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The Position of Political Parties as Subjects of Corporate Law Under Law Number 1 of 2023 on The Criminal Code

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Abstract

Law Number 1 of 2023 on the Criminal Code affirms the recognition that corporations are subjects of criminal law. However, the formulation of Article 45, Paragraph (2) has not yet explicitly included political parties within the definition of a corporation. This condition gives rise to a crucial legal issue, considering that a political party is juridically positioned as a legal entity that is vulnerable to involvement in criminal offenses such as election fraud, corrupt campaign practices, through to political bribery. This research employs a type of normative legal research with a statutory approach and a conceptual approach, examined through primary and secondary legal materials. The results of the discussion show that, by means of the method of systematic interpretation, a political party may be categorized as a corporate legal subject based on its status as a valid legal entity under the Political Parties Law. The criminal liability of a political party may be realized where it satisfies the element of fault committed by the management having a functional position within the party's structure, whose actions are carried out in the name of or for the interest of the political party. The scheme for its law enforcement may be pursued through criminal proceedings in the district court, where a court decision declaring the political party guilty may serve as the legal basis for the Constitutional Court to impose the sanction of dissolution.

Keywords: Political Parties; Legal Subjects; Criminal Liability; Dissolution of Political Parties.

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1. Introduction

A criminal offense (pidana) is an act which, if violated, results in the perpetrator receiving a sanction in accordance with the laws and regulations governing it. A criminal offense or, in Dutch, Strafbaar Feit, a term that can be interpreted as "delict" is, as stated by D. Simons, an unlawful act that has been committed intentionally or unintentionally by a person who can be held responsible for their actions, and which has been declared by law to be a punishable act. Discussing criminal offenses is, of course, inseparable from the subject or perpetrator of the offense itself. A legal subject is the holder of rights and obligations under the law; therefore, in accordance with existing legal provisions, the legal subjects in Indonesian criminal law are "natural persons" and "legal entities." (Sudariono and Natangsa, 2005). Human beings, or natural persons, as legal subjects means that every human being has rights and obligations without exception this is what is referred to as legal capacity to have rights and obligations. Thus, every human being has the legal capacity to hold rights and obligations, and there are several juridical reasons why human beings are regarded as legal subjects. First, human beings possess subjective rights. Second, legal authority, which means the capacity to be a legal subject—that is, as a bearer of rights and obligations (Gilang, 2022).

Besides human beings as bearers of rights, the law also recognizes bodies or associations as legal subjects that can possess rights and perform legal acts like human beings. These bodies and associations can own their own property, participate in legal transactions through their administrators, and can be sued and sue before a judge. Such bodies or associations are called legal entities (rechtspersoon), which means a "person" created by law (Kansil, 1989). Thus, there is a legal form (rechtsfiguur), namely the legal entity (rechtspersoon), which can possess rights and legal obligations and can enter into legal relationships. One of the causes of stagnation in the legal world is the entrapment within a single positivist paradigm (Putu and Yogi, 2025) whereby the law lags behind and fails to keep pace with ongoing social developments. Prior to the enactment of Law Number 1 of 2023 on the Criminal Code (hereinafter referred to as the National Criminal Code), the regulation of corporate criminal offenses in Indonesia was governed by several statutes, such as Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption (hereinafter referred to as the Anti-Corruption Law), Law Number 32 of 2009 on Environmental Protection and Management (the Environmental Protection and

Management Law), and Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Committed by Corporations (hereinafter referred to as Perma 13/2016). If we refer to the explanation of "Corporation" as meant in Perma 13/2016, Article 1, Point 1 stipulates that a Corporation is an organized collection of persons and/or assets, whether or not it constitutes a legal entity.

In Indonesia, the development of criminal offenses has become increasingly massive. Moreover, the perpetrators of criminal offenses are not only natural persons; corporations, too, can act as perpetrators of crime. However, previously, the legal status of corporations as legal subjects had not been comprehensively regulated in a manner that set out corporations as legal subjects. Therefore, in an effort to address this problem, the government undertook a legal breakthrough by which it reaffirmed the existence of corporations as legal subjects within the positive legal order in Indonesia. This effort is set forth in the National Criminal Code. The provision on Corporations as legal subjects in the National Criminal Code is affirmed in Article 45, Paragraph (1), whose elucidation sets out that a Corporation is a subject of criminal offenses; Paragraph (2) then provides the following definition of a corporation:

"A Corporation as referred to in Paragraph (1) includes legal entities in the form of Limited Liability Companies, Foundations, Cooperatives, State-Owned Enterprises, Regional-Owned Enterprises, or their equivalents, as well as associations, whether or not they have legal personality, and business entities in the form of Firms, Limited Partnerships, or their equivalents, in accordance with the provisions of the laws and regulations."

Examining the elucidation of Article 45, Paragraph (1) of the new Criminal Code, political parties are not included in the definition of legal subjects categorized as corporations, such as State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and the like, even though, juridically, a political party is in fact also a legal entity, as stated in Article 3, Paragraph (1) of Law Number 2 of 2011 on the Amendment to Law Number 2 of 2008 on Political Parties (hereinafter referred to as the Political Parties Law), which provides that "a Political Party must be registered with the Ministry in order to become a legal entity." Therefore, a political party must take the form of a legal entity so that it possesses the rights and authority to perform legal acts. Based on this explanation, a political party is likewise capable of committing legal acts (criminal acts), and consequently there is a need for clear regulation concerning the position of political parties as legal

subjects—this in order to clarify and affirm the matter should a political party later commit a criminal offense.

The foregoing explanation is already sufficiently complex in setting out the definition of a corporation (legal entity); however, in this respect there still remains ambiguity in viewing the existence of political parties within the order of corporate legal subjects, given that the definition set out in Article 45 above contains no phrase that comprehensively sets out the position of political parties as corporate legal subjects, even though, juridically, a political party is also a legal entity. Indeed, in the practice of corruption offenses, there are indications or suspicions that corruption cases frequently involve members of political parties, with the proceeds subsequently also flowing to their parties; yet, to date, no political party has been examined or prosecuted by law enforcement in Indonesia. Based on the foregoing explanation, the author is of the view that there is a need for a re-examination of the definition of a corporation as set out in Article 45, Paragraph (2) of the National Criminal Code, particularly regarding the existence of political parties as corporate legal subjects. Accordingly, on the basis of the background described above, the author is interested in conducting research under the title "The Position of Political Parties as Corporate Legal Subjects under the New Criminal Code.".

2. Problem Formulation & Method Research

The problem in this research is that the formulation of Article 45, Paragraph (2) of Law Number 1 of 2023 on the Criminal Code still leaves legal ambiguity regarding the position of political parties as legal subjects under the National Criminal Code. The type of research used is Legal Research, which aims to resolve existing legal issues and to issue prescriptions that can be applied to the legal issue raised. The approaches employed in this research include the statute approach and the conceptual approach. The statute approach is used to examine the application of norms—in this case, Article 45, Paragraph (2) of the New Criminal Code. The analytical materials used for this approach are the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1946 on the Regulation of Criminal Law, Law Number 1 of 2023 on the Criminal Code, the Civil Code (Burgerlijk Wetboek), Law Number 2 of 2008 on Political Parties, Law Number 2 of 2011 on the Amendment to Law Number 2 of 2008 on Political Parties, Law Number 31 of 1999 on the Eradication of the Crime of Corruption, Law Number 32 of 2009 on Environmental Protection and Management, Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal

Cases Committed by Corporations, and various relevant regulations. The conceptual approach, meanwhile, is an approach grounded in the various doctrines that have developed in the advancement of legal science (Peter, 2005). Legal policy regarding a regulation, in this case including legal policy (Astariyani, 2023), in the context of The Position of Political Parties as Subjects of Corporate Law Under Law Number 1 of 2023 on The Criminal Code. The conceptual approach in legal research refers to a method of analysis that emphasizes an understanding of the legal concepts forming the basis of a regulation or piece of legislation. This approach provides a particular perspective in analyzing the resolution of legal problems by prioritizing the aspect of the legal concepts that underlie a given norm.

3. Analysis and Discussion

3.1. The Position of Political Parties as Legal Subjects Under The National Criminal Code Regime

One of the fundamental reforms in Law Number 1 of 2023 on the Criminal Code is the recognition of corporations as subjects of criminal law. This provision is explicitly regulated in Article 45 of the Criminal Code, which states that a corporation is a subject of criminal offenses in addition to natural persons. This arrangement reflects a paradigm shift in Indonesian criminal law, which was previously oriented toward individual liability, into a system that also recognizes the criminal liability of legal entities (Anwar and Iwan, 2026). The recognition of corporations as subjects of criminal law is a logical consequence of the development of the global economy and the complexity of corporate crime. The classical theory that developed in the 19th century held that only human beings possess the element of fault (mens rea), and hence only human beings can be punished. However, the development of business practice shows that many criminal offenses are committed through the organizational structure of corporations, making it difficult to determine the individual perpetrator responsible (Hiariej, 2021). According to Alfakar et al., the development of modern criminal law demonstrates a shift from individual criminal responsibility toward corporate criminal responsibility. This shift arises because corporations have the capacity to make decisions, control resources, and obtain profits from criminal offenses committed within their business activities (Alfakar and Masyhar, 2023). This finding is consistent with the research of Mukhlis and Sipatuhar, which states that the recognition of corporations as subjects of criminal law under the National Criminal Code constitutes a form of modernization of Indonesian criminal

law (Mukhlis and Sipatuhar, 2024). However, this research extends that study by demonstrating that such recognition is not merely symbolic but is accompanied by the regulation of the mechanism of liability and the types of punishment that may be imposed on corporations. The 2023 Criminal Code explicitly brings an end to the dominance of the doctrine of societas delinquere non potest, which holds that a legal entity cannot commit a criminal offense. Corporations now acquire the status of an independent subject of criminal law.

If one examines the construction of the norms in the National Criminal Code that affirm corporations as legal subjects, this can be seen in Article 45, Paragraph (1) of the National Criminal Code, which states that "a Corporation is a legal subject," while Paragraph (2) states that "a Corporation as referred to in Paragraph (1) includes legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, or their equivalents, as well as associations, whether or not they have legal personality, and business entities in the form of firms, limited partnerships, or their equivalents, in accordance with the provisions of the laws and regulations." It is interesting to analyze that, having regard to this norm, no phrase whatsoever mentions political parties as legal subjects in that Article, unlike State-Owned Enterprises (BUMN), Foundations, Regional-Owned Enterprises (BUMD), and the like. However, if interpreted using the method of interpretation, the phrase "legal entity" can serve as a basis for claiming that a political party is the legal subject referred to therein. Why is this so? Pursuant to Article 3, Paragraph (1) of Law Number 2 of 2011 on the Amendment to Law Number 2 of 2008 on Political Parties (hereinafter referred to as the Political Parties Law), it is stated that "a Political Party must be registered with the Ministry in order to become a legal entity." Thus, since Article 45 of the National Criminal Code also states that a legal entity is a subject that can be held criminally liable, it follows that a political party is likewise a legal subject that can be held liable on the basis of that legal-entity status.

3.2. The Concept of Legal Liability of Political Parties

Before discussing the substance of this sub-chapter, the author will first discuss several theories of liability. Ridwan Halim is of the opinion that legal liability is a further consequence of the exercise of a role, whether that role constitutes a right and duty or an authority. In general, responsibility is understood as the obligation to do something or to behave in a particular manner without deviating from the existing rules. Purbacaraka, meanwhile, offers the view that legal

responsibility originates or arises from the use of the facilities available in the exercise of each person's capacity to exercise rights and/or perform duties, and that every exercise of a right whether carried out inadequately or adequately must in principle still be accompanied by responsibility (Sugeng, 2014). In criminal law, the term "liability" is known; in Dutch it is called toerekenbaarheid, and in English, criminal responsibility or criminal liability. Regarding criminal responsibility, Roeslan Saleh refers to it as "criminal responsibility", whereas Moeljatno speaks of "pertanggungjawaban dalam hukum pidana" (responsibility in criminal law), while other legal scholars more frequently refer to it as "criminal responsibility." (Sampur, 2015). Responsibility, or what is known as the concept of liability in the philosophy of law, is described by Roscoe Pound, who states: "I use the simple word 'liability' for the situation whereby one may exact legally and another is legally subjected to the exaction." Criminal responsibility, as understood by Pound, is a duty to pay the retribution that will be received by the perpetrator from a person who has been harmed (Romli, 2000) There are several theories of legal liability, as follows:

1. Liability Based on Fault, This is a classical theory which holds that a person may be held liable only if there is an element of fault.
2. Strict Liability, This theory is a departure from the fault principle. Under strict liability, a person may be held liable for the harm that arises without any need to prove the existence of an element of fault. This theory is applied to activities regarded as extremely dangerous or high-risk.
3. Vicarious Liability, This theory imposes responsibility on a person for acts committed by another person who is under his or her supervision (Din, 2025).

Based on the foregoing explanation, this is sufficient to provide an overview of the meaning and several examples of theories of legal liability. Then, how is corporate liability conceived under the National Criminal Code? It has previously been explained that a political party may be regarded as a corporate legal subject under the National Criminal Code; subsequently, Article 46 of the National Criminal Code states that "a Criminal Offense by a Corporation is a Criminal Offense committed by the management having a functional position within the organizational structure of the Corporation, or by a person who, on the basis of an employment relationship or another relationship, acts for and on behalf of the Corporation or acts in the interest of the Corporation, within the scope of the Corporation's business or activities, whether individually or jointly."

Meanwhile, Article 48 explains that "a Criminal Offense by a Corporation as referred to in Article 46 and Article 47 may be held liable if: a. it falls within the scope of the business or activities as stipulated in the articles of association or other provisions applicable to the Corporation; b. it benefits the Corporation unlawfully; c. it is accepted as a policy of the Corporation; d. the Corporation fails to take the necessary steps to prevent, to avert greater impact, and to ensure compliance with the applicable legal provisions in order to avoid the occurrence of a criminal offense; and/or e. the Corporation allows the criminal offense to occur." Furthermore, the penalties that may be imposed on a corporation are principal penalties and additional penalties. If one considers the concept of punishment referred to, then pursuant to Article 120 of the National Criminal Code, it is explained that (1) Additional penalties for a Corporation as referred to in Article 118 letter b consist of: a. payment of compensation; b. rectification of the consequences of the Criminal Offense; c. performance of obligations that have been neglected; d. fulfillment of customary obligations; e. financing of job training; f. forfeiture of Goods or profits obtained from the Criminal Offense; g. announcement of the court decision; h. revocation of certain licenses; i. permanent prohibition from performing certain acts; j. closure of all or part of the Corporation's business premises and/or activities; k. freezing of all or part of the Corporation's business activities; and l. dissolution of the Corporation. Paragraph (2) The additional penalties as referred to in Paragraph (1) letters h, j, and k shall be imposed for a maximum of 2 (two) years

The question then arises again: can a political party commit a criminal offense? Before that, the author will first set out several crimes that are closely related to political parties, such as election fraud, namely corruption directly connected to electoral fraud, in which a political party, in an organized and systematic manner, has planned victory by illegal means, typically beginning with inaccurate voter registration, vote inflation, the falsification of documents, through to the stage of certifying the election results. Ordinarily, political parties bribe officials or officers responsible at every stage of the election with sums of money. In addition, there is the term corrupt campaign practice, namely the practice of campaigning using state facilities or state funds. In the Indonesian context, this type of corruption is difficult to avoid as long as state officials concurrently serve as functionaries of political parties, whether as general chairperson, secretary-general, or even as chairperson of the board of trustees or chairperson of the honorary council. In order not to appear conspicuous, the modus operandi of this type is carried out in the regions by disguising the boundary between duties as a state official and the agenda of political party

activities, whose days are made the same but whose hours differ. This modus operandi at least saves the political party's budget for transportation and accommodation costs, since these are usually financed by the state (Piers and James, 1995). Lastly, political bribery, namely power in the legislative sphere as the law-making body. Politically, that body is controlled by a particular interest, because the funds spent during the general election period are often connected to the activities of certain companies. Businesspeople hope that the members seated in parliament can make rules that benefit them. It is an open secret that corruption in Indonesia does not occur in the implementation of laws, but has instead occurred at the time of the formation of laws in parliament. Every bill that is drafted has a price. Indeed, every sentence, word, and use of punctuation can be negotiated.

Theory of A.V. Dicey Perspective of the Rule of Law in Indonesia, Rumiartha (2022) discusses the relationship between A.V. Dicey's rule of law theory and the Indonesian legal system. The Constitution (Rumiartha, 2022), of Indonesia is the primary foundation of laws and regulations aimed at the welfare of the people (Marwanto, et al., 2024), including welfare in the legal field. Based on the foregoing, it can be stated that in the study of crime, more than half of crimes are closely related to political parties. The question then is: is it possible for a political party to be held criminally liable, and what would the legal scheme be? The liability of political parties is an inevitability. At present, Indonesian regulation recognizes the dissolution of political parties under three criteria. First, dissolution where the party dissolves itself by its own decision. Second, merging with another political party. Third, dissolution by the Constitutional Court. Furthermore, the provisions concerning the dissolution of a political party by the Constitutional Court are further regulated in Article 48, Paragraph (7) of Law Number 2 of 2008, which states that "a violation of the provisions as referred to in Article 40, Paragraph (5) shall be subject to the sanction of dissolution of the Political Party by the Constitutional Court." Meanwhile, the wording of Article 40, Paragraph (5) of Law Number 2 of 2008 is: "A Political Party is prohibited from adhering to, developing, and disseminating the teachings or ideology of communism/Marxism-Leninism." The Government is the party that may petition for the dissolution of a political party. Meanwhile, the grounds for dissolving a party continue to refer to the provisions set out in Article 40, Paragraph (2) and Article 40, Paragraph (5) of Law Number 2 of 2008, namely:

1. A political party carries out activities that contravene the 1945 Constitution;

2. A political party carries out activities that contravene the laws and regulations;
3. A political party carries out activities that endanger the integrity of the Unitary State of the Republic of Indonesia (NKRI);
4. A political party carries out activities that endanger the safety of the Unitary State of the Republic of Indonesia (NKRI);
5. A political party adheres to the teachings or ideology of communism/Marxism-Leninism;
6. A political party develops the teachings or ideology of communism/Marxism-Leninism;
7. A political party disseminates the teachings or ideology of communism/Marxism-Leninism.

Based on the above explanation, the ground of "contravening the laws and regulations" can be used as an entry point to incorporate the criteria of extraordinary crime as a ground for the dissolution of a political party. Accordingly, a political party has the potential to violate the provisions as regulated in the National Criminal Code, for example by being involved in a corruption case. Therefore, mutatis mutandis, its legal liability may begin by bringing the matter before the district court. Subsequently, if it is proven to have committed a criminal offense, that court decision may serve as the basis for requesting the Constitutional Court to examine and dissolve the said political party.

4. Conclusion

The renewal of criminal law through the enactment of Law Number 1 of 2023 on the Criminal Code marks a paradigm shift from individual liability toward the recognition of corporations as subjects of criminal law. Law Number 1 of 2023 on the Criminal Code affirms the recognition that corporations are subjects of criminal law. However, the formulation of Article 45, Paragraph (2) has not yet explicitly included political parties within the definition of a corporation. This condition gives rise to a crucial legal issue, considering that a political party is juridically positioned as a legal entity that is vulnerable to involvement in criminal offenses such as election fraud, corrupt campaign practices, through to political bribery. The results of the discussion show that, by means of the method of systematic interpretation, a political party may be categorized as a corporate legal subject based on its status as a valid legal entity under the Political Parties Law. The criminal liability of a political party may be realized where it satisfies the element of fault committed by the management having a functional position within the party's structure, whose

actions are carried out in the name of or for the interest of the political party. The scheme for its law enforcement may be pursued through criminal proceedings in the district court, where a court decision declaring the political party guilty may serve as the legal basis for the Constitutional Court to impose the sanction of dissolution.

Nevertheless, the formulation of Article 45, Paragraph (2) of the National Criminal Code has not yet explicitly included political parties within the definition of a corporation. This gives rise to significant legal ambiguity, considering that a political party is juridically a valid legal entity under the Political Parties Law and has considerable potential to be involved in structural crimes, such as election fraud, corrupt campaign practices, through to political bribery. Although not expressly stated, by means of the method of systematic interpretation, a political party may still be categorized as a corporate legal subject. Criminal liability against a political party may be possible where the unlawful act is committed by the management or functionaries acting for and on behalf of, or in the interest of, the party. In order to achieve effective law enforcement, this scheme of liability may be pursued first through criminal proceedings in the district court. If the political party is proven guilty of committing a criminal offense, that court decision may serve as the juridical basis for the Constitutional Court to impose the highest sanction, namely the dissolution of the political party.

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