

Corporate Criminal Liability As An Insurance Crime Perpetrator Based On Law Number 1 Of 2023 On Criminal Law

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Abstract

The Insurance Law and the Indonesian Penal Code regulate criminal acts such as fraud during agreements and insurance claims. However, prior to Law No. 1 of 2023, criminal liability applied only to individuals, not corporations. This specific law establishes corporate criminal liability in insurance matters, enabling prosecution against corporations and their executives. Cumulative criminal threats are challenging to impose on corporations as they apply to executives, not the corporation itself. This study is a normative legal investigation exploring regulations, principles, and legal norms, aiming to accurately comprehend corporate criminal liability in the insurance field in Indonesia. Insurance crimes in Indonesia before the enactment of Law No. 1 of 2023, such as fraud during agreements and claims, were governed by Articles 381 and 382 of the Penal Code. Insurance Law No. 40 of 2014 covers ten articles encompassing insurance crimes, including operating without a license, document forgery, and misuse of confidential information. Articles 45-50 of Law No. 1 of 2023 establish corporations as subjects of criminal acts in insurance. Penal sanctions include fines and additional penalties, focusing on impact assessment and losses, governing a specific accountability system within insurance-related criminal acts.

Keywords: *Criminal Liability, Corporations, Insurance Crimes, Law Number 1 of 2023 on Criminal Law*

INTRODUCTION

The criminal provisions in the Insurance Business Law are crucial because, under the Indonesian Penal Code, criminal liability before the enactment of Law Number 1 of 2023 applied only to individuals, not corporations. Therefore, to enforce criminal liability against corporations in insurance crimes, the law needed to explicitly establish this. In cases of insurance crimes committed by corporations, criminal prosecution can be directed at the corporation itself, the executives giving orders, or those acting as leaders in the action. The threat of cumulative penalties (imprisonment and fines) complicates the application of penalties against corporations because it only allows for the conviction of corporate executives, not the corporation itself. (Junaidi Sembiring. 7/Ags/2015). In Indonesian positive law, corporate criminal offenses are regulated by specific laws distinct from the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP). (Wibawa, R. (2021). 4180).

Furthermore, the regulation of limited liability companies as subjects of criminal law is outside the scope of the Criminal Code (KUHP) and is governed by specific legislation. While the KUHP still regards the subject of criminal acts as “individuals,” the increasing incidence of detrimental behavior by limited liability companies towards society and the state highlights the necessity of governing these companies as subjects of criminal law. However, until now, in practice, companies are rarely directly held as subjects of criminal law; instead, it is more common for individuals or certain executives/employees acting on behalf of the limited liability company to be prosecuted for criminal acts. (Eliksander Siagian. 7, July 2023).

Several insurance companies in Indonesia, including Jiwasraya, Kresna Life, Bumi Asih Jaya, Bumiputera 1912, and Bakrie Life, have faced policy claim defaults and serious financial issues. Jiwasraya, in particular, is undergoing trial for alleged corruption involving state losses of around Rp 16.81 trillion. These cases underscore the importance of exercising caution when

selecting insurance providers and understanding the financial and management aspects of these companies. (Tim Riset, CNBC Indonesia. 25 August 2023).

RESEARCH METHODS

This research belongs to the realm of normative legal research, conducted through the analysis of legislation, principles, and legal norms. The aim of this study is to attain a precise understanding of corporate criminal liability in the insurance field in Indonesia. A statutory approach is necessary in normative research because the central focus and theme of the study involve various legal regulations that will be explored. (Johnny Ibrahim. 2007. 300.) The case approach is involved in the research by analyzing various court decisions that have attained legal force or finality (*inkracht*).

RESULT AND DISCUSSION

The Regulation of Criminal Acts in the Insurance Sector in Indonesia

Some criminal offenses that arise include insurance fraud, insurance embezzlement, and fraudulent acts as regulated in Articles 381 and 382 of the Indonesian Penal Code (KUHP). Article 381 refers to insurance fraud occurring during the insurance agreement, establishing a commitment between the insurer and the insured. Meanwhile, Article 382 highlights insurance fraud related to claims, where fraud occurs when an insurance claim is filed. Both types of insurance fraud are the focus in criminal activities associated with insurance. (Samsudin Sinubu.1/Jan-Mrt/2013)

Law Number 40 of 2014 concerning Insurance regulates criminal acts in Chapter XVI. There are ten articles that delineate crimes within insurance activities. Some actions classified as insurance crimes include conducting insurance business without permission, providing false information, embezzlement of premiums, document forgery, issuing policies while the company is under sanctions, and using confidential information for others. The law also addresses corporate crimes, which have an organizational nature and are expected to persist in their business operations. (Ridha Ari Setyono. Vol. 12. No. 4 Desember 2017).

Fraud entails four crucial criteria: intentional actions, compliant victims, and resulting losses. In the insurance industry, common criminal acts include fraud during insurance agreement, insurance claim fraud, and embezzlement of premiums. Patterns of fraud in claims vary, from falsified claims to document forgery and inflating claim values. Motives behind insurance fraud often involve changes in financial conditions, economic issues, and financial pressures. The causes can stem from necessity, opportunity, and greed. Criminological analysis shows that perpetrators commit crimes cunningly, exploiting situations to ensure victims remain unaware of the fraudulent activities, allowing the perpetrators to carry out deceit undetected. (Ridha Ari Setyono. Vol. 12. No. 4 Desember 2017)

Apart from Law Number 40 of 2014, criminal acts in the insurance field are often regulated in Law Number 1 of 1946 concerning Criminal Law. For instance, Article 381 of the Criminal Code regulates criminal acts of fraud related to insurance. Anyone using cunning and deceit misleads a person insuring about matters related to that insurance, so that person insures making an agreement they certainly would not have made, or would not have made under similar conditions, had they known the true state of affairs, shall be punished with imprisonment for a minimum of one year and four months. (R. Soesilo. 1994. 263)

In insurance fraud during agreement, the prospective insured individual deceives the insurance company about the actual condition of the insured object. This fraud can occur through means other than directly stating falsehoods, such as using forged documents—for instance, presenting a falsified doctor's certificate regarding health to obtain life insurance approval. (Laely Wulandari. 6 No. 1, Juni 2021)

Article 382 of the Indonesian Penal Code also regulates criminal acts related to insurance. Insurance claim fraud involves several elements: the intent to gain profit, breaking the law, causing losses to the insurer, and in some cases, it may encompass damage or related events that further exacerbate the loss. (R. Soesilo. 1994. 263). The article distinguishes between the intent of sinking a ship for profit and the intent to harm the insurer. Essentially, the intent outlined in this article is not solely limited to the insured item's value being lower than the promised sum. (PAF Lamintang dan Theo Lamintang. 2013. 186)

Furthermore, Article 372 of the Indonesian Penal Code regulates fraud, and elements of this article are incorporated into the embezzlement of insurance premiums. In certain situations, these actions can also fall under Article 378 of the Penal Code concerning fraud. This indicates an interconnection among the elements of these articles in dealing with cases of fraudulent activities within insurance.

The Penal System Against Corporations in Insurance Criminal Offenses Based on Law Number 1 of 2023 on Criminal Law

KUHPidana's new regulations face several issues regarding corporate regulation. Firstly, Articles 45 and 48 have similar wording but differ in their understanding of “corporation.” This discrepancy could lead to interpretation difficulties and requires revision. Secondly, Articles 512 and 173 exhibit contradictions in defining “entrepreneur,” creating potential legal interpretation challenges. The phrase “commercial enterprise” also lacks a clear definition. Attaching the term “entrepreneur” in other contexts, such as ships or irregularities in balance sheets, could cause similar interpretational problems. Clarity and precise definitions within the new KUHPidana are necessary to avoid ambiguity and contradictions in its application. (Prasetya, M., & Ratnawati, R. (2023). *UNES Law Review*, 6(1), 868-884.)

Law No. 1 of 2023 regulates corporate liability in Articles 45-50. Article 45 states that corporations, including PT (Limited Liability Company), foundations, cooperatives, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), and legally recognized associations, as well as business entities such as firms, limited partnerships, and similar entities, are considered subjects of criminal acts. (Ady Thea DA. <https://www.hukumonline.com>). Article 49 of the Indonesian Penal Code asserts that corporations are responsible for criminal acts as outlined in Article 48, encompassing executives, order givers, controllers, and/or beneficial owners. Article 56 of the Penal Code demands consideration in the prosecution of corporations, taking into account the losses or impact caused. Criminal sanctions for corporations consist of fines as the primary penalty and supplementary penalties according to Article 120 of the Penal Code, some of which are restorative in nature.

Pasal 188 of the Criminal Code sets penalties for corporations in two forms: primary penalties (fines) and supplementary penalties. Supplementary penalties include restitution, remediation resulting from the criminal act, fulfilling obligations, job training, asset confiscation, judgment announcements, permit revocation, closure or suspension of corporate activities, and dissolution of the corporation. Certain supplementary penalties apply for up to two years, and failure to comply can lead to corporate assets being seized and auctioned to cover the penalties. Corporate fine penalties are typically categorized at a minimum level IV, unless otherwise specified by the law. The amount of the fine penalty depends on the threat of imprisonment, which can fall into categories VI, VII, or VIII. If corporate assets are insufficient to pay the fine, there could be a suspension of corporate operations. The Criminal Code also mentions additional

actions such as supervision, guardianship, or corporate takeover. Articles 125-131 of the Criminal Code regulate the equivalence of corporate criminal penalties. If an action violates more than one rule, the penalty imposed will align with the most severe rule. (Mochamad Januar Rizki. 12 Desember 2022. <https://www.hukumonline.com>).

V.S. Khanna (Ahmad Sofian. Juli 2015) argued that corporations themselves don't commit offenses, but their agents represent the corporation in actions and mistakes. In terms of criminal liability, agents are responsible through vicarious liability because their actions benefit the corporation. Apart from vicarious liability, there are two other doctrines: direct corporate criminal liability, where the corporation is accountable for direct actions committed by its agents, and strict liability, where the corporation is responsible for actions without having to prove fault. All three are referred to as the respondent superior doctrine.

| | Direct Corporate Criminal Liability | Strict Liability | Vicarious Liability |
|-----------------------|--|--|---|
| Actus Reus | Committing direct offenses, the corporation -agent-directors | The offense is committed by the corporation being represented. | The offense is committed by the corporation. |
| Mens Rea | The agent's fault must be proven. | Fault does not need to be proven. | The fault lies with the agent, as they represent the corporation. |
| Responsibility | By the directors. | In the corporation. | Responsibility is delegated to the directors. |

Source. AHMAD SOFIAN. Pertanggungjawaban Pidana Korporasi Dalam Delik HAM. Juli 2015. <https://business-law.binus.ac.id/2015/07/18/pertanggungjawaban-pidana-korporasi-dalam-delik-ham/a>

Clapham mentions the “complicity doctrine,” which can be used in corporate criminal liability. This theory has two approaches: first, “aiding and abetting,” where corporate agents collaborate in various forms, both physically and non-physically. Second, “procuring,” where an agent advocates or proposes a crime, even if they don’t commit it directly. In this theory, one agent might advocate, and another might carry out the offense. (Ahmad Sofian. Juli 2015).

Law Number 1 of 2023 states that corporations are considered legal entities capable of being criminally liable. Whether they are legal entities or not, corporations are deemed capable of committing criminal acts and can be held legally accountable. Criminal responsibility can be applied to the corporation itself, its executives with functional roles within the corporation, or solely to its executives. Sanctions against corporations may involve criminal penalties, but they can also encompass other measures. Errors committed by the corporation are identified from the wrongful actions of executives with functional roles. They have the authority to represent the corporation, make decisions on its behalf, and oversee its operations. If they engage in criminal actions that benefit the corporation, whether as direct perpetrators, accomplices within the context of corporate affairs or employment, it can be deemed a corporate offense. This also includes corporate controllers, order givers, and beneficiaries. (Ainal Mardhiah. 2023)

Before the enactment of Law Number 1 of 2023, there existed regulations concerning corporate accountability as outlined in PERMA 13/2016 regarding Corporations, which defined corporations as organized groups of individuals and/or assets, whether legal entities or not. This established criminal liability for corporations, a concept previously not regulated. Despite its significant impact, this regulation could also hinder law enforcement. PERMA governed

processes of merging, amalgamation, separation, and dissolution of corporations while emphasizing the careful implementation of corporate culture models. This was an important step as it set clearer rules regarding corporations. (Prasetya, M., & Ratnawati, R. (2023). 868-884).

Article 24 of the Insurance Law stipulates that criminal prosecution can be brought against corporations, their executives, or both simultaneously in cases of insurance crimes. However, the law's limitations narrow the definition of executives solely to those who give orders or act as leaders in the criminal act. This results in the criminal responsibility of corporate executives in insurance crimes not encompassing the Board of Directors, Commissioners, the Board of Management, or those involved in policy-making, but only field leaders directly involved in committing or ordering such criminal acts. (Junaidi Sembiring. 7/Ags/2015).

Ancillary penalties in Article 21 of the Insurance Law employ a cumulative system, threatening imprisonment and fines simultaneously for each criminal act. However, the application of this cumulative approach makes it difficult to impose penalties on corporations as judges are bound by the wording of the law. When cumulative criminal sanctions are threatened, judges must impose both types of penalties simultaneously if the defendant is proven to have committed the criminal act, even if this is challenging to apply to corporations. The Insurance Law struggles to enforce criminal liability on corporations because there are no specific criminal threats aimed solely at corporations. The stacking of criminal penalties and principles misaligned with general criminal law further complicates this process. This renders the application of corporate criminal liability challenging in legal practice due to the inability to directly impose penalties on corporations. (Junaidi Sembiring. 7/Ags/2015).

Article 24 of the Insurance Law allows for criminal prosecution against corporations, their executives, or both simultaneously in cases of insurance crimes. However, the limitations within the law narrow the definition of executives solely to those who give orders or act as leaders in the criminal act. This results in the criminal responsibility of corporate executives in insurance crimes not encompassing the Board of Directors, Commissioners, the Board of Management, or those involved in policy-making, but only field leaders directly involved in committing or ordering such criminal acts. Furthermore, criminal threats in Article 21 of the Insurance Law employ a cumulative system, threatening imprisonment and fines simultaneously for each criminal act. However, this model of threats is difficult to apply to corporations as it is not aligned with general principles of criminal law, causing difficulties in directly imposing penalties on corporations.

Moreover, the New Criminal Code faces several issues regarding corporate regulations. Similar wording between Articles 45 and 48 but differences in the definition of 'corporation', and contradictions in the definition of 'entrepreneur' in Articles 512 and 173, could complicate legal interpretation. Therefore, clearer explanations are needed in the New Criminal Code to avoid ambiguity and contradictions in its application. Law No.1 of 2023 regulates corporate accountability in Articles 45-50. These articles state that corporations, including various types of legal entities, are deemed as subjects of criminal acts. Criminal sanctions for corporations consist of fines as the primary penalty and additional penalties as per the regulations governing the equality of corporate criminal penalties. These articles also emphasize considerations in the penalization of corporations, including the losses or impacts caused.

On the other hand, sections within the Criminal Code also establish penalties for corporations in the form of fines and additional penalties, including compensation, restoration due to criminal acts, fulfillment of obligations, job training, confiscation of goods, announcement of decisions, permit revocation, closure, or suspension of corporate activities, as well as dissolution. If a corporation's assets are insufficient to pay the fine, there could be a suspension of corporate activities. These sections also regulate additional actions such as supervision, administration, or corporate takeover.

Articles 45-50 in Law No.1 of 2023, in the context of insurance, establish that corporations, including various legal entities, are considered subjects of criminal acts. Criminal sanctions for corporations in insurance cases include fines as the primary penalty and additional penalties adjusted according to legal provisions emphasizing the equivalence of criminal penalties for corporations. Moreover, these articles also recognize the importance of considerations in penalizing corporations in the insurance sector, including evaluating the losses or impacts arising from the criminal actions committed by corporations in the insurance realm. This demonstrates how the law specifically regulates the corporate accountability system in criminal acts occurring in the insurance sector, considering the sanctions imposed and the impact of these actions on the insurance industry as a whole.

CONCLUSION

Insurance crimes in Indonesia encompass fraud during insurance agreements and claims, regulated in Articles 381 and 382 of the Indonesian Criminal Code (KUHP). Law No. 40 of 2014 concerning Insurance regulates ten articles related to crimes within the insurance domain, including conducting insurance operations without authorization, document forgery, premium embezzlement, and the misuse of confidential information. This law also addresses corporate crimes expected to persist in business.

Articles 45-50 of Law No. 1 of 2023 establish corporations as subjects of criminal acts within the insurance sector. Penal sanctions include fines and adjusted additional penalties, taking into account their impact on the insurance industry. These articles emphasize the importance of evaluating the impact and losses in penalizing corporations, establishing a specific accountability system for insurance-related criminal acts.

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