

Corporate Criminal Liability Which Violates the Rights of Persons with Disabilities

Mery Rohana Lisbeth Sibarani
{merysibaranidosen@gmail.com}

Universitas Kristen Indonesia

Abstract. Persons with disabilities are often denied their rights. Not only in the general public, but also in companies. Normatively, it is very clear that Indonesia as a country has obligations such as providing respect, protection, and also the fulfillment of the rights that persons with disabilities must obtain. This provision is normatively stated in Law Number 8 of 2016 concerning Persons with Disabilities. In this provision, any person or corporation that does not comply with these provisions may be subject to sanctions. Corporations in this case can be in the form of legal entities and not legal entities. This research shows the results that corporate behavior that violates the provisions in the law is the behavior of corporate managers acting for and on behalf of the corporation, or the rules of the corporation itself that have ignored, inhibited, and/or prohibited persons with disabilities from obtaining their rights by the rules in law. Meanwhile, the criminal responsibility against corporations used in this law requires accountability from corporate policymakers and corporate managers to be responsible. This is because policymakers and corporate administrators are parties who work for the benefit of the corporation, as well as on behalf of the corporation.

Keywords: Persons with disabilities, Criminal Liability, Corporations

1 Introduction

ASEAN stands for the Association of Southeast Asia Nations. As a regional organization, it has a specific goal of providing justice for vulnerable groups such as elderly people, women, underage children, and persons with disabilities. This is done by ASEAN in collaboration with Southeast Asian countries in various fields to build a special platform called the ASEAN Socio-Cultural Community (ASCC). Indonesia as a country that is part of ASEAN must support ASEAN's goals by providing justice for groups of people with disabilities who are still often the target of social discrimination by society, companies, and the state. Dr. Ir. Harry H., M.Si, Director General of Social Rehabilitation of the Ministry of Social Affairs, said that 14.2% of Indonesians are people with disabilities or the equivalent of 30.38 million people, referring to the 2018 National Socio-Economic Survey.

According to information on integrated social welfare data in January 2020, there are 1.3 million people with disabilities [1]. And in February 2020, the Central Bureau of Statistics showed data with a total of 17.74 million working-age citizens who are persons with disabilities. Of this number, only 44% of the total labor force participation is for the disabled group. This shows a very significance comparison with the total national labor force participation rate of 69%.

Employment opportunities for persons with disabilities are generally very few and limited, especially in the industrial sector. The sectors that provide jobs for persons with disabilities are usually in the service sector, providing services, and retail. The industrial sector in Indonesia is very large, however providing employment opportunities for persons with disabilities is still lacking due to the absence of access to work, the existence of inequality in society, and inadequate counselling. However, during the Covid-19 pandemic, there were opportunities for people with disabilities to work such as the use of technology that could make various skills mastered by persons with disabilities [2].

The right to obtain employment has been guaranteed by the state as stipulated in Article 27 paragraph (2) of the 1945 Constitution ("UUD 1945"): "Every citizen has the right to work and a decent living for humanity." Article 38 of Law Number 39 the Year 1999 concerning Human Rights ("Human Rights Law") stipulates that every citizen, according to his talents, skills, and abilities, has the right to decent work and is free to choose the job he likes in accordance conditions fair employment. Men and women who do the same work, comparable, equal, or similar, are entitled to wages following the terms of the same work agreement, and fair wages following their achievements and can guarantee the continuity of their family life.

Article 5 of Law Number 13 the Year 2003 concerning Manpower ("Manpower Law") states that "Every worker has equal opportunity without discrimination to get a job." This provision means that every worker has the right and equal opportunity to have a decent job and life without discrimination based on sex, ethnicity, race, religion, and political ideology following the interests and abilities of the worker concerned, including treating people with disabilities.

The State's obligation to fulfil the rights of citizens as residents in this case Persons with Disabilities is stated in Law Number 4 of 1997 concerning Persons with Disabilities ("Law 4/1997") which is the embodiment of Article 5 of the Manpower Law specifically for persons with disabilities. However, Law 4/1997 was repealed and declared invalid by Law Number 8 of 2016 concerning Persons with Disabilities ("Law on Persons with Disabilities"). Article 53 of this Law requires companies to employ Persons with Disabilities in their companies at least 1% (one percent). But in reality, the company still ruled out this provision.

Formulation of The Problem

1. How can the corporation be criminally responsible?
2. What is the responsibility of the Corporation for violations of the fulfillment of the right to work for Persons with Disabilities?

2 Research Methods

The method used in this research is a normative juridical method (legal research), using a statute approach and a conceptual approach. The data used for the research were obtained from literature research in the form of legal materials consisting of: (1) the 1945 Constitution of the Republic of Indonesia, and the Prevailing Laws relating to corporate liability and criminal acts; (2) Literature books, papers, articles, research results, and other scientific works related to this research. (3) Tertiary Legal Materials, which consists of General Indonesian Dictionary, Legal Dictionary, English - Indonesian Dictionary, and Encyclopedia.

Analysis of legal materials is descriptive qualitative, meaning that legal materials are presented descriptively and analyzed qualitatively by analyzing legal materials based on the

quality and correctness of legal materials, then conclusions are drawn which are the answers to the problems in this study.

3 Results and Discussion

3.1 Criminal Liability of the Corporation in Indonesia

In criminal law, human beings (natuurlijk person) are not the only subjects of the perpetrators of criminal acts, but also corporations. It is not explicitly stated in the Criminal Code as a *lex generalis*, but this is recognized in specialist laws, such as the Corruption Act, the Environmental Law, and the Money Laundering Crime Law. Laws that are regulated outside of the Criminal Code regulate how corporations should be held criminally responsible, however, the liability in this matter is limited under the topic of the special law [3].

Corporate crime with its character as a powerful crime by is a very complex crime so that law enforcers are required to have extra strength and a strong mentality [4]. Therefore, it is very difficult for law enforcement officers to declare corporations as legal subjects of criminal acts, and judges find it difficult to decide criminal cases against corporations. Even if there is a decision related to this matter, it can be categorized as a new thing that is categorized as a progressive law enforcement solution [5]. However, to facilitate the law enforcement process, the Attorney General's Office and the Supreme Court have issued the relevant regulations, namely the Attorney General's Regulation Number Per-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law as Subjects and Supreme Court Regulations Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

Article 2 of Supreme Court Regulations No. 13 of 2016 explains that the purpose of making procedures for the settlement of criminal cases by corporations is to:

1. To become a benchmark for law enforcers to handle criminal cases with perpetrators and/or corporate managers;
2. filling legal void, especially criminal procedure law in handling criminal cases with perpetrators and/or corporate management; and
3. Encouraging effectiveness and optimization in handling criminal cases with perpetrators and/or corporate management.

An offense committed by a corporation based on an order from the management of the corporation, then the corporation will be given a penalty in the form of a criminal return of property or assets [6]. According to B. Mardjono Reksodiputro, 3 forms of criminal responsibility can be applied, such as: [7]

1. Management of the company as the party who performs and is responsible;
2. the Company as the executing party and the manager who must be responsible;
3. the company is the party that makes and must be responsible.

Furthermore, there are 4 possibilities as a system that can be applied as a form of responsibility, namely: [8]

1. The management of the company as the subject who committed the offense and who is criminally responsible;
2. The company as the subject who committed the offense, and the management who is criminally responsible;

3. The company as the subject who committed the offense, and the company who is criminally responsible;
4. Management and the company as subjects who committed the offense and who are criminally responsible.

Therefore, as an implementation of corporate responsibility, some sanctions or penalties can be given to the company based on the instructions listed in Article 25 paragraph (1) Supreme Court Regulations 13/2016, such as (1) principal criminal, in the form of a fine that can be given to the corporation; (2) additional penalties, which are stipulated in Article 10 of the Criminal Code which can be given to corporations under the provisions of other types of crimes listed in other laws as *lex specialis* of the *legi generali* KUHP.

From the explanation above, the conclusion can be drawn that the liability of corporations in Indonesia can be given with cumulative criminal sanction, namely the main criminal in the form of a fine, with penalties which are in addition to criminal fines as well, so that sanctions against corporations that receive criminal penalties can be given criminal sanctions fines with provisions that are heavier than the value of the crime incurred, with the aim that the corporation does not repeat its actions and becomes a lesson for other corporations.

3.2 The responsibility of the corporation for violations of the fulfillment of the right to work for Persons with Disabilities

In the Human Rights Law, everyone should respect each other, including respect to Persons with Disabilities. Discrimination against Persons with Disabilities causes their rights not fulfilled [9]. The Law on Persons with Disabilities was created as to regulate that the rights of Persons with Disabilities are respected, protected and their rights are fulfilled. In this case, the state has special obligations for persons with disabilities which are divided into 3, namely: (1) respect (the obligation to respect), (2) maintain or protect (the obligation to protect), and fulfill (the obligation to fulfill). These three forms are not only the obligations of the state but every person, including companies or corporations.

Corporate actions that do not apply the rules regarding the number of 1% of Persons with Disabilities to be employed violate Article 53 of the Law on Persons with Disabilities. Although there are no direct sanctions for violating these provisions, there are consequences if this Article is not fulfilled by not giving the right to work as stated in Article 11 of the Law on Persons with Disabilities. Therefore, corporations that violate can be given criminal sanctions following Article 143 jo. Article 145 of the Law on Persons with Disabilities, namely maximum imprisonment of 2 years and a maximum fine of Rp. 200,000,000.00.

In Article 143 jo. Article 145 of the Law, offenses committed against Persons with Disabilities can be committed by the company as a subject of criminal law based on the provisions of Article 1 point 17 of the Law on Persons with Disabilities in terms of "Everyone" which means an individual or a corporation, be it a corporation with legal status or not with legal status. Article 1 point 15 of the Law on Persons with Disabilities also states that corporations are legal subjects in the definition of "Employers", namely individuals, entrepreneurs, legal entities, or other entities that employ workers by paying wages or other forms of remuneration.

The regulations governing people with disabilities do not state the parties or subjects who must be responsible if the corporation commits a violation. The criminal provisions that are regulated are only criminal penalties with a combined system (cumulative), meaning that if there are several types of criminal penalties that are threatened, the judge is obliged to decide on the whole, such as the penalty in Article 143 jo. 145 is a sentence of imprisonment

accompanied by a fine. This provision is a stumbling block because a corporation cannot be imprisoned.

There are 2 statements made by Mahrus Ali:

1. Whereas the company is unable to perform an act, but must be performed by an individual in the company which is called a functional action;
2. As a result of the first statement, the company can take action based on the intermediary, namely the management of the company.

In connection with Article 145 of the Law on Persons with Disabilities, it is found that this law has a system of “the Corporation as the maker and the manager who is responsible.” This provision is caused by the provision of cumulative criminal sanctions in the form of imprisonment and fines, which cannot be imposed on the corporation because it does not have a “body” so that the management of the corporation must be responsible if the corporation violates. This law does not regulate in detail what steps or solutions should be taken if sanctions for criminal charges are given to corporations, even though the corporation is a subject that is regulated to take responsibility.

The form of responsibility for crimes committed by the company and the responsible company management is based on the authority or articles of association of the company. Therefore, an offense committed by a corporation can be said to be an offense committed by a person or party in the company. The nature of the act that makes the offense is on-person, that is, the person who leads the company is criminally responsible, regardless of his knowledge of the act.

4 Conclusion

Corporate actions that do not meet the 1% (one percent) requirement to employ Persons with Disabilities, clearly violate Article 53 of the Law on Persons with Disabilities. There are no direct sanctions for violating these provisions because there are no derivative regulations such as Government Regulations regarding these provisions. Nonetheless, there are consequences for not fulfilling Article 53 of the Law on Persons with Disabilities related to the right to have a job as stated in Article 11 of this Law, namely corporations that violate, can be given criminal sanctions following Article 143 jo. Article 145 of the Law on Persons with Disabilities, which is sentenced to a maximum imprisonment of 2 years and a maximum fine of Rp. 200,000,000.00.

The criminal liability of the Corporation contained in the Law on Persons with Disabilities has the character of a corporation as the maker or the offender or the perpetrator of the offense, but the management of the corporation must bear the consequences for the offense because the corporate management represents the corporation. This is a manifestation of the form of punishment in this law in the form of combined (cumulative) punishment, namely the provision of punishment in the form of imprisonment and fines.

Suggestions

As stated in Article 145 of the Law on Persons with Disabilities, the sanctions that apply and are used are cumulative criminal sanctions from criminal sanctions in the form of imprisonment and fines. In reality, the company cannot be imprisoned so that the form of imprisonment as one of the cumulative penalties cannot be applied to the company. The company's inability to accept imprisonment is contained in Article 25 paragraph (3) of the

Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, which states that only the main criminal in the form of fines can be imposed on corporations.

Thus, the authors suggest imposing cumulative criminal sanctions against corporations as Article 145 of the Law on Persons with Disabilities following Supreme Court Regulations No. 13 of 2016, namely by making imprisonment and fines into 2 forms of sanctions, such as (1) principal punishment in the form of a fine; and (2) additional penalties in the form of further fines. So, the imposition of fines on corporations twice in this case is a form of increasing the criminal penalty against the corporation as a substitute for imprisonment that cannot be given to the corporation that violates.

To support the fulfilment of the rights of the persons with disabilities, it is necessary to have a special agreement issued by ASEAN as a form of regional integration to support the fulfilment of the right to work for persons with disabilities. The government should also immediately issue a Government Regulation as a derivative of Article 53 of the Law on Persons with Disabilities so that criminal liability is not the only way out but the *ultimum remedium*.

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