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Reconstruction of Criminal Sanctions against Corporations in Tax Criminal Actions

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ABSTRACT

In Law no. 28 of 2007 concerning the third amendment of Law no. 6 of 1983 concerning General Provisions and Tax Procedures has been regulated regarding criminal sanctions. However, in practice, these criminal sanctions cannot be applied to legal entities or corporations, because the formula is cumulative, alternative punishment will follow what is stated in the Criminal Code. This research is normative juridical research, which relies on secondary data. Secondary data consists of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research show that the reconstruction of criminal sanctions in the Tax Law must be carried out, namely changing the formulation of criminal sanctions (patterns of types of criminal sanctions, patterns of criminal formulation), the position of bodies or corporations such as the formulation of criminal sanctions in Corruption Laws and Laws concerning Prevention and Eradication of Money Laundering Crimes.

Keywords: *Reconstruction, Criminal Sanctions, Corporations.*

I. INTRODUCTION

Corporation is a term commonly used by criminal law experts to refer to what is common in other fields of law, particularly in the field of civil law, as a legal entity (Setiyono, 2002: 2 – 3). The existence of a corporation actually occurs as a result of the development of modernization. In ancient times, primitive or traditional societies were not known as legal entities or corporations, all activities / activities were only carried out individually or individually. But in its development, the need arises to carry out activities in collaboration with several people or corporations. Moreover, there are demands for economic and business development during the industrial revolution era which are increasingly broad and complex, especially the problem of limited funds for financing large industries and the problem of organizing cooperation between capital owners in carrying out economic and business activities. The existence of corporate

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funds - funds from individuals can be collected or combined to finance large projects that require very large funds (Salman Luthan, 1994:15).

In addition, there is a desire that the combination of skills will be more successful than if implemented alone. It is also possible that there are certain considerations, namely being able to share the risk of losses that might arise in the joint venture. In the further development of this joint venture or corporation, it does not only involve a few people, but several hundred or even thousands of people, as is currently the case with a Limited Liability Company (PT) which offers its shares to the general public or the public. This usually happens to Limited Liability Companies that have gone public.

At present the development of corporations seems to be increasing rapidly both in terms of quality, quantity and the field of business that they are engaged in. The corporation operates in various fields such as banking, transportation, communications, agriculture, forestry, marine, automotive, electronics, entertainment and so on. Almost no area of our lives is separated from corporate networks. The air we breathe, the water we drink, the food we swallow, the clothes and footwear we wear, the medicines that nourish us, the news we read, the future we plan, even behaviour in the bedroom is like the number of children that is desired, all of them smell of corporation, both through its products and pollution. (IS. Susanto, 1993: 5). The existence of corporations indeed brings many benefits to society and the state, such as increasing the income of the state treasury from taxes and foreign exchange, creating jobs, increasing technology transfer and so on. However, apart from the advantages or positive impacts mentioned above, the existence of corporations can also have negative impacts, such as environmental pollution (water, air, soil), exploitation or draining of natural resources, unfair competition, tax manipulation, exploitation of workers/labourers. , produce substandard or defective products that endanger consumers and so on. The emergence of this negative impact is caused by corporations too pursuing sizable profits.

Legal entities or corporations are able to enter into legal relations or enter into written or unwritten agreements with third parties, legal entities or corporations have civil rights over both movable and immovable objects, and can also commit acts against the law.

In the field of taxation, tax law subjects include individuals and legal entities or corporations or in practice they are also called companies. In order to seek large profits, it is not uncommon for companies to commit criminal acts. Corporations or legal entities as tax law subjects must carry out their obligations to pay taxes. The role of corporations is very large in the income of funds or the state treasury.

Considering that the role of corporations is very large in collecting funds or fees for the state budget, safeguarding this sector is very important. The Tax Law (Law No. 28 of 2007) has regulated criminal sanctions against taxpayers, both individuals and legal entities or Corporation. Law without sanctions is likened to a bird without wings, so it cannot fly. Law without sanctions is powerless. Legal sanctions must be enforceable (Rochmat Soemitro, 1987). In civil law there are coercive laws (*dwingend recht*) and there are optional laws (*relative recht*). However, once elected, it will be binding on both parties as law. Thus, it can be said that the function of sanctions in law is to give authority to the law and force people to comply with the law. Sanctions in public law, including tax law, are the main tool to force someone to comply with the provisions of the law. Paying taxes is an obligation for citizens in order to participate in financing development in order to achieve common prosperity. For citizens who already have a high level of legal awareness in the sense that they have behaved in accordance with the law or (legal behaviour) (Soerjono Soekanto, 1982: 159) or understand the function of taxes, understand the impact of taxes both on society and individuals, will voluntarily and Discipline in paying taxes without coercion. But there are not many such people, so the government needs to provide a lot of information or counselling to the public regarding the importance of taxes, so as to increase awareness of paying taxes. In addition, there is still a need for sanctions and coercive instruments that can be used to coerce taxpayers who do not comply with applicable laws and regulations. For citizens (taxpayers) who are afraid of sanctions will comply with applicable regulations or not commit a crime. The criminal sanctions contained in the Tax Law cannot be implemented. Given this, it is necessary to reconstruct criminal sanctions in the Tax Law.

(A) Problem Statement

From the description above, the problem is how the reconstruction should be carried out against Law no. 28 of 2007 so that corporations can be held responsible for their actions.

(B) Research Methodology

This research is a normative or doctrinal juridical legal research, namely research that analyses the norms or regulations that apply (Burhan Asshoha, 1996: 13) related to criminal acts in the field of taxation. The data used in this study are primary data and secondary data. Primary data obtained directly from the field by means of observation. However, primary data is only as a support for secondary data. Secondary data is the main data in this study. Secondary data is data that is indirectly obtained by researchers or data that has been processed by other people, which includes (Peter Mahmud Marzuki, 2009: 141):

a. Primary legal material

Primary legal materials are legal materials that are binding and include regulations related to the problem under study, namely;

- 1) Primary legal materials are legal materials that are binding and include regulations related to the problem under study, namely;
- 2) Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). 3) Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.
- 4) Attorney General Regulation Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects.
- 5) Law No. 1 of 1946 concerning the Criminal Code.
- 6) Law No. 1 of 2023 concerning the Criminal Code.

b. Secondary legal material

Secondary legal materials are legal materials that provide explanations regarding primary legal materials, research results, works of legal experts in the form of writings and so on, which are relevant to this research.

c. Tertiary legal material

Tertiary legal materials are legal materials that provide instructions or explanations of primary and secondary legal materials, such as legal dictionaries and encyclopaedias.

(C) Reconstruction of Criminal Sanctions Regulated in the Tax Law

In Article 1 point 1, 2 and point 3 of Law no. 6 of 1983 as amended by Law no. 28 of 2007 concerning the third amendment of Law no. 6 of 1983 concerning General Provisions and Tax Procedures stated that taxpayers are individuals or entities or corporations. With such a statement, all provisions contained in the aforementioned Law apply to individual taxpayers and entities or corporations, including provisions governing criminal sanctions.

1. Reconstruct Everyone's Sentence

In the rules of criminal sanctions in Law no. 6 of 1983 as amended by Law no. 28 of 2007 stated in Articles 38, 39, 39A, 41, 41A, 41B, 41C. Of these Articles apart from Article 41 the first sentence in each article begins with the words "everyone". In Article 38 it starts with the word "everyone" who because of his negligence.....

In Articles 39, 39A, 41B, 41C it starts with the word "everyone" who deliberately In

Law no. 28 of 2007 does not regulate the word "everyone", nor does the explanation for the law explain the word "everyone". This is very different from Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. In this Corruption Law, the word "everyone" is explained, namely in Article 1 point 3 which states that what is meant by "everyone" is an individual or including a corporation. So according to the Corruption Law what is meant by everyone can include individuals or it can also be bodies or corporations. Based on the conditions of Law no. 28 of 2007 concerning the third Amendment of Law no. 6 of 1983 concerning General Provisions and Procedures for Taxation, in the opinion of the author, it needs to be explicitly or textually confirmed in a law such as the Corruption law or if this is not so explained in the elucidation of the relevant law. In fact, according to the author's opinion, even though the law is not written or explained in the explanation, the meaning of "everyone" implicitly can be interpreted to include individuals and entities or corporations. This can be connected with the provisions in Article 1 points 1, 2 and 3 which states that the taxpayer consists of an individual or individuals and an entity or corporation.

II. RECONSTRUCTION OF FORMULATION OF CRIMINAL SANCTIONS

(A) Pattern of Types of Criminal Sanctions

In discussing this pattern of types of criminal sanctions, it is necessary for the author to point out that in the Criminal Code (KUHP) or *wetboek van Strafrech* in Article 10 of the Criminal Code, the types of criminal sanctions consist of principal criminal sanctions and additional criminal sanctions. Principal punishments consist of capital punishment, imprisonment, imprisonment and fines. Meanwhile, additional punishment consists of revocation of certain rights, confiscation of certain items and announcement of judge's decision. Then, if you look at the New Criminal Code, this type of sanction consists of Criminal and Acts. The punishment consists of 1) main punishments, namely imprisonment, punishment for imprisonment, punishment for supervision, punishment for fines and punishment for social work; 2) Additional Penalties, namely revocation of certain rights, confiscation of certain items and claims, announcement of judge's decisions, payment of compensation and fulfilment of customary obligations. Then the sanctions in the form of action consist of 1) for people who are unable or incapable of being responsible (actions imposed without a crime) treatment in a mental hospital, surrender to the government, surrender to someone, 2) For people in general who are able to be responsible (dropped together) same as criminal) revocation of driving license, deprivation of profits derived from criminal acts, repair of non-criminal consequences, job training, rehabilitation and treatment in an institution. For Law No. 28 of 2007 concerning the third

amendment of Law no. 6 of 1983 concerning General Provisions and Tax Procedures, the types of sanctions applied are imprisonment, confinement and fines. Looking at the types of criminal sanctions, the three are included in the main punishment. In compiling the types of sanctions, this Law does not follow the pattern in the Criminal Code (because it has eliminated Article 42 which regulates violations and crimes) or in the New Criminal Code. Given this, the tax law must make separate arrangements.

According to the pattern of the Criminal Code (WVS) for "crime" is generally punishable by imprisonment or a fine, while for "violation" is generally punishable by imprisonment or a fine. In the New Criminal Code Law no. 1 of 2023 concerning the Criminal Code no longer distinguishes between crimes in the form of "crimes" and "violations". The New Criminal Code classifies criminal acts whose nature/weight is considered "very light", "severe" and "very serious". "Very light" offenses are only punishable by fines, for "serious" offenses punishable by imprisonment or fines (alternative) and "very serious" offenses punishable by imprisonment only (single formulation) or in special cases can also be threatened with capital punishment as an alternative to life imprisonment or imprisonment for a certain time (Barda Nawawi Arief, 2008: 153)

From the description it can be grouped into three categories of criminal acts, namely:

- 1) Which is only punishable by fines (for offenses whose weight is assessed to be less than 1 (one) year in prison;
- 2) Those who are subject to alternative imprisonment or fines (for offenses punishable by imprisonment of 1-7 years);
- 3) Which is only punishable by imprisonment (for offenses that are punishable by imprisonment of more than 7 years.

However, the above pattern can still be deviated, among others, for several crimes which are deemed to generate high economic or financial benefits, the punishment of imprisonment can be alternatively and cumulative with fines. This kind of pattern can be applied to Law no. 28 of 2007 concerning the third amendment of Law no. 6 of 1983 concerning General Provisions and Tax Procedures in compiling criminal sanctions.

(B) Criminal Formulation Patterns

If you look at the Criminal Code/WVS, it only adheres to 2 (two) formulation systems, namely:

- Single formulation (only subject to one principal punishment);
- Alternative formulation.

The main punishment that is threatened/formulated singly is only imprisonment, confinement or a fine. There is no single death penalty or life imprisonment.

Furthermore, if you look at the form of criminal formulation from the Tax

Law, it will be different. According to Law no. 6 of 1983 concerning General Provisions and Tax Procedures or the old tax law was stipulated in a double manner. This dual purpose includes cumulative and alternative determination. In Law no. 6 of 1983 the system used is cumulative and alternative. This can be seen from the formulation of article 38 “..... shall be punished with imprisonment for a maximum of one year and/or a maximum fine of twice the amount of tax payable”. Article 39 “.....penalized with imprisonment for a maximum of three years and/or a maximum fine of four times the amount of tax payable”. Article 41 paragraph (1) "... shall be punished with imprisonment for a maximum of six months and/or a maximum fine of one million rupiahs". Article 41 paragraph (2) "... shall be punished with imprisonment for a maximum of one year and/or a maximum fine of two million rupiahs".

In Law no. 28 of 2007 the formulation of sanctions uses an alternative and cumulative system. Article 38 uses an alternative system, namely "..... causing losses to state revenues a fine of at least 1 (one) time the amount of tax payable that is not paid or underpaid and a maximum of 2 (two) times the amount of tax payable that is not paid or underpaid, or is subject to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year. In Article 39 paragraph (1) using a cumulative system, the threat of imprisonment is a minimum of six months and a maximum of six years and a fine of at least twice the amount of tax payable and a maximum of four times the amount of tax payable. In Article 39 paragraph (3) using a cumulative system, the threats are imprisonment for a minimum of 6 (six) months and a maximum of 2 (two) years and a fine of at least 2 (two) times the amount of restitution requested and a maximum of 4 (four) times amount of refund requested. Article 39A the formulation of sanctions is also cumulative, the threats are imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax on the invoice and a maximum of 6 (six) times the amount of tax on the invoice . Furthermore, for Article 41 paragraph (1), paragraph (2); Articles 41A and 41B have slightly different formulations of sanctions, namely they do not use a minimum limit for imprisonment or imprisonment and do not use a minimum limit for fines, but the formula still uses a cumulative system. Then for Article 41C uses an alternative system between imprisonment and fines.

With the change in the form of criminal formulation from cumulative and alternative to only cumulative form, the legislators do not give freedom to law enforcement prosecutors and judges

to choose the type of punishment that is threatened, but the judge in giving a verdict or decision must combine criminal sanctions that are threatened to perpetrator. Will this formula be applied to bodies or corporations as perpetrators of tax crimes? According to the author's opinion, it is clear that it will experience difficulties in its application, because it is impossible for an agency or corporation to be sentenced to prison. Entities or corporations can only be fined. Furthermore, the form of formulation of sanctions that uses a cumulative system also causes many problems. When viewed from the operationalization of the cumulative criminal system policy, it has a very rigid and imperative nature. With this system the judge is required to impose both types of punishment together (imprisonment / confinement and fines). Thus the judge is not given the opportunity to choose which type of punishment he deems most appropriate for the offender. If you look at the form of formulation of sanctions in the tax law, the most cumulative formulation is between imprisonment and fines. Even this is feared to be ineffective and can cause problems. In the tax law there are no specific provisions regarding alternative penalties for unpaid fines. This means that the general provisions of the Criminal Code apply, namely article 30 that the maximum alternative imprisonment is six months or can be a maximum of eight months if there is a weighting (recidive or concursus). Thus, the possibility of the threat of fines will not be effective, because if you are unable to pay the fine, you will only be subject to imprisonment for six months or a maximum of eight months. For the perpetrator / convict of imprisonment in lieu of a fine, it is unlikely that it will have any effect because even if he pays the fine, he will still serve a cumulative prison sentence imposed by the judge. When compared to other countries such as the Netherlands, Singapore and Australia, all three use the formulation of alternative tax sanctions. And from the alternative formulation, the priority is administrative sanctions or fines. While the Indonesian Tax Law actually formulates cumulative sanctions, which are rigid in nature and perpetrators of corporate or corporate tax crimes are not entangled in this system. Given this, the formulation of criminal sanctions in order to apply to individuals as perpetrators of crimes and bodies or corporations as perpetrators of crimes according to the author's opinion needs to be formulated as follows:

1. Article 38 states that every person or corporation which due to their negligence:
 - a. Not submitting a notification letter; or
 - b. Delivering a notification letter, but the contents of which are incorrect or incomplete, or attaching a statement whose contents are incorrect so that it can cause losses to state revenues and the said action is an act after the first action as referred to in Article 13A, is fined at least 1 (one) time the amount of tax payable that is not paid or underpaid, or is subject to imprisonment for a minimum of 3 (three) months or a maximum of 1 (one) year.

2. In Article 39 paragraph (1) it is stated that every person or corporation intentionally: a. Not registering to be given an NPWP or not reporting their business to be confirmed as a taxable entrepreneur; b. Misusing or using without rights the NPWP or validation of a taxable entrepreneur; c. Not submitting a notification letter; d. Delivering notification letters and/or statements whose contents are incorrect or incomplete; e. Refusing to carry out the inspection as referred to in Article 29; f. Showing books, records, or other documents that are false or falsified as if they were true, or do not describe the actual situation; g. Not keeping books or records in Indonesia, not showing or lending books, records or other documents; h. Not keeping books, records, or documents which form the basis of bookkeeping or recording and other documents including the results of data processing from bookkeeping that is managed electronically or carried out by means of an on-line application program in Indonesia as referred to in Article 28 paragraph (11); or i. Failure to deposit taxes that have been withheld or collected so as to cause losses to state revenues shall be subject to imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years or a fine of at least 2 (two) times the amount of tax payable which is not or less paid and a maximum of 4 (four) times the amount of tax payable or underpaid.

3. In Article 39 paragraph (3) it is stated that any person or corporation that attempts to commit a criminal act of misusing or using without rights the NPWP or validation of a taxable entrepreneur as referred to in paragraph (1) letter b, or submits a notification letter and/or statement containing incorrect or incomplete, as referred to in paragraph (1) letter d, in the context of submitting a request for refund or making tax compensation or crediting taxes, shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 2 (two) years or a fine at least 2 (two) times the amount of restitution requested and/or compensation or credit made and a maximum of 4 (four) times the amount of restitution requested and/or compensation or credit made.

4. In Article 39A states that every person or corporation who intentionally: a. Issuing and/or using tax invoices, proof of tax collection, proof of withholding taxes, and/or proof of tax payments that are not based on actual transactions; or b. Issuing a tax invoice but has not been confirmed as a taxable entrepreneur shall be subject to imprisonment for a minimum of two years and a maximum of six years or a fine of at least twice the amount of tax in the tax invoice, proof of tax collection, both withholding tax, and/or proof of tax payment and a maximum of six times the amount of tax in the tax invoice, proof of tax collection, proof of withholding tax, and/or proof of tax payment.

5. In Article 41 provides an alternative formulation of sanctions. Paragraph (1) An official who because of his negligenceis subject to imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 25,000,000.00 (twenty-five million rupiah). Paragraph (2) An official intentionally shall be subject to imprisonment for a maximum of 2 (two) years or a fine of a maximum of Rp. 50,000,000.00 (fifty million rupiah).
6. In Articles 41A and 41B have an alternative formulation of sanctions. Article 41A states that everyone is obliged to provide shall be subject to imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 25,000,000.00 (twenty-five million rupiah). Article 41B states that every person who intentionallyis sentenced to imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 75,000,000.00 (seventy-five million rupiah).
7. In Article 41C formulates an alternative criminal sanction. Article 41C paragraph (1) Every person who deliberately does not fulfil the obligations of shall be subject to a maximum penalty of 1 (one) year or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Article 41C paragraph (2) Every person who deliberately shall be punished with imprisonment for a maximum of 10 (ten) months or a fine of up to Rp. 800,000,000.00 (eight hundred million rupiah). Article 41C paragraph (3) Every person who deliberately shall be sentenced to ten months or a maximum fine of Rp. 800,000,000.00 (eight hundred million rupiah). Article 41C paragraph (4) Every person who deliberately shall be punished or fined a maximum of Rp. 500,000,000.00 (five hundred million rupiah). With the formulation of criminal sanctions that are cumulative and alternative in nature, it is hoped that law enforcers, especially prosecutors and judges, will be given leeway in the selection of criminal sanctions used so that law enforcement in the field of taxation creates legal certainty and creates justice. For the no. 5, 6 and 7 are not included in the category of individual and corporate taxpayers.

III. RECONSTRUCTION OF AGENCY OR CORPORATION POSITION

Furthermore, related to the position of individuals and entities or corporations as legal subjects or tax payers which include paying taxes, withholding taxes, and collecting taxes, who have tax rights and obligations in accordance with the provisions of tax laws and regulations, it is necessary to have more regulation clear especially the position of the body or corporation when committing a crime.

This setting concerns the following:

1. When is it said that the body or corporation has committed a tax crime;
2. Who can be held accountable in a tax crime;
3. In terms of how the agency or corporation can be held accountable for criminal acts of taxation;
4. What types of sanctions can be imposed on bodies or corporations in tax crimes.

When compared to the countries of the Netherlands, Singapore and Australia, these three countries have properly regulated the position of bodies or corporations, so that if a crime in the field of taxation occurs, whether it is committed by an individual or an entity or corporation, then both of them will be charged with criminal prosecution. existing regulations. Meanwhile, the Indonesian state tax law has not yet regulated this matter, especially bodies or corporations, so that if a crime occurs in the field of taxation, the corporation cannot be held criminally responsible. In view of Law no. 6 of 1983 as amended by Law no. 28 of 2007 concerning General Provisions and Tax Procedures has not yet regulated matters as mentioned above, it is necessary to reconstruct or rebuild it so that law enforcers in the field of taxation have guidelines in prosecuting bodies or corporations as perpetrators of criminal acts in the field of taxation. To make this reconstruction easier, one can imitate or compare it with the law on the eradication of corruption and the law on the prevention and eradication of money laundering. These two laws have accommodated bodies or corporations as subjects of criminal law in the field of corruption and money laundering. In Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes regulates bodies or corporations as subjects of criminal acts of corruption which are regulated in Article 20 as follows:

- (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal prosecution and imposition can be made against the corporation and/or its management.
- (2) The criminal act of corruption is committed by a corporation if the crime is committed by people either based on work relations or based on other relationships, acting within the corporate environment either alone or together.
- (3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management.
- (4) The management representing the corporation as referred to in paragraph (3) may be represented by another person.

(5)The judge can order the management of the corporation to appear before the court himself and can also order the management to be brought before the court.

(6)In the event that a criminal charge is made against a corporation, the summons to appear and submission of the summons shall be conveyed to the management at the residence of the management or where the management has an office.

(7)The main sentence that can be imposed on a corporation is only a fine with a maximum sentence plus 1/3 (one third).

From the wording of Article 20 paragraph 1 of the corruption law mentioned above, it indicates that this law adheres to the stance that an entity or corporation is the subject of a crime. Then the wording of Article 20 paragraph 2 indicates that the imposition of criminal responsibility on corporations adheres to the doctrine of identification and the doctrine of aggregation. The teaching of identification is contained in the sentence "if the crime is committed by people, either based on work relations or based on other relationships". Then the aggregation teaching is contained in the sentence "if the crime is committed in a corporate environment either alone or together".

What is meant by "people based on work relations" are people who have work relationships as administrators or as employees, namely (Barda Nawawi Arief, 2008:

153):

1. Based on the articles of association and their amendments,
2. Based on the appointment as an employee and work agreement with the corporation,
3. Based on a letter of appointment as an employee, or
4. Based on the work agreement as an employee.

Then what is meant by "people based on other relationships" are people who have relationships other than work relations with the corporation. They include those representing corporations to carry out legal actions for and on behalf of corporations based on (Barda Nawawi Arief, 2008:

153):

1. Authorization,
2. Based on an agreement by giving power of attorney (meaning that the power of attorney is not set apart but included in the work agreement)'
3. Based on the delegation of authority.

Thus what is meant by a crime can be held accountable to the corporation if the crime is committed by people who have a relationship with the corporation, whether the relationship is based on a work relationship or based on a relationship other than a work relationship.

Then to further complete the reconstruction or improvement of Law no. 6 of 1983 as amended by Law no. 28 of 2007 concerning General Provisions and Tax Procedures, the authors present Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. This money laundering law has regulated criminal acts committed by bodies or corporations and the main criminal threat is also in the form of fines. This law further regulates if the fine is not paid by the convict or corporation, so that the criminal sanctions are clearer. This can be seen in the provisions of Articles 6, 7, 8 and 9 of Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, namely

Article 6

In the event that the crime of Money Laundering as referred to in Article 3, Article 4 and Article 5 is committed by a Corporation, the sentence shall be imposed on the Corporation and/or Corporate Controlling Personnel.

Criminals are imposed on Corporations if the crime of Money Laundering:

- a. carried out or ordered by the Corporate Control Personnel;
 - b. carried out in order to fulfil the aims and objectives of the Corporation;
 - c. carried out in accordance with the duties and functions of the actor or giver of the order;
- And
- d. carried out with the intention of providing benefits to the Corporation

Article 7

(1)The principal sentence imposed on a Corporation is a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah);

(2)In addition to fines as referred to in paragraph (1) Corporations may also be subject to additional penalties in the form of: a. Announcement of the judge's decision;

- a. freezing of part or all of the Corporation's business activities;
- b. revocation of business license;
- c. dissolution and/or prohibition of the Corporation;
- d. confiscation of corporate assets for the state; and/or

- e. corporate takeover by the state.

Article 8

In the event that the convict's assets are insufficient to pay the fine as referred to in Article 3, Article 4 and Article 5, the fine shall be replaced by imprisonment for a maximum of 1 (one) year and 4 (four) months.

Article 9

(1) In the event that the Corporation is unable to pay the fine as referred to in Article 7 paragraph (1), the fine shall be replaced by confiscation of the Corporation's Assets or Controlling Personnel of the Corporation whose value is the same as the fine imposed.

(2) In the event that the sale of the confiscated Assets of the Corporation as referred to in paragraph (1) is not sufficient, imprisonment in lieu of fines shall be imposed on the Corporate Controlling Personnel taking into account the fines already paid.

The money laundering law provides a way out if the fines imposed on corporations are not paid, making it easier for law enforcers, both prosecutors and judges, to make decisions on corporate criminals.

By looking at the description above from the formulations of the articles of the Corruption Law and the prevention and eradication of money laundering, these formulations can be used to reconstruct or improve formulations of criminal sanctions in the field of taxation against perpetrators of criminal acts. In the field of taxation, both the actors are individuals and the actors are bodies or corporations. According to the writer's opinion, this improvement can be arranged in the article after article 43A. Thus the expected reconstruction could be:

Article 43B

- 1) In the event that a tax crime is committed by or on behalf of a corporation, charges and criminal convictions can be made against the corporation and/or its management.
- 2) A tax crime is committed by a corporation if the crime is committed by people either based on a work relationship or based on another relationship, acting within the corporate environment either alone or together.
- 3) In the event that a criminal charge is made against a corporation, the corporation is represented by the management.
- 4) The management representing the corporation as referred to in paragraph (3)

may be represented by another person.

5) The judge may order the management of the corporation to appear before the court himself and may also order the management to be brought before a court hearing.

6) In the event that a criminal charge is made against a corporation, the summons to appear and delivery of the summons shall be conveyed to the management at the residence of the management or where the management has an office.

7) The principal sentence that can be imposed on a corporation is only a fine, with the maximum penalty being added 1/3 (one third).

8) In addition to fines as referred to in paragraph (7) Corporations may also be subject to additional penalties in the form of:

- a. Announcement of the judge's decision;
- b. freezing of part or all of the Corporation's business activities;
- c. revocation of business license;
- d. dissolution and/or prohibition of the Corporation;
- e. confiscation of corporate assets for the state; and/or
- f. corporate takeover by the state.

Article 43C

(1) In the event that the Corporation is unable to pay the fine as referred to in Article 43B paragraph (7), the fine shall be replaced by confiscation of the Corporation's Assets or Controlling Personnel of the Corporation whose value is the same as the fine imposed.

(2) In the event that the sale of the confiscated Assets of the Corporation as referred to in paragraph (1) is not sufficient, imprisonment in lieu of fines shall be imposed on the Corporate Controlling Personnel taking into account the fines already paid.

In the provisions put forward by the author in Article 43B paragraph (1) in the case of a tax crime committed by or on behalf of a corporation, criminal prosecution and imposition can be made against the corporation and/or its management. This provision shows that if it is declared that an entity or corporation has committed a criminal offense in the field of taxation, then criminal prosecution and imposition can be imposed on three possibilities, namely on the corporation, on the corporation's management and on the corporation and corporation's management. This is related to the development of criminal law which concerns corporations as subjects of criminal law, according to Mardjono Reksodiputro there are three systems of

corporate responsibility in criminal law, namely (Mardjono Reksodiputro, 1994: 72): a. Corporate management as the maker and administrator is responsible;

- a. Corporations as creators and administrators are responsible;
- b. The corporation as a maker and also as a responsible.

The management of the corporation as a maker, then the management is responsible. This system limits the nature of criminal acts committed by corporations only to individuals (natuurlijk person). If a crime is committed in a corporate environment, then the person who commits the crime is the management. Those who are responsible in the event of a crime are the administrators who committed the crime. This system is adhered to by our Criminal Code, this is stated in Article 59 which reads "in cases where because of a violation a crime is determined against the management, members of the management body or commissioners, then the management, members of the management body or commissioners who are found not to participate interfering in an offense is not penalized." It seems that the provisions of the aforementioned article were influenced by the principle that developed in the 19th century, namely *societas delinquere non potest* or *universitas delinquere non potest*, namely legal entities cannot commit crimes. Errors cannot be borne by legal entities or corporations, but are borne by humans (individualization). The aforementioned article also contains reasons for the abolition of crimes for administrators, members of the board of directors or commissioners who are apparently not involved in committing a crime.

The corporation is the maker, the management is responsible. This system recognizes that corporations are subjects of criminal law or perpetrators of criminal acts, but accountability is still borne by the management.

The corporation as maker and responsible. In this system it is possible to sue the corporation and hold it accountable. In this system there has been a change that at first the corporation could not commit a crime or changed by accepting the concept of a functional actor, meaning that corporations could be held responsible for committing a crime. The issue of corporate responsibility as the subject of a crime cannot be separated from the main issue of responsibility in criminal law or wrongdoing. In Law no. 48 of 2009 concerning Judicial Powers Article 6 paragraph (2) states that "no one can be sentenced to a crime, unless the court, due to valid means of proof according to law, is convinced that a person who is deemed to be responsible has been guilty of the act charged upon him". The principle of guilt is an absolute principle in criminal law, namely as a basis for imposing a sentence. The problem is how does the principle of guilt affect corporations as the perpetrators of offenses? Can corporations have mistaken?

According to Suprpto, the corporation can be blamed if it is intentional or negligent or the negligence of the people who are the tools of the corporation. The error is not individual but collective (Setiono, 2002: 130). This is in line with the opinion of Van Bemmelen and Remmelink who stated that corporations can still have mistaken with the construction of management errors or members of the board of directors (Muladi and Dwijdjo Priyatna, 1991: 84). In this regard, Roeslan Saleh argues that the principle of culpability against corporations does not absolutely apply, but is sufficient to base the adage *re ipsa loquitur* (the facts speak for themselves) (Muladi and Dwidjo Priyatna, 1991: 87). Actually, this is not foreign anymore because in Anglo Saxon countries the principle of *mens rea* (inner attitude) is known with the exception of certain offenses, namely what is known as strict liability and vicarious liability.

Strict liability is criminal responsibility without the need to prove guilt. The principle of responsibility which views mistakes as something irrelevant to be disputed whether they exist or not. According to this doctrine, a person can already be held accountable for certain crimes even though the person is not guilty. According to LB Curson, this doctrine is based on certain reasons, namely (Hamzah Hatrik, 1996: 13-14):

1. It is essential to ensure compliance with certain important regulations necessary for social welfare.
2. Proving the existence of men's *rea* will be very difficult for violations related to social welfare.
3. The high social level caused by the action concerned.

Meanwhile, according to Ted Honderich, strict liability is used for the following reasons:

1. The difficulty of proving responsibility for certain crimes.

It is necessary to prevent certain types of crimes in order to avoid very wide-spread dangers. The sentence imposed as a result of strict liability is very light. In countries that adhere to the Common Law system, strict liability applies to three types of offenses, namely: Public Nuisance, disturbance of public order, blocking the highway, giving off a bad smell.

2. Criminal Libel, slander, defamation.
3. Contempt of court, violation of court rules.

Most strict liability is found in offenses regulated in law (statutory offenses, regulatory offenses, *mala prohibita*) which are generally offenses against the general welfare. Including regulatory offenses such as the sale of dangerous food and beverages or drugs, the use of misleading trade images and traffic violations.

Vicarious Liability is a criminal responsibility that is imposed on someone for the actions of other people. Accountability like this, for example, occurs in the case of actions committed by other people within the scope of their work or position. In general, this is limited to cases involving the relationship between employers and their workers, assistants or subordinates.

Corporate accountability on the basis of these two doctrines is very much needed in its development. Because with the development of technology, it is not easy to get sufficient evidence about the mistakes of corporate owners. In this regard, Barda Nawawi Arief stated that the two doctrines mentioned above need to be considered as to how far they can be adopted. This is in connection with several current criminal acts which are closely related to developments and advances in the fields of technology, economy and trade which involve many legal entities or corporations. Especially if the consequences arising from these offenses concern the public interest. It is very difficult to prove the existence of a corporation's fault because in general it is people who have faults. To make it easier, it is necessary to consider the corporate criminal liability system with the principle or doctrine of strict liability and vicarious liability (Muladi and Dwidjo Priyatna, 1991: 92 – 93).

Furthermore, what about our condition? Strictly speaking, we do not adhere to this doctrine, but in practice, especially in the application of traffic rules, it turns out that we adhere to strict liability regardless of the nature of the mistake. If a violation occurs, then he is held accountable. Based on the description above, the doctrine of strict liability and vicarious liability can be used for offenses or criminal acts committed by corporations, with the basis used to demand accountability is the fact of the victim's suffering.

In the New Criminal Code (Law No. 1 of 2023) the doctrines of strict liability and vicarious liability are accepted. For strict liability can be seen in Article 37 a. which states "in the case determined by law, everyone can: Furthermore, for vicarious liability can be seen in Article 37 b. which states that "in cases determined by law, each person can: be held accountable for criminal acts committed by other people".

In the Criminal Code according to Law no. 1 of 2023 concerning the Criminal

Code for corporations is regulated in Articles 45 to 50. In Article 45 it is stated that "corporations are the subject of a crime". Then in Article 46 it is stated that "Criminal acts by Corporations are criminal acts committed by management who have a functional position in the organizational structure of the Corporation or people based on work relationships or based on other relationships who act for and on behalf of the Corporation or act in the interests of the Corporation, in scope of business or activities of the Corporation, either individually or jointly.

In Article 47 it is stated that "In addition to the provisions referred to in Article 46, criminal acts by Corporations can be committed by givers of orders, controllers, or beneficial owners of Corporations who are outside the organizational structure, but can control the Corporation". Furthermore, in Article 48 it is stated that criminal acts by Corporations as referred to in Article 46 and Article 47 can be accounted for, if:

- a) included in the scope of business or activity as specified in the articles of association or other provisions applicable to the Corporation;
- b) unlawfully benefiting the Corporation;
- c) accepted as Corporate policy;
- d) Corporations do not take the necessary steps to prevent, prevent a greater impact and ensure compliance with applicable legal provisions in order to prevent criminal acts from occurring; and/or
- e) Corporations allow crime to occur.

In Article 49 it is stated that "Responsibility for criminal acts by the Corporation as referred to in Article 48 shall be imposed on the Corporation, administrators who have a functional position, give orders, control holders, and/or beneficial owners of the Corporation".

In Article 50 it is stated that "justifying reasons and excuses that can be submitted by administrators who have a functional position, give orders, control holders, and/or beneficial owners of the Corporation can also be submitted by the Corporation as long as these reasons are directly related to the crime charged against the Corporation." ”.

Furthermore, regarding the reasons for criminalizing corporations as creators/perpetrators, it is contained in the Collection of Reports on the Results of Studies in the Criminal Law Field, namely (Anonymous, 1986: 34):

- a. In economic offenses it is not impossible that the fines imposed on management are smaller than the profits received by the corporation by committing unlawful acts, or the losses incurred in society, or suffered by rivals, the profits and or losses are greater. greater than the fines imposed as punishment.
- b. Penalizing the management cannot provide sufficient guarantees that the corporation will not re-commit an act that is prohibited by law.

Justification for corporate responsibility as perpetrators of criminal acts, can be based on the following matters (Muladi, 1990: 11):

- a. On the basis of an intergalactic philosophy, that is, everything should be measured on the basis of balance, harmony and harmony between individual interests and social interests;
- b. On the basis of the principle of kinship in Article 33 of the 1945 Constitution;
- c. To eradicate anomie of success (success without rules);
- d. For consumer protection;
- e. For technological progress.

In relation to corporate responsibility in criminal law, what sanctions/criminals are more appropriate to be imposed on corporations? In my opinion, the most appropriate punishment is a fine, from the principal sentence available. In addition to criminal fines, corporations are also subject to additional punishment in the form of revocation of rights - rights obtained by corporations, announcement of judge's decisions, civil sanctions in the form of compensation for the consequences arising from corporate crimes. Apart from that, corporations can also be subject to disciplinary action, namely placing the company under the supervision of the authorities for a certain period of time. Specifically regarding the revocation of rights obtained by corporations, there is a need for restrictions. If what is meant by revocation is revocation of operational permits, what must be considered are the consequences that may arise as a result of these sanctions. This is because the revocation of an operational permit is tantamount to closing a company, so that the employees or labourers who are most affected are compared to the employer or company owner. Bearing in mind this, criminal prosecution of corporations is carried out carefully or selectively, because the impact is very broad. Those who suffer are not only those who make mistakes, but other innocent parties such as employees or labourers, shareholders and society or consumers also suffer.

IV. CONCLUSION

In the Tax Law, the formulation of criminal sanctions against corporations is equated with criminal sanctions against persons or humans. Corporations are a subject of criminal law or perpetrators of criminal acts, but their criminal responsibility differs from that of a person or human being. Among other things, the difference is that corporations cannot be subject to imprisonment or imprisonment.

Therefore, the formulation of criminal sanctions cannot apply cumulatively but is alternative in nature. Given this, it is necessary to reconstruct or change the criminal sanctions imposed in the

Tax Law.

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