

Corporate Criminal Liability for Alleged Criminal Acts of Employing Medical and Health Workers Without Permission in Hospitals

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Abstract

Corporations as legal subjects not only carry out their activities in accordance with economic principles (seeking large profits) but also have an obligation to comply with legal regulations in the health sector used by the government to realize community welfare and social justice. The corporation as the maker, the management responsible for the criminal act can be committed by the association or business entity (corporation), but the responsibility for it is the burden of the management of the legal entity (corporation). Gradually, criminal responsibility shifts from the members of the board to those who order, or by the prohibition of doing so if they neglect to lead the corporation in practice. The purpose of the study: to understand the form of corporate responsibility as a legal entity of hospitals in employing medical personnel and health workers without practice licenses (permits) in hospitals. This study uses a descriptive analytical normative juridical approach with secondary data from literature studies through primary, secondary and tertiary legal materials related to corporate crimes, hospital legal entities, licensing of medical personnel and health workers in Indonesian criminal law. The data was analyzed using qualitative analysis. Conclusion: In the accountability system for hiring medical personnel and health workers without a practice license (permit), the corporation can become the perpetrator of the crime, but the responsible are the members of the management, as long as it is expressly stated in the regulation. Corporations as makers or those who give orders/orders to employ medical personnel and health workers to work without permission. Managers are appointed as responsible; What is seen as done by a corporation is what is done by the complementary tools of the corporation according to its authority based on its articles of association.

Keywords:

Liability, Criminal, Corporate, Practice License, Medical Personnel, Health Workers

Introduction

The problem of corporations as the subject of criminal law cannot be separated from the aspect of civil law. In civil law, individuals are not the only subject of law. This is because there are still other legal subjects who have the same rights and can perform legal acts just like natural persons. This view is different from the Criminal Code (KUHP) which only recognizes individuals as legal subjects, in which almost all aspects of people's lives involve corporations. It can be seen that currently corporations have been engaged in various fields such as the agricultural industry, banking, entertainment including health and hospitals in particular. In Article 1 number 37 of Law Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law), it has been stated that every person is an individual person, including corporations.

The placement of corporations as legal subjects in criminal law cannot be separated from social modernization. The more modern society and the more complex social, economic and political, the need for a formal system of control of life will also be greater. Social life can no longer be left to a relaxed pattern of rules, but it is desirable to have an increasingly organized, clear, and detailed arrangement. Although these methods may meet the needs of the growing community, there are also quite a lot of problems caused.¹

To be able to ensnare corporations for crimes committed through laws and regulations that regulate corporate accountability is important, but no less important is to provide protection and justice to victims of corporate crimes.

Corporations (as legal persons) and where in their judicial practice depends, among other things, on the crime committed, the rules and the quality of the proof and prosecution. The motivation for crimes committed by corporations is not only aimed at personal gain, but also to meet the needs and achieve organizational profits. It is possible that this motive is also supported by operational norms (internal) and organizational subculture.²

Corporations as legal subjects not only carry out their activities in accordance with economic principles (seeking large profits) but also have an obligation to comply with legal regulations in the economic field used by the government to realize community welfare and social justice.³

Corporate criminal liability is closely related to the criminal liability of its management or employees. Employees who factually or physically commit the act will be held accountable. A.Z. Abidin proposed corporations as the subject of criminal law, namely "The makers of the delinquency that are the feed of the corporation are included by Roling in *functioneel daderschaap*, because corporations in the

¹ Sajipto Rahardjo, 1980, Community Law and Development, Alumni, Bandung, pp. 3-4.

² Alvin Syahrin, et al, Corporate Criminal Provisions Book, Kencana Publisher, Medan 2019

³ Alvi Syahrin, 2011, Criminal Provisions in Law No. 32 of 2009 concerning Environmental Protection and Management, PT Sofmedia, Jakarta, p. 57.

modern world have an important role in economic life which has many functions, employers, producers, price setters, foreign exchange users, and others."⁴

Literature review

1. Licensing and Practice Licenses for Medical and Health Personnel

Licensing law is one of the parts of state administrative law which is a public law material for certain authorities which is the determination of the application of a person or a certain legal entity for the matters he or she applies for. The implementation of licensing for personal interests or legal entities requires the service, coaching, regulation, supervision and control of a business license.

Licensing is a government or local government policy to control negative externalities that may be caused by social and economic activities. In building, making a place of practice or place of business, each owner must have a permit.

Permits are one of the most widely used instruments in state administrative law. Permit, according to Prof. Bagirmanan, is an approval from the ruler based on laws and regulations to elaborate certain actions or deeds that are generally prohibited.

Permits are one of the administrative instruments, especially in state administrative law. Permits must be requested in advance from the government authorized to run a business. The government uses permits as a means to regulate citizens' behavior. Permits are granted based on applicable regulations, so that with the issuance of the permit, the government has taken actions in the public interest that require special supervision.⁵ Permits are instruments of legal protection for the ownership or implementation of activities. A permit is a state administrative decision issued by an authorized official in the government as a consequence of his position. Every medical and health worker before carrying out his practice must have a permit issued by the local government, to be able to see whether the medical personnel and health workers are suitable or not in carrying out their practice so that not every medical worker and health worker can carelessly provide health services in carrying out their practice.

With this licensing, it will be easier for the public to report if there is fraud or do not get good service from the place of practice so that the government and law enforcement officials can follow up on this so that public services can be carried out properly with good treatment from the provision of health services by medical personnel and health workers.

⁴ Muladi, Dwidja Priyatno, Op. cit., p. 45. See also A.Z. Abidin, 1983, Bunga Potpourri of Criminal Law, Pradnya Paramita, Jakarta, p. 51.

⁵ Soekadji, Anatomy of Tourism, PT. Gramedia Pustaka Utama, Jakarta, 1997

To ensure the quality of health services and the safety of the community receiving health services, every Medical Personnel and Health Worker who will provide health services is required to have a Practice License (SIP). Provisions regarding the licensing of Medical Personnel and Health Workers are regulated in Law Number 17 of 2023 concerning Health where the regulations regarding the SIP issuance process have undergone fundamental changes. In order to provide legal certainty for the issuance of SIP before the enactment of the implementation regulations of Law Number 17 of 2023 concerning Health, procedures for the implementation of licensing are needed for Medical Personnel and Health Workers.

In Law Number 17 of 2023 concerning Health, it is stated that "A Practice License is written evidence given to medical personnel and health workers who will carry out the practice after meeting the requirements." Regarding practical issues, licensing instruments regulated in state administrative law have a relationship with the occurrence of an act of administrative malpractice, so that licensing is the most important and very important thing if a medical and health worker wants to carry out their practice. Because licensing can be used as proof that the medical personnel and health workers concerned have competence in carrying out practice.

In the event that to be able to obtain the license, a medical and health worker must fulfill several procedures that have been set by the licensee, namely the government through the fulfillment of certain requirements or procedures that have been regulated. The permit is intended to create positive activities for development activities. A permit issued by the government is intended to provide an orderly and safe condition so that it can be used in accordance with its purpose.

Medical Personnel and Health Workers who will apply for the issuance of SIP or extension of SIP that has expired can submit an application for the issuance of SIP to the Head of the Regency/City Health Office or the Head of the Investment and One-Stop Integrated Services Office of the Regency/City Region where the Medical Personnel and Health Personnel carry out their practice.

Medical personnel and health workers who do not have a license to provide health services should be examined and prosecuted whether the medical personnel and health workers have committed an unlawful act and have harmed others.

2. Corporations as Legal Entities of Hospitals

In terms of terminology, corporations have a meaning that has been formulated by several legal figures. Among them, according to Subekti and Tjitrosudibo, what is meant by *a corporatie* or corporation is an individual that is a legal entity.⁶ Meanwhile, Yan Pramadya Puspa stated that what is meant by a corporation is an individual who is a legal entity; *The corporation* or company referred to here is an association or organization that is required by law such as a human being

⁶ Ali, Chaidir. *Legal Entity*, Bandung : 1991

(*persona*) as the bearer (or owner) of the rights and obligations to have a lawsuit or sued in front of the court.⁷ Examples of Legal Entities are PT (Limited Liability Company), NV (*Namloze Vennootschap*) and Foundation (*stichting*); even the state is also a legal entity.

According to the Black's Law Dictionary, a corporation is a legalized corporation created by or under the legal authority of a country or nation, which constitutes, in some instances, of a single person being a successor, being an officer of a particular office, but usually consisting of an association of many individuals. While the definition of a corporation according to *Jowitt's Dictionary of English Law*, a corporation is a series or collection of people who have an estimated existence and different legal rights and obligations from individuals from time to time. A corporation is also known as a political body. Corporations have a fictitious character that is different from their members.

According to Chidir Ali, the law provides the possibility by fulfilling certain conditions that an association or other body is considered a person who is subordinate and therefore can exercise rights like ordinary people and can be held accountable, but nevertheless a corporate legal entity acts must be through the intermediary of ordinary people. However, the person who acts is not for himself, but for and for the responsibility of the corporation.

The legal entity of the Hospital as mentioned in Article 185 paragraph (3) and paragraph (4) of Law Number 17 of 2023 concerning Health states; "*Hospitals established by the community must be in the form of legal entities whose business activities are only engaged in the field of Health Services. Hospitals as referred to in paragraph (3) are excluded for Hospitals organized by non-profit legal entities*". In the explanation of article 185 paragraph (3) of Law Number 17 of 2023, it is explained that the health service sector is a field that provides direct health services to the community, including in the form of Clinics, Pharmacies and Laboratories.

3. Corporations as Legal Subjects

Legal entities (*rechtspersoon, legal persons, moralist personas, legal entities*) are legal subjects. According to Sudikno Mertokusumo, the subject of law is everything that can obtain rights and obligations from the law. The only people who can obtain rights and obligations from the law are humans. Therefore, human beings according to the law are recognized as holders of rights and obligations, as subjects of law or as persons.⁸

Legal entities consist of public legal entities and civil legal entities or private legal entities. Examples of public legal entities are the Regional Government, Bank Indonesia, the Financial

⁷ Arif, Barda Nawawi, *Flower Potpourri of Criminal Law*, Bandung: Citra Aditya Bakti 1996.

⁸ Sudikno Mertokusumo, 1999, *Getting to Know the Law of an Introduction*, Liberty, Yogyakarta, p. 67, see also Dwija Priyatno, 2017, *Corporate Criminal Liability System in Legislation Policy*, Kencana, Depok, p. 17.

Services Authority, and the Deposit Insurance Corporation. Examples of private legal entities are Limited Liability Companies, State-Owned Enterprises (SOEs), Foundations and Cooperatives.⁹

The problem of corporations as the subject of criminal law cannot be separated from the aspect of civil law. In civil law, individuals are not the only legal subjects. This is because there are still other legal subjects who have the same rights and can perform legal acts just like natural persons. This view is different from the Criminal Code which only recognizes natural persons as legal subjects.

Almost all aspects of people's lives involve corporations in it. It can be seen that corporations are engaged in various fields such as the agricultural industry, banking, entertainment including health and hospitals in particular. In Article 1 number 37 of Law Number 17 of 2023, it has been stated that every person is an individual person, including corporations. Corporations that have a broad definition, namely those that are legal entities or unincorporated persons. Examples of corporations that are incorporated in Indonesia have been regulated in Book I Chapter III of the Commercial Code in articles 36 – 57, namely Limited Liability Companies (PT), Associations, Cooperatives, SOEs and Foundations. The corporations that are not legal entities are civil partnerships, firm partnerships (FA) and commercial partnerships (CVs)

Etymologically, the meaning of corporation, which in other terms is known as *corporatie* (Dutch), *corporation* (English), *corporation* (German), comes from the Latin word "*corporatio*". *Corporatio* as a noun (*substantivum*) comes from the verb "*coporare*" which was widely used by people in the Middle Ages or later. "*Corporare*" itself comes from the word "*corpus*" (body), which means to give a body or to incorporate. Thus, in the end, "*corporatio*" means the result of the work of incorporating, in other words the body that is made into a person, the body obtained by human actions as opposed to the human body, which occurs according to nature."¹⁰

There are several definitions put forward regarding corporations. According to Sutan Remi Sjahdeini, corporations can be seen from their narrow meaning, as well as their broad meaning. Then Sutan Remi Sjahdeini revealed that:

"According to the narrow meaning, namely as a legal entity, a corporation is a legal figure whose existence and authority to be able or authorized to perform legal acts is recognized by civil law. That is, it is the civil law that recognizes the "existence" of the corporation and gives it "life" to be authorized to perform legal acts as a legal figure. The same is true of the "death" of corporations. A corporation is only legally "dead" if the "death" of the corporation is recognized by law."¹¹

⁹ Sutan Remy Sjahdeini, Loc. cit., Read the reading of Article 51 of the Dutch Sr. in Chapter 2 Subchapter 5 (History of Corporations as Perpetrators of Criminal Acts), pp. 50 – 51

¹⁰ Soetan. K. Malikoel Adil in Muladi and Dwidja Priyatno, Corporate Liability in Criminal Law, STHB, Bandung, 1991, p. 83

¹¹ Sutan Remi Sjahdeini, Op. cit., hal. 43

The purpose of corporations to continue to increase the profits they obtain results in frequent violations of the law. Corporations, whether in the form of a legal entity or not, have great power in carrying out their activities so that they often carry out activities that are contrary to the provisions of the applicable law, even causing victims who suffer losses. However, many corporations have escaped the pursuit of the law, so that corporate actions that are contrary to the law are increasingly widespread and difficult to control. It is easy for corporations to eliminate evidence of their crimes against the community, including intervening with law enforcement officials.

Regarding the broader definition of corporation in the field of criminal law compared to the definition of corporation in the field of civil law, Dwidja Priyatno argues as follows:

"The definition/formulation of a corporation in civil law..., turns out to be limited, as a legal entity. Meanwhile, if examined further, the definition/formulation of corporations in criminal law turns out to be broader. In Indonesia, the development of corporations as the subject of criminal acts occurs outside the Criminal Code, in special legislation. Meanwhile, the Criminal Code itself still adheres to the subject of a criminal act in the form of "person".¹²

There is a similarity between the last two opinions that suggest that the definition of a corporation as a legal subject in criminal law is broader than the definition of a corporation as a legal subject in civil law. This is based on the regulation of corporations as the subject of criminal acts in special laws and regulations outside the Criminal Code.¹³

Corporate crime is a complex crime both in planning and implementation, therefore to respond to the problem of corporate crime it is not enough to only use criminal law, but a more comprehensive legal study related to the problem of corporate crime is needed.

Regarding corporate crime, Clinard and Yeager also gave their opinion, that: *"A corporate crime is any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law"*.¹⁴ From the opinions of Clinard and Yeager, it can be identified that the definition or limitation of corporate crime is so broad, even beyond the scope of *the criminal law* itself. Corporate crime is a corporate act that can be punished by the state, ranging from administrative law to criminal law.

Regarding the opinion of Clinard and Yeager that the limits of corporate crime are broad because they do not only include criminal law, Muladi also argues that: "the term crime in the context of

¹² Dwidja Priyatno, Legislation Policy on Corporate Criminal Liability in Indonesia, CV. Utomo, Bandung, 2004, p. 168

¹³ Barda Nawawi Arief, Kapita Selekta Criminal Law, Op. cit, pp. 225-226, see also Dwidja Priyatno, Op.cit, pp. 168-172

¹⁴ Clinard and Yeager in Setiyono, Op. cit., p. 20

corporate crime has a distinctive meaning, because the spectrum of meaning is broader than just relating it to criminal law and criminology".¹⁵

Furthermore, the definition of a corporation as a subject of criminal law, according to Law Number 17 of 2023 concerning Health, provides the following qualifications according to Article 1 paragraph (37), that Every Person is an individual person, including corporations. In the event that criminal acts as referred to in Article 42A, Articles 430 to 435, Paragraph 1 437, Article 442, Article 444, Article 445, and Article 446 of Law Number 17 of 2023 are committed by a corporation, criminal liability is imposed on the corporation, administrators who have functional positions, order-givers, control holders, and/or beneficial owners of the corporation.

Article 447 paragraph (3) of Law Number 17 of 2023 concerning Health states that a corporation is subject to criminal liability for an act committed for and/or on behalf of the corporation if the act is included in the scope of its business as specified in the articles of association or other provisions applicable to the corporation concerned. Criminal penalties are imposed on corporations if the criminal offense:

- a. carried out in the context of fulfilling the purpose and objectives of the corporation;
- b. accepted as a corporate policy; and/or
- c. used to benefit corporations unlawfully

4. Criminalization of Corporations

The placement of corporations as criminal law subjects is still a problem, so that there are agree/pro and disagree/contra attitudes towards criminal law subjects. Those who agree/pro placing corporations as the subject of criminal law stated, namely;¹⁶

1. It turns out that the conviction of the management alone is not enough to carry out repression against the delicacies carried out by or with a corporation. Therefore, it is also necessary to be able to criminalize corporations and manage or manage only.
2. Considering that in social and economic life, it turns out that corporations are increasingly playing an important role as well.
3. Criminal law must have a function in society, namely protecting society and enforcing the norms and provisions that exist in society. If the criminal law is only emphasized on the individual aspect that only applies to humans, then the goal is ineffective, therefore there is no reason to always suppress and oppose the criminalization of corporations.
4. The conviction of corporations with criminal threats is one of the efforts to avoid criminal acts against the employees of the corporation itself.

The scope of corporate crime is also explained by Steven Box, where the scope of corporate crime includes:¹⁷

¹⁵ Muladi, Human Rights, Politics, and the Criminal Justice System, BP UNDIP, Semarang, 1997, p. 165

¹⁶ Muladi and Dwidja Priyatno, 2012, Corporate Criminal Liability, Kencana-Prena- daMedia Group, Jakarta, p. 47

¹⁷ Steven Box in Hamzah Hatri, *The Principle of Corporate Responsibility in Criminal Law Indonesia (Strict Liability and Vicarious Liability)*, Rajagrafindo Persada, Jakarta, 1995, p. 41

1. *Crimes for corporation*, is a violation of the law committed by a corporation in an effort to achieve the corporate goal of obtaining profits;
2. *Criminal corporation*, which is a corporation that aims solely to commit a crime;
3. *Crime against corporations*, namely crimes against corporations such as theft or embezzlement of corporate property, in which case the victim is the corporation.

Based on the scope given by Steven Box above, it can be determined that what is meant by corporate crime in this study is corporate crime in the form of *crimes for corporation*, namely crimes committed by corporations in order to make profits.

With the provision on corporations in a law, it will be easier to show the extent of accountability in the corporation. Currently, corporations increasingly play an important role in people's lives, especially in the field of health, so that the doctrine of *delinquere non potest universitates* (legal entities cannot commit criminal acts) has changed with the acceptance of the concept of functional actors according to Rolling¹⁸ who include corporations in "*functioneel daderschap*" Because corporations in the modern world have an important role in economic life which has many functions, namely employers, producers, price setters, foreign exchange users and others.

Based on the above, that is that corporations are the subject of criminal acts, this raises problems related to their accountability in criminal law. Regarding criminal liability, so far in Indonesia has adhered to the principle of guilt. This means that it is not enough to convict a person if the person has committed an act that is contrary to the law and is unlawful, but the perpetrator must have an element of guilt, or known as the principle of no crime without fault (*Geen straf zonder schuld; keine strafe ohne schuld*).

Although in principle corporations can be held accountable the same as individuals, there are several exceptions, namely;¹⁹

1. In cases that according to their nature cannot be done by corporations, for example: bigamy, rape, perjury;
2. In cases where the only criminal offenses that can be imposed are impossible to impose on corporations, for example, imprisonment and the death penalty.

The same thing was also stated by Peter Gillies that "*the law now recognizes that the company can incur criminal liability, although not for all crimes*"²⁰. So not all criminal acts can be committed by corporations and can be accounted for by corporations.

From the quote above, it is mentioned about crimes against corporations, where it is said that imprisonment and the death penalty cannot be imposed on corporations. So if this is related to the

¹⁸ Rolling, In Muladi, Muladi, Application of Corporate Responsibility in Criminal Law, Corporate Crime Lecture Materials, Page 8.

¹⁹ Barda Nawawi Arief, Comparison of Criminal Law, Second Edition, Jakarta, PT RajaGrafindo Persada, 1994, p. 37.

²⁰ Peter Gillies, Criminal Law, 1990, P.125.

criminal sanctions regulated in Article 10 of the Criminal Code, the main crimes consist of: the death penalty, imprisonment, imprisonment and fines; So the main penalty that can be imposed on a corporation is only a fine. The same thing was also stated by Peter Gillies who said that "*the obvious must be stressed : in most case the punishment visited upon the corporation will be fine*"²¹.

Brickey said that it is often said that the main penalty that can be imposed on a corporation is only a fine (*fine*), but if a sanction is imposed in the form of closing the entire corporation, it is basically a "*corporate death penalty*", while sanctions in the form of all restrictions on corporate activities, this actually has the same essence as imprisonment or confinement, so there is a term "*corporate imprisonment*". Even an additional penalty in the form of an announcement of a judge's decision (*publication*) is a sanction that is very feared by corporations²².

Suzuki warned that in imposing criminal penalties on corporations, for example in the form of closing all or part of the business, it is carried out carefully. This is because the impact of the decision is very wide. Those who will suffer not only the wrongdoers, but also innocent people such as workers, shareholders and consumers of a factory.²³

Regarding the principal penalty that can be imposed on corporations, namely only fines, this sanction will be formulated singularly. This single formulation will be very risky if the crime is not carried out. L.H.C. Hulsman once stated that *the sentencing system* is "*the statutory rules relating to penal sanction and punishment*".²⁴ If the definition of criminal thinking is broadly interpreted as a process of granting or imposing a criminal sentence by a judge, then it can be said that the criminal system includes the understanding;²⁵

- a. The entire system (laws and regulations) of the penal system;
- b. The entire system (laws and regulations) of granting/imposing and executing crimes;
- c. The entire system (laws and regulations) of criminal functionalization/operationalization/concretization;
- d. The entire system (legislation) that regulates how the law can be enforced or operationalized concretely so that a person is sanctioned (criminal law).

Furthermore, it is said that with the understanding as stated above, all laws and regulations regarding Material/Substantive Criminal Law, Formal Criminal Law and Criminal Implementation Law can be seen as a unit of the criminal system. In other words, the penal system consists of the Substantive Criminal Law subsystem, the Formal Law subsystem and the Criminal Execution/Execution Law subsystem.

²¹ Ibid, P.145.

²² Brickey, In Muladi, op cit, Page 29

²³ Yoshio Suzuki, In Muladi, Dwidja Priyatno, op cit, Page 115.

²⁴ L.H.C. Hulsman, In Barda Nawawi Arief, 2003, op cit, p. 135.

²⁵ Barda Nawawi Arief, ibid, e.g. 136.

Starting from the above understanding, if it is limited to substantive criminal law, then the entire system of statutory *rules* in the Criminal Code (as the parent general rule) and Special Laws outside the Criminal Code, in essence, is a unit of the substantive criminal system. All statutory *rules* in the field of substantive criminal law consist of "general *rules*" and "*special rules*". General rules are contained in the Criminal Code (Book I), and special rules are contained in the Criminal Code (Book II and Book III) as well as in laws spread outside the Criminal Code. These special rules generally contain the formulation of certain criminal acts, but they can also contain special rules that deviate from the general rules.²⁶

5. Criminal Liability Against Corporations

Corporate crime, which is usually in the form of a white collar crime, is generally committed by a company or legal entity engaged in business with various actions that are contrary to the applicable criminal law. Based on the experience of various developed countries, it can be stated that the identification of corporate crimes can include criminal acts such as violations of monopoly laws, fraud through computers, payment of taxes and excise, violations of price provisions, production of goods that endanger health, corruption, bribery, administrative violations, labor, and environmental pollution.²⁷

The basis for a criminal act is the principle of legality, while the basis for convicting the perpetrator of a criminal act is the principle of guilt. This means that the perpetrator of a criminal act will only be punished if he has a mistake in committing the crime. When a person is said to have a fault is a matter related to the issue of criminal liability. A person has a mistake when committing a criminal act, from a societal point of view he can be reproached for his actions.

The application of corporate criminal liability initially faced a number of legal problems, especially regarding the principle of no criminal innocence (*genstrap zonder schuld*). As is known, criminal acts do not stand alone. The criminal act is only meaningful if there is criminal liability. This means that everyone who commits a criminal act cannot automatically be convicted. For a person to be convicted, he must be held accountable. Criminal liability is born by the continuation of an objective rebuke (*vewijtbaarheid*) of an act that has been declared a criminal act based on the applicable criminal law, and subjectively to the perpetrator of a criminal act who meets the requirements to be subject to criminal punishment for his actions.

In his sense, criminal acts do not include criminal liability. Criminal acts only refer to the prohibition of acts as stipulated in a law and regulation. Whether the perpetrator of a criminal act who has committed a prohibited act and then is also sentenced to a criminal sentence depends on

²⁶ *Ibid*, p. 137.

²⁷ Gobert dan Punch, *Rethinking The Corporate Crime*, <http://maswig.blogspot.com>, 21 September 2007

the issue of whether the perpetrator of the criminal act can be held accountable in committing the act. In other words, whether the perpetrator of the crime is guilty.

Regarding the issue of corporate accountability to victims of corporate crimes, the criminal law policies used are also expected to be adjusted to the current time and situation and predict the situation in the future, so that the criminal law policies used can be functionalized effectively in the present and the future. In addition, the criminal law policy can also provide justice for victims of corporate crimes.

According to Barda Nawawi Arief, from the perspective of criminal law policy, in the sense of the policy of using/operationalizing/functionalizing criminal law, the central problem or main problem actually lies in the problem of how far the authority/power regulates and limits human behavior (citizens/officials) with criminal law.²⁸

Criminal liability imposed on corporations was first developed in countries adhering to the *Common Law System* such as the United Kingdom and the United States as a result of the industrial revolution that began in those countries. There are several theories of corporate criminal liability that are used as the basis for imposing criminal liability on corporations. The theory of corporate criminal liability includes identification *theory*, *vicarious liability theory* and strict liability *theory*.

Identification theory is a theory of corporate criminal liability. Criminal liability for corporations must be able to identify in advance who committed the crime. If the person who commits the criminal act is a "*directing mind*" or a person authorized to act on behalf of the corporation, then the corporation can be burdened with criminal liability.

Vicarious liability theory is a theory of corporate criminal liability where a person, in this case a corporation, is responsible for the mistakes of others. This theory is based on the *employment principle*, where employers are responsible for the actions of their workers within the scope of their duties and work. The theory of strict *liability* is the most practical theory of corporate criminal liability. Corporate criminal liability is imposed on the person who commits the crime to work without the need to prove whether there is a fault or not.²⁹

Several existing theories of corporate criminal liability are expected to provide a legal basis for imposing corporate criminal liability on victims of corporate crimes. This is the main problem that is expected to be accommodated in the future, so that criminal law policies related to corporate crime can be operated effectively while still paying attention to and adhering to the goals of social policies, namely the protection and welfare of the community.

²⁸ Barda Nawawi Arief, *Several Aspects of Criminal Law Enforcement and Development Policy*, PT. Citra Aditya, Bandung, 2005, p. 137

²⁹ Sutan Remi Sjahdeini, *Corporate Criminal Liability*, Graffiti Press, Jakarta, 2006, p. 78

In Indonesia, one of the ways that Corporations can also be held criminally accountable is by applying one of the theories, namely the principle of "no crime without fault". However, according to the Criminal Code Bill, this exception is only for certain criminal acts, not for all criminal acts.³⁰ For certain criminal acts, the perpetrator of the criminal act can be punished only because the elements of the criminal act have been fulfilled by his actions. Here, the mistake or inner attitude of the perpetrator of the crime in committing the act is no longer considered. This principle is known as the principle of "*strict liability*" or (*liability without fault*).

Research Methods

1. The method applied in this study is the normative juridical method, a deductive approach that uses theory as a starting point to answer research questions. This study will analyze articles in laws and regulations related to the responsibility of doctors and hospitals for hiring medical personnel and health workers without a permit. In the context of normative research, a conceptual approach is used to understand concepts such as corporate responsibility, hospital legal entities and crime. These concepts are the basis for producing norms in the rule of law.

2. Research Specifications

The specification of this study involves the application of analytical descriptive methods. This method is used to unravel the applicable laws and regulations, especially related to legal theories and the implementation of positive legal practices related to corporate criminal liability and the employment of medical personnel and health workers in hospitals. Descriptive research aims to provide in-depth details of certain phenomena related to the theory and address the problems that arise.

3. Method of Approach

The method applied in this study is the normative juridical method, a deductive approach that uses theory as a starting point to answer research questions. This study will analyze articles in laws and regulations related to the criminal liability of corporations and hospitals for employing medical and health workers in hospitals.

In the context of normative research, a conceptual approach is used to understand concepts such as corporate responsibility, licensing and hospitals. These concepts are the basis for producing norms in the rule of law.

4. Literature Research: Involves a literature study to collect secondary data, including primary and secondary legal materials related to corporate and hospital responsibilities.

³⁰ See the Explanation of Article 38 paragraph (1) of the draft Criminal Code Bill in September 2005, but the explanation does not clearly state the "specific crime".

5. Data Collection Techniques
 - a. Primary Legal Materials: Involving binding legislation such as the 1945 Constitution, the Criminal Code, Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 17 of 2023 concerning Health;
 - b. Secondary Legal Materials: Involving law books and legal works from various sources.
 - c. Tertiary Law Materials: Includes dictionaries, encyclopedias, indexes, and cumulatives.
6. Literature Studies: Searching and collecting secondary data such as laws and regulations, scientific journals, and scientific articles related to corporate liability, practice permits and hospitals.
7. Data Analysis: The selection of analysis must be in accordance with the type, purpose of the research, and the nature of the data collected. Qualitative descriptive analysis is used to group, select, and relate data from field research to the theory and law that has been studied.

Results and Discussion

1. Corporate Responsibility in Criminal Acts

The existence of corporations that commit crimes today is not rare,³¹ the mass media often reports on criminal acts committed by corporations both outside and within the country. The crime committed by the Corporation does not only occur today, but has been going on for a long time. This can be seen from the emergence of various theories of corporate criminal liability that were born in order to stop or punish corporations that commit criminal acts, such as *the identification theory*, *aggregation doctrine* which was born as far back as the early 20th century.

Regarding the imposition of criminal liability for crimes committed by the corporation itself, there are several theories or teachings that can be used as a basis for imposing criminal liability. These theories or teachings are *Identification Theory*, *Strict Liability Theory*, and *Vicarious Liability Theory*.

In the United States, a very common way to hold corporations criminally liable is through the doctrine of *superior respondeat* or *vicarious liability*. According to this doctrine, if an agent or employee of a corporation, acting within the scope of his work and with the intention of benefiting the corporation, commits a crime, his criminal liability can be imposed on the company. It does not matter whether the company has actually made a profit or not or whether the activity has been prohibited by the company or not.

This doctrine has worked well in English law, in relation to the crime of *strict liability* in relation to issues such as pollution, food and medicine, occupational health and safety. It has also been applied to hybrid crimes where the main crime is *strict liability* but allows for due *diligence*

³¹ Various crimes are often committed by Corporations, including: crimes in the field of taxation, destruction of the environment, forcible and arbitrary takeover of the rights of others, intellectual property rights, trafficking, accidents, etc.

defenses. Nevertheless, it is clear that *vicarious liability* does not have to be applied to all crimes of *strict liability*. Whether or not it will be applied is a matter of interpretation of the law in relation to the policy on the existence of the law and whether the use of *vicarious liability* will help the implementation of the law.

It is very difficult to ascertain whether *vicarious liability* can be applied in every case, the question is whether *vicarious liability* has a solid basis for holding corporations accountable. The reasons in favor of vicarious liability are largely pragmatic. By crossing all the issues that have to do with other doctrines, such as finding a fairly important person within the corporation who has committed a crime. With this doctrine, as long as a person acts in his field of work and has committed a crime, the company can be held criminally liable. This will prevent companies from protecting themselves from criminal responsibility by delegating illegal activities only to their workers.

In theory, a corporation can be said to have delegated the power to act in its own field to all its staff and based on that, the corporation should be held accountable for their evil deeds. This is also the reason that optimal prevention can be achieved by applying *vicarious liability* to the corporation. However, there are a number of major problems associated with this doctrine, especially when applied to crimes involving *mens rea*.

First, there is no empirical evidence to support the claim that this method is the most effective way to achieve prevention. This is the same as the claim that the crime of *strict liability* can be justified in terms of prevention. In response to these claims, it has been shown that companies will or at least only do what makes sense to prevent losses and *that strict and vicarious liability* can actually operate as a disincentive for companies to engage in socially beneficial activities.

Second, *vicarious liability* can be too *inclusive* in the event that a company can be punished for the fault of a worker for whom the corporation should not be accounted for, in the event that the corporation may have done everything in its power to prevent the occurrence of crime. Corporations may have made clear policies and set broad orders to avoid mistakes. When a corporate worker decides to "do it himself", it seems difficult to process the corporate fault in doing or not doing.

Third, the doctrine of *vicarious liability* can be very *uninclusive* in that a company's policies and practices may be bad and may encourage malicious behavior. However, it is not impossible to *pin-point* certain workers who have committed the necessary elements of crime.

The current challenge is still very difficult to support the doctrine of *vicarious liability* for all crimes, especially serious ones, such as *manslaughter*. Although in theory it is not difficult to justify this doctrine when applied to the crime of *strict liability* (assuming that the crime of *strict liability* can be held accountable by itself). Crimes like this, such as related to problems related to pollution, protection of consumers, food, medicine, health and safety. And this is undoubtedly

what corporations are most likely to do. For this kind of crime, finding fault on the part of the perpetrator is not necessary.

Therefore, it seems that there is little need to form a mistake on the part of the corporation. Indeed, it is possible to go further and argue that, due to the magnitude of the power granted by corporations in potentially dangerous areas, the role of *strict liability* should be expanded when crimes are committed by corporations. However, as will be argued below, this kind of different approach (treating corporations and individuals differently) will be *counterproductive* and contribute to the marginalization of crimes committed by corporations.

One of the solutions that can be compromised is the proposal from the *Council of Europe*, which is that the *prima facie* is a corporation that will take over responsibility for crimes committed by its workers but will be granted *a due diligence defence* if it can be stated that the management involved in the crime has taken all necessary measures to prevent it from being committed crimes.

The main purpose of this approach is to convert all crimes that contain intent (*mens rea*) committed by corporations into *hybrid* crimes, i.e. *strict liability* crimes and supplemented by a defense of *due diligence*. Again, as a consequence, corporate crime will be considered to have a different significance than other crimes, as the normal condition of a crime (e.g. *manslaughter*) does not need to be proved, this kind of crime will be considered a lesser crime and therefore will greatly impair the reproach function of the criminal law.

2. Formulation of Corporate Criminal Sanctions in the Health Law

The regulation on Corporate Criminal Liability in the Health Law is formulated in several articles. The formulation of sanctions in Article 447 of Health Law Number 17 of 2023. The article states that in the case of a criminal act by a corporation, the corporation can be subject to a fine with a penalty of three times the penalty of the fine of its management. Additional sanctions can be in the form of revocation of business licenses and/or revocation of legal entity status.

However, there is a regulatory vacuum related to the repetition of criminal acts and principal criminal sanctions against corporations. Article 447 of the Hospital Law also does not regulate the threat of the death penalty, only regarding imprisonment and fines. The criminal provisions of fines in Article 20 paragraph (7) of Law No. 31/1999 cause obstacles, because they do not provide an alternative if the fine is not paid by the corporation.

Barda Nawawi Arief stated that additional types of crimes such as closing a company or revoking business license rights can be used as a principal crime or at least as an independent additional crime. Brickey highlighted that restrictions on corporate activities are equivalent to imprisonment or confinement, referred to as "*corporate imprisonment*". The announcement of the judge's decision is also considered a sanction that is highly feared by corporations.

The approach to payment of fines by corporations, if not carried out, is not strictly regulated. Barda Nawawi Arief suggested the type of criminal punishment in lieu of fines such as revocation of business licenses or dissolution of corporations. This concept includes *financial sanctions*, *structural sanctions*, and *stigmatizing sanctions*.

In the 2004 Criminal Code, criminal arrangements in lieu of fines if not paid by corporations have been proposed. The provision provides payment options in installments and allows for decision-making of corporate wealth or income if the penalty is not paid in full. This study reveals problems related to criminal sanctions against hospitals as corporations, involving criminal aspects of fines, additional penalties, and alternative sanctions in dealing with the weaknesses of the formulation of the Health Law.

Article 447 of Law Number 17 of 2023 states: "*In the event that a criminal act as referred to in Article 428, Article 430 to Article 435, Article 437, Article 442, Article 444, Article 445, and Article 446 is committed by a corporation, criminal liability is imposed on the corporation, administrators who have functional positions, order-givers, control holders, and/or beneficial owners of the corporation.*"

Conclusion

From the above problems, the following conclusions can be drawn:

1. The corporation as the maker, the management responsible for the criminal act can be committed by the association or business entity (corporation), but the responsibility for it is the burden of the management of the legal entity (corporation). Gradually, criminal responsibility shifts from the members of the board to those who order, or by the prohibition of doing so if they neglect to lead the corporation in practice.
2. In the accountability system for hiring medical personnel and health workers without a practice license (permit), the corporation can become the perpetrator of a criminal act, but the responsible ones are the members of the management, as long as it is clearly stated in the regulation. The corporation as the maker and manager is responsible, so it is emphasized that the corporation may be the maker or the one who gives orders/orders to hire medical and health workers to work without permission. Managers are appointed as responsible; What is seen as done by a corporation is what is done by the complementary tools of the corporation according to its authority based on its articles of association.
3. A criminal act committed by a corporation is a criminal act committed by a certain person as an administrator of the legal entity. The nature of the act that makes the criminal act is "*onpersoonlijk*." The person who leads the corporation is criminally liable, regardless of whether he knows or does not know about the act.

Suggestion

1. Corporations as creators and responsible can sue corporations and hold them accountable according to criminal law. The appropriate criminal sanctions for corporations are criminal

sanctions of fines with three times the weight of individual crimes, revocation of business licenses and revocation of legal entity status, even though regulations have regulated criminal sanctions of imprisonment for its proven administrators.

2. The importance of careful consideration in imposing the penalty of closing all hospitals as a corporation considering its impact on many people. However, the author suggests that the formulation of regulations can give flexibility to judges to consider the imposition of these sanctions, with the word "may" provide flexibility in deciding whether the closure of the entire corporation needs to be imposed, so that the criminal penalty does not only apply to individuals but also to corporations.

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