

Corporate legal liability for environmental damage (Case study of corporate liability in Indonesia)

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ABSTRACT

Indonesia adopts environmental laws relatively oriented towards fines, although corporate participation in various laws regulating the environment is low. Therefore, it is necessary to develop the concept of responsibility-corporations, especially in environmental pollution or damage by the corporation. The purpose of this research is to see/identify the extent to which forms of responsibility for the composition of environmental damage, terms of punishment and compensation. This research was conducted using qualitative methods and normative juridical approaches. The results show that applying the concept of Strict Liability to business actors accused of environmental crimes will impact investigating environmental crimes. The principle of Strict Liability is regulated explicitly in Law Number 32 of 2009 concerning Environmental Protection and Management. The principle of strict liability will make it easier for public prosecutors that in the proof in court, public prosecutors do not need to prove mistakes in the form of deliberate acts or negligence on the part of the corporation that has committed a criminal act. The public prosecutor does not need to prove the existence of law enforcement or corporate motives for environmental crimes.

Key words : Legal responsibility, Corporation, Environmental damage

Introduction

The environment is a gift from God Almighty that must be preserved and developed to continue to be a source of life support for humans and other living things for the sake of continuity and improvement of the quality of life itself (Sibarani, 2018). Environmental damage in Indonesia is getting more and more alarming every day; it has even endangered the lives and lives of every living thing in and around it, including future generations' lives. The essence of the environment is the life that encompasses the order and values of life that exist in it. The rules and values that maintain the environment and natural resources and social justice for human

life on the right to the environment today and future generations. Likewise, what needs to be emphasized is that the environment must be seen and treated as a subject, managed for sustainable living, not merely for development growth.

Environmental laws establish targets for violations that are not only individuals but can also be corporations. However, Indonesia adopts environmental laws that are relatively oriented towards fines, even though corporations' participation in various laws regulating the environment is low (Tacconi *et al.*, 2019). The corporation also refuses to pay attention to environmental factors in its development and sector, which results in very high emission levels, both in terms of quantity and nature of

pollution. The pollution that arises from operating a company's production is usually much higher than that of actual human production. Environmental law can be applicable, determined by the criminal sanction and the general concept of criminal liability (Manisalidis *et al.*, 2020). The concept of criminal responsibility is essential because the problem of environmental pollution/damage can occur (originate) from the activities of a business entity (developer) in which many people are involved with various levels of work duties and responsibilities. In this case, it is necessary to develop corporate responsibility, especially in environmental pollution or damage by the corporation (Zelazna *et al.*, 2020). The purpose of this research is to see and identify the extent to which forms of responsibility for the composition of environmental damage, terms of punishment and compensation.

Materials and Methods

This research uses qualitative research with a normative juridical approach. The normative juridical research method is a study of the principles of positive law written in statutory regulations and aims to conceptualize law as a written method. Soerjono Soekanto argues that only legal research, which is carried out by examining library materials or secondary data alone, can be called normative legal research (Kridasaksana *et al.*, 2020). A literature study carries out data collection to collect legal materials, such as laws, law books, and legal research journals related to this research topic (Nawawi, 2020).

Results and Discussion

Law enforcement on environmental issues has an essential role in supporting environmental protection and management. Law enforcement related to the environment is still considered not running optimally and as expected. Based on this, law enforcement still needs a lot of evaluation and improvement. Regarding the improvement solution itself, of course, various parties and aspects need to be considered (Khan and Chang, 2018).

Environmental problems concern environmental damage. As mentioned by the Indonesian Forum for the environment, the corporation, through its extractive industry, is still in the first position as a predator that destroys the environment. Over time,

corporations are increasingly pursuing goals to obtain the maximum profit that makes a corporation potentially hurt the environment. This phenomenon is related to humans' survival or society that cannot be separated from a corporation's product.

Now corporations seem to be controlling our lives, determining what we eat, watch, wear, what we do and where we work. Their cultural ideology surrounds our society. Likewise, according to A Sentosa, large corporations dominate the world economic system and determine the work of many people, food, drink, clothing and others and can threaten the country's government where the corporation operates. Crimes committed by companies in the environmental sector, such as burning forests and exploiting natural resources on a large scale, have caused the current state of nature and the environment to deteriorate, even causing enormous losses both materially and non-material; this matter is exacerbated by the corporation that has done damage to the environment which is opposed to being prosecuted (Latif and Munir, 2017). Law enforcement has become very weak. It can be seen from cases, primarily civil and environmental crimes, which take a very long time; this happens as many corporations as environmental destroyers/polluters extend the time related to execution by taking steps to file an appeal.

On the other hand, the polluted environment still has not received any recovery and accountability from the environmental polluters due to the corporation. The law enforcers often ignore the ecological impact of environmental pollution caused by these corporations. According to Clinard and Yeager, corporate crime is an act committed by a corporation that can be punished by the State, regardless of being punished according to administrative law, civil law or criminal law. Law enforcement requires the most significant attention and authorization, especially for companies that cause environmental damage and pollution. Furthermore, related state losses arising from the practice of forestry crimes are very devastating. If a criminal act of corruption is categorized as an extraordinary crime, then forestry crimes must be included in the criteria of very extraordinary crimes.

Furthermore, the enforcement must be in a very extraordinary way too. In civil law enforcement, the community as the plaintiff does not always only suffer material losses but can also bear losses in damage in their area. Therefore compensation is not

only in the form of money but can be in the form of compensation for environmental restoration that has been damaged and polluted (Widodo, 2020).

To accelerate the development process, business entities (after this referred to as corporations) play an essential role. Today's corporations have entered all areas of life. There is almost no living area that does not require a corporation in its development, such as agriculture, plantation, forestry, housing, telecommunications, automotive, banking, food and beverage, education, and even entertainment. Corporations often do not pay attention to the surrounding environment's condition in their production and business, resulting in extensive pollution in quantity and quality of pollution. The pollution resulting from the corporate production process is usually much greater than that of individual human production. To prevent environmental crimes committed by corporations, Policymakers have revised Law Number 4 of 1982 with the issuance of Law Number 23 of 1997 concerning Environmental Management and replaced it with Law Number 32 of 2009 concerning Protection and Management of the Environment. Law Number 32 of 2009 concerning Environmental Protection and Management exclusively regulates the use of criminal law facilities in addition to administrative and civil legal means against corporations. The corporation's provisions that can be held liable for criminal responsibility in environmental cases are regulated in Articles 116 to 120.

Article 116 (1) regulates that if an environmental crime is committed in the name of a business entity, the crime and criminal sanctions are imposed on the business entity or person giving orders to commit a criminal act or act as the leader of the said criminal activity. (2) Suppose the environmental crime as referred to in paragraph (1) is committed by a person based on a working relationship or based on other relationships acting within the scope of work of a business entity. In that case, criminal sanctions shall be imposed on the person who gave the order or leader in the crime without paying attention to the act. The crime is committed individually or collectively. Article 116 Law Number 32 of 2009 concerning Environmental Protection and Management functions to anticipate the possibility that a corporation can take refuge behind the contractual relationship it has with other parties, then the meaning of Article 116 paragraph (2) the responsible parties are the issuer or decision maker or who acts as a leader;

Based on work relations or based on other relationships; Individually or collectively / collectively.

In addition to regulating the issue of corporate accountability, Law Number 32 of 2009 concerning Environmental Protection and Management also regulates (adheres to) the principle of absolute responsibility (strict liability). However, it is only limited to the obligation to pay compensation (civil), not in the form of criminal responsibility (Dewi *et al.*, 2019). This provision is a *lex specialis* in a lawsuit about illegal acts in general (Ulfah, 2018). The principle of absolute responsibility (strict liability) is concluded as an absolute obligation with the main characteristics that do not require more (proof) of error. A defendant can be found guilty only by proving a criminal act was committed without seeing the motive for committing the crime.

In contrast to the general criminal liability system, which requires intentional or negligent existence, in a strict accountability system, only the knowledge and actions of the defendant are required. This means that in committing the act, if the defendant knew or was aware of the potential losses of other parties, for example, losses suffered by the state and society. Then this situation is sufficient to demand criminal responsibility. An important factor related to the strict liability doctrine is the burden of proof (Lagioia and Sartor, 2020). One of the criteria that determines the distribution of the burden of proof should be given to the party with the most significant ability to provide evidence of environmental damage and pollution from industrial activities. The destroyer/polluter (corporation) only has less ability to provide evidence. Based on the polluter pays principle and the principle of absolute responsibility, it was developed in the science of procedural law of proof called shifting (or alleviating) the burden of proofs (Slamet, 2017).

There is no need for an element of intention/negligence on the part of the defendant, but solely an act that has resulted in environmental pollution that causes the person/corporation to be held responsible for the crime. Legal entities or corporations can be criminally liable to be linked to strict liability because a corporation is difficult to see from the "capable of being responsible" or seeing a corporation committing a criminal act with deliberate or negligent mistakes. Hence, it is better to see a corporation that has committed a criminal act. Criminal punishment is a consequence.

Strict liability is meant by liability without fault,

in which case the maker can be convicted if he has committed an act that is prohibited as defined in the law without looking further into the perpetrator's inner attitude. The application of the principle of absolute accountability is carried out in stages according to the development of needs. The concept of applying the legal aspects of the principle of strict responsibility in environmental management laws and regulations is manifested in compensation to help fulfil the community's interests individually and publicly related to the sustainability of environmental functions (private and public compensation). The benefits of strict liability principles are the importance of guarantees to comply with specific essential regulations necessary for society's welfare. The difficulty of investigating, prosecuting and proving environmental crimes committed by corporations will help if the court applies a system of absolute liability (strict liability) in the court process. Therefore, it is necessary to stipulate the principle of absolute responsibility (strict liability) for the civil law enforcement process and be determined for the criminal justice process. The acceptance of strict liability as a form of criminal responsibility based on the principle of error is taken from the concept of normative error. The theory of normative error results in errors that cannot be recognized as a condition of the human psyche proven deliberately. Evidence of guilt is challenging to obtain for violations of regulations relating to society's welfare, a high level of social harm that arises from these acts. The lack of serious consideration of State responsibilities understandably applies to one of the responsibilities of the State. However, it ignores responsibility as a "case of misplaced priority".

With strict liability for the latest legal system, the barriers that sufferers will suffer can be breached. According to this system, the claimant's proof will not be borne, as is usually the case, but it is the burden of the perpetrator of an act that can violate the law (Juška, 2018).

The application of the principle of strict liability is only temporarily applied to various existing development projects and industrial, trade and transportation business activities that are considered potentially causing abnormally dangerous environmental risks. In this case, it needs to be considered that the perpetrator can be given action in order to replace the economic benefit fully. The perpetrator receives the proceeds of his crime and partially and fully compensates for the costs of the investigation

and repairs some of the damage/losses caused by the perpetrator's actions. According to civil law provisions, it is necessary to comply with relativity in a legal problem (relativities). Liability claims in the legal aspects of compensation regulated in civil law are based on this aspect as the core of the liability suit, so that if the defendant can show evidence of caution carried out through a reverse verification process (ordering van bewijst), then they can be free of responsibility to guard the ordinary person who prudently and carefully compensates him.

Applying the principle of firm responsibility for a case and an environmental problem is carried out following the environmental rights and procedures regulated in the environmental law. Human rights and environmental damage must be assessed for their interest's government to comply with environmental procedures. As quoted by Hamzah Hatrik, Ted Honderich stated that it is necessary to use criminal sanctions, including the imposition of criminal sanctions against corporations, because criminal sanctions are an economical means of prevention. It is said to be an economic deterrence if the following conditions are met: The crime prevents; The punishment does not cause a situation more dangerous or detrimental than the punishment is not imposed, and no other crime can effectively prevent it with less harm. The need for criminal law (sanctions) is also closely related to the corporation's characteristics and the motivations that underlie corporate officials' actions (Fernando, 2020).

According to Gery A. Ferguson, there are two groups of thoughts on this issue: First, the law and economic view, which states that a company is established to generate profits for its owners and company officials are motivated almost solely by the desire to increase profits. A company will only engage in criminal activity when its officials conclude that this activity is more likely to profit than not commit an offence. Therefore, the most appropriate way to deter corporate crime is to ensure that all social costs that flow from the violation, including the costs of detection and prosecution, are borne by the company that commits the violation (Benson, 2015). Therefore, because companies are motivated by financial gain, the most effective sanction is financial penalties, usually monetary fines. Second, the sociological view recognizes that making a profit is one company's goal and can often be the dominant goal, but states that profit is not the only goal. As a social organization that consists of its in-

struments, the company often desires these devices (individuals) against the company's goals. Often, to fulfil their interests (dignity, power, personal gain), officials will commit acts that violate company regulations, including criminal offences. Therefore, the most effective prevention and countermeasures are non-financial sanctions (Erp, 2018).

It can be interpreted that the strategic point in the criminal justice system, namely when proving, passing the proving process in court, can be determined whether the evidentiary strength of each piece of evidence submitted will make a defendant (corporation/person) acquitted, released from all charges or convicted. At the end of this paper, it is necessary to examine the importance of strict liability in criminal liability, and its relationship with the crime is the proving process.

Based on PROPER 2019 data, it shows that the Ministry of Environment and Forestry (KLHL) noted that out of 2045 industrial companies in Indonesia, 26 companies were included in the gold category, 174 companies were categorized as green, 1,507 were categorized as blue, 303 companies are categorized as red, and two companies are categorized as black. The remaining 13 companies are subject to law enforcement, and 20 companies are no longer operating. However, there is a decrease in the number compared to previous years for companies categorized as red and black. However, a total of 305 companies can have a tremendous impact on the Environment in Indonesia. Not to mention that government policies are still considered exploitative towards natural resources without considering the impact on the environment. Not only that, increasing land conversion, especially forest areas, now without paying attention to environmental impacts and disaster risks, is something that should be used as material for future evaluation. The environmental damage that continues to occur and has not yet been restored can certainly trigger a bigger disaster.

As Francioni notes that environmental risks are created mainly by private parties involved in industrial and technological activities, it is also true that state control over these activities is retained (Ong, 2001). Therefore, it is time for the government to mainstream the interests of the environment, not just pursue the economic interests of investment at the expense of Indonesia's Environment and act negligently. The government must also provide space for the community to participate in a policy-making process. Community participation can pro-

vide valuable information to decision-makers and reduce the likelihood of community resistance. By taking into account the objections raised in the decision-making process, legal protection can be implemented. Various forms of harm and crimes to the environment, namely, pollution and regulation, corporate crime and its impact on the environment (including humans and wildlife), health and safety in the workplace where violations will damage the environment, the involvement of organized crime and corrupt officials in the disposal of toxins. Illegal waste, speciesism/animal abuse, wildlife trade, human populations, enforcement of laws and regulations relevant to the act (Ong, 2001).

Conclusion

Law enforcement of environmental problems has an essential role in supporting environmental protection and management. Law enforcement related to the environment is still considered not running optimally and as expected. Environmental law itself is a set of rules that govern human behaviour towards the environment. Environmental problems concern environmental damage. Crimes committed by corporations/companies in the environmental sector can cause enormous losses both in material and non-material terms. Strict liability in the company's responsibility for actions that result in environmental damage is regulated in Law Number 32 of 2009 concerning Environmental Protection and Management; however, based on Article 88 of the Law, strict obligations are limited to paying restitution cases of a civil suit. The criminal charges introduced in Law Number 32 of 2009 on Environmental Protection and Management also seem to embrace error theory. In situations of environmental fraud involving companies, that often should be held up as strict liability. The application of strict obligations to business actors accused of environmental crimes will impact investigations into environmental crimes. The principle of absolute responsibility (strict liability) will make it easier for the public prosecutor, that in the prosecution process in court, the public prosecutor does not need to prove mistakes in the form of deliberate acts or negligence on the part of the corporation that has committed a criminal act. Public prosecutors do not need to prove law enforcement or corporate motives for environmental crimes.

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