



Criminal Responsibility Of Corporation In Corruption Under Supreme Court Regulation Number 13 Of 2016

Dian Anggraeni Suciанти*, Said Karim, Nur Azisa

Faculty of Law Hasanuddin University, Indonesia

Corresponding Author: Dian Anggraeni Suciанти

ABSTRACT: This reasearch aims to analyze corporate criminal responsibility in the criminal act of corruption under Supreme Court Regulation No. 13 of 2016 and to analyze the ideal criminal responsibility by a corporation in the form of a Limited Responsibility Company in a criminal act of corruption. The research method used in this research is normative research method by approaching law, case approach, and conceptual approach. The results of this study indicate that corporate criminal responsibility in corruption after the enactment of Supreme Court Regulation No. 13 of 2016 has been regulated in such a way but the regulation of corporate responsibility does not regulate anticipatory steps by taking legal action to secure corporate property before the criminal is imposed to prevent bad faith corporations and ideal criminal responsibility by a corporation in the form of a Limited Responsibility Company in a criminal act of corruption allows the responsibility of assets from corporate organs as corporate executives and the concept of confiscation of corporate property as an optimization of the recovery of state financial losses.

KEYWORDS: Criminal Responsibility, Corporation, and Corruption

Received 27 July, 2018; Accepted 11 August, 2018 © The author(s) 2018. Published with open access at www.questjournals.org

I. INTRODUCTION

Corporations as entities or legal subjects whose existence contributes greatly in promoting economic growth and national development.¹ However, the important and thing positive that can be taken from a corporation as such can not always be realized but with the inevitability of corporate existence which is often followed by violations including violations of criminal law such as environmental pollution, unfair business or even an act criminal in the economic field such as corruption crime or money laundering crime which not only harm individual or society but also very potential to cause a loss of state.²

According to Loebby Loqman³ the first problem in discussing criminal responsibility to corporations is what is meant by the corporation? The general understanding of corporations in various literatures shows that corporations can take the form of firms, Commanditaire Vennootschap (CV), Associations or Limited Responsibility Company (PT). But the form of Limited Responsibility Company can be said as the most dominant because it is an association of capital and legal entity independent.⁴ During this time there are many experts and lawyers who criticize the uniformity of the use of the term corporation in the criminal law. A clear definition of a corporation is actually important because it will determine the situation in which and to what extent the law will apply to it.⁵ Moreover, the lack of definition and form of corporal criminal responsibility is not only a terminological-normative issue but a further impact in practical field. For example the authentic definition provided by law "every person is an individual and a

¹Kristian, 2013, *Urgensi Pertanggungjawaban Pidana Korporasi*, Bandung: Jurnal Hukum dan Pembangunan tahun 44th No. 4 Universitas Katolik Parahyangan, p.578.

² *Ibid.*,

³ Loebby Loqman, 2002, *Kapita Selekta Tindak Pidana di Bidang Perekonomian*, Jakarta: Datacom, p.32.

⁴Hukum Online, "Metamorfosis Badan Hukum Indonesia", published October 14th 2007, <http://www.hukumonline.com/berita/baca/hol17818/metamorfosis-badan-hukum-indonesia>, accessed May 17th 2018.

⁵Yetty Komalasari Dewi, 2013, "Liability of Legal Person in Indonesia: A Statutory and Practical Review", *Indonesia Law Review*, Vol.1 Year 3, p.45.

corporation, whether incorporated or unlawful." Furthermore, the criminal provisions of the same law mention "any person who performs ... shall be sentenced to imprisonment or fine ...". This formulation has the potential to cause problems because: first, corporations can be threatened with imprisonment and this is an issue especially in the technical context of legislative formation. Second, unincorporated corporations mean that a community of informal communities may be subject to criminal law, whereas in corporate civil law it tends to refer to the notion of a legal entity.⁶

In fighting and combating corruption in this country, several laws and regulations have been created which are expected to provide assurance of protection and legal certainty for the people. These regulations include Law Number 31 Year 1999 concerning the Eradication of Corruption which is then amended through Law Number 20 Year 2001 regarding the Amendment of Law Number 31 Year 1999 concerning the Eradication of Corruption (PTPK Law). In addition, Indonesia has also ratified the United Nations Convention Against Corruption (UNCAC) of 2003 enacted under Law No. 7 of 2006 on Ratification of the United Nations Convention Against Corruption 2003 (United Nations Convention Against Corruption 2003). Although the corporation has been established as a legal subject and may be criminally accountable since 1999 (where the Corruption Eradication Act is in force), but until 2010 (around 11 years) there has never been a corruption case where the corporation was made the defendant and prosecuted and convicted. New in the case of PT. Giri Jaladhi Wana who was presented as a defendant by the Attorney and prosecuted to court for corruption.⁷ The success of the Prosecutor in prosecuting criminal responsibility in the court is supported by the law enforcement policy instrument in the form of the Circular Letter of the Attorney General of the Republic of Indonesia Number B-36 / A / FT.1 / 06/2009 concerning Corporations as Suspects / Defendants in the Criminal Acts of Corruption. Without the guidance of the circular letter, the case is also not going to surface because technically the procedural law handling corporate crime is still unclear. The Attorney General's Office further refines the Circular Letter into the Attorney General Regulation No. PER-028 / A / JA / 10/2014 on Guidelines for Handling of Criminal Cases Subject to Corporate Law.⁸ However, there is still a weakness of the Attorney General's Regulation (Perja), which has not regulated who is eligible to represent the corporation, what if the corporation merges, consolidates or dissolves. In addition, the existence of the workshop is also still not able to reduce the inequality of corporal punishment against the persecution *natuurlijk* persoon. It does not indicate the absence of a corporate crime on the practical pitch, but because law enforcement still encounters a number of obstacles. Among the obstacles are the vacuum of procedural technical rules such as KUHAP that do not accommodate criminal law enforcement mechanisms and law enforcement mindset that is still oriented to the university *delinquere non potest*.⁹

The birth of Supreme Court Regulation (Perma) Number 13 Year 2016 on Corruption Crime Procedures by the Corporation on December 21, 2016 and then considered a new history in punishing the corporation. Related to that as far as the author follow, the first limited responsibility company set by the KPK as a suspect in a criminal act of corruption such as PT. Duta Graha Indah (DGI) which has changed its name to PT. Nusa Construction Enjiniring (NKE) with payment of replacement money to PT. DGI or PT. KNE of Rp. 14,400,000,000 for Udayana University Specialist Hospital development project in 2009 and 2010 and Rp. 33,400,000,000 for the building project of the athlete's house and multipurpose building of South Sumatera Provincial Government.

(Perma) No. 13 of 2016 provides a specific definition of a corporation's criminal offense, which is a criminal act committed by a person based on employment relations, or on the basis of other relationships, individually or jointly acting for and on behalf of the Corporation within or outside the Corporate Environment.¹⁰

One of the objectives of eradicating corruption in Indonesia is to restore the state financial loss for the benefit of society and to anticipate the occurrence of various crises in various fields, the optimization of the state financial loss is also the basis for the formulation of corruption against corporations. In most specific laws there is no specific provision on how if "corporation" does not pay a fine or additional criminal in the form of a replacement payment. It was also proposed by Barda Nawawi that the absence of alternative criminal arrangements could cause problems because the general provisions concerning the fine of unpaid penalties or substitution penalties in the Criminal Code (Article 30) apply only to "people". In the Criminal Code also there

⁶ *Ibid.*,

⁷ Budi Suhariyanto, 2016, *Progresivitas Putusan Pemidanaan Terhadap Korporasi Pelaku Tindak Pidana Korupsi*, *Jurnal De Jure* Volume 16 No2, p.207.

⁸ *Ibid.*,

⁹ *Loc.Cit.*,

¹⁰ Pasal 4 ayat (1) Peraturan Mahkamah Agung No13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana Oleh Korporasi

is no general rule about money replacement, because this type is not in the Criminal Code.¹¹ As the objective of eradicating corruption in Indonesia is the return of the state financial loss, how does the Regulation govern corporate criminal responsibility so that the state financial loss recovery can be run optimally.

RESEARCH QUESTIONS

Based on the above mentioned background it can be presented the following problem formulation:

1. How is the form of corporate criminal responsibility after the coming into effect of Supreme Court Regulation Number 13 Year 2016 on Procedures for Handling Criminal Cases by Corporations?
2. How is the ideal criminal responsibility by a corporation in the form of a Limited Responsibility Company as the perpetrator of corruption in the effort to restore the state loss?

II. RESEARCH METODHS

The author uses the type of normative legal research in this study. The approach method used in this research is the statistical approach, case approach, and conceptual approach. The types of legal materials in the study are primary legal materials and secondary legal materials. The primary legal substance that the Author uses in this writing consists of the laws and regulations of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 concerning the Eradication of Corruption, the Attorney General's Regulation (PERJA) Number: PER-028 / A / JA / 10/2014 concerning Guidelines on Criminal Case Handling with the Subject of the Law of the Republic of Indonesia, and Supreme Court Regulation No. 13/2012 on Corrective Crime Procedures by the Corporation. Secondary law materials are legal opinions, doctrines, theories derived from legal literature, research results, scientific articles, and websites related to research. The legal material that has been obtained is then processed and analyzed qualitatively then presented descriptively, that is describing, describing, and explaining in accordance with the problems closely related to this research in order to provide clear and directed understanding obtained from the results of later research, so that is expected to be obtained a clear picture of the conclusions on the research results achieved.

III. RESULT AND DISCUSSIONS

Corporate Crime Responsibility In Criminal Act Of Corruption Based On Supreme Court Regulation Number 13 Year 2016 About Procedures For Handling Crime Case By Corporate

Responsibility for a criminal offense is a process of continuing an objective (*verwijtbaarheid*) denunciation of an act expressed as a criminal offense by a criminal law and the offender being a legal subject deemed to be eligible for a criminal offense.¹² According to Surya Jaya, Supreme Court Judge and chairman of the (PERMA) organizing committee, there are several requirements that must be fulfilled if you want to hold the corporation accountable (punish):¹³

- (1) Firstly, there must be malice (*mens rea*) which is then manifested by a criminal act (*actus reus*). The criminal act can be either active or passive act;
- (2) Second, the criminal act of the corporation must comply with the particular law being violated.
- (3) The act of the corporation must also be against the law, such as obtaining a flow of funds illegally or illegally according to law. For example, the corporation appears to have no activity but in its account there is considerable funding, and can be turned on or destined for other businesses.

According to John Dista, Hakim *Ad Hoc* The State Court of the IB IB Class regarding the responsibility of a corporation still refers to the provisions of responsibility in criminal law. As it is known that according to H.B. Vos there are 3 (three) main elements of error as followed by Eddy O.S. Hiarej in the element description of the error is:¹⁴

- a. Can be accounted for the perpetrator (*Toerekeningsvatbaarheid van de dader*);
- b. The psychic relationship of the offender by his deeds is usually in the form of intentional or negligent (*Een zekere psychische verhouding van de dader tot heit feit, die kan zijn of opzet of schuld in engere zin*); dan
- c. There are no grounds that eliminate criminal responsibility for his actions (*Het niet aanwezig zijn van gronden, die de toerekenbaarheid van het feit aan de dader uitsluiten*).

Of the three elements, this paper will focus more on the second element of the error that is related to the proof of the psychic relationship of the offender with his deeds. It is because of the strong principle of "actus

¹¹Barda Nawawi Arief, 2015, *Kebijakan Formulasi Ketentuan dalam Peraturan Perundang-undangan*, Semarang: Pustaka Magister, p.78

¹²Rufinus Hotmaulana Hutahuruk, 2014, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif: Suatu Terobosan Hukum*, Jakarta: Sinar Grafika, p.47

¹³Surya Jaya dalam Arija Br. Ginting, *Op.Cit.*, p.130

¹⁴Eddy OS Hiarej, 2016, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, p.162

non facit reum nisi mens sit rea" in the practice of criminal law in Indonesia. The principle of error or shuldprinzip is concerning the personal guilt or blameworthiness that is required to be able to determine the parameters for criminal responsibility and the provision of the law. According to Beslin Sihombing, Chairman of the Mamuju District Court IB Class which is also one of the judges who decide the case that:

"It is not easy to find the basis of corporate responsibility, because corporations do not have the nature of spirituality (spirituality) as well as natural man (*natuurlijk persoon*). So to determine the fault of a corporation, it should be seen from the errors of organs in the corporation. Furthermore, the Limited Responsibility Company has the Company's organs consisting of General Meeting of Shareholders (AGMS), Board of Directors, and Board of Commissioners where the functions of the three organs are policy makers, implementation, and also supervision."

A criminal act shall be deemed done by the Corporation in Indonesia if it complies with the provisions of Article 20 paragraph 2 of the Corruption Law, as follows:¹⁵

"Corruption is committed by the corporation if the offense is committed by persons either based on employment or other relationship, acting within the corporate environment either alone or jointly."

Based on that, an action is deemed to be performed by the Corporation if it meets the following 3 (three) important elements::

- a. The existence of a criminal act of corruption committed;
- b. The perpetrator of a criminal offense is a person who has a working relationship or other relationship either alone or together; and
- c. The crime is committed within the corporate environment.

Then based on Article 4 (Perma) No. 13 Year 2016, in the imposition of a criminal against the corporation, the judge may judge the mistakes of the corporation, among others:

- a. The corporation may benefit or benefit from the offense or the offense is committed for the benefit of the corporation;
- b. Corporations allow criminal offenses; or
- c. Corporations do not take the necessary steps to take precautions, prevent greater impact and ensure compliance with applicable legal provisions to avoid crime.

To analyze the criminal responsibility of the corporation the author approach the case of PT. Karya Tunggal Putra Jaya in decision Number 07/Pid.Sus-TPK/2017/PN.Mam and case PT. Fatimah Indah Utama in decision Number 13/Pid.Sus-TPK/2017/PN Mam.

1. PT. Karya Putra Tunggal Jaya has been proven legally and convincingly guilty of committing a criminal act of corruption because together with PPK not performing work according to contract related to Hydrant Pump Manufacturing and its Equipment on Agricultural Infrastructure Provision and Improvement Activities (TP) of Fiscal Year 2009 at Agriculture and Estate Crops Agency Majene Regency and resulted in the loss of the State of Rp. 976.193.070,78 (nine hundred seventy six million one hundred ninety three thousand seventy rupiah seven and eight cents). Has violated Article 3 Jo Article 18 of Law Number 31 Year 1999 as already amended and supplemented by Law Number 20 Year 2001 Concerning the Eradication of Corruption Jo Article 55 Paragraph (1) of the 1 Criminal Code and imposing a fine to the defendant PT . Karya Putra Tunggal Jaya for Rp. 70.000.000, - (seventy million rupiah) provided that if the Defendant fails to pay a maximum of 1 (one) month after the decision of the court that has obtained permanent legal force, his or her possessions may be seized by the Prosecutor and auctioned off to cover the fine and in the event that the Defendant does not have sufficient property to pay the fine, it shall be replaced by a criminal closing of all activities of the defendant of PT. Karya Putra Tunggal Jaya for 4 (four) months.
2. PT. Fatimah Indah Utama the company acting as the executor of the Fishery Port of Niphur (PPN) of Palipi for the 2012 Budget Year at the Department of Marine Affairs and Fisheries of West Sulawesi Province deliberately does not perform the work in accordance with the work contract (contract) in Majene Regency and executes the contract by involving persons who are not part of him, but made as if it was part of the Defendant and resulted in the loss of the State of Rp. 1.366.796.147,10 (one billion three hundred sixty six million seven hundred ninety six thousand one hundred forty seven rupiah ten cents) and proven to corrupt Article 3 jo. Article 18 Law Number 31 Year 1999 Jo of Law Number 20 Year 2001 Concerning the Eradication of Corruption jo. Article 55 Paragraph (1) of the Criminal Code. To impose a fine of Rp. 100,000,000.- (one hundred million rupiahs) with the provision that if not paid the maximum fine within 1

¹⁵ Undang-Undang Nomor 31 Tahun 1999 sebagaimana diubah dengan Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi

(one) month after the decision of the court having obtained permanent legal force, then the property may be seized by the Prosecutor and auctioned off to cover the fine and in the defendant did not have sufficient property to pay the fine then replaced with the criminal closure of all activities of the defendant of PT. Fatimah Indah Utama for 6 (six) months and Rp. 280.000.000, - (two hundred and fifty million rupiah) and if the Defendant fails to pay the replacement money within a period of 1 (one) month after the decision of the court that has obtained permanent legal force, then the property may be seized by the Prosecutor and auctioned to cover the replacement money and in the event that the Defendant does not have sufficient property to pay the replacement money shall be replaced by a criminal closing of all activities of the defendant of PT. Fatimah Indah Utama for 6 (six) months.

Referring to Decision Number 07 / Pid.Sus-TPK / 2017 / PN.Mam and Decision Number 13 / Pid.Sus-TPK / 2017 / PN Mam as the Author described earlier where the judge's verdict on both corporations that has been proven legitimate and convincing violation the provisions of Article 3 *juncto*. Article 18 Law Number 31 Year 1999 *juncto* of Law Number 20 Year 2001 concerning Amendment to Law Number 31 Year 1999 concerning the Eradication of Corruption *juncto*. Article 55 Paragraph (1) of the Criminal Code. Then the question is exactly how the burden of the corporation in this case limited responsibility company to the corporation only, without charging the board.

If it refers to the provisions of Article 23 of (Perma) No.13 of 2016 that: "The judge may impose a penalty on the Corporation or the Management, or the Corporations and Management". If you look at the opinion of one of the Mamuju District Court judges IB Class, that:

"Any corporate action is inseparable from the conduct of its executives as a corporate controller so that corporate errors should not be imposed on their own without imposing responsibility on behalf of the management."

In this regard, the author quotes Hasbullah F. Sjawie, arguing that in relation to the mens rea of corporations in corruption, Article 20 Paragraph (2) of the Corruption Eradication Act follows the theories of Identification and the theory of Functional Actors, in which the criminal act of corruption considered to be done by the corporation, when the crime is committed by persons closely related to the corporation concerned.¹⁶

Muladi and Dwidja Priyatno argue that in the case of corporations as responsible makers and administrators, it is affirmed that corporations may be 'makers'. The board is appointed as responsible; which the corporation considers to be an act committed by a corporate gear by authority under its own articles of association. The nature of the offense that makes the offense is *onpersoonlijk*, ie the person who leads the corporation is criminally responsible, regardless of his knowledge of the action. Sutan Remy Sjahdeini also said that the directing mind of the corporation is a person who has a position as a determinant of corporate policy or has the legal authority to do or not to commit the act that binds the corporation without having to get approval from his superior as according to the theory of identification, From a legal perspective, this doctrine is expected can encourage corporate criminal responsibility for *actus reus* and *mens rea* from controlling officers, but limited to such officials. According to Sutan Remy Sjahdeini, to determine the directing mind of the corporation should be seen from the formal juris and according to the fact in the operationalization of the company's activities on a case by case basis. Seen formally juridical, directing mind of the corporation can be known through the corporation's basic budget. In addition, it can also be known from the decision of the board that contains the appointment of officials or managers to fill the position. However, it is often the case that officials formally jurisdictionally have the authority to independently determine policies and take decisions to act, are under the influence of very strong control of people who are formally juridical members of the board of directors, such as the majority shareholder or commissioner of the company . This doctrine may limit corporate responsibility, that is, if the crime is committed by an employee or agent who does not have the status of a senior official, the corporation can not be held liable.¹⁷

To apply the identification doctrine, it must be shown that the actions of the personnel who become the directing mind of the corporation are included in the field of activities assigned to it, the offense is not fraudulent to the corporation concerned, and the offense is intended to obtain or generate benefits for the corporation.

Based on further analysis of this case, the authors assume that the model of criminal responsibility that is more appropriately applied is the model of corporate criminal responsibility and management as responsible, so that the defendant in this case is the corporation and the board.

The principal penalty for corporations can only be realized with a fine of just fine (formulated in a single paragraph (7) of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 on the Eradication of Corruption) and criminal additions as follows:

¹⁶ Hasbullah F. Sjawie, *Op.Cit*, p. 149

¹⁷ *Ibid.*, p. 96.

article 18

- (1) In addition to the additional criminal referred to in the Criminal Code as an additional criminal is :
- a. appropriation of tangible or intangible goods of immovable goods used for those obtained from corrupt acts, including those owned by the convicted person in which the criminal act of corruption is committed, as well as the price of the goods substituting the goods;
 - b. repayment of the substantial sum of money in the amount of money obtained from corruption,
 - c. closure of business or part of the company for a maximum period of 1 (one) year;
 - d. revocation of all or part of certain rights or deletions or certain portion of gains, which the Government may or may have provided to the convicted person;
- (2) If the defendant fails to pay the replacement money as referred to in paragraph (1) letter b within a period of 1 (one) month after the decision of the court that has obtained permanent legal force, then his property may be seized by the prosecutor and auctioned off to cover the replacement money.
- (3) In the event that the defendant does not have sufficient property to pay the replacement money as referred to in paragraph (1) letter b, he shall be punished with imprisonment whose duration does not exceed the maximum threat of the principal penalty in accordance with the provisions of this law and hence the penalty is already determined in a court decision.

Based on the provisions of Article 25 (Perma) No. 13 of 2016 on Corrective Procedure by the Corporation, the Judge shall impose a penalty on the Corporation in the form of an additional criminal and / or additional crime. Criminal punishment which may be imposed on the corporation in accordance with the provisions of legislation. Nevertheless, the formulation of penal sanctions in Perma No.13 of 2016 is not formulated solely because in the provision of Article 28 there is an alternative to other criminal sanctions if the fine penalty is not paid by the corporation.

article 28

- (1) In the case of a penalty imposed on a corporation, a corporation shall be granted a period of 1 (one) month from the decision of permanent legal force to pay the fine.
- (2) In the event of a compelling reason, the period referred to in paragraph (1) may be extended for a maximum of 1 (one) month.
- (3) If the convicted corporation does not pay the fine as referred to in paragraph (1) and paragraph (2), the corporate property may be seized by the prosecutor and auctioned off to pay the fine.

Additional penalty for corporations shall also be regulated in Supreme Court Regulation No. 13 of 2016 concerning Procedures for Corruption Case Handling by the Corporations so that additional criminal punishment of corporations that commit corruption shall not only refer to the provisions of Article 18 of Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 concerning the Eradication of Corruption but refers also to this Regulation of the Supreme Court.

The provisions regulating the additional penalty for corporations in Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations shall be stipulated in the following provisions:

article 32

- (1) Corporations subject to additional crime in the form of replacement money, compensation and restitution, the procedure of execution shall be conducted in accordance with the provisions of the law.
- (2) In the event of an additional penalty in the form of replacement money, restitution and restitution shall be granted to the Corporation, the Corporation shall be given a period of no more than 1 (one) month after a permanent legal ruling to pay the replacement, compensation and restitution.
- (3) In the event of a compelling reason, the period referred to in paragraph (2) may be extended for a maximum of 1 (one) month.
- (4) If the convicted person does not pay compensation, restitution and restitution as referred to in paragraph (2) and paragraph (3) then his property may be seized by the prosecutor and auctioned off to pay compensation, compensation and restitution.

Related to the criminal responsibility of fines and substitute money in Articles 28 and 32 of Supreme Court Regulation No. 13 of 2016 has been regulated in such a way with anticipative measures within 1 (one) month to settle fines and / or replacement money. When the corporation does not pay, then the corporate property may be forfeited by the Attorney for the auction. However, corporate responsibility arrangements do not regulate anticipatory steps by taking legal action to secure corporate property before criminal prosecution is imposed to prevent unfavorable corporate bad faith.

Ideal Crime responsibility by corporate as effort state loss return

Supreme Court Regulation No. 13 of 2016 on Case Handling Procedures by corporations has regulated the effort to restore the state financial loss through Article 32 as follows:

article 32

- (1) Corporations subject to additional crime in the form of replacement money, compensation and restitution, the procedure of execution shall be conducted in accordance with the provisions of the law.
- (2) In the event of an additional penalty in the form of replacement money, compensation and restitution are imposed on the corporation, the corporation shall be given a period of no more than 1 (one) month after a permanent legal ruling to pay the replacement, compensation and restitution.
- (3) In the event of a compelling reason, the period referred to in paragraph (2) may be extended for a maximum of 1 (one) month..
- (4) If the convicted person does not pay compensation, restitution and restitution as referred to in paragraph (2) and paragraph (3) then his property may be seized by the prosecutor and auctioned off to pay compensation, compensation and restitution..

Basically, such provision has no significant difference as stipulated in Article 18 of Law Number 31 Year 1999 as amended by the provisions of Law Number 20 Year 2001 concerning the Eradication of Corruption. Returns to state losses are not as easy as imagined, but a legal action is needed to optimize the recovery of state finances. The existing and implemented legal action is in the form of a seizure, but in practice the recovery is still far from expected, this is because the defendant is generally more inclined to choose pairs of bodies (preferring an additional criminal sanction in the form of imprisonment) than to pay compensation against the loss of the state through the confiscation of property owned. Unlike the case of corporations, furthermore in Article 18 of Corruption Law and Article 32 Perma that if the convicted corporation does not pay compensation, compensation and restitution then his property can be seized by the prosecutor and auctioned off to pay compensation, compensation and restitution. If the property is insufficient then the company will close. (Perma) does not provide a solution to that. Therefore how to find alternatives or solutions / legal action as an effort to overcome it.

Further, according to the authors, the need for criminal sanctions in the form of confiscation of confiscation other than forced sita (Article 18 paragraph 2), if convicted corruption does not pay substitute money to avoid convict transferred his property. Sita guarantees as a precautionary measure for the transfer of corporate property to another party, so that in the case of a corporation or convicted person does not pay a replacement money, his guaranteed property will be auctioned by the public prosecutor.

Guarante confiscation (*Conservatoir Beslag*) is a legal action taken by the court before the case is examined or during the process of examination of the case, the intent and essence of Guarante confiscation where the goods / goods seized to guarantee the lawsuit, so that the lawsuit is not empty, / assign or charge the property to a third party; and in the case of guarante confiscation damages claim may include all defendant's property, when the decision has a permanent legal force Sita Guarantee / CB shall be changed into Sita Execution through Auction Sales.

Furthermore, Guarante confiscation if (*Conservatoir Beslag*) compared with the seizure in Article 1 point 16. (KUHAP):¹⁸

Foreclosure is a series of investigative actions to take over and or to retain under the control of immovable or immovable, tangible or intangible objects for the sake of proof in investigation, prosecution and judicial proceedings.

For confiscation in crime case in article 38 (KUHAP) as follows:

- (1) The seizure can only be carried out by the investigator with the permission of the Chairman of the local District Court.
- (2) In circumstances where it is urgent and urgent that investigators should be immediately and unlikely to obtain a license first, without prejudice to the provisions of paragraph (1) the investigator may confiscate only the movable object and shall, therefore, promptly report to the Chairman of the local District Court for his consent.

Article 39 of the Criminal Procedure Code as follows:

- (1) Which can use confiscation is:
 - a. Any object or bill of a suspect or defendant wholly or partly allegedly obtained from a crime or as a result of a criminal offense;
 - b. Objects that have been used directly to commit a crime or to prepare it;
 - c. Objects used to obstruct criminal investigations;

¹⁸ Indonesia, Kitab Undang-Undang Hukum Acara Pidana (KUHAP), LN. No.76 Tahun1981, TLN No.32

- d. Items specially made or intended to commit a crime;
 - e. Other objects that have a direct relationship with the crime committed.
- (2) Any objects that are in confiscation because of civil cases or by bankruptcy may also be confiscated for the purpose of investigation, prosecution and trial of criminal cases, to the extent that they comply with the provisions of paragraph (1).

The definition of guarantee confiscation or *Conservatoir Beslag* is regulated in Article 227 paragraph (1) of HIR, Article 261 paragraph (1) RBG or Article 720 Rv, which is juridically a legal effort taken by the court by seizing debtor goods as an action that precedes the principal examination of the case during has not been determined in the case. The definition of Article 261 paragraph (1) of the RBG is that if the plaintiff has no strong evidence of concern that the defendant shall alienate his goods, seizure can not be made. In the usual practice the petition is filed with the presiding judge presiding over the case and the presiding judge ordering the seizure by a statement. RBG Article 720 Rv is the duty of the Chief Justice of the State Court or if the Debtor resides or resides outside the Prosecutor's territory in the place of the District Court or if the Chief Justice is not present there. Thus Guarantee confiscation can be done:¹⁹

1. Before the court examines the subject matter, or
2. At the time of the process of inspection of the runner is running, before the Chief Judge (Court) to pass the verdict.

Law enforcement through *Conservatoir Beslag* (guarantee confiscation) can ideally be applied in the handling and settlement of state financial recovery as a result of corruption in support of the fulfillment of Article 18 of Law Number 31 Year 1999 which has been amended by Law Number 20 Year 2001 on Eradication of Action Criminal Corruption, as the concept of legal reform.

IV. CONCLUSION

Based on the results of research and discussion as described by the author, it can be concluded as follows corporate responsibility in Perma No. 13 of 2016 has been regulated in Articles 3 through Article 8. In determining corporate errors judges may assess whether corporations benefit from criminal acts, allowing for the commission of crime or not taking preventive measures. The criminal responsibility of fines and replacement money has been arranged in such a way with anticipative measures within a period of 1 (one) month to settle fines and / or replacement money. When the corporation does not pay, then the corporate property may be forfeited by the Attorney for the auction. The corporate responsibility arrangements do not regulate anticipatory steps by taking legal action to secure corporate property before criminal sanctions are imposed to prevent the bad faith of the corporation and corporate responsibility in the case of state loss should ideally pay attention to the nature of the corporation in the case of a Limited Responsibility Company and not necessarily impose only on the corporation only. Despite the separation of wealth between the directors and the company, within the law the company also allows the responsibility of the board in certain cases. Furthermore, the need for law enforcement through guarantee confiscation (*Conservatoir Beslag*) can be applied in the handling and completion of the state financial recovery as a result of corruption.

REFERENCES

Books:

- [1]. Arief, Barda Nawawi. 2015. *Kebijakan Formulasi Ketentuan dalam Peraturan Perundang-undangan*. Semarang: Pustaka Magister.
- [2]. Harahap, Yahya. 2004. *Hukum Acara Perdata*. Jakarta: Sinar Grafika.
- [3]. Kristian. 2013. *Urgensi Pertanggungjawaban Pidana Korporasi*. Bandung: Jurnal Hukum dan Pembangunan tahun ke-44 No. 4 Universitas Katolik Parahyangan. p 578.
- [4]. Loqman, Loebby. 2002. *Kapita Selekta Tindak Pidana di Bidang Perekonomian*. Jakarta: Datacom.
- [5]. Hiariej, Eddy OS. 2016. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.
- [6]. Hutahuruk, Rufinus Hotmaulana. 2014. *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif: Suatu Terobosan Hukum*. Jakarta: Sinar Grafika.
- [7]. Suparmono, R. 1997. *Masalah Sita Jaminan (CB) Dalam Hukum Acara Perdata*. Bandung: Mandar Maju.

Journals Papers:

- [8]. Dewi, Yetty Komalasari. 2013. "Responsibility of Legal Person in Indonesia: A Statutory and Practical Review". *Indonesia Law Review*. Vol.1 Year 3.
- [9]. Suhariyanto, Budi. 2016. *Progresivitas Putusan Pemidanaan Terhadap Korporasi Pelaku Tindak Pidana Korupsi*. *Jurnal De Jure* Volume 16 Number 2.

Regulations:

- [10]. Indonesia, Kitab Undang-Undang Hukum Acara Pidana (KUHAP), LN. No.76 Tahun1981, TLN No.32

¹⁹R. Suparmono, 1997, *Masalah Sita Jaminan (CB) Dalam Hukum Acara Perdata*, Bandung: Mandar Maju, p. 7.

Criminal Responsibility Of Corporation In Corruption Under Supreme Court Regulation Number 13

- [11]. Undang-Undang Nomor 31 Tahun 1999 sebagaimana diubah dengan Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi
- [12]. Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana Oleh Korporasi
- Website:**
- [13]. Hukum Online. "Metamorfosis Badan Hukum Indonesia". published October 14th 2007. <http://www.hukumonline.com/berita/baca/hol17818/metamorfosis-badan-hukum-indonesia>. accessed May 17th 2018.

Dian Anggraeni Sucianti "Criminal Responsibility Of Corporation In Corruption Under Supreme Court Regulation Number 13 Of 2016" *Quest Journals Journal of Research in Business and Management* , vol. 06, no. 03, 2018, pp. 15-23.