

## Legal Actions and Consequences for Corporations Involved in Corruption

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### Abstract

The purpose of writing this journal is to identify and analyze the methods and motives behind acts of corruption carried out by corporations, as well as to understand the organizational structure and market dynamics that influence these corrupt practices. And to evaluate the legal consequences that apply to corporations involved in acts of corruption and to examine the effectiveness of the application of these penalties in efforts to prevent and overcome corruption among corporations. The approach method used in this study is Normative Law (normative juridical) using a legislative approach, a conceptual approach, and a comparative and empirical approach (field data). The results of the study show that corporations are involved in acts of corruption through various methods that are often complex and covert, driven by motives to increase profits, dominate the market, or avoid regulation. The mechanisms they use range from bribery, tender manipulation, to money laundering practices. Corporations involved in acts of corruption can face a number of legal consequences, ranging from heavy fines, license revocation, asset confiscation, to operational restrictions. Although these penalties are intended to provide a deterrent effect, their effectiveness in preventing corporate corruption often varies. While fines may provide a financial impact, without significant internal changes in corporate culture and governance, the potential for corrupt practices to recur.

**Keywords:** Legal Analysis, Corporations, Corruption Crimes.

### INTRODUCTION

Corruption has long been recognized as one of the greatest threats to the stability and integrity of a country's legal and economic systems. While much of the discussion of corruption focuses on the behavior of individuals, the phenomenon of corporations engaging in corrupt practices often receives less attention. Corporations with significant resources may have the ability to influence public policy, conceal corrupt behavior, and even undermine existing legal structures in ways that individuals cannot. In this context, corporate corruption not only harms the economy but also fosters public distrust of market institutions.

In addition to harming state finances, corruption also slows down national development which slows down the improvement of people's welfare. It is not surprising that corruption is considered a common enemy. The unlawful act of corruption not only harms state finances but also violates the social and economic rights of the entire community. In addition, corruption has weakened the legal system, contributed to the economic crisis, and made it difficult to organize transparent and democratic governance (Romli Atmasasmita, 2012).

With the shift in the global business paradigm, corporations are now central actors in the economic and social dynamics of a country. While many corporations contribute positively through investment, job creation, and innovation, there are a handful of entities that use their power for less than moral purposes. Corporate corruption often involves much

larger sums of money than individual corruption, with a much broader impact on the economy and society.

The Constitution of the Republic of Indonesia has emphasized that the Republic of Indonesia is a State of Law (Khairul Riza, et al., 2022). As a state of law that has an obligation to protect its people from all crimes including corruption, legal instruments are needed with the main objective of eradicating criminal acts of corruption is to build a society based on Pancasila and the 1945 Constitution of the Republic of Indonesia that is just, prosperous, and prosperous because corruption has harmed the country's economy, public finances, and ability to develop.

Corruption has become rampant in the lives of Indonesian society. The number of incidents, the amount of state financial losses, and the severity of the crimes committed, which are increasingly systematic and have penetrated all aspects of people's lives, all continue to increase from year to year. In Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, this condition is recognized and expressed. According to the law, widespread corruption must be classified as a crime whose eradication requires a comprehensive approach because it not only harms state finances but also violates the social and economic rights of society as a whole (Adami Chazawi, 2015).

The law passed in 2001 expanded the definition of corruption to include both "corporations" and "individuals". Every person is referred to as a person or corporation that commits corruption in Article 1 Number 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which is stated as a group of people or wealth in the form of a legal entity or not called a corporation.

The principal penalty for corporate crimes according to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption is a fine, with a maximum penalty of 1/3 (one third), twice, or by stating an increased nominal amount. In addition, corporations can be forced to close all or part of their operations for up to one (1) year.

If a fine is imposed, it will eventually fall into the hands of the state and be returned to the company in the form of capital participation. Likewise, if the sanction is the closure of the company, there will certainly be a state loss in the form of capital or shares included in BUMN (Adami Chazawi, 2018).

The legal consequences of corporate corruption are also complex. While many countries have introduced criminal sanctions for companies involved in corruption, enforcement is often challenging. Companies can have complex structures, cross-border operations, and the resources to pursue their legal cases much more aggressively than individuals.

Considering all these factors, it is important to examine more deeply how corporations engage in corruption, their impact on society and the economy, and the legal consequences they face. Through in-depth analysis, this study aims to provide clearer

insights into the role of corporations in the phenomenon of corruption and its implications for legal and business governance in today's global era.

Based on the description above, the author is interested in conducting further research where the research will be presented in the form of a scientific journal work entitled: "Legal Analysis of Actions and Legal Consequences for Corporations Involved in Corruption".

From the problem and title which has been described above, the formulation of the problem that will be discussed is as follows:

1. How corporations are involved in acts of corruption, and what motives and mechanisms do they use in carrying out corrupt practices??
2. What are the legal consequences faced by corporations involved in acts of corruption, and to what extent is the effectiveness of implementing these penalties in preventing and overcoming corporate corruption?

## **THEORETICAL FRAMEWORK AND RESEARCH METHODS**

The researcher in this section applies the theoretical framework and methodology to analyze the problems above and it needs to be clarified from the beginning about the theoretical framework that uses the theoretical framework and concepts as an analytical tool (Soerya Respationo, 2022). In this methodology section, one of the methods used by the author is to apply the use of the theory of corporate criminalization, and the theory of organs from Otto von Gierke to the problems discussed in this study. (Idham, et al., 2022).

Study used in writing This journal is normative legal research is a legal research of literature by examining library materials (Dollar, Khairul Riza, 2022). The approach method used in this study is Normative Law (normative legal) using a statutory approach, a conceptual approach, and a comparative and empirical approach (field data). What is meant by the normative legal research method is a legal research method carried out by examining library materials or secondary data only.

This research was conducted in order to obtain materials in the form of: "theories, concepts, legal principles and legal regulations related to the subject matter". In this research, the scope is by drawing legal principles, which is carried out on positive law. written or spoken unwritten (Soerjono Soekanto and Sri Mamudji, 2013).

The data sources in this study consist of library research as the main data source and field research as complementary data (Library research and field research) (Zainuddin Ali, 2014). Within the framework of the formation of legal theory, legal norms (law in books), implementation of legal norms (legal behavior, including those that fulfill and deviate (law in actions), social structures and other socio-cultural symptoms are completely observed (Oloan Sitorus and Darwinsyah Minin, 2010).

## **RESULTS AND DISCUSSION**

### **Corporations Involved in Corruption, Motives and Mechanisms Used in Carrying Out Corrupt Practices**

Corporations can engage in corruption through a variety of mechanisms. One is through "bribery," where a company gives something of value to gain a commercial or

regulatory advantage. In addition, corporations can also engage in tender manipulation, tax evasion, and embezzlement.

The motives behind corporate corruption are usually driven by the desire to increase profits, reduce costs, or gain access to resources or markets. In some cases, corporations may feel the need to pay bribes to operate efficiently in a particular country or region, especially in areas with less stringent regulations or where corruption is considered the “business norm.”

Corporate organizational structures often enable or even encourage corrupt practices. For example, if a company has a highly decentralized structure without strict oversight, certain branches or divisions may have more opportunities to engage in corruption. Conversely, a lack of transparency and accountability in the corporate structure can also facilitate corruption (Yasmirah Mandasari Saragih, 2018).

In situations where market competition is intense, corporations may feel compelled to bribe or engage in other corrupt practices to gain a competitive advantage. For example, a corporation may bribe a government official to obtain a government contract or to avoid certain regulations.

Corporate culture also plays a significant role in encouraging or preventing corruption. If integrity and ethics are emphasized in the corporate culture, employees are more likely to avoid corrupt practices. However, if the corporate culture encourages achieving targets by any means, including through corrupt practices, then corruption may become more prevalent.

With the growth of international trade and cross-border investment, multinational corporations often operate in multiple countries with different standards and norms. This can create challenges for companies to maintain consistent ethical and integrity standards across their operations.

Corporate involvement in corrupt acts is a complex phenomenon influenced by various factors, ranging from organizational structure, market dynamics, corporate culture, to the influence of globalization. Understanding how and why corporations engage in corruption is an important step in efforts to prevent and overcome corrupt acts among corporations (Yasmirah Mandasari Saragih, 2017).

In this discussion section, to analyze the motives and mechanisms used by corporations in carrying out corrupt practices using the theory of corporate criminology which emphasizes the analysis of the causes and factors that encourage corporate entities to commit violations of the law. This theory can help researchers understand the economic, structural, and cultural motives that encourage corporations to participate in corruption. (Theo Huijbers, 2019).

Basically, the legal regulation of corruption in the context of corporate criminal liability is regulated in the corruption law in the country concerned. However, in general there are several general principles applied in the regulation (Eva Achjani Zulfa, 2011).

Corporate Criminology Theory is a field of study that explores the causes and contexts in which corporate entities choose to break the law. Using this theory as a

framework, we can understand the motives and mechanisms underlying corporate corrupt practices.

At the heart of corporate criminology theory is the understanding that corporations aim to maximize profits. Economic motives are often the primary drivers behind corruption. Bribing public officials, for example, may be seen as an investment to secure lucrative contracts, obtain permits, or avoid taxes and tariffs. Corruption here is seen as a means to achieve economic efficiency, albeit through unethical or illegal means (Elwi Danil, 2012).

In highly competitive markets, corporations may feel the need to “game the system” in order to remain relevant. Using corrupt practices can be a means to gain a competitive advantage, such as obtaining confidential information about competitors or securing exclusive rights to certain resources.

Corporate criminology theory emphasizes the importance of organizational structure and culture in encouraging or discouraging criminal activity. Corporations with strict hierarchies and a lack of transparency may be more susceptible to corruption, especially when there is pressure to meet certain targets. On the other hand, a corporate culture that promotes ethics and integrity will tend to reduce the risk of corrupt behavior.

In carrying out corrupt practices, corporations often use complex mechanisms to hide their tracks. This may include money laundering, setting up shell companies, or using interpersonal networks to give or receive bribes. The use of technology and international financial systems also allows corporations to move funds in ways that are difficult for authorities to track.

Corporate criminology theory also highlights the lack of effective oversight as a factor that facilitates corporate corruption. In many cases, regulators may not have the resources or expertise to detect or prosecute corrupt practices, providing opportunities for corporations to “get away” with violations (Nurdjana, 2015).

Using the lens of corporate criminology theory allows us to understand corruption not simply as an individual act, but as the result of a number of structural and cultural factors within the corporate world. Economic motives, competitive pressures, and organizational structures are among the many factors that play a role in pushing corporations toward corrupt behavior. By understanding these motives and mechanisms, we can be more effective in preventing and addressing corruption in corporate circles.

### **Legal Consequences Faced by Corporations Involved in Corruption, and the Effectiveness of the Implementation of Such Penalties in Preventing and Overcoming Corporate Corruption**

In this section, we will discuss about the legal consequences faced by corporations involved in corruption, and the extent to which the implementation of these penalties is effective in preventing and overcoming corporate corruption can be analyzed using Otto von Gierke's organ theory (Idham, et al., 2022) which states that a corporation is not a collection of individuals, but is organic and has its own 'life' that is different from its members. Gierke sees corporations as a manifestation of social cooperation that produces something greater than just the total of the individuals involved.

Corporate criminal liability is a legal concept that states that a company or organization can be punished criminally for crimes committed by individuals working for the company. This means that the company can be considered the perpetrator of the crime and subject to criminal sanctions, such as fines or imprisonment, just as the individual who committed the crime. (Andi Hamzah, 2015).

When corporations engage in corrupt acts, there are a range of legal consequences they may face, depending on the jurisdiction and the severity of the offense. Below are some of the most common legal consequences that corporations may face.

One of the most immediate consequences of corrupt acts is financial fines and sanctions. Many jurisdictions have laws that impose significant fines on corporations found guilty of corrupt acts, with the fines often calculated based on the profits derived from the corrupt act or the losses suffered by others.

Corporations involved in corruption may risk losing their licenses or permits to operate. This could mean losing the right to operate in a particular region or industry. While the corporation as an entity may be subject to sanctions, individuals within the corporation, such as executives or employees, may also face criminal charges for their role in the corrupt act. This could result in prison sentences for the individuals involved.

In some cases, corporate assets obtained from corrupt activities or used in such activities may be seized by the government. This may include property, bank accounts, or other assets. In addition to criminal legal action, corporations involved in corruption may also face civil legal action from parties harmed by the corrupt activities, such as injured competitors, the government, or other stakeholders.

While not technically a legal consequence, reputational harm is one of the most damaging and long-lasting impacts of corrupt acts. Damage to public image and trust can have long-term effects on a corporation's business success, including the loss of customers, business partners, and investment opportunities.

In addition to license revocation, corporations involved in corruption may also face operational restrictions. For example, they may be barred from bidding on government contracts or from operating in certain countries. Corporations that have been involved in corrupt practices may come under increased scrutiny from regulators, with the possibility of further investigations and audits in the future.

The application of punishment for corporations involved in corruption is an effort to provide a deterrent effect and prevent future corruption. However, the effectiveness of such punishment can vary depending on various factors.

The following is an in-depth analysis of the effectiveness of the application of penalties in the context of corporate corruption:

1. Amount of Fines and Financial Sanctions

Significant fines can have a significant financial impact on corporations and can act as a deterrent. However, if the fine is only a small portion of the profits derived from the corrupt act or if the corporation has significant financial resources, the deterrent effect of the fine may be limited.

2. Revocation of License or Permit



Revocation of a license or permit can be very effective, especially for corporations that rely on the license or permit for their operations. However, the application of this sanction must be done carefully so as not to harm employees or third parties who are not involved in the corrupt act.

### 3. Asset Confiscation

Asset confiscation ensures that corporations do not benefit from corrupt practices and can destroy a corporation's financial capacity, making it an effective sanction. However, the confiscation process may require extensive investigation and a long time.

### 4. Reputational Loss

While not a penalty in the traditional sense, reputational damage often has profound long-term effects on a corporation's operations and sustainability. Reputational damage can affect relationships with customers, investors, and business partners, and is often difficult to repair.

### 5. Civil Legal Action

Civil legal action by third parties can increase the financial burden on a corporation. However, its effectiveness as a deterrent may be limited unless it is accompanied by significant changes in corporate governance and culture.

### 6. Operational Restrictions

Operational restrictions, such as a ban on bidding on government contracts, can have significant impacts on corporations and serve as a powerful deterrent.

### 7. Continuity of Punishment

A one-time penalty may not be effective without ongoing monitoring mechanisms. Ongoing investigations and audits can ensure that corporations comply with the law and improve their practices.

While punishment can be an effective tool to prevent and combat corporate corruption, its success often depends on consistent implementation and monitoring, as well as the willingness of corporations to make internal changes. In addition, a holistic approach that includes punishment, education, and changing corporate culture can be a more effective way to address the problem of corruption among corporations.

Otto von Gierke, a German legal scholar, is known for his theory of "organ theory". According to Gierke, a corporation is not a collection of individuals, but is organic and has its own 'life' that is different from its members. Gierke sees the corporation as a manifestation of social cooperation that produces something greater than the sum of the individuals involved.

Referring to Gierke's thinking, a corporation is an entity that has its own "life" and identity, separate from the individuals that make it up. This provides an interesting perspective on the legal consequences for corporations. By viewing corporations as organic entities, the legal consequences faced by corporations (such as fines or license revocation) affect not only the corporation's finances and operations, but also its 'existence' as a social and economic entity.

Through the lens of Gierke's theory, corporations have an inherent moral responsibility. When a corporation engages in corruption, it is not just the individuals within

it who are guilty, but the entire corporate "organism." Therefore, the legal consequences faced by the corporation must be commensurate with the level of wrongdoing committed by the entity as a whole.

If we accept Gierke's view that corporations are organic entities with their own lives and morality, then the punishments imposed on corporations should be designed to improve the 'morals' of the corporation, not just to deter it. This means that punishments such as fines may not be effective unless they are accompanied by efforts to improve the corporation's internal culture and governance.

In addition to imposing penalties, there may need to be a rehabilitative approach to help corporations get back on track, given that corporations as "organisms" have the capacity to change and grow. This could include ethics training, improved governance, and external monitoring.

By considering Otto von Gierke's organ theory, we gain a profound perspective on how to view corporations and how to address the problem of corruption within corporations. Rather than simply imposing punitive punishments, there is a need to understand and improve the 'soul' of the corporation itself, recognizing that corporations have the potential to change and develop in positive ways.

## **CONCLUSION**

Based on the discussion that associated with problem then you can draw conclusion as following:

1. Corporations engage in corruption through a variety of often complex and covert means, driven by motives to increase profits, dominate markets, or evade regulation. The mechanisms they use range from bribery, tender manipulation, to money laundering. Internal factors such as an organizational culture that tolerates violations, as well as external factors such as weak oversight and regulation, contribute to these corrupt practices. Awareness of the methods and reasons behind corporate corruption is essential for developing more effective prevention strategies.
2. Corporations involved in corrupt practices can face a range of legal consequences, from heavy fines, license revocation, asset confiscation, to operational restrictions. While these penalties are intended to provide a deterrent effect, their effectiveness in preventing corporate corruption often varies. While fines may provide a financial impact, without significant internal changes in corporate culture and governance, the potential for corrupt practices to recur. Therefore, a holistic approach that combines sanctions, education, and structural reform is key in efforts to prevent and address corruption at the corporate level.

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