

Analysis of Legal Certainty of the Indictment Against Corporation That Committed Criminal Acts in the Sector of Social Security in Criminal Justice on the Decision of the Sumedang District Court Num

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6 Analysis of Legal Certainty of the Indictment Against Corporation That Committed Criminal Acts in the Sector of Social Security in Criminal Justice on the Decision of the Sumedang District Court Number 109/PID.SUS 2017/PN.SMD

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ABSTRACT

Handling corporate criminal cases, many regulations in Indonesia place corporations as the subject of criminal acts that can be held accountable. One of the cases related to the handling of corporations is the embezzlement of BPJS. BPJS embezzlement is also regulated in BPJS Law no. 24 of 2011, one of the cases related to BPJS embezzlement is the decision of the Sumedang District Court Number 109/Pid.Sus 2017/PN.Smd the defendant is Een Nataw⁸ya, here the judge decides the corporation is guilty but does not charge the legal subject of the corporation according to the Supreme Court Regulation Number 13 Year 2016 on Procedures for Handling Corporate Crimes. This research examines how the certainty of charges against corporations that commit criminal acts in the field of social security in sentencing the Sumedang District Court decision Number 109/Pid.Sus 2017/PN.Smd? In order to answer these problems, normative research methods are used. There are two approaches used, namely the statutory approach, and the case approach, with deductive analysis techniques. The results of the study indicate that criminal law enforcement officers must have good abilities in conducting corporate examinations as legal subjects.

Keywords: Legal Certainty, Indictment, BPJS, Corporate

1. INTRODUCTION

Indonesia is a country based on law, so every community activity must be guided by existing regulations, one of which is the norms that apply in Indonesian society. As already stated by Hans Kelsen, he means that law is a rule as a system of rules about human behaviour. Thus the law does not accumulate on a single rule but a set of rules which have a unity so that it can be understood as a system, the consequence is that it is impossible to understand legal law if you pay attention to one rule only[1].

Basically, humans have basic needs in order to survive. Such a situation requires every individual human being to have a cooperative relationship with other individuals. Of course, this can have a beneficial or detrimental effect on the individual himself, such as causing various modes or forms of crime. As the act has been regulated in criminal law and some are still in the grey area, meaning that it is considered a mere civil law act even though the act has caused harm to the community [2]

One of the crimes and violations that occur in Indonesia is embezzlement. Embezzlement is the act of taking the property of another person in part or in whole where control of the goods already exists with the perpetrator, but the possession of the goods has occurred legally. For example, a crime against property, for example, is the control of goods over the perpetrator, which occurs because the owner has entrusted the goods. Or the possession of goods by the perpetrator occurs because of his duty or position, such as an officer for safekeeping of goods. Crimes against the property will appear to be increasing in developing countries. This increase is in line with development and economic growth. [3]

According to Book II Chapter XXIV of the Criminal Code that regulates embezzlement, embezzlement is generally stated in Article 372 and the crime of embezzlement in an employment relationship is stated in Article 374. Embezzlement is also regulated in a special law, one of which is embezzlement of BPJS No. 24 of 2011. One of the cases related to BPJS embezzlement is the decision of the Sumedang District Court Number 109/Pid.Sus 2017/PN.Smd.

The legal subject of the defendant is Een Natawidjaya Bin Sukun Natawidjaya, as the President Director of the Limited Liability Company (PT) Natatex Prima. The defendant was charged with cumulative charges, namely the first charge of violating Article 55 Jo. Article 19 (1) of Law no. 24 of 2011 on BPJS And the second indictment Article 55 Jo. Article 19 (2) of Law no. 24 of 2011 on BPJS. The defendant has the task of regulating or coordinating the operations of the company. In the field of Textiles especially spinning and dyeing.

Furthermore, on September 15 of 2014, based on the Circular Letter of the Regent of Sumedang, PT Natatex was required to register its workers into social security, but from May 2015 to January 2016 PT Natatex experienced financial difficulties so that it did not deposit BPJS Ketenagakerjaan contributions with a total of Rp. 223,700,539.

Apart from employee contributions, the Company will also be asked for BPJS Employment contributions which consist of PRSH Old Age Security (JHT) of 3.7%, Work Accident Insurance (JKK) contributions of 0.89%, and Death Security contributions (JKM) of 0,3% of the employee's salary with a total of Rp. 546,947,918.83.

It turns out that the contributions that the company has received have not been paid to the BPJS, even though the BPJS Employment has made several attempts to reprimand Defendant as President Director of PT Natatex Prima but there is no response and no efforts to resolve the problem. As a result of not depositing BPJS Employment contributions by the Company Management under the leadership of the defendant, when 2 (two) workers on behalf of Mr. Dede Mulyadi (late) and Ms. Yeti Suhayati (deceased) cannot benefit from BPJS Employment. With the delay due to non-payment of BPJS employment contributions for the JHT program, JKK and JKM PT Natatex Prima under the leadership of the defendant from May 2015 to January 2016 then PT Natatex Prima will be fined Rp. 169,464,288.86.

In this decision, the judge uses Article 25 (2) of Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Corporate Crimes, the article reads that the main punishment that can be imposed on the Corporation is referred to in paragraph (1) is fine. As one of the articles that were violated by the defendant, therefore the Judge decided that the defendant EEN NATAWIDJAYA BIN SUKUN NATAWIDJAYA in his capacity as President Director of PT Natatex Prima was guilty of violating Article 55 Jo Article 19 paragraph (1) and paragraph (2) of the BPJS Law, with a fine of Rp. 940,113,147.09. If the fine cannot be paid, the property of PT Natatex Prima can be confiscated by the Prosecutor and auctioned off to pay the fine.

1.1. Related Work

Based on the introduction, the issues in this research is "How is the certainty of indictment against corporation that committed crime against social service in the verdict

of on Sumedang Court Number 109/Pid.Sus/2017/PN.Smd?"

1.2. Our Contribution

The purpose of this research is to address issues that have been outlined in the background is to know how is the certainty of the indictment against corporation that corporation that committed crime against social service in the verdict of on Sumedang Court Number 109/Pid.Sus/2017/PN.Smd

1.3. Paper Structure

The structure of this paper uses research method to collect data, manage data and conclude from the data according to the problem to be studied by the author. This legal research studies certain legal phenomena, either one or more symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts. The research method used by the author in the study is as follows: Types of Research, the type of research in this paper is normative research and also known as doctrinal legal research, this research was conducted to examine the criminal policy that should be against corporate criminals who were not charged by the public prosecutor. The approach of this paper is descriptive research, descriptive research is when the research is carried out, and the results of the research are then processed and analysed to draw conclusions.

This research uses various material: primary legal material such as criminal code, Law Number 8 of 1978 Law of the Republic of Indonesia Number 24 of 2011, Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016, Regulation of the Attorney General of the Republic of Indonesia Number 28 of 2014, secondary legal material such as related literature, articles, etc.

2. BACKGROUND

Legal certainty in the indictment emphasizes that the law or regulation must be enforced as desired by the law or regulation. Everyone hopes that the law can be enacted in the event of a concrete event. How the law is determined, what must apply, the indictment is the legal basis for the criminal procedure because based on what is contained in the letter, and the judge will examine the examination case based on the indictment.

The purpose and use of the indictment as a basis for examining a case in a court trial, a judge in examining a case must not deviate from what is formulated in the indictment.

However, no matter how clear the formulation of the indictment is, it is often found that the implementation is not relevant to the indictment, even while the law is wrong about the function of the indictment as the basis for the examination. It often happens that the way and direction of the examination are more coloured by the tastes of the

judge and the public prosecutor who acts as a prosecutor, the defendant or legal advisor who acts as a companion to the defendant, must be bound by the formulation of the indictment. Meanwhile, the role of the indictment is as the basis for examination in the district court, the basis for criminal charges (requisition), the basis for the defence of the defendant and/or defender, the basis for judges to make decisions, and the basis for further judicial examinations (appeal, cassation, review and even cassation in the interest of law)[3]

In preparing the indictment, the Prosecutor and the Public Prosecutor must be able to clearly formulate the elements of the crime/delict that have been indicted in the sense that the formulation of the elements of the offense must be integrated and explained in the form of a description of the facts of the acts committed by the defendant. Prosecutors are functional officials who are authorized by law to act as public prosecutors and implement court decisions that have legal force and other powers based on the law. Prosecutors are not only required to master positive laws of a general nature (*lex generalis*) but also specific ones (*lex specialis*), which have emerged recently.

The Prosecutor in carrying out state power in the field of prosecution and other tasks stipulated by the law is under the provisions of Article 2 paragraph (2) of Law Number 16 of 2004 on the Prosecutor, which is carried out independently, meaning in accordance with the explanation of Article regardless of the influence of government power and the influence of other powers. The Prosecutor in criminal law acts as a functional institution authorized by law to act as a public prosecutor and implement court decisions that have obtained legal force and other powers based on the law. Such a role requires a prosecutor not only to master the discipline of criminal law, but also the discipline of civil law and state administration.

Carry out prosecutions, close cases for the sake of law, carry out other actions within the scope of duties and responsibilities as public prosecutors according to the provisions of the law, carry out judges' decisions. And in Law Number 16 of 2004 on the Prosecutor of the Republic of Indonesia, namely conducting prosecutions, carrying out judges' decisions and court decisions legal force, supervising the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions, conducting investigations, against certain criminal acts based on the law, complete certain case files and for this reason can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators. Therefore, the examination approach in the trial must be based on and directed to efforts to prove the criminal acts formulated in the indictment. basically it is not allowed to deviate from the law, even though the world is collapsing, the law must still be enforced.

This is what legal certainty wants. Legal certainty as a justifiable protection against arbitrary actions, for example that someone will be able to get something that is expected under certain circumstances.

3

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

Talking about the Corporate Crime Handling system, it cannot be separated from criminal responsibility. Criminal acts cannot stand alone, therefore they must be paired with criminal liability. This means that anyone who commits a crime does not automatically have to be punished. In order to be convicted, there must be criminal responsibility for criminal liability born with the continuation of objective reproaches (*verwijbaaraeid*) against acts that are declared as criminal acts based on applicable criminal law, and subject to manufacture that meets the requirements to be subject to criminal charges for their actions.[4]

Legal subjects that can be criminally accounted for are themselves regulated in one book of criminal law (code penal), the Criminal Code itself is a *lex generalis* of various special laws in each country, except in the special law that specifically regulates general provisions. So that special law applies because this special law is a *lex specialist* of the Criminal Code.

The Criminal Code itself does not regulate corporations as legal subjects because the nature of offenses committed by corporations is limited to individuals, this can be seen in Article 59 of the Criminal Code which states that:

"In cases where a criminal offense is determined against the management, members of the governing body, or commissioners, then the management, members of the management body, or commissioners who apparently do not interfere will commit a criminal offense."

So the subject of criminal law cannot be limited only natural humans but also includes corporations, namely an organized collection of people and/or assets, whether they are legal entities or not.

The recognition of corporations as legal subjects is divided into three stages, namely:

The first stage characterized by efforts to limit the nature of offenses committed by corporations to individuals (*natuurlijk persoon*). So that if a criminal act occurs within the corporate environment, then the crime is considered committed by the management of the corporation. The second stage is marked by the recognition that emerged after the first world war in the formulation of a law that a criminal act can be committed by a union or business entity (corporation). The responsibility for that is also the burden of the management of the legal entity. The third stage is the beginning of the direct responsibility of the corporation which began during and after World War II. At this stage it is possible to hold him accountable according to criminal law. The laws and regulations that place corporations as legal subjects and can be directly accounted for criminally are Article 15 of Law no. 7 of 1955 on Investigation, Prosecution, and Judiciary of Economic Crimes. We can also find a similar formulation in Article 19 paragraph (3) of the Environmental Law, Article 46 paragraph (1) and paragraph (2), Law Number

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31 of 1999 jo. Law No. 20 of 2001 Article 20 paragraph (1) on the Crime of Corruption, the Law on Money Laundering Article 4 paragraph (1) also contains a similar formulation. Article 46 paragraph (1) and paragraph (2), Law Number 31 of 1999 jo. Law No. 20 of 2001 Article 20 paragraph (1) on the Crime of Corruption, the Law on Money Laundering Article 4 paragraph (1) also contains a similar formulation. Article 46 paragraph (1) and paragraph (2), Law Number 31 of 1999 jo. Law No. 20 of 2001 Article 20 paragraph (1) on the Crime of Corruption, the Law on Money Laundering Article 4 paragraph (1) also contains a similar formulation.

The recognition of the corporation in the third stage is clear, that the corporation can be criminally responsible if a criminal act is committed for and on behalf of the corporation. One that corporations can be held criminally accountable for is BPJS. The Social Security Administering Body, hereinafter abbreviated as BPJS, is a legal entity established to administer the health insurance program. [5] BPJS consists of BPJS Health and BPJS Employment. Functions, duties and authorities are clear to BPJS. Thus, it can be known with certainty the limits of responsibility and at the same time can be used as a means to measure the performance of the two BPJS transparently so that a special criminal law regulation is needed in Law No. 24 of 2011 on the BPJS.

Crimes in the BPJS Law should be in accordance with the general criminal law as far as possible. Of course, there are still special differences, because the BPJS law really requires it in the details. [6] The criminal provisions contained in Law No. 24 of 2011 on BPJS are special criminal law rules outside the Criminal Code which are a special part (sub system) of the entire criminal system. Thus, the criminal system in special laws outside the Criminal Code must be integrated into general rules. [7] However, special laws outside the Criminal Code can make special rules that deviate or differ from the rules stipulated in Book 1 of the Criminal Code and there are two types of criminal sanctions contained in Law No 24 of 2011 on BPJS. the first is the threat of sanctions for employers who do not register their workers into BPJS while the second is more for the agencies that provide services for BPJS itself, criminal sanctions are the last sanctions imposed or can be said to be the most severe sanctions after administrative sanctions so that criminal sanctions are required in the BPJS Law as a *lexspecialist* or special legal rules.

For this matter, those who can be subject to heavy administrative sanctions are members of the supervisory board or members of the board of directors and the employer and imprisonment for each crime committed is a maximum imprisonment of 8 (eight) years and a maximum fine of Rp. 1,000,000. 0000.00 (one billion rupiah). The provisions are in Articles 54 and 55.

As for the violation of BPJS regulations by BPJS implementers and employers as in the case in Sumedang District Court Decision Number 109/Pid.sus 2017/PN.Smd. as follows: the indictment used in this case is in the form of a cumulative indictment, the first charge violating Article 55 Jo. Article 19 (1) of Law no. 24 of

2011 on BPJS And the second indictment Article 55 Jo. Article 19 (2) of Law no. 24 of 2011 on BPJS
Defendant

Name: Een Natawidjaya Bin Sukun Natawijaya

Place of Birth: Bandung

Age/Date of Birth: 57 years/18 July 1959

Male gender

Nationality: Indonesian

Place of Residence: Jalan Naripan No. 28 Rt. 003 Rw. 001

Kebon Pisang Village, Sumur District, Bandung City, Bandung

Christianity

Occupation: Private (President Director of PT Natatex Prima)

Education:-

On September 15, 2014 based on the Circular of the Regent of Sumedang number 968/5078.Sos, PT Natatex Prima is engaged in the textile sector, especially spinning and dyeing. Mandatory to register workers into social security. During the BPJS, since before January 2015, and during that time the payments were relatively smooth.

However, starting from May 2015 to January 2016 the defendant as Director of PT Natatex experienced financial difficulties so that he did not deposit BPJS Employment contributions with a total amount of Rp. 223,700,539. Apart from employee contributions, the Company will also be asked for BPJS Employment contributions which consist of PRSH Old Age Security (JHT) of 3.7%, Work Accident Insurance (JKK) contributions of 0.89%, and Death Security contributions (JKM) of 0.3% of the employee's salary with a total of Rp. 546,947,918.83.

Based on the indictment that has been read by the Prosecutor, it turns out that the contributions that the company has received have not been paid to the BPJS for approximately 8 (eight) months, even though the BPJS Employment has made several attempts to reprimand the Defendant as President Director of PT Natatex Prima but has not no response and no efforts to solve the problem. As a result of not depositing BPJS Employment contributions by the Company Management under the leadership of the defendant, when 2 (two) workers on behalf of Mr. Dede Mulyadi (late) and Ms. Yeti Suhayati (deceased) cannot benefit from BPJS Employment. With the delay due to non-payment of BPJS employment contributions for the JHT program, JKK and JKM PT Natatex Prima under the leadership of the defendant from May 2015 to January 2016 then PT Natatex Prima will be fined Rp. 169,464,288.86.

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In this decision, the Judge uses Article 25 (2) of Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Corporate Crimes, the article reads that the main punishment that can be imposed on the Corporation as referred to in paragraph (1) is a fine. As one of the articles that was violated by the Defendant, therefore the Judge decided that the defendant EEN NATAWIDJAYA BIN SUKUN NATAWIJAYA in his capacity as President Director of PT Natatex Prima was guilty of violating Article 55 Jo Article 19 paragraph (1) and paragraph (2) of the BPJS Law, with a fine of Rp. 940,113,147.00 if the fine cannot be paid, the property of PT Natatex Prima can

be confiscated by the Prosecutor and auctioned off to pay the fine.

If it is seen from the case, the actions of the defendant Een Natawidjaya Bin Sukun Natawijaya are included in the theory of corporate criminal liability identification. Corporate criminal liability is divided into three, namely: First, the Doctrine of Direct Criminal Liability or the Doctrine of Identification. According to this doctrine, a corporation is judged to be able to commit a crime directly through a senior officer and is identified as an act of the corporation itself. Criminal liability can only be truly charged to the corporation if the criminal act is committed by a person who is the directing mind (the brain that carries out all the activities of the corporation). Second, the Strict Liability Doctrine or responsibility without fault or called no-fault liability or liability without fault. In this doctrine or theory, criminal responsibility can be requested without having to prove the existence of guilt and the perpetrator of the crime. And the third is the vicarious liability doctrine. Basically, the doctrine of vicarious liability is based on the principle of employment principle which is meant by the principle of employment principle in this case that. The employer is the main person responsible for the actions of his workers or employees. From the explanation of the identification theory, the judge declared the defendant Een Natawidjaya Bin Sukun Natawijaya as the President Director of PT Natatex Prima. In this case, perform actions that are identified as corporate actions. Because a corporation can be judged to have committed a criminal act directly through a senior officer and identified as an act of the corporation itself. Criminal liability can only be truly charged to the corporation if the criminal act is committed by a person who is a directing mind.

Judging from the judge's considerations, the judge decided that the corporation was guilty but was not charged with the subject of corporate law by the Public Prosecutor. Whereas in the indictment written by the public prosecutor, it is clear that the defendant is a legal subject, namely an individual with the personal identity of the defendant, not a legal entity. Meanwhile, in the corporate setting, the subject of criminal law can only be found in laws and regulations of criminal law outside the Criminal Code which are categorized as special crimes, or administrative legislation with criminal sanctions. Visible discrepancies in the formulation of the corporation as a legal subject,

In the Sumedang District Court Decision Number 109/Pid.Sus/2017/PN.Smd, the formal requirements to indict this corporation are regulated in the Supreme Court Regulation of the Republic of Indonesia Number 13 of 2016 on Procedures for Handling Corporate Crimes. In Article 12 paragraph (2) the form the indictment as referred to in paragraph (1) refers to the provisions of Article 143 paragraph (2) of the Criminal Procedure Code (KUHAP) with adjustments to the contents of the indictment as follows:

Company name, place, date of establishment and/or number of articles of association/deed of establishment/regulations/documents/agreements as well

as recent amendments, domicile, nationality of the Corporation, type of corporation, form of activity/business and identity of the representative management, detailed, clear description and complete details of the crime charged with mentioning the time and place where the crime was committed. [8]

However, in the indictment in Decision Number 109/Pid.Sus/2017/PN.Smd, the Public Prosecutor did not take the corporation as the Defendant, in this indictment the Public Prosecutor wrote down the contents of the indictment in the form of the defendant's personal identity, not the corporate identity which should have been listed in the indictment. in the Regulation of the Supreme Court of the Republic of Indonesia number 13 of 2016 on Procedures for Handling Corporate Crimes in the article described above and the Regulation of the Attorney General of the Republic of Indonesia number 28 of 2014 on Guidelines for handling criminal cases with the subject of corporate law regulating the preparation of corporate indictments must include the identity of the corporation, namely: the name of the corporation, the number and date of the deed of establishment of the corporation and its amendments, the number and date of the deed of the corporation at the time of the crime, the place of domicile, corporate nationality, line of business, taxpayer identification number and identity representing the corporation in accordance with Article 143 paragraph (2) letter a of the Criminal Procedure Code.

Contoh surat dakwaan di dalam Peraturan Jaksa Agung Nomor 28 Tahun 2014 terhadap korporasi dan pengurus sebagai berikut:

KEJAKSAAN
 "UNTUK KEADILAN"
SURAT DAKWAAN
 NO.REG.PERKARA:.....

A. IDENTITAS TERDAKWA

I-1 Terdakwa 1

Nama	:	PT/CV/Yayasan.....
Nomor dan Tanggal Akta	:	.....
Pendirian Korporasi beserta perubahannya	:	.....
Nomor dan Tanggal Akta Korporasi	:	.....
pada saat peristiwa pidana	:	.....
Tempat Kedudukan	:	.....
Kebangsaan*	:	.....
Jenis/Bidang Usaha	:	.....
NPWP	:	.....

*Tempat kedudukan Perusahaan induk apabila korporasinya berbentuk Holding Company

Pengurus bertindak untuk terdakwa dan atas nama terdakwa yaitu:

Nama	:	.....
Tempat Lahir	:	.....
Umur/Tanggal Lahir	:	.....
Tempat Tinggal	:	.....
Jenis Kelamin	:	.....
Kebangsaan	:	.....

Figure 1 Letter of Indictment (Part 1)

Agama :
 Pekerjaan :
 Pendidikan :

B. DAKWAAN :

1. Status/Kedudukan terdakwa;
2. Waktu dan tempat tindak pidana dilakuka, termasuk delik perbuatan berlanjut (*Vorgesette handeling*) dan/atau perbarengan (*Concurus Realis*);
3. Apabila terdapat penyertaan maka dimasukan bentuk penyertaan.
4. Rumusan pasal-pasal dari tindak pidana yang didakwakan;
5. Uraian secara cermat, jelas dan lengkap mengenai perbuatan,kejadian,keadaan yang mendukung/terkait dengan masing-masing unsur tindak pidana yang didakwakan, dengan memperhatikan kriteria berupa perbuatan atau kejadian tersebut sebagaimana kriteria pemidanaan.²⁴

Figure 2 Letter of Indictment (Part 2)

Meanwhile, in the Sumedang District Court Decision Number 109/Pid.Sus/2017/PN.Smd, the Public Prosecutor only indicted the identity of individuals as follows:

- Defendant
- o Name : Een Natawidjaya Bin Sukun Natawijaya
 - o Place of Birth: Bandung
 - o Age/Date of Birth: 57 years/18 July 1959
 - o Male gender
 - o Nationality : Indonesian
 - o Residence: Jalan Naripan No. 28 Rt. 003 Rw. 001 Kebon Pisang Village, Sumur District, Bandung City, Bandung
 - o Christianity
 - o Occupation: Private (President Director of PT Natek Prima)
 - o Education :-

In addition to the Procedure for Handling Corporate Crimes in Decision Number 109/Pid.Sus/2017/PN.Smd, legal certainty is also very important in the process of indicting a corporation because according to Fence M. Wantu, "Law without the value of legal certainty will lose its meaning because it does not again can be used as a guideline of behaviour for all people. It can be seen that legal certainty has an important role in the process of indicting corporations because according to Jan Michiel to legal certainty has the possibility in certain situations:

- a. There are clear (clear), consistent and easy to obtain regulations, issued by and recognized by the state (power).
- b. Ruling agencies (government) apply the rules of law consistently and are also subject to and obedient to them.
- c. Citizens principally adjust their behaviour to these rules.

- d. Independent and thoughtless judges (judicial) apply the rules of law consistently when they resolve legal disputes.
- e. Judicial decisions are concretely implemented

And legal policy must also be applied in handling this corporate crime because according to Sudarto, criminal policy is an effort to realize good regulations in accordance with the circumstances and situations at a time and the policies of the state through the competent bodies to establish regulations. Which is expected to be used to express what is contained in society and to achieve what is aspired to.

In the Draft Criminal Code, the formulation of Article 1 paragraph (1) is basically the same as the provisions contained in Article 1 paragraph (1) of the Criminal Code, (namely the principle of formal legality is still adhered to. This principle is maintained because the principle of legality is a basic principle in criminal law, for the existence of legal certainty and the absence of arbitrariness of law enforcement in carrying out actions. Article 1 paragraph (1) of the Criminal Code "No action can be criminalized, except for the strength of the criminal rules in the existing legislation, before the act is committed". The purpose of this legality principle is the principle that determines that there is no prohibited act and is threatened with a criminal if it is not determined in advance in the law. In addition, the principle of legality is also regulated in the criminal procedure law in Article 3 of the Criminal Procedure Code.

As explained above, the District Court Decision Number 109/Pid.Sus/2017/PN.Smd should include the name of the corporation, place, and date of establishment and/or number of articles of association/deed of establishment. /regulations/documents/agreements as well as recent amendments, domicile, nationality of the corporation, type of corporation, form of activity/business and the identity of the representative management. So legal certainty must also be carried out according to its sound, so that the community can ensure that the law is implemented properly. Legal policies are also applied in order to realize criminal regulations so that they can be in accordance with the conditions at a certain time and in the future which will later fulfil a sense of justice

3. CONCLUSION

Legal certainty is a guarantee that the law must be implemented in a good way. So that the rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed, such as the case in Decision Number 109/Pid.Sus/2017/PN.Smd. In this case, the judge decided that the corporation was guilty by using Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Corporate Crimes Article 25 paragraph 2, based on this decision, the Public Prosecutor in preparing the indictment should be able to formulate an indictment with these rules, but in this case, The Public

Prosecutor did not indict the corporation as a suitable legal subject.

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