

## IMPLEMENTATION OF CORPORATE CRIMINAL RESPONSIBILITY IN LAW ENFORCEMENT OF THE TRANSNATIONAL DIMENSION OF TRAFFICKING IN PERSONS

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**Abstract:** Trafficking in persons is a modern form of human slavery (Modern Day Slavery) and is one of the worst forms of treatment for violations of human dignity. In this study, the type of research used is normative juridical research with a law approach and a concept approach. From the research results, It can be concluded that the use of criminal law regarding corporate criminal liability in the crime of trafficking in persons with a transnational dimension at Unit IV Sub-Directorate III of the Directorate of General Crimes of the Criminal Investigation Unit of the Police is to harmonize the legal arrangements for the criminal act of trafficking in persons charged by the public prosecutor as contained in Article 10 of the Law. -Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons with the theory put forward by experts related to the elements of criminal liability and the model of corporate criminal liability. The implementation of corporate criminal responsibility in law enforcement of the criminal act of trafficking in persons with an effective transnational dimension is one whose solution prioritizes the concept of restorative justice.

**Keywords:** Liability, Corporate, Trafficking in Persons

## I. INTRODUCTION

Corporations as legal entities or subjects whose existence makes a major contribution to increasing economic growth and national development, but in reality, corporations sometimes also commit various criminal acts (corporate crimes) that have a detrimental impact on the state and society.<sup>1</sup>

In the face of competition, corporations are faced with the discovery of new technologies, marketing techniques, and efforts to expand or dominate the market. This situation can result in corporate actions to spy on rivals, imitate, counterfeit, steal, bribe, and conspire about prices or marketing areas. In short, because of the compulsion of competition, corporations can and often do commit a crime in order to achieve their goals.<sup>2</sup>

According to its qualifications, corporate crime is classified as a white collar crime that uses a sophisticated modus operandi and can also have a transnational dimension where it is carried out across countries and territories. The combination of these two qualifications results in a broad scope of crime and a very large loss impact. It is said that because the victims caused by crimes committed by corporations include the general public, consumers who use the products produced, corporations that act as competitors, and employees or workers who are not protected. Even the state can become a victim of corporate crime where corporate crime causes financial losses to the state or the state economy.<sup>3</sup>

The problem of corporate responsibility for criminal acts is not a simple matter, considering that corporations are legal entities. This problem stems from the principle of no crime without guilt. Mistakes are mens rea or heart attitudes that naturally only exist in natural people. Mens rea is an element that is difficult to prove from a corporation that is considered to have committed a crime considering that a corporation can only take action through the organs of the board of directors.<sup>4</sup>

Trafficking in persons is a modern form of human slavery (Modern Day Slavery) and is one of the worst forms of treatment for violations of human dignity.<sup>5</sup> The perpetrators of the crime of trafficking in persons are not only committed by humans but are also carried out by corporations as legal subjects who can carry out legal actions.<sup>6</sup>

Corporations play a role in the distribution of Indonesian Migrant Workers abroad but in their development, corporate crimes are carried out more sophisticatedly, both in form or type and modus operandi and often exceed the boundaries of a country (trans border crime), committed by people with high status (white collar crime). crime), committed by organized crime, transnational organized crime, crimes with new dimensions of crime, or perhaps international crime.<sup>7</sup>

Corporate criminal liability has a broad scope, not just discussing the presence or absence of errors as in natural human criminal responsibility. With the acceptance of corporations as perpetrators of criminal acts and can be convicted, the interesting thing to study is the issue of corporate criminal liability and the penalties imposed on corporations. The main principle in criminal

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<sup>1</sup>Consideration letter a Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

<sup>2</sup>IS Susanto, Corporate Crime, BP Diponegoro University, Semarang, 1995, p.30.

<sup>3</sup>Kristian, Corporate Criminal Law: Integral Policy Formulation of Corporate Criminal Liability in Indonesia, Nuansa Aulia, Bandung, 2014, p.33

<sup>4</sup>Barda Nawawi Arief, Problems with Law Enforcement and Criminal Law Policy in Combating Crime, Kencana Prenada Media Group, Jakarta, 2007, p. 51

<sup>5</sup>Explanation of Law no. 21 of 2007 concerning PTPPO

<sup>6</sup>Riduan Syahrhan, Summary of Inti Sari Ilmu, PT Citra Aditya Bakti, Bandung, 2008, p. 135

<sup>7</sup>Kristian, Integral Policy of Corporate Criminal Liability Formulation in Indonesia, Nuansa Aulia, Bandung, 2014, p. 13

responsibility is the principle of error (schuld) on the perpetrator of the error which is the heart of criminal responsibility.<sup>8</sup>

When examining what are the main factors causing the rampant human trafficking, in the cases that have been revealed, there are three things that can be known, namely First; the poor (Poverty), second; number of residents and third; Patriarchal culture. Poverty is the most dominant factor in the occurrence of human trafficking. People who have a low standard of living can easily be persuaded to be sold in the mode of providing jobs for a better life.<sup>9</sup>

This situation is further strengthened by the country's large population and the difficulty of finding work, especially for women. This situation is exacerbated by the position of women in a patriarchal culture which is always under pressure from the environment around them. Therefore, women are often the object of human trafficking. To smooth this crime of human trafficking, the perpetrators use several methods, some are kidnapped and then sold to prostitution places outside their country, some are sold by their own families who believe that their children will become domestic servants or using a contract marriage mode with a foreigner and the last is by being tricked into being employed in a certain place but then being sold into a prostitution area. The powerlessness and lack of protection for women and children make them objects in this human trafficking. Recently, a horrendous case was revealed where the sale of babies abroad was carried out in an organized manner. This action certainly makes us ask how it can become a commodity for certain people and is not easily handled by our national law.<sup>10</sup>

The regulation of human trafficking has been around for a long time. International arrangements have recorded several conventions including the International Convention to Abolish Trafficking in White Slaves in 1921, the International Convention to Abolish Trafficking in Women and Children in 1921, the International Convention to Abolish Trafficking in Adult Women in 1933, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. .<sup>11</sup>

In addition to international arrangements in the form of conventions above, no less important is the regulation on the protection of victims of human trafficking regulated in the Palermo Protocol (Protocol to Prevent, Suppressing Punish Trafficking in Persons, Especially Women and Children, Supplement to the United Nation Convention Against Transnational Organization Crime). /Protocol on Preventing, Taking Action and Punishing Trafficking in Persons, Especially Women and Children, complements the existence of the United Nations Convention Against Transnational Organization Crime) in 2000.<sup>12</sup>

In this study, the author examines the Decision Number 959/Pid.Sus/2020/PN. Btm with Defendant Defendant I Hery Agustono Alias Agus, Defendant II Muhammad Hasbar Yasir Alias Daeng Bin Yasir and Defendant III Sukaryanto Bin Karman and Decision Number 960/Pid.Sus/2020/PN.Btm with Defendant Astri Yusniar Alias Amey bint Sugiono. The defendants were submitted by the public prosecutor to the trial with the overall actions of the defendants deemed to be contrary to Article 10 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

## II. RESEARCH METHODS

The research method used in this research is normative legal research, which is an activity that will examine the internal aspects (to solve problems that exist in) the positive

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<sup>8</sup>Ibid. p, 54

<sup>9</sup>Nana Riana, "Corporate Criminal Liability in the Crime of Trafficking in Persons", Master Thesis of Law Airlangga University, Surabaya, 2016, p. 89

<sup>10</sup>Ibid

<sup>11</sup> Kristian, op.cit.,

<sup>12</sup>Ibid

law. This is done as a consequence of the view that the law is an autonomous institution that has no relationship.<sup>13</sup> Normative legal research is used to identify the application of the doctrine of corporate criminal responsibility in law enforcement of the transnational dimension of trafficking in persons.

### III. RESULTS AND DISCUSSION

#### 1. The Use of Criminal Law Regarding Corporate Criminal Liability in the Crime of Trafficking in Persons with Transnational Dimensions in Unit IV Sub-Directorate III of the Directorate of General Crimes of the Police Criminal Investigation Unit

The crime of trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of the threat of force, use of force, abduction, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits to obtain consent. from a person who has control over another person, whether carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited (Article 1 Point 1 of the TIP Law).

There are 2 theories that are used as the basis for justifying the imposition of criminal responsibility on corporations, because in these two theories still place errors as a condition for the accountability of a criminal subject, namely: First, the theory of identification. The theory is used to provide justification for the imposition of "criminal responsibility" on corporations even though in reality a corporation is not something that can act alone and cannot have mens rea because it does not have an inner attitude.<sup>14</sup>

This theory "teaches that in order to impose criminal responsibility on a corporation, whoever committed the crime must be able to be identified by the public prosecutor. If the criminal act of human trafficking is committed by those who are the directing mind of the corporation, then the responsibility for the crime can only be charged to the corporation. This means that the behavior and mens rea of a person associated with a corporation can be attributed to the corporation so that criminal liability can be charged to the corporation. In other words, the behavior and mens rea of the person is considered to be the behavior and attitude of the heart of the corporation.<sup>15</sup>

Determination to be able to apply this theory must be able to address that:<sup>16</sup>

- a. The actions of the personnel who are the directing minds of the corporation are included in the field of activity assigned to them;
- b. The criminal act is not a fraud against the corporation concerned;
- c. The criminal act is intended to obtain or generate benefits for the corporation; and
- d. In order for a legal subject to be found guilty of having committed a criminal act, the legal subject must have an error.

Second, the Vicarious Liability Theory. This theory reinforces the justification for the imposition of "criminal liability to corporations. This theory is the imposition of criminal responsibility for criminal acts committed by other people or better known as substitute liability. In vicarious liability, mens rea is the main requirement that must be met to convict legal subjects who commit crimes. In other words, it must first be proven that someone made a mistake, so that he should be punished for his mistake. In addition, there must be a working relationship between the perpetrator and another person who must be held accountable for the criminal act committed.<sup>17</sup>

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<sup>13</sup>Bambang Sunggono, *Legal Research Methodology*, PT RajaGrafindo, Jakarta, 2003, p. 32.

<sup>14</sup>Muladi and Diah Sulistyani, *Corporate Criminal Responsibility*, Bandung, PT Alumni, Second Edition First Printing, 2015, p. 103

<sup>15</sup>Ibid

<sup>16</sup>Satipto Rahardjo, *Law Enforcement Issues*. Sinar Baru, Bandung, tt., p. 201

<sup>17</sup>Muladi and Diah Sulistyani, *op.cit.*.

If this theory is applied to corporations, “it means that it is possible for corporations to be responsible for the actions of their employees, proxies, or mandates or anyone who is responsible to the corporation. There are two important conditions that must be met to be able to apply a criminal act based on this theory, namely:<sup>18</sup>

- a. There must be a relationship, such as an employment relationship between an employer and an employee; and
- b. The criminal act committed by the worker must be related to or still within the scope of his work.

In this study, the author uses the theory according to Moeljanto, in analyzing the application of corporate criminal responsibility, according to him, a person or legal entity can be held criminally responsible if it meets the following elements:<sup>19</sup>

- a. Have accountability capabilities;
- b. There is an error, whether intentional or negligent; and
- c. There are no things that are the reason for the criminal eraser

Thus, the responsibility of "corporations in the crime of human trafficking is the fulfillment of all conditions for criminal liability which are interpreted from the mistakes of the administrators, namely, the existence of criminal acts/criminal acts, the ability to be responsible, the existence of errors, and no excuse for eradicating crime. Then it is adjusted to the theory of corporate responsibility as described previously.

In line with the theory put forward by Moeljanto, according to Mardjono Reksodiputro, when a corporation is declared criminally responsible for a crime committed, there are generally three systems of corporate criminal liability, namely:<sup>20</sup>

- a. Corporate management as the maker and must be responsible (development of corporate responsibility in the first stage);
- b. The corporation is the maker but the manager is responsible (development of corporate responsibility in the second stage)
- c. The corporation as the maker and the corporation must also be responsible (the development of corporate responsibility in the third stage).

In line with the explanation above, if it is related to the Decision that the author is reviewing, namely Decision Number 959/Pid.Sus/2020/PN. Btm with Defendant I Hery Agustono Alias Agus, Defendant II Muhammad Hasbar Yasir Alias Daeng Bin Yasir and Defendant III Sukaryanto Bin Karman and Decision Number 960/Pid.Sus/2020/PN.Btm with Defendant Astri Yusniar alias Amey bint Sugiono it can be seen that the Para The defendant is a unit of people who are members of and have ties to PT. Duta Group belonging to the Defendant Muhammad Hasbar Yasir Alias Daeng in the human trafficking case. This means that in this case, the defendants can be held accountable for their actions.

Meanwhile, according to Moeljanto, a person or legal entity can be held criminally responsible if it fulfills the following elements:<sup>21</sup>

- a. Have the ability to be responsible

"Simply put, the term "responsibility" can be interpreted as "The condition of being healthy and having a person's mind in distinguishing between good and bad things". If this element is related to the two verdicts that the author examines, it can be understood that the Defendants are not unreasonable people. This can be seen in the indictment submitted by the

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<sup>18</sup>Nyoman Sarikat Putra Jaya, *Criminal Law in Economics*, Third Edition, Diponegoro University Publishing Agency, Semarang, 2015, p. 66

<sup>19</sup>Moeljanto, *Principles of Criminal Law*, Revised Edition, Renika Cipta, Jakarta, 2008, pp-25

<sup>20</sup>Mardjono Reksodiputro, *Corporate Criminal Liability in Corporate Crime*, UNDIP Press, Semarang, 1989, p. 9.

<sup>21</sup>Moeljanto, *op.cit.*,

public prosecutor, the defendants understood and did not raise any objections. This means that the entire Defendant is a person who has the ability to be responsible.

b. There are errors, either intentionally or by negligence

In criminal law, intentional (*dolus*) or omission (*culpa*) are two forms of the inner attitude of a criminal who is an important basis for determining whether or not he is guilty of his actions. The essence of this theory is that a person's criminal act can be said to have been done intentionally if at the time of the act the perpetrator knew/realized that the act was prohibited by law and this theory teaches that a person's criminal act can only be said to have been done deliberately if the perpetrator did not only know/ aware of the prohibition of the action, but also really wants the action to occur.<sup>22</sup>

If this second element is related to the decisions that the author is reviewing, it can be understood that the actions of the Defendants are clearly included in the mistakes that are contrary to the law.

c. There is no excuse for forgiveness and justification as an eraser of mistakes

A legal subject including corporations can be held criminally responsible for the absence of forgiving reasons. The excuse of forgiveness is a reason that eliminates the guilt of a legal subject, including a corporation. If this third element is related to the two decisions that the author examines, the Panel of Judges is of the opinion that there is no forgiving reason that can erase his guilt, nor a justifying reason that can eliminate the unlawful nature of his actions.<sup>23</sup>

Because all the elements stated by Moeljanto were fulfilled in the two verdicts that the author reviewed, it means that the Defendants who are members of PT. Duta Group can be held accountable for the actions he has done.

Furthermore, if the verdict handed down by the Panel of Judges to each of the Defendants is analyzed with the theory put forward by Mardjono Reksodiputro, it can be seen that the panel of judges imposed imprisonment on each of the Defendants with the amount of time adjusted to the actions committed by the Defendants. That is, in this case, the model of corporate criminal responsibility used by the Panel of Judges is the first model, namely the corporate management as the maker and the management who must be responsible. As it is known that the Defendants are a unit that is incorporated in PT. Duta Group belonging to the defendant Muhammad Hasbar Yasir Alias Daeng, even though the Defendants are members of a corporation, but the actions were carried out by the Defendants directly,

Based on the description above, it can be concluded that the use of criminal law regarding corporate criminal liability in the crime of trafficking in persons with a transnational dimension in Unit IV Sub-Directorate III of the Directorate of General Crimes of the Criminal Investigation Unit of the Police is to harmonize the legal arrangements for the criminal act of trafficking in persons charged by the Prosecutor general provisions contained in Article 10 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with the theory put forward by experts related to the elements of criminal liability and the model of corporate criminal liability.

## **2. Effective Implementation of Corporate Criminal Responsibility in Law Enforcement of Trafficking in Persons with Transnational Dimensions (Study in Unit IV Sub-Directorate III of the Directorate of General Crimes of the Criminal Investigation Unit of the Indonesian National Police)**

With regard to law enforcement against corporate crimes, there is a dilemma between the interests of punishment and maintaining the survival of the corporation. Criminalization

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<sup>22</sup>PAF Lamintang, *Fundamentals of Criminal Law in Indonesia*, Issue I, PT. Sinar Graphic, Jakarta, 2014, p.

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<sup>23</sup>*Ibid.*,

of corporations is not only a legal issue, but also a social issue. A punishment that prioritizes a retributive approach (retaliation) will have more negative impacts, especially on innocent people who depend on corporations for their lives.<sup>24</sup>

Therefore, the punishment of corporations, especially the sanctions for closing corporations, should be carried out carefully and wisely because the impact is very broad, lest innocent people such as workers, shareholders, consumers and parties who depend on corporations including the government become victim as the aggrieved party.<sup>25</sup>

Settlement of criminal acts through a restorative approach as an alternative option in the criminal law system, it is necessary to build a model system approach so that the settlement of criminal acts through a restorative approach can be implemented.

To apply this restorative approach, there are 4 (four) models that we can examine for criminal liability committed by corporations. In this regard, Van Ness introduces four models of a restorative approach system, namely:<sup>26</sup>

a. *Unified system,*

*Unified system* is a radical model because it wants to restore (take) conflict resolution authority from the state. The state is seen as having stolen the conflict from the parties, therefore returning the conflict to its "owner" by surrendering the efforts of the justice processes to be carried out by victims and violators by determining the outcome of the conflict resolution themselves. The state does not have an absolute right to conflict resolution, so the restorative approach processes are expected to replace all processes in the criminal justice system.<sup>27</sup>

In the author's view, this system is too radical and overrides the role of the state as a representative of the community, in resolving corporate criminal cases where the equality of position between the victim (community) and the perpetrator (corporation) is not balanced will tend to harm the victim even though the decision is made by the parties themselves.

b. *Dual Track System,*

*Dual Track System*, the restorative approach is an alternative companion to the traditional process (criminal justice system). The conflicting parties are given the freedom to choose the method of resolving criminal cases, if an agreement to resolve through a restorative approach can be reached, the formal process (criminal justice) is abolished. On the other hand, if the restorative approach is not achieved, the solution will use the criminal justice process.<sup>28</sup>

According to the author's view, this system is quite ideal, not prioritizing a repressive or retributive approach, giving the parties the opportunity to resolve criminal cases in a win-win solution. However, the weakness is that there are no criteria or restrictions on which cases must be resolved through a restorative approach. Therefore, it is necessary to have criteria or restrictions on certain cases, where the settlement must go through formal channels (the judicial process system) as the main means or through a restorative approach. Not all cases must prioritize settlement through a restorative approach, selection must be made (selective and limitative).

c. *Safeguard system*

This model is indeed designed to deal with criminal acts through a restorative approach, where restoration programs are used as the main means to deal with problems of crime, so that there will be a transition from the criminal justice system to the restorative justice

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<sup>24</sup>Andi Zainal Abidin, *Principles of Criminal Law Part One*, Alumni, Bandung, 1987, p. 11

<sup>25</sup>Ibid

<sup>26</sup>Eva Achjani Zulfa, *Restorative Justice*, Publishing Agency, Faculty of Law, University of Indonesia, Jakarta, 2012, p. 9

<sup>27</sup>Ibid

<sup>28</sup>Ibid, page 10

system. In this system, not everything is resolved through a restorative approach, for certain cases it will still be resolved through the criminal justice system.<sup>29</sup>

This system is similar to the Unified System but is more moderate and not radical, because the role of the state is still recognized by the settlement through the criminal justice system for certain cases.

d. *Hybrid System.*

In this model, the response to the restorative approach and the response to criminal justice are normative parts of the justice system. The determination or determination of a guilty person is carried out in the criminal justice process, the process of determining the sanctions using the concept of a restorative approach. In this regard, Martin Wright provides a framework for issues of an authoritarian and democratic restorative justice system model.<sup>30</sup>

According to the model of the authoritarian restorative justice system, decision-making is carried out by two judicial systems in courts, each of which has its own limits of authority. A democratic restorative justice system, whose positions are outside the criminal justice system and decision makers are victims, offenders and members of society.<sup>31</sup>

Regarding the application of the restorative approach in the settlement of corporate crimes, the author proposes the use of a selective dual track system model, with consideration of the path of settlement through a restorative approach side by side with the criminal justice system. The restorative approach path is placed as the main (primary) means selectively. This means that not all cases of corporate crime must enter the restorative approach, carried out selectively using clear parameters, so that certain cases of a special nature are not included in the restorative approach but are entered into the criminal justice system.<sup>32</sup>

The resolution of corporate crimes using a dual track system model, from the point of view of formulation policies in Indonesia, is a new thing, although it is not a new policy at all. "Similar" policies have been known in Indonesia, especially in the settlement of juvenile crimes, where a restorative approach is prioritized (primary).

Settlement of criminal acts committed by corporations, although not explicitly, can be resolved using a Restorative approach, where the parties involved actively play an active role in resolving criminal cases, there is an entry point (legal basis) to resolve corporate criminal liability through a Restorative approach, namely by using provisions of Article 152 letter d.

According to this provision, the authority for root prosecution is invalid if there has been an out-of-process settlement (outside the litigation process). Thus, the application of the concept of restorative justice to corporate crimes which in fact is a settlement outside the formal justice system process (non-litigation) will be the reason for the abolition of prosecution.

In line with the explanation above, it can be concluded that the implementation of corporate criminal responsibility in law enforcement of the criminal act of trafficking in persons with an effective transnational dimension is one whose solution prioritizes the concept of restorative justice.

According to Tony Marshall, the concept of restorative justice is the concept of resolving a particular crime that involves all interested parties to jointly seek a solution and at the same time seek a solution in dealing with events after the occurrence of the crime and how to overcome its implications in the future. That means, by applying this concept, the

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<sup>29</sup>Ibid

<sup>30</sup>Ibid, p. 11

<sup>31</sup>Ibid

<sup>32</sup>Jimmy Joses Sembiring, *How to Resolve Disputes Out of Court (Negotiation, Mediation, Conciliation and Arbitration)*, Transmedia Pustaka, Jakarta, 2011, p. 99

criminal act prevention process is carried out by restoring the situation which includes compensation for the victim through certain methods agreed by the parties involved in it.<sup>33</sup>

If the concept of restorative justice is related to the two decisions that the author examines, it can be seen that the panel of judges sentenced each defendant to years in prison. That is, the Panel of Judges applies criminal liability to the Defendants by using the retributive concept.

However, it does not mean that the decision handed down by the Panel of Judges is said to be an ineffective criminal settlement. In this case, the Panel of Judges handed down a sentence of imprisonment for each of the Defendants not on the basis of retaliation, but solely to create a deterrent effect for the Defendants so that in the future the Defendants would not repeat acts that are against the law again.

#### **IV. CONCLUSION**

The use of criminal law regarding corporate criminal liability in the crime of trafficking in persons with a transnational dimension in Unit IV Sub-Directorate III of the Directorate of General Crimes of the Criminal Investigation Unit of the Police is to harmonize the legal arrangements for the criminal act of trafficking in persons charged by the public prosecutor as contained in Article 10 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with the theory put forward by experts related to the elements of criminal liability and the model of corporate criminal liability.

The implementation of corporate criminal responsibility in law enforcement of the criminal act of trafficking in persons with an effective transnational dimension is one whose solution prioritizes the concept of restorative justice. According to Tony Marshall, the concept of restorative justice is the concept of resolving a particular crime that involves all interested parties to jointly seek a solution and at the same time seek a solution in dealing with events after the occurrence of the crime and how to overcome its implications in the future. That means, by applying this concept, the criminal act prevention process is carried out by restoring the situation which includes compensation for the victim through certain methods agreed by the parties involved in it.

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<sup>33</sup>Marshall, Tony, *Restorative Justice: An Overview*, Home Office Research Development and Statistics Directorate, London, 1999, p. 106

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