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Political Party As Legal Subject After National Criminal Code

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Abstract: This study seeks to broaden the legal definition of corporations to encompass political parties as entities subject to criminal law. By expanding how we understand corporations in criminal contexts, the research explores whether political parties can be treated as corporate entities that bear criminal responsibility and face prosecution. The proposed criminal penalties for political parties would mirror those applied to corporations under the National Criminal Code, with one notable exception: the potential for dissolution. However, the authority to dissolve political parties remains solely with the Constitutional Court under the 1945 Constitution. The article addresses two primary questions: how political parties should be classified within criminal law frameworks, and what forms of criminal accountability and sentencing should apply to political parties under the new National Criminal Code.

Keyword: Legal Subject, Corporation, Political Party, Punishment.

INTRODUCTION

After the National Criminal Code is passed in early 2023 and will be effective in 2026, it will enter a new phase of criminal law reform. The criminal law decolonization project through recodification, democratization, consolidation and harmonization is expected to bring justice to the Indonesian people. In fact, Indonesia has been eager to establish a National Criminal Code of its own for quite some time. In 1946, the idea was introduced by the Government of the Republic of Indonesia in Yogyakarta through the implementation of Law No. 1/1946 related to Criminal Law Regulations. The legislation announced the implementation of the amended Criminal Code of 1915, and concluded by declaring the need for a prompt preparation of a new Criminal Code (Santoso, 2023).

The recent revisions to the National Criminal Code now recognize the legal status of "Corporation" as a viable subject for criminal prosecution, marking a notable progression in legal standards. The concept of holding corporations criminally accountable dates back to ancient legal systems and has been a topic of considerable interest and became the center of doctrinal discourse by jurists around the 19th century until the end of the 19th century. However, the diverse history, legal system, economy, and political environment in each

country greatly influence how corporate criminal responsibility is perceived and implemented. This influence has resulted in the development of different types of corporate accountability for criminal acts. Corporate criminal liability has followed a distinct path in Civil Law tradition in contrast to the route taken in the Common Law tradition. The way in which corporate criminal responsibility has evolved in different legal systems is shaped by the unique historical and socio-economic contexts of each country (Pop, 2006).

The intense debate began because criminal law initially only acknowledges one interpretation of legal entities that can be deemed liable for criminal actions, namely *natuurlijke persoon* or natural person (Maradona, 2018). Traditionally, criminal law has only focused on what constitutes an offense (or crime), namely blame (*schuld*), culpability and infliction of loss on an offender. A state or mental attitude (person's mental state) becomes the benchmark for an offense committed by humans as perpetrators. On that basis sanctions can be applied only to the perpetrator without harming other innocent parties, thus arises the principle that legal entities or groups cannot be held responsible for criminal acts, known as *societas delinquere non potest*. Although, businesses operate in a manner similar to individuals, being able to exercise their rights and fulfill their obligations according to civil law, specifically private law, but Corporations are still considered not to have moral abilities that allow them to be accepted as subjects in criminal law (Pieth & Ivory, 2011). Moral responsibility intertwines with criminal responsibility, making it necessary for there to be an element of moral culpability in the offender in order for criminal penalties to be applied, therefore individuals who do not have moral responsibility are considered and cannot be imposed a criminal sanction (Maradona, 2018).

In criminal law, corporations are acknowledged as distinct legal entities, leading to various themes of discussion including corporate identity, corporate accountability, and corporate ethos (Wells, 2011). Khanna not only discussed the challenges faced in recognizing Corporations as eligible for criminal prosecution, but also highlighted various barriers such as legal fiction, moral culpability, ultra vires, and issues related to procedural law (Khanna, 1996). In addition to the issues that have emerged in discussions, modern criminal law has evolved to include Corporations as entities that can be sanctioned for engaging in different forms of misconduct (Guntik & Yustiawan, 2022). These behaviors include, among others, environmental pollution, fraudulent competition, tax manipulation, manipulation of company bookkeeping, crimes against consumers and other deviant practices whose consequences can be felt directly and the scope of victims is large and many than criminal acts committed by individual humans. These deviant behaviors are then termed as corporate crime.

In Indonesia, before the National Criminal Code was introduced, Corporations were not regulated under criminal law, as the Colonial Criminal Code, which was based on the Dutch Criminal Code, did not include provisions for them. Staatsblad 1915 No. 732 concerning the Wetboek van Strafrecht jo Law Number 1 of 1946 concerning Criminal Law Regulations (State Gazette No. 127 of 1958, Supplement to State Gazette No. 1660), hereinafter referred to as the Colonial Criminal Code. The Dutch Criminal Code, which dates back to the 1800s, does not consider Corporations as legal entities because it is believed that artificial entities are less likely to commit crimes, based on the principles of '*societas delinquere non potest*' or '*universitas delinquere non potest*'. Hence, according to Article 59 of the Colonial Criminal Code, leaders are expected to take responsibility for any illegal actions conducted by the Company (Wahyu, 2014).

Hence, within the Colonial Criminal Code, an individual is viewed as the main focus of legal matters, leading to various implications regarding the subject in the Colonial Criminal Code, among others: (1) the legal subject in the formulation of criminal offenses determines the formulation with terms such as 'whoever', 'whoever', 'person of legal age', etc. which only refers to natural persons and not legal entities (Corporations / legal entities); (2) Article 44 to

Article 49 of the Colonial Criminal Code which determines criminal responsibility requires the existence of a certain 'mental state' (*verstandelijke vermogen*) of the perpetrator; (3) The principle of imputation of criminal sanctions in Dutch is known as '*geen straf zonder schuld*' or in German '*keine straf ohne schuld*', and in Latin '*nulla poena sine culpa*'. Which means that there is no crime without fault; (4) The Colonial Criminal Code's Article 10 specifies various criminal penalties, including death penalty, imprisonment, confinement, and fines. All forms of sanctions refer to the form of sanctions that can only be imposed on humans (Santoso, 2023).

The limited scope of the legal subject of the Colonial Criminal Code to respond to crimes committed by Corporations. In order to avoid this situation, Indonesia has implemented various legal measures beyond the Colonial Criminal Code, such as Special Criminal Law and Administrative Criminal Law. These laws allow for corporations to be held accountable for criminal activities, along with individual members, as separate legal entities (Santoso, 2023). While there have been regulations set in place through different special laws apart from the Colonial Criminal Code, the legal field still faces challenges in defining and determining the boundaries of Corporations. This discrepancy between civil law systems and criminal law systems adds complexity to the issue. For Sutan Remy Sjahdeni, the term Corporation in Indonesian criminal law is defined in a broad sense. Whereas in civil law, those authorized to perform legal acts (legal subjects) are individuals and legal entities. However, in criminal law, Corporations include, among others; entities such as LLCs, foundations, corporations, and associations that have been given legal recognition. Additionally, corporations encompass unincorporated groups like partnerships, limited liability companies, or CVs, as well as partnerships or *maatschap*, which are business entities that do not have legal entity status under civil law. Furthermore, according to criminal law, corporations are seen as groups of people, under the direction of a leader, who carry out legal activities like reaching agreements in business or social activities managed by their leaders on behalf of the group (Sjahdeni, 2007).

Sjahdeni thinks that it aligns with Article 45 paragraph (1) and Article 145 to add regulations for Corporations to the National Criminal Code, as both articles acknowledge Corporations as a legitimate subject of criminal law. The exact definition of Corporation is clearly stated in Article 146. Meanwhile, Criminal Offenses by Corporations (TPK) are regulated in Article 46 of the National Criminal Code. By examining the provisions outlined in Article 146 of the National Criminal Code, it can be understood how a Corporation is defined and classified as a company is a structured group of individuals and/or resources, whether it takes the form of a legal entity or an unincorporated association.

With regard to Corporations as legal entities, Nani Mulyati in her dissertation defines Corporations as legal entities whose existence and capacity depend on the law and regulate the behavior of their members with certain objectives. Corporations obtain status as legal entities after going through the Incorporation process. The process then distinguishes the status of a Corporation from an entity that does not go through the incorporation process or known by another term, namely Unincorporated Body (Mulyati, 2018). Despite Nani Mulyati's explanation, the concept of corporations in the National Criminal Code varies significantly. The National Criminal Code specifically addresses the inclusion of corporations. Corporations are groups of people and resources that can be used to commit crimes and profit from criminal activities, regardless of their legal status. Corporate entities being capable of committing criminal acts implies that they can be subject to legal consequences under criminal laws, irrespective of their legal status.

Apart from the differences pointed out by Mulyati, there are inconsistencies in the National Criminal Code when it comes to the scope of Corporations, which encompasses both entities with legal status and those without. However, the National Criminal Code does

not expressively verbis contain and state Political Parties as Corporations, but only contains the formulation "includes legal entities ..., or what is equated with it, as well as associations both incorporated ...." as specified in Article 45 paragraph (2) of the National Criminal Code. Meanwhile, political parties are legally established as legitimate entities according to Article 3 of the Political Parties Law. The question at hand is whether a political party can be subject to prosecution under the corporate criminal statutes outlined in the National Criminal Code. In the event that they can, is it possible for political parties to face criminal charges and potential sentencing?

Previously, there have been cases of alleged involvement of political parties in corruption and money laundering cases in Indonesia. This has been stated in Zainal Arifin Mochtar's research, that in the facts of the trial of the corruption case of budgeting and procurement of goods/services for the procurement package for the implementation of Electronic ID cards for the 2011 fiscal year, it was stated that there was a flow of funds suspected of being the proceeds of corruption flowing to political parties. In connection with this, the KPK indictment number DAK-15/24/02/2017 contains matters related to the actions of the defendant, namely the discovery of the flow of funds from corruption to several political parties in Indonesia with different amounts. Although it has been mentioned in the KPK's indictment, until now not a single political party has been brought to trial for corruption for the alleged flow of funds. Another incident involving political parties, namely with regard to the flow of funds amounting to Rp. 195 billion from abroad to the accounts of the treasurers of 21 political parties, where the findings were found transactions with this nominal by PPATK which stated that it had found transactions from abroad to the treasurers of 21 political parties in 2022 with a nominal value of Rp. 83 billion which then increased in 2023 to Rp. 195 billion. According to the provisions outlined in paragraphs (1) and (2) of the Political Party Law. Committing the act is considered a crime, but authorities will focus solely on the financier and leadership of the political party rather than holding the entire party responsible as a legal entity under Political Party Law for the criminal offense.

It is not out of the realm of possibility for political parties to face criminal charges and be subject to punishment. In Croatia, there has been a case and even the only case in a democratic country, where the court has tried a political party, namely the Croatian Democratic Union (CDU), which committed the crime of corruption and money laundering (TPPU). The case has been raised and became the main focus of dissertation research conducted by Aleksandar Maršvelski with the title 'Responsibility of Political Parties for Criminal Offences'. Maršvelski's dissertation uncovered the notion that a Political Party with legal recognition is essentially a Corporation, making it susceptible to criminal prosecution and potential sentencing. Furthermore, in his dissertation, Maršvelski even provides a classification of crimes that can be committed by Political Parties and also provides alternatives to punishment for Political Parties in the form of humiliating marginalization (Maršavelski, 2015).

Based on this, if only the formulation of Article 45, Article 145 and Article 146 of the National Criminal Code and Article 3 of the Political Party Law, Political Parties fall under the jurisdiction of Corporations according to the National Criminal Code, making them eligible for criminal prosecution and penalties. This research will examine the ways in which Political Parties acting as Corporations can be subject to criminal liability, and will also consider the potential outcomes and penalties they could encounter following the enforcement of the National Criminal Code.

This study explores the role of political parties under the National Criminal Code in terms of their legal liability. Additionally, it examines the various ways in which political parties can be held accountable for criminal actions following the implementation of the National Criminal Code.

METHOD

This research examines normative legal methods, which involve approaching legal issues through statutes and concepts while considering various sources and materials in the field of law (Marzuki, 2005). Or this research is explanatory or explanatory research which is principally used to test legal norms or rules on a particular matter based on a prescriptive analysis process with deductive argumentation (Irwansyah, 2020).

The legal research materials used here primarily include primary legal sources that are deemed authoritative, namely (Marzuki, 2017):

(1) Constitution of the Republic of Indonesia 1945;
(2) Law No. 1 of 1946 Concerning the Regulation of Criminal Law (State Gazette II No. 9);
(3) Law No. 73 of 1958 Concerning the Entry into Force of Law No. 1 of 1946 of the Republic of Indonesia Concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia and Amending the Criminal Code (State Gazette of 1958 Number 127 and Supplement to State Gazette of 1958 Number 1660);
(4) Law Number 1 of 2023 Concerning the Criminal Code (State Gazette of the Republic of Indonesia of 2023 Number 1 and Supplement to the State Gazette of the Republic of Indonesia of 2023 Number 6842);
(5) Law Number 2 of 2011 Concerning the Amendment to Law Number 2 of 2008 Concerning Political Parties (State Gazette of the Republic of Indonesia of 2011 Number 8 and Supplement to State Gazette of the Republic of Indonesia Number 5189);
(6) Law Number 2 of 2008 Concerning Political Parties (State Gazette of the Republic of Indonesia of 2008 Number 2 and Supplement to the State Gazette of the Republic of Indonesia of 2008 Number 4801).

In addition to the main sources of law, this study will also incorporate secondary resources, namely, in the form of all lawful publications that do not carry official status. The researcher will utilize supplementary legal sources such as textbooks, research dissertations, and relevant journals to examine how Political Parties can be treated as legal entities under the National Criminal Code, potentially facing criminal prosecution. The findings of this study are showcased in a prescriptive manner, focusing on accurately assessing the issue at hand regarding the role of Political Parties within the National Criminal Code as legal entities of Corporations that are susceptible to criminal responsibility and penalties within the national legal framework (Indonesian Legal System).

RESULTS AND DISCUSSION

The Position of Political Parties as Subjects of Criminal Law in the National Criminal Code

Legal Subject of Corporation

The subject of law within the scope of legal science is a person. A legal subject or person can be a *natuurlijk persoon* or *rechtpersoon* (Prawirohamidjojo & Pohan, 2000). *Natuurlijk persoon* comes from the Dutch language which refers to a person in a natural sense. Conversely, in Dutch *rechtpersoon* means legal entity, which is a set of several people (*natuurlijk persoon*) as an association. In the context of civil law, legal entities (*rechtpersoon*) are usually equated with corporations. In criminal law circles, the term "corporation" is often used to describe entities that are recognized as legal bodies in various legal systems, particularly in civil law (Prasetyo, 1989). Soemitro defines a legal entity as an entity that can have property, rights and obligations like a *natuurlijk persoon* (Sandra & Aristya, 2000).

The civil rights of a *natuurlijk persoon* begin with his birth as a human being and as a legal subject will end with his death, and matters related to it (Vollmar, 1990). The same applies to *rechtpersoon* for its status as a legal subject. The birth of *rechtpersoon's* civil rights begins with its establishment (in accordance with applicable legal rules) and ends as a legal subject with its cessation or status based on applicable legal rules (Sandra & Aristya, 2000). Even Subekti explained the criteria for an association or body to be called a rechtpersoon, namely: (1) has its own wealth separate from the owner's personal property; (2) involves itself in legal traffic through the intermediary of its management; (3) can be taken to court and sued in a legal case (Subekti, 2001).

Furthermore, according to Salim H.S added another criterion that must exist in *rehctpersoon*, namely the existence of an organization. In BW (*Burgerlijk Wetboek*), its regulation as a legal subject is in Book III Title IX which regulates the rights and obligations of legal entities (*rechtpersoonlijkheid*), but some experts consider the regulation of *rechtpersoon* in BW to be incomplete (Sandra & Aristya, 2000). That a legal entity has assets that are separate from the assets of its management, so that in the event of a legal issue, the management is only responsible for the assets of the legal entity, meaning their liability is restricted to matters directly involving the company (Sandra & Aristya, 2000).

The management of a legal entity can act to represent the legal entity with other parties. The organ is responsible and liable for all its actions or agreements made with these other parties. There are several theories that can be used to determine how the relationship between organ liability and legal entity liability, namely: a) the activities of the organ are conducted within the boundaries set by its jurisdiction, then the legal entity must be responsible and bound; b) the organ's actions are carried out outside its authority (ultra vires), but the actions do not harm the legal entity, rather benefit it, then the legal entity is still responsible and bound; c) ultra vires organ actions that result in harm to the legal entity, then the legal entity is not responsible. The organs must be held personally and jointly and severally liable to other parties; d) the organ's actions are unlawful but carried out within the limits of its authority, the legal entity is still responsible and bound; e) the organ's actions are unlawful but ultra vires, the legal entity is not responsible and not bound; f) the organ's actions are unlawful actions carried out within the limits of its authority, but there is personal fault from the organ, the legal entity is still responsible and bound. However, the organ can still be held personally liable. If the legal entity has paid compensation to another party, the legal entity has the right to demand back from the organ personally, what has been paid; g) the organ's actions are carried out within the limits of its authority but contain negligence of duty or negligence that causes harm to the legal entity, it remains responsible and bound. However, the organ is still held personally liable (Meliala, 2006).

Based on its nature, a legal entity can be divided into 2 (two) categories, namely between corporations (corporatie) and foundations (stichting). A corporation is an association that is a business entity. Based on Indonesian law, business entities that have status as legal entities are limited liability companies (PT) and cooperatives. As for the foundation, it is not a commercial organization, but rather a group involved in various aspects such as social, religious, educational, and humanitarian activities (Sandra & Aristya, 2000).

In the realm of criminal law, other terms for corporation, such as corporatie (Dutch), corporation (English), and corporation (German), all have roots in the Latin word "corporare," which originated in the Middle Ages. The word "corporare" traces back to the Indonesian term "corpus," which conveys the idea of forming or giving a body, ultimately leading to the creation of corporatio through the process of corporealization (Syahrin et al., 2019). According to Utrecht quoted by Moh. Saleh Djindang, explains the corporation as a group of individuals who join forces under the law to form a distinct legal entity, resembling

a person. Corporations are legal entities comprised of members, but possess their own set of rights and duties independent of those of the individual members (Ali, 2005).

In Indonesia, the acknowledgment of companies committing criminal offenses developed through different laws, not tied to the Colonial Criminal Code. The Colonial Criminal Code maintains a focus on individual responsibility for criminal offenses, as outlined in Article 59. Legislators initially held the belief that legal responsibility for crimes could only be attributed to humans. This belief is evident in the drafting of Article 59 of the Colonial Criminal Code, particularly in the use of the term "*hij die*" meaning "whoever" to describe the perpetrator of an offense. Which in its development, criminal law policy makers (lawmakers) when devising crimes, take into account the fact that individuals frequently engage in activities within or beyond established institutions. Consequently, the regulation of corporations or businesses as legal entities under criminal law was established (Dwija, 2017).

Corporate crime is a type of white-collar crime that emerges as a result of the progress made in economic and technological spheres. Corporate crime is an ongoing phenomenon that constantly evolves and adapts to new circumstances. The existing criminal laws in Indonesia are inadequate in addressing and keeping up with these changes, as evidenced by the shortcomings in Article 59 of the Colonial Criminal Code (Ahmat, 2018). In fact, according to Barda Nawawi Arief, the rules of punishment in the Colonial Criminal Code are solely oriented towards "persons" (natural persons), not addressed to corporations (legal entities). Most corporate contracts are subject to particular laws that explicitly designate corporations as responsible for committing crimes, therefore necessitating the need for unique penalties for corporations. These penalties may involve: 1) recognizing corporations as capable of committing criminal offenses; 2) specifying criminal consequences for corporations; 3) identifying individuals responsible for corporate wrongdoing; 4) establishing criteria for holding corporations/managers accountable; 5) setting forth distinct punishment guidelines for corporations; 6) outlining circumstances for exempting corporations from prosecution or punishment (Arief, 2011).

Corporate organizations are currently acknowledged as entities that can be deemed responsible for unlawful actions under particular legislation that deals with corporate wrongdoing. The earliest legal recognition of corporations as entities capable of facing criminal charges emerged with Law No. 7/Drt. 1995 on Economic Crimes. Subsequently, numerous Indonesian laws have incorporated provisions for corporate criminal liability across various sectors. These include industrial regulations (Law No. 5/1984), postal services (Law No. 6/1984), and fisheries legislation (Law No. 9/1985 as amended by Law No. 31/2004). The banking sector is covered under Law No. 7/1992 as modified by Law No. 10/1998, while financial markets fall under Law No. 8/1995 on Capital Markets and Law No. 10/1995 on Customs.

Drug-related offenses are addressed through Law No. 50/1997 on Psychotropic Substances and Law No. 22/1997 on Narcotics, which was later amended by Law No. 35/2009. Environmental crimes are governed by Law No. 23/1997 on Environmental Management, subsequently replaced by Law No. 32/2009 on Environmental Protection and Management. Business competition issues are regulated under Law No. 5/1999 on Prohibition of Monopoly and Unfair Business Competition, while consumer protection is covered by Law No. 8/1999. Anti-corruption measures are outlined in Law No. 31/1999 as amended by Law No. 20/2001, and money laundering prevention is addressed in Law No. 8/2010 (Rohman, 2018). The unique regulations beyond the Colonial Criminal Code govern corporations in terms of criminal law, focusing on holding corporations responsible for their actions that result in harm.

Furthermore, the participation of companies as legal entities accountable for criminal offenses in Indonesia has been clearly specified by their inclusion in the criminal law statutes

of the National Criminal Code. According to the National Criminal Code, corporations can be held responsible for criminal offenses, meaning they have rights and responsibilities as the perpetrator of a crime (Article 45 paragraph 1). The National Criminal Code defines corporations as legal entities that can take on various structures such as limited liability companies, foundations, cooperatives, state-owned enterprises, and associations, whether they are formally acknowledged or not. Business entities like partnerships and firms are also considered under this category as per the laws and regulations stated in Article 45(2). The rules governing corporations as legal entities can be found in Articles 45 to 50 of the National Criminal Code.

Corporate criminal activities refer to unlawful actions carried out by company officials with a designated role in the company's hierarchy or individuals who represent the company in various capacities. These actions are conducted in the company's best interest or as part of its operations, either independently or collaboratively, as stated in Article 46 of the National Criminal Code. Furthermore, in terms of the consequences for breaking the law that can be imposed on corporate entities under criminal law, the primary punishment generally involves fines and other penalties such as compensating the victims, fixing the harm resulting from unlawful behavior, fulfilling neglected obligations, complying with customary obligations, funding training programs, confiscating assets or profits acquired through criminal activities, publicizing court decisions, revoking specific licenses, permanently banning certain actions, shutting down parts or all of the company's operations, stopping business activities, and breaking up the corporation are addressed in Sections 118 to 120 of the National Criminal Code. Comparing corporate dissolution as a penalty to harsh punishments such as death sentence is discussed.

As per the National Criminal Code, a corporation is characterized as a structured group consisting of individuals and/or resources, whether it be an entity such as LLCs, foundations, associations, cooperatives, state-owned enterprises, regionally-owned enterprises, and village-owned enterprises, or a similar organization, or an informal group or commercial entity like a corporation, partnership, or equivalent organization described in Article 146 of the National Criminal Code.

Political Party

Article 1 point 1 of Law No. 2/2011 on Political Parties (Amendment of Law No. 2/2008), establishes a definition of what is meant by a political party, namely a national organization consisting of Indonesian citizens who have come together voluntarily with a shared vision to safeguard the political welfare of its participants, the community, and the country. It is focused on maintaining the honor and principles of the Indonesian Republic as outlined by Pancasila and the 1945 Constitution.

Starting from this definition, it contains several elements that are important in relation to political parties as "national organizations", which according to Nani Mulyati and Topo Santoso is a new term and first appeared in Law No. 2/2008. That the clause "national organization", previously did not exist in Law No. 31/2002 which was the first previous regulation regarding political parties and there was no explanation of the clause, either in Law No. 2/2008 and its first amendment in Law No. 2/2011. Literally, what is meant by a national organization is a national entity is characterized by its size, administration, and management. For a political party to gain legal recognition, it must have administrative presence in every province, cover at least 75% of districts or cities within each province, and involve a minimum of 50% of sub-districts in every city according to Law No. 2/2011 Article 3 paragraph (2) letter c. Therefore, broadening the definition of a "national organization" underscores the necessity for management to be established in various regions of Indonesia (Mulyati & Santoso, 2019).

Additionally, in Indonesia, it is important to note that a political party is established through the collaboration of individuals who are dedicated to promoting and safeguarding the political interests of its members, the public, the country, and the government. According to this definition, political parties are restricted to advocating for general political goals in order to acquire political influence (Mulyati & Santoso, 2019). Political parties have the option to gain official recognition by meeting the criteria outlined in Article 3 of Law No. 2/2011 and undergoing registration with the Ministry of Law and Human Rights. Once a political party is officially recognized, it is bestowed with a distinct legal persona separate from its individual members (Mulyati & Santoso, 2019). Despite this, a political party in carrying out its status as a national organization cannot escape the possibility of avoiding corrupt behavior and even violating the rules and regulations in obtaining a struggle for political interests.

Each country has its own unique way of regulating the dissolution of organizations, such as political parties, and ensuring that national interests are safeguarded. Organizations should only be dissolved following a legal process and by a neutral court, as they represent important aspects of freedom of belief and expression (Iskandar Nasution, 2021). For a political party to be officially disbanded, it needs a court ruling that is backed by sensible and fair reasoning. A political party's legal existence can come to an end through dissolution, which can only happen under certain conditions as laid out in Law No. 2/2008 and Law No. 2/2011. These circumstances include the party choosing to dissolve on its own, merging with another party, or being dissolved by the Constitutional Court.

Indeed, the disbandment of a political organization, either by its own choice or as a result of merging with other parties, is undeniably something that can be easily understood. However, the dismantling of political parties by state authority, such as the Constitutional Court, may result in controversies and issues stemming from the enforcement of the decision (Iskandar Nasution, 2021). Sanctioning political parties by the government does not necessarily eliminate the potential for further sanctions to be imposed, namely disbanding political parties may be seen as unconstitutional and a breach of legal rules.

In the various time periods concerning the control over the disbanding of political organizations in Indonesia. In the old order era, the focus was primarily on ideology, the foundation and goals of the government, and potential dangers to national security and territorial boundaries. Moreover, political parties can undergo dissolution due to conflicting ideologies, principles, objectives, agendas, and party operations that are deemed to be in violation of the 1945 Constitution. During the Old Order era, the government, specifically the President, took over the responsibility of disbanding political parties. The Supreme Court, acting in this situation, only took into account the President's appeal. The same thing also existed during the New Order period, but during the Reformation period there was a shift. The power to determine the disbandment of political organizations lies within the jurisdiction of the judiciary, specifically the highest court and later the Constitutional Court, with the government playing only a minor role as the one requesting legal action (Iskandar Nasution, 2021). The Constitutional Court is authorized to decide on the disbandment of political parties, as outlined in Article 24C paragraph (1) of the 1945 Constitution, one of its four powers.

Apart from that, there are multiple methods to classify the various types of offenses that political parties can engage in. That is, whether the activities of a political party are "genuine" or "not", i.e. representing the will of the people. Thus, to see the delinquency or deviation of political parties is always two-sided. Based on this, according to Maršavelski, namely: Firstly, political parties sometimes fail to represent the interests of their voters or supporters by abusing the powers vested in them (e.g. corruption, violence, illegal phone tapping); Secondly, sometimes the interests of their voters or supporters are themselves unlawful, meaning that in such cases political parties are loyal to the people they represent, but in doing

so break the law (e.g. the activities of terrorist groups or pro-separatist movements) (Maršavelski, 2015).

Not only that, there are several studies related to the criminality of political parties that show their criminal behavior is mainly limited to economic crimes (corruption, tax evasion, etc.); electoral crimes (unlawful campaign financing, electoral fraud, etc.); political crimes (treason, *lese-majeste*, sedition); crimes committed on a global scale such as genocide, war crimes, and crimes of aggression; crimes against privacy (illegal data interception and illegal wiretapping); hate speech; unlawful imprisonment and torture (Maršavelski, 2015)

The Position of Political Parties in the National Criminal Code

If a particular law categorizes a corporation as a organized group of people or resources, regardless of its legal status, and uses this definition to classify and potentially categorize a political party as a type of corporation, then it is possible for a political party to fall under this definition. Therefore, political parties have the ability to be recognized as legitimate entities with legal responsibilities and entitlements, allowing them to engage in legal activities and assume legal liabilities.

Indeed, political parties are classified as businesses when they are given legal recognition after meeting the criteria laid out in Article 3 of Law No. 2/2011. Based on this, political parties are considered to have assumed different and separate rights and obligations from their members who personify them independently in terms of carrying out their activities as political parties. Of course, this supposition has implications for the possibility that political parties can commit a violation of the law based on provisions that contain corporations as legal subjects. The rights and obligations of political parties as legal entities have also been determined in Article 12 and Article 13 of Law No. 2/2008 jo Law No. 2/2011. Aditionally, political parties have the ability to handle internal conflicts through either legal means or informal resolutions, effectively resolving any disputes that may arise within the party (Article 32).

Furthermore, under criminal law, the National Criminal Code defines a range of legal structures that can be classified as business entities. These include limited liability companies, foundations, cooperatives, state-owned enterprises, and other similar entities. This also includes both incorporated and unincorporated associations, as well as business entities like firms, limited partnerships, or other similar entities as specified in the applicable laws and regulations (Article 45 paragraph 2 of the National Criminal Code). Thus, political parties, considered legal entities, fall under the category of corporations in the eyes of criminal law. Even though it is not explicitly stated, political parties are subject to the same regulations as corporations according to the National Criminal Code.

The use of the term "legal entity... or similar..." can be broadened to encompass the portrayal of a legal entity as having attributes and responsibilities outlined in political party legislation. Furthermore, political parties, classified as legal entities similar to corporations under the National Criminal Code, can be subject to provisions in Article 46 to Article 48 if they engage in criminal behavior. Therefore, arrangements related to punishment for corporations, namely the main and additional punishment in the National Criminal Code (Article 118 and Article 119), can also be applied to political parties as corporate legal subjects. Thus, the National Criminal Code is not limited to holding accountable corporate officials, such as those from political parties, for committing crimes. It also allows for political parties as legal entities to be targeted for prosecution.

Criminal Liability and Punishment of Political Parties in the National Criminal Code

Arrangement of Criminal Responsibility and Punishment of Corporations in the National Criminal Code

The Criminal Code of the Colonial era did not recognize Corporations as entities that could be held responsible for criminal actions, as mentioned before, therefore to respond to serious crimes, laws and legal provisions outside the Colonial Criminal Code were formed to ensnare the criminal liability of Corporations. However, in the formation of the law, there is no uniformity in terms of the definition of corporation and corporate liability (Bahari et al., 2020) and sometimes its application in criminal liability is interchanged between the management (as *natuurlijk persoon*) and the Corporation itself (Mulyati, 2018).

Furthermore, Nani Mulyati tries to determine the classification based on doctrinal benchmarks on corporate liability in Indonesian criminal law. She decides how to categorize things using various laws that decide when corporations may bear criminal liability. This decision is mainly based on the concepts of vicarious liability and identification doctrine. In the principle of vicarious liability, the responsibility for an act is assigned to a person representing the Corporation, regardless of their role in the organization or the Corporation's preventive measures to avoid criminal activities. Secondly, the more recent law introduces the concept of qualified vicarious liability, which includes specific requirements for criminal actions done to benefit or on behalf of the Corporation. Third, the principle of identification states that the Corporation should not be held accountable for the illegal activities carried out by its front-line employees, as these actions do not represent the intentions of the Corporation as a whole (Mulyati, 2018).

There are several classifications that are compiled in several models of criminal liability of the Corporation. The initial model involves individuals performing tasks either through employment or other connections like power of attorney, within the setting of legal entities, either individually or in collaboration. On the other hand, the second model involves individuals representing the Corporation for its advantage within the Company's surroundings, either individually or in teams, due to employment or other associations. Lastly, the third approach consists of activities carried out or directed by the managing staff of the organization in accordance with the objectives and vision of the company, and in line with the responsibilities and tasks of the person responsible or directing, all actions are taken to improve the company (Mulyati, 2018).

The initial model focuses on the concept of strict vicarious liability, which means that the actions of individual members of the Corporation do not impact the Corporation's responsibility. Meanwhile, this model emphasizes that administrators who commit criminal acts in the Corporation are not seen whether they provide benefits or benefits to the Corporation to cause the Corporation to be criminally responsible (Mulyati, 2018). Laws that adopt this model include Law No. 31/1999 in conjunction with Law No. 20/2001 on Combating Corruption, Law No. 10/1995 in conjunction with Law No. 17/2006 on Customs, Law No. 11/1995 in conjunction with Law No. 39/2007 on Excise, Law No. 15/2003 on Stipulating Government Regulation in Lieu of Law No. 1/2002 on Combating the Crime of Terrorism into Law and Law No. 44/2008 on Pornography.

In addition, the second model is an adoption of vicarious liability and there is an influence from the identification doctrine. This model introduces a constraint on management, leading to the Corporation being legally responsible when actions are carried out by individuals representing the company, instead of just being based on the employment relationship as in the initial model. If a business engages in illegal behavior, they can face consequences for their conduct. It must be proven that the wrongdoing was committed in the course of fulfilling managerial responsibilities for the purpose of helping the Company. In this situation, it is the responsibility of the company to oversee the actions of its employees or individuals given specific duties (Mulyati, 2018). Laws that follow this model include Law No. 21/2007 on the Eradication of Trafficking in Persons, Law No. 1/2009 on Aviation and Law No. 17/2008 on Shipping.

The third model, as previously described, adopts the identification doctrine, namely the actions of controlling personnel can be attributed to the Corporation as long as they are performed in order to meet the goals and objectives of the Corporation, executed following the responsibilities and roles of the individuals within the Corporation, and done with the aim of bringing advantages to the Corporation. This model limits the Corporation's criminal liability to the actions and mistakes of the controlling personnel or management. Although, this model still allows the Corporation's criminal liability to be determined from the acts and misconduct of the lower-level management, the words "ordered by the controlling management" are sufficient to limit the application of criminal liability to the Corporation because there is a possibility if the controlling management does not expressly or indirectly order the personnel under him to commit an action that goes against legal regulations. The limitations associated with the behaviors of managers who can be held responsible by the company are outlined in this model. Managers must consider these restrictions while carrying out their responsibilities to promote the company's objectives, follow their designated roles and obligations, and strive to enhance the company's success (Mulyati, 2018). The law that adopts this model is Law No. 8/2010 on Money Laundering.

The National Criminal Code regulates the criminal liability of the Corporation under Article 45 to Article 50. With regard to the provision of criminal punishment and the imposition of measures, it is regulated under Article 118 to Article 124 of the National Criminal Code. Article 46 of the National Criminal Code states that individuals with a managerial role in a corporation can be held responsible for any criminal actions they commit on behalf of the company. This refers to staff members who are representing the company or working in its favor while fulfilling their responsibilities. This provision aims to hold both individuals and corporations accountable for illegal activities conducted during the company's business operations. The concept of "functional position" refers to the authority held by an individual to act on behalf of, decide for, and oversee operations within a company, including those in roles that involve ordering, committing, influencing, or assisting in criminal activities. "Other relationships" could include temporary employment agreements, for instance.

From these provisions, it can be concluded as a matter relating to the actus reus of the corporate crime. This article states that the Corporation's illegal actions can only be carried out by a manager with a specific role within the organization, an employee, or any individual acting on behalf of the Corporation. This individual must ensure that their decisions are in line with the company's goals and objectives as they fulfill their responsibilities. The article discusses an operational position that involves being granted the power to represent the organization, lead decision-making processes, oversee operations, issue commands, take part in various activities, and encourage others to commit illegal acts. Therefore, it can be inferred that the National Criminal Code adopts the identification doctrine. Not only that, the Criminal Code makers intend the limitation of criminal offense is not only committed by the controlling personnel but also the people who can take and decide a policy in the Corporation as specified in Article 47 of the National Criminal Code.

Criminal Liability and Punishment of Political Parties as Corporations

Political parties, like business corporations, can face criminal charges under the National Criminal Code, in accordance with previous discussions on the matter. By broadening the definition of what constitutes a corporation, political parties would fall under the same criminal liability framework that applies to corporate entities in the National Criminal Code. However, existing Political Party Law already establishes certain restrictions for political parties, though the criminal penalties outlined in these regulations target party leadership and management rather than holding the political party itself accountable as a legal entity.

The forms of violations along with the sanctions imposed regarding Political Parties based on the Political Party Law are as follows: a) Failure to comply with the rules for Political Party formation (Article 2), Violating the requirements for registering a Political Party as a Legal Entity (Article 3), Political Party principles conflicting with Pancasila and the 1945 Constitution (Article 9 paragraph 1), Political Parties misusing the name, symbol, or image of the Indonesian Government (Article 40 paragraph 1), and facing consequences such as denial of registration as a Legal Entity by the Ministry of Law and Human Rights (Article 47 paragraph 1); b) Political Parties neglecting to maintain financial records (Article 13 letter h) and facing warnings from the government (Article 47 paragraph 2); c) Political Parties failing to submit reports on the use of financial aid funds (Article 13 letter i) and encountering penalties like termination of financial assistance (Article 47 paragraph 3); d) Political Parties without designated accounts for election campaigns (Article 13 letter j) and being cautioned by the General Election Commission (Article 47 paragraph 4); e) Political Parties relying on factions in legislative bodies for funding (Article 40 paragraph (3) letter e) and consequences from agencies responsible for upholding party integrity (Article 47 paragraph (5); f) Political Parties with legal status using the Government's name, symbol, or image (Article 40 paragraph 1) facing management suspension by the district court (Article 48 paragraph 1); g) Political Party actions in violation of the Constitution and other laws (Article 40 paragraph 2) leading to temporary party suspension by the district court for one year (Article 48 paragraph 2); h) Parties under temporary suspension but continuing to disobey rules (Article 48 paragraph 3) facing dissolution as per Constitutional Court decision (Article 48 paragraph 3); i) Parties engaging in business activities or owning shares in companies (Article 40 paragraph 4) facing temporary suspension of party management and confiscation of assets and shares to the state (Article 48 paragraph 6); j) Political Parties promoting communist ideologies (Article 40 paragraph 5) risking dissolution by the Constitutional Court (Article 48 paragraph 7); and k) Donations exceeding legal limits to Political Parties (Article 35 paragraph (1) letter b and letter c) may result in donations being confiscated by the state (Article 49 paragraph 3) (Mochtar, 2019).

The regulation of criminal sanctions has indeed been contained in the Political Party Law. Only the management of the Political Party, along with other specified individuals by the Political Party Law, are targeted with criminal sanctions, not the Political Party itself. Meanwhile, sanctions for Political Parties as adresat in the Political Party Law are only given administrative sanctions, dissolution, and confiscation. When political parties are categorized as corporate legal entities, any criminal acts committed by party members and administrators become corporate crimes under Articles 46 and 47 of the National Criminal Code. Consequently, political parties, along with their members or administrators, can be prosecuted if they satisfy the criteria specified in Article 48, sections b, d, and e of the National Criminal Code. Furthermore, Article 49 of the National Criminal Code establishes that political parties, including their leadership and membership, may be held criminally responsible and face corresponding sanctions.

The imposition of punishment against Political Party as a legal subject of Corporation must follow the provisions in Article 118 of the National Criminal Code and all forms of principal punishment applicable to Corporations can also be applied to be imposed on Political Party. However, specifically for additional punishment in the form of dissolution of the Corporation in Article 120 paragraph (1) letter l of the National Criminal Code cannot be applied to Political Parties, because it has limitatively become the authority of the Constitutional Court as stipulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The same thing also applies to actions against Corporations in Article 123 of the National Criminal Code. Therefore, only some provisions can be applied to Political Parties, because this is also related to the Political Party Law, especially freezing.

Thus, only actions in letters b and c of Article 123 of the National Criminal Code can be imposed on Political Parties, because this relates to administrative sanctions which are also still applicable in the Political Party Law, especially Article 48 paragraph (1) and (2). Regarding the additional consequences, the penalties outlined in the Election Law for Political Parties, who are considered as participants in the election process, should align with the regulations in Article 121 of the National Criminal Code because Political Parties are recognized as legal entities similar to Corporations.

Comparison of Political Party Liability and Criminalization in various countries

Certain countries, such as Italy, have laws that treat Political Parties as legal entities in a unique way. In Italy, Political Parties are not held criminally responsible because they play a crucial role in the Constitution. Not only that, France offers unique considerations for Political Parties in relation to their criminal liability under the law. Even so, in France, political parties can still be held responsible for criminal acts, although the Penal Code specifies that they may not face the harshest penalties. The provision stipulates that political parties cannot be subject to judicial surveillance and cannot be forcibly dissolved (Pieth & Ivory, 2011).

In Croatia, a major political party faced criminal conviction for corruption charges. The Croatian Democratic Union (HDZ), which is Croatia's largest political party, was found guilty in 2014 of participating in illegal financial transactions with Fimi Media Company over a six-year period from 2003 to 2009. The court determined that HDZ had improperly received donations totaling around 15 million kuna (approximately US$2.3 million). As punishment, the Croatian judicial system imposed the maximum penalty permitted under the law, requiring HDZ to pay both the fine and restitution for the illegally obtained funds. The total financial penalty amounted to 5 million kuna (about US$75,000) in fines plus 24.2 million kuna (roughly US$3.6 million) in compensatory damages. This legal process spanned two years and was commonly referred to as the most significant trial in Croatian media. Ivo Sanader, a previous Croatian Prime Minister, received an 8.5 year prison sentence for bribery and abuse of power, and was also implicated in another trial. Marsavelski suggests that political parties often engage in criminal activity when their desire for power outweighs their commitment to the common good (Mulyati & Santoso, 2019).

CONCLUSION

After examining the research findings, it is evident that political parties are actually subjects of Corporate Criminal law because they have included the category of Corporations determined in the National Criminal Code, therefore political parties may face criminal responsibility for illegal actions as outlined in the National Criminal Code. However, it cannot be equated with private/private corporations in general. Political Parties play a critical role in society and should not be subject to the same penalties for criminal behavior as private companies. It has also been limited that the matter of dissolution still follows and is based on what has been determined by the 1945 Constitution of the Republic of Indonesia, namely in the Constitutional Court.

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