

Legal Responsibility for Corporations Against Environmental Damage Crimes

Annisa Sabilla Sueni¹, Eko S.²

^{1,2}Postgraduate Law Program, Faculty of Law, Universitas Diponegoro
Jalan Imam Bardjo, S.H No. 1-3, Campus of Diponegoro University in Pleburan,
Semarang, 50241

Email: annisasabilla182@gmail.com (Corresponding Author)

Accepted: 22-10-2022, Revised: 29-12-2022, Approved: 30-12-2022, Published: 02-01-2023.

DOI: 10.30596/dll.v8i1.12053

How to cite:

Sueni, A.S., Eko S. (2023). "Legal Responsibility for Corporations Against Environmental Damage Crimes". De Lega Lata: Jurnal Ilmu Hukum, 8(1), 1-7.

Abstract

The rise of the issue of environmental damage in various regions in Indonesia has become a separate concern and problem for the relevant government to handle and overcome environmental issues, especially crimes committed by corporations. Where is the environmental damage done by irresponsible corporations, and there is no remedial treatment, so that nature in Indonesia is really eroded and even becomes pollution and problems for the surrounding community. The method of writing this thesis uses normative research, namely legal research that places law as a building system of existing norms such as books, journals, and other references. Overall, corporate responsibility for environmental crimes in Indonesia, in terms of solving these problems, is seen from the point of view of laws and regulations that govern both Act No. 03 of 2020, Act No. 32 of 2009. In terms of minimizing corporate crime in the future, the authors argue that it is obligatory to regulate provisions regarding recidivists for the same perpetrators in terms of corporate crime, application of the principle of guilt in Islam (meaning that whoever commits it is he who must be responsible even if it is in the form of a legal entity), and commit comparison with regulations regarding the environment and mining from other countries is assessed from the context of legal protection for victims (compensation, compensation, or restitution).

Keywords: Corporation, Crime, Environment.

INTRODUCTION

As a gift from God, Indonesia's natural resources, which are given by the Almighty for the prosperity and welfare of the country, should be made available in Indonesia as much as possible (Rangkuti, 2018). For this reason, it is very important to build a balanced and equal relationship between the conservation of natural resources and the utilization of these natural resources to prevent environmental pollution and damage. Act 23 of 1997 regarding environmental management has been resolved by Act Number 32 of 2009 regarding protection and managing the environment.

In English, the term "environment" can also be spelled "environment," "milieu" in Dutch, or "environnement" in French. The term "environment" refers to all objects, forces, and conditions that exist in a location or space where humans or living things are located and can have an impact on their lives. In article 1 of RI Law No. 32 of 2009, it is stated that the

environment is a spatial unit with all objects, powers, circumstances, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things.

With rapid global developments that have a direct impact on environmental growth, as evidenced by the increasing development in Indonesia, a problem arises in terms of the development that the community requires in order to maintain sustainability. The large number of community members who rely on their own lives and are against the law from the forestry fraud sector or exploitation of forest products such as wood and rattan, clearing agricultural land to mining from natural sources that have a direct impact on people's livelihoods, which tend to be reckless and frustrated.

Indonesia itself has also proven that it is important to manage the environment in order to prevent this, with guaranteed legal certainty since 1982 with the promulgation of Law No. 4 of 1982 concerning Basic Provisions for Environmental Management, which was later amended by Act No. 23 of 1997 concerning Environmental Management, and amended again by Act No. 32 of 2009 concerning Environmental Protection and Management. The Environmental Law regulates procedures for resolving environmental disputes, how to complain about environmental disputes, and other matters related to accountability in environmental disputes carried out by corporate actors (Rezeki, 2015).

Regarding the issue of corporate criminal liability, the principle of guilt is still maintained, but with developments in the field of law, especially criminal law concerning criminal responsibility, the principle of guilt, or the principle of no crime without fault, does not apply absolutely. In this new view, it is sufficient that the fact that the victim suffered is used as a basis for demanding criminal responsibility for the perpetrator in accordance with the Adagium Res Ipsa Loquitur, The facts speak for themselves. In the literature, the principle of absolute responsibility (no-fault liability or liability without fault) is usually known by the expression "absolute liability" or "strict liability (Muladi & Priyatno, 2010). with the principle of responsibility without having to prove a mistake. Or, in other words, a principle of responsibility that views "mistakes" as something that is irrelevant to be questioned, whether in reality there are or not.

Meanwhile, in foreign languages, criminal responsibility is also referred to as *teorekenbaarheid*, criminal responsibility, or criminal liability. It has been stated that criminal responsibility is intended to determine whether a suspect or defendant is held accountable for a crime that has occurred or not. In other words, will the defendant be convicted or acquitted? If he is convicted, it must be proven that the act he committed was unlawful and the defendant is capable of being held responsible (Sianturi, 2002). This ability shows the mistakes of the perpetrator in the form of intentional or negligent acts committed by someone.

In the concept of criminal law, criminal responsibility is meant to determine whether a suspect or defendant is held accountable for a crime that has occurred or not. If he is convicted, the action he took was against the law, and the defendant is capable of being held responsible. However, under Act No. 32 of 2009, regulations govern corporate responsibility towards the principle of strict liability. Accountability without fault is the principle of strict liability; sufficient facts speak for themselves.

In other words, the corporation must be held accountable for its actions when there is a loss, even though the case has not been brought before the court. In line with Act No. 32 of 2009, Islamic criminal law also recognizes corporate responsibility as represented by its management. The presumption of innocence principle in Islam explains that even if the perpetrators are not criminally responsible, the burden of compensation is still borne by the perpetrators of the corporation. Apart from individuals who can be criminally prosecuted, based on modern criminal law theory, corporate or legal entities (in the Environmental Protection and Management Law) are legal subjects who can be prosecuted. Specifically regarding corporate

responsibility in criminal law, it turns out that there are various ways of formulating it that are adopted by legislators. With regard to the imposition of criminal liability on corporations, there are three) systems, namely: (Machmud, 2012) 1. The management of the corporation as the maker and administrator is responsible, 2. The corporation as the maker and administrator is responsible, 3. The corporation is both the maker and the responsible.

In this regard, one form of action that harms another person or party is environmental pollution or environmental damage, which in other terms is also referred to as environmental damage (Rahmadi, 2012). So, environmental pollution or destruction of the environment, as well as anything that is categorized as detrimental to people or detrimental to the state in its own interests, is included as an unlawful act (*onrechtmatigedaad*). This argument is also based on the large amount of environmental damage that exists in Indonesia and various regions within it, both from corporations that do not have business licenses and from a lack of maintenance, which has caused nature in Indonesia to become severely eroded and even a source of pollution and problems for the surrounding community.

Thus, it can be understood that corporate crime in the environmental field is a crime that can be committed by anyone, both individuals and corporate bodies, but in general, corporate crime is a form of unlawful act related to corporate executives or management. They have deviant behavior and high authority in a corporation and use their position as a tool to violate the law, so that it is often said that economic crime is a corporate crime within that corporation. (Hutauruk, 2014).

RESEARCH METHOD

This writing uses normative juridical research, namely research on positive legal principles and legal principles, which is carried out by evaluating legal principles (laws and regulations) and conducting literature studies relevant to the research topic (Fajar & Ahmad, 2010). Legal research that treats law as a set of norms is known as normative juridical research. The system of norms is about principles, norms, rules of law, agreements, and doctrines. This normative research is research on legal systematics, namely research whose main objective is to identify the notions or bases in law (Sunggono, 2015). This research was conducted by conducting a literature review and providing an overview of phenomena based on facts that occurred based on literature, journals, reading materials, and regulations related to the object of research.

DISCUSS AND ANALYSIS

Corporations' Legal Responsibility for Environmental Crimes

Environmental crime offenses experienced an expansion in Act No. 23 of 1997. not only regarding formal offenses but also to subjects that are not limited to individuals. In Act No. 4 of 1982, environmental offenses only account for individuals as criminal subjects, but not for something else that can be equated with it, such as organizations or forms of association. Act No. 23 of 1997 mentions the names of legal entities, such as companies, associations, foundations, or other organizations, as subjects of criminal law in environmental offenses (Wiliamsah, 2021).

The development of special legislation outside the Criminal Code, especially regarding criminal law subjects, namely the formulation of corporations, has also experienced a wider experience compared to the understanding of corporations according to civil law; according to criminal law, corporations can be in the form of legal entities or not.

So if it is related to corporate crime in the environmental field, the legal responsibility for corporations for criminal acts of environmental damage becomes clearer. The following are the regulations governing corporate responsibility, and those governing them are as follows:

1. According to Act No. 32 of 2009 concerning Environmental Protection and Management

- a. Article 98 Act No. 32 of 2009 concerning Environmental Protection and Management. Any person who intentionally commits an act that results in exceeding the ambient air quality standard, water quality standard, seawater quality standard, or environmental damage standard criteria shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiahs) and a maximum of IDR 10,000,000,000.00 (ten billion rupiahs). If the act as referred to in paragraph (1) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000.00 (four billion rupiah) and a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah). If the act referred to in paragraph (1) causes a person to be seriously injured or dies, the criminal shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).
- b. Article 99 of Act No. 32 of 2009 concerning Environmental Protection and Management. Any person who, due to their negligence, causes the ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria to be exceeded shall be punished with imprisonment for a minimum of one year and a maximum of three years and a maximum fine. a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah). If the act as referred to in paragraph (1) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiahs) and a maximum of Rp. 6,000,000,000.00 (six billion rupiahs). If the act as referred to in paragraph (1) causes a person to be seriously injured or dies, the criminal shall be punished with imprisonment for a minimum of 3 years and a maximum of 9 years and a fine of at least Rp. 3,000,000,000 (three billion rupiahs) and a maximum of IDR 9,000,000,000 (nine billion rupiahs).
- c. Article 109 of Act No. 32 of 2009 concerning Environmental Protection and Management Everyone who carries out a business and/or activity without having an environmental permit as referred to in Article 36 paragraph (1) shall be punished with imprisonment for a minimum of one year and a maximum of three years and a fine of at least Rp. 1,000,000.00 (one billion rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah).
- d. Article 116 of Act No. 32 of 2009 concerning Environmental Protection and Management If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on them:
 - 1) Business entity; and/or
 - 2) The person giving the order to commit the crime or the person acting as the activity leader in the crime.If the environmental crime as referred to in paragraph (1) is committed by a person based on a work relationship or based on another relationship acting within the scope of the business entity's work, a criminal sanction will be imposed on the giver of the order or the leader in the said crime regardless of whether the crime was committed individually or together.
- e. Article 119 of Act No. 32 of 2009 concerning Environmental Protection and Management Business entities that violate this may face additional punishment or disciplinary action in addition to the punishment specified in the law:
 - 1) Deprivation of profits derived from criminal acts
 - 2) closure of all or part of the place of business

- 3) Remedy as a result of a crime
- 4) The duty to do what is right is ignored.
- 5) Placing the company under guardianship for a maximum of three years

In carrying out the provisions referred to in Article 119, letters a, b, c, and d, the prosecutor coordinates with the agency responsible for environmental protection and management to carry out the execution. In carrying out the provisions referred to in Article 119, letter e, the government has the authority to manage business entities that are subject to the sanction of placement under guardianship to carry out court decisions that have permanent legal force.

By looking at the above facts, which show that the corporate crime of environmental pollution and damage is committed by a party that is closely related to or strongly suspected of causing the pollution and environmental damage itself, it is appropriate that environmental corporate crimes be eradicated and deserve to be punished.

The Ideal Concept of the Future in Terms of Legal Responsibility for Corporations Against Environmental Crimes

To develop the ideal concept of corporate legal responsibility for environmental crimes, the concept of Sustainable Development in the future formulation, it is necessary for us to look back at Act No. 32 of 2009 concerning the Protection and Management of the Environment, is it appropriate to be used as a source of guidance on mining corporation cases that have existed until now? to come are as follows:

1. Regulation of provisions regarding recidive (reinstatement for corporate actors who repeat acts of environmental corporate crime).

The criminal justice system, as part of the judicial power in Indonesia, has the function of enforcing material legal rules. So that in carrying out its functions, the guidelines in the material criminal law provisions that must be applied are related to the repetition of criminal acts. (Recidive). When a person commits a criminal act, is sentenced to a sentence by a judge's decision with permanent legal force, and then commits another crime (recidivist), it is an excuse to aggravate punishment (Fatmawati et al., 2021) By not regulating the repetition of criminal acts in the environment, the legal consequence is that there is no legal basis, especially for law enforcers (judges), to exacerbate the sentences imposed. This is because, if one pays attention to the repetition of criminal acts (recidivism) in the Criminal Code, it is not regulated in Book I of the Criminal Code regarding General Rules but is regulated in Books II and III of the Criminal Code, so there are terms "recidive" crimes and "recidive" violations. Therefore, the consequences of not regulating the repetition of criminal acts in Book I are criminal provisions outside the Criminal Code that must be made for each arrangement so as not to cause juridical problems in the future.

2. Application of Wrong Principles in Islam

In other words, the corporation must be held accountable for its actions when there is a loss, even though the case has not been brought before the court. In line under Act No. 32 of 2009, Islamic criminal law also recognizes corporate responsibility that is represented by its management. The principle of guilt in Islam explains that although, criminally, the criminal is not burdened with responsibility, the burden of compensation is still borne by the perpetrator.

3. Making Comparisons with Regulations Regarding the Environment and Mining from Other Countries assessed from the context of Legal Protection for Victims (Compensation, Compensation or Restitution).

Legal protection for victims can be seen in the criminal sanctions contained in the law that governs them; from these criminal sanctions, the sanctions that are threatened to the perpetrators can be seen, so that the form of the perpetrator's legal responsibility to the victim

can also be known. The threat of punishment is stated in Law Number 3 of 2020, namely Article 145, even though it has been regulated regarding corporate responsibility for communities affected by illegal mining activities, which reads as follows:

Based on the provisions of the articles that regulate criminal acts of environmental damage, there is not a single pre-article that regulates the protection of victims concretely before the criminal acts of environmental and mining corporations occur. By simply imposing high sanctions on the perpetrators, it is actually a form of indirect protection for the victim, also called "abstract protection".

We compare it with foreign countries that have regulated the protection of victims, including the State of Bhutan. The formulation of legal protection in the Penal Code of Bhutan 2004 is contained in Chapter 5 regarding damage, restitution, confiscation, and recovery. According to the provisions of these articles, the convict is required to pay compensation to the victim, but if the victim plays a role in the realization of the incident so that he becomes a victim, then the perpetrator is not responsible for the victim's losses. According to the provisions of the Bhutan Penal Code, the court can order the defendant to pay appropriate damages or compensation for any loss, injury, or deterioration caused to the victim. Furthermore, he ordered the defendant to pay damages in all forms as an additional penalty.

To prevent the next victim from becoming a victim, the company that has decided to carry out the TPLH is announced in a newspaper, on the radio, or by another interested secretariat. According to Article 67 of the National Environment Protection Act 2007 (NEPA, 2007), namely, every citizen of Bhutan is the guardian of natural resources and the environment for the benefit of present and future generations, and therefore it is the main duty of every citizen to contribute to the protection of the natural environment, the conservation of existing diversity, and for future generations..

CLOSURE

Conclusion

Based on the results of the research and discussion of the description above, the writer can draw the following conclusions: the form of corporate criminal law responsibility in a society that is directly negatively affected by environmental corporate crime is entitled to obtain appropriate compensation due to errors in the exploitation of mining activities in accordance with the provisions of the laws and regulations. filing a lawsuit through the court against losses due to mining operations that violate the provisions. Provisions regarding the rights of people who are directly negatively affected by mining business activities, as referred to in paragraph 1, are carried out in accordance with the provisions of laws and regulations.

Sugesstion

Law enforcers must be more vigilant in supervising corporations that are indicated to have committed environmental crimes, besides that there must be a form of supervision related to corporate responsibility that has been proven to have committed environmental crimes so that there is a deterrent effect.

REFERENCES

- Fajar, M., & Ahmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris, Pustaka Pelajar*. Pustaka Pelajar.
- Fatmawati, A., Putri, D., Prasetyo, M. H., Hukum, M., Hukum, F., Diponegoro, U., Hukum, F., & Diponegoro, U. (2021). *Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Di Bidang Pertambangan*. 3, 312–324.
- Hutauruk, R. H. (2014). *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restorative Suatu Terobosan Hukum*. Sinar Grafika.
- Machmud, S. (2012). *Penegakan Hukum lingkungan di Indonesia*. Graha Ilmu.
- Muladi, & Priyatno, D. (2010). *Pertanggungjawaban Pidana Korporasi*. Kencana.
- Rahmadi, T. (2012). *Hukum Lingkungan di Indonesia*. Rajawali Pers.
- Rangkuti, R. (2018). Pertanggungjawaban Korporasi Terhadap Tindak Pidana Lingkungan Hidup Menurut Undang– Undang Nomor 23 Tahun 1997. *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora*, 1(1).
- Rezeki, S. sri. (2015). Pertanggungjawaban Korporasi Terhadap Penerapan Prinsip Strict Liability Dalam Kasus Kerusakan Lingkungan Hidup. *Al-Jinâyah: Jurnal Hukum Pidana Islam*, 1(1), 248.
- Sianturi. (2002). *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*. Story Grafika.
- Sunggono, B. (2015). *Metodologi Penelitian Hukum*. PT. RajaGrafindo Persada.
- Wiliamsah, M. A. (2021). Pemberian Sanksi Berupa Pemulihan Lingkungan Akibat Pertambangan Batu Bara Oleh Korporasi. *Jurnal Ekonomi, Intelektiva : Jurnal Ekonomi, Sosial & Humaniora*, 3(1), 115–125.