# VICTIMIZATION BY CORPORATION IN INDONESIA

*By*
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## I. Introduction

This paper attempts to analyze various classifications of corporate harms, corporate victimizations, and corporate victims. It suggests that various kinds of corporate victimization cause different kinds of harm, and different kinds of victims to different degrees. In most corporate victimization cases there are multiple victims, besides direct victimization, indirect victimization also takes place; there is also a widescale inter-organizational victimization occurring among corporations.

As we note the twentieth century, it is apparent how much knowledge has since developed on the topic of political, white-collar, occupational, and coporate crime. We have also seen that the creation of regulatory agencies and citizen-watchdog or Ngo groups does not appear to have eliminated or even substantially reduced corporate misbehaviour. With the some bank scandals, suspicious about big business, and awareness of the tremendous cost of white-collar crime. Perhaps the reason that corporate crime does not receive the attention afforded street crime is that the phrase corporate crime is an oxymoron. How can a corporate, a nonliving entity, commit any act, let alone a criminal deed? Even if we overlook the anthropomorphism, is it likely that the people who form the corporation intend to commit crimes? Is it really a crime to succeed in business? Are not the people who run corporations well-heeled pillars of the community? If corporations do sometimes err, is not it because of overregulation by the government?

This paper is dedicated to addressing these and other questions about the illegal behaviour of corporations in our society. Compared to conventional crime, we know relatively little about the frequency, duration, causation, or cessation of illegal corporate behaviour. Not only do we lack adequate measures of corporate crime, but intersubjective definitions of crime, criminal, and victim that could lead to improved measurements have yet to be formulated.

## II. The Developing of Corporate Crime

The study of corporate crime had received its imprimatur from the specific bifurcation in 1973 by Clinard and Quinney of white-collar offences into those committed by individuals and those by corporations. In time, corporations were deemed "persons" under the law, and with some

exceptions, they now are allowed to enjoy most privileges applicable to individuals.

Corporate crime is probably what Sutherland had in mind when he coined the term white-collar cirme. These illegal acts are committed by the wealthy and powerful to further their business interests. They include such acts as price-fixing and illegal restraint of trade, false advertising, and the use of company practices that violate environmental protection statutes. The variety of crime contained within this category is great, and the damage they cause vast. In addition to acting as individuals, some white collar criminals become involved in criminal conspiracies designed to improve the market share or profitability of their corporations. This type of white-collar crime, which includes antitrust violations, price-fixing, and false advertising is also known as corporate crime.

The final component of white-collar crime involves situations in which powerful institutions or their representatives wilfully violate the laws that restrain these institutions from doing social harm or require them to do social good. This is also known as corporate or organizational crime. Simpson, Harris and Mattson propose a method of counting corporate crime that considers the opprtunity to commit an illegal act, the serial production (interconnectivity between principals) of such acts, and the number of transactions among principals. While their scheme perhaps offer a more valid method for counting corporate crime, uncovering the frequency with which corporate crime occurs still remains problematic.

Shover and Bryant incorporate both macro and microlevel theories in their analytical framework. They consider how legal, structural, and economic factors affect the opportunity to commit corporate crime, as well as how a crime-facilitative culture evolves and how it operates to mitigate resistance to legal and ethical compliance. Their analytical framework assumes a crime-as-choice perspective of offending.

On the other hand, much more so than individuals, corporations have been surrounded by thousands of regulations, many carrying criminal penalties. You and I and he or she, for instance, might combine to restrain trade, by providing similar allowances to our children, but corporations are barred by antitrust regulations from such price-fixing conspiracies. This, among many other considerations – and most particularly the inanimate nature of the corporate form – renders corporate crime a particularly complicated area of criminological concern. Herbert Edelhertz, an expert on the white-collar crime phenomenon, suggests that many offenders feel free to enagage in business crime because they can easily rationalize its effects.

Ronald Kramer argues that the explanations of organizational or corporate crime involve three structural factors:

1. Business organizations as institutions committed to goal attainment will engage in criminal behaviour if they encounter serious difficulties in attainting their goals, especially profit. In addition, product-goals play a role in the decision to violate rules. For example, when a car company tries to design a low-cost competitive model and sacrifices safety features.
2. The internal structure of an organization can also influence decisions to violate the law. Structure can have a significant influence on corporate goals. For example it can translate the overall quest for profit into subgoals, such as cost reductions, which foster criminality.
3. Organizational environment influences criminality. The economic, political, cultural, legal, technological, and interorganizational factors influence corporate behaviour.

**III. The Impact of Corporate Crime**

The paper also reviews the possibilities for the individualization of the victims, personalization of the offenders, and the personalization of harms as they relate to corporate deviance. The combined classifications may be helpful for further conceptualization of the various aspects of corporate deviance. Yet any attempt to measure accurately or to explain the etiology of corporate crime begs the question of definition. Many researches seem content to use the standard imposed by Clinard and Yeager that includes any act committed on behalf of the corporation that is punishable by civil, criminal or administrative sanctions.

Such attentiveness to corporateand white-collar illegality has resulted in new conceptions of victimization. Stitt and Giacopassi remind us of the relative unimportance of victims in the criminal justice process. Corporate crime victims are even more "invisible" than those individuals harmed by conventional criminals.

The main issue in the study of corporate crime appears to be how to control it. Clinard suggested three ways to control corporate crime: improved ethics among those in corporate power; strong intervention of state and federal legal agencies, including not only changes in corporate structure but also sanctions aimed at deterring illegal behaviour; and finally pressure from the public.

The principal problem with deciding to use the criminal law to control corporate conduct is that we really do not know how effective it is. We have many who speculate about the deterrent effect of the criminal law but little empirical support for their conclusions. Other have argued that sanctions do have a deterrent effect on white-collar criminals and that the problem has been that in the past "there appears to have been no appropriate research design for assessing the impact of sanctions applied to corporations." In some cases, there was fear of revocation of a license to trade. Second, the fines might have been a deterrent. Third, company officials may have feared

negative consumer reaction, although the evidence did not justify their unease. The evidence indicated that the main deterrent wa "concern about loss of reputation, both that of the company and, more particularly, that of individual managers.

**IV. Victim Assistance**

Violations of law by corporations have come under the particular scrutiny of legislative bodies, regulatory agencies, journalists, public-interest groups, the courts, and academic criminologists. Until recently the victim was the forgotten actor in the crime drama. There are variouss reasons for this, among them the fact that the real victim of crime has no legal status.

Although studies on the problems of victimization are still relatively recent in Indonesia, its development seems very positive. Victimization problems are not only being studied by academics. Community organizations, both state and private, are more and more interested in studying the problems while at the same time actively helping the victims. However, a coordinated program to services and assistance has yet to be developed in Indonesia.

The word "victim" does not even appear in many statute books, and in modern criminal law the victim is the state, not the individual actually injured; it is the state that prosecutes, adjudicates, and punishes crime. Other important reasons for the neglect of crime victims have to do with the traditional focus of scientific, professional, and popular interest in crime and its prevention. That focus has always emphasized criminals: how to explain their behaviour, how to deal with them, how to prevent them from committing crimes again. Little attention has been paid to the victim, and when victims are brought in it is in the quise of precipitating factors in crime. But the picture has changed dramatically since the early 1970s. An international effort is underway to study the victimizing effects of crime and to bring the real victim back into the picture.

Much of this effort has been directed at changing criminal justice policy and practice to accommodate a more active role for victims who for years have been "twice victimized". First, by the criminal, and then by the system to which they have turned for help. A variety of constructive responses are now being made to the needs of crime victims. Some of the responses seek to reduce the probability of victimization and in that sense are part of crime prevention efforts. Outside the criminal laws, legislation on environmental protection needs to be mentioned. The spirit of the law is not only protect the environment against damages but also to assisst victims to obtain reparation for damages caused by corporation.

The other major change in the treatment of crime victims has been the establishment of mechanism for a material redress of grievances against an offender. There are two types of treatment are Victim Compensation and Victim Restitution. Compensation is usually available for only a narrow

range of offences, mostly those involving violence. Restitution differs from compensation in a number of important respects. First, it involves payments of money or services to the victim by the offender, not the state. Second, it therefore requires that an offender be caught and convicted. Third, whereas compensation does not rest on the ability of an offender to pay or render services, restitution does. Fourth, restitution is considered by many to have a correctional goal, while compensation clearly does not.

The idea very simply is that through making restitution the offender will gain some rehabilitative benefit.

## V. Conclusion

1. From a policy standpoint, legislative inquiry into corporate crime offers the possibility of direct linkage between what had been learned and the ability to translate that knowledge into statutes to deal with the discovered difficulties. Of particular importance is the fact that legislative committees have an imprimatur: their conclusions, if the matter is relatively important, come from a source and wrapped in a form that virtually insists that attention be accorded to them.
2. Victim assistance program shoul be operated at local and state levels and are designed to help victims pursue their case through the criminal justice system.
3. It is alleged that even if we cannot prove that the criminal law deters, it does have an important function in that it serves society's need for retribution and help preserve confidence in the system of rule by law.
4. It is important to understand that with regard to some types of corporate conduct that we wish to control, administrative regulation may be more effective than either the civil or the criminal law.
5. Although studies on the problems of victimization are still relatively recent in Indonesia, its development seems very positive. In the present situation there is still hope that legislation which gives attention to the problems of victims can be endorsed by the government. The government will make it possible to establish a victim support policy especially victims by corporations with a coordinated program for services and assistance for victims.

## References

Alan T.harland.1981. Restitution to Victims of Personal and Household Crimes, Washington DC: US Department of Justice.

Charles E.Reasons, ed. 1974. The Criminologist: Crime and the Criminal, California: Goodyear Publishing.

Grant Stitt B. 1990. Assessing Victimization From Corporate Harms.

Joe Hudson and Burt Galoway.1975. Restitution in Criminal justice, Mass:Lexington Press.

Marshall B. Clinard and Richard Quinney,eds. 1967. Criminal Behaviour Systems: A Typology, New York: Holt, Reinhart and Winston.
Stephen Schafer. 1971. The Concept of the Political Criminal. "Journal of Criminal Law, Criminology, and Police Science".
Sue Titus Reid.1985. Crime and Criminology, Hols Rienhard & Winston.

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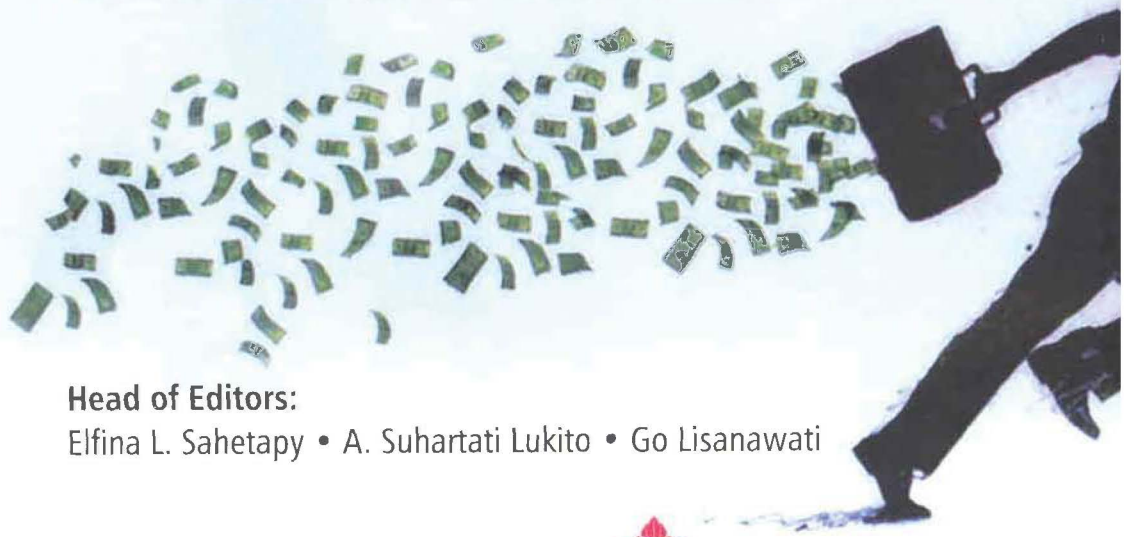

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1. Any person who deliberately and without right conducts any acts as referred to in Article 2 paragraph (1) or Article 49 paragraphs (1) and (2) shall be sentenced to imprisonment of at least I (one) month and/or a fine of at least Rp. 1,000,000.- (one million rupiah) or imprisonment of at most 7 (seven) years and/or a fine of at most Rp. 5,000,000,000. (five billion rupiahs)
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# TACKLING FINANCIAL CRIMES

## VARIOUS INTERNATIONAL PERSPECTIVES

The development of crime, in this particular-financial crime, has massively increased. Its manifestation has become major problems in all countries. The variety of financial crime manifestation can be understood such as fraud, corruption, money laundering, financing of terrorism and proliferation, cyber laundering, etc. These kinds of financial crime have attracted all the nations concern to build a good regime of the prevention and eradication against these crimes. The instrument of law such as criminal law and international law plays an important role in eradication while it is easily to mention that those variety of crimes has its characteristic as transnational crime and should be categorized as extraordinary crime.

Criminal law in its function to be a law which can maintain peace living between offender-victim and society of states shall be reconstructed to achieve its goals. Criminal law is not only about punishment. The problem of financial crime will need refunctioning of criminal law in all areas, national and international.

Emphasizing on the current condition, in global context economic growth is significant. In particular, Asia-Pacific is the fastest growing economic region and the largest continental economy by gross domestic product (GDP) purchasing power parity in the world. Therefore, it is important for all countries to keep the integrity of the economies from subversive wrongful actions.

This book is suitable for law students, legal practitioner, and people who interested in area of building a good regime in financial crime prevention and eradication.


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