

Corporate Criminal Liability for the Alleged Crime of Employing Medical Personnel and Health Personnel Without a License in Hospitals

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Abstract

Corporations as legal subjects not only carry out their activities in accordance with economic principles (seeking maximum profits) but also have an obligation to comply with legal regulations in the health sector which are used by the government to realize community welfare and social justice. As the corporation is the creator, the management is responsible for criminal acts that can be committed by associations or business entities (corporations), but the responsibility for this is the responsibility of the management of the legal entity (corporation). Gradually, criminal responsibility shifts from management members to those who order them, or are prohibited from carrying them out if they neglect to actually lead the corporation. Objective research : understand form accountability corporation as body law hospital in employ power medical and power health without letter permission practice (permit) at hospital. This study use approach juridical normative nature descriptive analytic with secondary data from studies references through material primary law, secondary nor related tertiary with follow criminal corporation, body law hospital, permission power medical and power health in law Indonesian criminal law. Data analyzed use analysis qualitative. In the accountability system employing medical personnel and health workers without a practice license (permit), the corporation can become a perpetrator of action criminal, will but responsible are members administrator, origin just stated with firm in that regulation. Corporation as maker or who gives command/ordered for employ power medical and power health work without permission. Manager appointed as responsible; which is seen done by corporation is what is being done by tool complement corporation according to authority based on budget basically.

Keywords: Liability, Criminal, Corporate, Practice License, Medical Personnel, Health Personnel

1. INTRODUCTION

Problem corporation as subject law criminal not free from aspect law civil. In law personal civil law it's not the only one subject law. This matter caused still there is subject other laws that have right and can do deed law the same like an individual. View like this different with the criminal code only get to know individuals as subject law. Almost all aspects of society's life involve corporations. It can be seen that corporations operate in various fields such as the agricultural industry, banking, entertainment including health and hospitals in particular. In Article 1 number 37 of Law Number 17 of 2023 concerning Health, it is stated that every person is an individual, including corporations. The placement of corporations as legal subjects in criminal law cannot be separated from social modernization. The more modern society becomes and the more socially, economically and politically complex it becomes, the greater the need for a formal life control system. Social life can no longer be left to a relaxed pattern of rules, but requires increasingly organized, clear and detailed arrangements. Even though methods like this may meet the needs of an increasingly developing society, the problems they cause are also quite numerous. Prosecuting corporations for the crimes they commit through laws and regulations governing corporate responsibility is important, but what is no less important is providing protection and justice to victims of corporate crimes. Corporations (as individual legal subjects " *legal persons* ") and where in their judicial practice, among other things, depend on the crimes committed, the rules and quality of evidence

and prosecution. The motivation for crimes committed by corporations is not only aimed at personal gain, but also at fulfilling needs and achieving organizational profits. It is possible that these motives are also supported by operational (internal) norms and organizational subculture. Corporations as legal subjects not only carry out their activities in accordance with economic principles (seeking maximum profits) but also have the obligation to comply with legal regulations in the economic sector which are used by the government to realize community welfare and social justice. Corporate criminal liability is closely related to the criminal liability of its management or employees. Employees who factually or physically carry out this act will be held accountable. AZ Abidin stated that corporations are the subject of criminal law, namely "The perpetrators of offenses which are corporations are included by Roling as functioneel daderschaap, because corporations in the modern world have an important role in economic life which has many functions, employers, producers, price setters, users, foreign exchange, and so on."

2. METHODOLOGY

Method applied in this study is method juridical normative, a approach deductive use theory as point beginning for answer question study. This study will analyze articles in regulation legislation related with not quite enough answer doctor and House Sick to employ power medical and power health without permission. In context study normative, approach conceptual used for understand concepts like not quite enough answer corporation, body law hospital and crime. This concepts become base for produce norm in rule law.

1. Specification Study

Specification this study involve application method descriptive analytical. This method used for parse regulation applicable legislation, in particular related with theories law and implementation practice law related positive not quite enough answer criminal corporation and employ power medical and power health at hospital. Study descriptive aim for give details deep to phenomenon related particulars with theory and overcome problems that arise.

2. Method Approach

Method applied in this study is method juridical normative, a approach deductive use theory as point beginning for answer question study. This study will analyze articles in regulation legislation related with not quite enough answer criminal corporation and hospital to employ power medical and power health at hospital. In context study normative, approach conceptual used for understand concepts like not quite enough answer corporation, licensing and hospital. Concepts This become base for produce norm in rule law .

3. Stage Study

Study Bibliography : Engaging studies literature for collecting secondary data, incl material primary law and related secondary with not quite enough answer corporation and hospital.

4. Technique Data collection

Material Primary Law : Involving binding legislation like invite basic 1945, Book invite law criminal, act invite number 40 of 2007 concerning limited liability companies, and invite number 17 of 2023 concerning health

Material Law Secondary : Involving books law and work law from various source

Material Law Tertiary : Including dictionary , encyclopedia, index, and cumulative

5. Tool Data collection

Studies Bibliography: Search and collect secondary data like regulation legislation, journal scientific, and article scientific related accountability corporation, permission practice and hospital.

6. Data analysis

Election analysis must in accordance with type, purpose research, and the nature of the data collected. Analysis descriptive qualitative used for grouping, selecting, and connecting data from study field with theory and existing law studied.

3. RESULTS AND DISCUSSION

Responsibility Answer Corporation in Act Criminal

There is the corporation does crime now this it's not rare thing, mass media often preach about follow crime committed by corporation well outside as well as inside country. Crime committed by corporation this it turns out not only happen in current times course, but already taking place since a long time ago. This matter can seen from appearance various theory accountability criminal the corporation that was born in frame stop or punish the corporation does it follow criminal, like the theory of identification doctrine, aggregation doctrine was born far on beginning 20th century. About loading accountability criminal to crime committed by corporation that alone

there is a number of theory or teachings that can be made base in loading accountability the criminal. Theory or teachings the is theory Identification (Identification Theory), Theory Accountability Criminal Absolute (Strict Liability), and Theory Accountability Criminal Substitute (Vicarious Liability). In the United States, the very way general in request corporation responsible answer in a way criminal is through doctrine respondeat superior or vicarious liability. According to this doctrine, if a agent or worker corporation, act in scope his job and with meaning for profitable corporation, do something crime, bear it answer the crime can charged to company. Not become problem is company in a way real obtain profit or No or is activity the has forbidden by company or no. Doctrine this has walk with good inside law england, in relationship with crime strict liability related with problems like pollution, food and medicine, health and security work. This also has applied for crime mixed (hybrid) which is evil mainly strict liability but allow defense due diligence. However so, it's clear that vicarious liability no must applied for all over crime from strict liability, is will applied or no is problem in interpretation to constitution relate with policy on existence constitution the and is use vicarious liability will help implementation constitution. Very difficult for confirmed is vicarious liability can applied in every case, the question is is vicarious liability own strong foundation for request accountability corporation. The reasons supporting vicarious liability are partial big nature pragmatic. With traverse all existing problems relationship with other doctrines, such as find enough people important inside corporation that has do crime. With this doctrine, then throughout somebody that act in field his job and has do something crime so company can asked accountability criminal. This matter will prevent company protect himself from not quite enough answer criminal with bestow illegal activities only to his workers just.

In theory, one corporation can said has deliver power for act inside the field each to all over his staff and based on that, corporation must asked accountability on deed wicked they. This also made reason that optimal prevention is possible achieved with apply vicarious liability on the corporation. However there is a number of big problems related with doctrine this, in particular when applied for the crimes involved mens rea. Firstly, no there is proof empirical support statement that method this is the most effective way in reach prevention. This the same with claim that crime strict liability can justified in matter prevention. For respond claim this, has showed that company will or at least only do what makes sense for prevent loss and strict and vicarious liability can truly operate as a dis-incentive for company for follow as well as in activities that are social profitable. Second, vicarious liability can just become too inclusive in matter something company can convicted for error from a workers to him corporation should no accountable, in matter corporation can so has do everything inside field his power for prevent happen crime. Corporation can so has make clear policy and set order in a way wide for avoid error. When a worker corporation decide to " do it myself " that, it seems difficult for processing error corporation in do or no. Third, doctrine this, even can so very not inclusive inside matter policy and practice something company Possible bad and perhaps push act in demand wicked. However no possible for pin-point for worker certain ones have do elements necessary evil. Indeed, quote decision where are you from America ? company has sued and punished, though there is the facts show all over worker corporation has released from accusation. Meanwhile, still difficult for support doctrine of vicarious liability for all over crimes, especially serious ones, such as manslaughter. Of course just no difficult for justify doctrine this when applied for crime strict liability (assuming crime strict liability can held accountable alone). Crime sort of this is related with related problems with pollution, protection to consumer, food, medicine, health and safety and no doubtful again this is a possibility big done by corporation. for crime sort of this, found error on party perpetrator not required. By because that, it seems small need for forming something error from party corporation. Indeed, it is possible step more far and give argumentation that, because big given power by corporation in fields that have potency dangerous, role from strict liability must expanded when crime done by corporation. However, as the reason that will stated below this is a different approach sort of this (treat corporation and individual in a way different) will become counter productive And donate for marginalization crime committed corporation. One of possible solution compromised is proposal from the Council of Europe , namely the main thing (prima facie) is the corporation will take switch not quite enough answer for crime committed by his workers but will given a due diligence defense if matter this can stated that management involved in crime has take all necessary steps for prevent did it the crime. Objective main from approach this is for change all pregnant crime the intention (mens rea) to be carried out by corporation become crime hybrid, that is crime strict liability and added with defense a due diligence. very again, as the consequence, crime corporation will considered own different significance compared with other crimes, as normal terms of something crime (eg manslaughter) no need proven, crime sort of this will considered as more crimes low and by because that will lots damage function reproach from law criminal.

Formulation Penalty Criminal Corporation in Invite Invite Health

Arrangement about not quite enough answer criminal corporation in invite health among them formulated in a number of articles. Formulation penalty in Article 447 of the Law Health Number 17 of 2023. Article the mention that in case follow criminal by corporation, corporation can charged criminal fine with weighting triples from criminal fine the manager. Addition penalty Can form revocation permission business and / or revocation of agency status law. However, there are emptiness regulation related repetition follow criminal and penalty criminal principal to corporation. Article 447 of the Law hospital also no arrange threat criminal dead, just about criminal prison and fine. Provision criminal fine in Article 20 paragraph (7) Law No. 31/1999 causes obstacle, because no give alternative If fine no paid by corporation. Barda Nawawi Arief put forward that type criminal addition like closing company or revocation right permission business can made criminal principal or at least as criminal independent addition. Brickey highlighting that restrictions to activity corporation equivalent with criminal prison or confinement, called as " corporate imprisonment ". Announcement the judge's decision too considered as severe sanctions feared by corporation. Approach payment fine by corporation, if no done, no arranged in a way firm. Barda Nawawi Arief recommend type criminal replacement fine like revocation permission business or dissolution corporation. This draft covers financial sanctions, structural sanctions, and stigmatizing sanctions. In the 2004 criminal code, regulation criminal replacement fine if no paid by corporation has submitted. Provision the give option payment in instalment and allow taking decision from riches or income corporation if fine no paid completely. This study disclose problem related penalty criminal to hospital as corporate, involving aspect criminal fine, criminal additional, and alternative penalty in face weakness formulation Invite Health. Article 447 of Law Number 17 of 2023 states: " In the event that criminal acts as referred to in Article 428, Article 430 to Article 435, Article 437, Article 442, Article 444, Article 445 and Article 446 are committed by a corporation, criminal liability is imposed towards corporations, managers who have functional positions, givers of orders, holders of control, and/or beneficial owners of the corporation ."

4. CONCLUSION

From the problems mentioned above, the following conclusions can be drawn: As the corporation is the creator, the management is responsible for criminal acts that can be committed by associations or business entities (corporations), but the responsibility for this is the responsibility of the management of the legal entity (corporation). Gradually, criminal responsibility shifts from management members to those who order them, or are prohibited from carrying them out if they neglect to actually lead the corporation. In the accountability system for employing medical personnel and health workers without a practice license (permit), corporations can become perpetrators of action criminal, will but responsible are members administrator, origin just stated with firm in regulation that. Corporation as maker and administrator responsible, then confirmed that corporation Possible as maker or who gives command/ordered for employ power medical and power health work without permission. Manager appointed as responsible; which is seen done by corporation is what is being done by tool complement corporation according to authority based on budget basically. Act crime committed by corporation is follow crime committed by somebody certain as administrator from body law the. Characteristic from the act of making follow criminal that is " *onpersoonlijk* ." The person who leads corporation responsible criminal, regardless from is he know or no about did it deed. Corporations as makers and responsible. This third accountability system is the beginning of direct responsibility from the corporation, in this system the possibility of suing the corporation and holding it accountable according to criminal law is opened. The importance of careful consideration in the criminal imposition of closing an entire hospital as a corporation is acknowledged, considering the impact on many people. However, the author suggests that the formulation of regulations can give judges the freedom to consider imposing these sanctions, with the word "can" providing freedom in deciding whether the closure of the entire corporation needs to be imposed, so that the criminal severity does not only apply to individuals but also to corporations.

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