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CORPORATE CRIME PENALTIES IN BRAND FORGERY BASED ON LAW NUMBER 20 OF 2016 CONCERNING BRANDS AND GEOGRAPHICAL INDICATIONS

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ABSTRACT

Every trade in goods and services will have a brand as the identity of the goods and services it produces. Therefore, a brand has value or equity which is a benchmark for a product in trade. Because brands have high value, it is quite tempting for individuals or legal entities to gain benefits from the brand in question by using someone else's registered mark and in conflict with the law, including by counterfeiting the brand, either by individuals or corporations. The identification of this research is: How is a corporation deemed to have committed a criminal act and its responsibilities based on Law Number 20 of 2016 concerning Marks and Geographical Indications? The normative legal research method used in this research, the approach is analytical descriptive, using secondary data which is then analyzed qualitatively juridically. The results of this research are that research identifies that corporations can be made legal subjects that can be held criminally liable for trademarks, which can be identified from article 1 point 19 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

INTRODUCTION

Every trade in goods and services will have a brand that is used to make the goods and services they produce. Therefore, a brand has value or equity which will become a benchmark for a product in trade. This is understandable because the first thing to look at before buying a product is the brand of the product itself because brands have an important role in the world of trade and in protecting the reputation built by many companies. Through brands, entrepreneurs can maintain and provide a guarantee of the quality (*a guarantee of quality*) of the goods and/or services produced and prevent dishonest competitive actions (concurrency) from other entrepreneurs who have bad intentions with the intention of riding on their reputation *(passing off)* . Therefore , brands have value or equity.

Brands have a very important and strategic function in the world of commerce. The importance of brands is not only to differentiate similar goods or services, but also to function as an invaluable company asset, especially for brands with well-known *marks* . This brand has become a symbol that has a higher reputation . The symbol has a dazzling and attractive radiant power, so that whatever type of goods are under the brand, it immediately creates a touch of familiarity *(familiar attachment)* and a mythical connection *(mythical context)* to all levels of society. A *well-known* brand or a famous brand *has* a high reputation and " *good will"* which is a symbol of a lifestyle. Brands that have such a degree will have high marketing power value to consumers. According to Eva Saigeti, a *well-known* or *famous* brand immediately becomes an instrument to enlarge its monopoly on other goods or *"becomes a weapon of big monopolies"*.

On the other hand, the popularity or fame of a brand increasingly invites irresponsible people to use it in violation of the law. This is like the expression "*the greater the reputation, the greater the risk of injury"*. The higher and more well-known a brand's reputation is, the greater the risk of being harmed by fraudulent parties. The existence of brand violations, such as brand counterfeiting of well-known branded products, is actually motivated by fraudulent or unfair business competition *carried* out by business actors in order to enrich themselves dishonestly

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(unjust enrichment) . The act of counterfeiting certain well-known brands is not only carried out by individuals, but also by corporations.

The crime of using well-known brands is currently quite widespread, this is due to the promise of large profits that will be obtained if you use a well-known brand rather than using your own brand. There are many reasons why many corporations use well-known brands for their products, one of which is so that they are easy to sell.

Enforcement law to riches intellectual is a commitment And consequence for Indonesia Which must fulfilled after follow sign establishment of the WTO through ratification of the agreement multilateral the in Constitution Number 7 Year 1994 about formation WTO. With thereby, Indonesia has participate in apply principle free trade within the framework of the agreement in the field of international trade. Effect from The agreement applies to all member countries WTO is possible for country members to export goods and services to Indonesia with tariff low. Apart from the WTO, under the union organization nations there are organizations associated with importance promote protection intellectual property for mutual progress for para its members. Organization the named IP Organization World (WIPO) Which own 188 country, whereas in level agreement regional, Indonesia join in *Association of Southeast Asian Nations* (ASEAN)And Then form *ASEAN economics Community (AEC)* Which applies start year 2015. The aim of creating the ASEAN Economy 2015 For increase stability economy in area ASEAN, And expected capable overcome problems in the economic sectorbetween country ASEAN.

Brands as a form of intellectual work also have an important role in the smooth and increasing trade of goods and services in Indonesia. A brand is a tool used to differentiate goods and services produced by a company, with the aim of indicating the characteristics and origin of the goods (*Indication of Origin*). In line with this, according to Edy Santoso, KI is a right that arises based on intellectual works that produce a product or process that is useful for humans. In essence, IP is the right to enjoy the economic results of intellectual creativity.

A special legal protection mechanism is needed so that more cases of infringement of well-known brands do not develop. The legal protection for well-known brands provided by the preventive and repressive trademark law as stipulated in Article 6 paragraph (3) and paragraph (4) of the trademark law is in line with *the provisions of the Trade Related Aspect of Intellectual Property Rights* (*TRIPs Agreement*) covering protection or services, whether similar or not, namely trademark registration, in addition, matters relating to repressive trademark protection are also regulated.

The act of using a well-known brand belonging to another person or corporation, as a whole, not only harms the owner or holder of the brand itself but also consumers. However, the wider impact will not only be detrimental to the national economy, but even more broadly it will be detrimental to both bilateral and multilateral economic relations. In this way, the massive expansion of corporations in developing their businesses outside their country of origin, not only has negative impacts, such as pollution, depletion of natural resources, fraudulent competition, tax manipulation, exploitation of workers, producing products that endanger their users, as well as fraud against consumer. Likewise, crimes committed by corporations are diverse and include crimes such as violations of monopoly laws, computer fraud, payment of taxes and excise, violations of price regulations, production of goods that endanger health, corruption, bribery, administrative, labor and environmental pollution violations. life.

RESEARCH METHODS

The research method in this paper is normative legal research, namely research carried out by examining library materials (secondary data) or library legal research. Normative legal research is a scientific research procedure to find the truth based on the logic of legal science from its normative side. The scientific logic that is often used in normative legal research is legal science whose object is law itself.

The library materials or secondary data referred to are statutory regulations, using a deductive approach that is the reasoning process starting from general circumstances to specific

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circumstances as approach teaching that begins by presenting general rules, principles followed by specific examples or the application of those general rules and principles to specific circumstances . This normative legal research is library research based on secondary data and is qualitative in nature . In this stage, all secondary and tertiary data are collected and classified, then arranged in a systematic arrangement, so that a comprehensive picture of legal rules, legal provisions and legal principles relating to aspects and sanctions of corporate crime is obtained.

RESULTS AND DISCUSSION

Pancasila is the source of all sources of state law, while the 1945 Constitution of the Republic of Indonesia is the basic law in statutory regulations. Therefore, the aim of national development is to create a just and prosperous society that is equally material and spiritual in an era of economic democracy based on Pancasila and the 1945 Constitution. Then Article 33 of the 1945 Constitution regulates Indonesia's economic development by stating that : "The national economy is organized based on the principles of economic democracy with the principles of togetherness, efficiency, justice, environmental sustainability, independence, and by maintaining a balance of progress and unity of the national economy." In line with the principles of economic democracy which have been mandated by the constitution, therefore, the development of the Indonesian national economy in the era of globalization must be able to support the growth of the independence of an environmentally friendly business world with the ability to produce a variety of goods and services. or services that contain domestic technology that can improve the welfare of society at large.

With the increasingly open national market as a result of the globalization process, the economy must continue to guarantee an increase in people's welfare as well as certainty regarding the quality, quantity and safety of the goods and/or services they obtain in the market. As a result of economic globalization, violations of IP are occurring on a massive scale. Therefore, in an effort to provide guarantees and legal protection for IP owners, in this case brands, from the actions of unhealthy business actors or unfair *competition* from use without registered property rights of other people to piggyback on fame (*passing off)* and misinformation, based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the Indonesian Government has issued several legislative products invitation to provide legal protection guarantees for IP, including: Law No. 15 of 2001 concerning Marks as amended by Law No. 20 of 2016 concerning Marks and Geographical Indications .

In social reality, criminals are no longer a separate group that is sharply separated from civil life, but are intertwined with a kind of interdependence. According to Satjipto Rahardjo, life in a society that runs more or less in an orderly and orderly manner is supported by the existence of an order. Because of this order, life becomes orderly. Order in society will of course be difficult to achieve if crime continues to occur and develops rapidly in society.

These crimes must be prevented and dealt with. One way is through criminal law policy. Crime prevention using criminal law is a crime prevention effort that has been used for a long time along with the development of crime in society. Combating crime using criminal law is part of criminal policy. According to Sudarto, if criminal law is to be used, it should be seen in the overall relationship of criminal politics or *"social defense planning* ", which must also be an integral part of the national development plan.

Regarding the issue of corporate responsibility for victims of corporate crime, the criminal law policies used are also expected to be adapted to the current time and situation and can predict future situations, so that the criminal law policies used can be functionalized effectively in the present and future. in the future, as long as the criminal law policy can also provide justice for victims of corporate crime. Corporate responsibility for victims of corporate crime cannot be separated from three main issues in criminal law, namely those related to criminal acts, criminal

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liability, and criminal and criminal penalties. According to Barda Nawawi Arief, seen from the perspective of criminal law policy, in the sense of policy using to operationalize, functionalize criminal law, the central problem or main problem actually lies in the problem of how far the authority of the authorities regulates and limits human behavior (citizens/officials) with criminal law.

From the description above, it appears that the central issue is authority and the regulation of authority itself in the functionalization of criminal law policies. Authority in the functionalization of criminal law policy includes legislative policy authority, application authority or judicial policy, and execution authority or executive policy. As stated by Barda Nawawi Arief, the division of authority is based on three stages of concretization or functionalization/operationalization of criminal law seen from the perspective of criminal law policy.

First, the stage of determining/formulating criminal law by law makers (formative/legislative policy stage). Second, the stage of application of criminal law by law enforcement officials or the courts (judicial/judicial application policy stage). Third, the stage of criminal execution by the criminal execution apparatus (administrative executive policy stage).

If seen from the stages above, the legislative formulation policy stage is the most important stage and plays a large role in the operationalization of criminal law policy. The continuation of the formulative stage, namely the application and execution stages, is very dependent on the success of the formulation of a criminal law policy. Is the formulation of this matter in criminal law policies relating to corporate crime able to ensnare corporations as perpetrators of crimes, in the sense that corporations can be prosecuted and burdened with criminal responsibility?

There are several theories of corporate criminal responsibility which can be used as the basis for imposing criminal responsibility on corporations. These corporate criminal theories include identification theory, vicarious liability theory *and* strict liability *theory. Identification theory* is a theory of corporate criminal responsibility. Criminal liability for corporations must first be able to identify who committed the criminal act. If the person who commits the criminal act is a *"directing mind"* or a person authorized to act on behalf of the corporation, then the corporation may be subject to criminal liability. The theory of *vicarious liability* is a theory of corporate criminal liability when someone, in this case a corporation, is responsible for the mistakes of another person. This theory is based on *the employment principle* , when employers are responsible for the actions of their workers within the scope of their duties and work. The theory of absolute liability *(strict liability*) is the most practical theory of corporate criminal liability. Corporate criminal liability is imposed on the person who commits the criminal act without needing to prove whether there is an element of fault or not. The theory of responsibility above is used in order to guarantee corporate responsibility for victims of corporate crime.

(The emergence of) corporate crime is carried out by corporations secretly or covertly, rather than openly committing the crime of brand counterfeiting, so that law enforcement officials and the original brand owner do not know about it. This crime cannot be separated from the new theory put forward by Edwin H. Sutherland, namely the theory of *white collar crime* which then gave rise to a new concept of crime in the form of corporate crime which also had an impact on the emergence of a new type of victim, namely victims of corporate crime. According to Clinard and Yeager:

"Except in such crimes as fraud, the victim of ordinary crime is known that he or she has been victimized, Victims of corporate crimes, on the other hand, are often unaware that they have been taken."

This opinion shows that victims of corporate crime are often unaware *that* they have become victims. From the opinions above, it can be concluded that several characteristics of

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victims of corporate crime can be identified, including the unawareness of crime victims that they have become victims of corporate crime, the difficulty of identifying which are victims of corporate crime and which are victims of ordinary crime *(abstract victims),* the emergence of victims in large numbers with the amount of loss is not too large (*the diffusion of victimization).*

Based on the provisions of Article 1 number 8 of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, that; "Criminal acts by corporations are criminal acts for which corporations can be held criminally liable in accordance with the law governing corporations." Based on the description of the article, it can be seen that the conditions for a criminal act to be held accountable to a corporation are that it must be determined as such by the relevant law. In a different sentence, it can be said that the law must first state that corporations can be held criminally responsible, only then can corporations be held criminally responsible.

The fact that formally corporations can be held criminally responsible for trademark counterfeiting as intended by the trademark law is in line with the fact that materially corporations can carry out trademark counterfeiting through people who are part of the corporation in question based on employment or other relationships. . The material requirements for a corporation to be able to commit a criminal offense are regulated as intended by:

1. Article 3 of the Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, that; “Criminal acts by corporations are criminal acts committed by people based on work relationships, or based on other relationships, either individually or collectively acting for and on behalf of the corporation inside or outside the corporate environment.
2. Article 4 paragraph (2) of the Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, that; "In imposing a crime against a corporation, the judge can assess the corporation's mistakes as stated in paragraph (1), including:
   a. The corporation can obtain profits or benefits from the criminal act or the criminal act was carried out for the benefit of the corporation/
   b. Corporations allow criminal acts to occur; or
   c. "The corporation did not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts."

The correspondence between formal facts and material facts that in essence legal entities (corporations) commit criminal acts in the form of brand counterfeiting can be analyzed using the theories as fully explained in the section below.

1. Using the theory of justice as put forward by Aristotle, which basically says that justice is giving everyone what is their right. If the meaning of each person is expanded to suit current legal facts, it must be considered to include corporations as legal subjects created by law. By using this understanding, justice can be interpreted as giving everyone, including corporations, what is their right.

   Corporations (legal entities) which materially commit brand counterfeiting are seen using the perspective of brand protection as intended by the law on brands and geographical indications, linked to the concept of justice according to Aristotle, this can be explained as follows;

   Corporations (legal entities) that have rights to trademarks should benefit from the use of these rights. Meanwhile, corporations that do not have the rights to a trademark, should and should not benefit from the use of the trademark in question. Thus, it can be ascertained that injustice has occurred if a corporation (legal entity) which has trademark rights obtains benefits from the use of the trademark after being reduced by the benefits received unlawfully by the corporation, or individual, for the use of a trademark to which they do not have the rights.

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By using the concept of distributive justice, as intended by Aristotle, the existence of the Trademark and Geographical Indications Law can be seen as an effort to ensure the distribution of services to corporations based on brand ownership. Corporations that have brands have the right to obtain services that are not obtained by corporations that do not have brands.

Meanwhile, using the perspective of corrective justice proposed by Aristotle, corporations that without the right use brands belonging to other people/corporations, should and should receive criminal sanctions as a corrective measure against corporations that commit brand counterfeiting, and as a preventive measure for other corporations to prevent not commit a criminal act of using a brand without rights.

2. A brand is part of intellectual property and is an *intangible* property *right* , therefore it needs legal protection. Theoretically, there are several theories of protection for intellectual property, namely:
   a. *Reward Theory* . Creating a brand actually requires certain efforts. Likewise, after the brand is formed, within certain limits it can provide benefits (in various forms) to the party who created it. In this case, the party entitled to receive *a reward* is the party who created the brand in question. Thus, parties who do not create a brand, or use a brand without rights and unlawfully, should not receive rewards or benefits from using the brand in question.
   b. *Recovery Theory* gives rights to brand creators who have made sacrifices in various forms in their efforts to create a brand. For these sacrifices, the brand creator has the right to receive compensation, in the form of benefits from the use of the brand in question. It would be inappropriate if a corporation that did not make any sacrifices to create or obtain rights to a brand could unlawfully obtain benefits from the use of the brand in question, because the benefits it obtains are not intended to recover a particular sacrifice.
   c. *Incentive Theory* is a justification for corporations or people who, by using all their efforts, can create a brand, then the brand can provide benefits to its creator. The benefits in question can be analogous to the incentives received by brand creators for the brands they create. By using this kind of thinking, it is fitting and appropriate for corporations that do not expend any effort to create a brand, in the end they do not receive incentives in the form of benefits from using the brand in question.
   d. *Risk Theory* gives rights to corporations or people who, with their innovation or creativity, create brands, even though in the process they face various risks, one of which is the risk of "failure". The various risks faced by brand creators are directly related to the potential loss of resources in various forms and manifestations, including the potential loss of time (wasted time that does not produce benefits). It is appropriate that the potential risks faced by the brand creator are "rewarded" by the benefits that can be enjoyed by the brand creator. Corporations that do not create brands certainly do not have to bear potential risks in various forms and manifestations. Because it does not bear the risk, it is appropriate and proper for the corporation not to benefit from the brand it uses without right and against the law.
   e. *Economic Growth Stimulus Theory* (economic growth stimulus theory) gives brand creators the right to be able to obtain benefits from the brand they create in the form of increasing their economic level to a higher level than before creating the brand. Based on this thinking, it would be inappropriate if a corporation that did not create a brand obtains benefits in the form of increasing the economic growth of its corporation as a result of using a brand that it does not have the right to, which is done unlawfully.
3. Corporate accountability. In the legal system in force in Indonesia, corporations are positioned as a legal subject that carries rights and obligations, so that they can be held criminally responsible if they commit a criminal act. Regarding corporate responsibility, there are several that can be applied, namely:

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a. *Doctrine of Strict Liability* . Based on this doctrine, criminal liability can be imposed on corporations as perpetrators of criminal acts without needing to consider the existence of mens rea. This is very much in line with the fact that the corporation itself cannot have *a mens rea* . It is possible for corporate managers or leaders to have *mens rea* . Thus, if the corporation actually benefits from the criminal act of brand counterfeiting committed by the structural or functional management of the corporation, then the corporation can be held criminally liable.
   This doctrine has been adopted by Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Article 100 paragraphs (1) and (2), to prove the defendant's guilt there is no need to prove the element of *mens rea* in the form of intent or *liability without default* . Therefore, the perpetrator can already be accused of committing a trademark crime according to this article, if in *the actus reus* the perpetrator has fulfilled the element of unlawfulness in the form of without the right to use a mark that is completely the same or substantially similar to a registered mark belonging to another person.
   The legal norms in this article do not consider the perpetrator's fault whether the trademark crime was committed intentionally or not, as long as the perpetrator's actions are proven to have used someone else's registered mark without the right, then he can be blamed for committing a trademark crime according to this article.
b. *Doctrine of Vicarious Liability* . This doctrine can be the basis for corporate criminal liability if the actual perpetrator of the criminal act is an employee/leader of the corporation who has an employment relationship with the corporation, where the corporation benefits from the criminal act committed by the employee/leader of the corporation.
c. *The Doctrine of Delegation* provides legality for corporations to be held criminally responsible for criminal acts committed by employees/leaders of the corporation on the grounds that there has been a delegation of authority from the corporation to employees/leaders of the corporation which allows the employees/leaders of the corporation to commit criminal acts, which in the end The benefits of criminal acts committed by corporate employees/leaders can also be enjoyed by corporations in various forms and manifestations.
d. *The Doctrine of Identification* places the burden on corporations to be responsible for criminal acts committed by corporate leaders after thorough and careful identification, the results of which can ensure that the party responsible for the occurrence of a criminal act is the head of the corporation in question.
e. *The Doctrine of Aggregation* provides an obligation for corporations to accept criminal responsibility for criminal acts committed by several employees/leaders of the corporation where each criminal act that occurs is related to one another.

Thus, it is fitting and appropriate that if material facts can prove that a corporation is the perpetrator of a criminal act that must be criminally responsible, then formally this must be declared as fulfilling the requirements for criminal law enforcement (in the case of brand counterfeiting) to be carried out against the corporation referred to in court.

In Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, corporations are declared the subject of criminal acts as intended by Article 45 paragraph (1). What is meant by corporation is further explained in paragraph (2), namely; "Corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned business entities, regional-owned business entities, or equivalent, as well as associations whether legal or non-legal, business entities in the form of a firm, limited partnership, or equivalent in accordance with the provisions of the laws and regulations." Based on these provisions, what is basically meant by cooperatives includes:

1. Associations, both legal entities and non-legal entities.

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2. Legal entity business entities include; Limited Liability Company (PT). Foundation, cooperative, firm, Limited Partnership (CV), or something equivalent.

According to the provisions of Article 46 of the new Criminal Code, "Criminal acts by corporations are criminal acts committed by administrators who have a functional position in the organizational structure of the corporation or people based on work relationships or other relationships who act for and on behalf of the corporation or act in the interests of the corporation, within the scope of the business or activities of the Corporation, either individually or jointly." Thus, the perpetrators of corporate crimes are; corporate administrators, people who have a work relationship or other relationship with the corporation, and people who act for and on behalf of the Corporation or act in the interests of the corporation, either individually or collectively.

Based on this definition, virtually everyone who is part of a corporation, in any position, can be a perpetrator of corporate crime. This is reaffirmed by the provisions of Article 47, namely; "In addition to the provisions as intended in Article 46, criminal acts by corporations can be committed by those giving orders, controlling holders or beneficial owners of corporations who are outside the organizational structure, but can control the corporation. As an example; If a regional company commits a corporate criminal act, which occurs because it carries out orders from the regional leadership, then the regional leadership can be categorized as having committed a corporate criminal act (even though the regional leadership in question is not directly part of the organizational structure of the regional company that commits the criminal act corporation).

Likewise, a limited liability company can be categorized as having committed a corporate crime, which occurred because it carried out instructions from the head of the parent corporation *(holding)* , then the head of the parent corporation can be categorized as having committed a corporate crime (even though his position is not directly part of the corporate organization in question). committing a corporate crime).

The conditions for a corporate criminal act that can be held accountable to the corporation are as intended by the provisions of Article 48 of the new Criminal Code, namely: "Criminal acts by corporations as intended in Article 46 and Article 47 can be held accountable, if:

1. “including within the scope of business or activities as determined in the articles of association or other provisions applicable to the Corporation;
2. unlawfully benefits the Corporation;
3. accepted as Corporate policy;
4. the corporation does not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts; and/or
5. Corporations allow criminal acts to occur.”

In the end, a corporation can be held accountable for the occurrence of corporate criminal acts committed by anyone related to the corporation, where the corporation essentially obtains profits, both *tangible* and *intangible* .

The party that must be legally responsible in relation to the occurrence of corporate criminal acts as intended by the provisions of Article 49, namely: "Responsibility for criminal acts by corporations as intended in Article 48 shall be imposed on the corporation, the management who has a functional position, the giver of orders, the holder of control, and/or beneficial owners of the Corporation.” Even though it is clearly proven that a corporate criminal act has occurred, it is also possible for the party responsible for this matter to submit justification and excuse reasons related to the corporate criminal act in question as long as the reason is relevant to the criminal act charged against the corporation as intended in the provisions of Article 50 of the New Criminal Code. .

Regarding the justification and forgiveness reasons, there is no further explanation. In the explanation of Article 50 of the New Criminal Code, only examples are given; "In the event that

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the individual has a functional position in the organizational structure of the Corporation, acting for and on behalf of the Corporation or in the interests of the Corporation, based on an employment relationship or based on another relationship, within the scope of the Corporation's business, justification reasons can be submitted on behalf of the Corporation. For example, a company employee (employee) damaged a government waste disposal pipe to save the company's employees." It can be understood that the reasons for justification and reasons for forgiveness in the event that a corporate criminal act has occurred will ultimately be decided by the considerations or wisdom of the panel of judges who examine and decide the case in question in court.

In fact, currently Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, although it was promulgated on January 2 2023, based on the provisions of Article 624, the Criminal Code comes into force after 3 (three) years. from the date of promulgation. In other words, at the time this was carried out, Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code had not yet come into effect effectively. Based on these facts, in relation to criminal acts committed by corporations in terms of brand counterfeiting, the laws and regulations that regulate them are:

1. Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law.
2. Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications.
3. Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

The occurrence of a criminal act is basically based on the existence of *mens rea* and *actus reus* . What is meant by *mens rea* is the intention or intent of the perpetrator of a criminal act, while *actus reus* is the criminal act itself. Although according to the provisions as intended by Article 45 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code; "Corporations are the subject of criminal acts", they can commit criminal acts *(actus reus)* , but in fact corporations do not have *mens rea.* However, *the mens rea* of a corporation lies or is owned by the people who are part of the corporation, who materially commit a criminal act.

As intended by the provisions of Article 3 of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Cases of Criminal Acts by Corporations, "Criminal acts by Corporations are criminal acts committed by people based on work relationships, or based on other relationships, either individually or together acting for and on behalf of the Corporation inside and outside the Corporate Environment." Based on this description, it can be understood that corporations can commit criminal acts because basically corporations can also have *mens rea* and carry out *actus reus* as do people who commit criminal acts in general.

The laws and regulations currently in force in Indonesia relating to brand protection are Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications. In this law, corporations in the form of "legal entities" are positioned as legal subjects that can commit criminal acts. In this way, corporations can be held criminally liable as intended by the provisions of Article 4 paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, linked to the provisions of Article 1 number 19 of the Law of the Republic of Indonesia Number 20 2016 Concerning Brands and Geographical Indications.

In reality, although Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Article 100, Article 102 in conjunction with Article 1 number 19 jo. Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, has established norms that the subject of criminal law in the field of brands are individuals and legal entities, and has also formulated the formulation of norms for

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criminal sanctions, but in the reality of criminal justice practice, it is often corporations that are used and become part of the perpetrators of criminal acts, in this case not criminal branding, are never held criminally responsible and are subject to criminal sanctions.

Criminal liability and the imposition of criminal sanctions in almost all criminal justice practices are limited to the owners and managers of corporations, as is the fact in the district court decisions above.

In the context of corporate criminal liability based on the doctrine of absolute criminal liability or *strict criminal liability* , according to the author, Article 100 paragraphs (1) and (2) of Law Number 20 of 2016 have been adopted, namely in proving branding crimes committed by corporations, not again requires the existence of a *mens rea element* , namely an element of offense related to a mistake *(a guilty conscience)* in the form of intent or *liability without default* .

Thus, according to the formulation of the offense of Article 100 paragraphs (1) and (2) of the Trademark and Geographical Indications Law, a corporation can be held criminally liable if it is sufficiently proven that the actus reus element of the unlawful act of the owner and structural and functional management of and the corporation has received benefit from that action, in the form of without right using a mark that is the same in its entirety or substantially the same as a registered mark belonging to another person. Which corporate *actus reus is implemented from the actus reus* carried out by the structural or functional management of the corporation.

However, the reality of criminal justice practice is related to criminal liability for trademark crimes, even though Article 100 paragraphs (1) and (2) jo. Article 1 number 19 of the Trademark and Geographical Indications Law has stipulated that the legal subject of trademark crime is "every person and legal entity" but in general, as in the case of the decisions of the district courts which are the subject of the author's study, it turns out that criminal liability and criminal impositions are only limited to only the owner and management, while the legal entity has never been held criminally responsible or sentenced to a crime.

In the author's opinion, the absence of a corporation as an entity that must carry out criminal liability for brand crimes committed by its structural and functional management, who act for and on behalf of the corporation, where the corporation benefits from these actions, is an implication of Law Number 20 of the Year 2016 concerning Trademarks and Geographical Indications does not regulate the procedural law on how to prosecute a corporation suspected of having committed a trademark crime before a criminal court trial.

Likewise, the Criminal Procedure Code also does not regulate the procedures for prosecuting corporations that are suspected of having committed criminal acts, in this case trademark crimes. Based on this argument, the author believes that for law enforcement officials it is easier to prosecute the owner or management of a corporation which is considered easier to prove than the corporation for the reason that it is so difficult to place a corporation as the subject of a criminal act to be held criminally responsible, one of the reasons is The procedures and procedures for examining corporations as perpetrators of criminal acts are still unclear.

CONCLUSION

Research identifies that corporations can be made legal subjects that can be held criminally liable for trademarks. This can be identified from article 1 point 19 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications where the object that is infringed is a registered mark which is an intangible property right which *is* an *asset* belonging to another person, which is used without right or the same in its entirety. or the same in essence, so that they can be held criminally liable and can be subject to criminal sanctions according to Article 100 paragraphs (1) and (2) and Article 102 of the Trademark and Geographical Indications Law.

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