

# THE IMPLEMENTATION OF CRIMINAL SANCTION IN CORPORATION OF THE LABOUR LAW PERSPECTIVE (CASE STUDY ON CORPORATIONS IN CIANJUR DISTRICT, INDONESIA)

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## ABSTRACT

*Corporations as perpetrators of criminal offense might be criminally liable and might be subjected to criminal penalties. Criminal sanctions against corporations committing criminal acts in the field of labour are set forth in Law No. 13 Year 2013 about Manpower. This study aimed at finding out how the implementation of criminal sanction against corporations committing criminal acts of employment is and what types of criminal sanctions can be applied to corporations committing labour crime. The research method used in this study is qualitative research method which data were collected through document review/literature supported by participation of observation through in-depth interviews. The results of this study indicate that criminal prosecution can be brought against corporations and their administrators or both. The types of sanctions may be imposed on corporations are not imprisonment or confinement, but penalties and/or compensation, additional criminal sanctions in the form of administrative sanctions, whereas imprisonment or imprisonment may be given to corporations' administrators. Based on the results of field research authors from 2016 and 2017 to cases that are or are being processed in the District Court Cianjur District, the researchers did not find any criminal cases that put the corporation as a defendant for violating Article 183 to Article 190, Article 183 paragraph (1), Article 184 paragraph (1), Article 185 paragraph (1), Article 186 paragraph (1) Article 187 paragraph (1) of Law Number 13 Year 2003. In fact, researchers found hundreds of violations committed by corporations to labour violate law number 13 of 2003.*

**Keywords:** Corporation, Criminal Act, Employment, Sanction and Labour Law.

## INTRODUCTION

Since 1990, Indonesia experienced a very rapid industrial development with the emergence of various kinds of corporations in various regions in Indonesia one of them is Cianjur district known as a new industrial city in Indonesia. According to the Head of Department of Manpower and Transmigration of Cianjur Regency, the number of corporations with various types of businesses located in Cianjur Regency, which tend to increase every year, from 2015, 960 corporations; 2016, as many as 960 corporations and in 2017, 1024 corporations. Besides the development of new corporation establishment in Cianjur regency, also followed by high corporation crime. According to the researcher's observation, at least there are 171 cases violation annually done by corporation especially violating the Act No. 13 of 2003 on

Manpower. However, researchers have not found a single offense that puts corporations as defendants.

Corporation criminal act in the field of employment is one of many legal issues that have not got much attention from law enforcement officials in the field of employment compared to issues of labour law that are non-criminal such as violations of the normative rights of workers (minimum wage, overtime salary, holiday allowance, etc.). The implementation of sanctions toward corporation criminal act in labour crime runs slow, whether by law enforcement in charge of employment, workers' organizations and even industrial relations courts, even industrial relation courts labour rarely give sanctions to corporation committing criminal acts, it shows the industrial relations court judges lack of understanding about Corporation as subject of criminal law of labour (Sobczak, 2003).

Corporation criminal acts toward their labour are types of organizational crime, therefore it is necessary to understand the in-depth understanding of a corporation, its forms, activities, administrators, rights and obligations, responsibilities and the types of employment crimes which are often perpetrated by corporations or other types of labour legislation or rights of workers/labour which are often violated by corporations. With such recognition, it is expected to find juridical solution (Yoder, 1973).

Corporation criminal acts in the field of employment have large negative impacts, especially on the welfare of workers/labours that will thwart the government's efforts to create prosperous society, while law enforcement may not work well. There are 5 (five) inhibiting factors in law enforcement of labour crime, namely: Law enforcer, facilities, community, cultural and legal factors (legislation). The five factors are closely related and are essential for law enforcement. The issues studied in this study are as follows: How is the implementation of criminal sanctions toward corporations committing labour crimes and what are criminal sanction types that can be implemented against corporations committing labour crimes?

## **RESEARCH METHOD**

The research method used in this study is qualitative research that does not use any calculations of numbers in performing epistemological justification, but trying to see the relationship between humans and their culture. The data collected in this study were secondary data supported by research data (primary data). Secondary data is diverse and complex. However, this research gave more focused on documents, texts or scientific papers that are relevant to the issues studied. The data were selected accurately. The documents used were integrated with some of the Primary Data as initial research conducted by the researcher in collaboration with the Department of Manpower and Population, Department of Education and Culture, Department of Tourism, Law Court Cianjur District or primary data obtained when this research is conducted.

The data collection technique was done through document/literature review supported by the participation of observation through in-depth interviews. In this study, the researcher became the main instrument (data gathering tool), in accordance with the characteristics of qualitative research. The data obtained from key informants in addition to other relevant sources, through such step, it was expected that the data has unique and wide variation with the snowball model in accordance with the needs and development of the direction and purpose this study intended to

achieve. The data sources used were diverse considering the number of paradigms, theories, concepts and models studied.

## **RESULTS AND DISCUSSION**

### **Corporations as Subject of Criminal Labour Law**

There were no corporations judged as legal subjects in criminal law yet. This is different from what happened in the Netherlands which since 1976, has set the corporation could be a subject of crime and has regulated in Article I of the Criminal Code concerning general provisions. In Indonesia, Article 59 concerning the Indonesian Criminal Code still holds a view that criminal acts can only be committed by individuals. The Criminal Code has not regulated criminal liability committed by corporations.

There are laws and regulations that place corporations as subjects of criminal law, one of which is Law Number 13 Year 2003 concerning Manpower in Article 183-190, Article 183 paragraph (1), Article 184 paragraph (1), Article 185 paragraph (1), Article 186 paragraph (1) and Article 187 paragraph (1). The types of sanctions set forth in the articles of Manpower above are: Imprisonment, fine, compensation and additional administrative sanctions.

A corporation could be a subject of criminal law in the field of employment and its responsibility of labour criminal law can be scrutinized. That is regulated in Law Number 13 Year 2003 about Manpower concerns about criminal provisions for violations of imperative norms with imprisonment and/or sanctions/penalty for violators under the category of criminal offenses such as those provided in Article 80 in conjunction with Article 185 of Manpower.

Corporations as criminal subject including in the field of labour crime as set forth in Article 80 jo Article 185 of the Manpower raise some problems: What is meant by the definition of criminal acts in the field of employment, whether the corporation in criminal law in the field of employment can commit errors, what corporation's responsibility in the case of a corporation committing a crime in employment is, who the perpetrators of whether a corporation or a tool of a corporation such as an entrepreneur are (the Board of Directors, the Management, the Entrepreneur, the Corporate Leader, the employers' assistant, Directors, Managers, Entrepreneurs, Corporate Leaders or whom entrepreneurs can be held accountable for the occurrence of labour crime), how to prosecute and punish against corporations that commit criminal acts in the field of manpower and types of criminal sanctions can be imposed on corporations or corporate equipment that commit criminal offenses in the employment field.

Corporation criminal act in the field of employment is one of many legal issues that have not got much attention from law enforcement officials in the field of employment compared to issues of labour law that are non-criminal such as violations of the normative rights of workers (minimum wage, overtime salary, holiday allowance, etc.). The implementation of sanctions toward corporation criminal act in labour crime runs slow, whether by law enforcement in charge of employment, workers' organizations and even industrial relations courts, even industrial relation courts labour rarely give sanctions to corporation committing criminal acts, it shows the industrial relations court judges lack of understanding about Corporation as subject of criminal law of labour (Miller, 1994).

The understanding of corporation criminal acts in the field of labour crime, primarily by labour law enforcement (mediators, industrial relations court judges) as well as workers and workers' organizations as directly injured as almost all workers and workers' organizations are less familiar with crimes in the field of corporate criminal acts committed by corporations should be improved.

Corporation criminal acts toward their labour are types of organizational crime, therefore it is necessary to understand the in-depth understanding of a corporation, its forms, activities, administrators, rights and obligations, responsibilities and the types of employment crimes which are often perpetrated by corporations or other types of labour legislation or rights of workers/labour which are often violated by corporations. With such recognition, it is expected to find juridical solution (Guttel and Teichman, 2012).

Corporation criminal acts in the field of employment have large negative impacts, especially on the welfare of workers/labours that will thwart the government's efforts to create prosperous society, but the law enforcement does not work well. According to Roger Bowles, Michael Faure and Nuno Garoupa (2008), there are a number of causes regarding that thing:

- The role of the corporation in the field of economy is vital (including the field of employment (the author)) and directly involves many parties, thus creating dilemma conditions for law enforcement to take decisive action. Ironically, this condition is used by corporate actors to gain maximum profit, although their actions may result negative impacts;
- The characters of corporation criminal acts (including the field of labour crime (the writer)) are not fully understood by law enforcers or the public because the settlement of corporation criminal acts are rarely found, even the penalties are not deterred;
- The extent of the scopes of corporation criminal acts (including the labour crime (the writer)) requires the adoption of various aspects of the law, so that the enforcement is fully implemented.

Corporations have strong bargaining power, even if the corporations had proven committing a criminal offense in the field of employment they can always get out of the law and/or be able to solve it outside the legal way. On the other hand, the strict actions of law enforcement, for example in the form of criminal sanctions, civil sanctions (compensation) or administrative sanctions (revocation of permits) might not necessarily solve the problem, as stated by Husein Muslimin (2009): "Criminal perpetrators of corporations are only given sanctioned, the cases might not end even if the perpetrators are punished, while the corporation operates continuously. Only civil sanctions, such as compensation for the punishment of their crimes, yet it gives insignificant effects. Moreover, if the corporations can make a big profit with the crime, they will ready to pay any compensation punished. Administrative sanctions actually have more power to suppress, such as the revocation of business licenses, but the impact that will be generated can be large because with no operation, the corporation could have an effect on the economy of the community, at least on a small scale could cause problems for the workers, until now there is no legal protection for the workers whose workplace is revoked of his business license for committing a crime.

Based on the above matters, it is necessary to find a form of criminal sanction that is capable of creating a deterrent effect against corporations without eliminating the role of corporations in the national economic development process. Identifying the inhibiting factors in law enforcement against corporations that commit criminal acts in the field of manpower is also needed.

Soekanto (1983), proposed 5 (five) inhibiting factors in law enforcement: Law enforcers, facilities, community, cultural and legal factors. These five factors are closely interrelated, they are essential for law enforcement. Inhibiting factors from law enforcement or government officials, according to Suwanto (2003) are: Not doing the task objectively, taking sides or lack of control over various laws and regulations. Including lack of control over the laws and regulations on labour crime. Inhibiting factor from the aspect of facilities is that the implementation of facilities to create harmonious industrial relations in an effort to prevent the occurrence of corporation criminal acts in the field of employment are not maximized, such as: Company Regulations, Joint Working Regulations, Workers' Organizations, Employers' Organizations, Bipartite Cooperation Institutions, Tripartite cooperation, etc.

Inhibiting factors in law enforcement from the public or environmental aspect derived from workers/labourers may also come from entrepreneurs, inhibiting factors derived from entrepreneurs, according to Suwanto, for example there are still many entrepreneurs who cannot understand or apply the correct laws and regulations in the field Employment that is normative, most employers consider the workers' normative right is the cost of production that must be suppressed, the perspective that worker/labourer as a means of production not as a human being with all the dignity of his dignity (Suwanto, 2003).

Inhibiting factors from worker/labour aspect according to Suwanto are: Relatively low level of workers' education. Therefore, most workers/labourers have no compatible understanding about the legislation relating to workers' normative rights and their criminal sanction (imprisonments, confinement and fines). Inhibiting factors from the community: The wider community has not paid much attention to legal issues in the field of labour crime compared to issues of non-criminal labour law (minimum wage, overtime salary, holiday allowance, etc.) (Apel, 2013).

Inhibiting factors from the legal aspects include: Law No. 13 Year 2003 concerning Manpower has not clearly set about corporation's responsibility in labour crime, so in its enforcement causes uncertainty and injustice, for example Manpower has not clearly set the criteria of entrepreneurs who will be the responsible party in the case of employment crime, who is the employer, whether the Board of Directors, the Management, the Entrepreneur, the Corporate Leader, the Employers' Assistant, Directors, Managers, Entrepreneurs, Corporate Leaders, whom entrepreneurs can be held accountable for criminal acts in the field of employment, whether the corporation can make a mistake, is the criminal act of employment known the reasons that can remove the punishment, whether the reasons for the abolition of punishment which in principle applies to humans, can also apply to corporations (companies, business entities).

The definitions of entrepreneur regulated in Article 1 paragraph (5) Manpower is:

- An individual, a partnership or a legal entity running a company of his or her own;
- An individual, partnership or legal entity that independently runs a company which is not his or her own;
- Individuals, partnerships or legal entities residing in Indonesia representing companies as referred to in letter a and b domiciled outside Indonesia.

Article 1 paragraphs (5) only mention the criteria of employers only from the aspect of business entity, ownership and position. Manpower has not given clear understanding of who the entrepreneur is, especially if the company or business entity is in the form of a legal entity such

as Limited Liability Company, who is called entrepreneur, Board of Directors or management. Therefore, the existence of Manpower in the concept of corporate responsibility in labour crime does not reflect the principle of vindictive justice and the principle of protective justice.

The principle of vindictive justice regulated that rewards and punishments must be in accordance with the mistakes made while the principle of protective justice is to provide protection to every human being so that no one will get arbitrary treatment, in the case of criminal acts in the field of employment are not appropriate, vindictive justice and protective justice are done by subject of corporation law to the legal subject of the worker/labour. Legal science divides the subject of law into 2 (two) namely the legal subject of person/human and legal subject of legal entity/corporation. Soenarwati (1987) said, "The subject of law is a person of legal personality and everything that is based on the demands of society by law is recognized as a supporter of rights and duties".

According to Ichsani (1986), the legal subject is "the carrier of rights and duties (*dragger van rechten en plichten*)". Based on the definitions of the legal subject of Soenarwati Soekawati and Achmad Ichsani, the legal subjects are human (*natuurlijk* person) and legal entity (*rechts person*).

Riduan Syahrani (2000) distinguishes the legal entities based on their forms:

- Corporation (*corporatie*) is a combination of associations of persons in the association of the law acting together as a separate legal subject, therefore this corporation is a member-owned legal entity, but has the rights and obligations of its members, for example company, insurance associations, shipping, *Cooperation, Omdonesiche Maakschappy Opaandelen* (IMA) and so on;
- Foundation (*stichting*) is a treasured treasure for a particular purpose. So, foundation has no member, its only has officials.

The subject scope of labour law is labour, worker, employers, and/or companies and the scope of legal subjects in industrial relations and/or employment are entrepreneur, worker and employer. The definition of labour according to Article 1 paragraph (2) Manpower is any person capable of doing work to produce goods and/or services either to meet their own needs and for the community. When it is associated with the legal arrangement of labour law the definition of manpower is included into pre-employment operations, such as activities of mobilization and placement of labour in an effort to fulfil the need for labour in one area.

The definition of entrepreneur as described in Article 1 paragraph (5) Manpower above and the definition of company according to Article 1 paragraph (6) Manpower:

- Any form of business incorporated or unlawful, owned by persons, property of the partnership or owned by a legal entity, whether private or state-owned, employing worker/labour by paying wages or other forms of repayment;
- Social enterprises and other businesses that have caretakers and employ others by paying wages or other forms of remuneration.

The definition of worker/labour according to Article 1 paragraph (3) of the Manpower is "any person who works by receiving wages or other forms of remuneration". The understanding of the worker/labour when it is associated with the legal arrangements of the labour law is included in the operational period during the employment and the government interferes widely

during the working period, the purpose of government intervention is to protect all parties fairly for the sake of achieving good working atmosphere and continuity in business.

The definition of employer in Article 1 paragraph (4) of Manpower, is an individual, an entrepreneur, a legal entity or other entities employing labour by paying wages or other forms of remuneration. The Company is an economic term used in the Commercial Code and the laws outside the Code of Commercial Law, in the Commercial Code are not defined as the official terms of the company (Muhammad, 2006). The definition of the company is formally defined in Article 1 Law No. 3/1982 about Obligation of Corporate Registration.

According to Molengraaff (1966), the company is an entire act perpetrated on an on-going basis, acting out, to earn income, by trading or delivering goods or entering into trade agreements. According to Abdul Kadir Muhammad, Molengraaff views the notion of an enterprise from an economic angle for the purpose of earning income by: 1) Trading goods, which means to buy goods and sell them again with the calculation of earnings in the form of profit; 2) Giving goods, means releasing the control of the goods with the calculation of earning, such as renting goods; 3) Trading Agreement, meaning to link one party to another by calculating income in the form of profit or profit for the authorizer and wage for the authorized person; e.g. realtor, commissioner and corporate agent.

Based on the company's understanding of Molengraaff, the elements of the company are: 1) An act in the economic field, in the form of trading and delivering goods and entering into a trade agreement; 2) Continuously done or not incidentally; 3) Act upon something out; 4) Earn income.

According to Abdulkadir Muhammad, Molengraaff's explanation is not questioned about the company as a business entity, which the company questioned as an action or type of business. According to Article 1 letter b of Law Number 3 Year 1983 concerning Obligatory Company Registration: "The Company is any form of business that carries on any kind of business that is permanent and continuous and established, working, domiciled within the territory of the State of Indonesia for the purpose of obtaining profit".

Based on the provisions of that article, in the definition of the company, there are 2 (two) main elements, namely:

- Forms of business in the form of organizations or business entities, established, working and domiciled within the territory of the state of Indonesia. Also called as company or enterprise;
- Types of business in the form of activities in the economic field (industry, trade, arms and financing, run by trading entities, perjasaaan, financing) run by business entities on an on-going basis (business).

According to Article 1 number 1 of Law Number 8 Year 1997 concerning Company Documents: "The Company is any form of business which carries on regular and on-going activities by obtaining profit and/or profit, whether held by individuals or business entities in the form of legal entities or non-legal entities, established and domiciled within the territory of the Republic of Indonesia".

According to Article 1 paragraph (6) of Law 13 Year 2003 on Manpower, company is:

- Any form of business which is a legal entity or not, the property of an individual, belongs to the partnership or is owned by a legal entity, whether private or state-owned, that employs workers by paying wages or other forms of remuneration;

- Social enterprise and other endeavours that have management and hire others by paying wages or other forms of remuneration.

Based on the company's understanding of some experts and laws as described above, the elements of a company are: Business Entity (be legal or not, owned by an individual or partnership, private or state-owned, Shaped, Firm, Housing, Company, Limited Liability Company and Cooperative. Activities in the economic field: Industry (timber, fishery, food, medicine, etc.); Trading (buying and selling, import export, shop, supermarket, etc.); Services (transportation, banking, consulting, workshop, etc.). Continuous, not casual or incidental jobs. Are fixed, activities are unchanged or changed in a short period of time. Openly or publicly known. Profit and/or profit being the primary objective. Records of rights and obligations relating to a company's business activities.

### **Types of Criminal Witnesses against Corporations Committing Labour Criminal Act**

Some laws and regulations in the field of employment stipulate that if a corporation commits a criminal offense/act in the field of manpower, in addition to the responsible board as well as the leader of a legal entity or union, the said legislation is included in Law Number 22 Year 1957 jo Law Number 26 of 1957 about Labour Settlement contained in Article 27 which stated: Article 27 paragraph (1) if anything that is threatened with penalty in this law is done by a legal entity or union, the demand is addressed as well as the sentence imposed on the board or head of legal entity or union. Article 27 paragraphs (2) stated if the head of a legal entity or union is held by a legal entity or other union, then the provisions of paragraph (1) shall apply to the management of the legal entity or the union that holds that leadership.

A similar definition is found in Law No. 3 Year 1958, Law about Placement of Foreign Personnel (Article 13). Whereas Law Number 3 Year 1982 concerning Obligation of Company Registration, if a criminal act is committed by a corporation then the responsible person is the trustee or holder of power of the legal entity.

Criminal sanctions against corporations incorporated or non-commissioned criminal acts in the field of manpower, regulated in Law No. 13 Year 2013 about Manpower, namely in Article 183 until Article 183, Article 183 paragraph (1), Article 184 paragraph (1), Article 185 paragraph (1), Article 186 paragraph (1) Article 187 paragraph (1). The types of sanctions set forth in the articles of UUK above are: Imprisonment, fine, compensation and additional criminal sanctions in the form of administrative sanctions.

### **Types of Criminal Sanctions against Corporations are not Legally Entitled to Conduct Crime of Employment**

#### **Types of Criminal Sanctions against Trading Companies Conducting Employment Crime**

A Trading Company is a sole proprietorship by an entrepreneur. The trading company may be managed by (one) or more people with own capital, if a trading company commits a criminal offense in the employment field, a criminal suit may be filed against a trading company or equipment of a trading company or both, a means of trading company equipment,

management, businessmen, corporate leaders, business assistants, who govern, directors. The types of criminal that may be imposed on trading companies that commit criminal offenses in the field of employment are not criminal penalties, but penalties and/or compensation, additional criminal sanctions in the form of administrative sanctions. While the equipment of trading company may wear imprisonment or confinement (Garoupa and Pomar, 2004).

### **Types of Criminal Sanctions against Civil Associate Companies (Maatschap) Conducting Crime of Employment**

The existence of civil partnership as a business enterprise is regulated in Article 1618- Article 1652 Civil Code. According to Article 1618 of the Civil Code, it is stated that Maatschap is: "A covenant with which 2 (two) or more people commit themselves to enter into communion with a view to sharing the profit or benefit derived thereto." Criminal prosecution in case of a civil partnership company (Maatschap) commits a criminal offense in the field of employment, may be brought against a civil partnership (Maatschap) or a ruler in a civil union (Maatschap) or both.

The criminal type which may be imposed on a civil union (Maatschap) is not a prison sentence, but a fine of fines and/or additional compensation and/or additional criminal sanctions, whereas imprisonment or imprisonment may be imposed on the civil union equipment (Maatschap) Managers, leaders, employers, business assistants, directors or rulers in a civil union (Maatschap).

### **Types of Criminal Sanctions against Firms Conducting Criminal Acts to Labour**

The existence of Firm as a business entity is regulated in Articles 16-35 of the Commercial Code. The definition of Firm is simply described in Articles 16, 17 and 18 of the KUH Dagang, which states that: "Firm is any civil partnership established to run a company with a common name, where each Firm is not excluded from each other Can bind the Firm to a third party and they are each responsible for the entire debt of the Firm jointly". Criminal charges against firm committing a criminal offense in the field of employment, may be filed against the Firm Company or the leader/who rules in the Firm or both, the criminal type that may be imposed on the Firm company committing criminal acts in the field of non-criminal employment, but in the form of fine and/or compensation and/or additional criminal sanctions in the form of administrative sanctions. A witness for imprisonment may be liable to the Firma Company's equipment, which is the board, which governs the Firm Company, i.e., employers, directors, business assistants and Firma corporate directors.

### **Types of Criminal Sanctions against a Limited Liability Company (Commanditaire Vennootschap/CV) Conducting Employment Criminal Offenses**

Commercial Code does not give the understanding of the Company Commanditaire Vennootschap/CV. The regulation of CV in Commercial Code is very short, namely in Article 19, Article 20 and Article 21. Thus, CV is located between the Firm and Limited Liability Company. Accordingly, the CV is a partnership with a deposit of money, constituted by 1 (one)

or more active members who are jointly liable on one side with 1 (one) or more other persons as money-lenders.

The criminal prosecution of a Limited Liability Company which commits a criminal offense in the field of employment may be submitted to a Limited Liability Company or a leader/governor in a Limited Liability Company or both, the type of criminal liability to a Limited Liability Company is not a penalty but a fine and/or compensation and/or additional criminal sanctions in the form of administrative sanctions, whereas imprisonment may be imposed on the equipment of the company Commander (leader or governor), who is the chairman or governor of the Limited Liability Company, the employer, the head, the assistant employer and the Board of Directors of the Commanders Company (Dubber, 2013).

### **Types of Criminal Sanctions against Corporations with Legal Entities Conducting Employment Criminal Act**

#### **Types of Criminal Sanctions against Limited Liability Companies Conducting Criminal Acts of Employment**

Limited Liability Company under Article 1 paragraph (1) of Law no. 40 year 2007 is: “Legal entity which is a capital alliance, established under the agreement, engages in business activities with the authorized capital wholly divided into shares and meets the requirements stipulated in this Law and its implementing regulations”. According to Yoder (1973), a legal entity is: “A group of people deemed to be able to act in the law, which has the rights and obligations and can perform legal acts with other persons or legal entities”.

Then if again look at the definition of limited liability Company above, it is written that the company was established on the basis of the agreement. Generally, people argue that the establishment of Company is not a pure agreement as intended in Article 1313 concerning Civil Code. There is indeed a covenant and the need for corresponding descriptions of the will and revealed by more than one person. But, the founders did not bind themselves to each other; they claimed that the burden was the same, that they wanted the establishment of a company. They stand side by side and do not burden each other, but they go to a point, the direction of goals to be achieved by the company. Such legal deeds by German law scholars, “Gesamt Akt”: Legal acts consisting of the actions of several people to achieve a legal effect in such a way, but there is no ensemble between the people. Some reasons people prefer a form of business in the form of Company, because: The form of legal entities, capital consists of shares, limited responsibilities and have a regular organization.

A criminal charge against a Limited Liability Company committing a criminal offense in the field of employment may be filed against a Limited Liability Company or a leader or a ruling in a Limited Liability Company or both, a criminal suit applicable to a Limited Liability Company not a penalty but a fine and/or penalty of compensation and/or additional criminal sanctions in the form of administrative sanctions. Penalty or imprisonment may only be imposed on the management or in the Limited Liability Company, i.e., in this case, the General Meeting of Shareholders, Board of Directors and Commissioners.

### **Types of Criminal Sanctions against Cooperation (Economic Enterprise) Conducting Criminal Acts in the Field of Labour Law**

1945 Constitution, particularly Article 33 Paragraph (1), states that Indonesian economy is constituted as a joint effort based on the principle of kinship. Further explanation of Article 33, among others, states that the prosperity of society is preferred not the prosperity of a person and build a company in accordance with it is Cooperation. The explanation of Article 33 places Cooperation both in the position as a pillar of the national economy and as an integral part of the national economic order.

According to Article 1 paragraph (1) of Law no. 25 Year 1992 concerning Cooperation mentioned that: "Cooperation is a business entity consisting of persons or a legal entity of Cooperation with the basis of its activities based on the principle of Cooperation as well as a people's economic movement based on the principle of kinship".

Cooperation is based on Pancasila and the 1945 Constitution and based on the principle of kinship, which has the purpose of promoting the welfare of members in particular and society in general and to build the order of the national economy in order to realize a developed, just and prosperous society based on Pancasila and 1945 Constitution.

The claims against Cooperation that commit crimes in the field of employment may be filed against Cooperation or its equipment of the leader or governing cooperatives or both (Cooperation and leaders or ruling cooperatives). The type of criminal that may be imposed on Cooperation committing a criminal offense in the field of employment is not a jail sentence, but a fine of fines and/or criminal redress and/or additional criminal sanctions in the form of administrative sanctions. Criminal or imprisonment may be imposed on equipment or management and the rulers of Cooperation, i.e., meetings of members, administrators and supervisors of Cooperation.

### **Types of Criminal Sanctions against Foundation Conducting Criminal Acts in the Field of Labour Law**

Prior before the Law relating to the Foundation, the Foundation in Indonesia was based solely on customs in society and the jurisprudence of the Supreme Court. The fact shows the tendency of the community to establish Foundation with a view to taking refuge behind the legal status of the Foundation, which is not only used as a forum for developing social, religious, humanitarian activities, but also occasionally aimed at enriching the Founders, Management and Supervisors. In line with these trends, there are also various problems related to the activities of Foundation which are not in accordance with the purposes and objectives contained in the Articles of Association, the dispute between the Board and the Founder or other parties, as well as the allegation that Foundation is used to hold the wealth derived from Founders or other parties obtained in a manner which is unlawful. The problem cannot be resolved legally because there is no positive law regarding Foundation as the juridical foundation of the settlement.

The public should be given a correct understanding of the foundation, to provide a correct understanding to the community regarding Foundation, to ensure the certainty and order of law and restore the function of Foundation as a legal institution in order to achieve certain goals in the social, religious and humanitarian fields, August 6<sup>th</sup>, 2001, the President of the Republic of

Indonesia, Megawati Soekarnoputri, legitimated Law no. 16 Year 2001, which was amended by Law no. 28 Year 2004 about Foundation.

According to Article 1 paragraph (1) of Law no. 28 Year 2004 about Foundation, it is stated that Foundation is: “Legal entity consisting of wealth separated and destined to achieve certain goals in the field of social, religious and humanity, which has no members”. The criminal type which may be imposed on Foundation committing criminal offense in the field of employment is not a prison sentence, but a criminal penalty and/or compensation and/or additional criminal sanctions in the form of administrative sanctions. Criminal or confinement may be imposed on the head or the ruler, in this case the Coach, Administrator (Chairman and/or Secretary and/or Treasurer) and the Supervisor.

## CONCLUSION

Based on the above explanation, the researcher draws the following conclusions:

- The application of penal sanctions may be applied to corporations committing employment criminal act if: Conducted to fulfil the purposes and objectives of the Corporation; Done according to the duties and functions of the perpetrator or the giver of the order; and Conducted with the intent of providing benefits or benefits to the Corporation.
- Criminal sanctions imposed on corporations shall be criminal penalties, other than that it may be advisable to be imposed in the form of: Announcement of Judge’s Verdict, Freezing a part or all parts of the corporation’s business, Revocation of Business License, Dissolution and/or banning the Corporation, Confiscation of Corporate Assets for the Country and/or Takeover of Corporations by the State.

However, the researcher did not find a single criminal case that placed the corporation as the defendant for violating Article 183 s.d. Article 183 paragraph (1), Article 185 paragraph (1), Article 186 paragraph (1) of Article 187 paragraph (1) of Law Number 13 Year 2003 concerning Manpower with types of sanction: Penalty, imprisonment, fine, criminal damages and additional criminal sanctions in the form of administrative sanctions.

The cause of non-enforcement of criminal law sanctions against corporations that commit criminal acts in the field of labour law as described in the above articles because of the existence of Law Number 2 Year 2004 concerning Industrial Relations Dispute Settlement (Law Number 2 2004) which has categorized violations of criminal offenses in the field of labour law with the perpetrators of corporations, is one of the types of industrial relations disputes, namely the type of Disputes of Rights, namely disputes which are workers’ rights that are regulated in labour legislation not covered by the corporation. Therefore, Law Number 2 2004, as if the process of settlement must go through a non-criminal process, namely through the stages of the process: Bipartite, Mediation process, Conciliation, Arbitration and judicial process in the Industrial Relations Court as a special court under the District Court Class IA Bandung and the appeal process in the Supreme Court (Vide Articles 3 until 115 Act Number 2, 2004).

## REFERENCES

- Apel, R. (2013). Sanctions, perceptions and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29(1), 67-101.
- Bowles, R., Faure, M. & Garoupa, N. (2008). The scope of criminal law and criminal sanctions: An economic view and policy implications. *Journal of Law and Society*, 35(3), 389-416.

- Concerning Company Documents*. (1997). Law Number 8.
- Concerning Cooperatives*. (1992). Law no. 25.
- Concerning Telecommunication*. (1964). Law Number 5.
- Dubber, M.D. (2013). The comparative history and theory of corporate criminal liability. *New Criminal Law Review: An International and Interdisciplinary Journal*, 16(2), 203-240.
- Foundation (Yayasan)*. (2004). Law Number. 28.
- Garoupa, N. & Pomar, F.G. (2004). Punish once or punish twice: A theory of the use of criminal sanctions in addition to regulatory penalties. *American Law and Economics Review*, 6(2), 410-433.
- Guttel, E. & Teichman, D. (2012). Criminal sanctions in the defence of the innocent. *Michigan Law Review*, 110(4), 597-645.
- Ichsan, A. (1986). *Dunia usaha Indonesia dari segi hukum, segi manajemen*. Struktur/Bentuk Hukum. Jakarta: Pradnya Paramita.
- Industrial Relations Dispute Settlement*. (2004). Law Number 2.
- Labour Completion*. (1957). Law Number 26.
- Limited Liability Company*. (2007). Law Number 40.
- Manpower*. (2003). Law Number 13.
- Miller, J.L. (1994). Variation in judgments of criminal sanctions: An application of "schema theory". *Sociological Focus*, 27(3), 257-279.
- Molengraaff, W.I.P.A. (1966). *Guidance in the practice of Dutch commercial law (Second Edition)*. Jilid I. Cetakan ke.
- Muhammad, A. (2006). *Hukum perusahaan Indonesia*. Bandung: Citra Aditya Bakti.
- Obligation of Corporate Registration*. (1982). Law No. 3.
- Setiyono, H. (2009). *Kejahatan korporasi, analisis viktimologis dan pertanggungjawaban korporasi dalam hukum pidana Indonesia*. Malang: Bayumedia Publisng.
- Sobczak, A. (2003). Codes of conduct in subcontracting networks: A labour law perspective. *Journal of Business Ethics*, 44(2/3), 225-234.
- Soekanto, S. (1983). *Faktor-faktor yang mempengaruhi penegakan hukum*. Jakarta: Rajawali Pers.
- Suwarto. (2003). *Hubungan industrial dalam praktek*. Bandung: Asosiasi Hubungan Industrial Indonesia.
- Syahrani, R. (2000). *Seluk beluk dan asas-asas hukum perdata*. Bandung: Alumni.
- Wang, S. (2010). On development of criminal law in the people's republic of china. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 43(3), 292-303.
- Yoder, S.A. (1973). Criminal sanctions for corporate illegality. *The Journal of Criminal Law and Criminology*, 69(1), 40-58.