

## Corporate Criminal Liability In Environmental Pollution Crimes

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**ABSTRACT.** *Corporate crime against the environment is a major crime and is very dangerous for human life. Even though there are laws that regulate forms of legal sanctions for corporations, in fact environmental pollution still occurs. In environmental criminal cases involving corporations, the principle of absolute responsibility should be applied, so that the application of absolute responsibility can be expanded. This means that the sanctions that will be imposed on the perpetrators are not only civil compensation claims but also criminal legal protection. Legal sanctions for corporations proven to have committed criminal acts of environmental pollution include imprisonment, fines and additional penalties. Law Number 32 of 2009 concerning Environmental Protection and Management states that the criminal act referred to is committed by or on behalf of a legal entity, company, association, foundation or organization, the threat of a criminal fine is increased by one third. The method used in this research is normative legal, namely research that refers to legal norms contained in statutory regulations, literature, legal norms that exist in society and the data obtained. The type of research used is qualitative research which is carried out by examining literature materials in the field of law and legislation relating to legal policies for corporations that commit criminal acts of environmental pollution. This research aims to determine criminal liability for corporations that are proven to have committed environmental pollution and to determine the factors inhibiting criminal liability for corporations that have committed environmental pollution.*

**Keywords:** *Accountability , Corporations, Criminal Acts, Pollution, The Environment.*

## INTRODUCTION

### A. Background

The juridical understanding of the environment is contained in Article 1 Paragraph 1 of Law Number 32 of 2009 concerning Environmental Protection and Management which reads "The living environment is a spatial unity with all objects, forces, conditions and living creatures, including humans and their behavior. affecting nature itself, the continuity of life and the welfare of humans and other living creatures."

Indonesia is a country that is developing in the fields of development and economy. The breath of globalization felt by the Indonesian people is marked by the increasing number of companies or corporations carrying out their business activities. The increasing number of

corporations as part of the impact of globalization has created special attention to environmental impacts. The existence of corporations in society is a means of supporting the needs of society as widely as possible, both locally, regionally, nationally and internationally.

According to Simons, actions carried out by someone who is good, bad or even ignoring a deviant action can be said to be a criminal act ( *strafbaar feit* ). This illustrates a direct link to the criminal responsibility of the perpetrator, which in this case is a corporation. Moeljatno also stated that corporations as legal subjects must be held accountable for every criminal act committed ( *criminal responsibility or criminal liability* ), for example acts of pollution committed by the company. Likewise, criminal acts carried out by corporations as the subject of criminal acts are carried out by parties who are located within the institutional structure in question and act in the interests of the institution, which is in the corporation, both individually and in the community.

A healthy living environment is part of the rights of humans and the living creatures around them to be able to enjoy it without exception. Humans are quite an important factor for environmental sustainability and also play a role and responsibility in always empowering the environment so that ecosystem survival is maintained. But in reality, humans' selfish attitude of controlling nature just to achieve satisfaction is what drives the emergence of excessive exploitation of natural resources . This is not only for personal interests, but environmental destruction also occurs a lot during business activities. In fact, facts on the ground also state that business activities cause more environmental damage than personal activities.

Environmental pollution is a major change in environmental conditions due to economic and technological developments. Where changes in these conditions exceed the threshold limit of ecosystem tolerance, thereby increasing the amount of pollutants in the environment . One of the biggest factors that causes this to happen Environmental pollution is human. Actually, whether we realize it or not, we have contributed to the process of environmental pollution. Starting from the uncontrolled increase in population and the large number of sources of pollution that nature is unable to neutralize.

Public education and awareness are also very important in efforts to prevent environmental pollution. The public needs to be given knowledge and awareness about the importance of maintaining environmental health and changing the wrong mindset that rubbish or waste disposal does not have a negative impact on the surrounding environment. In order to

maintain the sustainability of life and minimize the negative impacts of pollution, cooperation and commitment from all parties, including government, industry and society, are needed to take real action to maintain a clean and healthy environment.

Seeing the many cases of environmental damage and pollution carried out by companies or corporations, it is appropriate for the authorities to make a policy, namely implementing strict law enforcement against perpetrators of environmental pollution because environmental damage can have a tremendous impact on people's lives. This aims to provide a deterrent effect against perpetrators who commit criminal acts of environmental pollution.

Environmental crimes or environmental offenses are statutory orders and prohibitions on legal subjects which, if violated, are threatened with the imposition of criminal sanctions, including: imprisonment and fines with the aim of protecting the environment as a whole and elements in the environment such as animals, land, air and water and humans. Based on this understanding, environmental offenses are not only criminal provisions formulated in Law Number 32 of 2009 concerning Environmental Protection and Management, but also various criminal provisions formulated in other laws and regulations as long as these formulations are intended to protect the environment as a whole or its parts.

With the background description above, it is interesting for the author to examine and discuss this problem in a scientific study with the title "Corporate Criminal Liability in Environmental Pollution Crimes".

## **RESEARCH METHODS**

The method used in writing this journal is a normative legal research method by researching library materials or secondary materials using a statutory approach. This research is a normative juridical research, namely legal research carried out by researching and reviewing library materials or secondary data. This research was carried out by examining primary, secondary and tertiary legal materials. The primary legal material used is national legislation. Secondary legal materials include text books, research results, journals, scientific writings and other reading materials. The materials that have been collected are then analyzed using qualitative analysis methods.

## **DISCUSSION**

### **1. Corporate Criminal Liability in Environmental Pollution Crimes**

The environment is a gift from God Almighty to the people and nation of Indonesia which must be preserved and developed so that it can become a source and support for life for the community. Bearing in mind that the environment in Indonesia must be managed with the principle of preserving environmental functions in harmony, harmony and harmony balanced to support development that is insightful towards improving the welfare and quality of life of the nation's generations. Constitutionally, the legal basis that provides protection for the community to obtain a good and healthy living environment is contained in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, where the state is responsible for providing environmental quality that is in line with these provisions.

There are a lot of natural resources in Indonesia, but over time the availability of our natural resources has decreased in quality, resulting in the potential for pollution and damage to the environment which ultimately becomes a social burden. Therefore, environmental management systems in various fields must be in accordance with the principles of environmental law in Indonesia. The development of increasingly complex times has caused many types of crime to emerge. One of them is the crime of environmental destruction committed by a corporation. Corporate crime can drain natural resources, human capital, social capital, and even institutional capital. Corporations can undermine the function and trust in governments that are formed democratically, meaning that corporate crime has become a very scary thing because it is carried out systematically.

Facts clearly prove that human civilization has always advanced and kept up with the times. Likewise, the models of crimes that occur on earth always develop in various ways and are more extreme beyond our own reasoning as humans. It must be admitted that the existence of law has always lagged behind human civilization itself. One example of crime that is currently the center of attention is environmental crime.

The characteristics of a legal entity as a subject of criminal law are that the individual who is the founder has its own assets, separate from the assets of the founder or administrator, has rights and obligations in addition to the rights and obligations of the founder and administrator. In essence, corporations have differences in the legal subjects of people. People who are legal subjects have souls and inner attitudes, corporations do not have inner attitudes (

*mens rea* ). The soul and inner attitude of a corporation are found in its management who act for or on behalf of the corporation. *Mens Rea* is a provision that is required to be included in corporate accountability.

A criminal act is a formulation of a prohibition on doing something or a prohibition on causing certain consequences. The formulation of criminal acts also influences criminal liability and the form of punishment (criminal sanctions) against those who produce them. Criminal liability has a close relationship with determining the subject of criminal law. Subjects of criminal law in statutory provisions are perpetrators of criminal acts who can be held responsible for all legal actions they commit as a result of their mistakes against other people.

Article 48 of the Criminal Code (KUHP) states that criminal acts committed by corporations are acts carried out based on employment or other relationships related to the corporation. Article 49 of the Criminal Code states that the responsibility imposed on business entities that commit unlawful acts are their management and/or corporations. Article 50 of the Criminal Code states that corporations can be criminally liable if the actions are carried out in the name of the corporation. Then Article 51 of the Criminal Code also states that the imposition of criminal responsibility can only be directed at management of business entities who still play a role in running the business.

Corporations that commit environmental crimes can also be sued by parties who feel disadvantaged. These provisions are regulated in Article 1365 of the Civil Code and Article 1366 of the Civil Code. The loss in question is caused by actions carried out intentionally, due to negligence or lack of caution. Corporate responsibility in the aspect of civil sanctions is also regulated in Article 87 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) of the Environmental Protection and Management Law which is a form of embodiment of the principles contained in in the living environment.

With the establishment of corporations as legal subjects in the Environmental Protection and Management Law, a corporation has criminal responsibility as regulated in Article 116 paragraph (1) and paragraph (2). Article 116 paragraph (1) states "if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions are imposed on: a. Business entity; and or b. the person who gives the order to carry out the criminal act or the person who acts as the leader of the activity in the criminal act. And Article 116 paragraph (2) states that if an environmental criminal act as intended in paragraph (1) is

committed by a person based on an employment relationship or based on another relationship acting within the scope of work of a business entity, criminal sanctions are imposed on the person giving the order or leader in the act. The crime is committed individually or jointly. Based on this article, criminal liability is imposed on *natural persons*. In fact, this article was constructed so that a business entity could be subject to criminal liability. In essence, the formulation of criminal sanctions in the Environmental Protection and Management Law is imposed on people and not on business entities. Meanwhile, the implementation of this article must be guided by Article 118.

In Law Number 32 of 2009 concerning Environmental Protection and Management, there is an article that regulates the types of penalties that can be imposed on business entities proven to have committed environmental pollution, namely Article 119 which contains:

- a. Confiscation of profits obtained from criminal acts;
- b. Complete or partial closure of business premises and/or activities;
- c. Reparations resulting from criminal acts;
- d. Obligation to do what is neglected without right; And
- e. Placement of the company under supervision for a maximum of 3 (three) years.

In practice, law enforcement against corporations that commit environmental crimes is very difficult to implement. And the cause is:

- a. Law enforcers are still fixated on the principle of no crime without fault as adhered to by Indonesian general criminal law;
- b. Inaccuracy by investigators or prosecutors in making prosecution or indictment letters which do not include corporations as parties being held criminally responsible; And
- c. The prosecutor's inability to prove corporate guilt means that the concept of corporate criminal responsibility itself cannot be accepted by investigators, prosecutors or judges .

## **2. Factors Inhibiting the Implementation of Corporate Crime in Environmental Pollution Crimes**

Environmental pollution and destruction can occur due to human activities or natural events such as volcanic eruptions, landslides, and forest and land fires. Environmental pollution carried out by humans or corporations (business entities) can be negative and threaten the survival of humans. Environmental pollution and destruction are dangers that constantly threaten

life from time to time, causing the sustainability of an ecosystem to be disrupted. Environmental pollution that occurs without realizing it will cause an imbalance in the existing environment or ecosystem. Because pollution will damage conditions that were originally good to become bad. When pollution occurs, many things will be disturbed, not only humans but also animals and plants

Basically, every person who pollutes or damages the environment is obliged to counteract the pollution or damage and carry out environmental restoration. This can be done by:

- a. Providing warning information about pollution or environmental damage to the public;
- b. Isolating pollution and/or environmental damage;
- c. Termination of sources of pollution and/or environmental damage; And
- d. Another way that is in line with developments in science and technology.

Meanwhile, restoration of environmental functions is carried out in stages: stopping sources of pollution and cleaning up polluting elements, remediation (efforts to restore environmental pollution to improve the quality of the environment), rehabilitation (recovery efforts to restore the value, function and benefits of the environment including efforts to prevent land damage , providing protection and improving ecosystems), restoration (recovery efforts to make the environment or its parts function again as before).

Mistakes regarding environmental problems occur due to several factors such as economic problems, individual or group interests, lifestyle, weak laws and regulations and monitoring systems for various environmental management and protection. Therefore, there is a need for law enforcement to protect the environment. Law is a way of reflecting a system of values that society believes to be an institution in everyday life, including personal, social, national and state life.

Environmental law is also often considered as a juridical instrument for any environmental management and protection. Therefore, in every implementation of environmental law, we will always pay attention to the general principles of good governance. The existence of these principles will provide a goal so that every implementation of applicable policies and regulations will not deviate from the objectives of environmental management and protection that have been established for the common good so that everyone has the right to experience a useful and healthy living environment.

It is hoped that law enforcement in various cases of environmental pollution can improve welfare and equality which will later be felt by the community. In efforts to enforce environmental law, there needs to be good cooperation between the government, law enforcement officials and the role of the community in order to strengthen the self-awareness of each individual so that the nation's future generations will experience various benefits from the environment.

In fact, the government has issued many regulations relating to the environment. However, implementation in the field still experiences various obstacles or barriers so that law enforcement against perpetrators or business entities that pollute the environment cannot be effective. Several things are inhibiting factors in law enforcement against corporations, namely:

1. Legal Means Factor. The formulation of Law No. 32 of 2009 concerning Environmental Protection and Management has weaknesses. There are various acts that qualify as criminal acts but it is difficult to measure or determine that an environmental crime has occurred;
2. Human Resources Factors. One of the obstacles to law enforcement is limited human resources which are disproportionate to demographics and such a large area. The lack of human resources both in quality and quantity in carrying out monitoring activities regarding company compliance regarding the environment;
3. Law Enforcement Officials. The number of professional law enforcement officers capable of handling environmental cases is still very limited. Because the environment includes very broad and complex aspects related to various scientific disciplines. Limited knowledge and understanding of environmental aspects by law enforcers is a very dominant constraining factor in efforts to create a common perception of handling environmental cases;
4. Facilities and Infrastructure Factors. The absence or limitations of supporting facilities and facilities will greatly affect the success of environmental law enforcement. The reality shows that handling environmental cases will involve various sophisticated technological devices such as pollution detection equipment and laboratory equipment whose operation requires experts and to use these tools requires a lot of funds;
5. Factors of Community Legal Awareness of the Environment. Appropriateness and compliance with environmental law provisions is an indicator of public legal awareness because society is an important component in enforcing environmental law. People who



interact with the environment every day should know the environmental legal regulations that bind corporate activities. So that when a violation occurs, the public can report it to the authorities. Sometimes there are also people who know that a corporation has committed a violation, but because the public's legal awareness is still low, they are not indifferent to this condition and do not report it to the authorities;

6. Licensing Factors. Licensing is indeed one of the problems that provides more opportunities for the development of environmental problems because Article 36 of Law Number 32 of 2009 can still be bypassed by entrepreneurs; And
7. Cultural Factors. The emergence of apathetic thinking in society when they encounter a form of violation and choose to remain silent makes it difficult for law enforcement officers to detect a problem. This is coupled with a permissive attitude which assumes that environmental pollution is a normal thing that occurs and has become a habit in society.

## **CONCLUSION**

Based on the descriptions above, the author draws the following conclusions:

1. Corporations that commit environmental crimes can be sued by parties who feel disadvantaged. These provisions are regulated in: a). Article 48, Article 49, Article 50, Article 51 of the Criminal Code as well as Article 1365 of the Civil Code and Article 1366 of the Civil Code. The loss in question is caused by actions carried out intentionally, due to negligence or lack of caution. Corporate responsibility in the aspect of civil sanctions is also regulated in Article 87 paragraph (1), paragraph (2), paragraph (3) and paragraph (4), Article 116-Article 118 of the Environmental Protection and Management Law which is an embodiment of on the principles contained in the environment.
2. The factors that hinder the application of corporate crime in criminal environmental pollution are legal means factors, human resource factors, law enforcement factors, facilities and infrastructure factors, community legal awareness factors regarding the environment, licensing factors and cultural factors.

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