Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. Collection of legal materials through document studies (library), processing of legal materials is carried out by means of checking (editing), marking (coding), reconstruction, and systematizing. Analysis of legal materials was carried out qualitatively, comprehensively and completely.

3. RESULTS AND DISCUSSION

3.1. Copyright Crimes in Positive Law

Intellectual Property Right (IPR) is essentially the development of human resources (HR), because intellectual property relates to products and processes related to the human mind. With the development of the IPR system, it is hoped that human

resources (HR) will also develop, especially the creation of an innovative culture in the field of copyright. (Zen, 2002)

Meanwhile Copyright is a part of IPRs. Regarding copyright in the field of songs or music, basically it can be in the form of cassettes or optical discs, such as: Compact Discs (CD), Video Compact Discs (VCD), or Digital Video Discs (DVD). This problem continues to occur a lot, until now there has not been found a way to deal with the many cases of violations in the field of songs or music, especially the media or equipment used in the form of cassettes, Compact Discs, Digital Video Discs, Video Compact Discs. With regard to perpetrators, Article 113 paragraph (3) of the Copyright Law Number 28 of 2014 states that anyone who without rights and/or without the permission of the creator or copyright holder violates the economic rights of the creator for commercial use, shall be punished with imprisonment and fines.

1. Copyright to Protect

Article 9 paragraph (2) TRIPS states: Copyright protection is only given to the embodiment of a work and not to ideas, procedures, implementation methods or mathematical concepts of the kind. Taylor stated that what is protected by copyright is the expression of an idea, so it is not protecting the idea itself. That is, what is protected by copyright is already in a tangible form as a work, not still an idea.

Thus, there are two main requirements for obtaining copyright protection, namely the element of originality and creativity of a copyrighted work. That a copyrighted work is the result of the creator's own creativity and is not an imitation and does not have to be new or unique. However, it must show authenticity as someone's creation on the basis of personal abilities and creativity. Songs or music with or without text are defined as a unified whole of copyrighted works, which are creations that are protected under Article 40 of Law Number 28 of 2014 concerning Copyright.

As it has been known that from the moment a creation is realized, it results in the emergence of a copyright to the creation, meaning from that moment the copyright begins to take effect. The official creator has the right to publish his creation, duplicate his creation, announce his creation, and prohibit other parties from duplicating and/or using his creation commercially. Everything has a beginning and an end. Likewise, copyright cannot be separated from its validity period or there is a time limit.

2. Applicability of Copyright

The problem of the application of copyright is not the same between one creation and another because it is influenced by the nature of the creation of the copyright group. There are two kinds of characteristics of creation, namely those that are original and derivative in nature. The validity period also depends on the type of creation or "object" of copyright, and whether the object is published or not published.

Copyright lasts for a limited time, and the duration varies from country to

country. As a right that has a social function, copyright has a certain validity period. This is to avoid excessive monopoly of the creator. In Indonesia based on Law Number 28 of 2014 concerning Copyright, the validity period of a copyright is as follows:

a. Validity Period of Moral Rights

The creator's moral rights are valid indefinitely in terms of: 1) continuing to include or not including his name on the copy in connection with the use of his work for the public; 2) use aliases or pseudonyms; and 3) defend their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation.

The creator's moral rights apply as long as the copyright period for the work in question lasts, namely in the case of: a. change his creation according to the decency in society; b. change the title and subheadings **of creation.**

b. Term of Song Economic Rights

Article 58 of Law Number 28 of 2014 states that copyright protection for works such as songs is during the validity period: 1). during the creator's life and continues for 70 (seventy) years after the creator's death. 2). In the event that a work is owned by 2 (two) or more people, copyright protection applies as long as the life of the creator who died most recently and lasts for 70 (seventy) years thereafter. 3). Copyright protection for works owned or held by legal entities is valid for 50 (fifty) years from the time the announcement was made.

3.2. Corporate Responsibility for Copyright Violation

The word corporation is a term commonly used by criminal law experts and criminology to refer to what in other fields of law, especially in the field of civil law, is called a legal entity (recht persoon, Dutch), derived from the absorption word: corporatie (Dutch), English: corporation (English), corporation (Germany), and corporatio (Latin). Corporate comes from the word "corpus" which means body (Indonesia), which means giving body or body. The word corporation means the result of bodily work, in other words, a body that is made into a person, a body that is obtained by human actions as opposed to a human body, which occurs according to nature. Satjipto Rahardjo defines that a corporation is an entity created by law. The body he creates consists of a "corpus", namely the physical structure and into it the law incorporates the element "animus" which gives the body a personality. Because a legal entity is a creation of law, apart from its creation, its death is also determined by law.

Barda Nawawi Arief states that the definition of corporation in each Special Crime contains the term corporation as follows: (Barda, 2003)

- a. The definition of a corporation as a subject of crime that is only for certain crimes, which are regulated in special laws.
- b. Initially the term "corporation" was not used, but various (non-uniform) and

inconsistent terms were used.

The term corporation began to appear in 1977 in the Psychotropics Law and was influenced by the term in the draft 1993 Criminal Code. Generally the term corporation is contained in general provisions (Article 1), but some include it in the elucidation of the relevant article.

It has become human nature that every human being must have needs that must be met. This need that must be met then becomes the basis of the human instinct to survive. However, there are times when these needs are not met, so humans make various efforts to meet these needs. One form of this effort is to form a group collectively by several individuals to meet their needs which cannot be fulfilled alone.

From this group which will then develop as the forerunner of the corporation. The development of corporations in the form of forming groups, for example, occurred in Asia Minor, Greek and Roman societies. In Rome, these groups then formed an organization that had many functions similar to today's corporations operating in the military, trade, religious and public affairs sectors

Subsequent corporate development cannot be separated from the role of the global industrial revolution. The industrial revolution began with technological developments, giving rise to various innovations and new technological discoveries that had a major impact on industrial activities, especially large-scale industries. One of the most influential inventions in the industrial revolution activities was the steam engine. As a result of these technological discoveries which had a major influence on industrial activities, massive changes occurred in the industrial sector starting from the form of organization, human resources, business capital, to the expansion of trade activities to distant areas.

According to Erlangga Kurniawan, the presence of corporations in people's lives (Erlangga, 2019) makes a significant contribution to economic development. In some developed countries there is a large corporation that supports the country's national development through economic activities that absorb the employment sector and help the government prosper the economy of its people. It's just that not many understand that actually corporations don't have a real form like humans because originally corporations were a nomenclature popularized by businessmen and economists to package business entities in trade transactions. Even though corporations are intangible, it is a common fact that most people accept and understand that corporations can carry out activities that can be directly felt by the community.

The presence of a corporation is indeed necessary, starting from early birth until the end of a human's life on earth, at least the corporation has taken fairness in each of these phases. The presence of the corporation cannot be denied anymore. Efforts to encourage corporate growth and development are in line with the demands of fulfilling the stages of development, namely by laying the foundations for industrial development in welcoming the era of long-term development.

Initially, the subjects of criminal law were only natural persons, while corporations

(recht persoon) were not recognized as subjects of criminal law. This is due to the enactment of the university principle *delinquere non potest*. However, the possibility of criminal prosecution of corporations based not only on utility considerations, but also on theoretical grounds is also justified. (Setiyono, 2003)

The use of corporations as subject of criminal law is not new, because it has been around for a long time. According to Maine, corporations have become the subject of criminal law. Even in Indonesia, villages as corporations were also subject to fines. Sahetapy (Sahetapy, 1994) believes that those who reject corporations as subjects of criminal law, because of the opinion that corporations are "persona ficta" (subjects/fictional humans), can be justified. However, if it is observed in socio-economic life, then the corporation's movements must be controlled by law, and if it deviates, then the corporation can be held accountable.

From a historical perspective, cooperation as a subject of criminal law began with the formation of corporations, and is still being debated. However, if you look at human development as part of society, then the initial formation of corporations was carried out to fulfill interests that could not be fulfilled by individual humans.

Criminal responsibility arises with the continuation of objective reproach (*verwijbaarheid*) for actions that are declared as criminal acts based on applicable criminal law, and subjectively to perpetrators who meet the requirements to be subject to criminal sanctions for their actions. (Dwidja, 2004) Criminal liability is highly dependent on error (liability based on fault). However, criminal liability for corporations is a bit of a deviation from the theory of criminal responsibility in general.

The element of "mistake" in corporate crime is not absolutely enforced, although the existence of errors must still be considered. In this case, the strict liability doctrine is known, where if a person or corporation carries out a type of activity that can be classified as extrahazardous or abnormally dangerous, then he must be responsible even though he has acted carefully. (Ahmad Santosa dkk, 1998)

In this regard, many agree with Muladi and Priyatno that in matters of criminal liability, the principle of guilt is still maintained, but in developments in the field of law, especially criminal law concerning corporate criminal responsibility, the principle of guilt or "the principle of no crime without fault" is not absolute. apply. There are quite a lot of facts that the victim suffered as a basis for demanding criminal responsibility from the perpetrator in accordance with the adage "*res ipsa loquitur*", that the facts speak for themselves." (Muladi dan Dwidja Priyatno, 1991)

In relation to the mistakes, the element of guilt as a basis for criminal responsibility is basically aimed at humans as natural persons or natural legal subjects, not corporations as legal subjects or *recht persoon*. This can be seen clearly in the elements of error in a broad sense, especially in the elements of error in the narrow sense of intention (*dolus*) or negligence (*culpa*). There is doubt that there is a corporation's fault, because this element can only be stated if a natural person intentionally or negligently commits a criminal act.

In the elucidation of Article 15 of the Law on Economic Crimes it is stated:

Article 15 stipulates that punishment or action can also be imposed on legal entities, companies, associations and foundations. In economic criminal law, this rule is really needed, because many economic crimes are committed by these bodies. Modern criminal law science has recognized the teaching that punishment can be pronounced against a legal entity.

The Law on Economic Crimes was the adoption of the *Wet op de Economische Delicten* in the Netherlands in 1950 which had previously introduced the position of corporations as subjects of criminal law. This concept was then included by the Dutch into the *Wetboek van Strafrecht* Amendment in 1976 as contained in Article 51 *Wetboek van Strafrecht*. With the enactment of the changes to the *Wetboek van Strafrecht*, the provisions regarding corporations as subjects of criminal law in Article 15 *Wet de op Economische Delicten* are removed. Indeed in Indonesia, even though the current Criminal Code does not yet accommodate corporations as subjects of criminal law, the 2015 revised Criminal Law has accommodated corporations as subjects of criminal law.

4. CONCLUSIONS

- a. Copyright crimes, including song copyrights, are regulated in the Copyright Law as part of Indonesian positive law. Article 113 of the Copyright Law Number 28 of 2014 states that anyone who without rights and/or without the permission of the creator or copyright holder violates the economic rights of the creator for commercial use, will be punished with imprisonment and a fine. Because legal entities are equated with people, legal entities that commit criminal copyright infringements can also be punished under this article as a form of responsibility.
- b. Copyright crimes, including song copyrights, are regulated in the Copyright Law as part of Indonesian positive law. Article 113 of the Copyright Law Number 28 of 2014 states that anyone who without rights and/or without the permission of the creator or copyright holder violates the economic rights of the creator for commercial use, will be punished with imprisonment and a fine. Because legal entities are equated with people, legal entities that commit criminal copyright infringements can also be punished under this article as a form of responsibility.
- c. Corporate responsibility as perpetrators of criminal acts is regulated in Article 3 of MA Regulation 13/2016; constitutes a crime committed by a person based on a work relationship, or based on another relationship, either individually or jointly acting for and on behalf of the Corporation inside or outside the Corporate Environment. Copyright crimes, including song copyrights, are regulated by the Indonesian Copyright Law Number 28 of 2014. Article 113 paragraph (3) of this Copyright Law

5. SUGGESTION

- a. To avoid infringement on song creations in particular, songwriters are advised to register their song creations at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights to be recorded in the general register of Works or other intellectual property objects.
- b. To avoid infringement of song copyright, everyone, including legal entities, is not to easily duplicate songs without obtaining the consent of the song copyright holder

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