

CORPORATE CRIMINAL LIABILITY IN ENVIRONMENTAL POLLUTION CRIMES

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Abstract

Environmental law is a set of regulations that regulate the protection and management of the environment. Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage through structuring, utilization, control, maintenance, supervision and law enforcement. The problems in this journal are: What is the criminal responsibility of corporations as perpetrators of criminal acts of environmental pollution and how? efforts to overcome environmental pollution resulting from criminal acts of environmental pollution committed by corporations. The research method was carried out by method normative legal research/normative juridical legal research. This research was conducted to identify the application of corporate criminal responsibility teachings in criminal law enforcement. Based on this research, it can be understood that corporate criminal acts in the environmental sector have widespread and complex negative impacts so that they not only cause direct losses to society and the environment but also disrupt the financial and economic stability of the country, considering that environmental criminal acts are carried out with economic motives. The impact on society includes material losses, health and safety problems, and social and moral losses, namely damage to public trust in business behavior. Administrative environmental law functions to resolve the problem of their actions (environmental pollution), civil environmental law functions to provide legal protection to victims of pollution, and criminal environmental law functions to resolve the problem of polluters (perpetrators of pollution).

Keywords: Accountability for Corporate Crime, Environmental Pollution

INTRODUCTION

Environmental law is a set of regulations that regulate the protection and management of the environment. Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage through structuring, utilization, control, maintenance, supervision and law enforcement actions.

Criminal acts that were originally perceived as simple and conventional crimes involving only individuals have now developed into corporate crimes involving companies with a much more complex and organized mode with the support of advanced technology and professional management.

Various unlawful acts involving companies or classified as corporate crimes can be found, among others, environmental destruction, tax evasion, banking crimes, smuggling of illegal goods, neglect of employee work safety, plane crashes due to airline company negligence, accounting trickery.), psychotropic crimes and so on.

To anticipate the emergence of various new forms and modes of criminal acts, various criminal legislation instruments outside the Criminal Code (KUHP) were born.

Environmental issues are a juridical instrument for environmental management, because environmental management is carried out by the government, therefore environmental law consists of government law. On the other hand, environmental issues have destroyed the culture of shame among state administrators so that they consider environmental issues as a tradition. If this condition continues to develop, you can imagine how serious the consequences will be. Inequalities in life will continue to increase and become more striking and in turn can turn into an explosion of social jealousy which will seriously endanger the stability and security of the country.

Environmental crimes are regulated in Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the PPLH Law).

Corporate crimes in the environmental sector are crimes that are complex and economically motivated. This means that the use of non-penal means (non-criminal law) must be given priority in overcoming them, while the use of penal means (criminal law) must be used as a last resort.

So the application of criminal law needs to pay attention to the principle of subsidiarity, meaning that enforcement of criminal law against a criminal act can only begin if legal action has been implemented in the form of accountability for administrative and/or civil sanctions by the competent authority, but if the administrative and/or civil sanctions are unable to stop the violation that occurred or between the company that committed the violation and the community who became victims as a result of the violation. Attempts have been made to resolve the dispute through alternative mechanisms outside of court in the form of deliberation/peace/negotiation/mediation, but these efforts are also ineffective, so only investigative activities or law enforcement instruments can be carried out. environmental crime can be used.

Based on the elements of imposing corporate criminal liability stated above by Sutan Remy Sjahdeini, it seems clear that legal action to criminalize a corporation can only be carried out after the court first declares that the person or persons carrying out the management or activities of the corporation in question have been proven legally and convincingly has committed an environmental crime

In other words, after the court decides that the people carrying out the management or activities of the corporation are proven guilty of committing environmental crimes or committing criminal acts that violate the law, only then can a reconstruction be carried out to see whether the actions of the management and/or people who were given the authority to

managing the corporation can become a corporate criminal liability. The problem formulation is as follows:

1. What is the criminal responsibility of corporations as perpetrators of criminal acts of environmental pollution?
2. How?efforts to overcome environmental pollution resulting from criminal acts of environmental pollution committed by corporations?

The theory used to examine the problems in this research is

1. Penal system theory

In the Criminal Code (KUHP) criminal acts are known as *Strafbaarfeit*. This criminal act is a term that contains a basic understanding in legal science, as a term that was formed with awareness in giving certain characteristics to criminal law incidents. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so criminal acts must be given a scientific meaning and clearly defined to be able to separate them from terms used every day in people's lives.

2. Theory of Criminal Responsibility

The basis of criminal liability is error, where the error can be intentional (*opzet*) or negligent (*culpa*). This shows that the basis for accountability for a person's actions is placed in the concept or rationale for whether the elements of a criminal act are proven or not. If the elements of a criminal act are proven, the guilt is also proven and the person will be punished accordingly, so that criminal responsibility is attached to the elements of the criminal act.

Criminal responsibility is the defendant's responsibility for a criminal act committed whether the defendant will be convicted or acquitted. According to Roeslan, criminal responsibility is defined as continuing the objective blame that exists in a criminal act and subjectively fulfilling the requirements to be punished for that act.

3. Corporate Theory

If you refer to the Criminal Code (KUHP) currently in force in Indonesia, you will not find the definition of a corporation. The Indonesian Criminal Code only recognizes humans (*natuurlijk person*) as subjects of criminal law.

If you refer to a number of regulations that recognize corporations as subjects of criminal law, you will find out what is included as a corporation in criminal law. Emergency Law Number 7 of 1955 concerning Investigation, Prosecution and Trial of Economic Crimes in Article 15 paragraph (1) regulates that: "If an economic crime is committed by or on behalf of a legal entity, a company, an association of persons who or a foundation, then criminal charges are carried out and criminal penalties and disciplinary measures are imposed, whether against the legal entity, company, association or foundation, whether against those who gave orders to commit economic crimes or who acted as leaders in the act or omission, or both."

RESEARCH METHODS

In this research, the type of research used is normative legal research/normative juridical legal research. This research was conducted to identify the application of corporate criminal responsibility teachings in criminal law enforcement.

Normative Legal Research is an activity that will examine internal aspects (to resolve existing problems) of positive law. This is done as a consequence of the view that law is an autonomous institution that has no relationships.

DISCUSSION

Corporations are recognized as the subject of environmental crimes considering that the law regulates criminal provisions related to the environment. In this regard, theoretically it is

known that there are two motives for corporate crime, namely, the goal of the corporation to obtain maximum profits which is reflected in individual characteristics, and the occurrence of a contradiction between the goals of the corporation and the needs of competitors, the State, workers, consumers and society.

Prosecuting corporations as perpetrators of criminal acts is hampered by the problem of indictments, which is an important aspect in prosecuting corporations as perpetrators of environmental crimes. Meanwhile, Law Number 8 of 1981 concerning Criminal Procedure Law (Criminal Procedure Code/KUHAP) does not specify corporations as the subject of criminal law, this is problematic in enforcing environmental corporate criminal acts, for example the problem of the formality of indictments.

The recognition of corporations as the subject of offenses in criminal law has been going on since 1635 when the English legal system recognized that corporations could be criminally liable for minor crimes.

In its later development, Indonesian criminal law has placed corporations as the subject of criminal law in various special criminal laws and regulations.

Environmental criminal liability is based on the element of fault on the part of the perpetrator, because in the formulation of the substance of environmental criminal acts there is always an element of intention or negligence/negligence, so in this case the principle of "no punishment without fault" (*genstrafzondesculd*) applies, meaning that a person cannot be punished without being proven that there was guilt in the perpetrator.

In Indonesian Criminal Law, the corporate criminal liability system adopted is based on the principle of strict liability and the principle of vicarious liability. The principle of strict liability in holding corporations accountable does not need to be proven that there is an element of fault in the corporation and the principle of vicarious liability states that corporations can be held responsible for the actions of other people within the scope of their business activities.

The principle of vicarious liability is contained in Article 116 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management, This is marked by the sentence "... environmental criminal acts are committed by people, based on work relationships or other relationships acting within the scope of work of a business entity, criminal sanctions are imposed on the person giving the order or leader in the criminal act."

Based on the principle of vicarious liability, business actors can be held responsible for their actions, including the actions of other people but within the scope of their business activities or the consequences originating from their activities which can harm other people. Thus, the Public Prosecutor's Criminal Complaint at the Bandung Regency District Prosecutor's Office states

Research Analysis of Decision Number 435 K/PID.SUS-LH/2022 and Decision Number 294 PK/PID.SUS-LH/2022

Defendant PT. JERDYTEC Number 32 of 2009 concerning Environmental Protection and Management as in the third indictment of the Public Prosecutor. Imposing a fine on the Defendant PT. JERDYTEX, which in this case is represented by JERRY SURYADINATA, is subject to a fine of IDR 2,000,000,000.00 (two billion rupiah) with the provision that if the fine is not paid, some of the assets/property of PT. JERDYTEX was confiscated and sold at auction to pay the amount of the fine in question. 3. Determine the evidence in the form of: Approximately 1 (one) Kilogram of Sediment taken from the water channel after the PT Wet Scrubber tank. JERDYTEX which will go to the Pond Batu inside PT. JERDYTEX No 10 RT 01/01 Melong Village, South Cimahi District, Cimahi City.

Defendant PT. BALDU SARI NABATI INDONESIA, represented by the Management/Proxy acting for and on behalf of the Defendant NGADI UTOMO, S.Sos., SH, has been legally and convincingly proven guilty of committing the criminal act "Violating

waste water quality standards, emission quality standards or nuisance quality standards ", as regulated and punishable by crime in Article 100 Paragraphs (1) and (2) in conjunction with Article 116 Paragraph (1) letter a of Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management in the indictment.

Sentencing the defendant PT. KALDU SARI NABATI INDONESIA, represented by the Management/Proxy, acts for and on behalf of the Defendant NGADI UTOMO, S.Sos., SH, with a fine of Rp. 600,000,000.00 (six hundred million rupiah) with the provisions, if the fine is not paid within a period of 1 (one) month, Defendant PT. INDONESIAN NABATI SARI BROTH represented by the Management/Proxy acting for and on behalf of The defendant NGADI UTOMO, S.Sos., SH was unable to pay the fine, so some of the assets or assets of PT. INDONESIAN NABATI SARI BROTH confiscated for auction sale through the State Auction Office in accordance with statutory provisions to pay the amount in question; Additional penalties. Repair of the IPAL and the environment around the PT location. Indonesian Nabati Sari Broth as a result of committing a criminal act by carrying out water treatment. waste, so that waste water discharged into environmental media meets quality standards. Optimizing the IPAL and channeling industrial waste water (coming from washing dough filters/production process equipment) to the IPAL up to the quality standard limit

Declare evidence in the form of: 1 (one) legalized photocopy of the Letter from the Head of BPLH Bandung Regency Number 667/322/BPLH dated 21 February 2012, regarding Recommendations for UKL-UPL Documents for the food (snack) industry on behalf of PT. Indonesian Vegetable Caldasari. Determine that the Defendant pay court costs of Rp. 5,000.00 (five thousand rupiah).

The verdict is to reject the cassation request from the cassation applicant/public prosecutor at the Bandung Regency District Prosecutor's Office; Charges case fees at all levels of the judiciary and on the level of cassation is borne by the State.

The presentation of the cases above shows that environmental crimes committed by corporations have negative impacts which not only harms society but can also disrupt the country's financial and economic stability. The negative impacts of corporate criminal acts in the environmental sector are categorized as impact on society, impact on the environment, impact on the country.

The negative impacts of corporate criminal acts in the environmental sector are very broad and complex, making it necessary for corporations to be held accountable for the environmental crimes they commit.

Things that can be used as justification or reasons that the corporation is the creator and at the same time responsible are as follows:

1. Because in various economic or fiscal crimes, the profits obtained by corporations or losses suffered by society so large that it cannot be balanced if the crime only punishes the management;
2. By only punishing the management, there is no or no guarantee that the corporation will not repeat criminal acts again. So, if you punish a corporation with a type and severity that is appropriate to the nature of the corporation, it is hoped that the corporation will be able to comply with the relevant regulations.

According to Muladi, justification for corporations being accountable is based on the following:

1. Based on an integralistic philosophy, namely that everything should be measured on the basis of balance;
2. On the basis of kinship;
3. To eradicate anomie of success (success without rules);
4. For consumer protection; And
5. For technological progress.

The criminal liability imposed on corporations for environmental crimes they commit causes the corporation to be punished for its actions.

The aim of punishment is prevention (general and specific). The specific aim of prevention is to educate and reform the criminal; while the goal of general prevention is to prevent other people from committing the crime.

The purpose of punishment is to protect society. Protection of society as the goal of punishment has very broad dimensions, because fundamentally it is the goal of all punishment.

Efforts to Overcome Environmental Pollution Due to Criminal Acts of Environmental Pollution Committed by Corporations

Efforts to overcome corporate crime can be carried out through non-penal measures and through penalties. Non-penal efforts cover a fairly broad field. The main aim of overcoming corporate crime through non-penal measures is to improve certain social conditions, but indirectly has a preventive effect on corporate crime.

The use of penal measures or criminal law is not an absolute means, meaning that the use of criminal law is attempted last after other efforts have not worked (*ultimum remedium*), criminal law should not be used as the main means for overcoming corporate criminal acts (*primum remedium*), because Corporate crime is a crime that is complex and economically charged.

In fact, efforts to overcome corporate crime cannot only be carried out through one of non-penal means (means other than criminal law) and penal (criminal law means) but must be carried out in an integrative manner between non-penal and penal policies to suppress or reduce potential factors for their growth. corporate crime.

Efforts to overcome environmental pollution resulting from unlawful acts committed by corporations are:

Criminal Environmental Law: Criminal Sanctions Against Environmental Polluters
Criminal environmental law functions to resolve the problem of environmental polluters (perpetrators of environmental pollution) by imposing criminal sanctions.

The use of criminal sanctions in environmental law not only functions to condole the perpetrators of pollution and/or environmental damage so that they do not repeat their actions again, but is also intended as a threat to prevent the possibility of environmental pollution or environmental pollution by potential polluters.

Criminal provisions are regulated in the provisions of Chapter XV from Article 97 to Article 120 of the PPLH Law. Criminal sanctions in the PPLH Law include basic penalties and additional penalties. The basic punishment is imprisonment with a maximum penalty of fifteen years and a fine with a maximum penalty of Rp. 15,000,000,000.00 (fifteen billion rupiah). Additional penalties include: confiscation of profits obtained from criminal acts, closure of all or part of business premises and/or activities, repairs resulting from criminal acts, obligation to carry out what was neglected without rights and/or placing the company under protection for a maximum of three years.

The perpetrators of environmental pollution are often corporate businesses/activities. These corporations are usually large companies engaged in industry or mining and so on. If this corporation in carrying out its business causes environmental pollution then it is not enough if criminal sanctions are imposed only on its management.

Administrative Environmental Law

Administrative environmental law is oriented towards resolving environmental pollution problems (acts of pollution). Settlement of environmental pollution cases from an administrative environmental law aspect is carried out by government officials or more concretely by officials authorized to issue permits.

The means used are supervision and administrative sanctions. The means used are supervision and administrative sanctions. Supervision aims to prevent environmental pollution and/or damage. With a good monitoring mechanism, environmental pollution can be prevented.

The legal basis for supervision as a means of preventing environmental pollution is regulated in the provisions of Article 71 to Article 75 of the PPLH Law.

Administrative sanctions are a means of power in the nature of public law that can be applied by the authorities as a reaction to those who do not comply with administrative law norms. The nature of administrative sanctions is reparatory, meaning restoring to the original state. Administrative sanctions have an instrumental function, namely preventing and overcoming prohibited acts and are primarily aimed at protecting the interests protected by the violated legal provisions.

Civil Environmental Law

Civil environmental law aims to provide legal protection for victims of environmental pollution by filing environmental dispute lawsuits in general court to obtain compensation.

Absolute Liability in Environmental Disputes

Considering the various difficulties or obstacles in implementing the principle of liability based on fault, the PPLH Law introduces the concept of absolute liability (*risicoaansprakelijkheid*) or what in the Anglo-American legal system is called the principle of "strict liability".

Punishment Against Authorities

New material that is not in the previous law, whether UULH or UUPLH, is material contained in the provisions of Article 112 of the PPLH Law which states "Every authorized official who deliberately does not supervise the compliance of the person in charge of business and/or activities with statutory regulations. environmental invitations and permits as intended in Article 71 and Article 72, which result in environmental pollution and/or damage resulting in loss of human life, shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of IDR 500,000,000.00 (Five hundred million)".

CONCLUSION

The criminal liability of corporations as perpetrators of criminal acts of environmental pollution (Case Study of Decision Number 435 K/PID.SUS-LH/2022 and Decision Number 294 PK/PID.SUS-LH/2022) is because corporate criminal acts in the environmental sector have a negative impact which is widespread and complex so that it not only causes direct harm to society and the environment but also disrupts the financial and economic stability of the country, considering that environmental crimes are committed with economic motives. The impact on society includes material losses, health and safety problems, and social and moral losses, namely damage to public trust in business behavior. The impact on the environment is that corporate criminal acts in the environmental sector cause environmental damage which can be temporary or permanent so that these criminal acts not only need to be enforced repressively but also preventively. The impact on the state is related to the fact that environmental crimes resulting from industrial activities have large financial losses, thereby disrupting the country's economic stability considering that there is a decrease in state income due to costs for recovering environmental pollution/damage incurred by the state.

Efforts to overcome environmental pollution resulting from unlawful acts committed by corporations (Case Study of Decision Number 435 K/PID.SUS-LH/2022 and Decision Number 294 PK/PID.SUS-LH/2022) cover 3 (three) areas of law at once, namely administrative environmental law, civil environmental law and criminal environmental law. Administrative environmental law functions to resolve the problem of their actions

(environmental pollution), civil environmental law functions to provide legal protection to victims of pollution, and criminal environmental law functions to resolve the problem of polluters (perpetrators of pollution).

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