

THE STRATEGY OF CORPORATE CRIME COMPLIANCE IN THE BUSINESS PYRAMID THROUGH PENAL MEDIATION

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Abstract

The form of corporate crime (business crime) in our research is the crime of investments with pyramid schemes, the initial concentration of the pyramid scheme is within the jurisdiction of civil law and economic law turns into a legal matter that enters the jurisdiction. This is because the company that develops the business does not have good faith in the management of the company (good governance) corporate crime settlement strategy in pyramid business which be done through penal mediation. Penal mediation may be made if the parties (offerors, offerees, and corporations) involved value each other and the results obtained in penal mediation, because the most important principle in penal mediation is the recognition of guilt and forgiveness by the injured party resulting from acts to achieve a win solution in the effort to bring responsibility for the perpetrator and the victim. In the criminal justice system at both level of investigation, prosecution and court proceedings there is a possibility of penal mediation by adhering to the principle of legal assurance, legal order and justice.

Key words : Corporate crime, business pyramid, penal mediation

1. Introduction

The development of business pyramid in Indonesia can not be separated from the development of business that develops globally today, and its development can not be separated from the spirit of creating the welfare of society, not only the people of the country but also the world community. One effort to create the welfare of the community is the creation of the World Trade Organization, and Indonesia as one of the countries that has the concept of community welfare to ratify the international agreement with the Law no. 7 year 1994. With the ratification of the treaty, the consequence for the state is to be subject to all the provisions contained, although in some cases not accordance with the cultural customs of our society that upholds the ethical values that still prioritize the values inner world which is not merely calculated on the basis of the economic

value in a material manner, whereas in the international treaty precisely put forward the material form of welfare only, not the inner welfare, as stated by Romli Atmasasmita, that is "true development of the noble ideals of the international community after the Cold War material welfare is not inward." (Atmasasmita; 2010; 26)

Romli statement above is not without reason, this is due to the background of world economic development that continues to change towards the ideals of the welfare of the world community. Along with the emergence of new and sovereign nations, trade patterns are required to respect the equality of treatment and openness among countries. The century of modern capitalism has shifted to a century of far-sighted postmodern capitalism about the side effects of special modernization on the environment, health, natural resources, and developments in

information technology, biological and health technologies. This century is marked by the rapid development of multinational companies or multinational corporations all over the world. (Atmasasmita; 2010; 27)

The development of the above concept also gives effect to Indonesia, especially in this globalization era, the trading system applied in Indonesia continues to experience metamorphosis / development to the post-modern capitalism system, that is, the developing companies in our country already in the formation of multinational companies engaged in various sectors, with the regulation of the attention to the impacts of business behavior, whether in the environment, natural resources and health, and the system applied to the company from the impact it generates in the form of Corporate Social Responsibility (CSR), and this responsibility system has been regulated in Law no. Year 40 Year 2007 About Limited Company.

Besides the impacts of the government's attention through the law of the Company, there are also negative impacts that regardless the attention of the government, one of which is the existence of regulatory exemption that is considered to inhibit foreign investors in investing their capital to Indonesia, but it has a significant negative impact for the Indonesian people, ie the loss of the inner values of our society to gain (defend) the economic advantage outwardly, the individual's interest begins to be prioritized compared to the kinship interests, and this unknowingly can dissolve the joints of our kinship as a nation famous for the customs of mutual coercion and kinship.

The loss of values is due to the emergence of the principle of globalization that is embraced everywhere, especially in the world's

economy, the principles of globalization they are, 1). Protection of individual property rights; 2). Market concentration; and 3). Healthy competition; (Atmasasmita; 2010; 29) and now greatly affects the economic community in Indonesia, so the concern that arises is the importance of the individual becomes very important by ignoring the common interest (communal interest). Another perceived impact of highly visible globalization is that of the ideology of capitalism and economic liberalism leading to the misery of the people and resulting in significant disparities between the rich and the poor. Meanwhile, when viewed from the side of developed countries there is a positive impact, because the economy of developed countries is going up.

One of the problems that arise from this negative impact in this globalization era is the emergence of business crime or other term "business crime" or in other terms often termed "corporate crime" or corporate crime. According to Atmasasmita, the term "business crime" contains philosophical, juridical, and sociological aspects. Philosophically, the term meaning implies that there has been a change in values in society when a business activity is operated in such a way that is very detrimental to the interests of the wider community, such as investment activities in the labor-intensive private sector, or the activity of capital markets whose shareholders namely the wider community including the lower middle class. (Atmasasmita; 2010; 75)

2. Method

The legal fact that begins with the description of the legal relationship between the parties with the corporation, in the implementation of business investment pyramid schemes. Data that

can be gained from the field (primary) and secondary data as a result of tracing and then analyzed by legislation, the applicable law relating to the offeror's legal responsibility in pyramid business investment. Research using normative juridical method supported by empirical juridical method, with multidisciplinary approach, data obtained from research result both primary data and secondary data are processed by using qualitative juridical method. that is by examining criminal law and legislation related to legal protection problem, legal assurance, legal order and justice as the objective of law.

3. Result and Discussion

The form of corporate crime (business crime) that concentrates on our research is the corporate crime in the field of investment with the pyramid system, and the system is implemented with the aim at achieving a large profit target in a very tight competition, so in practice the business actor applying a system of community fundraising in stages or widely used by our community with the term pyramid system or the term economic law is a Ponzi Scheme (Ponzi Scheme). (Krismen, 2014, 136) It is used for the purpose of achieving the highest profit yield with the lowest bid cost, because by using a tiered system or pyramid system, the company can utilize

the customer / investor as the marketing / marketing for the development of the company or as an effort to collect / seek new investors with the aim at collecting capital (funds) as much as possible, but in practice it ignores many provisions set forth in Law no. 25 Year 2007 About Investment Law no. 35 Year 2007 About the Company, so that initially as a pyramid system that is in the area of civil law or economic law turned into a legal issue that enters the jurisdiction of criminal law. This is because the company that develops the business does not have good faith in the management of the company (good governance), that is not clear in the object / product produced by the company, although in some research not clear, then gold is always used as an investment object, unclear financial management mechanism of the company including the management of risks faced by companies related to funds taken from the community.

In practice by using the pyramid system, companies do not directly deal with investors, especially the lowest investors; companies will only meet with investors who are in the upper level only, while the second level's investors can not meet the company further. If in the picture will look like the following.

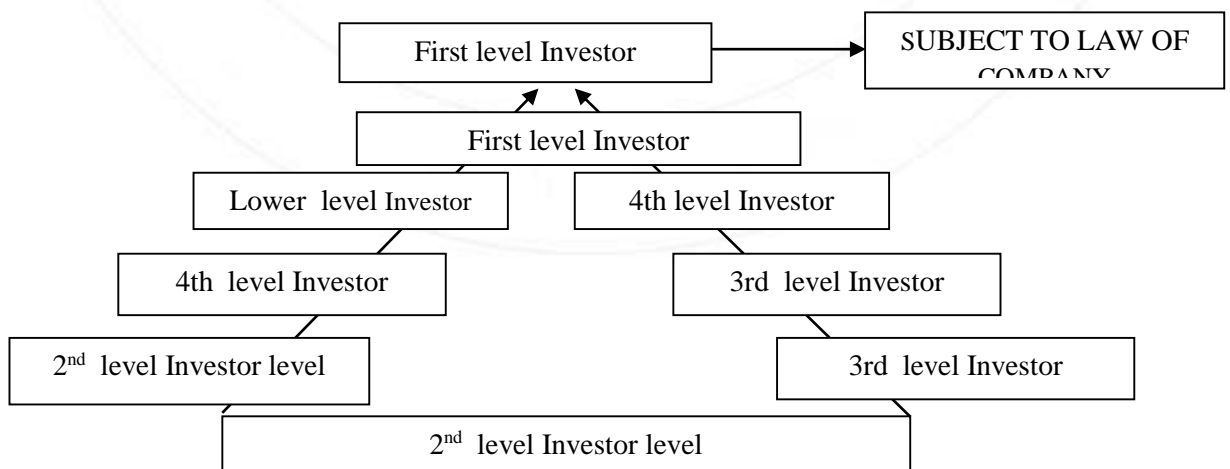


Figure 1. pyramid system

Based on the description above, there can be seen that the company does not have a direct relationship with the bottom of the investor, especially that the company does not know anymore investors who are in the lowest level or also investors who are in the middle level, because of this pyramid system, then the legal relationship in the lowest investor is the legal relationship done with the investor who is in the middle level, or often termed the legal relationship that arises between the offeror and the offeree, the offeror is the investor at the top / middle level while the offered is the investor at bottom level.

In this system, the company appears to be no longer interfering in legal relations activities between the offeror and the offeree, all marketing activities and investor recruitment are performed by the offeror, so offeree only knows all the company's related information from the offeror. In fact in practice the company releases responsibility for the offeror, whereas the offeror involves in seeking and recruiting investors on behalf of the company and the investment provided by the offeree is left to the company. So the problem arising from the above legal relationship is, the offeror does not benefit directly from the offeree, but the offeror will benefit from the company in the form of a point as a bonus for the business of recruiting customers, in addition to profits him as an investor, but the issue of law in the future is how much the responsibility of the offeror to the offeree is related to the negligence made by the investment company because it has neglected its obligation in providing profit on the investment made, and the weakness of the offeror related to the recruitment of investors is the introduction and knowledge of the company owned is not complete enough this is because the offeror also gets information and knowledge about the

company from the top level offerors and the upper level offerors get information and knowledge about the company from the offeror on the level above it, and so on, so that the company's management (good governance) of the company is not known and well-respected by each offeror because it only relies on the information of the offeror in stages, and this is what many companies use to cheat.

The rights, obligations and responsibilities of investors are specifically regulated in order to provide legal certainty, reinforce the obligations of growers capital towards the application of sound corporate governance principles, give respect for the cultural traditions of the community, and carry out corporate social responsibility

Based on the analysis conducted, the company should be liable for the actions done by the offeror, because the company is considered not having good faith and let (know) the process of recruitment offeree by the offeror and benefit from the actors offeror, and it becomes one of the important elements in criminal responsibility, that is, the element of error. In addition, accountability must be borne by the corporation because of the criminal offense could result in extraordinary losses (due to law): (1). In the economic or material disadvantages of showing the extent of economic losses is extraordinary, as the Subcommittee on Antitrust and Monopoly of the US Senate Judiciary Committees, chaired by Senator Philip Hart, estimates the losses incurred by corporate crime between 174-231 Billion dollars / year, (2). And also social and moral disadvantages, the impact of corporate crime is to undermine people's trust in business behavior. (K. Kristian, 2014, 585) So that corporation can be said to have a responsible ability.

Based on the actions performed and the applicable criminal accountability, the corporation may be subject to an objective breach of a penal provision, but the criminal penalty imposed is not only a sanction that can give a deterrent effect to the corporation, but sanction punishment that can provide the best benefits for the offeror and offeree as well as for the company itself, because within the structure of the company there is always a workforce (employees) in addition to directors and investors (majority shareholder), so that applied criminal sanctions must save the three parts above. The justification of the sanctions system is based on several things, namely: (Muladi, 2012, 24)

Based on an integral philosophy, that all things should be measured on the basis of equilibrium;

2. On the basis of kinship;
3. To combat anomie of success (success without rules);
4. For consumer protection;
5. For technological advancement.

In an effort to apply the above criminal sanctions, the judicial system's efforts are used through penal mediation, due to the principle in penal mediation solves a rational criminal justice case based on Win-Win Solution principles and not Win-Lose Solution. (Sahuri Lasmadi, 2012; 4) Especially for the crime committed by the corporation, penal mediation would be very appropriate to apply, this is because the one who must be saved in the crime is not only offeree and offeror but also his own corporation in it there are company employees also owners of the company.

According to Covey, Win-Win Solution or win-win solutions can satisfy all the litigants alike, because philosophically, win-win is a framework of thinking and feeling that seeks mutual benefit in all interactions among people. Win-win means everyone is happy, because the

agreement or problem solving benefits and satisfies both sides, with win-win solutions, all parties are happy with the decisions taken and related to participate in implementing the agreed action plan. (Lasmadi, 2012; 5) It's just that applying the penal mediation model requires the greatness of each party better use for both want to settle the crime well, so with the model, the purpose of punishment is not to provide guarantees for perpetrators, but provide benefits for the perpetrators and victims.

4. Conclusion

Mediation of penal as an attempt to solve crimes committed by corporations with pyramid system in order to achieve justice for the offeror and offeree, by growing corporate responsibility for the actions that have been done, so hopefully penal mediation can end the conflict made by each party with the principle of win Solution.

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