

Regulation of criminal sanctions against corporations in administrative penal law in the context of criminal law reform

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Abstract: Criminal sanctions in their use in administrative criminal law are an unavoidable condition to support administrative law enforcement. The policy of using criminal sanctions in administrative criminal law is a very important discussion. The application of criminal sanctions in administrative penal law is not only a technical matter of legislation but an inseparable part of the substance of legislation as a legislative policy process. The formulation of the problem in this research concerns how the regulation of criminal sanctions that can be applied to corporations in administrative penal law in the future. The method used in this research is normative juridical research, employing conceptual approach techniques, statutory approaches, and historical approaches. The nature of this research is descriptive, and the data used in this research is secondary data, with data collection techniques carried out through literature studies and document studies. Data analysis in this research will be analyzed qualitatively. The results and discussion in this research indicate that, so far, criminal sanctions that can be applied to corporations in administrative penal law only focus on criminal sanctions, which consist of basic and additional punishment. The ideal criminal sanctions to be applied to corporations in the future do not only focus on criminal sanctions but also include action sanctions. The main criminal sanctions that apply to corporations in the future are also not limited to fines but consist of various options. The main criminal sanctions that can be imposed on corporations in the future need to be adjusted to the level of need for administrative laws governing certain fields. Fines as the only main criminal sanction applicable to corporations are unlikely to be imposed singly or independently.

Keywords: *Administrative penal law, Corporations, Criminal sanctions.*

1. Introduction

Crime is essentially a form of deviant behavior that is always inherent in the life of society. This deviant behavior is a real threat to the social norms that underlie social order and has the potential to threaten the sustainability of social order [1]. Marc Ancel stated that criminal acts are not only a social problem, but also a human problem [2]. The policy of using criminal law in administrative law is a very important discussion. The use of criminal law in administrative law, of course, is related to the application of criminal sanctions itself. The use of criminal sanctions in administrative law is a reality, so that every administrative law product has placed criminal provisions in it. The placement of criminal provisions in administrative law, given the many violations that occur against the norms of administrative law. Overcoming an offense that occurs has been taken in various ways, one of which is by using the means of criminal law through the application of criminal sanctions.

Violations of the law against the provisions of administrative law are basically unlawful acts in the realm of administrative norms, which then violations of the law in administrative norms are enforced by criminal law enforcement through criminal sanctions. Violations of the law against the provisions of

administrative norms that are threatened with criminal sanctions are known as administrative crimes. The existence of these criminal sanctions in *administrative penal law*, of course, as we know, plays a role as a supporter of administrative law enforcement. The policy of determining criminal sanctions as a means of tackling crime is a matter of choosing from various alternatives to the sanction itself. The policy of determining criminal sanctions as part of crime prevention efforts, basically cannot be separated from the state's objectives in protecting the entire Indonesian nation and realizing general welfare based on Pancasila and the 1945 Constitution. The selection and determination of a criminal sanction cannot be separated from various rational considerations in accordance with the circumstances and development of society.

In Indonesia, the existence of corporations as subjects of criminal law that can be burdened with criminal liability has been formulated in legislation, especially in administrative laws that contain criminal provisions. The formulation of criminal sanctions applicable to corporations in the *administrative penal law* is a very important stage of policy formulation. The policy of formulating criminal sanctions that can be applied to corporations in the *administrative penal law* is essentially part of criminal law policy. Criminal sanctions are given to corporations, if the corporation is blamed for an unlawful act, therefore it is very important to prevent the corporation from committing the same criminal offense in the future and to prevent other corporations from making the same mistake [3].

Criminal sanctions that can be applied to corporations as stipulated in the *administrative penal law* consist of principal punishment and additional punishment. Therefore, the regulation of criminal sanctions that can be applied to corporations in administrative criminal law is very important to be discussed. Based on the description above, this paper wants to analyze how the regulation of criminal sanctions that can be applied to corporations in the *administrative penal law* in the future in the context of criminal law reform.

1.1. Research Method

The method used in this writing is normative juridical research, using conceptual approach techniques, legislative approaches and historical approaches. The nature of this research is descriptive analytical, while the data used in this writing is secondary data with data collection techniques carried out through literature studies and document studies. The method of data analysis in this writing will be analyzed qualitatively.

2. Results and Discussion

2.1. Formulation of Criminal Sanctions Against Corporations in Administrative Penal Law, in Indonesia

Criminal sanctions that can be applied to corporations as formulated in several *administrative penal laws* as described above, basically consist of principal punishment and additional punishment. In Indonesia, several *administrative penal laws* that contain criminal sanctions that can be applied to corporations as an example can be seen in the table below.

Table 1.
Criminal Sanctions Applicable to Corporations in *Administrative Penal Law* in Indonesia

No.	Law	Types of criminal sanctions imposed on corporations	Description
1	Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition in conjunction with Law No. 6 of 2023 Stipulation of Perpu No. 2 of 2022 on Job Creation become law.	Principal punishment: Fines Additional punishments include: a. Revocation of business license b. Prohibition of business actors to hold positions of directors or commissioners for at least 2 (two) years and a maximum of 5 years. c. Termination of activities or actions	Article 48 Article 49
2	Law Number 8 Year 1999 on Consumer Protection	Basic punishment: fine Additional punishments include: d. Deprivation of certain goods e. Announcement of judge's decision f. Payment of compensation g. Cease and desist order h. Obligation to withdraw goods from circulation i. Revocation of business license	Article 62 Article 63
3	Law Number 24 Year 2007 on Disaster Management	Basic punishment: fine Additional punishment: Revocation of business license and Revocation of legal entity status.	Article 79 Paragraph (1) Article 79 Paragraph (2)
4	Law No. 30 Year 2009 on electricity	Basic punishment: fine	Article 55
5	Law No. 33 Year 2009 on Film	Basic punishment: fine Additional punishment includes: Forfeiture of profits obtained from criminal acts and Revocation of business license.	Article 82 Paragraph (1) Article 82 Paragraph (3)
6	Law No. 32 Year 2009 on Environmental Protection and Management	Basic punishment is not regulated. Additional punishments or disciplinary measures are confiscation of profits obtained from the criminal offense, closure of all or part of the place of business, repair of the consequences of the criminal offense, obligation to do what is neglected without right and placement of the company under guardianship for a maximum of 3 years.	Article 116 Article 119
7	Law No. 17 of 2023 on Health	Criminal fine Additional punishment: a) payment of compensation, b) revocation of certain licenses and or c) closure of all or part of the place of business or corporate activities.	Article 447 (2) Article 448
8	Law No. 11/2010 on Cultural Heritage	Criminal fine Additional punishment is revocation of business license.	Article 113 (2) Article 115 (2)
9	Law No. 21 of 2011 on the Financial Services Authority as amended by Law No. 4 of 2023 on Financial Sector Development and Strengthening.	Criminal fine	Article 54
10	Law No. 1 Year 2011 on Housing and Settlement Areas.	Basic punishment: fine	Article 163
11	Law No. 20 Year 2011 on Flats Jo Law No. 2 Year 2022 on Job Creation.	Basic punishment: fine Additional punishment in the form of revocation of business license or revocation of legal entity status.	Article 117 (1) Article 117 (2)

12	Law No. 20 Year 2014 on Standardization and Conformity Assessment	Basic punishment: fine Additional punishment in the form of license revocation and or revocation of legal entity status.	Article 73 (2) Article 73 (3)
13	Law No. 27 of 2006 on Spatial Planning in conjunction with Law No. 6 of 2023 on the Stipulation of Perpu No. 2 of 2022 on Job Creation into law.	Basic punishment: fine Additional punishment includes: revocation of business license and/or revocation of legal entity status.	Article 74 (1) Article 74 (2)
14	Law No. 18 of 2009 concerning Livestock and Animal Health jo Law No. 41 of 2014 concerning Amendments to Law No. 18 of 2009 jo Law No. 2 of 2022 concerning Job Creation.	Principal punishment: fine Additional punishment in the form of revocation of business license, revocation of legal entity status or employment status from the authorized official.	Article 92 (1) Article 92 (2)
15	Law No. 7 of 1992 on Banking Jo Law No. 10 of 1998 on the Amendment of Law No. 7 of 1992 as amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector	Basic punishment: fine Additional punishment in the form of a) announcement of the judge's decision, b) suspension of part or all of the activities of the corporation, both legal and non-legal entities or other entities, after obtaining consideration from the financial services authority.	Article 50 C (1) Article 50 C (2)
16	Law No. 8 of 1995 on the Capital Market as amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector	Basic punishment: Fine Additional punishment in the form of announcement of the judge's decision, freezing part or all of the corporation's activities, both legal and non-legal entities or other entities.	Article 109 A (3) Article 109 A (4)
17	Law No. 3 Year 2011 on Fund Transfer	Principal punishment: Fines Additional punishment: Obligation to return the proceeds of crime along with services, interest or compensation to the injured party.	Article 87 (4) Article 88
18	Law No. 27 of 2022 on Personal Data Protection	Principal punishment: Fines Additional Penalties include: a) Confiscation of profits and or assets obtained from criminal offenses, b) Freezing of all or part of the corporation's business, c) permanent prohibition of certain actions, d) closure of all or part of the place of business and or corporate activities, e) implementing obligations that have been neglected, f) payment of compensation, g) revocation of licenses and or h) dissolution of the corporation.	Article 70 (2) Article 70 (4)
19	Law No. 39 Year 2014 on Plantations in conjunction with Law No. 6 Year 2023 on Job Creation.	Basic punishment: Fine.	Article 113
20	Law No. 13 of 2019 on the Protection and Empowerment of Farmers in conjunction with Law No. 6 of 2023 on Job Creation.	Principal punishment: Fines	Article 104
21	Law No. 3 Year 2014 on Industry in conjunction with	Basic punishment: nothing is stipulated or mentioned.	Article 121

	Law No. 6 Year 2023 on Job Creation.		
22	Law No. 17 of 2019 on Water Resources.	Basic punishment: fine	Article 74 Paragraph (2) letter a.
23	Law No. 38 Year 2004 on Roads as last amended in Law No. 2 Year 2022 on Roads.	Basic punishment: fine	Article 65 (2)
24	Law No. 18 Year 2012 on Food in conjunction with Law No. 6 Year 2023 on Job Creation.	Basic punishment: fine Additional punishment: a) deprivation of certain rights and b) announcement of the judge's decision.	Article 148 (1) Article 148 (2)
25	Law No. 4 of 2009 on Mineral and Coal Mining jo Law No. 3 of 2020 on Amendments to Law No. 4 of 2009 on Mineral and Coal Mining.	Basic punishment: fine Additional punishment: a) revocation of business license and/or b) revocation of legal entity status.	Article 163 (1) Article 163 (2)
26	Law No. 5/2017 on the Promotion of Culture	Principal punishment: fine. Additional punishment: a) revocation of business license, b) confiscation of profits obtained from criminal acts, c) revocation of legal entity status, d) dismissal of management and e) prohibition to the management to establish a corporation in the same business field.	Article 57 (1) Article 57 (2)
27	Law No. 13 of 2010 on Horticulture jo Law No. 6 of 2023 on the Stipulation of Regulations in Lieu of Law No. 2 of 2022 on Job Creation into Law.	Basic punishment: Fine	Article 129 (1)

Source: Processed from several administrative laws that contain criminal sanction provisions.

The formulation of criminal sanctions that can be imposed on corporations, in the table above, the author concludes that first, that the crime prevention policy by using the means of criminal law through criminal sanctions that can be imposed on corporations is still limited and directed at criminal sanctions that are criminal in nature consisting of main criminal sanctions and additional criminal sanctions. Second, the main criminal sanctions imposed on corporations are basically only in the form of fines. Third, regarding additional criminal sanctions, not all of them are formulated in administrative legislation and fourth, *administrative penal law* in determining criminal sanctions that are criminal in nature, in terms of objectives, is more directed at preventing the crime from happening again and does not aim to prevent the perpetrator from committing a crime again.

The criminal sanctions consisting of principal punishment and additional punishment formulated in the administrative criminal law are actually still considered by the legislators as *prima donna* sanctions in providing deterrent effects, especially for corporations as perpetrators of criminal acts. The criminal sanctions formulated in the aforementioned law indicate the legislator's understanding of criminal and punishment issues. Regarding additional criminal sanctions that are not formulated in all *administrative penal laws*, this shows or indicates the absence of consistency in the formulation of criminal sanctions in *administrative penal laws*.

Administrative penal law that does not formulate additional criminal sanctions can be seen in several areas of law including horticulture, protection and empowerment of farmers, plantations, water resources, financial services authorities and so on. Additional criminal sanctions that are not formulated in certain *administrative penal laws*, at least have weaknesses and gaps, especially in the context of law enforcement effectiveness. The criminal sanctions formulated in the *administrative penal law* above, by

quoting Ali Zaidan's opinion, are only based on practical considerations and have not been based on philosophical and conceptual reasons. According to Indriyanto Seno Adji, the determination of criminal sanctions that are not based on conceptual considerations has the potential for confusion in legislation [4]. The inclusion of criminal sanctions and its application must be seen in terms of its purpose, benefits or usefulness for improvement and prevention. Criminal law is used in tackling criminal acts through the application of criminal sanctions, as Roeslan Saleh said, not only aims to impose sanctions in the form of punishment, but also by using actions. Action is also seen as a sanction in criminal law in order to carry out special prevention and protect the community from the threat of an offense [5]. Thus, criminal sanctions in essence do not only include sanctions that are criminal in nature (criminal sanctions), but also include sanctions of action.

Action sanctions, actually in its discussion, cannot be separated from the thoughts of the schools of punishment. Criminal sanctions, as described above, were originally intended solely as retaliation, which emphasized the act (*daad-strafrecht*) which is a classic school of thought. However, the flow of punishment has developed in connection with the idea that requires criminal sanctions not only aimed at the act, but also considers the perpetrator (*dader-strafrecht*). This concept gave birth to the idea of individualization of punishment, so that the punishment is directed to the act and the perpetrator (*daad-dader strafrecht*). Moving on from this idea, criminal sanctions are not only retaliatory, but also foster or educate the perpetrator. This view also influences the sanctions in criminal law, which are not only criminal in nature, but also include actions or what is known as the *double track system*.

The *double track system* is a two-track system that requires punishment not only to be aimed at the act, but also to be based on the condition of the perpetrator so that it can be repaired and fostered. The punishment system in the *double track system* concept does not only use criminal sanctions, but also action sanctions. Action sanctions are also a means to realize the purpose of punishment. This system requires the elements of deterrence and guidance to be equally accommodated [6]. Sudarto once stated that for corporations that have committed criminal offenses, the criminal sanctions that can be applied to corporations include criminal sanctions (consisting of main and additional punishment) and actions [7]. The formulation of criminal sanctions that can be imposed on corporations in its development as stipulated in Law Number 1 Year 2023 on the Criminal Code (referred to as the new Criminal Code) has consisted of criminal sanctions (in the form of main and additional punishment) and action sanctions. However, the formulation of criminal sanctions that can be imposed on corporations also needs to be evaluated and will be further discussed in the discussion below.

2.3. Formulation of Basic Criminal Sanctions for Corporations

The main criminal sanction is the main and mandatory type of sanction imposed on the perpetrator of the crime. This sanction aims to directly punish the perpetrator of the crime as a result of his actions. The main criminal sanction that applies to corporations in positive law in Indonesia, so far, is only a fine. Fines are the only form of basic criminal sanctions that apply to corporations. Becker and Posner argue that the use of criminal fines has several advantages and one of the advantages of using criminal fines is to avoid social costs incurred [8]. Fines are a means used to control criminal responsibility for corporations. Criminal fine is a sanction in the amount of money that must be paid by the perpetrator of the crime, in this case a corporation based on a court decision with permanent legal force. The rational reason behind the use of criminal fines in determining sanctions applicable to corporations is for prevention.

Corporations are considered to act rationally in running their business to generate profits. The establishment of a fine sanction system is designed to make corporate crime unprofitable, thus preventing corporations from rationally committing criminal acts [9]. The biggest threat to corporations is the loss of profitability, because the loss is contrary to the main purpose of the corporation, so that fines have the potential to provide a deterrent effect for corporations [10]. However, the use of fines as a prevention tool will not be effective through a phenomenon known as the deterrence trap. The deterrence trap is when the amount of fine imposed to prevent criminal offense by

a corporation is greater than the corporation's ability to pay the fine [11]. Fines imposed on corporations should take into account the corporation's ability to pay fines as a criterion or guideline in imposing fines on corporations [11].

The criteria or guidelines in imposing fines on corporations are also stated by Barda and Muladi who stated that in order for the imposition of fines to be effective, it is also necessary to pay attention to, among others: (a) the purpose factor of the punishment in providing public protection, crime prevention, improvement of the perpetrator and so on, (b) the ability factor of the perpetrator and (c) the factor of the person who is the victim of the crime [12]. Criteria in imposing fines on corporations, as a comparison, can be seen in *The American Law Institute Model Penal Code*, in *article 702* which basically states as follows [13]:

- a. Criminal fine is imposed, if *first*, considering the nature of the crime and the history of the perpetrator (corporation). *Second*, the perpetrator (corporation) has benefited from the criminal offense he has committed. *Third*, the corporation is able to pay the fine and the fine imposed will not prevent the perpetrator from providing compensation or making repairs to people who are victims of crime.
- b. Take into account the financial resources of the perpetrator (corporation).

The Supreme Court Regulation (PERMA) No. 13/2016 in formulating the implementation of fines, does not contain considerations related to the ability of corporations to pay fines. However, the ability of the corporation to pay the fine has been considered and formulated in the new Criminal Code as stated in Article 80 paragraph (1). Article 80 paragraph (1) states that the judge must consider the defendant's ability by taking into account the defendant's real income and expenses. Fines imposed on corporations can also be paid in installments, as stipulated in Article 122 Paragraph (1) of the New Criminal Code. Criminal fine as one of the main criminal sanctions, is primarily aimed at the assets or property of the corporation that has violated the provisions of the applicable law. The assets of the corporation as a guarantee for the implementation of the criminal sanction of fine imposed to the corporation, if the corporation is not willing to pay the fine. In this case PERMA No. 13 Year 2016 only regulates corporations that do not pay fines, then the assets of the corporation can be confiscated and auctioned by the Prosecutor to pay the fine as confirmed in Article 28, which reads in its entirety:

- 1) In the event of a fine imposed on a corporation, the corporation is given a period of 1 (one) month since the verdict is legally binding to pay the fine.
- 2) In the event that there are compelling reasons, the period as referred to in Paragraph (1) may be extended by a maximum of 1 (one) month.
- 3) If the convicted corporation does not pay the fine as referred to in paragraph 1 and paragraph 2, the assets of the corporation may be confiscated by the Prosecutor and auctioned to pay the fine.

Fines as the only main criminal sanction applicable to corporations, cannot be imposed singly. According to Adriano, the imposition of criminal fines in its application is accompanied by sanctions in lieu of fines, if the assets of the corporation are insufficient to pay the fines imposed. According to him, sanctions in lieu of fines, if the assets of the corporation are insufficient, the corporation can be dissolved [14]. Agustinus Pohan, who is a lecturer in criminal law at Parahyangan University, said that for fines that cannot be fulfilled by the corporation, due to the corporation not having sufficient assets or no assets at all, then there are no other efforts that can be made to replace the fines.¹ Agustinus Pohan's view is certainly different from Marjono Reksodiputro's opinion, which states that corporations must be forced to pay the fines imposed on them [15]. Mardjono Reksudiputro said, in the event that the corporation does not have the ability to pay the fine, then the corporation can be liquidated [13].

Criminal fine, in its application as formulated in Article 122 of the new Criminal Code, reads as follows:

- (1) Fines must be paid within a certain period of time as stated in the court decision.

Novrieza Rahmi, If the Corporation's Property is Nil or Insufficient to Pay Fines, <http://www.hukumonline.com>, accessed on 1 December 06, 2023, at 09.19.wib.

- (2) The court decision as contained in Paragraph (1) may determine the payment of the fine in installments.
- (3) If the fine as referred to in Paragraph (1) is not paid within the prescribed period, the assets or income of the corporation may be confiscated and auctioned by the Prosecutor to pay off the unpaid fine.
- (4) In the event that the assets or income of the corporation are insufficient to pay off the fine as referred to in paragraph (3), the corporation shall be subject to substitute punishment in the form of suspension of part or all of the corporation's business activities.

Article 122 of the new Criminal Code, if examined as stated in paragraph (4) above, basically the fine in its implementation has been accompanied by a sanction in lieu of a fine, if the assets or income of the corporation are not sufficient to pay off the imposed fine. If the assets or income of the corporation are not sufficient to pay off the fine as stated in Article 122 paragraph (4), the corporation may be subject to punishment in lieu of fine in the form of suspension of part or all of the corporation's business activities. However, the formulation of Article 122 of the new Criminal Code, in terms of regulating the implementation of fines, still raises issues. The issue is how to deal with corporation that cannot pay the fine and does not have assets. Here, the new Criminal Code does not regulate in more detail regarding corporations that cannot pay off or pay fines and do not have assets. Prosecutors as the executor of court decisions that have permanent legal force, often complain about the difficulty of collecting fine payments to convicted corporations. This description is reviewed by the author in order to provide a comparison of the difficulty of efforts in terms of the execution of criminal fines, so in this case it is also necessary to realize that these possibilities can occur. On the other hand, the corporate entity as regulated in Indonesian legislation contains a fairly broad meaning. Corporations do not only include coverage as legal entities, but also include corporations that are not legal entities, such as firms and CVs.

Firma or CV as a corporation that is not incorporated, then in relation to its assets, it does not separate the assets of its management. In other words, the assets of a CV or Firm are mixed with the management or founder. This certainly makes it difficult to detect the assets of corporations such as the CV or Firm in question. The difficulty of detecting the assets of corporations such as CV or Firm can be overcome by declaring corporations that do not have assets. Therefore, it is not an exaggeration to say that the mechanism for the implementation of criminal fines still has a legal vacuum, in terms of corporations that do not have assets or assets. The author argues that arrangements related to other efforts that can be made, in the case of corporations that do not pay fines and do not have assets, actually need to be considered and regulated in legislative policies in order to optimize the use of criminal fines. According to the author, the formulation of Article 122 Paragraph (4) contained in the new Criminal Code needs to add a phrase in the form of "corporations that do not have assets to fulfill the fine", so that the wording of Article 122 Paragraph (4) as a whole reads "*in the event that the corporation does not have assets to fulfill the imposed fine or the corporation's assets (income) are insufficient to pay the fine as referred to in Paragraph (3), then the corporation is subject to substitute punishment in the form of suspension of part or all of the corporation's business activities*".

Sylvia Rich said that criminalization of corporations in general is still dominated by *retributive* and *utilitarian* thinking. Sylvia Rich said the theory that dominates the punishment of corporations based on retributive thinking, views corporations as entities that have the ability to make *moral judgments*. According to her, *retributive* aims to create pain, whereas corporations are unlikely to feel punishment, even though corporations feel losses [16]. Fines as the only main criminal sanction applicable to corporations, when examined, of course, refers to the provisions contained in Article 10 of the Criminal Code. The form of basic criminal sanctions listed in Article 10 of the Criminal Code, if connected with entities such as corporations, indeed only fines are still relevant to be applied to corporations. The main criminal sanctions listed in Article 10 of the Criminal Code only apply to legal subjects in the form of *naturalijk persoon*, so the form of main criminal sanctions applicable to corporations is not only seen from the regulation of the main criminal sanctions listed in Article 10 of the Criminal Code.

The legislator in determining the main criminal sanctions applicable to corporate legal subjects, can deviate from the provisions of the main criminal sanctions contained in Article 10 of the Criminal Code. This deviation is of course based on the provisions of Article 103 of the Criminal Code. The provision of Article 103 of the KUHP states that the provisions in Chapter I to Chapter VIII of this book shall also apply to acts punishable under other laws, unless the law determines otherwise. Article 103 of the Criminal Code, in fact, gives freedom to the legislator, in making choices in formulating and determining the form of main criminal sanctions that will be applied to corporations. Corporation as a legal subject that can be burdened with criminal liability is essentially a deviation from the provisions regulated by the Criminal Code. Similarly, in determining the forms of main criminal sanctions that will be applied or imposed to corporations, this depends on the legislators in determining their choices.

The main punishment applicable to corporations as a subject of criminal law should not only be based on fines. The author is of the view that the use of fines as the only monetary sanction in controlling corporate behavior does not necessarily prevent corporations from violating the law in the future. According to the author's point of view, it may be quite difficult to prevent law violations committed by corporations by only punishing the corporation with fines. Fines as the main punishment applied to corporations are unlikely to be able to overcome the complexity of the corporation's criminal behavior. Although, monetary sanctions are useful sanctions in imposing punishment against corporations that have committed criminal offenses. However, even though fines are indeed relevant to be used for corporations, it is just that fines formulated as the only main punishment applicable to corporations are considered inadequate. The fine sanction is not sufficient as the only solution in controlling the criminal activities of corporations. Criminal fines as the main criminal sanction that can be imposed on corporations, according to Diamantis, are not enough to provide a deterrent effect for corporations to improve their bad behavior in running their business, especially for large and multinational corporations. Criminal fines imposed on corporations will not have an effect on them, because naturally corporations will not feel the suffering due to the imposed punishment [9].

Fines for large corporations can be said to be a business cost risk, so it is not so significant. Thus, it can be concluded that the application of criminal fines to corporations is unlikely to always create structural changes in corporate culture or corporate governance that can prevent criminal acts in the future. The author argues that there is a need for alternative forms of criminal sanctions that can be categorized as the main punishment applicable to corporations, this is based on considerations that can be seen from the nature and level of violations committed, the corporation's track record in committing criminal acts and the consequences of these criminal acts. According to the author, not all criminal offenses or violations committed by corporations must be punished with fines. Sutan Remi Sjahdeni argues that the main punishment applicable to corporations should not only be a fine. Some forms of additional criminal sanctions can be allocated as the main punishment applicable to corporations [11]. Some forms of additional criminal sanctions such as announcement of the judge's decision, revocation of license, dissolution followed by liquidation and seizure of corporate assets can be allocated as the main punishment [10]. The same opinion was also conveyed by Barda Nawawi Arief who said that several forms of additional punishment scattered in the legislation can be used as the main criminal sanction applicable to corporations. According to Barda, if the punishment of deprivation of liberty is the main punishment applicable to a person (*naturalijk persoon*), then the main punishment for corporations that is identified with the punishment of deprivation of liberty is the criminal sanction of corporate business closure [17].

The formulation of the main criminal sanctions applicable to corporations in the future should consist of various options and be adjusted to the level of need for laws governing certain fields or matters. For example, remedial sanctions due to criminal acts. Remedial sanctions as a result of criminal acts as known are sanctions that are environmental recovery in nature. The environment as a victim of a criminal offense needs to get justice through environmental restoration, so that remedial sanctions as a result of criminal acts are a basic need that must be prioritized in the law on environmental protection

and management (abbreviated as UUPPLH). Therefore, remedial sanctions resulting from criminal acts can be allocated as the main criminal sanction applicable to corporations

2.4. Formulation of Additional Criminal Sanctions for Corporations

Additional punishment as explained above is an additional punishment to the main punishment imposed. Additional punishment cannot stand alone, additional punishment is a complement to the main punishment. Additional punishment only complements or adds to something that is principal. This principle is in accordance with the term known in Latin *ubi non est principalis, non potest esse accessorius*, which means that there is no main thing, so there is no additional thing [18]. Additional punishment is facultative, which means that the imposition of additional punishment is not a must. Additional criminal sanction as stated by Hermin Hadiati Koeswati is entirely the authority of the judge, whether or not it is necessary to impose the additional criminal sanction [19]. Additional criminal sanctions applicable to corporations as stipulated in the law, according to Sutan Remi Sjahdeni, must be imposed and are not optional. Additional criminal sanctions applicable to corporations as regulated in several *administrative penal laws*, include: revocation of business license, closure of all or part of the corporation's business, revocation of legal entity status, freezing of all or part of the corporation's business, obligation to withdraw goods, payment of compensation and so on. Additional criminal sanctions applicable to corporations, even though the regulation is intended to complement or add (punishment) to the main criminal penalty, but the additional criminal sanctions formulated in the *administrative penal law* do not regulate how the implementation mechanism of the form of additional criminal sanctions.

Administrative *law* that contains criminal provisions in it (*administrative penal law*) does not even regulate the legal consequences, if additional criminal sanctions imposed based on court decisions that have legal force are not implemented. The application of additional criminal sanctions applicable to corporations in its development as formulated in Article 120 Paragraph (3) of the new Criminal Code has implemented the consequences of additional criminal sanctions that are not carried out by the corporation. Article 120 Paragraph (3) states that *in the event that the corporation does not execute the additional punishment as referred to in paragraph (1) letter a to letter e, the assets or income of the corporation may be confiscated and auctioned by the prosecutor to fulfill the unfulfilled additional punishment*. Several forms of additional criminal sanctions in their application formulated in the new Criminal Code, have regulated the consequences of the imposed additional criminal sanctions that are not carried out. The additional criminal sanctions that have such consequences are the sanction of payment of compensation, reparation of criminal offenses, implementation of obligations that have been neglected, fulfillment of customary obligations and sanction of financing job training. However, the issue is how to deal with corporations that cannot fulfill the additional punishment imposed and do not have assets to be confiscated or auctioned or the assets or income of the corporation are insufficient to fulfill the additional punishment.

Corporations that cannot fulfill the additional punishment and do not have assets or corporate assets are not sufficient to fulfill the additional punishment imposed, of course, make the implementation of the provisions of Article 120 Paragraph (3) very difficult to do. Related to the implementation of the provisions of Article 120 Paragraph (3), according to the author, it is necessary to think about other alternative efforts that can be made against corporations that cannot fulfill the additional punishment imposed and do not have assets or corporate assets are not sufficient to fulfill the additional punishment. In the event that there is a situation where the corporation is unable to fulfill the additional punishment and does not have assets or corporate assets are not sufficient to fulfill the unfulfilled additional punishment, a careful approach is needed to ensure that the objectives of law enforcement are still achieved without imposing unenforceable punishment.

The author argues that for corporations imposed with additional punishment that cannot be fulfilled and the corporation in question does not have assets to be confiscated and auctioned or the assets of the corporation confiscated and auctioned are not sufficient to fulfill the additional punishment imposed, then the corporation can be subject to other alternative sanctions for not fulfilling the provisions of

Article 120 Paragraph (3). Alternative sanctions are needed to answer various limitations of law enforcement, especially against corporations that do not fulfill the additional punishment and do not have assets to be confiscated and auctioned or the corporation's assets are not sufficient to fulfill the additional punishment. Alternative sanctions are designed to maintain a balance between justice and the effectiveness of law enforcement.

2.5. Formulation of Action Sanctions

Action sanctions in the discussion of criminal law are one type of sanction that applies in criminal law. Action sanctions focus more on improving the perpetrator and prevention. The application of criminal law through sanctions in *administrative penal law* to deal with violations of the law committed by corporations is not only punitive in nature, but must also educate or foster corporations not to repeat violations in the future. Action sanctions are more flexible and can be adjusted to the level of need for violations committed by corporations. Action sanctions applied to corporations are basically steps taken by the government as a consequence given to corporations that have violated the law. The application of action sanctions to corporations in order to encourage corporate compliance with applicable law.

Hakristuti Hakrisnowo argues, related to the form of sanctions applicable to corporations as formulated in the new Criminal Code, it is necessary to discuss whether the three sanctions, namely the sanction of corporate takeover, placement under supervision and placement of the corporation under guardianship, can be said to be a form of judge's decision that includes improving the corporate organizational system, thus improving the character of the corporation in carrying out its business practices [16]. The three forms of sanctions formulated in the new Criminal Code applicable to corporations, according to the author, essentially have the aim of fostering and educating corporations in making improvements in the management system and governance of the corporate organization in question, so as to provide efficiency for the corporation itself. The sanctions formulated in the new Criminal Code can also be applied to administrative law. However, based on the description above, the author concludes that in applying and imposing the three sanctions above, the following matters must be considered, namely:

1. The three action sanctions above must be carried out proportionally. The application of the three sanctions above is based on the level of guilt and the impact caused.
2. Ensure the timeframe and mechanism for implementing the three sanctioned actions.
3. Rights and obligations of stakeholders. The rights and obligations of stakeholders such as shareholders should be properly explained in the takeover, placement under guardianship and placement under supervision processes.
4. Ensure that takeovers, supervision and guardianship are conducted in an accountable and transparent manner.
5. Institutions that are appointed and entrusted with the task of both taking over and supervising, have the potential to improve corporate management and can promote good business practices.

Action sanctions as described above, according to the author, in the future it is possible to be applied simultaneously with the main criminal sanction in the form of a fine. Action sanctions with basic criminal sanctions in the form of fines can be imposed at the same time to corporations. The imposition of action sanctions with the main criminal sanction in the form of a fine simultaneously to the corporation is intended so that the imposition of criminal sanctions is not only punitive, but also educates the corporation by improving corporate behavior. Providing deterrent effect and prevention by applying both sanctions at the same time is intended to get a balance in achieving efficiency in providing protection and social welfare of the community. The action sanction formulated by the New Criminal Code above is essentially one type of sanction that focuses on efforts or corrective measures or supervision given to corporate actors, so that the action sanction is the main sanction and must be given to the corporation in order to influence the corporation itself.

The action sanctions imposed simultaneously with the principal punishment in the form of fines aim to enable the corporation to improve its behavior in carrying out its business ethics strategy. The desire

to improve corporate behavior in carrying out its business activities so that violations do not recur is not only based on the use of criminal sanctions, but must be followed by sanctions that are fostering and educating. The application of action sanctions with the main criminal sanctions in the form of fines simultaneously, this can be seen from the nature or level or type of offense. The combination of the two criminal sanctions reflects a comprehensive approach and can be more effective in enforcing the law. This combination allows the criminal justice system not only to punish corporations, but to address the root causes of violations and prevent the recurrence of violations committed by corporations in the future.

3. Conclusion

Criminal punishment in lieu of fines in its implementation should include corporations that do not fulfill the imposed fines and do not have assets or assets or corporate income that are not sufficient to pay off the imposed fines. The main criminal sanctions applicable to corporations in the future should not only rely on fines. The formulation of the main criminal sanctions applicable to corporations in the future should consist of various options and be adjusted to the level of need for laws governing certain fields or matters. Corporations that are imposed with additional punishment that cannot be fulfilled and the corporation in question does not have assets to be confiscated and auctioned or the assets of the corporation that are confiscated and auctioned are not sufficient to fulfill the additional punishment imposed, then the corporation may be subject to other alternative sanctions for not fulfilling the provisions of Article 120 Paragraph (3) of Law Number 1 Year 2023 on Criminal Code. Alternative sanctions are designed to maintain a balance between justice and the effectiveness of law enforcement. The desire to improve corporate behavior in carrying out its business activities so that violations do not recur is not only based on the use of criminal sanctions, but must be followed by sanctions that are fostering and educating. The application of action sanctions in the future can be imposed simultaneously with the main criminal sanctions in the form of fines. This combination allows the criminal justice system not only to punish corporations, but to address the root causes of violations and prevent the recurrence of violations committed by corporations in the future.

Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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