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ACCOUNTABILITY OF POLITICAL PARTIES AS CORPORATIONS IN THE ABUSE OF AUTHORITY OF POLITICAL PARTY MEMBERS IN PARLIAMENT

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Abstract

Leo Dedy. 2023. Dissertation of the Doctoral Study Program in Law, Diponegoro University, Semarang. Accountability of Political Parties as Corporations in Misuse of Authority of Political Party Members in Parliament The purpose of this study is to analyze: How are political parties identified as corporations? How is the determination of guilt on political parties as corporations that commit a criminal act in the criminal act of laundering money from the proceeds of corruption in Indonesia? How is political parties accountable for corruption? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) Basically, the meaning of political parties as corporations by law has a broad meaning, but the debate about political parties as corporations is still ongoing today. So there must be an affirmation in the meaning of corporate forms so that they can be qualified as legal subjects as referred to in the arrangement. This is very necessary in order to entangle political parties as a corporation. 2) Regarding accountability, political parties can be sanctioned when they have been proven to have committed criminal acts of corruption by referring to the provisions of Article 20 Paragraph (7) of the PTPK Law. However, the existence of special arrangements that refer to violations of political parties may be a loophole in the enforcement of criminal laws on corruption and money laundering because of the nature and scope of the norm regulation which can also be about the problematic conditions or context of political parties in today's sociological facts, so that not without reason, regarding criminal acts by political parties also leads to ineffectiveness in the enforcement of criminal laws on corruption and money laundering for parties politics. 3) The existence of a complete formulation of legal norms should enable law enforcement to present comprehensive justice both to administrators and political parties involved in criminal acts of corruption. However, the fact is that the implementation and actualization of norms seems to have experienced obstacles, law enforcement seems to be running in place, indikantor is certainly fundamental where there is no political party that can be accounted for as a legal entity that commits criminal acts of corruption.

Keywords: Political Party, Corporation, Authority, Parliament.

INTRODUCTION

Background

Speaking of political parties, political parties (hereinafter referred to as political parties) are a necessity in modern democratic political life. As an organization, political parties are ideally intended to activate the mobilization of the people, represent certain interests, provide a way of compromise for competing opinions, and provide maximum political leadership in a legitimate and peaceful manner. In the current modernization, political parties are more of a group that puts forward candidates for public office to be elected by the people, so as to overcome or influence government actions.[1]

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The discussion on the involvement of political parties in nation building has also even been formulated juridically in Article 1 number 1 of Law Number 2 of 2008 Jo. Law Number 2 of 2011 concerning Political Parties (hereinafter referred to as the Political Parties Law), political parties are organizations that are national in nature and formed by a group of Indonesian citizens voluntarily on the basis of common will and ideals to fight for and defend political interests members, society, nation and state, and maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945).

Acts of corruption committed by political party administrators who act and on behalf of political parties do tend to be discussed in the midst of society. The issue of criminal *liability* is one of the problems that has not been able to be resolved until now, plus the demands of the public who demand the fulfillment of criminal sanctions for political parties involved in committing criminal acts of corruption become anxiety in the construction of law enforcement. The above problems in criminal law are criminal law policy problems in an effort to realize criminal laws and regulations that are in accordance with circumstances and situations at a certain time and for the future.[2]

Regarding the accountability that can be held against corporations proven to have committed acts of corruption is referring to the Criminal Code except for the death penalty, imprisonment and imprisonment. In addition, the anti-corruption law also stipulates to impose a maximum fine plus one-third. So that based on the concept of accountability, it can be used as a guideline by law enforcement in eradicating corruption in Indonesia. However, with the birth of the doctrine of strict liability, criminal liability can be imposed on the perpetrators of the criminal act concerned with no need to prove any wrongdoing (intentional or negligence) on the perpetrators. Then to attract criminal liability to political parties can be done with vicarious liability which allows the political party to be responsible for actions committed by administrators / members of political parties who have the power to carry out their party activities.

Thus, examining criminal liability against political parties can be analogous to examining criminal liability against corporations as stipulated in Perma No. 13 of 2016. The reasons for the conviction and procedures for examining the criminal responsibility of political parties for corruption crimes mutatis mutandis follow the provisions as stipulated in Perma No. 13 of 2016.

Based on the above background, this study is actually to analyze the criminal responsibility of political parties in the criminal act of money laundering from the proceeds of corruption in their position as a corporation. The analysis was carried out based on theories of criminal liability in corporations, while still ignoring the provisions of existing laws and regulations. To facilitate research and discussion later, this study is entitled "*Accountability of Political Parties as Corporations in Abuse of Authority of Political Party Members in Parliament".*

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Problem Statement

1. How are political parties identified as corporations?
2. How is the determination of guilt on political parties as corporations that commit a criminal act in the criminal act of laundering money from the proceeds of corruption in Indonesia?
3. How is political parties accountable for corruption?

Theoretical Framework

1. Theory of Direect Corporate Criminal Liability

In countries that adhere to the Anglo Saxon system such as England and America, this theory is widely known or also referred to as the theory of direct criminal liability. According to this theory, corporations can commit a number of offenses directly through agents who are closely related to the corporation, acting for and/or on behalf of the corporation. The requirement for direct corporate criminal liability is that the actions of these agents are still within the scope of their corporate work.[3]

With the acceptance of corporations as subjects of criminal law that are considered to be able to commit criminal acts and can account for them criminally, it will certainly have other consequences in its application.[4] For corporations as perpetrators of criminal acts of corruption, law enforcement should use accountability as stipulated in Article 20 of Law No. 31 of 1999.[5] In the PTPK Law, several parts have provided special legal arrangements for corporate crimes. The first two paragraphs of Article 20 of the PTPK Law can be said to regulate corporate criminal liability (in this case including political parties).[6]

2. Functional Perpetrator Theory

The next theory which is also a theory of corporate criminal liability is the theory of functional actors, which in principle says that in a socio-economic environment, the maker (corporation) does not have to do the act physically, but it can be done by his employees, as long as the act is still within the scope of the corporation's authority.[7]

3. Criminal Law Theory

Talking about criminal law often makes people imagine everything that is evil, dirty, and deceitful. Criminal law is a law that has a special nature, namely in terms of sanctions. Every time we encounter the law, our mind goes towards something that binds a person's behavior in his society.[8] Criminal law is the legal regulation regarding criminals. The word "criminal" means things that are "criminalized", that is, by the ruling agency delegated to an individual as something that is unpleasant to feel and also things that are not daily devolved.[9]

4. Identification Theory

Identification theory or identification theory is one of the dotrins used to impose criminal liability on corporations. The doctrine views corporations as also having elements of guilt or mensrea in committing crimes. Corporations commit criminal acts through individuals who are

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considered to have a close relationship with the corporation and are seen as the corporation. Such views then make the position of individuals so important, that their thoughts, wills and deeds can be identified as the will and deeds of the corporation.[10]

RESEARCH METHODOLOGY

This type of research is a type of research that is juridical normative or legal research that is normative. Normative juridical legal research or normative legal research is research that discusses legal history and comparative law.[11] More about normative legal research, namely research that has the object of study of rules or legal rules. Normative legal research examines legal rules or regulations as a system building related to a legal event. This research was conducted with the intention of providing legal argumentation as a basis for determining whether an event has been true or false according to law.[12]

The type of research that the author uses in the preparation of this writing is normative legal research or literature, namely legal research carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research or literature includes research on legal principles, research on legal systematics, and research on the level of verbal and horizontal synchronization, legal history and legal comparison.[13]

RESEARCH RESULTS

A. Political Parties Identified as Corporations

Referring to Law Number 31 of 1999 jo Law Number 20 of 2001 concerning the eradication of criminal acts of corruption, a corporation is defined as a collection of people and/or wealth that is organized both legal entities and non-legal entities. In line with Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations as an organized collection of people and/or wealth, both legal entities and non-legal entities. With these two definitions, it is clear what is called a corporation.

Based on the theory of legal reality that provides an understanding of the capacity and existence of a legal entity to be a legal subject created based on law, political parties are then referred to as corporations, where corporations can carry out legal actions because existing provisions state them as legal subjects and impose an obligation which is then followed by granting rights to legal entities, So he then became an independent legal subject / known as *person standi in judicio.*[14] To see and know the validity of political parties in criminal law as a corporation can be seen in the provisions that make them the subject of criminal acts in criminal acts. In this study, we can use juridical and historical justifications to see the legal point of view examined from various criminal law rules and the demands of events related to the existence of political parties and corporations as elements given by law. The juridical foundation for seeing views on political parties identified with corporations is at least with legal regulations that provide regulations on political parties being subject to delicacy, namely the Law on the Eradication of Criminal Acts of Corruption.[15]

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1. Juridical Justification of Political Parties as Corporations

First, the regulation regarding corporations as the subject of offense can be understood through the provisions of article 1 number (1) of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 which states that what is meant by corporations in the Law is a collection of people and / or assets organized whether they are legal entities or non-legal entities.

The phrase "and/or" in the provision at least confirms that what can be said to be a corporation is: [16]

a. An organized collection of people and words in the form of a legal entity;
b. An organized collection of people and wealth is not a legal entity;
c. An organized collection of people in the form of a legal entity;
d. Kumplan organized persons are not a form of legal entity;
e. An organized collection of words in the form of a ukum body;
f. An organized collection of words is not a legal entity.

This provision provides an understanding that what is meant by corporation in the Law on Corruption has a broad meaning. This is indicated by the phrase "and/or" which indicates the alternative as well as cumulative nature referred to in the provision. That is, in fact the Law has given the subject of the corporation a very broad part and can not only be measured from the position or status of a legal entity as a legal subject of *recth person* in the narrow sense.[17]

Second, Law Number 2 of 2008 as amended by Law Number 2 of 2011 concerning political parties, mentions political parties as legal entities in terms of their existence and status, namely based on the formulation of article 3 of the Law which shows that political parties are born as bodies created by law (*rechpersoon, legal entity*), in other words that political parties exist as something that *cratet by legal process* or through legal process in accordance with existing regulatory provisions.[18]

Therefore, in the theory of legal reality that provides an understanding of the capacity and existence of a legal entity to be a legal subject created based on law, political parties are then referred to as corporations, where corporations can carry out legal actions because existing provisions state as legal subjects and impose an obligation which is then followed by granting rights to legal entities, so he then became an independent legal subject or known as *person stand in judicio*.

Based on this definition, it shows the characteristics of political party similarities and corporate concepts as in the Law on the Eradication of Criminal Acts of Corruption, which is likened to an association of people or an organization. This characteristic indirectly explains that political parties are a separate part of the association by several people as subjects of law. Therefore, this explanation has explained that political parties have the same meaning as legal subjects who can be suspected of committing acts of corruption.[19]

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2. Historical justification of political parties as corporations

Historical justification is a series of justifications from historical aspects regarding the subject of corporial law and its relation to political parties in criminal law. **First, the** corporation is a central organ that greatly influences the civilization of the subject of law as the purpose of its formation, namely to achieve the public interest.[20] The history of the development of corporations as legal subjects dates back to Roman times, namely the existence of groups that later formed an organization with the field of function for the administration of public interests, religious, military and trade. The organization was determined to have wealth separate from the wealth of its members, so that at this time also began to recognize the distinction between the position of individuals in the organization and the position of individuals separated from the organization.[21]

History shows that corporations are formed to carry out vital functions that are always closely related to the public interest in various matters, such as education, military, charities, and even government administration bodies. Without realizing it, it turns out that there is a special character that characterizes the historical development of corporations, namely the main functions of corporations related to the implementation of public interests for the wider community. This characteristic is basically considered very much in line with various other public interest organizing organs today, because in addition to the nature of wealth separation between members and corporations as separate legal subjects, organizations that carry out the strategic role of public interest organizers can be widely seen today, including political parties as one of the community organizations established by the community and for the benefit of society (general).[22]

Political parties as corporations that carry out the function of implementing public interest in the political field play a central role in organizing functions to achieve these goals. The strategic role of political parties in carrying out the public interest in the political field is what then becomes the basis of attachment between historical intent and the literal meaning of a corporation in today's era.

B. Determination of Guilt on Political Parties as Corporations that Commit a Criminal Act in the Criminal Act of Money Laundering from the Proceeds of Corruption in Indonesia

The scope of criminal acts basically talks about acts that are prohibited and threatened with criminal sanctions by related legislation.[23]The action in question is an action related to the perpetrator, which is contained in his heart and is an element inherent in the circumstances of the actions of the maker.[24] In simple terms, the phrase criminal offense relates to unlawful acts committed either intentionally or not by a person and can be held accountable for his actions and stated by law that such acts are punishable.[25] Relating to corruption and money laundering, the scope of the crime can be seen in the laws and regulations governing corruption and money laundering. The formulation of offenses that regulate the two types of criminal acts as referred to is regulated in the Corruption Law and the TPPU Law. First, the Corruption Law regulates the scope of criminal acts in at least several article provisions, which include corruption crimes

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that require losses to state finances (Article 2 paragraph (1) and Article 3), bribery corruption (Article 5 paragraph (1) letter a and b; Article 5 paragraph (2); Article 6 paragraph (1) letter a and b; Article 6 paragraph (2); Article 11; Article 12 letters a, b, c, and d; Article 13), the criminal act of corruption abuse of office (Article 8; Article 9; Article 10 letters a, b, and c), the crime of extortion corruption (Article 12 letters e, g, and f), the crime of fraudulent corruption (Article 7 paragraph (1) letters a, b, c, and d; Article 7 paragraph (2); Article 12 letter h), the criminal act of conflict of interest corruption in procurement (Article 12 letter I), and the act of corruption of gratification (Article 12B and Article 12C).[26]

With regard to political parties, the regulation regarding how far the elements of offense in corruption and money laundering crimes can be applied to political parties as corporations at first glance does not experience problems in its regulation. However, this does not mean that the scope of criminal acts by political parties can be easily implemented against corruption and money laundering committed by them. This is because the regulatory factor regarding the scope of separate criminal acts that can be committed by political parties in the Political Parties Law, thus becomes a more specific rule and can certainly replace regulations regarding corruption and money laundering crimes by political parties.[27]

The scope of studies on criminal acts in the form of prohibitions that can be carried out by political parties has basically also been specifically regulated in the provisions of the Political Parties Law. Although there is no explicit problem related to the arrangement, with the diaturn, the regulation for political parties can also be used as a basis for not justifying corruption and money laundering because political party violations are only related to matters referred to in the provisions on political parties. Implicitly, the act of corruption as explained earlier more or less explains how the activities of political parties to enrich themselves or other parties that lead to state financial losses, [28] and the various modes used often also use members of factions in the legislative branch of government, both the People's Representative Council (DPR), Regional Representative Council (DPRD), People's Consultative Council (MPR), and so on.[29]

Article 20 paragraph (1) of the PTPK Law provides an opportunity for a corporation to be submitted to the green table due to its actions in committing criminal acts of corruption committed together with its management. Paragraph (2) of article 20 of the PTPK Law follows the functional theory and the doctrine of identification. Corporations are considered to commit criminal acts of corruption if the criminal acts committed by individuals in the corporation concerned have a very close relationship.[30] Then the sanctions that can be given to corporations (including political parties) refer to Article 10 of the Criminal Code, which contains two types, namely in the form of principal crimes and additional crimes.[31] When viewed from the provisions of Article 20 Paragraph (7) of the PTPK Law, the sanctions that can be imposed are criminal fines as the principal crime plus one third of the maximum criminal provisions.[32]

Serious problems with this arrangement refer to the provisions of Article 40 paragraph (2), especially those contained in letter a, the formulation emphasizes that political parties are prohibited from committing acts that are contrary to the constitution and applicable laws and regulations. The context of regulations regarding corruption and money laundering here is a provision that is of course also referred to in the Political Party Law. The nature of the

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regulation of violations as referred to in the provisions of Article 40 paragraph (2) letter a of the Political Parties Law is considered very broad, so it is not that corruption and money laundering are also included in the law on political parties. That is, an act that is considered a form of corruption can be imposed with two arrangements at once, namely the Corruption Law and the Political Party Law. Similarly, if there is a criminal act of money laundering as a follow-up *crime*, the involvement of political parties in money laundering is not only related to the provisions of the TPPU Law, but also the Political Party Law as a special arrangement applied to political parties with its broad nature and can include all other prohibited acts that are contrary to the law and constitution.[33, 34]

Not only that, the scope of the ban for political parties which is often relevant to the reality of criminal violations of corruption and money laundering by political parties is as stipulated in Article 40 paragraph (3) letter e regarding the prohibition for political parties to use fractions in the MPR, DPR, and DPRD for the purposes of funding political parties. Such provisions can be a basis to also justify that corruption and money laundering by members of political parties in their factions allegedly involving political parties are violations as stipulated in the provisions of the Political Party Law specifically and not the Corruption Law or the TPPU Law. Although it has also fulfilled the elements of offense as stipulated in both laws on corruption and money laundering, the principle of lex specialist derogat legi generalis or law that specifically overrides the general law [35]can be applied by describing the fact of the conditions of involvement of political parties in receiving funding from their factions.[36]

Although not always the funds received by political parties are sourced from corruption, violations of the receipt of funds are an absolute thing not to be done by political parties. This is where the regulatory loopholes regarding corruption and money laundering cannot be applied properly, furthermore, the two types of regulations regarding the act of funding political parties through fractions and violations as mentioned in Article 40 paragraph (2) point a are not pure types of criminal law because the regulation is only in the type of administrative law, so it is only referred to as administrative [37] criminal law with sanctions that also take the form of administrative criminal sanctions.[38]

The existence of special arrangements that refer to political party violations as described above may be a loophole in the enforcement of criminal law on corruption and money laundering because of the nature and scope of the norm regulation which can also be about the problematic conditions or context of political parties in today's sociological facts, so that not without reason, regarding criminal acts by political parties this also leads to ineffectiveness in the enforcement of corruption criminal laws and money laundering for political parties.[39]

C. Accountability of Political Parties in Corruption

As its definition, the criminal concept will provide an explanation of the sanctions (in this case a form of demnity) given to the subject of offense by the state for violating a provision of criminal law on the relevant provisions governing it, therefore it is said to be a reaction against the delict maker. While in criminal law, punishment is the provision of punishment for a crime that has been determined or simply can also be referred to as a process of giving a crime to the

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subject of offense who is proven to have violated existing legal rules.[40]

Referring to the provisions of Law 31 of 1999 Jo Law 20 of 2001 concerning the Eradication of Criminal Acts of Corruption adheres to corporations as subjects of criminal law. Article 1 paragraph 3 of the Law on Corruption regulates each person as an individual or corporation. Article 20 paragraph 1 of the Corruption Law further stipulates: in the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal prosecution and conviction can be made against the corporation and or its management. This provision is different from the Criminal Code which adheres to the subject of law only referring to humans or *natuurlijk persons*.[41]

Theoretically also developed by Park and Jong Song High Schools, there are three basic references that can be used to determine that a corporation is responsible for illegal actions committed by its management. First, the corporation is only responsible for criminal acts committed by the management if the actions are still within the scope and nature of their work in the corporation. The scope of work of administrators here is often interpreted broadly. One opinion states that the corporation is criminally responsible for criminal acts committed by administrators as long as the administrators when committing criminal acts are within the scope of their work. Corporate accountability requires that political party administrators must act within the scope of their work that is otherwise proven if the administrator has real authority to do so.[42]

In order to impose criminal liability and punishment on political parties based on criminal acts committed by political party officials, several theories of *directcorporate criminal liability* can be used as long as they are closely related to the doctrine of identification, which states that the actions of certain agents of a corporation, as long as the actions relate to the corporation, are considered to be the actions of the corporation itself.[43] The theory also argues that certain agents within a corporation are considered "*directing minds*" or '*alter egos'*. The deeds and mens rea of the individuals are then related to the corporation, if the individual is authorized to act on behalf of and during the course of carrying on behalf of and during the course of carrying on the business of the corporation, the mens rea of the individual is the mens rea of the corporation.[44]

In addition to the above theory, there is a doctrine that can be used as a reference in building legal arguments against criminal liability and punishment of political parties in criminal acts committed by political party administrators, namely *the Doctrine of Vicarious Liability*. Building on the argument of this doctrine teaches about the *legal responsibility of one person for the wrongful acts of another*.[45]

To overcome doubts about the mechanism in enforcing the accountability of legal entities, the Supreme Court stipulated the Supreme Court Regulation of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. The existence of criminal liability arrangements against legal entities is a measure in law enforcement that can be applied to political parties, as a juridical consequence that has been mutually agreed and is believed to be neutral, impartial and objective.21 As formulated in Article 4:

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Paragraph (1): Corporations may be held criminally liable in accordance with the criminal provisions of corporations in the law governing corporations.

Paragraph (2): In imposing a crime against a corporation, the judge may assess the guilt of the corporation as subsection (1), among others;

a. The corporation may benefit or benefit from the criminal act of corruption or the criminal act is committed for the benefit of the corporation;
b. The corporation condones the commission of a criminal act or;
c. The Corporation does not take the necessary steps to prevent, prevent greater impact and ensure compliance with applicable legal provisions in order to avoid criminal acts.

Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties, Article 40 (2) confirms that political parties are prohibited;

a. carry out activities that are contrary to the Constitution of the Republic of Indonesia Year 1945 and laws and regulations; or
b. carry out activities that endanger the integrity and safety of the Unitary State of the Republic of Indonesia.
c. For violation of this act, political parties will be subject to dissolution sanctions by the Constitutional Court.

Subsection (3) political parties are prohibited: from or giving to foreign parties donations in any form contrary to laws and regulations;

a. accept donations in the form of money, goods, or services from any party without stating clear identity;
b. Receive donations from individuals and/or companies/business entities exceeding the limits stipulated in laws and regulations.
c. Violations of this act will be accounted to the political party management with a maximum imprisonment of 1 (one) year and a fine of 2 (two) times the amount of funds received.

Paragraph (4):

a. receive from or give to foreign parties donations in any form contrary to laws and regulations
b. accept donations in the form of money, goods, or services from any party without stating clear identity;
c. Accept donations from individuals and/or companies/entities
d. business exceeds the limits stipulated in laws and regulations.

With the formulation of complete legal norms, law enforcement should be able to present comprehensive justice both to administrators and political parties involved in criminal acts of

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corruption, but in the implementation and actualization of norms seem to experience obstacles, law enforcement seems to run in place, indikantor is certainly fundamental where there is no political party that can be accounted for as a legal entity that commits criminal acts of corruption. Based on some facts in the courtroom, political parties can be criminally responsible, and can even be dissolved if the public prosecutor is able to prove the facts presented by the defendants in the courtroom, then the public prosecutor qualifies the defendant's actions to be money laundering, thus political parties can be determined to have committed a criminal act by enjoying or receiving benefits from the criminal act that carried out by political party officials. Whether it is done intentionally or in circumstances of negligence, in criminal law political parties as legal subjects can be held criminally liable.[46]

CONCLUSION

The results showed that;

a. Basically, the definition of political parties as corporations by law has a broad meaning, but the debate about political parties as corporations is still ongoing today. So there must be an affirmation in the meaning of corporate forms so that they can be qualified as legal subjects as referred to in the arrangement. This is very necessary in order to entangle political parties as a corporation.

b. Regarding accountability, political parties can be sanctioned when they have been proven to have committed criminal acts of corruption by referring to the provisions of Article 20 Paragraph (7) of the PTPK Law. However, the existence of special arrangements that refer to violations of political parties may be a loophole in the enforcement of criminal laws on corruption and money laundering because of the nature and scope of the norm regulation which can also be about the problematic conditions or context of political parties in today's sociological facts, so that not without reason, regarding criminal acts by political parties also leads to ineffectiveness in the enforcement of criminal laws on corruption and money laundering for parties politics.

c. The existence of a complete formulation of legal norms should enable law enforcement to present comprehensive justice both to administrators and political parties involved in criminal acts of corruption. However, the fact is that the implementation and actualization of norms seems to have experienced obstacles, law enforcement seems to be running in place, indikantor is certainly fundamental where there is no political party that can be accounted for as a legal entity that commits criminal acts of corruption.

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