

Vicarious Responsibility Theory on the Corruption Case by PT Timah Tbk



Tita Mayang Sari¹, Pujiyono²

¹Student, Master of Law, Faculty of Law, Diponegoro University, Semarang, Indonesia

²Lecturer, Master of Law, Faculty of Law, Diponegoro University, Semarang, Indonesia

ABSTRACT: The alleged corruption case of tin commodity trading system in the PT Timah Tbk Mining Business License (IUP) area for the 2015-2022 period has caused state losses of hundreds of trillions of rupiah. This article examines the applicability of vicarious responsibility theory or substitute responsibility theory to the case of corruption in the tin commodity trading system in the PT Timah Tbk Mining Business License (IUP) area. This research aims to look at all aspects of corporate liability theory, one of which is vicarious responsibility theory. Related to the corruption case of PT Timah Tbk, vicarious responsibility theory does not apply, because the perpetrator is a superior, so it is not possible for his subordinates or other people to take responsibility for his actions.

KEYWORDS: Corporate Crime; Corruption; Tin; Vicarious Responsibility Theory

I. INTRODUCTION

Green straf Zonder Schuld, or keine strafe ohne schuld, or actus non facit reum nisi mens sir rea, one of the important principles in the criminal book that there is no punishment without fault. The principle of guilt or schuldprinzip is related to personal guilt and blameworthiness which are required to be able to determine the parameters for criminal responsibility and punishment. In the field of criminal law, with the existence of this principle, the existence of a criminal offense will not necessarily be followed by the provision of punishment for the perpetrator. This is none other than because a criminal offense only refers to a prohibited act (in the sense of being actively carried out) or to a prohibited result (in the sense of being passively carried out), and against the perpetrator of the offense is threatened with a penalty, while whether the criminal sanction as threatened by the violated article will be given to the perpetrator, is very dependent on the answer, whether the perpetrator is present and found the elements of guilt or not (Sjawie, 2017).

In general, criminal offenses have the same elements, namely: 1) Act/behavior (active/positive or passive/negative); 2) consequences (specifically for criminal offenses formulated materially); 3) against the law (against formal law related to the principle of legality, and against material law/silent elements; and 4) absence of justification (Barthos, 2022). There are many types of crimes, ranging from general crimes such as fraud, kidnapping, murder, to special crimes such as corruption that occur very often. As according to the Secretary General of Transparency International Indonesia (TII), Danang Widoyoko, "Indonesian democracy is going backwards rapidly. This backward step is simultaneous with the lack of corruption eradication and human rights protection in the country. In fact, without qualified corruption enforcement, true human rights protection will not be achieved." Since its first launch in 1995, Indonesia has been one of the countries that has been regularly monitored for its corruption situation. The CPI 2023, released today, shows that Indonesia continues to experience serious challenges in fighting corruption. "Indonesia's CPI in 2023 is at a score of 34/100 and is ranked 115th out of 180 countries surveyed. This score of 34/100 is the same as the 2022 CPI score." said Wawan Suyatmiko, Deputy Secretary General of Transparency International Indonesia (Indonesia, 2024).

This statement shows how stagnant the handling of corruption cases in Indonesia is. Stagnant in the imagination of the abolition of corruption eradication institutions, wishful thinking. Corruption in Indonesia today is systematic and endemic, so that it not only harms state finances and the country's economy, but has also violated the economic and social rights of the wider community (Saputra, 2015). One of the perpetrators of corruption is corporations. Corporations have been explicitly recognized in the Corruption Law No. 31 Year 1999 in Article 1 point 3, that: "Every person is an individual or includes a corporation." The word "Every person" indicates himself as a subject or perpetrator of criminal acts of corruption, namely in the form of an individual or including a corporation.

Indonesia has recently been shocked by the alleged corruption case committed by PT Timah Tbk. The alleged state losses caused by the corruption committed by PT Timah Tbk amounted to hundreds of trillions of rupiah. As of April 29, 2024, the Attorney

Vicarious Responsibility Theory on the Corruption Case by PT Timah Tbk

General's Office (AGO) has named 21 (twenty-one) suspects in the alleged corruption of tin commodity trading in the PT Timah Tbk Mining Business License (IUP) area for the 2015-2022 period. Previously, there have been several journals that discuss vicarious responsibility theory. However, it only focuses on describing the theory of the applicability of vicarious responsibility theory in Indonesia, not yet analyzing its applicability to a case. In addition, the corruption case of tin commodity trading system by PT Timah Tbk is a case where there is no analysis of what kind of responsibility theory is used.

Therefore, in the tin corruption case, the author will try to analyze the applicability of vicarious responsibility theory to the corruption case of PT Timah Tbk. Vicarious responsibility theory is one of the theories of corporate criminal liability. Vicarious liability, namely the principle of criminal liability without having to require the element of guilt in the perpetrator of the crime (Priyatno, 2010, p.15) Although in Indonesia, its development and use is quite slow compared to other theories of liability for corruption by corporations. Can the doctrine of vicarious liability be used in such cases. So that through this writing, the author will analyze whether the vicarious responsibility theory can be used in the corruption case by PT Timah.

II. METHODS

This article is a type of normative legal research. Normative legal research is legal research. Legal research is conducted by examining library materials or secondary data (Soekanto, 2013). In addition, it is also referred to as doctrinal research, where law is often conceptualized as what is written in laws and regulations (law in books) or conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate (Marzuki, 2007). This article uses primary legal materials in the form of limited liability company (PT) law number 40 of 2007 and corruption law number 31 of 1999. Secondary materials used are books, doctrines, and legal cases. Tertiary materials from this article are legal dictionaries and encyclopedias. The approach method used is a normative juridical approach and case approach. the collection of legal materials is done by means of literature study. The analysis of legal materials is analytically descriptive.

III. RESULT AND DISCUSSION

A. Chronology of PT Timah Tbk Corruption Case

Suspect HT aka ASN is a development of investigations from the previous suspects who have been detained, namely Suspect TN aka AN and Suspect AA. Then regarding Suspect SG aka AW and Suspect MBG, these two suspects own a company that entered into a cooperation agreement with PT Timah Tbk in 2018 regarding the lease of tin smelting processing equipment. The agreement was signed by Suspect MRPT aka RZ as President Director of PT Timah Tbk and Suspect EE aka EML as Finance Director of PT Timah Tbk. At that time, Suspect SG aka AW ordered Suspect MBG to sign a cooperation contract and ordered to provide tin ore by forming dummy companies to accommodate the collection of illegal tin ore from PT Timah Tbk's IUP, which was entirely controlled by Suspect MBG. The tin ore produced by Suspect MBG was obtained from the IUP of PT Timah Tbk with the approval of PT Timah Tbk. Then, both the ore and tin metal were sold to PT Timah Tbk. To collect illegally mined tin ore, Suspect MBG with the approval of Suspect SG aka AW formed a dummy company, namely CV Bangka Jaya Abadi (BJA) and CV Rajawali Total Persada (RTP). The total cost incurred by PT Timah Tbk related to the cost of mining at PT SIP during 2019 to 2022 is IDR 975,581,982,776. Meanwhile, the total payment for tin ore is Rp1,729,090,391,448. To legalize the activities of these puppet companies, PT Timah Tbk issued a Borongan Work Order for the transportation of the remaining processing results (SHP) of tin minerals, where the profits from the tin ore purchase transaction were enjoyed by Suspect MBG and Suspect SG aka AW. In addition to forming a puppet company, Suspect MBG with the approval of Suspect SG aka AW also accommodated illegal tin miners in the PT Timah Tbk IUP area. Later, the tin ore minerals obtained were sent to the smelter owned by Suspect SG aka AW. The actions of the suspects resulted in state financial losses which in the calculation process exceeded state losses from other corruption cases such as PT Asabri and Duta Palma. In addition, there are losses of environmental damage due to illegal tin mining activities in Bangka Belitung Islands Province (Puspadini, 2024).

B. PT Timah Tbk as a Legal Subject of Corruption Crime

Initially, legal subjects that can commit a criminal offense and be held criminally liable were limited to human legal subjects (*natuurlijk persoon*), but along with the development of legal subjects which also include legal entities (*rechtspersoon*), then a legal entity can also commit a criminal offense and be held criminally liable based on applicable statutory provisions. Then a legal entity can also commit a criminal offense and be held criminally liable based on the applicable statutory provisions. However, even though business entities can be held criminally liable, this has specificity compared to criminal liability imposed on human legal subjects (Lestari, 2022).

Timah Tbk is a member of MIND (Mining Industry Indonesia, BUMN Holding Mining Industry which was established on August 2, 1976 with the deed of Establishment of PT Tambang Timah (Persero) No. 1 dated August 2, 1976 made before Imas Fatimah, S.H., Notary in Jakarta which has been approved by the Minister of Justice of the Republic of Indonesia based on Decree No. Y.A.5 /65/17 dated February 5, 1977 which has been amended several times and most recently by Deed of Statement of Meeting Resolution of PT TIMAH Tbk No. 6 dated July 13, 2023 made by Rini Yulianti, S.H., Notary in East Jakarta, which has been received and recorded in the Legal Entity Administration System of the Ministry of Law and Human Rights of the Republic of

Vicarious Responsibility Theory on the Corruption Case by PT Timah Tbk

Indonesia Directorate General of General Legal Administration in accordance with the letter of Acceptance of Notification of Amendments to the Articles of Association of PT TIMAH Tbk No. AHU-AH.01.03-0091474 dated July 13, 2023. PT Timah is listed on the Indonesia Stock Exchange and has a Mining Business License (IUP) onshore and offshore Bangka, Belitung, and Kundur Island covering an area of 473,310 hectares (Timah.com, 2024).

The existence of the deed of establishment shows that PT Timah Tbk is a legal entity. A legal entity is a legal subject, meaning that PT Timah Tbk is the bearer of rights and obligations. As the bearer of rights and obligations, PT Timah Tbk can perform legal acts like humans. According to the theory of fiction (fiction theory) or artificial entity theory (artificial entity theory) teaches that companies are only imaginary from humans and held by humans. Naturally, the real subject of law is only human beings as people, but based on the interests and needs of their lives, people create legal subjects in their shadows called legal entities or corporations that have rights and obligations like natural humans as subjects of law (Manullang, 2020).

PT Timah Tbk is a producer and exporter of tin metal, and has an integrated tin mining business segment ranging from exploration, mining, processing to marketing activities. The scope of the company's activities also includes mining, industry, trading, transportation and services. The main activity of the company is as a holding company that conducts tin mining operations and provides marketing services to their business groups. The company has several subsidiaries engaged in workshops and shipyards, engineering services, tin mining, consulting services and mining research and non-tin mining. The Company is domiciled in Pangkalpinang, Bangka Belitung Province and has operations in Bangka Belitung Islands Province, Riau Province, South Kalimantan, Southeast Sulawesi and Cilegon, Banten.

The legal action of PT Timah Tbk that was revealed recently was the alleged corruption in the tin commodity trading system in the PT Timah Tbk Mining Business License (IUP) area for the period 2015 to 2022. The crime of corruption committed by a corporation has occurred if it fulfills at least 2 (two) conditions, namely the corporation unlawfully commits an act of enriching itself, or another person, or a corporation that can harm state finances or the state economy, and the act of a natural person as an organ of the corporation unlawfully commits an act of enriching the corporation that can harm state finances or the state economy (Januarsyah, 2020).

C. Vicarious Responsibility Theory on The Corruption Case by PT Timah Tbk

Can a criminal act committed by one person be held accountable by another? The question is addressed to vicarious liability basically to answer. Vicarious liability in Black's Law Dictionary is defined as: "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties." (The liability of a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties).

The ability to be responsible is determined by two things, namely reason and will. Where with reason a person can distinguish between good and bad or prohibited actions, while the will or desire manifests awareness or awareness of the bad actions he has committed (Raymond Joshua Marudut Sibarani, 2016) The ability to be responsible is determined by two things, namely reason and will. Where with reason a person can distinguish between good and bad or prohibited actions, while the will or desire manifests awareness or conviction of the evil deeds he has done (Sari, 2023)

The doctrine of vicarious responsibility is based on the principle of "employment principle", which is meant by the principle of employment principle in this case the employer (employment) is the main responsible for the actions of his laborers or employees. So in this case the principle of "the servant's act is the master act in law" or also known as the agency principle which reads "the company is liable for the wrongful acts of all its employees". The principle of Vicarious responsibility allows the company to be punished for crimes with the fault of actus reus (for the display of acts prohibited by law) and mens rea (criminal intent) of an individual for the corporation. Corporate liability is derived from the fault of their employees, officers or agents (Manullang, 2020).

In the PT Timah Tbk case, one of the suspects in the corruption of tin commodity trading in the PT Timah IUP area is the President Director of PT Timah Tbk for the period 2016-2021 Mochtar Riza Pahlevi Tabrani (MRPT). In 2018, suspect Alwi Akbar (ALW) as Director of Production Operations of PT Timah Tbk for the period 2017-2018 together with suspect MRPT and suspect Emil Ermindra (EE) as Finance Director of PT Timah Tbk realized that the supply of tin ore produced was less than other private smelter companies. This was caused by the massive illegal mining carried out in the PT Timah Tbk IUP area. Based on this condition, suspect ALW together with suspect MRPT and suspect EE, who should have taken action against competitors, instead offered smelter owners to cooperate by buying illegal mining products exceeding the standard price set by PT Timah Tbk without going through a study first. In order to smoothen the action to accommodate the illegal mining, ALW together with MRPT and EE agreed to make an agreement as if there was a lease cooperation for tin smelting processing equipment with the smelters (detik.com, 2024).

So far, the emergence of acts of corruption in the IUP area of PT Timah Tbk is known to have been initiated jointly between the President Director, Finance Director and Production Operations Director of PT Timah Tbk due to their awareness that the tin ore produced is less than other private smelter companies. The ninja path taken by the company's brain has caused legal, social and natural problems. Compound with the organism theory of Otto von Giarke as quoted by Syuiling (1948), that: "The Board of Directors is an organ or equipment of a legal entity. Just as humans have organs, such as hands, feet, eyes, ears and so on and because every movement of the organs is willed or ordered by the human brain, every movement or activity of the Board of Directors

Vicarious Responsibility Theory on the Corruption Case by PT Timah Tbk

of a legal entity is willed or ordered by the legal entity itself, so that the Board of Directors is the personification of the legal entity itself.” (Lubis, 2018).

Company Law No. 40 of 2007 Article 92 paragraph (1) states that: “The Board of Directors shall carry out the management of the Company for the benefit of the Company and in accordance with the purposes and objectives of the Company. The duties of the Board of Directors if seen in Article 98 paragraph (1), namely: “The Board of Directors represents the Company both inside and outside the court.” This provision illustrates the organ theory described by Otto von Giarke previously. That way the suspect MRPT as Managing Director, suspect EE as Director of Finance, and suspect ALW as Director of Production Operations are representatives of a legal entity, namely PT Timah Tbk. They have the authority to carry out legal acts on behalf of the corporation (PT Timah Tbk). The crime of corruption committed by a corporation has occurred if it fulfills at least 2 (two) conditions, namely the corporation unlawfully commits an act of enriching itself, or another person, or a corporation that can harm state finances or the state economy, and the act of a natural person as an organ of the corporation unlawfully commits an act of enriching the corporation that can harm state finances or the state economy (Lbn.Toruan, 2014).

Based on the vicarious responsibility theory, are the three Directors entitled to be personally responsible for their actions? It should be noted that in the application of the doctrine of vicarious liability, three (3) things related to it can be stated, namely: First, this doctrine is based on the doctrine of respondeat superior, whose adage can be interpreted as “a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agents”; Second, this doctrine is based on the “employment principle”, where an employer is the main responsible for the actions of employees, so it is said that “the servant's act is the master's act in law”; and thirdly, this doctrine is also based on “the delegation principle”, thus the fault or guilty mind of the employee can only be attributed to the employer if there is a relevant delegation of powers and duties, so there must be “a relevant delegation of powers and duties” according to the law. The concept of vicarious liability stems from the doctrine of respondeat superior. Prior to the 18th century, the general rule of respondeat superior was that an employer was not liable for the tortious acts of his subordinates that harmed third parties, unless the subordinates' acts were encouraged or ordered by the employer. In the 19th century, respondeat superior developed into its current form. An employer must still be liable for third party losses caused by the unlawful acts of his subordinates, even though the subordinate's actions were carried out without his employer's consent (Sjawie, 2015).

In relation to the corruption case of tin commodity trading in the IUP area of PT Timah Tbk, the concept of vicarious liability cannot be applied. Because the occurrence of corruption cases of PT Timah Tbk was carried out by the superior (employer), namely the Board of Directors. The Board of Directors is legally given its position and role by law. The concept of vicarious liability applies criminal acts committed by one person can be held accountable by another person. The abuse of power committed by the Board of Directors is an act committed personally, which means that other people or subordinates cannot be held accountable for the criminal acts of corruption committed by them. It is different if the case is civil, there is a possibility that the harmful act can be charged to the Corporation not to its organs, because what is needed by the injured party is compensation. So it is emphasized, that the concept of vicarious liability cannot be applied to corruption cases by PT Timah Tbk.

CONCLUSIONS

The existence of the deed of establishment shows that PT Timah Tbk is a legal entity. A legal entity is a legal subject, meaning that PT Timah Tbk is the bearer of rights and obligations. As the bearer of rights and obligations, PT Timah Tbk can perform legal acts like humans. According to the theory of fiction (fiction theory) or artificial entity theory (artificial entity theory) teaches that companies are only imaginary from humans and held by humans. Naturally, the real subject of law is only a human being as a person, but on the basis of the interests and needs of his life, people create legal subjects in his shadow called legal entities or Corporations that have rights and obligations as well as natural human beings as subjects of law.

The concept of vicarious liability stems from the doctrine of respondeat superior. Prior to the 18th century, the general rule of respondeat superior was that an employer was not liable for the tortious acts of his subordinates that harmed third parties, unless the subordinates' acts were encouraged or ordered by the employer. In the 19th century, respondeat superior developed into its current form. An employer must still be liable for third party losses caused by the unlawful acts of his subordinates, even though the subordinate's actions were carried out without his employer's consent. In relation to the corruption case of tin commodity trading in the IUP area of PT Timah Tbk, the concept of vicarious liability cannot be applied. Because the emergence of the PT Timah Tbk corruption case was carried out by the superior (employer), namely the Board of Directors. The Board of Directors is legally given its position and role by law. The concept of vicarious liability applies criminal acts committed by a person can be held accountable by others. The abuse of power committed by the Board of Directors is an act committed personally, which means that other people or subordinates cannot be held accountable for the criminal acts of corruption committed by them. It is different if the case is civil, there is a possibility that the harmful act can be charged to the Corporation not to its organs, because what is needed by the injured party is compensation. So it is emphasized, that the concept of vicarious liability cannot be applied to corruption cases by PT Timah Tbk.

REFERENCES

- 1) Agustini, N. M. (2021). *Kejahatan Korporasi : Pertanggungjawaban Tindak Pidana dalam Hukum Positif Indonesia*. Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha, 744.
- 2) Barthos, H. L. (2022). *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Lingkungan Hidup Berkaitan dengan Dumping Limbah Tanpa Izin pada Perusahaan Tambang PT Indominco Mandiri di Kalimantan*. *Constitutum Jurnal Ilmiah Hukum* Vol. 1, 49.
- 3) detik.com, T. (2024, Maret 29). *Fakta-fakta Korupsi Timah RP 271 Triliun yang Jerat Suami Sandra Dewi*. Diambil kembali dari detikbali: <https://www.detik.com/bali/berita/d-7267504/fakta-fakta-korupsi-timah-rp-271-triliun-yang-jerat-suami-sandra-dewi>
- 4) Indonesia, TI. (2024, April 27). *Diambil kembali dari Transparency International Indonesia*: <https://ti.or.id/indeks-persepsi-korupsi-2023-pemberantasan-korupsi-kembali-ke-titik-nol/>
- 5) Januarsyah, M. R. (2020). *Penerapan Sistem Pertanggungjawaban Pidana Korporasi Sebagai Subjek Tindak Pidana dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi*. *Jurnal Wawasan Yuridika*, Vol.4, No.2, 251.
- 6) Lbn.Toruan, H. D. (2014). *Pertanggungjawaban Pidana Korupsi Korporasi* . *Jurnal RechtsVinding*, Vol. 3, No. 3, 411.
- 7) Lestari, H. (2022). *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Lingkungan Hidup Berkaitan dengan Dumping Limbah Tanpa Izin Pada Perusahaan Tambang PT Indominco Mandiri di Kalimantan*. *Jurnal Ilmiah Hukum* Vol. 1, No. 1, 554.
- 8) Lubis, M. F. (2018). *Pertanggungjawaban Direksi Disuatu Perseroan Terbatas Ketika Terjadi Kepailitan Pada Umumnya dan Menurut Doktrin Hukum Perusahaan & Undang-Undang No. 40 Tahun 2007*. *Jurnal Hukum Kaidah*, Vol.17, No. 2, 38. Diambil kembali dari Hukumonline.
- 9) Manullang, H. &. (2020). *Pertanggungjawaban Pidana Korporasi*. Medan: LPPMUHN Press : Universitas HKBP Nommensen.
- 10) Marzuki, Peter Mahmud (2007). *Penelitian Hukum*. Jakarta: Kencana.
- 11) Priyatno, M. &. (2010). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana.
- 12) Puspadini, M. (2024, Maret 21). *Kronologi Korupsi Timah, Jerat Para Bos dan Sita Rp 33 M Duit Helena Lim*. Diambil kembali dari CNBC Indonesia: <https://www.cnbcindonesia.com/market/20240321111229-17-524017/kronologi-korupsi-timah-jerat-para-bos-sita-rp33-m-duit-helena-lim>
- 13) Raymond Joshua Marudut Sibarani, N. S. (2016). *Penerapan Doktrin Vicarious Liability dalam Tindak Pidana Penggelapan Pajak Oleh Korporasi (Studi Putusan Mahkamah Agung Nomor 223K/Pid.Sus/2012*. *Diponegoro Law journal*, Vo. 5, No. 3, 12.
- 14) Saputra, R. (2015). *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Korupsi*. *Jurnal Cita Hukum*, FSH UIN Syarif Hidayatullah, Jakarta, Vol.3 No. 2, 270.
- 15) Sari, N. K. (2023). *Konsep Pertanggungjawaban Pelaku Pidana Korporasi Menurut Vicarious liability Theory*. *Al-Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 3512.
- 16) Sjawie, H. F. (2017). *Pertanggungjawaban Pidana Korporasi pada Tindak Pidana Korupsi*. Jakarta: Kencana.
- 17) Soekanto, Soerjono dan Sri Mamuji (2013), *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Kencana.
- 18) Timah.com. (2024, Mei 5). *Anggaran Dasar*. Diambil kembali dari timah.com: <https://timah.com/blog/tata-kelola/anggaran-dasar.html>



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.