

THE EFFECTIVENESS OF CRIMINAL SANCTIONS IMPOSED ON LEGAL ENTITIES IN LAW ENFORCEMENT IN INDONESIA

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ABSTRACT

In Indonesia, legal entities can be subject to criminal sanctions for violations of the law which are regulated in various laws and regulations. The aim of this research is to investigate the effectiveness of implementing criminal sanctions against legal entities in law enforcement in Indonesia. The research method used is normative legal research. Data will be collected through literature studies, analysis of legal documents, and case studies related to the application of criminal sanctions against legal entities in Indonesia. The collected data will be analyzed qualitatively using a descriptive approach and content analysis. The research results show that the effectiveness of implementing criminal sanctions against legal entities in Indonesia is still low. This is caused by several factors, such as unclear laws and regulations, weaknesses in law enforcement, limited resources. This condition results in injustice for society, especially for victims of criminal acts committed by legal entities.

KEYWORDS Implementation, Criminal Sanctions, Legal Entities, Law Enforcement



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INTRODUCTION

In the ongoing era of globalization, there is a significant acceleration in the development and construction of the economic sector, especially in Indonesia. One concrete example of this progress is seen in the business field, where there are no longer just individuals operating independently as in the past. Currently, there is a tendency for collaboration and cooperation among individuals to create new entities. This collaboration creates a new model where people come together to form larger entities by pooling their resources together. The main goal of these groups is to conduct business activities with the aim of achieving maximum profit. These

How to cite: Ida Bagus Bayu Brahmantya. (2024). The Effectiveness Of Criminal Sanctions Imposed On Legal Entities In Law Enforcement In Indonesia. *Journal Eduvest*. 4 (5): 3878-3886
E-ISSN: 2775-3727
Published by: <https://greenpublisher.id/>

entities are often referred to as businesses, which can also take the form of legal entities (Disemadi & Jaya, 2019).

In the field of civil law, it has long been recognized that legal entities have the status of legal subjects standing on their own, or known as *persona standi in iudicio*, and therefore can act legally. This concept also includes the ability of legal entities to commit unlawful acts, as known in Dutch as *onrechtmatig handelen* or *tort*. Interpretation of this concept is usually done by referring to the principles of expediency (*doelmatigheid*) and justice (*billijkheid*) (Theresia, 2022). In Indonesia, legal entities can be subject to criminal sanctions for violations of the law, as regulated in various legislation. Corporations were first recognized as entities with legal existence through the issuance of Emergency Law No. 7 of 1955 concerning Investigation, Prosecution, and Adjudication of Economic Crimes (Pardede, 2020).

Since then, various regulations regarding corporate crimes have begun to emerge in various legislation, such as Law No. 11/PNPS of 1964 concerning the Eradication of Subversive Activities, Law No. 38 of 2004 concerning Roads (Road Law), Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (Corruption Law) which has been amended by Law No. 20 of 2001, and Law No. 32 of 2009 concerning Environmental Protection and Management. However, the effectiveness of implementing criminal sanctions against legal entities remains a matter of debate. This issue arises because there are challenges in enforcing the law against legal entities, including challenges in identifying responsibility, proving criminal acts, and enforcing consistent law enforcement.

Previous research (Wangga, 2018) examined the criminal responsibility of political parties as legal entities in corruption cases, and the results showed that law enforcement agencies could establish policies on responsibility in the implementation of corruption cases within political parties as legal entities and urge the parliament to promptly issue the Criminal Code (R-KUHP) which has established the doctrine of vicarious liability to strengthen law enforcement compliance in the future period.

Another study by (Puspasari, 2016) examined criminal sanctions for legal entities committing crimes in the scope of labor relations, and the observations showed that criminal sanctions for legal entities committing criminal violations in the scope of labor relations are imposed fines. The imposition of punishment is not objective because it is based on a balanced amount with the punishment threatened for individual violators or managers of legal entities. Furthermore, under Law Number 13 of 2003, criminal penalties in the form of fines for legal entities are not listed independently in one article.

The novelty of this research lies in its object of study, namely the effectiveness of the implementation of criminal sanctions against legal entities, which has never been studied before. The findings of this research can enrich understanding of the effectiveness of the implementation of criminal sanctions for legal entities based on the legal context in Indonesia. The purpose behind this research is to investigate the effectiveness of the implementation of criminal sanctions for legal entities based on law enforcement in Indonesia.

RESEARCH METHOD

The research method used a normative legal approach. The method employed a normative approach, which involves studying regulations for primary legal purposes. These primary laws are also reinforced using books, expert opinions, public resources, newspapers, and print media for additional legal references (Efendi & Ibrahim, 2018). Data will be collected through literature review, analysis of legal documents, and case studies related to the implementation of criminal sanctions against legal entities in Indonesia. The data obtained will be examined using qualitative descriptive methods and content analysis. The data will then be analyzed to identify trends, patterns, and challenges in the implementation of criminal sanctions against legal entities. The analysis will be conducted by referring to relevant legal frameworks and relevant case studies.

RESULT AND DISCUSSION

The term "legal entity" has been commonly used in society and various legal contexts. The definition of a legal entity according to Sudikno Mertokusumo (1988) in the research by Prananingrum (2014) is a unit or group of individuals with specific objectives and the ability to have rights and obligations. Meanwhile, according to Subekti (1996), still within the same study, a legal entity is an entity or association that has the ability to conduct activities as a human would, possesses personal assets, and can be sued or sue in court. This definition emphasizes that a legal entity is an entity that can act legally and has rights and responsibilities. Legal entities also have the ability to own property and engage in legal processes such as filing lawsuits or being sued in court. This means that legal entities have a legal existence distinct from individuals, regardless of their participation.

Article 1654 of the Civil Code defines a legal entity as any association with the power to perform legal acts (civil), without removing the general provisions where such authority has been modified, limited, and subjected to specific procedures. This means that a legal entity is an entity with legal capacity to perform civil actions, in accordance with applicable provisions, without violating general regulations that govern the limitation of such authority. The preceding Article 1653 of the Civil Code regulates associations, including corporations, which are legally recognized associations of individuals forming a group. Additionally, this article also encompasses individual associations within organized groups accepted by public authority.

Quoting the rules set forth in Article 1653 of the Civil Code, legal entities can be categorized into three types according to Krisnawan (2022):

1. Associations formed by the government or state authorities, such as provinces or government banks.
2. Associations accepted by the government or state authorities, such as corporations, churches, or religious bodies.
3. Associations formed for specific purposes that do not contradict laws and ethics, such as limited liability companies or insurance associations.

The presence of Article 1653 of the Civil Code serves as the legal basis for the existence of legal entities, including both public and private legal entities, but it

does not specifically regulate the entities themselves. A legal entity, whether public or private, can be recognized as such if it meets several criteria. First, the legal entity must have separate wealth assets from the individual assets of those involved. Second, the legal entity must have clear and specific goals to be achieved. Third, there must be a common interest held by the members of the legal entity. Fourth, there must be a structured and planned organizational structure to regulate activities and decision-making. An entity can be considered a legal entity if it meets these principles (Prasetyo, 2021).

After meeting these requirements, the established legal entity can be sanctioned through several steps (Musthofa, 2018), namely:

1. The association must be established through the drafting of a notarial deed.
2. The founding deed must be registered at the local District Court registry office.
3. The articles of association of the legal entity must be submitted for approval to the Minister of Justice.
4. The approval of the legal entity must be announced in the State Gazette.

Following these procedures, an entity can be officially recognized as a legal entity. This validation process is important to ensure that the legal entity is lawfully recognized by the government and has legal legitimacy to operate and engage in activities within society.

Furthermore, a legal entity can be said to be a corporation, which according to legal experts as cited in Listyowati (2015), can be identified into 2 classifications based on its form:

1. *Corporatie* (corporation) is a combination or group of individuals that occurs in legal matters and then acts together as independent legal subjects. Thus, a corporation is a legal entity consisting of individual members but with authority and responsibilities shared among them. Examples of corporations include limited liability companies, insurance companies, shipping companies, and cooperatives.
2. *Stichting* (foundation) is a separately owned asset for specified purposes. Regarding membership, a foundation has no members, only administrators responsible for carrying out all necessary activities to achieve the foundation's objectives.

The role of corporations as legal entities cannot be denied to have a significant role in development, especially in the economic context. The contributions made by corporations include enhancing economic growth through tax payments to the state, contributing foreign exchange through international trade activities, and creating extensive job opportunities for the population. However, unfortunately, in their activities, corporations are often involved in deviant behavior or crimes (Shanty, 2017). The modus operandi of corporate crimes can vary depending on the context and nature of the company's activities.

According to research (Memah, 2023), the processes of modernization and economic development indicate that corporations have a vital interest in the social activities of society. However, during development, corporations often engage in prohibited activities or even criminal activities using working patterns involving legal entities. Thus, the position of corporations as legal subjects in the context of

civil law has shifted to become subjects of criminal law. This indicates that in law enforcement, legal entities can also be held criminally accountable for their unlawful actions.

Some examples of corporate crime modus operandi include fraud, where legal entities may be involved in manipulating consumers, third parties, or even governments for their own benefit. Money laundering involves the use of legal entities to launder money from illegal activities such as drug trafficking or corruption. Document forgery may involve legal entities in illegal activities to avoid taxes or gain unfair profits. Corruption involves practices such as bribery, nepotism, or abuse of power by legal entities. Environmental violations occur when legal entities take actions that harm the environment, such as illegally disposing of hazardous waste or irresponsibly depleting natural resources. These violations are just examples; there are many other modus operandi that irresponsible legal entities may use.

In reality, both individuals and legal entities that violate the law should be prosecuted because their actions can cause harm to the victims of their offenses. According to (Rinaldi, 2022), individuals who originate from society are brought into the criminal justice system and then returned to society in a different situation than before. This is because the function of the criminal justice system plays a role in addressing violations and ensuring effective law enforcement. Additionally, there are objectives in the implementation of the criminal justice system, namely, first, to prevent citizens from becoming victims of legal entity violations by taking firm action against criminals and deterring potential offenders. Second, to conclude ongoing cases so that people feel satisfied because justice has been applied and the offenders have been punished. Lastly, to make efforts to ensure that offenders do not repeat their violations by providing rehabilitation or preventive measures to the community.

Legal entities that violate the law also need to be sanctioned or punished in accordance with applicable regulations to ensure justice and provide a deterrent effect for offenders. Sanctions are legal authority instruments designed to ensure law enforcement by imposing negative actions or responses as consequences of non-compliance and violations of active regulatory rules (Susanto, 2019). This means that punishments are given in response to illegal behavior, intended to uphold justice and deter legal entities from violating the law. Sanctions can take various forms, including fines, imprisonment, revocation of licenses, or other actions based on the level of violation and punishment controlled in the applicable legal regulations. Through the imposition of sanctions, it is hoped that individuals or legal entities that violate the law will be held accountable for their actions and avoid committing similar offenses in the future.

Several reasons why sanctions are important for legal entities that violate the law include helping to maintain the integrity of the legal system so that no legal entity is exempt from its legal responsibilities and preventing that legal entity or other legal entities from committing similar violations in the future. Additionally, sanctions can serve as a tool to restore justice to victims of legal entity violations who may have suffered losses as a result of the actions of that legal entity. What happens if a legal entity that violates the law is not appropriately sanctioned is that it can damage the credibility of the legal system and trigger doubts about legal

justice. Therefore, sanctions for legal entities that violate the law play a very important role in ensuring justice, preventing legal violations, and ensuring compliance with applicable laws.

In response to this, Indonesia applies criminal sanctions to legal entities as outlined in several regulations, one of which is Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. This regulation contains procedures for handling criminal cases committed by corporations, including case submission processes, recruitment and utilization of human resources, equipment, and materials, document and evidence management, data and information collection and analysis, risk management and security, as well as supervision and monitoring to handle criminal cases.

According to research by Bismar Nasution, Professor of Economic Law at the Faculty of Law, University of North Sumatra, citing his book "Corporate Crime and Accountability" in (Bawono, A., 2011), three types of accountability for corporate violations are found according to the regulations in force in Indonesia. First, criminal responsibility can be directly imposed on the corporation itself, as regulated in Article 65 paragraphs (1) and (2) of Law Number 38 of 2004 concerning Roads. Second, criminal liability can also be applied to the organs or managers of the corporation who commit acts or act as leaders in committing criminal acts, as regulated in Article 20 paragraph (2) of Law Number 31 of 1999 concerning Corruption Crimes as amended by Law Number 20 of 2001, and Law Number 31 of 2004 concerning Fisheries. Third, criminal liability can also be imposed on both the managers of the corporation as the issuers of orders or leaders, and on the corporation itself, as regulated in Article 20 paragraph (1) of the Law on Corruption Crimes.

The explanations provided demonstrate the legal framework for addressing corporate crimes and applying appropriate criminal sanctions to legal entities that violate the law. However, the effectiveness of the application of criminal sanctions to legal entities in Indonesia is still low. This low effectiveness is caused by several reasons, such as, firstly, the lack of clarity in legislation regarding the application of criminal sanctions to legal entities. For example, in the Criminal Code, there is no provision explicitly stating that corporations or legal entities can be prosecuted and sentenced to criminal sanctions. As a result, law enforcement processes against legal entities committing violations become ambiguous and uncertain. Additionally, there is still a lack of regulations that clearly specify punishment for legal entities if they commit legal violations resulting in legal consequences, such as in the enforcement of tax-related laws. If severe sanctions, such as closing down and terminating the activities of a legal entity, are implemented, the consequences will be felt by the employees or workers within that legal entity (Rohi et al., 2022).

The lack of clarity in law enforcement and the application of sanctions leads to legal uncertainty, including difficulties in determining appropriate legal actions and a lack of firmness in regulating law enforcement processes against legal entities. Without clear and firm legal guidance, law enforcement officials may struggle to decide on the actions needed to address the wrongdoing committed by legal entities. Consequently, this may create loopholes exploited by criminals to evade the sanctions or penalties they should rightfully receive. Thus, the lack of clarity in

legislation is one of the main factors hindering the effectiveness of the application of criminal sanctions to legal entities in Indonesia.

The second factor affecting the low effectiveness of the application of criminal sanctions to legal entities is weaknesses in law enforcement. Corruption and collusion practices in law enforcement processes still occur frequently, posing a major challenge to the functioning of the legal system in developing countries, including Indonesia. Indeed, corruption has become rampant in almost all law enforcement institutions, including the judiciary (Sulaiman, 2016). Corruption and collusion practices in law enforcement processes that still occur frequently can hinder the investigation and prosecution processes against legal entities committing criminal acts. Moreover, the lack of neutrality or involvement of certain parties in the legal process can result in unbalanced partiality.

Corruption and collusion practices in law enforcement processes still occur frequently, hindering the investigation and prosecution processes against legal entities committing criminal acts. Furthermore, the lack of neutrality or involvement of certain parties in the legal process can lead to unbalanced partiality. The implication is injustice in law enforcement, where legal entities that should be firmly dealt with may escape or receive treatment that is not in line with justice.

This statement is supported by the fact that cases of corruption involving law enforcement officials in Indonesia have been found. Moreover, it is not uncommon for supreme court judges to be involved in corruption cases. As a result, the public loses confidence in the integrity and justice of law enforcement in Indonesia, seeing the numerous cases of involvement of law enforcement officials in corruption crimes (Utama, 2019). This indicates the need for serious efforts to combat corruption and strengthen the independence and integrity of law enforcement institutions to enable more effective and fair law enforcement.

The last point of the factors that cause the low effectiveness of the application of criminal sanctions to legal entities is the shortage of resources. Law enforcement agencies have limited resources to handle criminal cases involving legal entities. The police and prosecutors, as two very important institutions in law enforcement, often face challenges due to resource constraints, including personnel or infrastructure. These limitations pose practical barriers to conducting investigations and handling cases, resulting in slow and ineffective legal processes (HR, 2021). The limitations in addressing legal entity violations have the potential impact of increasing the frequency or prevalence of violations committed by legal entities due to the lack of optimization in law enforcement.

This situation results in injustice for society, especially for victims of criminal acts committed by legal entities. Society feels that law enforcement is not functioning well and fairly, thus diminishing trust in the justice system. Moreover, weaknesses in law enforcement against legal entities can also send negative signals to criminals to continue their criminal activities without fear of consequences.

Based on these issues, more serious and comprehensive efforts are needed from authorities to increase the effectiveness of the application of criminal sanctions to legal entities, including recommendations in the research suggesting improvements in legislation by clarifying regulations through evaluation and revision of laws governing legal entity crimes to ensure that the punishments imposed

provide clarity and sufficient deterrence for legal entities that violate the law. This revision may include increasing the amount of fines, enforcing additional penalties such as revocation of business licenses, and clarifying court procedures in handling legal entity criminal cases.

Furthermore, enhancing the integrity and capacity of law enforcement is crucial. This involves strengthening independent supervision and law enforcement systems, as well as providing adequate training and education to law enforcement officers to enhance their understanding of criminal law, legal entity investigation procedures, and evidence collection. Lastly, adequate resource allocation is also a crucial factor in improving the effectiveness of law enforcement against legal entities. This includes allocating sufficient budget to support thorough investigations, providing adequate facilities, and increasing the number of trained and skilled personnel in law enforcement agencies responsible for handling legal entity criminal cases. Through these efforts, it is hoped that the effectiveness of enforcing criminal sanctions against legal entities will be enhanced, and law enforcement will be strengthened in preventing corporate criminal actions.

CONCLUSION

The effectiveness of imposing criminal sanctions on legal entities in Indonesia is still low. Several factors contribute to this low effectiveness, including the lack of clarity in legal regulations regarding the imposition of criminal sanctions on legal entities. There is still uncertainty in the interpretation and implementation of the law in this context. Additionally, weaknesses in law enforcement, such as corruption and collusion practices, also influence the effectiveness. The frequency of these occurrences undermines public trust in the legal system. Resource limitations, both in terms of personnel and funds, possessed by law enforcement agencies such as the Prosecutor's Office and the Police, also play a role in reducing the effectiveness of imposing criminal sanctions on legal entities. This situation results in injustice for society, especially for victims of criminal acts committed by legal entities.

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