



Characteristics of Criminal Liability of Political Parties in Corruption Offenses

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Abstract

Political parties play a strategic role in advancing democracy, but they are increasingly faced with issues that cast a negative light on their organizations. These issues include, first, the involvement of political parties in various corruption cases, which damages their public image and reduces public trust in them; second, the legal debate surrounding the criminal liability of political parties implicated in corruption cases; and third, the challenge of imposing criminal sanctions on political parties or corporations as legal entities proven to have committed corruption offenses. Political parties are associations composed of individuals, an element defining them as organizations or management bodies within the parties. Political parties manage independent finances and are considered part of “organized wealth” and a “legal entity” capable of acting on their own behalf. This establishes that, fundamentally, political parties possess characteristics akin to corporations in the context of corruption offenses.

Keywords: *Criminal Liability; Corruption Offenses; Political Parties*

Introduction

The legitimacy of political parties or corporations as legal entities is essential to establish in order to prosecute political parties involved in corruption. It is therefore crucial to clarify the justification of political parties as corporations, as defined in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Corruption Eradication (UU Tipikor), and further supported by the national Criminal Code [KUHP] enacted under Law No. 1 of 2023. This status allows them to be held accountable independently.

Furthermore, the concept of political parties as distinct legal entities relates to the separate wealth they manage. This is outlined in Article 1, Point 5 of the Political Parties Law, which details that a political party's finances encompass all rights and obligations measurable in monetary terms, whether in cash, assets, or other forms of property, all of which are the party's sole responsibility. The financial autonomy of political parties emphasizes a separation between the assets of the party and those managing it, granting the party full control over its finances. Similar to corporations in corruption cases, the characteristic of “organized wealth” is a defining feature required by the Anti-Corruption Law (UU Tipikor).

The Criminal Code reinforces this equivalence between political parties and corporations in criminal provisions. Article 46 of the new Criminal Code elaborates on the scope and characteristics of

corporations, defining them as entities with “functional positions” allowing representatives to act, make decisions, and oversee operations on the entity's behalf. This includes individuals who may instigate, participate in, or instruct others to commit criminal offenses or assist in their commission. “Other relationships,” such as temporary employment contracts, also fall within this definition.

The designation of corporations as subjects of criminal offenses in the Criminal Code clarifies the broader scope of what constitutes a corporation as detailed in Article 45 of the Criminal Code. When applied to political parties, the features described in this article align closely with those of political parties as defined in legislation.

In this context, the explanation above highlights a meaningful equivalence between political parties and corporations as legal subjects in corruption cases. Specific elements of political parties mirror those of “organized associations of individuals,” given their financial independence and status as legal entities capable of self-representation. This affirms that political parties, in essence, share the same legal definition as corporations in corruption offenses.

As previously established, the equivalence in meaning between corporations and political parties in the National Criminal Code (KUHP) further reinforces the status of political parties as corporations in criminal law. Article 46 of the National Criminal Code elaborates on the characteristics and scope of corporations, defining a corporation as an entity that includes individuals with “functional positions.” These positions grant individuals authority to represent, make decisions for, and oversee the corporation, including roles that allow them to instruct, participate, or mobilize others in committing or assisting in criminal acts. The term “other relationships” in this context refers to temporary contracts, among others.

The provision that classifies corporations as subjects of criminal acts expands upon the concept of a corporation as defined in Article 45 of the National Criminal Code. When applied to political parties, the elements described in these articles reflect the characteristics of political parties as outlined in legal regulations governing them.

This correlation with political parties pertains to the organized structure of political parties, which extends hierarchically from the central level to the lowest local levels, such as villages, with interconnections based on hierarchical work relationships. From a governance perspective, political parties have structured leadership at central, provincial, district, and even local levels, with rules and mechanisms governed by the bylaws and constitution (Anggaran Dasar or AD, and Anggaran Rumah Tangga or ART) of each party. Political parties must consist of at least fifty individuals, and specific minimum numbers or restrictions must be met regarding the organization's leadership, underscoring that the governance of political parties generally comprises a large organizational structure. This organizational and leadership structure indicates that political parties inherently meet the initial criteria to be considered corporations subject to criminal law. Additionally, as a legal entity, the establishment of a political party for a set period also fulfills the corporate criteria outlined in Article 46, paragraph (1) of the National Criminal Code.

This principle can be observed from two perspectives: an active period and a passive period. The active period refers to the established time frame of a political party's existence as stipulated in the bylaws and constitution of the legal entity. A legal entity's existence for a defined period, ending upon the completion of its specified term in its foundational documents, reflects this active term. This time frame, also referred to as a limited period, may be based on the formation of the entity by all or some of its founders as a legal entity or potentially as part of a joint venture for specific objectives (Anonim, 2018). Similarly, political parties, as legal entities, may establish a defined active period according to their particular needs and conditions.

Method

This study used normative or juridical-normative legal research approach by reviewing legal literature, examining legal principles including both ideal legal elements that generate norms through legal philosophy and concrete elements that form specific legal frameworks and exploring legal systematics by identifying fundamental legal concepts, such as legal subjects, rights and obligations, and legal events. This study aims to analyze and establish the justification for categorizing political parties as corporate entities subject to criminal liability in corruption cases. In addition, this study examines factors hindering the enforcement of criminal penalties against political parties and seeks to analyze and formulate a framework for imposing criminal sanctions on political parties involved in corruption cases. According to Peter Mahmud (2016), legal research is a process designed to uncover legal rules, principles, or doctrines to address pertinent legal issues (Mahmud, 2016, p. 35).

Research Findings and Discussion

The Nature of Criminal Responsibility for Political Parties as Legal Entities in Corruption Offenses

1. Corporation as a Legal Subject

To address a corporation as a subject in criminal offenses, it is essential first to examine the concept of a legal entity. The term *rechtspersoon* or “legal person” is closely related to civil law (Dwidja, 1991, p. 1). Originating from the Dutch word *corporatie*, it is commonly interpreted as a legal entity—a group of individuals united by a common purpose under the law or historically brought together, constituting an independent legal subject and regarded by law as a single unit (N.E. Algra et al., 1983, p. 83).

Sajipto Rahardjo emphasizes that law does not solely consider humans as legal subjects but also extends to non-human entities, such as legal persons (Sajipto Rahardjo, 1991, p. 128). Furthermore, Rahardjo states that a legal person is a legal creation designed to achieve certain objectives. This entity comprises *corpus* (its physical structure), within which the law instills an *animus* or spirit, endowing it with a distinct personality. As a legal creation, a legal person’s existence and dissolution are determined by law (Sajipto Rahardjo, 1991).

According to R. Subekti, a legal entity is an organization or association possessing rights, able to perform actions like a human being, has its own assets, and can be sued or sue in court (H. Man S. Sastrawidjaja, 2005, p. 128). Salim HS explains that a legal entity is a group of individuals with a specific purpose, assets, and distinct rights and obligations (HS, 2008, p. 26). The concept of “purpose” refers to the goal or aim outlined in the entity’s founding document. According to Salim, the characteristics of a legal entity include:

- a) Possessing an organized group;
- b) Having a specific purpose;
- c) Owning assets;
- d) Having rights and obligations; and

- e) Possessing the right to sue and be sued.

Andi Zainal Abidin argues that a corporation is viewed as a group of individuals granted legal rights as a unit, with a legal personality assigned for specific purposes (Abidin, 1983, p. 54). Sutan Remi Sjahdeini defines the concept of a corporation in both narrow and broad senses (Sjahdeini, 2017, p. 25). In the narrow sense, a corporation as a legal entity is a legal figure whose existence and authority to

perform legal actions are recognized under civil law. In the broader sense, a corporation in criminal law encompasses both legally recognized entities and those not formally established as legal entities (Kristian & Gunawan, 2017, p. 74).

Not only legal entities like limited liability companies, foundations, cooperatives, or officially recognized associations fall under civil law's definition of a corporation, but also firms, limited partnerships (CVs), and partnerships (*maatschap*), which are not classified as legal entities under civil law but still operate as business entities. Legal scholars categorize legal entities based on the following criteria:

- 1) Formation: How the entity is established and structured;
- 2) Regulatory Framework: The legal rules governing the entity;
- 3) Nature: Whether the entity operates as a public or private organization.

1. Indonesian Criminal Law on Corporations

The term legal entity in criminal law gained recognition in several criminal statutes outside the Indonesian Criminal Code (KUHP). Initially, as noted by Barda Nawawi Arief, the term corporation was not used consistently, and various terms were applied without uniformity (Arief, 2003). Barda further explains that the term corporation was first introduced in Law No. 5 of 1997 on Psychotropics, followed by Law No. 35 of 2009 on Narcotics, Law No. 31 of 1999 on the Eradication of Corruption Crimes (as amended by Law No. 20 of 2001), and Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes. This series of specialized criminal laws has designated corporations as subjects of criminal law, where the term corporation is defined and explained across various statutes (Sjahdeini, 2017).

In the draft Indonesian Criminal Code (RKUHP), Article 45(1) explicitly states that corporations are subjects of criminal offenses. According to Sutan Remy Sjahdeini, the criminal law definition of corporation differs from the civil law perspective. In civil law, a corporation is defined as a business entity or legal entity. In criminal law, however, a corporation encompasses not only business entities but also any organized group of people or assets, whether legally incorporated or not (Arief, 2003).

The Supreme Court has established guidelines for handling criminal cases involving corporations through Supreme Court Regulation No. 13 of 2006. Article 1, Paragraph 1 of the regulation defines a corporation as an organized group of people and/or assets, whether it is a legal entity or not. Article 2 outlines the objectives for establishing these procedural guidelines for corporate criminal cases as follows:

- 1) To serve as a guide for law enforcement in handling criminal cases involving corporate actors and/or their management;
- 2) To address gaps in criminal procedural law specifically for cases involving corporate actors and/or their management; and
- 3) To enhance the efficiency and effectiveness of criminal case management for corporate actors and/or their management.

2. Characteristics of Political Parties as Corporations

According to Article 3 of Law No. 2 of 2011, which amends Law No. 2 of 2008 on Political Parties, political parties in Indonesia hold the status of legal entities, with several stipulations that affirm their corporate characteristics. These requirements include:

1. Political parties must be registered with the Ministry of Law and Human Rights to obtain legal entity status.
2. Requirements for Legal Entity Status are as follows:
 - a. The political party must have an official deed of establishment notarized by a public notary.
 - b. The political party's name, symbol, or logo must be unique and not bear substantial similarity to those of other legally recognized political parties, as stipulated by existing laws.
 - c. The political party must establish a management structure in every province, with at least 75% of cities or regencies in each province represented and a minimum of 50% representation of districts within each city or regency.
 - d. The party must maintain permanent offices at the central, provincial, and city/regency levels until the conclusion of the electoral cycle.
 - e. A bank account under the political party's name is required for managing its financial transactions.

In the provisions of Article 3, it is evident that the existence of a political party as a legal entity (*rechtspersoon*) is established through a legal process in accordance with regulatory provisions. Otto Van Gierke's organ theory likens legal entities to natural persons, embodying rights and obligations within legal relations. A political party functions as an "organ" with distinct parts, such as its leadership structure comprising the Chairperson, Central Leadership Council (DPP), Regional Leadership Council (DPC), members, and supporters. Each component has specific functions, contributing collectively to the party's operations. The political party's leadership serves as an organ wherein the leaders act as agents who collectively guide the party, yet individual members within this organ only function with proper authorization from the party's governing structure.

Theoretically, when examining the classification of legal entities through their formation, regulatory oversight, and inherent characteristics, political parties fall under the category of legal entities based on their formation. According to their establishment, political parties align with the classification of private or civil law entities (**badan hukum privat**), as differentiated from public law entities. The characteristics of a political party as a private legal entity include:

1. The establishment process for political parties involves several stages as following:
 - a. Authentic Deed Stage:
 - 1) Political parties, as national organizations, must be founded by at least 50 Indonesian citizens, who voluntarily and with a shared purpose create an official notarial deed.
 - 2) The party's notarial deed must include the organization's bylaws (AD) and internal regulations (ART) as well as the structure of its central leadership.
 - 3) The bylaws serve as the foundational regulation for the political party, covering the following elements:
 - (a). Principles and Identity of the political party.
 - (b). Vision and Mission statements of the party.
 - (c). Name, Emblem, and Symbol of the party.
 - (d). Goals and Functions of the political party.
 - (e). Organizational Structure, Headquarters, and Decision-Making Process guidelines.
 - (f). Party Leadership Structure.
 - (g). Recruitment Mechanisms for membership and political roles.
 - (h). Cadre Development System to foster party members.
 - (i). Mechanisms for Dismissing Members.

- (j). Regulations and Party Decisions processes.
 - (k). Political Education strategies.
 - (l). Party Finances management.
 - (m). Procedures for Resolving Internal Disputes.
- 4) Founders and party officials are prohibited from holding membership in another political party.
 - 5) The formation and establishment of political parties must ensure at least 30% female representation.
 - b. After the political party is established with a notarial deed, the deed must be registered with the Ministry of Law and Human Rights to obtain official legal entity status. This registration process involves submitting the notarial deed along with other requirements necessary for recognition as a legal entity.
 - c. Once all registration requirements have been met, the Ministry of Law and Human Rights conducts a thorough examination and verification of the submitted documents to ensure completeness and accuracy. This verification process must be completed within a maximum of 45 days from the submission of the complete set of documents.
 - d. Upon completing verification, the Ministry of Law and Human Rights issues an official decree, granting the political party the status of a legal entity within a maximum of 15 days. This decree is then published in the Republic of Indonesia's Official Gazette (Berita Negara RI), formally announcing the party's legal status. The publication serves to inform the public and enables the political party to function legally and fulfill its roles as mandated by law.
2. The sovereignty of a political party resides with its members, who exercise it according to the party's internal regulations and bylaws (AD and ART). Each member has the right to participate in decision-making processes, vote, and stand for selection in party roles. In turn, every member is obligated to obey and execute the statutes and bylaws and actively participate in party activities.
3. Political parties are prohibited from establishing business entities or holding shares in any business enterprise.
4. Political parties run under a hierarchical organizational structure.
5. Conflicts within a political party must be resolved through deliberation and consensus
6. The law mandates that political parties first attempt to resolve disputes through consensus. If consensus cannot be reached, disputes may be resolved through judicial processes or alternative dispute resolution methods, such as reconciliation, mediation, or arbitration, as outlined in the party's statutes and bylaws.
7. Sources of Political Party Funding:
- a. Membership finances from party members are collected as standard dues, providing an internal funding source for political activities.
 - b. Donations permitted by law, which may take the form of cash, goods, or services, are grounded in principles of honesty, voluntarism, fairness, transparency, responsibility, as well as sovereignty and independence. These donations originate from:
 - (a). Contributions from individual party members are managed in accordance with the party's statutes and bylaws

- (b). Contributions from individuals who are not affiliated with the party are limited to a maximum of Rp 1,000,000,000 (one billion rupiah) per person within a fiscal year.
- (c). Contributions from companies or other business entities are capped at Rp 7,500,000,000 (seven billion five hundred million rupiah) per entity within a fiscal year.

c. State Budget Assistance (APBN/APBD):

Support from the national (APBN) and regional (APBD) budgets is provided proportionally to political parties with seats in the DPR RI (House of Representatives), DPRD Province, and DPRD District/City. This funding allocation is based on the party's vote share in each respective legislative city.

- 8. Political parties are required to submit an annual accountability report to the Audit Board of Indonesia (BPK). This report must be audited no later than one month after the end of the fiscal year.
- 9. By law, political parties must ensure transparency and accountability in their financial management. This includes an annual audit by a certified public accountant, with periodic publication of: a. Political Party Budget Realization Report b. Balance Sheet Report, c. Cash Flow Statement

Characteristics of Political Parties are structured as private or civil corporations; however, in practice, they operate as private entities performing public functions. This distinction is based on criteria set forth by legal scholars who differentiate public and private legal entities by their formation and operational scope. Politically, the role of political parties aligns with public interest objectives, as stipulated in Article 10 of the general and specific purposes of Political Parties. Furthermore, Article 1, Paragraph 3 of Law No. 14 of 2008 on Public Information Transparency defines a "Public Body" as any executive, legislative, judicial, or other body involved in state governance funded wholly or partially by the national or regional budgets, including NGOs partially or wholly financed through public, domestic, or foreign funds.

According to Saldi Isra, this perspective is fundamental, as political appointments for various offices, such as regional heads, presidents, ambassadors, ministers, and roles within national commissions and local councils, stem from party recruitment. Saldi further argues that the inherent superiority of political parties can lead to control issues, resonating with Lord Acton's maxim that power tends to corrupt, and absolute power corrupts absolutely. Thus, political parties, performing public legal functions, inherently wield oligarchic, feudal power prone to mandate manipulation and political corruption due to policymakers' involvement in political systems.

From the perspectives of organizational theory and social action theory, corruption offenses committed by party officials who hold state positions not only constitute political corruption but also criminal acts attributable to the political party. Such offenses render the party itself criminally liable under the relevant articles of the Corruption Eradication Act (Van Gierke, 1993, Op.Cit:19).

For criminal liability to attach to a political party, acts committed by officials must satisfy several criteria: a) The official's actions must not be personal but must reflect the exercise of their functions and powers (as outlined in the Party's Charter or Bylaws); b) These actions may include both prohibited acts (commission offenses) and failure to fulfill legal obligations (omission offenses); c) The offense must align with the corporation's purpose and objectives; d) The offense must be performed by an actor or upon the directive of an authority within the corporation as part of their duties; e) The offense must be intended to benefit the corporation; f) The actor or director lacks any legal basis for exoneration from criminal liability.

Accordingly, actions by party officials that meet these criteria establish grounds for criminal liability for the political party in corruption cases. This liability extends beyond the central executive committee (DPP) to include regional and local divisions (DPD and DPC) when their actions meet the specified requirements, as such authority derives from the party itself.

3. Similarities and Differences Between Corporations and Political Parties

Examining expert perspectives and relevant legislation reveals similarities between corporations and political parties:

- a. Both function as associations or organizations;
- b. Both hold the status of legal entities (*rechtspersoon*), equating them with natural persons (*natuurlijke personen*);
- c. Both are organizations or associations with specific and achievable objectives;
- d. Both operate without limited terms;
- e. Both have distinct rights and obligations;
- f. Both have independent assets of the wealth of their individual members or founders;
- g. Both have foundational legal principles defined by their respective laws;
- h. Both are accountable entities in legal terms.
- i. Political parties involved in criminal acts of corruption can be held criminally accountable, provided they meet certain criteria of accountability as outlined. Each part of the organization contributes to the overall functions of the entity. The political party's officials, seen as organs, consist of individuals who not only guide the political party but, on the other hand, can only act within their role if permitted by the party's functions.
- j. Under the organizational theory, the political party in corruption cases is evaluated through its officials' actions. This is because their actions reflect the broader party system, not merely individual gains. Otto Van Gierke's organizational theory aligns with Talcott Parsons' actor-structure theory, which explains that actions performed by an actor constitute social actions if they consist of interconnected units of action.

4. Scope of Corruption Offenses

The Anti-Corruption Law defines 30 acts under the category of corruption offenses, which can be grouped into seven main types:

1. Corruption relating to state losses is governed by two articles: Article 2, Clause (1) concerning unlawful acts and Article 3 regarding abuse of authority. These are formal offenses, meaning there need not be an actual state loss to declare an offense. However, following Constitutional Court Decision No. 25 of 2017, state losses under Articles 2 and 3 now require actual material loss.
2. Corruption involving bribery is covered across 12 articles.
 - a. Corruption related to embezzlement is addressed in five articles: Articles 8, 9, 10a, 10b, and 10c.
3. Corruption involving extortion is stipulated in three articles: Articles 12e, 12f, and 12g.
 - 1) Fraud-related corruption is covered in six articles: Articles 7, Clause (1), (a), 7, Clause (1), (b), 7, Clause (1), (c), 7, Clause (1), (d), and Article 12h.

4. Corruption related to procurement of goods and services is regulated in Article 12i, which involves civil servants or state administrators who, directly or indirectly, intentionally participate in creating contracts, procurement, or leasing under their management or oversight.
5. Corruption in the form of gratuities is governed by Articles 12B and 12C/

Article 12B defines gratuities broadly to include gifts of money, goods, discounts, commissions, interest-free loans, travel tickets, lodging, vacations, free medical treatment, and other facilities. Gratuities received within or outside the country, whether through electronic means or not, are included in this scope.

Conclusion

The Nature of Criminal Liability of Political Parties as Legal Entities in Corruption Offenses. Political parties are organized groups of individuals, an essential feature that categorizes them as legal entities with distinct governance structures. Political parties maintain independent finances and operate as “organized pools of wealth” and “legal entities” empowered to perform legal actions on their own behalf. This characteristic aligns them fundamentally with corporations in the context of corruption offenses. For judicial authorities, establishing specific guidelines to impose criminal liability on political parties is essential. Judges, in particular, must evaluate a political party’s culpability by examining legal facts that demonstrate the party's financial benefits or other gains derived from acts of corruption committed by its officials or functionaries. Such measures ensure accountability within political parties as legal entities, reinforcing their obligations under criminal law.

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