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Examination of Judge's Decision Number 732/Pid.Sus/2017/PN Jkt.Utr: A Case Study of Immigration Crimes Committed by Corporation based on Article 118 *juncto* Article 136 paragraph (1) of the Indonesian Immigration Law

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Abstract

In applying this article, the author finds a discrepancy between the judge's decision that has permanent legal force (*inkracht van gewijsde*) and what is mandated by Law Number 6 of 2011 concerning Immigration. Article 136 paragraph (1) explains that if an immigration crime is committed by a corporation, the parties who can be asked for responsibility are the management and the corporation. The author sees that there are three elements that have an influence on the effectiveness of law enforcement, namely Immigration Investigators, Public Prosecutors, and Judges. In this case, the Public Prosecutor has a major role in influencing the non-compliance with the application of the article. This is because the Public Prosecutor has authority over who and how much prosecution is in this case. However, the author cannot know what the basis for the Public Prosecutor's consideration in conducting the prosecution is because the Public Prosecutor is known to have died. The author concludes that there was an error in the interpretation of the elements of legal norms in Article 118 *juncto* Article 136 paragraph (1) which resulted in the prosecution only directed at the corporation.

Keywords: Examination of the Judge's Decision, North Jakarta Immigration Office

1. Introduction

Corporations have an important role to play in globalization. Corporations have an impact on the development of the world economy which is influenced by national and multinational corporations (Aryani, 2021). The existence of corporations will always coexist with the control of natural resources and world finance. In practice, corporations always monopolize more natural resources than other corporations. This will cause competition

between corporations and potentially create a more dominant corporation that will give birth to a global capitalism (Wijaya, 2018). The existence of unlimited human movement, making corporations not only affect the world economy and finance. But more than that, corporations can be subject to criminal law (Enggarsasi, 2002).

Black's Law Dictionary mentions crimes committed by corporations as Any criminal offense committed by and therefore chargeable to a corporation because of the activities of its officers or employees (e.g., price fixing, toxic waste disposal), which is often referred to as white collar crime.

Although the Criminal Code only stipulates that the subject of the crime is a legal person (Kristian, 2016). Administrative law appears as a single entity and can be treated as a legal entity or corporation (Retnowinarni, 2019). The Criminal Code will refer to corporate administrators or commissioners who must deal with the situation (Krismen, 2014).

Article (2) of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations regulates provisions for:

1. Become a guideline for law enforcement in handling criminal cases with Corporate and/or Management actors
2. Filling legal vacancies, especially criminal procedural law in handling criminal cases with Corporate and/or Management actors; and
3. Encourage the effectiveness and optimization of handling criminal cases with Corporate and/or Management actors

In various regulations governing special crimes, it also states that corporations can be made one of the subjects of law, namely as subjects of criminal acts committed by corporations (Puspitasari & Devintawati, 2018). In the Immigration Law, it is determined that corporations that act as guarantors of foreigners residing and operating in Indonesia are one of the subjects of special criminal law on immigration (Astuti, 2020). A guarantor is a person or corporation responsible for the existence and activities of foreigners while in Indonesia (Parengkuan, 2015). They have an obligation to guarantee foreigners residing and working in Indonesia. Corporations are determined as legal entities or non-legal entities that are guarantors for foreigners or foreigners who want to do activities in Indonesia (Mohede, 2011). Article 63 of the Immigration Law regulates foreigners who are required to have a guarantor while in Indonesia (Hamidi, & Christian, 2021). The obligations that must be fulfilled by the guarantor are individuals or corporations which if the guarantor violates or does not perform its obligations mentioned in Article 63 may be subject to criminal penalties as stipulated in Article 118 and Article 136 paragraph (1).

Article 118 of the Immigration Law specifies that:

Any Guarantor who intentionally provides false information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

Article 136 paragraph (1) of the Immigration Law specifies that:

In the event that criminal acts as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129 are committed by the Corporation, the crime shall be imposed on the management and the corporation.

The number of investigations from 2017-2019 there are two articles that determine corporations as the subject of criminal acts, namely in Article 118 *juncto* 136 and Article 124 *juncto*. 136 paragraph (1) and paragraph (2) and both show the number of cases is only five cases over the last three years. This data shows that the number of criminal acts whose subject is the Corporation as perpetrators of criminal acts is one of the articles that is still very minimal in the judicial process for the last three years in all Immigration Offices throughout Indonesia.

With so many laws governing corporations as subjects of criminal acts, it is not enough to reflect justice, certainty, and legal expediency as expressed by Gustav Radburch (Muslih, 2017). This can be seen by the

investigation process with corporations as perpetrators of criminal acts which in the Supreme Court Decision have not been able to implement what is prescribed by the Immigration Law. Some factors such as the investigator's understanding of the legal subject (corporation) that can be held accountable for prosecution in criminal acts. This has the potential to create legal uncertainty.

Based on the background above, the formulation of the problem in this study is as follows: (1) what is the basis for the judge's consideration in deciding a case with the person in charge of the corporation? (2) How the criminal case of PT. SJB and proving the elements of legal norms in Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law?

2. Method

This research uses legal research methods with normative and empirical approaches. This research data consists of primary data sources in tracing and collecting materials from direct interviews related to this study and secondary data in collecting data obtained through literature materials (Benuf & Azhar, 2020).

3. Discussion

3.1 Basis for Case Judge's Consideration in Deciding Corporate Crime Cases PT. SJB (Legal Study Decision Number 732/Pid.Sus/2017/PN Jkt.Utr)

3.1.1 Position Case

The case that became the object of this study originated from the results of immigration control operations for foreigners carried out by immigration officers of the intelligence and enforcement section at the North Jakarta Immigration Office. The activity was carried out on Friday, March 30, 2017 at a boarding house located at Jalan Tipar Cakung Sukapura, North Jakarta. During the foreign surveillance operation, Immigration officers found seven foreigners with Nigerian nationals suspected of immigration violations. Then they were taken to the North Jakarta Immigration Office for further examination related to the activities and travel documents of the seven Nigerian foreigners.

When checked, immigration officers found that one of them committed an immigration violation in the form of exceeding the time limit in Indonesia (Muhlisa & Roisah, 2020). This is known on the Republic of Indonesia Visa that they use when entering and being in Indonesia. The immigration officer checked the travel document and found the Visa of the Republic of Indonesia with Register Number 2A1211D-1005Q and IMI.2.GR.01.06.02.0658HQ.211 issued by the Embassy of the Republic of Indonesia in Abuja, Nigeria on August 24, 2016. In the visa there is the name of the guarantor, namely PT. The SJB stated on the foreigner's passport. Based on field facts, the foreigner is no longer allowed to be in Indonesian territory and is subject to immigration administrative action in the form of deportation and his name is included in the deterrence list (Ginting, et al., 2014). This provision is regulated in Article 78 paragraph (3) of the Immigration Law which explains that foreigners holding stay permits that have expired and are still in Indonesia more than sixty days from the deadline of the stay permit are subject to immigration administrative actions in the form of deportation and deterrence (Hasan, 2015).

As a follow-up to this action, the North Jakarta Immigration Office sent a letter with Service Letter Number W.10. IMI.7.GR.03.02-2703 to the guarantor contained in the Visa of the Republic of Indonesia, namely PT. SJB. President Director of PT. SJB is requested to immediately carry out its obligation as a guarantor to remove the foreigner from Indonesia. This obligation is regulated in Article 63 paragraph (3) of the Immigration Law:

The guarantor must pay the costs incurred to repatriate or remove the guaranteed foreigner from Indonesia if the foreigner:

- a. has expired his residence permit; and/or
- b. subject to immigration administrative action in the form of deportation.

Based on this case history, the guarantor must comply with Article 63 paragraph (3) point b in order to deport the foreigner. On March 31, 2017, the North Jakarta Immigration Office sent a letter to order PT. SJB as a guarantor to immediately repatriate one Nigerian foreigner since seven days from the letter received by PT. SJB. Until April 6, 2017 (deadline of seven days from receipt), PT. SJB does not carry out its obligations as a guarantor. Actions taken by PT. SJB as the guarantor has violated Article 63 Paragraph (3) of the Immigration Law and is subject to the criminal provisions of Article 118 *juncto* Article 136 paragraph (1) which regulates immigration crimes by the guarantor (PT. SJB).

Article 118 of the Immigration Law specifies that:

Any Guarantor who intentionally provides false information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

Article 136 paragraph (1) of the Immigration Law specifies that:

In the event that criminal acts as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129 are committed by the Corporation, the crime shall be imposed on the management and the corporation.

3.1.2 Judge Consideration Policy

The judge is tasked with examining, prosecuting, and deciding cases of immigration crimes by corporations contained in Decision Letter Number 732/Pid.Sus/2017/PN Jkt.Utr Based on the judge's decision, it was determined that PT. SJB has been found legally guilty of committing an immigration crime as stipulated in Article 118 *juncto* 136 paragraph (1) of the Immigration Law. This provision regulates criminal sanctions for guarantors who do not carry out their obligations (corporations).

After hearing testimony from witnesses, experts, evidence presented in the trial, and the indictment submitted by the Public Prosecutor, it is known as follows:

a. Considering the Public Prosecutor's Demands

Any guarantor who intentionally provides true information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3).

Criminal acts are committed by corporations by:

- 1) The North Jakarta Immigration Office conducted a foreigner surveillance operation at a boarding house on Jalan Tipar Cakung Sukapura, North Jakarta. Seven foreigners were arrested with the following initials: NCN, OSO, EU, OPO, AOJ, CI, ECS.
- 2) At the time of inspection and data collection by immigration officers by asking for travel documents and immigration documents to the seven foreigners. It was later discovered that the travel document of one of the foreigners had overstayed, which was more than sixty days. But the foreigner did not leave Indonesia. Furthermore, he was taken to the North Jakarta Immigration Office for further examination.
- 3) Immigration officers inspect the Visa of the Republic of Indonesia that has expired since November 11, 2016 with Register Number 2A1211D-1005Q and IMI.2.GR.01.06.02.0658HQ.211 issued by the Indonesian embassy in Abuja, Nigeria on August 24, 2016. In the Visa of the Republic of Indonesia there is a guarantor PT. SJB (defendant) responsible for the whereabouts and activities of foreigners. PT. SJB as a guarantor has the obligation to report every change of address, report any change of civil, immigration status, and change of address and must bear the costs incurred to repatriate or remove the foreigner he guarantees from Indonesia, if the foreigner is subject to immigration administrative action due to an expired stay permit (Mirwanto, 2016). However, based on evidence at the trial, it was proven that PT. SJB (defendant) as guarantor did not fulfill its obligations as guarantor.
- 4) The North Jakarta Immigration Office has issued a Service Letter Number W.10. IMI.7.GR.03.02-2703 addressed to PT. SJB (defendant) as guarantor on March 31, 2017. In the letter, it is explained about the notification that the guarantor must repatriate the foreigner within seven days from the time the letter has been received by PT. SJB. However, until April 10, 2017, PT. The SJB (defendant) did not release or repatriate the foreigner.

- 5) That based on Notarial Deed AK Number 07 dated May 15, 2015, Mr. NA has been appointed as President Director, Mr. S as Director, Mrs. WS as President Commissioner, and Mrs. R as Commissioner.
- 6) PT. SJB (defendant) must know the stay permit used by a guaranteed foreigner starting from when the effective date of his stay permit in Indonesia, where he is, what his activities are, and when his stay permit expires. Then if there are foreigners subject to immigration administrative action (fines or deportation), then PT. SJB as the guarantor has the obligation to bear all these burdens. If the obligation is not carried out by the guarantor (PT. SJB) has violated Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law.

In this verdict letter stated the criminal prosecution filed by the Public Prosecutor:

- 1) Declare that NA (President Director) as the party representing PT SJB, has been proven guilty according to law for committing immigration crimes as stipulated in Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law.
- 2) Imposing a fine of IDR 200,000,000. If not paid, it will be replaced by one year of confinement.

b. Considering the Testimony of Witnesses

1) RCA Witness

RCA is an immigration officer at the North Jakarta Immigration Office who gave information that on March 30, 2017 he and colleagues from the Immigration Intelligence and Enforcement Section conducted immigration control operations at the Boarding House located at Jalan Tipar Cakung Sukapura, North Jakarta. During the activity, it was discovered that they arrested as many as seven foreigners with Nigerian nationals. Then foreigners are required to present a travel document that is known that one of them has a travel document that has expired since November 11, 2016. This means that those who have stayed in Indonesia have passed the deadline of being in Indonesia for more than sixty days. The witness saw that the guarantor in the Visa of the Republic of Indonesia was PT. SJB (defendant). Then the North Jakarta Immigration Office sent a letter to PT. SJB as guarantor on March 31, 2017. However, until April 10, 2017, PT. SJB (defendant) did not perform its obligation as guarantor, which is to repatriate foreigners who have violated immigration stay permits.

2) MU Witness

MU is a courier at the North Jakarta Immigration Office. He gave a statement that he had delivered the Official Letter on March 31, 2017 to PT. SJB with an immigration officer named RCA. The official letter has been received by PT. SJB through an employee on the same day.

3) Member in Conference (RES)

RES as an expert in the trial gave the following testimony:

- a) Every foreigner must follow the prevailing laws and regulations in Indonesia, both the Immigration Law and other national regulations applicable in Indonesia.
- b) Every foreigner residing in Indonesia is required to provide the necessary information regarding his identity and/or family, report changes in civil status, citizenship, employment, guarantor, or change of address to the Immigration Office, show and submit travel documents or stay permits if requested by the Immigration Officer in charge of immigration control as stipulated in Article 71 of the Immigration Law.
- c) Every foreigner residing in Indonesia is required to have a stay permit as stipulated in Article 48 paragraph (1).
- d) Every foreigner whose residence permit expires, the guarantor is responsible for the existence and activities of the foreigner.
- e) Article 63 paragraph (2) stipulates that the guarantor is responsible for the whereabouts and activities of the foreigner he guarantees during his stay in Indonesia, and must report any changes in civil, immigration status, and change of address to the Immigration Office.
- f) Article 63 paragraph (3) states that the guarantor must bear the costs incurred to repatriate (deport) foreigners from Indonesia who have expired their stay permit.
- g) Article 118 of the Immigration Law states that any guarantor who intentionally provides incorrect information or does not fulfill the guarantee obligations provided by him as referred to in Article 63

paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years or a maximum fine of IDR 500,000,000.

- 4) Testimony of the Defendant in the trial (NA as President Director of PT. SJB)
 - a) That it is true that the defendant owns a company called PT. SJB.
 - b) That PT. SJB is located at Jalan Ks Tubun 10B, Kota Bambu Selatan, Palmerah, West Jakarta.
 - c) That PT. SJB operates in the apparel trade.
 - d) That true PT. SJB was founded in 2015.
 - e) That the defendant is the President Director of PT. SJB.
 - f) That one of the activities of PT. SJB is a visa administration and guarantor for Nigerian and Pakistani citizens who want to shop for garments or apparel in Indonesia.
 - g) That as a guarantor carry out visa arrangements at the Embassy of the Republic of Indonesia in Abujadi, Nigeria. Then a Clearing House (CH) meeting was held by the Directorate General of Immigration to decide on the status of Nigerian citizens to be granted visa calling.
 - h) That it is true that a foreigner named OSO is the responsibility of the guarantor (PT. SJB).
 - i) That it is true that the OSO residence permit has expired since November 11, 2016 and its current status as an overstayer.
 - j) That the defendant knows the responsibility as a guarantor stipulated in Article 63 paragraph (2) and paragraph (3).
 - k) That PT. SJB has received a letter from the North Jakarta Immigration Office to repatriate foreigners (OSO).
 - l) That PT. SJB was given until April 6, 2017 to repatriate OSO, but PT. SJB did not perform its obligations.

3.1.3 Evidence of the Chief Judge in the Conference of Matters with the Prosecutor PT. SJB

In this study, the author collected primary data from the Chief Judge of the North Jakarta District Court who tried this case (DIR). In the interview, the author conveyed several questions related to the basis for criminal conviction considerations only given to corporations, namely PT. SJB. Judge DIR testified that the panel of judges did not have the ability to make a perfect sentence, because of the number of cases that had to be handled. This makes the judge unable to focus on the redaction of the article or the interpretation of the law. Judges only examine, prosecute, and decide cases on what has been charged by the Public Prosecutor (Syahrin, 2019). In this case, the Prosecutor only prosecuted the corporation (PT. SJB) with a fine of IDR 200,000,000 and if not byar, it is replaced with imprisonment for one year.

The author also raises a follow-up question, whether the panel of judges can evaluate and change the object of the charge in a prosecution file. The judge replied that there is no normative legal procedure that provides space for the judge to interpret the contents of the article and evaluate the claim if there is an error from the object of the claim. The judge is only guided by the minutes of the trial, the facts of the trial, and also the file of charges submitted by the Public Prosecutor in the trial.

3.2 Anomaly of Criminal Conviction of Immigration Crime with Corporate Law Subjects

3.2.1 Application of Article 118 juncto Article 136 paragraph (1) in the Perspective of Immigration Crime

The author takes a discussion of immigration law enforcement case studies with the subject of law being corporations. In this case, the corporation in question does not carry out its obligations specified in the Immigration Law. The author argues that there is a discrepancy between the application of Article 118 *juncto* Article 136 paragraph (1) in the Case of PT. SJB. This is because the criminal conviction in Decree Number 732/Pid.Sus/2017/PN Jkt.Utr is not in accordance with the criminal provisions stipulated in the Immigration Law. So the author feels the need to conduct a legal examination of the application of law in the judge's decision with the following analysis:

a. Corporations in Indonesian Legal Perspective

Corporation comes from Latin, *corporare*. This term has been used by scholars since the early medieval times until now. *Corporare* is a word derived from the word *corpus* which means body or giving body. Then it develops into *corporatio* which means the result of forming a body.

According to Satjipto Rahardjo, a corporation is a body that is the result of a legal *ciota* in which there is a *corpus* or structure that has a personality. That is what makes law constituent and subdued by law, even though the term corporation does not exist in classical criminal law codifications. Article 8 paragraph (2) of the *Reglement op de Burgerlijke Rechtsvordering*, contains the term corporation as *indien de eischende overwerende partij eene corporation maatschap of handelsvereniging is, zal hare benaming en de plaats van naam, voornamen moeten warden uitgedrukt*. Later in 1938, this article was changed to *indien de eischende of verwerende partij een rechtsoersoon of vennootschap is zal haar benaming*. Based on Article 8 paragraph (2) of the *Reglement op de Burgerlijke Rechtsvordering* it is determined that what is meant by a corporation is something that can be equated with a legal subject known as *rechtspersoon*.

The definition of a corporation as a legal entity is also found in Black's Law Dictionary which states that:

An entity (usually a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely, a group or succession of persons established in accordance with legal rules into a legal or jurist person that has legal personality distinct from the natural persons who make it up, exist indefinitely apart from them, and has the legal powers that institution gives it.

Soerjono Soekanto and Purnadi Purbacaraka, gave opinions regarding legal entities:

In translating *zedelijk lichaam* into *legal entity*, then *lichaam* is *correct translation of badan*, but *law as zedelijk translation is wrong*. Because it is actually moral. So the term *zedelijk lichaam* is the same as *rechtspersoon*.

b. Corporate Crime

Corporate crime can also be categorized as transnational organized and structured crime (Disemadi & Jaya, 2019). This is because a corporate crime is committed by a structured and organized group of people both in terms of positions and responsibilities of each member in a corporation (Parameshwara & Riza, 2023). This action will give rise to a very compact and solid crime organization (Sjahdeini, 2017). This is usually based on interests and also ethnic and tribal ties or family ties, and in a corporate crime (Priyatno, 2017). In this action, there may be the involvement of law enforcement, professional groups, and the community who are the beneficiaries of the proceeds of crime (Prasetyo, et al., 2017).

In a corporate crime there are several elements in it, namely deceit, misrepresentation, concealment of fact, manipulation, breach of trust, subterfuge, or illegal circumvention that can harm many parties (Rifai, 2014).

c. Subjects of Corporate Crime Law in Article 136 paragraph (1) of the Immigration Law

Legal subjects are all who can have the right and obligation to act in law (Yudoprakoso, 2016). Corporations have the ability as legal objects that are used for all the needs of legal subjects and can be the subject of a legal relationship carried out by the legal subjects themselves. So it can be understood that corporations are subjects of criminal law (Puteri, et al., 2020).

The Immigration Law regulates corporate crime in Article 136 paragraph (1) which explains that if the subject of corporate law commits a criminal act as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129, then the crime is imposed on the management and the corporation. Then in its implementation, this provision has been strengthened by Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations which regulates the

understanding and also legal subjects that can be held criminally responsible in corporate criminal cases. This regulation also regulates the handling of corporate crime cases which are the legal authority of each law enforcement agency. The author cites several articles in Supreme Court Regulation Number 13 of 2016 which uphold Article 136 paragraph (1) of the Immigration Law as follows:

Article 1 number (1)

Management is a corporate organ that carries out the management of the corporation in accordance with the articles of association or laws authorized to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or influence corporate policies or participate in deciding policies in the corporation that can be qualified as criminal offenses.

Article 2

The aims and objectives of the establishment of procedures for handling criminal cases by the Corporation are to:

- (1) become a guideline for law enforcement in handling criminal cases with Corporate and/or Management actors;
- (2) fill legal vacancies, especially criminal procedural law in handling criminal cases with corporate and/or management actors;
- (3) encourage the effectiveness and optimization of handling criminal cases with Corporate and/or Management actors.

Article 23

- (1) Judges can impose crimes against Corporations or Managers, or Corporations and Managers.
- (2) The judge administers the crime as referred to in paragraph (1) based on each law that regulates criminal threats against the Corporation and/or Management.
- (3) Criminal conviction against the Corporation and/or Management as referred to in paragraph (1) does not rule out the possibility of criminal conviction against other perpetrators who under the provisions of the law are proven to be involved in the crime.

With the use of redaction "and" in Article 118 *juncto* 136 paragraph (1) which can be interpreted that both subjects can be subject to criminal sanctions, namely corporations represented by the President Director or leaders responsible for the Corporation and also administrators responsible according to the articles of association and laws.

3.2.2 Elements of Law Enforcement Officers in the application of Article 118 *juncto* 136 Paragraph (1) in the Case of PT. SJB

On April 20, 2017, the North Jakarta Immigration Office sent a Notice of Commencement of Investigation to the North Jakarta District Attorney's Office to inform that an investigation into alleged immigration crimes committed by the corporation (PT. SJB.) The unlawful element is that the corporation acting as a guarantor does not perform its obligations as stipulated in Article 118 *juncto* 136 paragraph (1).

PT. The defendant SJB is represented by the President Director (NA). He is suspected of being guilty of committing immigration crimes, because PT. SJB does not perform its obligations as guarantor. This was proven when immigration officers conducted immigration control and found that there were foreigners with Nigerian citizenship (OSO) who had expired their residence permits since November 11, 2016 and were subject to immigration administrative action (deportation).

Article 63 paragraph (2) explains that each guarantor must bear the costs arising from the deportation of the guaranteed foreigner. The North Jakarta Immigration Office has sent a notification letter to order the guarantor to immediately repatriate the foreigner within seven days. However, the guarantor did not do what was ordered by the North Jakarta Immigration Office, so the guarantor has committed a criminal act as stipulated in the criminal provisions of Article 118. This article stipulates that guarantors who deliberately provide false

information and do not carry out their obligations as guarantors are threatened with imprisonment for a maximum of five years and a maximum fine of IDR 500,000,000. Because the guarantor is a corporation, the criminal provisions are further regulated in Article 136 paragraph (1) stating that if a corporation commits an immigration crime, the management and the corporation can be criminally charged. From the point of view of the criminal stelsel, the use of editorial "and" in Article 136 paragraph (1) can be interpreted to mean that criminal subjects can be imposed on both (administrators and corporations) as stipulated in Article 118.

But in fact, in this case, only the corporation is subject to criminal sanctions, while the management is not subject to punishment. To examine these findings, the author uses the theory of law enforcement effectiveness proposed by Soerjono Soekanto which states there are five factors that affect the effectiveness of law enforcement (Soekanto, 2004). To sharpen this research, the author will examine only one factor that is considered to have a major contribution in influencing the law enforcement process, namely law enforcement officials. In the investigation process until the reading of the judge's decision that has permanent legal force (*inkracht van gewijsde*) has involved three elements of law enforcement which are explained as follows:

a. Immigration Investigator

The author asked for information directly to the immigration investigator who handled this case directly, namely SS. The author conducted an interview and asked several questions, namely what is the basis for proving the elements of Article 118 *juncto* Article 136 paragraph (1). SS said that when the case title was judged, it was important to send a notification letter to the guarantor that the foreigner he guaranteed had expired and was subject to immigration administrative action. In this case, the guarantor has the obligation to repatriate the foreigner (OSO) within seven days after the letter reaches PT. SJB. As guarantor, PT. SJB, does not respond or have good faith to carry out its obligations as stipulated in Article 63 paragraph (2). This is the basis of legal proof that the guarantor (PT. SJB) has not performed its obligations and has fulfilled the elements of Article 118 with the offense of not performing obligations as a guarantor by not removing foreigners from Indonesia within seven days. Because in this case the guarantor is the Corporation, the provisions imposed are Article 118 *juncto* Article 136 paragraph (1).

The limitation of the authority of the Immigration Investigator in the investigation is until the determination of the article to be imposed and its proof (Syahrin, 2018). After the elements of the article and the administration of the investigation have been fulfilled, the case file will be declared P21 or complete (Yuanitha, 2020). Then the case is transferred to the Public Prosecutor by submitting the accused and evidence to the Public Prosecutor (Mulyawan, 2018). Immigration investigators do not have the authority to determine the prosecution of either the subject or the amount of charges to be prosecuted against the accused (Malota, 2015). No legal procedure can be taken if the Immigration Investigator objects to the charges given by the Public Prosecutor to the defendant. Immigration investigators cannot interfere with the prosecution process conducted by the Public Prosecutor.

b. Public Prosecutor

In this study, the Public Prosecutor became one of the parties that influenced the effectiveness of law enforcement. This is because the Public Prosecutor has the authority and prerogative right to determine the charges imposed on the defendant without any intervention from any party, both from the Immigration Investigator and the Panel of Judges. However, the author could not obtain a statement directly from the Public Prosecutor (FA), because he had died before the author conducted the research. Prosecution documents were also not found. However, the author conducted a search and legal study of Decree Number 732/Pid.Sus/2017/PN Jkt.Utr in which there was the object of prosecution demanded against the defendant.

In Decree Number 732/Pid.Sus/2017/PN Jkt.Utr, it is stated that the Public Prosecutor prosecuted PT. SJB (defendant) with a criminal charge of a fine of IDR 200,000,000 addressed to NA as President Director of PT. SJB. The judgment stipulated that if the fine is not paid, it will be replaced by one year's imprisonment.

c. Panel of Judges

In Decree Number 732/Pid.Sus/2017/PN Jkt.Utr, the Panel of Judges imposed a fine of IDR 100,000,000 on PT. SJB (defendant). The panel of judges gave information regarding why in this case criminal convictions were only given to the corporation, even though the Immigration Law has determined that if the corporation commits a criminal act, those who can be held criminally responsible are the management and the corporation.

The panel of judges explained that they examine, prosecute, and decide criminal convictions always guided by and looking at what the Public Prosecutor demands, as well as the facts of the trial. The judge cannot award more crime than what is demanded by the Public Prosecutor to PT. SJB (defendant), because it will result in *ultra petita*. In this case, the Public Prosecutor only named one defendant, namely PT. SJB represented by NA as President Director. The Public Prosecutor did not name any administrators or anyone else in the company's articles of association to be prosecuted in this case. Even though this provision has been regulated in Article 118, which is a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

In the provisions of the Code of Criminal Procedure, there is no stipulation regarding the legal process that can be pursued if the Public Prosecutor demands differently from that specified in the law. The judge cannot intervene with the Public Prosecutor to change or replace the object of the charge in the Prosecution Letter. The judge only examines and proves the legal elements in the article charged. Based on the results of legal considerations from the Panel of Judges, it is proven that PT. SJB has committed an immigration crime as stipulated in Article 118 *juncto* Article 136 paragraph (1). Criminal sanctions are given only to corporations (PT. SJB). The author argues that this judge's decision is not in accordance with the theory of legal purpose put forward by Gustav Redburch (Moeliono & Sebastian, 2015). A good judge's decision must meet the principles of legal expediency, legal certainty, and legal justice with the following explanation:

- (1) Legal Justice: In the judge's decree that has permanent legal force (*inkracht van gewijsde*), the Panel of Judges only imposes criminal sanctions on the corporation, because the prosecution file submitted by the Public Prosecutor does not mention the administrator as a defendant. So that this causes legal injustice, even though Article 118 *juncto* Article 136 paragraph (1) has determined that if the corporation commits a criminal act, the management and the corporation can be subject to criminal sanctions.
- (2) Legal Certainty: The author sees legal uncertainty arising from prosecutions that are not in accordance with what is prescribed in the Immigration Law. If we look from the point of view of the subject of criminal acts in Article 118 *juncto* Article 136 paragraph (1), then those who must be responsible are the management and the corporation. But in fact, what was demanded by the Law Prosecutor and then became the basis for the judge to sentence this case only to the Corporation.
- (3) Legal Expediency: The Judges Council (DIR) explained that the imposition of criminal punishment is not a means of revenge, but must provide benefits for many people. That is, the sanctions imposed can provide this deterrent effect on the perpetrators of criminal acts, so as not to repeat their actions that will cause losses to many people. In this case, the author of the criminal sanctions given by the Panel of Judges has not been able to reflect the expediency of the law optimally, because the criminal conviction given is not in accordance with the Immigration Law, so it does not cause a deterrent effect for corporations that commit criminal acts.

The author uses the theory of the effectiveness of law enforcement and also the theory of legal objectives because in handling this corporate crime case, it has resulted in ineffectiveness in the application of the law (Ansori, 2017). The author sees three elements of law enforcement officials who play an important role in the law enforcement process of this case. The author uses law enforcement theory presented by Soerjono Soekanto to see and measure the limits and authority of each element of law enforcement officials (Arianto, 2010). The author finds that in this case, the party who has erred in applying the law is the Public Prosecutor. In the Code of Criminal Procedure, the Public Prosecutor is given the authority to prosecute and determine the object of the charge and which subjects can be held accountable. But in this case, the Public Prosecutor only named one defendant (corporation), while the management was not prosecuted. Even though the provisions for immigration criminal sanctions for corporations have been regulated in Article 118 *juncto* Article 136 paragraph (1) of the

Immigration Law which was later strengthened by Court Regulation Number 13 of 2016. In this provision, the party that must be responsible is PT. SJB as a corporation and NA as President Director.

With the object of the charge that is different from the Immigration Law, the Panel of Judges cannot impose criminal penalties on the management. The panel of judges has no authority to intervene in the prosecution of the Public Prosecutor and decide the criminal conviction no more than what is demanded by the Public Prosecutor (*ultra petita*). Therefore, the author considers that this judge's decision does not meet the principles of legal justice, legal certainty, legal expediency as conveyed by Gustav Radburch.

4. Conclusion

Based on the results of data analysis in the previous discussion, it can be concluded that the basis for the judge's consideration of imposing a criminal verdict in a corporate crime case is only addressed to PT. SJB while its management is not given criminal sanctions. The panel of judges in sentencing a criminal case refers to the prosecution file submitted by the Public Prosecutor. In the prosecution file, the Public Prosecutor only charged one defendant, namely PT. SJB represented by NA as President Director. The author did not find a normative procedure that could give authority to the Panel of Judges to intervene in the charges filed by the Public Prosecutor. The Magistrate's Majelies cannot decide cases beyond what is demanded by the Public Prosecutor.

The application of Article 118 *juncto* Article 136 paragraph (1) is addressed to PT. SJB for not carrying out its obligations as guarantor. PT. SJB did not repatriate the foreigner from Indonesia, because he had passed his stay permit. The author found a discrepancy between the Judges' Decision Letter that has permanent legal force (*inkracht van gewijsde*) and what is mandated by the Immigration Law. Article 136 paragraph (1) specifies that if an immigration crime is committed by a corporation, the parties who can be asked for responsibility are the management and the corporation. The author sees that there are three elements that affect the effectiveness of law enforcement from this judge's decision, namely the Immigration Investigator, the Public Prosecutor, and the Panel of Judges. The author argues that the Public Prosecutor has a crucial role that influences the disagreement in the application of the article. This is because the Public Prosecutor has authority over who and what objects are used as prosecutions in this case. However, the author cannot know what the basis for the Public Prosecutor's consideration for carrying out the prosecution, because the Public Prosecutor has died. The author concludes that there was an error in the interpretation of the elements in Article 118 *juncto* Article 136 paragraph (1) which resulted in the prosecution only directed at the corporation.

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