

RINGKASAN

PEMBUBARAN KORPORASI SEBAGAI ALTERNATIF PEMIDANAAN DALAM TINDAK PIDANA KORUPSI

Abdul Muni

Pembubaran secara harfiah dimaknai sebagai tindakan menghilangkan atau menghapus eksistensi. Pembubaran merupakan sanksi terberat yang dapat dikenakan terhadap korporasi dibandingkan dengan jenis-jenis sanksi pidana tambahan yang lainnya. Undang-undang pidana yang mengakui korporasi selaku subjek hukumnya, tidak semua menerapkan sanksi pembubaran sebagai salah satu jenis pidana tambahan. Undang-undang yang menerapkan sanksi pembubaran korporasi, adalah Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Undang-Undang Nomor 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme. Akan tetapi, kedua undang-undang tersebut tidak disertai dengan peraturan pelaksanaan yang mengatur tentang mekanisme pembubaran korporasi. Mekanisme pembubaran korporasi telah diatur secara eksplisit dalam Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas dan Peraturan Pemerintah Nomor 45 Tahun 2005 tentang Pendirian, Pengurusan, Pengawasan Dan Pembubaran Badan Usaha Milik Negara. Namun, perlu diingat korporasi dalam konteks Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, oleh karenanya tidak dapat diterapkan terhadap badan hukum lain, seperti : yayasan maupun koperasi.

Pembubaran korporasi berdasarkan Pasal 143 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, dinyatakan : Penghentian kegiatan usaha perseroan; Namun penghentian kegiatan usaha tersebut, tidak mengakibatkan status hukumnya “hilang”. Perseroan yang dibubarkan baru kehilangan status badan hukumnya, apabila proses likuidasi dan pertanggungjawaban likuidator telah selesai dilaksanakan serta disampaikan kepada Rapat Umum Pemegang Saham (RUPS) atau Pengadilan Negeri atau Hakim Pengawas, tergantung pada siapa pembubaran tersebut diajukan. Selain definisi pembubaran sebagaimana dimaksud dalam Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas tersebut, Undang-Undang Nomor 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme dalam Penjelasan Pasal 8 ayat (5) huruf c menyatakan : yang dimaksud dengan “Pembubaran Korporasi” adalah langkah hukum untuk menghentikan perusahaan dari kegiatan usahanya. Ketentuan pembubaran dalam Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Undang-Undang Nomor 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme tidak ada keharusan dilakukannya likuidasi, sebagaimana ditentukan dalam Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Likuidasi yang berarti pemberesan merupakan tindakan keperdataan dalam melindungi kepentingan

pihak ketiga yang memiliki hubungan keperdataan dengan korporasi yang bersangkutan. Apabila merujuk pada ketentuan Pasal 143 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, maka diketahui bahwa proses likuidasi telah menjadi syarat mutlak untuk menghapus atau menghilangkan status badan hukum korporasi.

Selanjutnya atensi internasional terhadap pertanggungjawaban korporasi dalam tindak pidana korupsi telah dimulai pada tahun 2003, dimana beberapa negara anggota Perserikatan Bangsa-Bangsa (PBB) termasuk Indonesia telah membentuk komitmen yang kemudian tertuang dalam konvensi-konvensi internasional, salah satu diantaranya adalah *United Nations Convention Against Corruption*, 2003 (Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi) yang akhirnya diratifikasi melalui Undang-Undang Nomor 7 Tahun 2006 tentang Pengesahan *United Nations Convention Against Corruption*, 2003. Konvensi tersebut telah mempertegas mengenai permasalahan pertanggungjawaban korporasi melalui ketentuan Pasal 26 *United Nations Convention Against Corruption*, 2003 (Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi, 2003) yang menyatakan :

- (1) *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. (Terjemahan bebas : Negara Pihak wajib mengambil tindakan-tindakan yang perlu, sesuai dengan prinsip-prinsip hukumnya untuk menetapkan tanggung jawab badan hukum yang berpartisipasi dalam kejahatan menurut konvensi ini).*
- (2) *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. (Terjemahan bebas: Dengan memperhatikan prinsip-prinsip hukum Negara Pihak, tanggung jawab badan hukum dapat bersifat pidana, perdata atau administratif).*
- (3) *Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. (Terjemahan bebas : Tanggung jawab tersebut tidak mengurangi tanggung jawab pidana orang-perorangan yang melakukan kejahatan).*
- (4) *Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (Terjemahan bebas : Negara Pihak wajib pada khususnya mengusahakan agar badan hukum yang bertanggung jawab menurut pasal ini dikenakan sanksi pidana atau non pidana yang efektif, proporsional dan bersifat larangan termasuk sanksi keuangan)."*

Uraian di atas telah menetapkan sanksi pidana sebagai salah satu bentuk pertanggungjawaban korporasi. Namun ketentuan tersebut tidak menjelaskan mengenai jenis-jenis sanksi pidana yang dapat dikenakan terhadap korporasi. Sehingga penentuan atau pemilihan jenis-jenis sanksi pidana yang akan diterapkan kepada korporasi dalam tindak pidana korupsi, akan diserahkan

se penuhnya kepada negara yang bersangkutan. Undang-Undang Tindak Pidana Korupsi tidak menetapkan pembubaran korporasi sebagai salah satu jenis sanksi pidana tambahan. Beberapa jenis sanksi pidana tambahan sebagaimana yang diatur dalam Pasal 18 ayat (1) Undang-Undang Tindak Pidana Korupsi hanya berorientasi pada pengembalian kerugian keuangan negara.

Pemilihan jenis-jenis sanksi pidana yang tepat akan menentukan tingkat keberhasilan pemberlakuan peraturan perundang-undangan yang bersangkutan. Sanksi yang dipandang paling menakutkan, akan menjadi senjata yang paling efektif dan efisien dalam menanggulangi kejahatan. Berkaitan dengan jenis-jenis sanksi pidana tambahan yang dapat dikenakan terhadap korporasi, sanksi pembubaran korporasi merupakan satu-satunya sanksi yang dapat dipersamakan dengan pidana mati.

Disisi lain, khususnya terhadap subjek hukum manusia alamiah (*natuurlijk persoon*) telah diterapkan sanksi pidana mati sebagai sanksi terberat. Oleh karenanya perlu dipertimbangkan dalam Undang-Undang Tindak Pidana Korupsi dicantumkan sanksi pidana tambahan berupa pembubaran korporasi.

Keberadaan asas persamaan dihadapan hukum (*equality before the law*) yang menghendaki adanya perlakuan yang sama terhadap semua subjek hukum, seharusnya jadi acuan bagi pembuat undang-undang pada saat merumuskan kebijakan pidana (*penal policy*) dengan menerapkan sanksi terberat terhadap manusia alamiah (*natuurlijkpersoon*), maka hal yang sama juga harus diperlakukan terhadap subjek hukum yang lainnya.

SUMMARY

CORPORATE DISSOLUTION AS THE ALTERNATIVE OF CRIMINAL PURSUIT IN CURRUPTION

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Dissolution, literally defined as the act of relieves or gets rid of an existence. Dissolution is the worst punishment that can be subject to a corporation from several kind of punishment which is defined as additional crime in some regulation of applied law. In fact, not all of the penal law acknowledges a corporation as the subject of law, applying dissolution penalties as one of a kind of additional law, as for The Law that apply dissolution penalties is The Law Number 8 2010 about Prevention and Eradication of Money Laundering and The Law Number 9 2013 about Prevention and Eradication of Terrorism Funding. However, both of that laws are not accompanied by implementing regulation which is regulate about the mechanism of dissolution as form of criminal pursuit. The mechanism of corporate dissolution has been regulated explicitly in The Law Number 40 2007 about Limited Company and Government Regulation Number 5 2005 about Establishment, Management, Monitoring and Dissolution State Owned Enterprises. But, it is important to be remembered that the corporation in the context of The Law Number 40 2007 about Limited Company only the limited company itself, therefore it can't be applied to the others corporation such as: foundation or cooperative, whereas the corporation in the context of Government Regulation is Liability Company and Public Company.

Dissolution based on article 143 verse (1) The Law Number 40 2007 about Limited Company, declared: termination of company activities; but those termination don't make the status "dismiss". The dissolved company lost their legal entity until the liquidation is finished, and the responsibility of the liquidator in the end of liquidation proses accepted by General Meeting of Shareholders, District Court and Monitoring Judge. Besides the definition in The Law Number 40 2007 about Limited Company, the Number 9 2013 about Prevention and Eradication of Terrorism funding in the explanation of article 8 verse (5) letter c declare: what is meant by "Dissolution of Corporation" is a legal action to stop the company from their activities. The provision of dissolution in The Law Number 8 2010 about Prevention and Eradication of Money Laundering and The Law Number 9 2013 about Prevention and Eradication Doing an Injustice in Terrorism funding, there is no necessity to be liquidated, as mentioned in The Law Number 40 2007 about Limited Company. Liquidation which means settlement is a civil action in order to protect third side interests that have a civil connection with the connected corporation. If we refer to article 143 verse (1) The Law Number 40 2007 about Limited Company, it is known that the liquidation process has become the absolute requirement to relieve and get rid of the corporation legal entity status.

Hereafter the international attention of corporation responsibilities for doing an injustice in corruption has been started in 2003, where several countries of United Nations members including Indonesia made a commitment which is declared in International Conventions, one of those is United Nations Convention against Corruption, 2003 that ratified in The Law Number 7 2006 about Ratification of United Nations against Corruption, 2003. The convention has emphasized the issues of corruption responsibility in verse 26 United Nations against Corruption, 2003 that state:

- (1) Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
- (2) Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
- (3) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
- (4) Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

The above description has been assigned the criminal punishment as one of the legal entity responsibility. But the provision is not explained about the type of criminal punishment that can be imposed on corporations. So that the determination or selection of type of the criminal punishment which will apply in the corporation in Corruption, will be submitted entirely to the country concerned. The Law of Corruption didn't mention dissolution as one of the additional criminal punishment which will be applied to the corporation. Some kind of additional criminal punishment as stated in article 18 verse (1) The Law of Corruption only orientated in repayment of state lost, so that identic with materiel.

The selection of the type of appropriate punishment will be determined the success level of the regulation of law itself. The scariest punishment, will be the most effective and efficient weapon in handling the crime. Related to the type of criminal punishment which can be applied to the corporation, the dissolution of corporation is the only punishment that equivalent with death.

On the other side, specially to the natural human as the legal subject (*natuurlijk persoon*) has been applied death as the heaviest penalty that imposed by the court. Although the death punishment that applied to the human is type of main crime that should not be compared with type of additional crime (*Incasu*, Dissolution) that only *accessoir* (supplementary), but the physical form of the corporation as legal subject that only can receive dissolution as the heaviest penalty is the only reason that considered.

Besides that, the existence of the equality before the law that require the same treatment to all of the legal subjects, should be the reference to the legislators in making the penal policy by applying the heaviest penalty to the natural human (*natuurlijk persoon*), so the same think should be applied to the others legal subject.

ABSTRACT**CORPORATE DISSOLUTION AS THE ALTERNATIVE OF CRIMINAL PURSUIT IN CURRUPTION**

The reality that corporations can do the corruption has been approved when The Laws No. 31 1999 about Eradication of Corruption was legally enforced and binding from August 16th 1999. As the legal subject that should be treated equally with the other legal subject, the form of Corporation as fiction entity causes corporation may not be punished by death penalty, imprisonment or confinement, just like human. The Laws No. 31 1999 about Eradication of Corruption can only assigned the revocation of temporary business licenses as the heaviest penalty that may be imposed on corporations. Even though, several Laws have applied the kind of penalty that equivalent with death, which is the dissolution of the corporation itself. Dissolution substantially is the action which aims to eliminate or remove the corporate existence, and has been mandated by The Laws to be accompanied by liquidation as legal protection form for third parties who have the right to assets of corporation.

Keywords : *corruption, dissolution, liquidation.*