



RESPONSIBLE CORPORATE OFFICER DOCTRINE AS A NEW IDEA IN THE NATIONAL CRIMINAL CODE (KUHP) ON CRIMINAL LIABILITY IN CORPORATIONS

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Abstract

The 2023 National Criminal Code contains several new provisions that have not been regulated in the current Criminal Code. One of them is criminal liability, which can be imposed on the corporation's administrators (executives/superiors), as in Article 48, Letters D and E. In order to analyze the laws and regulations used as the primary basis for research, researchers use normative juridical methods using qualitative analysis techniques with several collections of secondary data sources in the form of laws and regulations, books, and national and international journals. Based on this research, it can be understood that one of the concepts of criminal liability in the corporate sector regulated in the National Criminal Code is the doctrine of responsible corporate officers (RCO). However, the National Criminal Code does not fully adopt the criminal responsibility model. Therefore, it is necessary to review Articles 46 and 49 of the National Criminal Code to see the concept of RCO. In addition, criminal liability based on (RCO) needs to consider Articles of Association and Bylaws in corporations, considering that this liability model is closely related to sectoral corporations.

Keywords: *National Criminal Code, Responsible Corporate Officer Doctrine, Corporate Criminal Responsibility.*

Abstrak

KUHP Nasional 2023 memuat beberapa ketentuan baru yang belum diatur pada KUHP yang digunakan saat ini. Salah satunya yakni pertanggungjawaban pidana yang dapat dibebankan pada pengurus (eksekutif/atasan) dalam korporasi sebagaimana dalam pasal 48 huruf d dan e. Guna menganalisis aturan perundang-undangan yang dijadikan landasan utama penelitian, peneliti menggunakan metode yuridis normatif menggunakan teknik analisis kualitatif dengan beberapa pengumpulan sumber data sekunder berupa peraturan perundang-undangan, buku-buku, jurnal bersekala nasional maupun internasional. Berdasarkan penelitian ini dapat dipahami salah satu konsep pertanggungjawaban pidana dalam sektor korporasi yang diatur pada KUHP Nasional adalah doktrin *responsible corporate officer* (RCO). Namun model pertanggungjawaban pidana tersebut tidak dianut sepenuhnya pada KUHP Nasional, oleh karena itu perlu meninjau Pasal 46 dan 49 KUHP Nasional untuk melihat konsep RCO. Selain itu pertanggungjawaban pidana berdasarkan (RCO) perlu mempertimbangkan AD/ART dalam korporasi mengingat model pertanggungjawaban jenis ini erat kaitannya dengan sektoral dalam korporasi.

Kata Kunci: *KUHP Nasional, Doktrin Responsible Corporate Officer, Pertanggungjawaban Pidana Korporasi.*

INTRODUCTION

The word corporation is a loan word from the English language. This word also has similarities with Dutch *corporatie*, German *corporation*, and Latin *corporatio* (Kristian, 2013: 579). By its terminology, a corporation is the business of an organization which according to law has individual rights and obligations, and follows certain objectives. According to Garner and Bryan A, a corporation itself is a group of people or legal entities that are permitted by law to carry out actions like individuals as legal subjects. Based on the definition above, whether simple or complex, a corporation is defined as a legal entity that is considered to have personality before the law (Harkrisnowo, 2019: 411). Corporations in Indonesian legal regulations have undergone several changes and what has just been passed is the National Criminal Code or 2023 Law Number 1 concerning the Criminal Code. Based on Article 45 paragraph (2), what is recognized as a corporation includes legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, or equivalent, as well as associations both with and without legal entities, business entities in the form of firms, limited partnerships, or equivalent in accordance with the provisions of statutory regulations.

Crimes that take place in the corporate sector cause various detrimental impacts suffered by individuals, society and the state (Reksodiputro, 2020: 60). One of the major losses caused by corporate crime is in the environmental sector. The various criminal acts mentioned above can be held accountable by the corporation itself, the corporation and its management, and the management itself. However, to find out who is responsible for a criminal act in a corporation, proof is needed to determine who is criminally responsible, whether it is the corporation based on the actions committed by its management, the management's responsibility for the criminal actions of their subordinates, or the management's responsibility for the management's own mistakes. Therefore, there are several possibilities for perpetrators of criminal acts in corporations, both active and passive, who play a role in committing crimes or allow crimes to occur even though they have the authority to stop them. For example, an employee who dumps hazardous waste into a local river may be acting against company policy and against his superior's instructions, but there is also the possibility that the subordinate is acting with the approval of his superior (Cohen, 1996: 400).

On this basis, responsibility for corporate criminal acts cannot be purely held by the management when the criminal act is done by the subordinate. It could be that the criminal act was against the orders of his

superiors (management), or the management was responsible for criminal acts committed by his subordinates because he gave approval either directly or indirectly. The problem in this case is when the management gives approval indirectly; the management is aware of a criminal act within the corporate which he has authority but the criminal act is ignored. It is very difficult to prove that the management has made a mistake because of its rarity of proof in the form of documents or other things stating that the action received consent from the management (superior). In other words, it is difficult to see any evidence that the management was involved in the criminal act. Based on the explanation above, the focus of this research is on the analysis of the responsible corporate officer doctrine which is considered to be in line with Article 48 letters d and e of the National Criminal Code.

Basically there has been previous research which has several similarities with the research that the researcher will discuss, the first is a journal written by Fines Fatimah and Barda Nawawi Arief entitled Vicarious Liability in Criminal Law Formulation Policy in Indonesia. Related to the similarities with this research is the sub-discussion which explains the formulation of corporate criminal responsibility. However, in this research the researchers focus more on aspects of the vicarious liability doctrine which was initiated to be included in the Draft Criminal Code (RKUHP) in 2010. In this research, the researchers provide ideas related to the concept in the vicarious liability doctrine which can be adopted into the 2010 RKUHP. This journal is of the view that a criminal act can be charged to another person even though the person did not commit it when: the criminal act has been formulated in the law relating to strict liability offences, is threatened with a fine, there is a relationship or employment relationship, the criminal act is committed by an employee within the scope of work and aims to benefit the employer, and there is a transfer of authority/delegation (Fatimah dan Arief, 2012: 35).

The second article is a journal written by Fifink Praiseda Alviolita entitled Criminal Liability by Corporate Management linked to the Geen Straf Zonder Schuld Principle. There, he explains that there are elements that cause ambiguity related to management representing the corporation in committing a criminal act based on Supreme Court Regulation (Perma) No . 13 of 2016. In this regulation, criminal liability is based on the doctrine of strict liability, so that it can exclude the element of error in criminal acts. The authors in this journal view that there needs to be a limit on management who are deemed to be able to represent a corporation committing a criminal act and include statutory regulations so that the classification of managers who can be made suspects or defendants is clear (Alviolita, 2018: 13).

The third article is a journal written by Khairil Andi Syahrir, M. Said Karim, Hijrah Adhyanti Mirzana entitled Update on the Method of Proving Corporate Legal Subjects as Perpetrators of Corruption Crimes. Here, the author explains that there is a way to prove that the subject is charged with criminal responsibility for corporate criminal acts based on the Draft Criminal Code. As for the Draft Criminal Code, there are two approaches to corporate criminal liability; first, the corporation that acts and the corporation that is burdened with responsibility, and second, the corporation that carries out responsible management. In this journal the author concludes that the regulation of corporate criminal liability based on Article 49 of the Draft Criminal Code is more directed towards doctrine of identification. It is stated that this doctrine is almost similar to the doctrine of vicarious liability . The difference is that the identification doctrine is aimed at criminal acts committed by high level managers and the vicarious liability doctrine is aimed more at criminal acts committed by subordinates. (Syahrir, et al., 2022: 45).

Despite similarities among the three journals, there are fundamental differences regarding the doctrine adopted in corporate criminal liability, where in this case the researcher uses the responsible corporate officer (RCO) doctrine. Apart from that, previous studies discussed criminal liability based on the Supreme Court Regulation and Draft Criminal Code before the final draft was ratified, were 2 points that had not been included in Article 48. When the final draft which has now been ratified by the state, these two points are considered to be in line with the responsible corporate officer doctrine. This research is very important, because by applying the doctrine that has been ratified in the National Criminal Code, administrators (superiors) in a corporation can be held criminally responsible for the criminal acts of their subordinates even though they were neither the directing mind nor participated in a criminal act in the corporate sector.

RESEARCH METHOD

This research uses a normative juridical research method, which is a study aimed at examining the norms, provisions, principles contained in it, and the applicable laws and regulations (Irwansyah, 2022: 42). In their approach, the researchers use studies that focus on literature through library research. The data analysis technique used in this research is qualitative analysis using and collecting secondary data sources in the form of statutory regulations, which is Law Number 1 of 2023 concerning the Criminal Code, the Legal Code Criminal Code (KUHP), Regulation of the Attorney General of the Republic of Indonesia Number: Per-028 /A/Ja/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects. As well as other legal materials related to the

problems in this research, using both national book sources and quotations from several international books or journals.

DISCUSSION

Responsible Corporate Officer (RCO) Doctrine

When discussing corporate criminal acts, we refer to mistakes committed by corporate managers. If a corporation is found guilty of a crime, the corporation can be subject to several types of penalties including fines, restitution, community service, and revocation of permits. Of course, apart from the corporation itself being subject to criminal liability, the guilty management can also be held liable (Sarin dan Lund, 2021: 295). However, it is necessary to first find out the mistakes of the management which caused a criminal act to occur within the corporation.

A corporation can be likened to a human body that has a nerve center and brain to control what the corporation does. Corporations also have hands, which act according to orders from the brain. Some people in the corporation are employees who are like hands to do certain jobs and cannot represent their will or thoughts. Meanwhile, several other people such as directors and managers represent the will and thoughts to control or direct the corporation regarding what it will do. This state of mind of directors and managers is the state of mind of the company. Thus, if the law requires individual fault as a condition for liability in a lawsuit, then the fault of directors and managers will be the company's personal fault (Yadav, 2015: 756).

When there is a criminal act within a corporate environment, those who can be held responsible are the corporation itself, its management, or other parties, in this case; employees of the corporation. According to the responsible corporate officer (RCO) doctrine, the state can prosecute and punish company managers (executives) who, although they may not have "awareness of wrongdoing", still have responsibility for corporate wrongdoing. In other words, under the RCO doctrine, a corporate manager (executive) can be held criminally responsible even though he was not directly involved in the criminal act. As long as the concerned executive has the authority to prevent corporate crime and fails to do so, he or she can become a target in a criminal lawsuit. The RCO doctrine clearly poses a challenge to the traditional understanding of criminal wrongdoing, according to which criminal liability is only for wrongs that have been personally committed, and only if one commits them with a guilty mind (Spinwall, 2014: 372).

This doctrine first appeared in 1943 as the doctrine of criminal responsibility in the Dotterweich case. The Dotterweich case involved the criminal prosecution of company officials under the Federal Food, Drug, and Cosmetic Act (FDCA) related to shipments of branded and adulterated

drugs. In the end, the case was resolved with the RCO doctrine, a doctrine which teaches that an administrator can be personally responsible for the criminal acts of his subordinates if the administrator was able to prevent the crime (Lerner, 2017: 493). This doctrine has power in preventing violations in corporations (Kushner, 2003: 681). In RCO, responsibility is assigned to the management for the illegal actions of other company agents, without evidence that the officials participated or had direct authority in the crime. This doctrine presents an opportunity to modernize criminal law in overcoming the difficulties in proving that an administrator (superior) permitted the criminal acts of his subordinates (Kushner, 2003: 682). In classical criminal law, proof of criminal responsibility by administrators is very difficult to detect, this is because there is no measure of authority of administrators when there is a criminal act by their subordinates. By implementing RCO, this can be overcome and become a flexible tool as a powerful prevention to bureaucratic concealment that protects criminal acts in the corporate environment (Hustis, 1994: 173).

In general, an administrator can be held responsible for corporate criminal responsibility when participating, assisting or colluding a criminal act, if it is proven that they acted on the official's orders or with his permission. However, it is very difficult to prove that corporate officials authorized criminal acts committed by subordinates, because such authorization is rarely documented. An administrator with great control over corporate operations can easily create the impression that he or she does not know the details of a criminal offense. On this basis, it will be difficult for the law to achieve this, because many laws require proof of a criminal act before imposing responsibility on administrators (Kushner, 2003: 686).

The RCO doctrine teaches that knowledge of a criminal act alone is not enough to impose a crime on an administrator, because the administrator may not have full power over criminal activities, and thus the administrator cannot be held criminally liable. On the other hand, power only without knowledge of a criminal act is not enough, because it allows guilty subordinates to involve their superiors. So, based on this doctrine, management must fulfill both authority over activities that give rise to crime and sufficient knowledge about criminal activities within the corporation. In the United States, a corporate administrator accessible to an RCO regulated by the Office of Inspector General (OIG) is any managing employee defined as an individual, including a business manager, general manager, administrator, or director who runs operational or managerial control over the entity, or parties who indirectly and directly carry out daily operations (Kim JD, 2017: 138). Then in 2013 the United States Food and Drug Administration (FDA) expanded the reach of the RCO doctrine to include third parties (distributors) who bear responsibility for the

manufacturer's actions. Thus, the RCO doctrine in the US now has a very wide reach. Of course, it also refers to the Environmental Protection Agency (EPA), which is an environmental agency in the United States whose aim is to create and enforce statutory regulations that are established for the environment and public health.

In the United States, this doctrine is often applied to environmental crimes. The prosecution presented circumstantial evidence that the defendant had knowledge of the environmental violations, even though in that case there was no evidence that the officers permitted the illegal activity, this can be seen in the case of *United States; V. Iverson*. The defendant, who was the President and chairman of a chemical company that was sentenced for violating the Clean Water Act and the Clean Air Act, was deemed to have knowledge of the discharge of pollutants into protected waters. In this case, the defendant's subordinates cleaned drums containing hazardous waste, so that the toxic waste water flowed into the city's sewer system. The evidence showed that defendant was aware of at least some of the waste water discharge from the drum washes because he was present at some of the cleanups and could observe or smell the hazardous waste. But the defendant did not personally dispose the wastewater and his presence at the dumping site does not prove that he authorized it. Therefore, the head of the chemical company can be held responsible for criminal acts committed by his subordinates if the following elements are proven: (Kushner, 2003: 706).

- a. The defendant was aware of the fact that pollutants were being discharged into the drain by employees.
- b. The defendant had the authority and ability to prevent the discharge of pollutants into the sewer system.
- c. Defendant did not prevent the ongoing discharge of pollutants into the sewer system.

A corporation, especially in the environmental sector, must report the owner or corporate officer responsible for the sector of refining, importing, and so on. In this case, the 'owner' is someone who is the main owner of the business or company, while the 'responsible corporate officer' is someone whose position as a corporate officer is in accordance with the governing law, and plays a role and is responsible for refining, importing, or so on (United States Environmental Protection Agency, 2003).

The explanation above is an application of the RCO doctrine, which allows superiors or administrators to be responsible for criminal acts committed by their subordinates because corporate administrators have the authority to prevent the actions of subordinates who commit criminal acts. Therefore, the judge can conclude that the management (superior) has authorized the violation even though not directly, and it is even considered

that he personally participated in a criminal act. To show that a defendant is a "responsible corporate officer," prosecutors must show that he or she had authority over the activity that gave rise to a crime and failed to stop it.

The RCO doctrine will impose an obligation on management (superiors) to prevent violations within the corporation committed by subordinates, and to know what behavior constitutes violations. If the administrator in this case does not take precautions then he is responsible as if he had committed the violation. When this doctrine is compared to "aiding and colluding", then the main difference is that the RCO doctrine substitutes a "relationship of responsibility" for the "action" requirement, as illustrated: a superior knows the criminal intent of a perpetrator who is his subordinate, and one commits overt actions to help the perpetrator's actions, so of course these two things are different (Kushner, 2003: 708). The difference is that in the RCO doctrine, the management does not actively aid or abet a criminal act, but rather he has responsibility for the company, is aware of a violation committed by a subordinate, and allows the criminal act or does not prevent it. Thus the RCO doctrine replaces the traditional rule, that a corporate administrator cannot be criminally responsible for the actions of his subordinates unless he has complete control over the criminal actions.

The RCO doctrine fills a gap in criminal law because pure criminal liability for corporations also has weaknesses. The advantages of this doctrine are: First, the RCO doctrine does not create new crimes, its function is to establish responsibility for actions that have been criminalized by law. Rather than isolating a criminal *actus reus*, the doctrine seeks to extract criminal responsibility from bureaucratic patterns. When documented evidence of a crime is not available, the doctrine focuses on the relationship of superior responsibility to subordinate behavior. The prevailing assumption is not that new crimes must be proven to cause administrators (superiors) to be punished, but that responsibility for existing crimes must not be avoided.

Second, the RCO doctrine provides a cheaper alternative than vicarious liability. RCO is one answer to the difficulty of proving that corporate officials permitted a criminal act. Punishing corporations imposes higher costs than punishing officials who are truly to blame. If there is a doctrine that makes it nearly impossible to prosecute corporate officials for crimes, then that doctrine must be changed. If it is true that the only way a corporation can act is through the people acting on its behalf, then the law must treat the board as the responsible party (Kushner, 2003: 711).

With regard to corporations that cannot be conclusively proven to have committed a criminal act, the corporation's management cannot be held criminally liable. In other words, responsible management cannot be held criminally responsible for corporate actions that are not actually

criminal in nature. After all, the RCO Doctrine was designed to address corporate wrongdoing through individuals (Kim JD, 2017: 139).

Because this doctrine discusses accountability by the management, it is necessary to show close causality between the management and the corporation itself. Corporate managers (executives) certainly receive awards in the form of high wages, this shows that the welfare of the management and the corporation are interrelated, the fate of both must rise and fall together. The practice of rewarding executives if the corporation progresses without committing a crime must also be accompanied by providing sanctions to executives if the corporation makes a profit by committing a crime (Spinwall, 2014: 372). It is inappropriate for an executive to abdicate responsibility on the pretext that he did not participate but knew about the violation at the time it occurred. If the violation is the fault of the corporation or its subordinates then he must fulfil the obligation to accept the mistake and any consequences resulting from it.

However, the responsibility of the management (executive) in the corporation is not because he received an award in the form of a high salary from the company, but rather lies in the award being considered inappropriate because he did not prevent a criminal act from occurring even though he knew about it. This is one of the obligations of the management which he did not live it. Thus, when management (executives) do not object to rewarding them with higher wages, then they should also not object to giving them punishment (Spinwall, 2014: 402).

Implementation of the Responsible Corporate Officer (RCO) Doctrine in the National Criminal Code

Initially, the understanding adopted by many countries, including Indonesia, stated that only humans could commit criminal acts, therefore only humans were burdened with criminal responsibility. Then later this understanding began to shift to the point that corporations could also be burdened with criminal liability for actions carried out by management. Corporate criminal liability has been widely accepted in common law and civil law countries since at least the middle ages (Dubber, 2013: 204). Even though it has been known since the middle ages, it is still an interesting issue to discuss. Moreover, corporate responsibility raises several problems related to the principle of "no crime without fault", which is the basis for corporations being able to be punished even though they have no *mens rea* (Sjahdeini, 2017: 147). In the Indonesian context, the formulation of corporate criminal liability has not been regulated in the Criminal Code. Only after the National Criminal Code was ratified then criminal liability by corporations are able to apply generally to every criminal act. Corporate criminal acts defined in the National Criminal Code are mentioned in Article 46, which in essence, these criminal acts are committed by

management, people who have employment relationships, or other relationships whose actions are aimed at and on behalf of the corporation concerned. Thus, even though the National Criminal Code has justified corporate responsibility, it must first be a criminal act committed by the management or party who has a work relationship or other relationship with the corporation. Criminal liability for corporate criminal acts in the National Criminal Code is not necessarily directed only at corporations, but in some conditions it can be imposed on the management when a criminal act is committed by the management or the management participates in committing a criminal act, which is essentially a general provision in the law. crimes that have existed for a long time in criminal law regulated in Articles 55 and 56 of the Criminal Code, Articles 20-22 of the National Criminal Code.

It can be said that a criminal act is a corporate criminal act and is liable if it fulfils several elements; the criminal act is within the scope of business or activities that have been determined by the articles of association or other provisions of the corporation, the criminal act provides benefits for the corporation, the corporation does not make any efforts which is considered to prevent criminal acts from occurring, and corporations allow criminal acts to occur. Previously, in the Draft Criminal Code of July 4 2022, corporate elements did not make efforts or steps that could prevent criminal acts from occurring and corporate elements allowed the realization of criminal acts to be unregulated. Based on the elements mentioned above under Article 49 of the National Criminal Code, criminal acts within the corporate scope can be held accountable to the corporation, the management who has a functional position, the giver of orders, the holder of control, and/or the beneficial owner of the corporation. From these provisions it can be understood that the theory of legal fiction regarding aspects of human personality initiated by Von Savigny cannot be eliminated absolutely even though criminal liability in the corporate environment (Asmui, 2023: 145). Based on this provision, although the National Criminal Code mentions corporate criminal liability, its provisions also explain that management can still be held criminally accountable.

In this regard, the author focuses more on article 48 of the new Criminal Code. This article, as previously mentioned, regulates the elements in which a corporation can be held accountable for a criminal act. The author focuses more on the elements of corporations not taking steps that can prevent criminal acts from occurring and corporations allowing criminal acts to occur. These two elements are considered to be in line with the responsible corporate officer (RCO) doctrine in the United States, *feitelijk leidinggever* in the Netherlands, or deemed liability in Australia.

As previously explained, the National Criminal Code contains several doctrines regarding criminal responsibility. One of them is the

responsible corporate officer (RCO) doctrine in article 48 of the National Criminal Code, but this doctrine will not appear in this article without reading article 46 which states that a corporate crime is a criminal act committed by its management, as well as article 49 which states management can also be responsible when there is a criminal act within the scope of the corporation. Initially, criminal liability was a person's responsibility for a criminal act that he had committed (Santoso, 2023: 245). However, this doctrine teaches that criminal responsibility is imposed on corporate managers for criminal acts committed by the corporation itself or its subordinates (Spinwall, 2014: 372). Of course, criminal liability is not necessarily imposed on the management, but rather there are certain limitations which result in corporate managers being liable to be punished. The existence of an article formulation in the National Criminal Code that is based on this doctrine is considered very important, and according to researchers functions like a double-edged sword. Apart from being able to protect corporate managers for criminal acts that they did not commit, they can also punish managers who in essence could have prevented criminal acts from occurring but ignored them. So the existence of this doctrinal content in the National Criminal Code makes criminal responsibility for criminal acts in the corporate sector more selective in choosing the party charged with responsibility. Apart from that, the existence of the RCO doctrine contained in the National Criminal Code can avoid human rights violations against corporate managers because it punishes managers who do not make mistakes and do not fulfill the elements that can be punished in corporate criminal acts that occur.

Previously, it was stated that the regulations related to the RCO doctrine in the 4 July 2022 Draft Criminal Code had not yet been regulated. Then, with several proposals, the effect of this doctrine was included in the National Criminal Code which was ratified. The articles that contain elements of this doctrine are located in article 48 letters d and e, namely: d. The corporation does not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts; and/or. e. Corporations allow criminal acts to occur.

The article mentions the phrase "corporation", not "management". However, a corporation is not a living thing, there are administrators of the corporation who are the brains that control it. So, indirectly, it is the management who is obliged to prevent criminal acts within the corporation and it is not permissible for the management to allow criminal acts to occur. In this regard, administrators can be punished even though Article 48 letters d and e mention the phrase "corporation" not "management", because Article 49 of the National Criminal Code explains that apart from corporations which can be charged with criminal liability, criminal liability

can also be imposed on administrators who have the position of functional, giving orders, controlling, and beneficial owners of the corporation. Thus, the manager can be punished when he has the authority to stop a criminal act within the corporation but allows it. This is further emphasized based on Article 46 which explains that corporate criminal acts are criminal acts committed by management, which means that in the National Criminal Code the corporation cannot act. On this basis, the act of allowing a criminal act to occur while having the authority to stop the criminal act is a criminal act by the management.

With the provisions in the National Criminal Code related to the RCO doctrine regulated in Article 48, the state has the authority to prosecute and punish company managers (executives) who, even though they do not have "awareness of wrongdoing", still have a part as responsible parties in the corporation. In other words, under the RCO doctrine, a company manager (executive) can bear criminal responsibility for corporate violations that he did not participate in because the management did not or failed to prevent the crime. As long as the management concerned has the authority in the sector he leads to prevent corporate crime and fails to do so, he can be punished under Article 49 of the National Criminal Code.

The element mentioned here is knowing that a criminal act has been or will be committed. According to researchers, this element is very important, considering the aim of the RCO doctrine to be more selective in choosing parties who can be held criminally liable. What this means is that the RCO doctrine can protect administrators from criminal acts that they did not commit or do not meet the elements to be punished. Apart from that, with this doctrine, administrators can be punished because they have a responsibility and therefore have full authority to prevent criminal acts within the corporate environment even though they are not directly involved in the criminal act. So when the management (executive) has the authority but is not aware of a criminal act, it will be detrimental to the management because they allow a criminal act to occur which they are basically unaware of. In an offense with a *mens rea* requirement, power alone without knowledge of the crime is not enough, because it allows the guilty subordinate to implicate his superior. On the other hand, knowledge of criminal violations alone is not enough to impose criminal liability on administrators, because administrators may not have full power over criminal activities within the scope of their authority. Thus, the management cannot be burdened with criminal liability. So, based on this doctrine, administrators must fulfil both. Authority over activities within the corporation that give rise to crime and sufficient knowledge about the activity, so that the criminal act can be proven to have been impliedly authorized by the management (Kushner, 2003: 690). Thus, it is necessary to confirm it with other laws and regulations to confirm the concept of RCO

in the National Criminal Code which has been ratified, because the provisions in article 48 letters d and e alone are not enough because they allow corporate managers to be punished without any wrongdoing.

However, to find out and determine whether an administrator can be held accountable for the consequences of the corporation, it is appropriate to use identification theory as an 'analytical blade', especially looking at the corporation's articles of association. Of course, the Statutes and Bylaws are confidential or top secret, therefore those who have the authority to investigate are investigators or officials who are given the rights and obligations to do so. If the RCO doctrine is to be applied, it is possible that an administrator who is suspected of being responsible for a mistake will use 'willful blindness' as a defense. Referring again to the RCO doctrine explained in the United States, in this doctrine there is a theory of 'willful blindness' which means that the defendant deliberately closes his eyes to the truth or avoids prolonged involvement in the case involved. Because if a defendant who is a manager carries out this action, of course the plaintiff of facts in this corporate crime will conclude that the defendant knew something, the existence, or even an action that was actually wrong, so that the element of *mens rea* is fulfilled. (Hustis, 1994: 178).

With regard to corporate management's knowledge of criminal acts within the corporate environment, this has actually been regulated in the Regulation of the Attorney General of the Republic of Indonesia Number: Per-028/A/Ja/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. In relation to the RCO doctrine, the regulation explains that corporate managers can be charged with criminal liability when they have control and authority to make efforts to prevent criminal acts from occurring, but these efforts are not made even though they are aware of the risks posed to them if a criminal act occurs within the corporate environment. The regulation also further explains that management can be charged with criminal liability if they find out that there is a risk that is deemed to be quite large due to a criminal act committed by the corporation, either because their subordinates or the corporation's own policies violate the rules. The first element, as the researcher concluded from the Attorney General's Regulation above, is already included in the National Criminal Code, but the second element is not included in it. However, the Attorney General's Regulation (Perja) can still be applied as a provision that binds Prosecutor's Office employees to carry out prosecutions even though the National Criminal Code does not regulate this element. However, according to researchers, it is very unfortunate that this element is not included in the National Criminal Code considering that this element regulates the reasons for convicting or not convicting someone. Moreover, the regulation of corporate criminal liability is a hot issue in the National Criminal Code because it is aimed at

modernizing accountability for criminal acts in corporations which are still traditional.

CONCLUSION

The responsible corporate officer doctrine is a doctrine that teaches that management can be burdened with corporate criminal liability when the management knows that a criminal act has been or will be committed, the management has the power to prevent it, and the management fails to take precautions. This doctrine is in line with the National Criminal Code in Article 48 letter d. and e. which had not previously been included in the 4 July 2022 Draft Criminal Code. With the provisions in the National Criminal Code in Article 48 letters d and e, the state has the authority to prosecute and punish company managers (executives) who, even though they have not committed a criminal act directly, still have responsibility responsible for criminal acts within the corporation for not taking preventive measures. Furthermore, to prove this, it is worth considering looking at the corporation's Statutes and Bylaws, which is closely related to identification theory, so that identification theory and RCO complement each other to reveal whether the management deserves to be held criminally responsible because of the sectoral position they hold based on information. in the corporation's Statutes and Bylaws.

Even though the National Criminal Code has been assessed as including the concept of the RCO doctrine in article 48, there is one element that is not contained in the National Criminal Code, namely the element of "knowing that a criminal act has been or will be committed". In a violation with mens rea requirements, power alone without knowledge of the criminal act is not enough because this allows the guilty subordinate to involve his superior, even though the management or superior is not aware of the existence of a criminal act within the corporate environment under his authority. So, based on this doctrine, administrators must fulfill both. Even though this element is not regulated in the National Criminal Code, but Attorney General's Regulation no. 28 of 2014 has regulated it so that the Attorney General's Regulation can still be applied even though the National Criminal Code does not regulate this element.

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