

## **Analysis of the Application of Criminal Law to Corporations Dumping Hazardous Waste into Environmental Media in the Supreme Court Decision (No. 1405/K/Pid.Sus./2013)**

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### **ABSTRACT**

*Environmental arrangements are regulated in Law No. 32 of 2009 concerning Protection and Management of the Environment. Corporation is a body created by law. The body that is created consists of "corpus" which is its physical structure and in it the law includes an element of "animus" that makes the body and the law is a legal creation then except the creator, his death is also determined by law. The regulation of criminal responsibility and individual responsibility for corporations and corporate administrators as perpetrators of criminal acts is regulated in Law No. 32 of 2009 concerning the protection and management of living environments. To find out who the criminal offender in the environment can be used as proof theory so that directing information can be found in the company. The research used in this legal research is normative law. Normative legal research or also called library legal research is legal research conducted by examining library materials or mere secondary data.*

**Keywords: Corporation, Dumping, B3 Waste.**

### **A. Introduction**

The environment is the home of all humanity on Earth. Therefore, humans were created on this earth to serve as caliphs, their duty being to manage everything on earth, from water and soil to plants and animals. However, as time goes by, advanced technology becomes an obstacle to maintaining environmental purity. This technological advancement has an impact on the environment. The industrial sector contributes significantly to environmental pollution.<sup>1</sup>

Law Number 32 of 2009 concerning Environmental Protection and Management explains that a corporation or business entity that commits an environmental crime has 3 models of criminal responsibility, this is stated in Article 116 paragraph (1) letters a and b. The party responsible for environmental crimes committed by a business entity is the business entity; and/or, the activity leader and/or if the crime is committed by a person based on an employment relationship, then criminal sanctions are imposed on the person giving the order without considering whether the crime was committed alone or together.<sup>2</sup>

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<sup>1</sup>Yondia Vanensashakeh Soemantri. Lingkungan Hidup (Studi Dumping Limbah Tanpa Izin Terkait Dan Berdasarkan Putusan Nomor 61/Pid.Sus/2015/Pn.Unr. Jo. Nomor 162/Pid.Sus/2016/Pt.Smg.). *Diponegoro Law Journal*. Volume 6, Nomor 2, Tahun 2017, Hlm 1-2

<sup>2</sup> Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Pasal 116 huruf a dan b

PT. Karawang Prima Sejahtera Steel (PT. KPSS) which was established in Karawang based on the Deed of Establishment of Limited Liability Company No. 1 dated November 2, 2007 before Notary Ida Rasida Suryana, S.H., MH which was legalized by the Director General of General Legal Administration on behalf of the Minister of Law and Human Rights of the Republic of Indonesia No. CC-06377 HT.01.01 of 2007 dated December 13, 2007, which in this case was represented by Wang Dong Bing Director/Head of General Affairs at the time and place as stated in the Primair indictment has dumped waste and/or materials into environmental media without a permit as stated in Article 60 of Law Number 23 of 2009.<sup>3</sup>

The case of dumping B3 waste (Hazardous and Toxic Materials) involving PT. Karawang Prima Sejahtera Steel (PT. KPSS) in the case of dumping B3 waste in the form of coal into environmental media in the form of soil and water, therefore investigators due to their obligations have the authority to summon witnesses related to the case.

## **Research Methods**

A study cannot be called research if it does not have a research method.<sup>4</sup> Research methods are one of the factors of a problem that will be discussed.<sup>5</sup> The study was conducted using secondary data which was analyzed qualitatively using the Desk Research Method.<sup>6</sup> The literature materials used in writing this research are several references originating from research results, studies, and reviews of several writings which are then summarized into a scientific paper.<sup>7</sup>

## **B. Discussion**

### **1. Regulation of Corporate Crimes in the Environmental Sector Based on Law Number 32 of 2009**

Corporate crime is something new compared to ordinary (conventional) crime. Previously, these crimes were committed only by poor people, those with low education, from slum communities living in the suburbs or villages, and so on. However, many people were shocked by the emergence of ideas from Edwin H. Sutherland, who discussed corporate crime.

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<sup>3</sup> Putusan Nomor 1405/K/Pid.Sus/2013

<sup>4</sup> Koto, I., Hati, L. P., Manurung, A. S., & Siregar, A. S. (2024). Islamic Holy Days: The Contention of Rukyatul Hillal and Hisab Hakiki Wujudul Hilal Disputes for Muslims in Indonesia. *Pharos Journal of Theology*, 105(2).

<sup>5</sup> Hanifah, I., & Koto, I. (2025). Legal Protection for Workers with Fixed-Term Employment Agreements Before and After the Job Creation Law. *Kosmik Hukum*, 25(2), 245-256.

<sup>6</sup> Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.

<sup>7</sup> Perdana, S., & Koto, I. (2024). Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors. *DE LEGA LATA: Jurnal Ilmu Hukum*, 9(1), 23-30.

He was the person who first revealed white collar crime at the thirty-fourth annual meeting of the American Sociological Society in 1939, which highlighted or explained the behavior of corporations in America that violated the law.<sup>8</sup>

Corporations as perpetrators of criminal acts are not recognized in the Criminal Code (KUHP), because the KUHP recognizes the principle or adage "actus non facit reum, nisi mens sit rea" or "there is no crime without fault." This principle has the consequence that only those who have a heart, namely humans, can be held criminally responsible. Legal entities that do not have a heart cannot be held criminally responsible.<sup>9</sup> Based on the principle of "no crime without fault," several provisions of criminal law recognize legal entities (corporations) as subjects of criminal acts, but only those who can be held criminally responsible under the authority of the legal entity.

The right to a good and healthy environment is one of the most fundamental principles and is often considered part of the basic rights or human rights to a good and healthy environment. According to Otto Sumarwono, "The responsibility imposed on the implementation of this right also requires that the implementation of this right be carried out in such a way as not to cause disturbance or harm to others."<sup>10</sup>

The right to environmental information is stated in Article 65 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management, which states: "Everyone has the right to environmental education, access to information, access to participation, and access to justice in fulfilling the right to a good and healthy environment."

In the Environmental Law Number 32 of 2009, there are 10 acts (Article 69) broadly classified as prohibited acts (environmental crimes).

The prohibited acts are:

- a. Committing acts that result in environmental pollution and/or destruction;
- b. Importing hazardous and toxic materials (B3) prohibited by law into the territory of the Republic of Indonesia;
- c. Importing waste originating from outside the territory of the Republic of Indonesia into the environmental media of the Republic of Indonesia;
- d. Importing hazardous and toxic waste into the territory of the Republic of Indonesia;

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<sup>8</sup>Sahetapy, JE. *Kejahatan Korporasi*. Bandung, Eresco, 1994, hlm 14

<sup>9</sup>Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia*, Surabaya: Graha ilmu, 2012, hlm 141.

<sup>10</sup>Otto Soemarwono, *Ekologi Lingkungan Hidup dan Pembangunan*, Djambatan, Bandung, 1994, hlm. 54-

- e. Disposing of waste into the environmental media;
- f. Disposing of hazardous and toxic waste into the environmental media;
- g. Releasing genetically engineered products into the environmental media in violation of laws and regulations or environmental permits;
- h. Clearing land by burning;
- i. Preparing an environmental impact analysis (EIA) without a certificate of competence for preparing an EIA; and/or
- j. Providing false or misleading information, omitting information, destroying information, or providing incorrect information.

According to Article 1 number 21, what is meant by B3 is a substance, energy and or other components which due to their nature, concentration and or quantity, either directly or indirectly, can pollute and or damage the environment, endanger the environment, health and survival of humans and other living creatures. While waste is the residue of a business and or activity. While criminal sanctions for these acts are regulated in criminal provisions, from articles 97 to 115.

The provisions of Law No. 32 of 2009 are (1) any person, individual or body that violates the law in the environmental sector:

- a. Intentionally committing an act that results in environmental pollution and/or damage;
- b. Negligently committing an act that results in environmental pollution and/or damage;
- c. Violating applicable laws and regulations, intentionally releasing or disposing of hazardous or toxic substances, energy, and/or other components onto or into the ground, into the air, or into surface water, importing, exporting, trading, transporting, storing such materials, or operating a hazardous installation, while knowing or having reasonable grounds to suspect that such act may cause environmental pollution and/or damage or endanger public health or the lives of others.<sup>11</sup>

## **2. Criteria for Individual Responsibility for Corporations and Corporate Managers as Perpetrators of Environmental Pollution Crimes**

Article 1 point 1 of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) defines the environment as a unity of space with all objects, power,

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<sup>11</sup> Aziz Syamsuddin, *Tindak Pidana Khusus*, Sinar Grafika, Jakarta, 2011, hlm. 46.

conditions and living creatures, including humans and their behavior that affect nature itself, the continuity of life and the welfare of humans and other living creatures. In relation to corporations as perpetrators of criminal acts that commit environmental crimes, by paying attention to the formulation of environmental crimes, in Article 1 number 32 of Law No. 32 of 2009 concerning Environmental Protection and Management, what is meant by every person is an individual or business entity, whether a legal entity or not a legal entity, in other words the legal subject can also be a corporation.<sup>12</sup>

UUPPLH corporations as legal subjects in criminal acts that can be held accountable for environmental crimes, can be seen from the formulation of Article 119 of UUPPLH, namely, In addition to the criminal acts as referred to in UUPPLH, business entities can be subject to additional criminal penalties or disciplinary measures in the form of; Confiscation of profits obtained from criminal acts; Closure of all or part of the business premises and / or activities; Repairs due to criminal acts; Obligation to carry out what was neglected without rights; and / or placing the company under guardianship for a maximum of 3 (three) years.<sup>13</sup>

The concept of a legal entity is a concept that emerged in the field of civil law, as a necessity to carry out activities that are expected to be better and more successful. What is called a "legal entity" itself is actually nothing more than a legal creation, namely by referring to the existence of a body, where this body is given the status of a legal subject, in addition to legal subjects in the form of natural human beings. Thus, a corporation as a legal entity is a personification of humans. A corporation as a legal entity is a legal creation, namely the granting of status as a legal subject to a body, in addition to legal subjects in the form of natural human beings. Thus, a legal entity is considered to be able to carry out or perform a legal act.<sup>14</sup>

### **3. Criminal Liability of Corporations for Environmental Crimes According to Law No. 32 of 2009 concerning Environmental Management and Management**

In criminal law, there are two important things that need attention, namely regarding the act of committing a criminal act (*actus reus*) which is related to the subject or perpetrator of the criminal act, and regarding the fault (*mens rea*) which is related to the problem of criminal responsibility. Regarding the subject or perpetrator of the act, in general the law only recognizes people as perpetrators, but along with the development of the times, the legal subject

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<sup>12</sup>Abdul Roup, dkk, *Pertanggungjawaban Pidana Korporasi Lingkungan Hidup Pasca Peraturan Mahkamah Agung No. 13 tahun 2016* Volume 1 No.2 Oktober 2017, hlm 299

<sup>13</sup>Masrudi Muchtar, *Perlindungan*. *Justitia Jurnal Hukum* Fakultas Hukum Universitas Muhammadiyah Surabaya *dan Pengelolaan Lingkungan Hidup*, Prestasi Pustaka: Jakarta, 2015, hlm 131-132

<sup>14</sup>*Ibid.*, hlm 3

of corporations (legal entities) has emerged. Corporations (legal entities) are a legal creation, namely the granting of legal subject status to an entity, in addition to legal subjects in the form of natural humans. Thus, legal entities are considered able to carry out or perform a legal action.<sup>15</sup>

The ways to criminalize corporations are:

1. Corporations can be subject to criminal liability based on the principle of strict liability for crimes committed by their employees.
2. Corporations can be subject to criminal liability based on the principle of identification, which recognizes the actions of certain members of the corporation as acts of the corporation itself. This theory states that the actions and intentions of directors are also acts of the corporation's will. In other words, for criminal liability to exist, the principle of legality must first be met, namely, there must be a clear legal basis/source (source of legitimacy), both in the field of material/substantive criminal law and formal criminal law.<sup>16</sup>

Legal entities or corporations are recognized as legal subjects in Law Number 32 of 2009 concerning Environmental Protection and Management as regulated in Article 1 number 32. Article 1 number 32 states that: "every person is an individual or business entity, whether a legal entity or not. Law Number 32 of 2009 concerning Environmental Protection and Management recognizes corporate criminal liability as regulated in Articles 116 to 120. The provisions of Article 116 of the UUPPLH regulate criminal liability in the event of a criminal act committed by, for and on behalf of a business entity. In connection with criminal liability, it must first be clear who can be held responsible. This means that it must first be ascertained who is declared as the perpetrator of the crime. Regarding who is declared as the perpetrator of the crime (subject of the crime) has basically been formulated by the law makers.<sup>17</sup>

Responsibility according to this article is based on the existence of an unlawful act resulting from the perpetrator's mistake, which is often also referred to as an unlawful act. So, the form of responsibility included in the provisions of Article 87 paragraph (1) of the UUPPLH is closely related to the aspect of fault (liability based on fault), which is often referred to as "negligencerule". Based on the doctrine of "no liability without fault", environmental disputes

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<sup>15</sup>Sri Sufiyati dan Munsyarif Abdul Chlmim, Kebijakan Hukum Pidana Dalam Upaya Menanggulangi Tindak Pidana Lingkungan Hidup (Studi Kasus Penanggulangan Limbah Bahan Berbahaya Dan Beracun Padat Sisa Dari Pmbakaran Batubara Mesin Boiler), Jurnal Hukum Khaira Ummah. Vol. 12. No. 3 September 2017, hlm 462

<sup>16</sup>*Ibid*

<sup>17</sup> Rizka Junisa Dayani, *Op.Cit.*, hlm 5

whose prosecution is based on Article 87 paragraph (1) of the UUPPLH must contain the following elements:

1. Unlawful acts;
2. Environmental pollution and/or destruction;
3. Harm to others or the environment;
4. Responsibility for business and/or activities; and
5. Paying compensation and/or certain actions.<sup>18</sup>

The elements of Article 87 paragraph (1) of the UUPPLH are a single series as a whole that constructs the integrity of Article 89 of the UUPPLH. This means that an environmental lawsuit to obtain compensation and/or certain actions must establish the existence of an “unlawful act”. This unlawful act must be in the form of environmental pollution and/or destruction in order to become an element of an environmental lawsuit. Without causing environmental pollution and/or destruction, an unlawful act alone is certainly not enough to give rise to an environmental lawsuit.<sup>19</sup>

The doctrine of absolute liability, a perpetrator can be directly and immediately burdened with the obligation to pay compensation without the need to prove the existence of an element of fault in the actions of the perpetrator of environmental pollution or destruction. This is further emphasized by the Explanation of Article 87 of the UUPPLH which states that the meaning of absolute responsibility or strict liability means that the element of fault of the perpetrator does not need to be proven by the plaintiff as a basis for payment of compensation, because the provisions of this article are *lex specialis* in lawsuits regarding unlawful acts.<sup>20</sup>

#### **4. Individual Responsibility Criteria for Corporations and Corporate Managers as Perpetrators of Environmental Pollution Crimes**

Corporate responsibility can be divided into three issues, namely:

- a. Discussion on determining what types of organizations can be held accountable;
  - b. What types of crimes are considered capable of being committed by corporations;
- and

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<sup>18</sup> Koesnadi Hardjosoemantri, *Hukum Tata Lingkungan*, Gajah Mada University Press, Yogyakarta, 1994, hlm 386

<sup>19</sup> Suparto Wijoyo, *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*, Airlangga University Press, Surabaya, 2003, hlm. 21-22

<sup>20</sup>*Ibid*

- c. What criteria are needed to attribute (attach) criminal responsibility to corporations.<sup>21</sup>

Keulen and Gritter note that Dutch courts use varying criteria for vicarious liability. Based on the authors' summary of these criteria, a corporation is liable if:

- a. The crime is suspected to have been committed by someone working for the corporation, whether through a formal or informal employment relationship;
- b. The crime was committed as part of the corporation's normal daily activities;
- c. The corporation profited from the crime;
- d. The corporation had authority over the crime and also accepted the crime.<sup>22</sup>

Specifically regarding the last criterion, Stessens stated that the power and acceptance of the corporation derives from the criteria used in the 1954 iron wire case (IJzerdraad). In this case, the Hoge Raad stated that the corporation is responsible for the actions of its employees if:

- a. Corporations have the power to determine the actions of their employees, and
- b. These employee actions fall within the scope of actions normally accepted by corporations and are therefore considered part of the normal course of corporate affairs. Therefore, the IJzerdraad decision established two criteria for determining corporate liability: power and acceptance. These two criteria were later incorporated into legislation in the Elucidation of Article 118 of Law No. 32 of 2009 concerning Environmental Protection and Management.<sup>23</sup>

In determining individual responsibility in environmental crime cases, the identification theory teaches that in order to hold a corporation criminally liable, it must be possible to identify the perpetrator of the crime. This theory justifies imposing criminal responsibility on corporations, as it is known that corporations cannot have mens rea because they lack a conscience. An act committed by corporate personnel is not considered a crime unless it is committed by a corporate personnel who has the authority to act as the directing mind of the corporation. The directing mind of a corporation can be identified through the corporation's articles of association. Furthermore, it can also be identified through the management's decrees appointing officials or managers to fill certain positions and granting them the authority to carry out the duties and obligations related to those positions. There are certain individuals

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<sup>21</sup>Cristina de Maglie, *Models of Corporate Criminal Liability in Comparative Law*, "Washington University Global Studies Law Review", Vol. 4(3), 2005, hlm. 550

<sup>22</sup>Andri G. Wibisana, *Op. Cit.*, hlm 159

<sup>23</sup>*Ibid*

who, although according to the corporation's articles of association, do not have the authority to carry out management actions for a corporation, in reality, those individuals who formally control the individuals are the company's managers (such as shareholders). Therefore, in this theory, the determination of individual criminal responsibility can not only be carried out against directors and corporations, but also against shareholders and controllers of a corporation.<sup>24</sup>

## **5. Application of Criminal Law to Corporations Dumping B3 Waste in Decision (Number 1405/K/Pid.Sus/2013) Case Position**

PT Karawang Prima Sejahtera Steel (PT KPSS) is a company engaged in the metal, steel, and aluminum industries, export-import, and trade of products. The company was established in Karawang based on the Deed of Establishment of a Limited Liability Company Number 1 dated November 2, 2007, before Notary Ida Rasida Suryana, and was ratified by the Director General of General Legal Administration on behalf of the Minister of Law and Human Rights of the Republic of Indonesia under No. C-06377 HT.01.01 of 2007 dated December 13, 2007. The President Director and Shareholder of the company are located in China, therefore, the head of PT Karawang Prima Sejahtera Steel is Wang Dong Bing, Head of General Affairs.

PT KPSS is engaged in the metal, steel, and aluminum industries, export-import, and trade of products. PT. KPSS uses coal as fuel and during its production, it produces aeroslag waste from iron and steel smelting, as well as bottom ash and fly ash waste from coal combustion in power plants.

Some of the hazardous and toxic waste, including bottom ash and fly ash, is processed into concrete blocks for its own use. PT KPSS does not have a permit from the Minister of Environment, the Governor, or the Regent to utilize this waste.

### **Indictment<sup>25</sup>**

The defendant was brought to trial because he was accused of committing a crime as stated in the Public Prosecutor's indictment, namely: The defendant's actions as regulated and subject to criminal penalties in Article 104 in conjunction with Article 116 paragraph (1) letter a of Law No. 32 of 2009 concerning Environmental Protection and Management.

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<sup>24</sup>Ruslan Renggong, *Hukum Pidana Lingkungan*, PT. Kencana, Hlm 110

<sup>25</sup>Surat dakwaan adalah suatu surat atau akte yang memuat suatu perumusan dari tindak pidana yang didakwakan, yang sementara dapat disimpulkan dari surat-surat pemeriksaan, yang bila ternyata cukup bukti, terdakwa dapat dijatuhi hukuman. Lihat : A. Karim Nasution, *Masalah Surat Dakwaan dalam Proses Pidana*, Pantjuran Tudjuh, 1981, Hlm 75

## Public Prosecutor's Demands<sup>26</sup>

Reading the criminal charges of the Prosecutor/Public Prosecutor at the Karawang District Attorney's Office dated January 10 2011 as follows:

- a. To acquit the defendant PT. KPSS, represented by WANG DONG BING, of the primary charge;
- b. To declare the defendant PT. KPSS, represented by WANG DONG BING, legally and convincingly guilty of committing the crime of dumping waste without a permit as stipulated and threatened in Article 104 in conjunction with Article 116 paragraph (1) letter a of Law No. 32 of 2009 concerning Environmental Protection and Management in the subsidiary charge;
- c. To sentence the defendant PT. KPSS, represented by Wang Dong Bing, to 5 (five) months' imprisonment and a fine of Rp. 1,000,000,000.00 (one billion rupiah), subsidiary to 6 (six) months' imprisonment;
- d. To impose an additional penalty in the form of reparations for the criminal act, the implementation of which was under the supervision of the Karawang Regency Environmental Agency;
- e. Stating evidence in the form of:
  - 1) 5 (five) jerry cans of waste cooling water, each with a volume of 5 (five) liters;
  - 2) 4 (four) jerry cans of B3 dump seepage water, each with a volume of 4 (four) liters;
  - 3) River water before the industry (Upstream) with a volume of 5 (five) liters;
  - 4) River water after the industry (Downstream) with a volume of 5 (five) liters;
  - 5) Fly ash and bottom ash, 3 (three) plastic bags, each with a volume of 4 kg;
  - 6) Slag waste from the steel industry, 3 (three) plastic bags, each with a volume of 4 kg;
  - 7) 4 (four) bundles of photocopies of Letter No. 503/05/Tamben, dated August 23, 2010;
  - 8) 4 (four) photocopies of the Hazardous Waste Utilization Cooperation Agreement, No. 001/05/BKS/ENVT-DEPT/KJS/VIII/2010, dated May 8, 2010;
  - 9) 2 (two) photocopies of Letter No. 01/KPSS/VIII/2010, dated August 2010, concerning the Application for a TPS Certificate;
  - 10) 1 (one) bundle of photocopies of the Waste Processing Certificate;
  - 11) 3 (three) photocopies of the Karawang Regent's Decree No. 503/Kep.105-BPLH/2010.

District Court Decision:

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<sup>26</sup>Tuntutan adalah surat yang diajukan oleh penuntut umum setelah pemeriksaan di sidang pengadilan dinyatakan selesai (pasal 182 ayat 1 KUHAP). Surat tuntutan dibacakan setelah proses pembuktian di persidangan pidana selesai dilakukan. Pasal 182 Ayat 1 tentang Kitab Undang-Undang Hukum Acara Pidana.

Karawang District Court Decision Number 434/Pid.B/2011/PN.Krw dated February 9 2012, the full ruling is as follows:

- a. Declaring that the defendant PT KPSS, represented by Wang Dong Bing, has not been proven legally and convincingly guilty of committing the crime charged in the primary indictment;
- b. Acquitting the defendant PT KPSS, represented by Wang Dong Bing, of the charges.
- c. Declaring the defendant PT KPSS legally and convincingly guilty of committing the crime of dumping waste into the environment without a permit.
- d. Sentencing the defendant PT KPSS to a fine of Rp. 500,000,000.00 (five hundred million rupiah);
- e. Declaring that the defendant Wang Dong Bing, as the representative of PT KPSS, has not been proven responsible for the above-mentioned error of PT KPSS (error in persona).
- f. Acquitting the defendant Wang Dong Bing, as the representative of PT KPSS, of all charges brought by the Public Prosecutor.
- g. Restoring the rights of Defendant Wang Dong Bing as the representative of Defendant PT KPSS in terms of his ability, position, dignity, and status;
- h. Establishing evidence in the form of (as stated in the indictment).

#### High Court Ruling

Decision of the Bandung High Court Number 170/Pid.Sus/2012/PT.Bdg dated May 28, 2012, the full ruling of which is as follows:

- a. Accepting the appeal from the Public Prosecutor and the Defendant;
- b. Annuling the appealed decision of the Karawang District Court dated February 9, 2012, Number 434/Pid.B/2011/PN.Krw;
- c. Declaring the Public Prosecutor's indictment inadmissible;
- d. Acquitting Defendant Wang Dong Bing of the Public Prosecutor's charges;
- e. Restoring the rights of Defendant Wang Dong Bing in terms of his capacity, position, dignity, and honor;
- f. Establishing the following evidence: (as in the indictment).

#### Supreme Court Decision

Supreme Court Decision Number 1405 K/Pid.Sus/2013 with the following ruling:

- a. Granting the cassation appeal from the Cassation Applicant: the Public Prosecutor at the Karawang District Attorney's Office;

- b. Annuling the Bandung High Court's decision Number 170/Pid.Sus/2012/PT.Bdg dated May 28, 2012, which had annulled the Karawang District Court's decision Number 434/Pid.B/2011/PN.Krw dated February 9, 2012;
- c. Declaring that the defendant, PT KPSS, represented by Wang Dong Bing, has not been proven legally and convincingly guilty of committing the crime charged in the primary indictment.
- d. Acquitting the defendant, PT KPSS, represented by Wang Dong Bing, of the charges;
- e. Declaring that the defendant, PT KPSS, represented by Wang Dong Bing, has been proven legally and convincingly guilty of committing the crime of "dumping waste into the environment without a permit";
- f. Sentencing the defendant Wang Dong Bing, PT KPSS, to 10 (ten) months' imprisonment;
- g. Sentencing the defendant PT KPSS to a fine of Rp 500,000,000.00 (five hundred million rupiah);
- h. Ordering the detention of the defendant Wang Dong Bing;
- i. Establishing the following evidence (as in the indictment):
- j. Sentencing the defendant to pay court costs at all levels of court, and at the cassation level, this fine is set at Rp 2,500.00 (two thousand five hundred rupiah).

Karawang District Court Decision No.434/Pid.B/2011/PN.Krw. Defendant PT.KPSS was proven legally and convincingly guilty of committing the crime of "Without a Permit to Dump Waste into Environmental Media"; and sentenced Defendant PT. KPSS to a fine of Rp.500,000,000.00 (five hundred million rupiah) and declared Defendant Wang Dong Bing who represented PT.KPSS not proven and responsible for the above-mentioned Defendant PT. KPSS's mistake of wrongful arrest (error in persona).<sup>27</sup>

Individual perpetrators, as referred to in Article 55 paragraph 1 of the Criminal Code, are those who commit, order, or participate in an act; those who give or promise something by abusing power or dignity, using violence, threats, or deception, or by providing an opportunity, means, or information, intentionally inducing another person to commit an act.

The author believes that judges must be more discerning in determining whether a criminal act is an individual, whether representing a legal entity, or a corporation, as the perpetrator and the corporation responsible. Based on the Karawang District Court Decision No. 434/Pid.B/2011/PN.Krw, this distinction between legal subjects is important to avoid

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<sup>27</sup>Putusan Pengadilan Negeri Karawang No.434/Pid.B/2011

obscure libel charges. Public prosecutors must be more discerning in distinguishing the defendant's status as an individual or a representative of a corporation.

West Java High Court Decision No. 170/PID.SUS/2012/PT.Jabar. dated 28 May 2012 the indictment of the Public Prosecutor/Prosecutor cannot be accepted, and acquits the defendant Wang Dong Bing from the indictment of the Public Prosecutor/Prosecutor and restores the rights of the defendant Wang Dong Bing in terms of his ability, position and dignity.<sup>28</sup>

The author believes that, similar to the Karawang District Court ruling, law enforcement must consider the mens rea element. Because corporations lack conscience, the fault essentially lies with the corporation's management due to their deliberate and negligent actions.

There are three points of concern to the author: first, the Supreme Court failed to clearly identify the true subject of the crime in the environmental pollution case. The Supreme Court positioned PT. KPSS, where Wang Dong Bing served as Deputy Director, as the perpetrator/culprit. As the controller and organizer of PT. KPSS's activities, Wang Dong Bing was also deemed responsible for the environmental pollution committed by PT. KPSS. However, the Supreme Court's ruling did not explicitly state that Wang Dong Bing was the perpetrator/culprit, but only stated that the defendant PT. KPSS.

Second, in Supreme Court Decision No. 1405 K/Pid.Sus/2013, the defendant PT. KPSS, represented by Wang Dong Bing, was found legally and convincingly guilty of committing the crime of "Unauthorized Dumping of Waste into the Environment." The word "guilty" refers to the issue of evil mental attitude (mens rea), which is used to prove a crime. Declaring guilt, in this case, the presence of mens rea, can only be applied to individuals, not corporations. According to the author, the Supreme Court should have first demonstrated the mens rea present in Wang Dong Bing, as Deputy Director of PT. KPSS, to declare his guilt in the crime charged by the Public Prosecutor. Based on this, an understanding of the appropriate accountability model for both Wang Dong Bing and PT. KPSS can be used.

Third, although the Supreme Court sentenced Defendant Wang Dong Bing, representing PT. KPSS, to 10 (ten) months' imprisonment and fined Defendant PT. KPSS Rp. 500,000,000.00 (five hundred million rupiah), it shows that Wang Dong Bing in running the company plays an important role which results in the problem of corporate responsibility of PT. KPSS. The decision of the Panel of Judges in imposing criminal sanctions on the Defendant

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<sup>28</sup>Putusan Pengadilan Tinggi Jawa Barat No.170/PID.SUS/2012

Wang Dong Bing and PT. KPSS with a prison sentence of 10 (ten) months and sentencing the Defendant PT. KPSS to a fine of Rp. 500,000,000.00 (five hundred million rupiah). Therefore, it appears that the Supreme Court used in issuing its decision was the third model of responsibility, namely the corporation as the maker and as the one responsible, but also included Wang Dong Bing as Deputy Director. The article proven in the examination was Article 104 in conjunction with Article 116 paragraph (1) letter a of the UUPPLH, so it can be seen how the regulations in the two articles are. Article 104 states: "Any person who dumps waste and/or materials into environmental media without a permit as referred to in Article 60, shall be punished with a maximum prison sentence of 3 (three) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah). rupiah).

### **C. Conclusion**

The regulation of environmental crimes in Indonesia is regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. The criminal law provisions in Law No. 32 of 2009 concerning Environmental Protection and Management are regulated from Article 97 to Article 120, with the threat of a minimum prison sentence of 1 year and a maximum of 15 years and a fine of at least 500 million rupiah and a maximum of 15 billion rupiah. Determining the criteria for individual responsibility for corporations and for managers as perpetrators of environmental pollution crimes requires the existence of an element of action (actus reus) and an element of fault (mens rea), both elements (actus reus) and the element of fault (mens rea) do not have to be present in one person alone. Based on Article 116 paragraph (1) and paragraph (2) of the UUPPLH, if an environmental crime is committed by or on behalf of a business entity, the person criminally responsible can be the business entity concerned (as regulated in Article 116 paragraph (1), or the people (those) who gave the order to commit the environmental crime (as regulated in Article 116 paragraph (1) and (2) of the UUPPLH, or both as referred to in the first and second.

The application of criminal law to corporations that dump B3 waste in Decision Number 1405/K/Pid.Sus/2013. Declares that the Defendant PT Karawang Prima Sejahtera Steel, which in this case is represented by Wang Dong Bing, has been legally and convincingly proven guilty

of committing the crime of dumping B3 waste into the environmental media, this is regulated in Article 104 in conjunction with Article 106 of the UUPPLH. The judge's consideration in deciding the case is the model of criminal responsibility of the management as the perpetrator and the corporation also as the perpetrator of the crime without first proving mens rea on The judge's apparent hesitation in deciding whether the perpetrators of the crimes committed by the managers and corporations gave the impression that their criminal liability was unclear.

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