



## Corporate Criminal Liability in Criminal Acts on The Position in an Automotive Company

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### Abstract

Corporate Criminal Liability concerns the issue of liability, intentionality or negligence of the Corporation. The cases of consumers' money embezzlement occurring in Automotive Companies in Indonesia are frequently not submitted to court. Although there were some cases that had been submitted in court and had obtained permanent legal force, the trapped party was only the members or company'. Meanwhile, the company has never been charged. This is because the Indonesia Criminal Code does not recognize legal subjects in corporation. In contrast, Criminal Code only recognizes human as subject to criminal law (Article 59 of the Criminal Code). In addition, the absence of strict regulation regulation provided on Liability of Business Actors (Company/ Corporation) against consumers' losses as stipulated in Act No. 8 of 1999 concerning Consumer Protection (UUPK), specifically the losses from the legal action of employees of the company and senior company officers, is also a leading factor for the development of criminal acts in corporations. The element of examining corporate as the subject to criminal acts misconduct is difficult to implement due to its non-human nature. However, if the corporation is not demanded to provide liability just because of the difficulty of proving perpetration, impunity to corporation will occur.

**Keywords:** Criminal Act; Corporate Criminal Liability; Penal System

### I. INTRODUCTION

Criminality is the quality or state of being criminal and, as such, the term refers both to an attribute of persons who commit crimes and to the criminal behavior in which they engage (Stephen Wormith & Schafers, 2015). The proposition that genetic factors have significant influence on antisocial behavior implies that there is a genetic propensity or predisposition in some individuals to engage in this type of behavior (González-Tapia & Obsuth, 2015).

Beside the physical and emotional trauma that can result from criminal victimizations, there is also a tremendous financial toll that is shouldered by taxpayers (Beaver et al., 2013). Children whose parents exhibit criminal behavior appear to have an increased risk of displaying themselves (Besemer, Ahmad, Hinshaw, & Farrington, 2017). Knowledge about residual criminal careers remains limited, despite its crucial importance to criminal justice and various social policies (Kazemian & Farrington, 2018). Criminal thinking styles were examined as mediational links between different forms of child maltreatment (i.e. sexual abuse, physical abuse, and physical neglect) and adult criminal behaviors in 338 recently adjudicated men (Cuadra, Jaffe, Thomas, & DiLillo, 2014). The marginal cost of committing a crime depends on the frequency with which criminal activities are detected (Carrillo, Lopez-Luzuriaga, & Malik, 2018)

The existence of a corporation today is often coupled with violations or even unlawful

acts, including criminal law<sup>1</sup>. The managers and owners of hundreds of companies are often the perpetrators or at least involved in the treatment of crimes that harm society. Criminal acts committed by at least parties involving a corporation are carried out in many aspects, for example economic or business, social, environmental and other strategic aspects<sup>2</sup>.

However, it is important to realize that even though corporate criminal acts are rampant in the community, crimes committed by corporations are generally handled by civil law or administrative law, namely by imposing sanctions in the form of compensation or fines or revocation of permits. In reality, the sanctions that should be imposed on corporations committing criminal acts are almost never carried out<sup>3</sup>.

The reason for the Criminal Code to not recognize the criminal liability imposed on corporations is with two principles, namely:

- The principle of "societas deliquere non potest" or "deliquere non potest universality": that legal entities cannot commit criminal acts. According to this principle, misconduct according to criminal law are always hinted to as human. Therefore, corporations that according to fiction theory are legal subjects (civil) are not recognized in criminal law.
- Principle "actus non facit reum, nisi mens sit rea" or "nulla poena sine culpa", i.e. there is no crime without perpetration. According to this principle, to prove the truth that a person has been guilty of committing an act that is given a criminal sanction, first his offense in both his behavior and mind must be proven<sup>4</sup>.

For corporations, this element of offense is difficult to prove, because it is not human. Corporations do not have the mind, so it is difficult to know their intentions. However, if a corporation is not demanded a liability only because of the difficulty of proving its misconduct, impunity takes place, even though the corporation itself often commits criminal acts<sup>5</sup>. Thus, if a corporation commits a crime, it is considered that the perpetrator is the employees because the offense at that time is interpreted as a physical act of the perpetrator<sup>6</sup>.

Article 59 of Act on Criminal Code affirms that criminal acts have never been committed by the Corporation but are perpetrated by the management. Even Act No. 8 of 1981 concerning Criminal Procedure Act (Indonesian term is KUHAP) also does not regulate the prosecution of offenders other than humans, for example Corporations. Thus, impossibility for a corporation to be convicted, as stipulated in Article 59 of the Criminal Code, is based on several reasons, namely:

- The principle of criminal law contained in the Criminal Code is based on the teaching of personal mistakes and is only aimed at natural persons.
- The principal punishments in the Criminal Code have personality traits.
- The penalties concerning independence cannot be exercised by the Corporation.
- Although a fine can be imposed to the corporation, the person who is sentenced to a fine can choose to pay a fine or serve a sentence as a substitute<sup>7</sup>.

In Indonesian criminal law, there has actually been a development that puts the corporation as a subject for criminal law<sup>8</sup>. Beyond the Criminal Code, corporation as a

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1. Kristian I, 2017, Sistem Pertanggungjawaban Pidana Korporasi (Ditinjau dari Berbagai Konvensi Internasional), Cetakan Kesatu, Refika Aditama, Bandung, p. 15.  
2. Kristian II, 2016, Kejahatan Korporasi di Era Modern & Sistem Pertanggungjawaban Pidana Korporasi, Cetakan Kesatu, Refika Aditama, Bandung, p. 21.  
3. Ibid  
4. H. Setiyono, 2002, Kejahatan Korporasi, Averroes Press, Malang, p. 15-16.  
5. Sutan Remy Sjahdeini I, 2006, Pertanggungjawaban Pidana Korporasi, Grafiti Pers, Jakarta, p. 30.  
6. D.Schaffmeister, et al (J.E Sahetapy dan Agustinus Pohan, ed) 2007, Hukum Pidana, Citra Aditya Bakti, Bandung, p. 275.  
7. J.E Jonkers, 1987, Buku Pedoman Hukum Pidana Hindia Belanda, Bina Aksara, Jakarta, p. 289.  
8. Edy Yunara, 2005, Korporasi dan Pertanggungjawaban Pidana Korporasi, Berikut Studi Kasus, Citra Aditya Bakti, Bandung, p. 2.

criminal law subject is known for a variety of special criminal legislation<sup>9</sup>. Corporations have been placed as criminal law subjects by laws and regulations outside the Criminal Code, which can be prosecuted for providing liabilities, even though there is no uniformity between the laws and various aspects relating to corporate criminal liability.

Legislation that puts the corporation as a subject for criminal acts and directly shall provide liability, including Article 15 Emergency Law No. 7 of 1955 concerning Investigation, Prosecution and Economic Criminal Justice; Article 39 of Law No. 3 of 1989 concerning Telecommunication; Law No. 24 of 1992 concerning Insurance; Article 108 of Law No. 10 of 1995 concerning Custom; Law No. 5 of 1997 concerning Psychotropic and Law No. 8 of 1999 concerning Consumer Protection, and else.

This study reviews corporate criminal liability for corporate criminal acts in automotive business and the criminal system of perpetrators of criminal acts committed in positions in such company. Specifically, this study is made with the aim to: examine and reveal the corporate criminal liability for corporate crime in automotive business; identify the criminal system of perpetrators of crime in the position of an automotive company.

## **II. METHOD**

The research method used in this study is the Juridical-Normative research method. The research approach used is statutory approach, conceptual approach, case approach, analytical approach, and philosophical approach. The technique used was document study or literature study. The collection of legal materials was carried out by an inventory procedure to study and explore the primary, secondary and tertiary legal materials related to this research.

## **III. RESULTS AND DISCUSSION**

### **Aspects of Criminal Law in Corporate Criminal Act**

In the Indonesian Criminal Code, there is no single article stipulates the non-human perpetrators of crimes. The recognition of the corporate to be as the subject of a criminal act and that it can be subject to sanctions for liability is contained in the 2015 Criminal Code Bill that is from Article 48 until Article 52 of the Criminal Code. When a Corporation is declared liable for criminal acts it committed, in general there are 3 systems of liability that must apply.

With regard to criminal liability by corporates in Indonesia, Criminal Code has the view that corporations cannot demanded to be liable on criminal liability, because corporations do not have hearts, but corporate administrators do, so they must be as legal person who are liable in criminal acts commission. Therefore, the corporate management is the entity that accepts demands for criminal liability. All the formulation of the law article is oriented towards human/person. This brings about difficulties in specification of the ability to realize liability provision when the perpetrator of a crime is a corporation.

#### *Doctrine of Corporate Criminal Liability*

As the law develops, the shift of convictions regarding criminal liability has taken place, e.g. the standpoint which argues that only human can commit criminal acts and thus they are the only subject for criminal liability demands shifts into that the corporation can become a criminal and because it can be subject to criminal liability for prosecution and conviction.

The shift in the establishment of criminal liability by cooperates is based on several doctrines of liability, including:

- Identification Theory or Direct Liability Doctrine
- Strict Liability or Absolute Liability Doctrine
- Vicarious Liability Doctrine
- Doctrine of Agregation

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9. Andi Hamzah I, 1991, *Perkembangan Hukum Pidana Khusus*, Rineka Cipta, Jakarta, p. 5

- The Corporate Model or Company Culture Theory
- Reactive Corporate Fault<sup>10</sup>.

#### *Corporate Criminal Liability System in the Criminal Code*

Although the current Criminal Code in Indonesia does not recognize corporations as the subject of criminal acts, various other laws specifically concerning criminal law have stipulated that in addition to humans, corporations are also included as criminals that violate criminal provisions in the Act. In fact, dealing with corporate criminal liability, the discussion is inseparable to criminal matters and conviction for a criminal act; if it can be accounted for by the perpetrator, further triggered consequences can be the criminal imprisonment<sup>11</sup>.

Indonesian criminal law adheres to dualism as the basis for imposing criminal penalties on offenders. Its notion basically prescribes that criminal liability can be imposed on the offender if the element of misconduct (liability of the perpetrator, intentional/negligence and the perpetrator can be expected to do something other than what is done) and the element of criminal acts committed by the perpetrator (according to the formulation of a criminal act) are complete<sup>12</sup>.

Mardjono Reksodiputro stated that:

"The Criminal Code still adheres to the general principle that a criminal act can only be carried out by humans (*natuurlijke persoon*) so that the legal entity (*rechtspersoon*) does not apply in Criminal Law, except the legislation outside the Criminal Code"<sup>13</sup>.

The establishment of paradigm on that only humans can be the subject of criminal acts so that humans can commit criminal acts is still accepted dominantly in criminal law in Indonesia. Hence, corporate conviction according to the Criminal Code is still seen as an exception.

#### *Corporate Criminal Liability System in the Criminal Code Bill*

Corporate criminal liability system has been regulated in the Criminal Code Bill. In the 2015 Criminal Code Bill, provisions concerning other matters relating to the Corporate criminal liability system or the adopted doctrine have been regulated, for example the regulation regarding absolute liability and substitute liability<sup>14</sup>.

The criminal law formulation policy consists of several points, including:

- Formulation of Criminal Act
- Formulation of Criminal Responsibility or Criminal Liability
- Formulation of Sanctions both in the form of criminal and civil acts<sup>15</sup>.

The formulation policy regarding the corporate criminal liability system and everything related to the corporation in the 2015 Criminal Code Bill is contained in several articles, including:

- Policy formulation regarding corporate criminal liability system. The formulation policy regarding the corporate criminal liability system in the 2015 Criminal Code Bill is contained in Articles 47 to 53 of the Criminal Code Bill.
- Formulation policy on corporate criminal sanctions. The formulation policy concerning corporate criminal sanctions in the Criminal Code Bill is contained in Articles 65, 67,

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10. Kristian II, 2014, *Hukum Pidana Korporasi Kebijakan Integral (Integral Policy) Formulasi Pertanggungjawaban Pidana Korporasi di Indonesia*, Cet-Kesatu, Nuansa Aulia, Bandung, p. 54-72.

11. Ahmad Drajat, 2017, *Penerapan Sanksi Pidana Terhadap Korporasi Sebagai Subjek Tindak Pidana Korupsi*, (online) <http://www.pn-medankota.go.id/v3/index.php/101-kumpulan-artikel/383-drajad1>, accessed on August 24, 2017, at 12:30.

12. Widyopramono, 2012, *Pertanggungjawaban Pidana Korporasi*, Jurnal Fakultas Hukum, Universitas Pattimura, Ambon, p. 3.

13. Mardjono Reksodiputro, 1994, *Kemajuan Pembangunan Ekonomi dan Kejahatan (Kumpulan Karangan Buku Kesatu, Pusat Pelayanan Keadilan dan Pengabdian Hukum d/h Lembaga Kriminologi, Universitas Indonesia, Jakarta*, p. 69.

14. Dwija Priyanto & Kristian, *Kebijakan Formulasi Sistem Pertanggungjawaban Pidana Korporasi Dalam Peraturan Perundang-undangan Khusus di Luar KUHP Indonesia*, Sinar Grafika, Jakarta, p. 541

15. *Ibid*, p. 16-19

80 paragraph (4,5,6), 85, 182, and Article 205 of the Criminal Code Bill.

- Formulation policy concerning the doctrine of absolute liability. The formulation policy regarding the doctrine of absolute liability in the Criminal Code Bill is contained in Article 38 paragraph (1) of the Criminal Code Bill.
- Formulation policy regarding the doctrine of substitute liability. The formulation policy regarding the substitute liability doctrine in the Criminal Code Bill is contained in Article 38 paragraph (2) of the Criminal Code Bill.

#### *Corporate Criminal Aspects in the Law of Consumer Protection*

The aspiration to develop responsible business actors as one of the motives for enacting the Consumer Protection Act (in Indonesian is termed UUPK) is realized by the existence of criminal law aspects that contain the concept of criminal liability. In the concept of criminal liability, there are teachings of misconducts (*schuld, mens rea*)<sup>16</sup>. This is the foundation of all liability based on the principles of liability which is a legal conception that is carried out continuously.

The importance of the aspect of criminal law in the Consumer Protection Act was put forward by Peter Cartwright, namely:

Criminal law is important to protect the health and safety of consumers or consumers' economic interests, where criminal sanctions are often used to protect consumers from violations of business actors, but obstacles to creating a strong criminal law are difficulties in applying the use of criminal provisions that have been enacted. Especially, if someone starts from the argument that criminal law must be the last means (criminal law must be a last resort), the criminal law is used only when other devices are inadequate<sup>17</sup>.

The aspect of criminal law in the law of consumer protection is seen in the principles of law concerning the intervention of criminal law in other legal fields. Criminal law intervention in the law of consumer protection must be clear in order to provide benefits and legal certainty for both business actors and consumers.

#### *Corporations as a Subject for Criminal Consumer Protection*

The adaptation of corporate criminal liability in the consumer protection law in Indonesia is marked by the mention of "business actor" as the subject of a crime in the Consumer Protection Act, as stipulated in Article 1 number 3 which reads:

"Business actors are any individual or business entity, whether in the form of legal entity or non-legal entity established and domiciled or carrying out activities within the legal territory of the Republic of Indonesia, both individually and jointly through agreements to conduct business activities in various economic fields".

Business actors included in this definition are companies, corporations, State-owned enterprises (Indonesian term is BUMN), cooperatives, importers, traders and distributors. Furthermore, prosecution and criminal justice against corporate business actors (Companies, State-Owned Enterprises) have problems in law enforcement practices because the UUPK still requires an element of "error" in the formulation of its norms. In fact, as prescribed by the doctrine strict liability an action can be punished on the basis of harmful conduct, without questioning whether there is intentional or negligence<sup>18</sup>.

Although the corporation can be accounted for in criminal law as seen in Article 61 of the UUPK, the provisions contain too complex implications. In the elucidation of Article 61 of the UUPK it was stated "quite clear", in which case it was not clear at all, because from the juridical side the implementation of the provisions contains many weaknesses. On one hand, this provision allows corporations to be liable in criminal law, but on the other hand there is no explanation on the formulation of norms of criminal acts committed by corporations. The UUPK does not regulate the provisions when a corporation commits a

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16. Roeslan Saleh, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana, Dua Pengertian Dasar dalam Hukum Pidana*, Aksara Baru, Jakarta, p.76-77

17. Yusuf Shofie, 2011, *Tanggung Jawab Pidana Korporasi Dalam Hukum Perlindungan Konsumen*, Cipta Aditya Bakti, Bandung, p. 122

18. *Ibid*, p. 182

crime. This is a weakness in the legislation policy in Indonesia. Such formulation is a strategic error that can hinder efforts to prevent and overcome crime at the application and execution stages. On this basis, it is necessary to reorient and reformulate the corporate liability which involves several requirements, including when the corporation is said to have committed a criminal act.

The formulation of norms concerning criminal acts committed by corporations in the field of consumer protection has not touched all areas of criminal acts. The UUPK does not regulate the limits or measures to determine a criminal act committed by a corporation.

## **Prosecution System For The Criminal Act Perpetrator On Position In Automotive Companies**

### *System of Sentencing in Indonesia*

Criminal sentencing is an integral part of the Criminal Law. Criminal sentencing is a process and before this process takes place the role of a judge it is very important to impose a sentence on the defendant in certain cases. Meanwhile, the sentencing system is defined as legislation relating to criminal sanctions and criminal prosecution<sup>19</sup>.

Andi Hamzah, claims:

“Criminal punishment is seen as a misery imposed by committing an offense. However, this is not an end goal, but only the closest destination. Similarly, the thing that distinguishes between crime and action can also be misery but not a goal<sup>20</sup>.”

In criminal terms, elements of a criminal are contained. The criminal elements according to Dwidja Priyanto are as follows:

- Criminal sentencing is essentially an imposition of suffering or sorrow or other unpleasant consequences.
- Criminal sentencing is given intentionally by a person or entity that has power (authority).
- Criminal sentencing is imposed on someone who has committed a criminal act according to the law<sup>21</sup>.

### *Criminal Sentencing System for Perpetrators in a Position in an Automotive Company*

There are 3 main points regarding the objectives to be achieved from a sentencing, namely:

- to improve the personal criminals
- to make people deterred from committing criminal acts
- to make certain criminals unable to commit a crime<sup>22</sup>.

Satochid Kartanegara stated that the sentencing in criminal law is divided into three theories, namely<sup>23</sup>:

Absolute Theory or Revenge Theory (Vergeldings Theorieen)

According to this theory, criminal sentencing is imposed as a form of retaliation given by the state which aims to notify the perpetrators of crimes due to their actions, and can lead to a feeling of satisfaction for the person who is harmed. Absolute theory has two angles, namely:

Criminal sentencing is imposed on the offender (subjective angle of retaliation);

Criminal sentencing is imposed to satisfy the feelings of resentment among the community (an objective angle of retaliation).

Criminal punishment according to the Absolute theory or the theory of Retaliation

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19. Barda Nawawi Arief, 2008, Bunga Rampai Kebijakan Hukum Pidana, Prenada Media Group, Jakarta, p. 13.

20. Andi Hamzah II, 1987, Stelsel Pidana dan Pemidanaan di Indonesia, Aksara Baru, Jakarta, p. 11.

21. Dwidja Priyatno, 2009, Sistem Pelaksanaan Pidana Penjara di Indonesia, Rafika Aditama, Bandung, p. 9.

22. P.A.F Lamintang, 1994, Hukum Penintesian Indonesia, Sinar Grafika, Jakarta, Bandung, p. 23.

23. Satochid Kartanegara, 2001, Hukum Pidana Bagian Pertama, Balai Lektur Mahasiswa, Jakarta, hal.56.

(Vergeldings Theorieen) has several purposes, namely:

- The criminal sentencing purpose is solely for retaliation
- Retaliation is the main goal and it does not contain means for other purposes such as for the welfare of the community
- Errors are the only condition for criminal existence
- Criminal punishment imposition must be adjusted to the violator's mistakes
- Criminal punishment looks at back, is a pure denunciation and the aim is not to repair, educate, or re-populate the offender<sup>24</sup>.

Relative Theory or Goal Theory (Doel Theorieen)

According to this theory the basis of sentencing is not in retaliation, but as a prevention of crime.

Andi Hamzah stated that:

Relative theory is divided into general prevention and special prevention. General prevention requires that people in general do not commit criminal acts; while in special prevention the purpose of sentencing is directed at the person who commits a crime so that he or she does not repeat his actions<sup>25</sup>.

Criminalization according to the relative theory or goal theory (Doel Theorieen) has a purpose, among others:

- Criminal goals are prevention
- Prevention is not the final goal but only as a means to achieve a higher goal of community welfare
- Only violations of the law can be blamed on the perpetrators (for example due to deliberate or culp) who qualify for criminal existence.
- Criminal sentencing must be established based on its purpose as a tool for crime prevention
- Criminal looking forward (prospective) criminal can contain an element of denunciation, but both elements of denunciation and elements of retaliation cannot be accepted if they do not help prevent crime for the benefit of the public welfare<sup>26</sup>.

Integrated Theory (Verenengings Theorieen)

Combined Theory is a combination of the Absolute Theory and Relative theory which combines retribution and orderly defense of community law.

The combined theory is divided into three forms, namely:

- Combined theory that focuses on retribution
- Combined theory that focuses on the orderly defense of society.
- Combined theory that positions balance between retaliation and orderly defense of society<sup>27</sup>.

In Article 55 of the 2015 Criminal Code Bill, the provisions concerning the purpose of criminal imposition or the purpose of criminal sentencing have been regulated, namely:

- to prevent criminal acts by enforcing legal norms for the sake of community protection.
- to popularize the convicted person by providing guidance so as to be a good and useful person.
- to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society.

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24. Ibid, p. 19.

25. Djoko Prakoso, 2010, *Hukum Penintesisier di Indonesia*, Liberty, Yogyakarta, p. 47

26. Andi Hamzah, *Op.cit*, p. 20-21.

27. Satochid Kartanegara, *Op.cit*, p. 56.

- to release guilt in the convicted person.

In connection with the crime of embezzlement of consumer money in the automotive companies, criminal imposition to the perpetrator is intended not only as retaliation but also includes prevention efforts, correction for peace in the community and the release of guilt in the convicted person.

### **The Sentencing of Corporations and Corporate Leaders/Managers**

Criminal Sentencing and liability of corporate leaders/managers can be applied individually or collectively. Liability of corporate leaders/managers is required for ensuring that those who make decisions within the corporation will be responsible for the decisions taken. In addition, decision makers in the corporation are not the corporations themselves, but leaders/managers<sup>28</sup>. The liability of corporate leaders/management is carried out through two approaches, namely:

#### Individual vicarious liability

the leaders/managers are responsible for the criminal acts of others (in this case the workers). Vicarious liability can be applied through:

- Criminal acts according to court decisions
- Explicitly provisions of legislation
- Doctrine of extensive construction
- Delegation principle theory

Participation, assistance, approval, or failure in conducting supervision Liability of corporate leaders/managers is based on:

- There is a direct participation in criminal acts
- There is an aid or encouragement to commit a crime
- There is a failure to carry out supervision

### *Criminal Sentencing for Money Embezzlement Perpetrators in Automotive Companies*

In the field of industrial relations, the problem of embezzlement committed by workers who have good control over goods (as a result of employment relationships) is one of the cases that is deliberately attention-grabbing, both in terms of the process of handling the case and its implications for the decisions made<sup>29</sup>.

In automotive companies, the legal relationship in carrying out work raises the authority for workers to carry out their obligations. In order to carry out its authority, there will always be opportunities for violations of the rules that have been established, both internal and external (the provisions of the legislation in force). The working relationship that is carried out can have an impact on negligence caused by human factors (workers) in implementing work relationships. The manifestation of the deviation of authority in the automotive company is, one of which is that it can lead to fraud, an action that departs from the interests that come out of the goals outlined, both in the contract of service and the achievement of the company's objectives<sup>30</sup>.

In the Criminal Code there is a provision in Article 374 which can take the form of embezzlement of funds, mark-up of transaction value, counterfeit falsification, falsification of letters etc. In this study, the researcher focused on the discussion of embezzlement in the position of the automotive company, which includes eight customer funds by the sales counter supervisor. Although the provisions have been stipulated in the law, not all companies decide at an early stage to directly submit the case to the realm of law. Such cases are usually processed internally in at the initial.

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28. Patrick Bernau, 2014, Decision and Punishment: Or Hold Bankers Responsible: Corporate Criminal Liability from an Economic Perspective, dalam: Dominik Brodowski, et al. (eds.), *Regulating Corporate Criminal Liability*, Springer, Dordrecht, p. 48.

29. Iron Sarira, 2015, *Tindak Pidana Penggelapan di Perusahaan Swasta dan Lembaga Pemerintahan*, Program Doktor Hukum, Universitas Parahiyangan, Bandung, p. 1.

30. Ibid

The process of handling cases of fund embezzlement internally must certainly be done by investigating the reports received and then searching for some evidence as a condition that the violation exists. Furthermore, the authorized party internally clarifies the said worker while still prioritizing the presumption of innocence. If it is known in the clarification that the worker is proven to have committed a crime as stipulated in article 374 of the Criminal Code, the authorities in the company will request a statement from the relevant worker. A statement signed by the worker will be an additional proof so that it can be reported to the authorities, namely the submission to the local police office regarding the report of a criminal act.

Criminal snaring as sanctions for violations committed against misuse of authority granted to workers are regulated as imprisonment for five years. However, its implementation allows for amnesty for mistakes due to embezzlement because of the authority in this working relationship by giving lighter sanctions where the parties agree not to proceed to the legal sphere. This means that all parties have agreed to resolve the problem peacefully marked by the desire of the worker to make compensation for the company, then the worker submits his resignation.

In connection with embezzlement at a certain position in an automotive company, the corporation should be liable in criminal law due to its members' misconduct. This is possible by the implementation of vicarious liability in the position of the corporation as an employer. In addition to vicarious liability, the corporation should also consider other relevant theories: the corporate model theory since the theory defines that corporations can be accounted for in terms of procedures, work systems, or culture. Corporate misconduct is based on internal decision-making structure/framework of the company.

If it is analyzed from Preventative Fault Theory perspective, the Automotive Company's liability will arise when the company is deemed to fail to enter or to implement an appropriate internal system in prevention or detection of a criminal act. One of the appropriate prevention measures is the development and implementation of internal programs (Company SOP). Meanwhile, if it is analyzed from the view of Corporate Error Theory through Reactive Corporate Fault, corporate misconducts arise when it is deemed to have failed in taking preventive actions or corrective actions in reaction to criminal acts (*actus reus*) committed by corporate personnel. There are two types of corporate misconducts, namely:

- Initial fault, which is a crime committed by an employee.
- Reactive fault, which is a failure to take appropriate action to correct the initial misconduct<sup>31</sup>.

Gustav Radbruch argued that certainty as one of the objectives of normative law, both the provision and decision of the judge, refers to the implementation of the order of life, which in its implementation is clear, orderly, consistent and consequent and cannot be influenced by subjective condition in the life of society.

The fact that everyone who breaks the rules of law shall surely be punished is the essence of legal certainty. Legal certainty can mean that the law must remain firm in the community; containing openness so that anyone can understand the meaning of a legal provision. One law with another law cannot be contradictory so it does not become a source of doubt. Legal certainty as a legal instrument of a country that contains clarity shall not require multiple interpretations, shall not cause contradictions, applicable, and must be able to guarantee the rights and obligations of every citizen in accordance with the existing community culture.

The judge in imposing a sentence must hold on to the evidence supporting his conviction and proof. If the facts in the trial have been disclosed, the judge begins to consider the elements of the public prosecutor's indictment. In addition to the juridical consideration of the indictment, the judge must also master the theoretical aspects, the views of the doctrine, jurisprudence, and the position of the cases handled. Because the

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31. Brent Fisse dan John Braithwaite, 1988, *The Allocation of Responsibility for Corporate Crime: Individualism, Collectivism and Liability*, Sydney Law Review, Vol. 11, p. 505-506

judge's duty is to uphold law and justice based on Pancasila, the decision must reflect a sense of justice. This is in accordance with the values contained in Article 24 paragraph (1) of the 1945 Constitution affirming that the judicial power is an independent power to conduct justice in order to uphold law and justice.

## **CONCLUSION**

Corporate criminal liabilities for corporate crimes within automotive companies are not regulated in the Criminal Code. This is because the Criminal Code still adheres to the principle of *societas delinquere non potest*, that is, corporations cannot commit criminal acts (Article 59 of Criminal Code). Hence, recognizable subject of the criminal to Criminal Code is only human individuals. Unlike in the Criminal Code, corporation as subject to criminal law is recognized in various special criminal laws and regulations, one of which is in Article 19 to Article 28 of UUPK (Consumer Protection). In addition, provisions on corporate criminal liability should be inconsistent, harmonious, not overlapping, in sync, and/or of integral between other provisions. Not only corporate criminal provisions that need legal clarity, the sentencing system for criminals in corporation should not be only influenced by the principle of legality and the principle of no criminal penalty of misconducts, as well as legal theories. The sentencing system is necessarily upheld fairly, thus not only the synergy of law or legal substance (legal substance reform) that must be built up but also the legal structure (legal structure reform) and legal culture (legal culture reform); including legal ethics and legal science/education must be well legally regulated.

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### **Legislation**

The 1945 Constitution of the Republic of Indonesia

Law No.1 of 1946 concerning Criminal Law Rules.

Law No.8 of 1981 concerning Criminal Procedure Law.

Law No. 8 of 1999 concerning Consumer Protection.

National Criminal Code Draft (RUU KUHP)