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Corporate Criminal Liability in Tax Offenses

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Abstract

This study aims to analyze the legal framework governing corporate criminal liability in the context of tax offenses.

This study uses a normative juridical method with a statute approach, a case approach, and a conceptual approach.

The novelty of this research lies in its critical analysis of the inconsistency found in tax crime cases: a discrepancy between the judges' legal reasoning, which acknowledges corporate fault, and the final verdicts, which ultimately only impose criminal sanctions on the corporate officers.

The results highlight a significant regulatory gap, as the current tax criminal framework lacks explicit corporate sanctions. In practice, this issue is compounded by judicial inconsistency, where court rulings impose penalties solely on corporate directors, even when the corporation's role in profiting from the crime is acknowledged by the court.

The conclusion of the research that a normative vacuum in the undang-undang perpajakan, compounded by judicial inconsistencies regarding corporate tax offenses, results in significant legal uncertainty. Consequently, legislative amendments are required to unequivocally establish the principles of corporate accountability.

Keywords: Corporation; Criminal Liability; Tax Offenses

Abstrak

Penelitian ini bertujuan untuk menganalisis kerangka hukum yang mengatur pertanggungjawaban pidana korporasi dalam konteks tindak pidana perpajakan.

Metode Penelitian ini menggunakan metode yuridis normatif dengan pendekatan undang-undang, pendekatan kasus, dan pendekatan konseptual.

Kebaruan penelitian ini terletak pada analisis kritisnya terhadap inkonsistensi yang ditemukan dalam kasus-kasus tindak pidana perpajakan: adanya ketidaksesuaian antara pertimbangan hukum hakim, yang mengakui adanya kesalahan korporasi, dengan putusan akhir, yang pada akhirnya hanya menjatuhkan sanksi pidana kepada pejabat korporasi.

Hasil penelitian menyoroti adanya celah regulasi yang signifikan, karena kerangka hukum pidana perpajakan saat ini tidak mengatur sanksi korporasi secara eksplisit. Dalam praktiknya, masalah ini diperparah oleh inkonsistensi yudisial, di mana putusan pengadilan hanya menjatuhkan hukuman kepada direksi perusahaan, meskipun peran perusahaan dalam memperoleh keuntungan dari tindak pidana tersebut diakui oleh pengadilan.

Kesimpulan dari penelitian ini adalah bahwa kekosongan normatif dalam undang-undang perpajakan, yang diperparah oleh inkonsistensi yudisial terkait tindak pidana perpajakan korporasi, mengakibatkan ketidakpastian hukum yang signifikan. Oleh karena itu, diperlukan amandemen undang-undang untuk menetapkan prinsip-prinsip pertanggungjawaban

korporasi secara tegas.

Kata kunci: *Korporasi; Tanggungjawab Pidana; Tindak Pidana Perpajakan*

1. INTRODUCTION

As a nation founded on the principle of the rule of law (*rechtsstaat*) and grounded in Pancasila¹, Indonesia upholds the supremacy of law as its core foundation. Within this framework, taxes constitute a primary source of state revenue, allocated for national development aimed at ensuring public welfare.² Consequently, tax law is inherently coercive and enforceable through measures such as asset seizure or civil confinement (*gijzeling*) against non-compliant taxpayers. However, the evolution of the state and socio-economic sectors has influenced the history of tax collection³, making it susceptible to criminal acts. The potential for tax non-compliance in Indonesia is remarkably high, considering that Indonesia implements a self-assessment system that is not balanced by adequate access to financial transaction data to confirm the veracity of information submitted by Taxpayers.⁴ In the modern economic landscape, the perpetrators of these offenses have evolved beyond individual actors to include corporations, utilizing their organizational complexity to conceal illicit profits and adversely affect public prosperity. Given the potential for state losses in the taxation sector, a resolution is deemed necessary, particularly regarding the imposition of criminal sanctions, to resolve alleged tax crimes in a proportional manner.⁵

Previous scholarship has extensively explored corporate criminal liability through various theoretical lenses. Extensive research has been conducted on the Identification Theory (*Alter Ego*), which attributes the acts of high-ranking officials directly to the corporation, and Vicarious Liability, which holds corporations accountable for employee actions based on the employment relationship. Furthermore, the Functional Actor Theory has been discussed as a means to address functional delicts embedded within corporate operations. Most existing studies focus on the normative formulation of these theories within the penal code or corruption laws.

However, there is a noticeable scarcity of literature that critically analyzes the judicial application of these theories in specific tax crime verdicts where normative vacuums exist. While scholars argue that corporations should be liable, few studies examine the inconsistency between judicial reasoning and final verdicts in tax cases. Specifically, there is a lack of analysis regarding cases where courts explicitly acknowledge that a crime was

¹ Fatma Ulfatun Najicha, "Peranan Hukum Pajak Sebagai Sumber Keuangan Negara Pada Pembangunan Nasional Dalam Upaya Mewujudkan Kesejahteraan Rakyat," *Jurnal Ius Civile (Refleksi Penegakan Hukum Dan Keadilan)* 6, No. 1 (2022).

² Taun Taun Anggi Kania Putri, "Peranan Hukum Pajak Dalam Pembangunan Ekonomi Nasional Guna Mencapai Tujuan Negara," *Jurnal Ilmiah Wahana Pendidikan* 9, No. 1 (2023).

³ Reynold Simandjuntak, "Pengaturan Penyelesaian Sengketa Pajak (Di Tinjau Dari Aspek Keadilan)" (Universitas Brawijaya, 2014).

⁴ Yuni Priskila Ginting, "Tindak Pidana Pencucian Uang Hasil Dari Korupsi Yang Mendapat Pengampunan Pajak," *Jurnal Litigasi* 21, No. 2 (2020): 266–86.

⁵ Eko Soponyono Erja Fitria Virginia, "Pembaharuan Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Perpajakan," *Jurnal Pembangunan Hukum Indonesia* 3, No. 3 (2021): 299–311.

committed for the corporation's benefit and falls under "corporate mens rea," yet ultimately fail to impose sanctions on the corporate entity itself, punishing only the directors.

This study addresses this gap by highlighting a significant regulatory deficiency: the current tax criminal framework lacks explicit corporate sanctions. This normative vacuum creates legal uncertainty. In practice, this leads to problematic rulings, such as in the case of PT ERLANGGA TRANSINDO ARTHA, where a director committed an offense by issuing tax invoices and failing to report VAT. Despite the court recognizing the act as fulfilling the corporation's functional interests, the punishment was solely directed at the individual.

Consequently, this research aims to analyze the legal framework of corporate criminal liability in tax offenses and critique the judicial inconsistency in recent rulings. The novelty of this study lies in its detailed examination of Decision No. 587/Pid.Sus/2021/PN Byw, contrasting the judge's utilization of the functional actor and vicarious liability doctrines in their legal reasoning against the contradictory final verdict. By dissecting this disparity, this research offers a concrete basis for proposing legislative amendments to unequivocally establish principles of corporate accountability in Indonesian tax law.

2. METHOD

This research employs a normative legal research method, which focuses on examining the application of existing positive legal norms and principles. Its objective is to find solutions for the legal problems that arise. In this study, the author utilizes a statute approach, by examining all regulations relevant to the issue, as well as a case approach, which involves the analysis of court decisions that have permanent legal force.⁶ The legal materials used consist of primary legal materials, such as legislation, and secondary legal materials in the form of books, journals, and other relevant literature.

The process of collecting legal materials in this study was conducted through a literature review, tracing primary and secondary legal sources. After these materials were obtained, they were selected, described, and analyzed in connection with the relevant regulations. Subsequently, the collected legal materials were analyzed qualitatively and arranged systematically to thoroughly address the core issues and answer the formulated research questions.

3. DISCUSSION

Taxes constitute a source of state revenue with a significant contribution, making tax revenue a mainstay for national development.⁷ Consequently, the discourse on criminal liability within the taxation sector has become crucial and has undergone a significant paradigm shift, moving beyond the traditional focus on natural persons (*natuurlijk persoon*) to encompass the complex reality of corporate entities (*rechtspersoon*) as dominant economic actors. In the modern landscape of state revenue collection, corporations play a

⁶ Irwansyah, *Penelitian Hukum: Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

⁷ Fahmy Asyhari Nana Rosita Sari, "Analisa Yuridis Terhadap Asas Lex Specialis Systematis Dalam Tindak Pidana Perpajakan (Studi Kasus Putusan No.95/Pid.Sus-Tpk/2021/Pn.Smg Atas Nama Asri Murwani)," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, No. 2 (2022): 268–81.

pivotal role as primary contributors; however, this dominant position simultaneously renders them susceptible to becoming instruments for significant financial crimes. Unlike conventional street crimes, tax offenses committed by corporations are characterized by their "white-collar" nature sophisticated, low-visibility acts often concealed within legitimate business operations and complex financial structures. This evolution presents a profound challenge to conventional criminal law principles, particularly the principle of *geen straf zonder schuld* (no punishment without fault). The central theoretical hurdle lies in constructing a legal framework capable of attributing *mens rea* or guilty intent—a concept originally derived from human psychology—to an abstract legal entity that possesses no biological mind or soul. Consequently, the discussion regarding corporate criminal liability in tax offenses must navigate the tension between the *societas delinquere non potest* doctrine (corporations cannot commit crimes) and the urgency of the functional actor theory, which posits that corporations must be held accountable for acts committed within their functional scope to prevent them from serving as mere shields for illicit enrichment.

In the specific context of Indonesia's positive law, this theoretical complexity is exacerbated by a normative vacuum within the Law on General Provisions and Tax Procedures (UU KUP). While the regulatory framework acknowledges the corporation as a legal subject capable of obligations, the enforcement of criminal sanctions reveals a persistent inconsistency between judicial reasoning and final verdicts. This chapter will critically analyze this discrepancy by examining how established theories of corporate liability ranging from Vicarious Liability to the Identification Theory—are applied, or misapplied, in practice. Special attention is directed toward the analysis of Supreme Court Decision No. 587/Pid.Sus/2021/PN Byw, which serves as a primary case study illustrating judicial hesitancy to punish the corporation even when the court explicitly recognizes that the tax evasion was committed for corporate benefit. By dissecting the characteristics of corporations as perpetrators and juxtaposing them with the limitations of current penal statutes, this discussion aims to uncover the root causes of the "impunity gap" in Indonesian tax law and evaluate the necessity for legislative reform to ensure that the principle of corporate accountability is not merely a theoretical concept but a distinct operational reality in safeguarding state finance.

3.1. Characteristics of Corporations as Perpetrators of Tax Crimes

Humans and corporations have different characteristics. A corporation lacks the mind, will, or hands necessary to kill, steal, conceal, or deceive others. This distinguishes criminal offenses committed by corporations from those committed by individuals. A corporation is an entity composed of a group of members that possesses its own rights and obligations, which are distinct from the rights and obligations of its individual members.⁸

'Corporation' is the term commonly used among criminal law experts to refer to what is known in other legal fields, particularly in civil law, as a "legal person" (*badan hukum*),

⁸ Muhammad Faris Aksa Mirsa Astuti, "Pendekatan Restoratif Sebagai Alternatif Sanksi Pidana Dalam Kejahatan Korporasi," *Iuris Studia: Jurnal Kajian Hukum* 2, No. 3 (2021).

which is termed *rechtspersoon* in Dutch and a "legal entity" or "corporation" in English.⁹ Crime is not a static but a dynamic phenomenon, evolving in line with societal development. While its essential nature has always been to cause harm to various interests, the type and extent of the damage inflicted constantly vary.¹⁰

Corporate crime poses a significant threat to public welfare, especially as the presence of corporations becomes increasingly pervasive in various activities within society.¹¹ Corporate crime is always a form of participation and a beneficial act. Due to this characteristic, the system and theories of corporate criminal liability must be based on a different line of thought compared to that for humans. Another type of criminal network is the criminal enterprise, defined as a company founded and run for the purpose of committing crimes, specifically corporate crimes. The role of the corporation in a criminal enterprise is to serve as a means to carry out criminality, functioning as a "mask" to hide the true face of the crime.¹²

Corporate crime is distinguished from conventional offenses by its unique characteristics. These crimes are typically carried out covertly and are concealed within routine work activities, which results in low visibility, makes them difficult to trace, and often leaves victims unaware of their losses. Furthermore, they exhibit a high degree of complexity, involving the sophisticated manipulation of technology, finance, and legal structures by numerous individuals over extended periods. This organizational complexity leads to broader responsibility and a diffusion of victimization throughout society. Consequently, significant obstacles to detection and prosecution arise, exacerbated by the disparity in professionalism between perpetrators and law enforcement officials, as well as by regulatory ambiguity or ambiguous laws.¹³

Here is the translation of the provided text. Please note that the source text contains several confusing and contradictory statements, especially in points 'a' and 'b'. The translation below reflects the source as closely as possible while attempting to form coherent sentences.

One approach to determining corporate criminal liability is the functional actor theory. A central tenet of this theory lies in the distinction between a functional delict and a purely physical delict. Purely physical delicts, such as homicide or assault, are acts that are inherently impossible for a corporation, as an entity, to perform. Conversely, functional

⁹ Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi* (Jakarta: Rajawali Pers, 2015).

¹⁰ Lalu Husni Rodliyah, Any Suryani, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia Corporate Criminal Responsibility In Indonesia Criminal Justice System," *Jurnal Kompilasi Hukum* 5, No. 1 (2020).

¹¹ Mario Mangowal, "Keterlibatan Korporasi Dalam Perkara Tindak Pidana Terhadap Anak," *Lex Et Societatis* 3, No. 8 (2015).

¹² Mahrus Ali Hanafai Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan* (Jakarta: Rajawali Pers, 2015).

¹³ Mardjono Reksodipoetro, *Dalam Mahrus Ali Asas-Asas Hukum Pidana Korporasi* (Jakarta: Raja Grafindo Persada, 2013).

delicts are criminal acts intrinsically embedded within the scope of a company's normal functions and operations, for instance, financial crimes, environmental pollution, or tax fraud.

Within the framework of a functional delict, all the constituent elements of the offense are considered to be fulfilled within the internal sphere of the corporation itself, without the need to trace the factual act back to a specific individual. This concept is also distinguished from a non-functional delict, where corporate liability can arise almost automatically merely because a prohibited state of affairs has occurred under its control. In essence, the functional actor theory provides the rationale for positioning the corporation itself as the perpetrator of a criminal act.

A corporation may be deemed involved in a criminal offense if the transgression manifests as an act carried out under the direction and with the approval of an authorized internal organ or official, such as an administrator. Within this framework, an offense arising from the socio-economic sphere encompassing activities that must be performed by and are directed at a specific functional group is specifically termed a functional delict.¹⁴

Establishing the criminal liability of a corporation requires the investigation and substantiation of two essential elements. First, an act committed by the management must not be in a personal capacity; rather, it must be intrinsically linked to the execution of the responsibilities and authorities vested in them within the corporation. In other words, for the act to be attributable to the corporation, it must align with the duties and objectives stipulated in its articles of association. Second, the management's act can manifest either as an affirmative act in violation of the law (*delictum commissionis*, a delict of commission) or as a failure to comply with a legal requirement (*delictum omissionis*, a delict of omission).¹⁵

The Limited Liability Company is one of many poor corporate business decisions made by businesses as a way to conduct business. In running their business, individuals typically use a Limited Liability Company. Given this, it is clear that the legal entity of a limited liability company is more important because it is a business entity established, regulated, and protected by "Law No. 40 of 2007 concerning Limited Liability Companies.

In a legal system, a legal subject that is, a party possessing rights and obligations is divided into two main categories: natural persons (humans) and legal entities.¹⁶ One of the most common forms of a legal entity is the Limited Liability Company (*Perseroan Terbatas* PT). Due to its status as a legal entity, a PT is recognized as an independent legal subject. This means a PT has its own legal rights and obligations separate from its founders or owners, enabling it to perform various legal acts in its own name.

Such legal acts include entering into contracts with third parties, where the company is represented by its Board of Directors. In accordance with the company's articles of association, the Board of Directors is an organ established for and by the company. The

¹⁴ Hanafai Amrani, *Sistem Pertanggungjawaban Pidana Perkembangan Dan Penerapan*.

¹⁵ Dwidja Priyatno Muladi, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenada, 2010).

¹⁶ Mardjono Reksidiputro, *Buku Pintar Hukum Perseroan Terbatas*, 2015.

Board of Directors has the sole authority to execute the provisions of the company's articles of association.

According to Article 3 of Law No. 40 of 2007 concerning Limited Liability Companies, a company's shareholders are not personally liable for commitments made on behalf of the company and are not liable for the company's losses exceeding their share ownership.¹⁷

Theoretically, the concept of complicity in a criminal offense (*penyertaan*) does not refer solely to a single perpetrator, but rather encompasses any individual who contributes to the commission of the crime. The normative provisions governing this are stipulated in Articles 55 and 56 of the Indonesian Criminal Code (KUHP), which impose criminal sanctions on several categories of parties.

Criminal liability extends to the person who commits the act itself (the perpetrator), the one who orders another to commit it (the indirect perpetrator or *doenpleger*), and those who jointly participate in its execution (co-perpetrators). Furthermore, sanctions apply to any party who intentionally incites another to commit a wrongful act (*uitlokker*). This incitement can be achieved by offering promises, abusing authority or status, employing violence, threats, or deceit, or by providing the opportunity, means, or information.

However, it is crucial to note that the criminal liability of the instigator encompassing both the incited act and its consequences is only taken into account if the incited offense is actually carried out.

Pursuant to Article 56 of the Indonesian Criminal Code (KUHP), an individual may be held criminally liable for their role as an accessory to a crime (*medeplichtige*). This involvement encompasses two primary forms: those who intentionally provide assistance during the commission of the crime, and those who intentionally provide the opportunity, means, or information to facilitate the offense.

Pursuant to the provisions of Articles 55 and 56 of the Indonesian Criminal Code (KUHP), there are two categories of complicity in a criminal offense. The first category is involvement as a perpetrator (*dader*), which includes those who personally commit the act (*pleger*), those who jointly participate in its commission (*medepleger*), those who direct another to commit the act (*doenpleger*), and those who instigate the crime (*uitlokker*). The second category, meanwhile, involves the participation of an individual whose role is limited to assisting the perpetrator in carrying out the criminal offense (*medeplichtige*).¹⁸

Pursuant to Decision No. 587/Pid.Sus/2021/PN Byw, the tax offenses committed by the corporation in said case comprised several acts. These violations included: intentionally submitting a Tax Return (SPT) with contents known to be false or incomplete; failing to remit taxes that had been withheld or collected from other parties, such as Income Tax (PPh) Articles 21, 22, and 26, to the state; and furthermore, issuing invoices to buyers and

¹⁷ Rachmalia Rosa Wardhani, "Tanggung Jawab Pemegang Saham Dari Pt. Gusher Tarakan Sesuai Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Privat Law* 6, No. 2 (2018).

¹⁸ Chant S. R. Ponglabba, "Tinjauan Yuridis Penyertaan Dalam Tindak Pidana Menurut Kuhp," *Lex Crimen* 6, No. 6 (2017).

collecting tax payments, which were then appropriated as company profit instead of being remitted.¹⁹

3.2. Criminal Liability for Corporations in Tax Offenses

3.2.1. Criminal Liability for Corporations in the Field of Taxation

Fundamentally, the field of taxation is an administrative matter premised on the fulfillment of citizens' obligations to the state, which serves as the primary objective in advancing national interests.²⁰ However, when significant violations occur, criminal liability arises. In this context, a corporation can commit a crime because it is recognized as a legal subject, and therefore can be held criminally liable.²¹ Legal subjects are divided into two categories: natural persons and legal entities.²² As legal subjects, legal entities possess a legal personality (*persoonlijkheid*), which is the capacity to be a subject within any legal relationship.²³ Every legal entity has the legal capacity to perform legal acts within the realm of assets and property.²⁴

Although criminal liability is regulated negatively in the Criminal Code (KUHP) through terms such as "is not punished" in Articles 48, 49, 50, and 51, and "cannot be held responsible" in Article 44 paragraphs 1 and 2 this framework has shaped legal theory. In the Netherlands, this regulation led to the development of theories on criminal liability in civil law, and Indonesia, in particular, adopted the Dutch Criminal Code.

The theory of liability in criminal law is generally based on the principle of fault, or the principle of "no crime without fault" (*geen straf zonder schuld*), which is commonly referred to as the "principle of fault" in civil law. The current Criminal Code, which views fault as a component of a crime, simultaneously addresses criminal responsibility when discussing fault as a component of the crime; this is known as the monistic theory.

The dualistic theory argues that fault is a component of a crime. However, criminal responsibility is not a component of the crime, as it pertains to the act. The law only regulates acts that are contrary to law.

Generally, three elements must be satisfied to establish the presence of fault on the part of an individual. The first element is the perpetrator's capacity to be held responsible (*toerekeningsvatbaarheid*). Second, there must be a specific mental state or psychological link between the perpetrator and the act, manifesting as either intent (*dolus*) or negligence (*culpa*). Finally, the element of fault is considered complete in the absence of any grounds for excuse that would negate criminal liability for the act committed.²⁵

¹⁹ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2011).

²⁰ Emmilia Rusdiana, "Pemenuhan Perumusan Dan Penyelenggaraan Hukum Pidana Pada Pelanggaran Pajak Demi Pencapaian Tujuan Peraturan Perundang-Undangan Perpajakan," *Jurnal Suara Hukum* 4, No. 1 (2022): 39–60.

²¹ Hijrah Adhyanti Mirzana Khairil Andi Syahrir, M. Said Karim, "Pembaharuan Metode Pembuktian Subjek Hukum Korporasi Sebagai Pelaku Tindak Pidana Korupsi," *Tu Mou Tou Law Riview* 1, No. 1 (2022).

²² Oliviani Yanto, "Janin Sebagai Subjek Hukum: Perspektif Hukum Perdata," *Jurnal Ilmu Hukum: Alethea* 8, No. 1 (2022).

²³ M. Iqbal Asnawi, "Implikasi Pengelolaan Bumn Persero Dalam Kerangka Welfare State Berdasarkan Mekanisme Perseroan Terbatas," *Jurnal Hukum Samudra Keadilan* 11, No. 1 (2016).

²⁴ Chidir Ali, *Badan Hukum* (Bandung: Alumni, 1999).

²⁵ Ismail Ali Andi Bau Mallarangeng, Mustari, Firman, "Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens Rea

The concept of "perpetrator's responsibility" refers to the consequences faced by the perpetrator of a criminal act. It means that once a crime is proven and all elements of criminal liability are met, the perpetrator will be punished. Conversely, "not the perpetrator's responsibility" means that even if the criminal act is proven, the elements of criminal liability are not fulfilled. Therefore, whether the perpetrator is ultimately held accountable is determined after a full examination of the offense.

Fault constitutes the fundamental basis for determining criminal liability, as explicitly regulated within the framework of criminal responsibility. This underscores that the Indonesian Criminal Code (Law No. 1 of 2023) firmly adheres to the principle of *nulla poena sine culpa* or 'no crime without fault.' Under this legal framework, fault encompasses the elements of responsibility, intent (*dolus*), negligence (*culpa*), and the absence of any justifying excuses.

In determining criminal liability, a judge must sequentially consider several fundamental factors. First, it must be ascertained that the perpetrator possesses the capacity to be held responsible (*toerekeningsvatbaarheid*). Second, the act itself must possess an unlawful character, which is assessed as a general prerequisite distinct from the specific constituent elements of the delict. Furthermore, there must be an element of fault (*mens rea*) on the part of the perpetrator, which is analyzed based on the purpose of the act and manifests as either intent (*dolus*) or negligence (*culpa*). Finally, criminal liability can only be imposed in the absence of any grounds for justification that would negate the unlawfulness of the act, or any grounds for excuse that would eliminate the perpetrator's fault.

A further prerequisite for criminal liability is that the perpetrator must possess the capacity to be held responsible. Simply put, according to prevailing legal doctrine, an individual is considered to lack this capacity if they are in a state that renders them unable to freely determine their will to choose between complying with or violating the law. This condition also applies if the perpetrator's mental state makes them incapable of understanding the consequences of their actions or of realizing that their conduct is prohibited by law.

Whether a person is a "norm addressat" (target of a norm) is a matter of their capacity to be held responsible. Unless stated otherwise, a person is fundamentally considered accused or responsible. "According to Book I Chapter III Article 44 of the Criminal Code, which reads as follows, the Criminal Code does not contain a formulation of when a person can be held responsible, but only contains provisions that point in that direction". No one shall be punished for committing an act that cannot be accounted for, due to deficient development of their mental faculties or a mental illness.

At the very least, the enforcement of corporate criminal liability places more emphasis on the extent to which a company can be said to be held accountable for its criminal sanctions. Currently, many theories of corporate criminal liability have been developed through the modification and development of new theories. Existence.

Dalam Tindak Pidana Korupsi," *Legal: Journal Of Law* 2, No. 2 (2023).

This theory is not intended to make corporate criminal liability or the legal interests protected by the relevant laws easier or more difficult to understand.

Several primary theories are used to impose criminal liability on corporations. The first is the theory of Vicarious Liability, or *Respondent Superior*, which analogizes the corporation-employee relationship to that of a parent and a minor child (*minderjarig*). Under this concept, the superior entity (the corporation or parent) bears primary responsibility for the acts committed by the party under its supervision.

Next is the Identification Theory, or the *Alter Ego* Theory, which posits that liability arises when the perpetrator is an individual considered to truly represent or be the "directing mind" of the corporation itself. This theory focuses on the liability of owners or high-level directors whose actions are deemed to be the direct actions of the company.

As an extension of the two preceding theories, the Delegation Theory emerged. This theory arose to address the challenges within large corporations where decision-making centers are often fragmented. According to this theory, individuals on the board of directors are considered to represent the company, and their actions can be attributed to the corporation even if the authority to perform them has been delegated to lower levels of management as long as the act originates from a single "directing mind".

In response to corporate crime, there are actually several other theories of criminal liability related to these three theories of liability. The foundation for understanding other criminal liability theories is an understanding of the theories of corporate criminal liability, Vicarious Liability, and the Delegation theory.²⁶

3.2.2.Criminal Liability for Corporations in Tax Evasion Offenses in Decision No. 587/pid.sus/2021/pn.byw

Tax crime is a type of offense that can be detrimental to state finances.²⁷ Tax crimes generally encompass acts such as tax evasion, financial statement manipulation, submission of fictitious data, and the misuse of tax restitution.²⁸ Tax offenses can be committed by taxpayers, which include both individual taxpayers and corporate taxpayers in their capacity as taxable entities.²⁹ Tax crimes related to tax avoidance and tax evasion have significant differences in terms of intent and execution. Tax avoidance is a legal yet manipulative effort to reduce tax liability, typically through legal loopholes or complex business structures, without explicitly violating the rules. In contrast, tax evasion involves illegal actions such as concealing income or filing false tax returns which are in clear violation of the law.³⁰

²⁶ Barda Nawawi Arief Fines Fatimah, "Pertanggungjawaban Pengganti (Vicarious Liability) Dalam Kebijakan Formulasi Hukum Pidana Di Indonesia," *Law Reform* 7, No. 2 (2012).

²⁷ Tanudjaja Renada Cipta Dewa, "Tanggung Jawab Pidana Pada Korporasi Dalam Tindak Pidana Perpajakan (Criminal Responsibility Of Corporations In Tax Crimes)," *Jurnal Hukum Indonesia* 3, No. 3 (2024).

²⁸ Fristia Berdian Tamza Putri Octavia, Ahmad Irzal Fardiansyah, "Tindak Pidana Perpajakan Di Indonesia: Antara Celah Regulasi Dan Efektivitas Penindakan," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 5, No. 2 (2025): 43–51.

²⁹ Ariawan Gunadi Lani Dharmasetya, "Memaknai Tanggung Jawab Renteng Dalam Perusahaan Terhadap Tindak Pidana Perpajakan (Interpreting Joint And Several Liability In Companies For Tax Offences)," *Jurnal Suara Hukum* 5, No. 2 (2023).

³⁰ Hudi Yusuf Noval Sulaiman, "Strategi Penanggulangan Tindak Pidana Perpajakan Di Indonesia: Studi Tentang

In accordance with one of the judge's considerations in Supreme Court Decision No. 587/pid.sus/2021/pn.byw, which states the following: The Supreme Court was of the opinion that the Defendant's act was willed or constituted the "mens rea" of the PT (company) because it was solely for the corporation's interest, even though the Defendant's action arose from an individual mens rea.

This applied to TRANSINDO ARTHA ERLANGGA. As a reflection of the doctrine of respondeat superior or "Vicarious" liability, "Individual Liability" and "Corporate Liability" must be applied simultaneously. "Responsibility" is applied to the corporation for the Defendant's actions or behavior because the personification of the corporation he represented becomes a duty and responsibility again, and what the Defendant did was decided collectively. Based on the preceding considerations, the judge considered whether the convict, whose actions also constituted the mens rea of the PT, possessed mens rea.

This relates to ERLANGGA ARTHA TRANSINDO. In this case, we are discussing law for which criminal liability can be demanded. If a person has been convicted, it does not matter whether they did the opposite legally or illegally (actus reus). The requirement that the perpetrator has fault or guilt (mens rea) is still necessary for punishment. Therefore, an unlawful act (actus reus) and an internal guilty state of mind (mens rea) are required to impose a sentence on someone.

In this context, the concept of corporate criminal liability also known as functional behavior or functional criminal liability must be adopted to address the issue of fault in criminal accountability. A distinguishing characteristic of this functional behavior is the fact that one person's physical act results in a functional act for another. Consequently, the capacity for responsibility of those who work for and on behalf of the corporation makes the corporation itself a subject capable of committing a criminal offense.

Regarding this idea, Muladi made a concrete recommendation to examine whether the act is in line with the objectives of the articles of association or company policy, and most importantly, whether it is consistent with the company's scope of work. In other words, if a company is to be held responsible for a prohibited act, the act must have been committed in the context of completing existing tasks and/or achieving the company's objectives.³¹

In accordance with decision No. 587/pid.sus/2021/pn.byw, where the convict served as the proxy for the Taxpayer's representative and as the Tax Manager on behalf of PT. ERLANGGA ARTHA TRANSINDO, the defendant's motive in committing his act was for the interest of the corporation, so that it would not have to pay corporate and income taxes as required. This is in line with Muladi's view that the convict committed the act in the context of carrying out duties and/or achieving company objectives, and that what the convict did was aligned with the company's goal of avoiding tax penalties. Therefore, in accordance with

Penghindaran Dan Penggelapan Pajakstrategi Penanggulangan Tindak Pidana Perpajakan Di Indonesia: Studi Tentang Penghindaran Dan Penggelapan Pajak," *Iic: Jurnal Intelek Insan Cendiki* 1, No. 9 (2024).

³¹ Raymond Joshua Et All, "Penerapan Doktrin Vicarious Liability Dalam Tindak Pidana Penggelapan Pajak Oleh Korporasi (Studi Putusan Mahkamah Agung No. 587/ Pid.Sus/ 2021/ Pn.Byw)," *Diponegoro Law Journal* 5, No. 3 (2015).

functional criminal liability, the accountability for the actions of those acting for and on behalf of the corporation is transferred to the corporation's own accountability, and criminal liability must be imposed on both the corporation and the convict because the corporation received the benefits of the tax evasion.

In the case of functional criminal liability, it should be noted that the corporation is subject to prosecution and punishment under so-called "sentencing provisions," which allow the perpetrator (management) and the corporation itself to be punished. Although the panel of judges stated in its considerations that the evolution of criminal law practice has introduced the attribution of an employee's liability within a corporate environment to the corporation through functional responsibility, the panel of judges directly applied functional liability to the convict but only imposed a sentence on the convict without any actual punishment for the corporation. The panel of judges did not accommodate the sentencing concept for functional liability, which is the imposition of the sentence itself. Moreover, the statement "the defendant was decided collectively in the judge's consideration" discusses the doctrine of corporate criminal liability through vicarious liability. "Substitute accountability" is the name given to this idea of accountability. More specifically, it is mentioned that the doctrine of Vicarious Liability, also called surrogate liability, contains criminal responsibility for acts committed, among others, by A to B16. The doctrine of vicarious liability is essentially based on the principle of employment, which states that the employer bears primary responsibility for the acts of their employees or workers. Therefore, the principle "the act of the servant is the act of the master" or the "agency principle" in law, which states that "the company is responsible for the wrongful acts of all its employees," applies in this case. Vicarious liability, on the other hand, is often equated with surrogate liability, which is legal responsibility for wrongs committed by another person. If the management of a corporation commits a criminal offense, the corporation may face a new criminal liability. In this case, the "directing mind" refers to decisions made by members of the board of directors, organizational organs, or managers concerning direction, activities, and operations.

4. CONCLUSION

The regulation of tax evasion offenses for corporations within Articles 38 to 43 of the Law on General Provisions and Tax Procedures (KUP Law) remains limited, as it does not explicitly stipulate corporate criminal penalties beyond financial fines, leaving physical imprisonment exclusively for the involved employees. However, judicial practice as evidenced in Supreme Court Decision No. 587/pid.sus/2021/pn.byw demonstrates a progressive shift by holding PT. Erlangga Artha Transindo liable based on the benefits gained from tax evasion motives. This application of the vicarious liability doctrine underscores the principle of employment, asserting that the employer must bear primary responsibility for the illicit actions of its subordinates. Consequently, while the statutory framework of the KUP Law lacks comprehensive corporate sanctions, judicial interpretation effectively bridges this gap by reinforcing corporate criminal liability through established legal doctrines.

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