

THE ALTERNATIVE MODEL OF CORPORATE CRIMINAL SANCTION MANAGEMENT IN INDONESIA

Dwidja Priyatno, Sekolah Tinggi Hukum Bandung, Law School

ABSTRACT

The aim of this article is to look for an alternative model of type arrangement of criminal sanctions can be imposed on the corporation. This is very important, because the criminal sanctions imposed on the corporation, must be implemented carefully, because it would impact on innocent party, such as corporate employees, stockholders, and consumers. The model distinguishes criminal sanctions targeted against the corporation that embraces the differences between the types of criminal sanctions imposed against persons and corporations, an alternative model of policy development legislation that ideal, so that law enforcement regarding the subject of corporate criminal act can be carried out as well as possible.

Keywords: Model Settings, Criminal Sanctions, Corporate Crime.

INTRODUCTION

The progress of civilization and human culture in the field of science and technology, especially the power of information, communication and transportation has modern, making the planet earth is getting smaller and as if limitless, so that events in one place on this earth quickly and within a short time even the same can be seen in the other hemisphere. Globalization in all areas of running extra fast so that no one country may isolate themselves politically, socio-cultural, economic and law in connection between countries.

Economic life of the country with other countries is sustainable so that the legal provisions in the field of international trade and transnational business increasingly necessary. There used to be a kind of adagium stating the poorer the nation the higher the level of crime that occurs. Now this adage applies only to conventional crimes such as robbery, theft, fraud and others. Soedjono Dirdjosisworo (1996) states that: crimes are now showing that technological advances also give rise to new forms of crime are no less danger and the amount affected by the earthquake.

Indonesia today already hit by crime contemporary enough to threaten the environment, energy sources and patterns of crime in the economy such as crime bank, computer crime, fraud against consumers in the form of goods produced in low quality beautifully packaged and sold via advertisements on a large scale with various corporate crime patterns that operate by penetration and disguises (Dirjosisworo, 1991).

Congress of PPB V about the Prevention of Crime and Treatment of Offender in 1975 and then reaffirmed in the UN Congress VII in 1975, showed that there are crimes of a new form that is committed by a corporation that is driven by entrepreneurs and bring a very negative impact on the economy the country concerned (Hamzah, 1994). The increasingly sophisticated corporate crime either shape or kind or modus operandi often transcend national boundaries (trans border crime) and are often influenced by other countries as a result of globalization. For

example in the early 1990s, international attention to corporate crime is caused partly by increasingly vigorous war against narcotics do developed countries (led by the United States). This war, also aimed at the financial resources of the international narcotics trade and because it involves a struggle to persuade the countries in the world make up the "Anti-Money Laundering Act". It is, of course involve the world of banking and therefore the problem extended to the "International Money Laundering" is not limited to drug trafficking because it has long been suspected that the stolen money was also used in the illegal arms trade and in promoting terrorism. This view is inter alia held by the Center for International Financial Crimes Studies at the College of Law, University of Florida, USA which is be the organizer of the International Conference on Money Laundering, Asset forfeiture and White Collar Crime in New York City, February 1994 (Reksodipuro, 1994). Even crimes involving money laundering, became the central issue at the ministerial level conference in Naples, Italy (Dirjosisworo, 1996). Crime "Money Laundering" according Dirdjosisworo (2002) is one of the categories of crimes which are difficult eradicated and is a prominent phenomenon of crime at the end of the 20th century and early 21st centuries Besides the impact of globalization era corporate crime that stands out is the Price Fixing (raise prices goods lawfully), false advertising (advertising scam), such as in the fields of pharmaceuticals (drugs), and environmental crimes (environmental crime), economic crimes and crimes banking (Priyatno, 1995).

The influence of the tremendous growth of the asset selling activities of giant corporations and conglomerates that reach millions and even billions of dollars to make the corporation has the power of economic, social and political outstanding. This means that these corporate giants can "control" the economic, political and social. For instance The Campbell Soup Company in the United States controls 95% of all the ingredients of soup, four food companies to provide 90% of all food in the morning (Clinard & Yeager, 1980).

Furthermore IS Susanto (1995) stated that the corporate power, in the language of economics is run through in investment decisions of, pricing, locations, research and design of the product, but also has resulted in social and political arenas such as in the field of employment, problem issues concerning the life of the local community as well as the quality of human life at large. Therefore it is no exaggeration to say that the power of corporations extraordinary in its implementation have a major effect on the lives of everyone. The air we breathe, the water we drink, the food we eat, clothing and footwear we wear, the way we've been through, the vehicles that we were on, the news we hear, see and read, the future that we want, even behavior in the bedroom was like how many children we want, all smelling corporation, through its products and because of pollution. Life, health and safety of most of the people directly and indirectly controlled by huge corporations, such as through the price level and therefore also the rate of inflation, the quality of goods and unemployment.

The conditions mentioned above has penetrated almost all parts of the world, as stated David C. Korten (2002) states that based on reports in the newspaper The Wall Street Journal that suggests examples of how the world's major corporations to take advantage of: Depletion of capital resources nature with the road completely eroded forests, fisheries and mineral reserves, by aggressively marketing toxic chemicals, and dispose of dangerous waste so that to change the soil and the water that had become a highly productive region of death; Depletion of human capital by maintaining working conditions were substandard in places such as the maquiladoras in Mexico, where they employ women who had a passionate and productive for three to four years, until in the end they became permanently disabled because of blindness, allergies, kidney

disease and often wounded; Serious drain social capital to divide the union, giving very low wages, to treat the worker as items can be disposed of so easily, and dismantle factories become the main activity Economics communities so they were forced to move to locations that have very cheap, with handing to the community to accommodate the destruction of families and communities, and the acts of violence which are the consequences of the inevitable of tension; and Serious drain institutional capital with the gnawing function and confidence in the government that was formed democratically, by the time they pay millions of dollars in campaign contributions to obtain government subsidies, debt relief, and the abolition of taxes, as well as striving to weaken environmental standards, health and labor important for public health for long periods of time.

The case of the Benguet Mining Company in the Philippines, which has been documented by Robin Broad and John Cavanagh (1993) in their book *plundering Paradise*. To search for gold, Benguet Mining has made a whole deep in the hills; the trees and the soil exhausted erode the surface, and throw a lot of blocks of stone into local rivers. With the depletion of soil and water resources, the Igorot people who are natives of the region feel the difficulty in growing rice and bananas there and had to go to the other side of the hill. As well as other losses caused by cyanide used to separate gold from rocks and flowing into rivers and killing fish, beaches and coral reefs, thus destroying the source of life of thousands of people in the safari trip. It is tragic that no matter which considered special charges that banguet case. It was the same with the case in Nigeria Shell Oil, Texaco in Ecuador and Freeport McMahan in Indonesia (Sahetapy, 1994). And cases of other corporations countless unpublished who gain from the destruction of natural resources and people's lives. Supposed to be the corporation must have what is called Corporate Social Responsibility, or corporate responsibility socially is the commitment of business to contribute to sustainable economic development, working with company employees, their families, the following community local and society as a whole, in order to improve the quality of life (Nawawi, 2004).

In the context of Indonesia can the legislation be able to anticipate corporate crime that already so advanced? On the basis of these facts related hazards and the impact that can be caused by corporate crime, raises a big question how setting the criminal liability of corporations? Are adequate arrangements to criminal sanctions on corporations and criminal sanctions which models are ideal and may be applied to the corporation, in order to tackle corporate crime?

Corporate Criminal System in Indonesia

In the Criminal Justice System, the criminal occupies central position. This is caused by the decision in the criminal system will have far-reaching consequences, both involving the direct perpetrators of criminal acts and society at large. The more so if the criminal judgment is considered inappropriate, it will cause a reaction which “controversial” because of freedom in this case nature is relative depending on which view it (Muladi, 1992). Developments in the formulation of sanctions (criminal) in some countries, especially Western Europe already so advanced when compared to other types of criminal sanctions stipulated in the Criminal Code of Indonesia (Priyatno, 2005). If studied more in depth about the subject of criminal sanctions widespread criminal acts in the form of a corporation, it is as if the criminal sanctions contained in the Penal Code are powerless to accommodate a criminal offense committed by the

corporation. Although there are some relevant sanctions such as criminal penalties and the judge's verdict could be applied to the corporation. This is because the Indonesian Penal Code valid embraces the subject of a criminal offense in the form of human. Criminal sanctions formulated in Article 10 in accordance with the basic philosophy of the Criminal Code addressed only to humans or person.

Differences in the model type of criminal sanctions for people and corporations, according to the authors is necessary, this is because the existing penal system as stipulated in Article 10 of the Criminal Code, philosophically established on the basis and addressed to the offender's person. But it is possible; the types of criminal sanctions can be directed to the corporation, with no record of any type of criminal sanction is appropriate and fit and could be applied to a corporation (Sudarto, 1974). For example, in Article 10 of the Criminal Code reads: Criminal consists of: (1) criminal principal: capital punishment, imprisonment, confinement and fines. (2) Additional penalty: revocation of certain rights, deprivation of certain goods and decision of the judge.

For criminal staple that can be imposed on the corporation is fine, but if the corporation could not pay the fine, is not regulated. While for the additional penalty, limited only confiscation of certain goods and the judge's verdict. For this type of additional penalty of revocation of certain rights contained in the Criminal Code mentioned above could not imposed on corporations because, according to Article 34 paragraph (1) Criminal Code, the rights may be deprived is the right hold office, the right enter the armed forces, the right elect and be elected, right to become counsel, the right be the guardian, the right to exercise power the father and so on. It cannot be addressed to the corporation but only just addressed to a natural person.

Similar provisions are also practiced in the Netherlands. To know more about the composition of sanctions in WV. As the Netherlands, with the qualification of the manufacturer "Adult", namely: (1) Principle penalties: Imprisonment; detention; community service; fine. (2) Additional penalties, Article 9, paragraph 1b: deprivation of specific rights, committal to a workhouse State; forfeiture, publication of the judgment. (3) Measures: confiscation and deprivation of the unlawfully obtained gains of Article 36-f, committal to a psychiatric hospital and placement on an entrustment order of Article 37-38 (Louise Rayar and Stafford Wadsworth, 2003).

Based on the provisions Article 51 of the WVS Netherlands, stated that criminal and actions shall be subject to the corporation also works for/could be applied. To find out ideal policy on crime system in the draft Criminal Code in 2015, it turns out the types of criminal punishment is still oriented towards the "people" and not oriented to the criminalization of the "corporation" itself. According to Barda Nawawi Arief (2003), briefly criminal system can be defined as the system administration or criminal punishment.

System administration/criminal penalties (penal system) it can be seen from the two (2) corners. First seen from the point of functional or corner work/function/process, the penal system can be defined as the entire system (rule of law) for functional/operationalization/concrete criminal acts; or the entire system (laws) that govern how criminal law is established or operationalized in concrete terms, so that a person subject to sanctions (law) criminal. So that a person subject to sanctions (law) criminal. So that a person subject to sanctions (law) criminal. Thus, the criminal system is identical to the system of criminal law enforcement that consists of a sub-system of the Criminal Law Materiel/substance, sub-systems of the Penal Code Formal and sub-systems Law Implementation of the Criminal, the third sub-system that is an integral system

of punishment, because criminal may not be operated. Enforced concretely only by one sub-system. Definition of the criminal system so it can be called a functional criminal system or the criminal system in a broad sense. Both from the point-substantive norm (just seen dart norms of substantive criminal law), criminal system could be interpreted as the whole system of rules/norms of criminal law for the provision of materials/imposition and execution of a criminal. Thus, the overall legislation (statutory rules) that is in the Criminal Code and the Law on Special outside the Criminal Code, are in fact one unified criminal system, consisting of general rules (Book I Criminal Code) and special rule contained in Book II Criminal Code and the Special Law beyond the Criminal Code (Nawawi, 2005).

The discussion of the penal system for corporate criminal system is based on the understanding of substantive criminal system contained in the Draft Bill 2015. The criminal type in the Draft Criminal Code of 2015 set out in Article 66, which reads as follows: (1) Basic Criminal consist of: imprisonment, criminal cover, criminal supervision, criminal fines and criminal social work. (2) The order of crime referred to in item 1 determine the severity of the criminal.

Whereas Article 68, regulating the additional penalty. Additional penalty consisting of: revocation of certain rights, deprivation of certain goods and or bill, the judge's verdict, the payment of indemnity and fulfillment of customs obligations. Additional penalty can be imposed together with the staple criminal, as the staple criminal, a criminal stand-alone or can be dropped together with the other additional penalty. Additional penalty in the form of fulfillment of the obligations of local customs and/or obligations according to the law the living or the revocation of the rights acquired corporation and dropped although not listed in the formulation of criminal offenses. Additional penalty for the trial and administration are the same with the additional penalty for the criminal. Criminal additional form of revocation of certain rights, if the convicted person is a corporation in certain circumstances has the effect of deterrence more effective. Because the judge may impose. Criminal disenfranchisement owned by a corporation although the formulation of criminal threat was not specified (Article 68 paragraph 1 of the Draft Penal Code, 2015).

For this kind of staple crime, according to the draft Penal Code in 2015 which can be levied against the corporation was fined. Criminal fines for corporations is at most the next higher category, except otherwise stipulated by the law (Article 82, paragraph 4). Furthermore, based on the explanation of the Draft Penal Code in 2015, described the background of the emergence of these provisions is: given the staple criminal who can be imposed on a corporation is only fined, it fair if the maximum threat of criminal penalties imposed on corporations are heavier than the penalty of fines against individuals. To that end, has have been selected how to determine the maximum penalty for a corporation commits an offense that is next higher category. As a record maximum fine stipulated by categories, namely: Category I Rp. 10,000,000.00 (ten million rupiah); category II Rp. 50,000,000.00 (fifty million rupiah); Category III Rp. 150,000,000.00 (one hundred and fifty million rupiah); Category IV Rp. 500,000,000.00 (five hundred million rupiah); category V Rp. 2,000,000,000.00 (two billion rupiah); category VI Rp. 15,000,000,000.00 (fifteen billion rupiah) (Article 82 paragraph 3 of the Draft Penal Code 2015). The next setting criminal penalties for corporations to in Article 82, paragraph 5 is said to be: a maximum fine for a corporation commits an offense punishable by imprisonment of 7 (seven) years to 15 (fifteen) years is fine category V, the death penalty, life imprisonment, or imprisonment for a period of 20 (twenty) years is fine category VI.

Furthermore, in the explanation of Article 82, paragraph 5 Draft Criminal Code, it is said that: in terms of the formulation of a crime in a legislation does not specify a penalty of a fine against the corporation, then apply the provisions of this paragraph, the minimum penalty as specified in paragraph 6. Article 82 paragraphs 6 of the draft penal Code 2015 states: fined at least for the corporation referred to in paragraph 5 is fine Category IV, unless otherwise provided by law. Additional penalty, on the revocation of rights, especially for corporations, then deprived of all rights is obtained corporation (article 93 paragraph 2 of the Draft Penal Code 2015). Such as the right to perform activities in certain sectors (the explanation of Article 93 paragraph 2). If the revocation of rights imposed on corporations, then the judge is free to determine the length of the revocation of such rights (Article 96 paragraph 2 of the Draft Penal Code 2015).

The types of criminal sanctions proposed in the draft Criminal Code in 2015, basically oriented on the "Offender" even though there are several types of criminal victim-oriented as criminal supervision, criminal social work. Although there are criminal compensation payment, which is actually one of the victim-oriented criminal (victim oriented), but it is a pity not explicitly mention may be subject to the corporation. Although the actual criminal charge of payment of compensation shall be liable to the corporation (Article 101 paragraph 1 of the Draft Penal Code), but if we examine the next verse and Article 101 that paragraph 2, which reads: If the obligation to pay compensation as referred to in paragraph 1 is not implemented, shall substitute imprisonment for criminal penalties.

Based on the formulation of the article, then the rules of origin 101 Draft Penal Code in 2015, aimed against people and not for corporations. This is because, if the obligation to pay damages not implemented, shall substitute imprisonment for criminal penalties. This provision can only be imposed on the subject of criminal acts in the form of people. So did staple types of criminal punishment in the form of supervision, it also is not worn to the corporation. Supposed to be this criminal corporation may be subject to the term "corporate probation", which applies to corporations with accompanying conditions, including restitution to the victim. The idea of "corporate probation" is virtually identical to criminal conditional/supervision (probation sentence suspended) for the common man. This is in accordance with the opinion of Mark Wagner (1999) which states that the probation order to a corporate entity is similar to the probation order for individuals.

So the idea of "corporate probation" is a logical consequence and extension of the subject of crime, from "people" to "corporations". Reasons criminal supervision could not imposed on corporations, as stipulated in the draft Criminal Code of 2015, in article 79 to article 81, if studied further, a criminal type, addressed to people and not to corporations. Reasons legally can be seen in Article 79 Draft Criminal Code in 2015, which reads: the defendant of committing criminal offenses which the prescribed penalty imprisonment of 7 (seven) years, can be sentenced supervision.

The provision which reads: "punishable by imprisonment", indicates that the subject of criminal supervision aimed against criminal acts such as people and not corporations, cause imprisonment can only be imposed on people/humans. To support or reinforce that criminal supervision aimed against people, can be seen in Article 80 paragraph 1 of the Draft Criminal Code in 2015, which reads: criminal supervision can be meted out to the defendant considering the personal circumstances and actions. The provision which reads: "considering the personal circumstances", it shows that having a personal situation are individuals. This is confirmed also in particular Article 80 paragraph 3 sub c, which is set on one proviso, namely supervision

criminal punishment the convicted person should do something or not doing certain acts, without reducing freedom of religious and political freedom. By the provisions that reads “without prejudice to the freedom of religious and political freedom”, it indicates clearly that such provision is directed only to the people and not corporations, because corporations do not have the right form of freedom of religion and politics, and who has such rights is a natural person, or the subject of human law. Other types of sanctions in the draft Criminal Code in 2015 which could otherwise be subject to the corporation, however not addressed to the corporation is the staple types of criminal punishment in the form of social work. Type criminal charge of Criminal Social Work, requirements are that: if imprisonment the imposed of not more than six (6) months or fine of not more than fines category I (Article 88 paragraph 1 of the Draft Penal Code, 2015); in social work criminal punishment as referred to in paragraph 1, shall be considered the following matters: Recognition the defendant on criminal acts committed; Age employability the defendant according to legislations in force; Approval after the defendant explained about the purpose and all matters relating to criminal social work; Social history of the defendant; Safety protection of the defendant; Religious and political beliefs of the defendant; and the ability of the defendant to pay a fine (Article 88 paragraph 2 of the Draft Penal Code 2015).

If observed the above Terms, *inter alia* if imprisonment the imposed no more than (6) six months, is one of the requirements of the criminal punishment of community service, and imprisonment itself can only be imposed on the person/man, age employability (expressly show that aimed against human beings) and so on, then this type of criminal charge of criminal social work which is set in the draft criminal Code in 2015, geared towards those that are not addressed to the corporation, even though can theoretically be imposed on the corporation.

Nonetheless the formulation of the draft Penal Code in 2015, have made progress in the formulation of criminal sanctions specifically targeted against the corporation when compared with the current Criminal Code still valid. Even the expansion of criminal offenses subject to corporation can be generalized. It is, in accordance with the provisions of article 213 Draft Penal Code 2015, which states: “Every person is an individual, including the Corporation”.

Model Alternative Sanctions Corporation

The draft Criminal Code in 2015, it did not distinguish between types of criminal sanction arrangements between the types of sanctions are targeted against persons and corporations. That is the model type of criminal sanctions targeted against persons and corporations united in one package setting the types of crime. According to the authors, this condition can be called as one of the models setting the type of criminal sanctions for the corporation. Such a model adopted in most countries that codify criminal law (including the Netherlands). Other models, as an alternative to the model are the need for differentiation types of criminal sanctions for people and corporations.

Based on the description above, the known models of type setting criminal sanctions, imposed against the corporation. The first model, the model type settings criminal sanctions aimed at both the person and the corporation no difference, in the first model is the basic philosophy of the imposition of the sentence is at the point of emphasis to the human/person; for example, the Criminal Code, *W.v. S Netherlands*, the draft Criminal Code 2015 (a constitute lush referendums ideal policies), legislation such as the Criminal Code specifically outside the law for economic crime, the Law on Narcotics and so on). The second model, the model type settings

criminal sanctions distinguish strictly criminal sanctions for people and for the corporation, the basic philosophy of the criminal punishment even though people and corporations as subjects of law, but they are different both in nature and theoretically (Muladi and Priyatno, 2015).

For it is necessary to find criteria on the basis or reason for these distinctions, in particular in order to determine the criteria or categories of principal and additional criminal punishment aimed at the corporate or legal entity. Search criteria as a basis for determining the model type of criminal sanctions aimed at corporations, if the criteria for corporate criminal type model is different from the criteria for the types of crime (both models), as alternative models.

Criteria could be seen from the definition/understanding of the corporation. If the corporation is restricted only limited understanding as a legal entity only, then there are restrictions or exceptions, to the corporation committing criminal offenses in cases which by its nature cannot be carried by a corporation, for example, bigamy, rape, perjury. In Case that the only crime may be imposed is not possible subject to the corporation, such as imprisonment or the death penalty, in a case of murder and treason, which the only form of criminal threat for life or capital punishment. When viewed, and the above description, the corporation as the subject of a criminal offense is different with humans. It is caused by nature; there are some limitations of a crime that can be committed by corporation, when compared with the criminal offenses committed by humans.

Criteria views of the benefits of punishment against the corporation. Some critics of corporate responsibility already doubts about whether the corporation itself can be prevented with a criminal. But a premature evaluation, giving another conclusion that corporations are likely to receive very little fines compared to the size / amount of corporation, income, or profit expected to be obtained from the offense committed. Therefore, it is difficult to assert that the corporation does not have to be convicted and that they do not need to be prevented.

A problem worthy of note that the crime for corporations tend imposed on the person/party which is not guilty, not only on shareholders, but also to employees, creditors, communities, and also for consumers which may indemnify the corporation if the fines seen as a business expense. This problem suggests a desire to minimize the punishment for the corporation. Some proposals, for example, the use of reasonable fines (fine inequity) withheld/withdrawn in common stock will prevent corporate bankruptcies and negate the loss for not shareholders, while pressing corporations to link the change control management. The same thing, criminal charge of corporate oversight (corporate probation) has been recommended as a means for public intervention. The other thing that recommended is the use of sanctions publicity and sanctions in the form of community service/social work.

This proposal suggests that the issue of corporate accountability can be and should be broken up or separated from the optimal form of corporate punishment. By contrast, corporate accountability facilitates the criminal prosecution against the individual defendants (Nawawi, 2005). The criteria on the size of the criminal sanction when to be directed to the corporation. If these criteria are not fulfilled, then the corporation should not be criminalized.

According Clinard and Yeager (2002), which have to meet the following criteria: the degree of loss to the public; the level of complicity by high corporate; the duration of the violation; the frequency of the violation by the corporation; evidence of intent to violate; evidence of extortion, as in bribery cases; the degree of notoriety engendered by the media; precedent in law; the history of serious, violation by the corporation; deterrence potential; the degree of cooperation evinced, by the corporation.

Based on some of the above criteria, then theoretically types of criminal sanctions to corporations can be dealt with separately and apart from the criminal sanctions package that had been there (the first model). This is an alternative to a model-type setting for corporate criminal sanctions, which the writer suggested as a second model. For example that the first model was adopted in the legislation, like the contained in the law No. 15 of 2002 no. Law No. 25 of 2003 on Money Laundering Crime. According to Article 5 paragraph (2), said: in addition to a fine as referred to in paragraph 1 against the corporation may also be imposed additional penalty of revocation of business licenses and/or corporate dissolution followed by liquidation. Act mentioned above have been withdrawn and replaced by Act No. 8 of 2010, but Article 7, paragraph 2, still contains the same provisions, and entered in the category of additional criminal.

If we analyze these provisions, it should be criminal revocation of business licenses and exposition of the corporation followed by liquidation or dissolution and the banning of the corporation, were not included in the category of the type of additional penalty, if we embrace the types of criminal sanctions for corporate models of both, and should fit into the type principal criminal, assuming different criteria of corporate crime by the principal for the criminal. According to the authors of criminal form of revocation of business and corporate dissolution followed by liquidation or dissolution of the fund or banning corporate, identical to the type of capital punishment, when addressed to the "people" according to alternative models for sanctions in second models.

Model stelsel criminal sanctions may be imposed against the corporation as the subject of a criminal act, as an alternative model options that had not been getting good setting with after listening to the description above, the model that distinguishes the type of criminal sanctions for people and corporations (both models). Selection of the model chosen setting is a policy issue, one important stage in the policy formulation stage which is the stage of law enforcement agencies in abstract by lawmakers. Prevention and control of crime with penal is a "penal policy" or "penal law enforcement policy" that functionalization/operationalization of several stages: (1) formulation (legislative policy/legislation; (2) Applications (policy judicial/judicial); (3) execution (executive policy/administrative).

Stage of formulations can be called a policy/legislation. A policy is a plan or program of legislators about what to do in the face of certain problems and how to do or accomplish something that has been planned or programmed it (Nawawi, 1994). Particularly relevant to the prospect of setting the type of corporate crime against the corporation can be said to be the ideal policy. The policy could affect law enforcement problem concerns the subject of corporate crime (Dwidja, 2004). To support the latter model (second model) which is an option on the model type of criminal sanctions for the corporation, can presumably a comparison of the results of the "International Meeting of Experts on the Use of Criminal Sanction in the Protections of Environment" held in Portland, Oregon, USA. On March 19 to 23, 1994, stating that it may be subject to the corporation, namely: Monetary sanction of them to replace the economic benefits (recoups any economic benefit) obtained as a result of the crime; recover, all or part of the cost of the investigation/inquiry and make improvements (reparation) any losses incurred; fine.

Additional penalty in the form of: a ban on acts/activities that can lead to continuation or recurrence of the crime; command to terminate or not to continue activities (temporarily or earlier) revocation prevalent activity, the dissolution of the business; appropriation of wealth (property assets) and the results of the crime by giving protection of the rights of the third party

is bona fide; remove or disqualify a convicted person/corporation from government contracts, fiscal benefits or subsidies; ruled solving cancel disqualify managers and officers from office; ordered the convicted person/corporation acts to fix or to avoid damages to the environment; requires convicted comply with the requirements stipulated conditions the court to prevent the convict repeat his actions; govern the publication of facts relating to a court decision; ordered the t convict to tell people who are harmed by his actions; ordered the convicted person (if an organization) to inform the public of all countries where it operates, the organization, the branches, to the directors, officers, managers or employees, the overall responsibility or sanction imposed on him; ordered the, the convicted person to perform services or social work (community service).

In the countries Anglo Saxon as the UK, the problem of Criminalization Corporation has developed in such a way as in the UK. Celia Wells (1996) in his book entitled Corporation and Criminal Responsibility, stating that the penalty for a corporation is divided into two: Financial Sanction is the type of penalty, which is deemed appropriate and can be dropped to the corporation. But in practice also raises the problem that if it cannot be paid by a corporation, then it will be replaced with criminal deprivation of liberty, restrictions in the payment of fines is limited or taken from the assets the corporation itself. But it can meet the financial sanctions in the form of sanctions, and then it will obviously affect the appearance and reputation of the corporation which is indispensable in business life. Non-Financial Sanction may include: probation; adverse publicity; community service; direct 'compensation orders; punitive injunctions.

Although does not expressly support the second model, the opinion Muladi (2002) actually leads to setting the type of criminal sanctions directed against both corporate models. He stated that all criminal sanctions and measures can basically be imposed on corporations, except the death penalty and imprisonment. In this regard it should be noted that in the United States known as the so-called "corporate death penalty" is liable to a closure of the Entire Corporation and "corporate imprisonment", which implies the existence of other restrictions against corporate measures in the attempt. The types of criminal sanctions can be imposed on the corporation as has been described above is an option in the preparation of legislation concerning the corporation as the subject of a criminal act, as well as support a second model type settings criminal sanctions directed against the corporation in Indonesia. The types of criminal sanctions can be imposed on the corporation as has been described above is an option in the preparation of legislation concerning the corporation as the subject of a criminal act, as well as support a second model type settings criminal sanctions directed against the corporation in Indonesia.

CONCLUSION

Looking for a model-type setting criminal sanctions may be imposed against the corporation, it is very important, because the criminal sanctions imposed on the corporation, must be applied carefully, because it would impact on innocent parties such as employees of the corporation, shareholders, and consumers, The second model as an alternative model, which distinguishes criminal sanctions directed against the corporation that embraces the distinction between the types of criminal sanctions imposed against persons and corporations, an alternative model of policy development legislation that ideal, so that law enforcement regarding the subject of criminal acts of the corporation can be implemented with as well as possible. Therefore, fault

or weakness, especially in formulating policy legislation criminal sanctions for corporations is a strategic error that could hamper prevention efforts and crime prevention/combating corporate crime at the application stage and the execution in Indonesia.

REFERENCES

- Broad, R. & Cavanagh, J. (1993). *Plundering paradise: The struggle for the environment in the Philippines*. Berkeley: University of California Press.
- Budimanta, A., Prasetyo, A. & Rudito, B. (2004). *Corporate social responsibility*. Jakarta: Indonesia Center for Sustainable Development.
- Clinard, M.B. & Yeager, P.C. (1980). *Corporate crime*. London, Collar Macmillan Publ.
- Dirjosisworo, S. (1991). *Indonesian criminal law and crime post-industrial crime*. Bandung: UNPAR
- Dirjosisworo, S. (1996). *Anatomy of crime in Indonesian (anticipation and projection of anticipation at the beginning of the 21st century)*. Bandung: Gramedia.
- Dirjosisworo, S. (2002). *Response to crime, introduction to the law of crime prevention*. Bandung: Bandung High School Press.
- Hamzah, A. (1994). *Crime in the field of economics and how to handle it*. Jakarta: Paper.
- Korten, D.C. (2002). *The post corporate world*. Jakarta: Yayasan Obor Indonesia.
- Moeijatno (1999). *KUHP (Criminal Law Book)*. Jakarta, Bumi Aksara.
- Muladi (1998). Basic principles of environmental criminal law in relation to law number 23 Tahun 1997. *Journal of Criminal law and criminology*, 1(1).
- Muladi (2002). *Democratization, Human Rights, and Law Reform in Indonesia*. Jakarta: The Habibie Center.
- Muladi & Sulistyani, D. (2013). *Pertanggungjawaban pidana korporasi (Corporate Criminal Responsibility)*. Bandung: Alumni.
- Muladi & Priyatno, D. (2015). *Corporate criminal liability*. Jakarta: Prenada Media Group.
- Muladi & Arief, B.N. (1992). *Crime theories and policy*. Bandung: Alumni.
- Nawawi, A.B. (1994). Legislative policy in countering crimes with prison crimes. Semarang: Badan Penerbit UNDIP.
- Nawawi, A.B. (2002). *Banking system penalization policy (Evaluation of penal system in banking law and bank Indonesia law)*. Semarang: FH Undip.
- Nawawi, A.B. (2002). *Sari kuliah comparison of criminal law*. Jakarta: Raja Grafindo Persada.
- Nawawi, A.B. (2005). *Criminal system in concept general conditions RUU KUHP*, Bandung: STH Bandung.
- Criminal Law Code. (2015). *The draft law of the republic of Indonesia*, Jakarta.
- Reksodiputro, M. (1994). *Corporate crime and how to cope*. Semarang: FH UNDIP.
- Shofie, Y. (2002). *Consumer business actor and corporate criminal act*. Jakarta: Ghalia Indonesia.
- Prefontaine, D.C. (1998). *Effective criminal sanctions against corporate entities*. Commentary: Canada. paper presented at the international colloquium on criminal responsibility of legal and collective entities, Berlin, Germany.
- Priyatno, D. (1995). *Anticipation of criminal law against corporate crimes in the era of globalization*. Bandung: Seskoed.
- Priyatno, D. (2004). *Legislation policy about corporate criminal accountability system in Indonesia*. Bandung: CV Utomo.
- Priyatno, D. (2005). *Kapita selekta hukum pidana*. Bandung: STHB Press.
- Sudarto (1974). *A dilemma in renewal of Indonesia's criminal system*. Semarang: FH UNDIP.
- Sudarto (1982). *Penal code, criminal and action*. Jakarta: BPHN.
- Susanto, I.S. (1995). *Corporate crime*. Semarang, Badan Penerbit UNDIP.
- Louise, R. & Stafford, W. (1977). *The Dutch penal code*. Colorado: Fred B. Rothman & Co. Law Number 8, concerning prevention and eradication of money laundering crime.
- Wagner, M. (1999). *Corporate criminal liability national and international responses*, Background paper for the international society for reform of criminal law 13th international conference, commercial and financial fraud: a comparative perspective, Malta, Canada: the international center for criminal justice policy.
- Well, C. (1994). *Corporate and criminal responsibility*. Oxford: Clarendon Press.