

THE CORPORATE CRIMINAL LIABILITY IN THE MANAGEMENT OF OIL PALM PLANTATION LAND

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Abstract

This study aims to analyze the form of criminal liability against corporations in the management of oil palm plantation land, especially in West Kalimantan province. Therefore, the corporation as an entity in its development is capable of committing acts against the law such as in the management of oil palm plantations. However, the actual form of criminal liability often contains anomalies in it, especially in the Province of West Kalimantan. This research is empirical legal research or a prescriptive sociological legal research using a statutory approach, and case approach. Analyze what are the obstacles in delegating criminal responsibility to corporations in the field of oil palm plantation land management. The results study show that the form of criminal liability against corporations in the management of oil palm plantations is a criminal fine that can be represented by a senior officer in court. Second, obstacles in delegating responsibility to corporations are caused by several factors, namely (1) the formulation (2) the application (3) the execution.

Keywords: Corporation; Crime; Liability; Plantation.

A. INTRODUCTION

Indonesia is the richest country in Southeast Asia in term of natural resource endowments such as forest, agriculture, etc.¹ This can be seen from the data released by the Directorate General of Plantations in 2020 the agricultural sector which is part of natural resource management has increased in quarter 2 and quarter 3. In the second quarter, the gross domestic product of the agricultural sector grew 16.24% and in the third quarter grew 2.15%, growth in the agricultural sector made economic growth in Indonesia continue to strengthen after the recession. This is seen from the increase in contribution to Gross Domestic Product in the third quarter to 571.87 trillion rupiahs or 14.68%.²

The large contribution of the agricultural sector to the economy in Indonesia is one of them driven by the large demand of industry to the oil palm plantation sector. with the total area of plantations until 2020 reaching

1 Rian Hilmawan. J. C., *An investigation of the resource curse in Indonesia. Resource Policy 64 (2019) 101483*, 2019, Page 64.

2 Perkebunan, D. J, *Peluang Ekspor Perkebunan Masih Bertahan*, Jakarta, 2020

14,858,300 hectares, making palm oil a prima donna of state foreign exchange increase from the natural sector in addition to the oil and gas sector. The amount of *crude palm oil* supplies is around 51,7% or equivalent to 60 million tons of global commodities.³ The export value of Indonesian palm oil which reached US\$ 18.44 billion or IDR 258 trillion in 2020, is growing 18.43% compared to the previous year.⁴ Those put palm oil as a plantation commodity that contributes the largest to foreign exchange in the plantation sector. Not only as a foreign exchange enhancer the presence of the coconut industry helped Indonesia create jobs with a total of 16.3 million jobs and contributed in terms of energy resilience of raw materials for the biofuel industry.

Not only on a national scale, the positive contribution of oil palm plantations is also felt by West Kalimantan Province as the third province that has the largest oil palm plantation in Indonesia with a total plantation land area of 2,039,200 hectares. The palm oil industry is the leading sub-sector in West Kalimantan Province towards Gross Regional Domestic Product based on Constant Price (PDRB ADHK). Even conveyed by the Regional Secretariat of West Kalimantan Province that the existence of palm oil has the potential to contribute 1.5 trillion rupiahs in the form of taxes to West Kalimantan Province.⁵

The rapid development of oil palm plantations is based on facilities by state policies and decentralization that allow local governments to issue permits.⁶ The ownership of the oil palm plantation sector is controlled by companies both private companies and State-Owned Enterprises (SOEs) with a percentage of 54.94% by Large Private Companies, 4.27% by state-owned enterprises, and 40.79% by people's plantations. Massive mastery by the company in its development experienced various damages. In the management of oil palm plantation land that is in the scope of licensing governance, plantation land use and certification in West Kalimantan Province based on *investigations conducted* by eyes on the forest 17 companies are not orderly in licensing governance, namely managing plantation land in areas that were previously forest areas. Illegal plantation land continues to exist until 2021, covering an area of 189,121 hectares in West Kalimantan Province.⁷

Not only in licensing governance, in the use of plantation land in West Kalimantan Province there are also unlawful acts in it in the form of land burning that violates environmental quality standards. As happened in 2019, the Directorate General of Gakkum KLHK sealed 10 forest and land fire sites belonging to 10 companies covering an area of 200ha in West Kalimantan, 3

3 Dadi, Oil Palm Plantation Expansion: An Overview of Social and Ecological Impact in Indonesia, *BIRCI-Journal*, 2021.

4 Kementerian Keuangan-Direktori Jenderal Bea dan Cukai, B. P. *Ditopang Kenaikan Harga, Nilai Ekspor Minyak Sawit Tumbuh 18% pada 2020*. Jakarta, 2021

5 Barat. P. D, *Forum OPD Perkebunan, Sekda Kalbar Apresiasi Peningkatan Ekspor CPO*. Pontianak, 2021,

6 Ari Susanti. A. M, Development narratives, notions of forest crisis, and boom of oil palm plantations in Indonesia, *Elsevier Forest Policy and Economics*, 2016, page. 136

7 Statistik, B. P, *Luas Tanaman Perkebunan Menurut Provinsi*, Jakarta, 2021,

of which belonged to PT MSL in Mempawah Regency, PT TAS, and PT SPAS in Ketapang Regency.⁸

The rise of illegal oil palm plantations certainly has a negative impact in terms of the environment, economy, and social. Illegal oil palm plantations result in the supervision of activities that are not done comprehensively, especially if the plantation outsources forest areas that cause changes in forest land cover that have an impact on ecological changes in an area. These changes have an impact on changes in air temperature, flooding, and loss of biodiversity and environmental services. The change in land cover from forests to oil palm plantations has a direct impact on increasing exposure to the sun so that it has an impact on the temperature of the air that becomes hot. Then, the opening of oil palm plantations without clear permits certainly does not pay attention to Environmental Impact Analysis (AMDAL), at the *land clearing* stage, the forest area cover function disappears. Forest cover that is converted into illegal plantations has a function as natural water storage and protects the soil from erosion due to rainwater. This was proven to occur in West Kalimantan Province in early November 2021. The statement conveyed by the Governor of West Kalimantan Sutarmidji that the flooding experienced by several regions in West Kalimantan Province in addition to being caused by high rainfall, was also caused by the illegal expansion of oil palm plantations.⁹ Not only the problem of temperature and flooding, but the existence of illegal oil palm plantations also causes biodiversity loss in West Kalimantan Province such as Orang Utan and other animals.

For violations or criminal acts in the field of oil palm plantation land management in *a quo* that occurs in the community is often acted on through administrative channels. In the paradigm of environmental law, environmental law enforcement prioritizes new administrative law and then switches to criminal law (*ultimum remedium*) if it is felt that the administration is not effective enough to deal with the problem.¹⁰ *A quo* that occurred in West Kalimantan Province that environmental crimes in the field of oil palm plantation management continued to occur from year to year, becoming the author's initial *prejudice* that the administration was not effective enough to enforce the law, so additional means were needed through criminal means. Poernomo said the power of criminal sanctions is needed to support laws created in administrative power or the public interest of public order.¹¹

Another problem in criminal corporate liability is related to the form of the corporation that is considered not to have feelings like a human being so that he cannot make *mens rea*. In addition, prison sentences are also not able to be imposed against corporations. However, given the negative

8 Gakkum, D. *Gakkum KLHK Segel 10 Lokasi Karhutla di Kalimantan Barat*, Kalimantan Barat, 2021,

9 Digest, F, *Tiga Faktor Penebab Banjir Sintang*, Sintang, 2021,

10 Isya Anung Wicaksono. F. U, Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup, *Pagaruyuang Law Journal*, 2021, page 48.

11 Poernomo, B, *Asas-asas Hukum Pidana*, Ghalia Indonesia, Jakarta, 2002, page 6

impact caused by corporate activities, there is a thought of accountability for the corporation in criminal cases.¹²

B. RESEARCH METHODS

This research used the method of Normative Approach. Therefore, in this writing can be drawn two formulations of the following problems are what is the form of corporate criminal liability in the management of oil palm plantation land in support of sustainable land-based business management and what factors are an obstacle to the acquisition of corporate criminal liability in the field of oil palm plantation land management in West Kalimantan Province.

C. RESULT AND DISCUSSION

1. Form of Corporate Criminal Liability in Oil Palm Plantation Land Management in West Kalimantan Province

Criminal liability or *teorekenbaardheid* or *criminal responsibility* is defined as a form of prosecution for a criminal offense committed. In the philosophical state of criminal liability law by J.J. Roscoe Pound is defined as "I... use simple word 'liability' for the situation whereby one may exact legally and other is legally subjected to the exaction". Based on Pound's view, criminal liability is interpreted as an obligation to pay the retaliation that will be received by the perpetrator from someone who feels he has been harmed, the form of accountability conveyed by Pound is not only limited to legal issues but, also to the issue of moral values or decency in the society.

Corporation by Satjipto Rahardjo was defined as a body of legal creation. The created body consists of "*corpus*" which is its physical structure and into it the law includes an element of "*animus*" that makes the body have personality. Since the body of the law is a creation of the law, except for its creation, its death is also determined by law.¹³ The position of the corporation in its development is recognized as the subject of criminal law that can account for its actions because law not only manages humans as a legal subject but other than individuals other legal subjects are also known namely corporation.¹⁴

The nature of the recognition of corporations as the subject of criminal law is expressly recognized in Law Number 32 of 2009 on Environmental Protection and Management in Article 1 number 32 which reads that "*everyone has an individual or business entity, both incorporated and non-incorporated*". In the Criminal Code, corporations are not recognized as a legal entity that can be held accountable to him, Roeslan Saleh stated that the element of *mens rea* in the RKUHP is often used in the formulation of the *delik*, as surely as it is but it is not known

12 Suartha, I. D, *Hukum Pidana Korporasi, Pertanggungjawaban Pidana dalam Hukum Pidana Indonesia*, Setara Press, Malang, 2015

13 Rahardjo, S, *Ilmu Hukum*, Adhita Bakti, Bandung, 2000, page 13

14 Muhammad Soni Wijaya. d, Inkonsistensi Pengaturan Pertanggungjawaban Pidana Korporasi, *Rechtidee*, Vol.13, No. 1 June, 2018, page 108

what it means, as if it does not cause doubt in its implementation.¹⁵ The inclusion of the element of *mens rea* in each decal in the formulation of the Criminal Code illustrates that the doctrine believed by the Criminal Code is the doctrine of monism. In the teachings of monism, the concepts of criminal liability, *mens rea*, ability, responsibility, and forgiving reasons become one unit or cannot be separated from criminal acts.

Mens rea which contains of elements of reproach (morally) is an element of guilt that legitimize criminal liability.¹⁶ The determination of corporate misconduct that is proven to commit criminal acts is essentially closely related to the stages of corporate recognition as the subject of criminal law that can commit acts that are contrary or prohibited in law. The form of criminal acts and corporate liability is described in 3 forms, namely corporate managers who commit criminal acts, managers only who are responsible; corporations that commit criminal acts, managers only are responsible; The corporation that committed the crime, the corporation is responsible.¹⁷

Recalling the form of the corporation as a body that contains a combination of people in legal association acting together as legal subjects who have rights and obligations separately from the rights and obligations of their respective members. Thus, from the definition, if judged only through form, then the element of *mens rea* will not be attached to a corporation considering the element of *mens rea* attached to the inner attitude of a human being. However, Mardjono Reksodipuro revealed that the *mens reas* contained in the corporate board were diverted or became the fault of the corporation it self.¹⁸

The mechanism of criminal liability against corporations is regulated in the Supreme Court regulation of the Republic of Indonesia Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations. In Article 1 number 8 that the criminal act of corporate is defined as a criminal offense that can be held criminally accountable to the corporation by the laws governing the corporation. It is further explained in Article 4 paragraph (2) which reads:

"In sentencing the corporation, the Judge may judge the fault of the Corporation as Paragraph (1) among others:

- a. The Corporation may profit or benefit from such criminal acts or such criminal acts for the benefit of the Corporation;*
- b. The corporation allows criminal acts to occur; or*

15 Saleh, R, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana: Dua Pengertian Dasar dalam Hukum Pidana*, Aksara Baru, Jakarta, 1983, page 98

16 Kabir. S. F, *Kejahatan dan Hukuman: Tantang Filosofis Determinisme-Kausal Terhadap Pertanggungjawaban Pidana*, *Jurnal Hukum & Pembangunan Tahun ke-49*, No.2 April-June, 2019, page 282.

17 Ali, H. A., 2015, *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan*, Rajagrafindo Persada, Jakarta, 2015, page 171

18 Reksodiputro, M, *Kemajuan Ekonomi dan Kejahatan (Kumpulan Karangan Buku) Cetakan Pertama*, Universitas Indonesia, Jakarta, 1994, page 107

- c. *The Corporation does not take the necessary measures to prevent, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.*

The form of corporate criminal liability in the management of oil palm plantation land, in this case, can be assessed through the doctrine of identification. The doctrine of identification or *direct criminal liability* means that the inner attitude of a certain person who is closely related to the corporation and the management of corporate affairs can be viewed as the act and the inner attitude of the corporation, these people are further referred to as the "*senior officer*" of a corporation.¹⁹

In determining whether the actions committed by the corporation can be held accountable then, there is a basic basis that must be fulfilled so that the actions committed include criminal acts, the main policy in question is the principle of legality or *principle of legality* and the principle of *actus non facit reum nisi mens sit rea* or *no criminal without mens rea*.

The principle of legality or *nullum delictum nulla poena sine praevia lege* which means that no act is prohibited and threatened with criminality if not specified in advance in the legislation. The principle of legality by Moeljatno is translated into three meanings:²⁰

- a. No act is prohibited and threatened with criminality if it is not first stated in a law.
- b. To determine the existence of a criminal act it is not permissible to use qiyas or analogy.
- c. The rule of criminal law cannot apply retroactively.

In the management of oil palm plantation land the legality of corporate criminal liability is stipulated in Article 116 Paragraph (1) of the Environmental Protection and Management Act which reads that "*if environmental crimes are committed by, for, or on behalf of business entities, criminal charges and criminal sanctions are imposed on: a. business entities; and/or; b. the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime.*"

Geen straf zonder schuld or *actus non facit reum nisi mens sit rea* that the basic in criminally punishing people (legal subjects) who have committed criminal acts is an unwritten norm; It's not in the same place if there's no mistake. Theoretically according to Chairul Huda the determination of corporate misconduct or can be reproached by the corporation is not fulfilled properly the community function owned by the corporation, in other words as long as it is open the possibility for the corporation to be able to do anything other than commit criminal

19 Priyatno, D, *Kebijakan Legislasi Tentang Sistem Pertanggungjawaban Pidana Korporasi di Indonesia*, CV Utumo, Bandung, 2004, page 90

20 Moeljatno, 2000, *Asas-asas Hukum Pidana, Cetakan Pertama*, Rineka Cipta, Jakarta, 2000, page 23-25

acts. Such other actions are as far as possibly reflected in the policies and ways of operation.²¹

Corporate misconduct must be seen from the reproach of certain actions, because the corporation has the possibility (in doing certain actions) to act other (alternative), while the alternative action can reasonably be done by the corporation (in the case of the act concerned). So that it can be concluded that no alternative action is taken, then the corporation can be reproached or blamed.²²

a. Licensing governance

The process of licensing oil palm plantations begins with the submission of principle permits to the city/district government. Principle permit is a permit issued by the government to business actors (corporations) who have investment plans that require land use or space for business activities. The application of principle permits is the main step that must be done by the corporation as a plantation business. After the issuance of the principle permit, the corporation then applies for a location permit. Location permit based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 19 of 2017 on Changes to the Regulation of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency No. 5 of 2015 on Location Permit is a permit given to the company to obtain the necessary land in the framework of investment that also applies as a permit for the transfer of rights, and to use the land for investment purposes. Based on Article 2 of the Minister's Regulation that every company (corporation) that has obtained investment approval must have a location permit can and/or is prohibited from carrying out land acquisition activities before the location permit is granted.

The findings of the investigation *conducted eyes on the forest* in a publication with the title "Legalization of Palm Oil Companies Through Changes in The Allocation of Forest Areas to Non-Forest Areas in West Kalimantan Province" published in 2018 that there are 17 corporations that are indicated to be disorderly in licensing governance based on sensing conducted *loleh eyes on the forest*. Some of the companies indicated to be disorderly in licensing governance are PT Indo Sawit Kekal, PT Bonti Permai Jaya Raya, PT Rejeki Kencana Prima, PT Citra Nusa Inti Sawit, PT Sentosa Prima Agro, PT Agronusa Investema, PT Paramitra Internusa Pratama, PT Megasawindo Perkasa, PT Efito Agro Lestari, PT Buana Tunas Sejahtera, PT Gemilang Makmur Subur, PT Indo Sawit Kekal, PT Mitra

21 Huda, C, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Prenada Media, Jakarta, 2006, page 8

22 Listawan, *Pertanggungjawaban Pidana Korporasi Pada Perkara Tindak Pidana Pencucian Uang*, *Justitis Et Pax Jurnal Hukum*, Volume 3, Nomor 3 Desember, 2021, page 253

Aneka Rezeki, PT Rezeki Kencana, PT Perintis Sawit Andalan, PT Ceria Prima, PT Wirata Daya Bangun Persada.²³

The arrangement regarding criminal provisions in relation to corporate criminal liability is regulated by several laws, namely Article 92 Paragraph (2) of Act No. 18 of 2013 on Prevention and Eradication of Forest Destruction which reads:

Article 92

(1)...

(2) The corporation that:

- a. carrying out plantation activities without the permission of the Minister in forest areas as referred to in Article 17 paragraph (2) letter b; and or*
- b. carrying heavy equipment and/or other tools that are common or appropriate to be used to carry out plantation activities and/or transport garden products in forest areas without the Minister's permission as referred to in Article 17 paragraph (2) letter a is punishable by imprisonment of at least 8 (eight) years and a maximum of 20 (twenty years) as well as a fine of at least IDR 20,000,000,000.00 (twenty billion rupiahs) and at most IDR 50,000,000,000.00 (fifty billion rupiahs).*

Other laws governing the criminal provisions against corporations in terms of oil palm plantation land management can be seen in Act No. 39 of 2014 on Plantations in the chapter on criminal provisions with Article 105 that *"Any plantation company that conducts plantation cultivation business of a certain scale and/or processing of plantation products as referred to in Article 47 paragraph (1) is punishable by imprisonment at most 5 (five) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)"*

rupiahs the provisions in Article 105, it can be seen that criminal sanctions as a form of corporate responsibility in terms of managing oil palm plantation land without legal licensing governance, namely the application of criminal fine against the corporation.²⁴ In this case the payment of criminal fines that are devolved to the corporation as a form of liability is paid from the property owned by the corporation. The plan that occurs in the environmental management sector cannot be subject to criminal entities as if the one who made the mistake is human. A corporation cannot be imprisoned or put to death against it.

23 Forest, E. o. *Legalisasi Perusahaan Sawit Melalui Perubahan Peruntukan Kawasan Hutan Menjadi Bukan Kawasan Hutan di Provinsi Kalimantan Barat*. Kalimantan Barat, Eyes On The Forest, 2018

24 Lasmadi, S, Corporate Criminal Liability on The Environmental Crime In Indonesia, *Journal of Legal, Ethical and Regulatory Issues*, 2021, page 1.

b. Utilization and maintenance of oil palm plantation land

Arrangements regarding land management are regulated in the Environmental Protection and Management Act, Plantation Law, Forestry Law, and especially West Kalimantan there is a Regional Regulation of West Kalimantan Province on Sustainable Land-Based Business Management. The use and regulation stipulated in the law are prohibitive, as in Article 69 Paragraph (1) letter a which reads that "everyone" is prohibited to commit acts that cause pollution and/or destruction of the environment; And the letter h forbids "everyone" to do land clearing by burning. Then it is further explained that in the event of a fire or activity that violates environmental quality standards as stipulated in the relevant Laws and Regulations, liability is transferred to the rights holder or permission from the location of the criminal act.

Verdict No. 256/Pid.B-LH/2020/PN Mpw with convicted PT Fajar Saudara Lestari, sitting the case that in the area of likes permit and right to business there is a land fire. For the incident, the convicted criminal with a criminal fine of IDR 1,000,000,000 (*one billion rupiahs*) and when not paid will be replaced with a prison sentence for one year to Darmadi alias Asi Anak from Sugito Dermawan who based on the power of attorney representing PT Fajar Saudara Lestari to be responsible.

PT Fajar Saudara Lestari and PT Arrtu Energie Resources are both charged with Article 99 Paragraph (1) juncto Article 116 Paragraph (1) Letter a of the Indonesian Republic Act No. 32 of 2009 on Environmental Protection and Management. Article 99 of the Environmental Protection and Management Law explains that due to negligence of legal subjects so as to cause the exceeded quality standards, ambient air, water quality standards, seawater quality standards or standard criteria for the quality of environmental damage will be punishable by imprisonment of at least 1 (one) year and a maximum of 3 (three years) and a fine of at least Rp.1,000,000,000.00 (*one billion rupiah*) and at most Rp3,000,000,000, 00 (*three billion rupiah*).

Maximum effort to do fire acidification either done intentionally by the corporation or because of other factors is an obligation and becomes basic from the responsibility of the corporation in terms of oil palm plantation land management.

The fact that the arrangement on the governance of licensing and provision of facilities and infrastructure in the management of oil palm plantation land is part of the obligation of plantation businesses (corporations) in realizing the obligation to conduct certification, namely based on Presidential Regulation No. 44 of 2020 on The Certification System of Sustainable Palm Oil Plantations of Indonesia. The promulgage of this presidential regulation is intended so that the management and development of coconut plantations in

running in accordance with the criteria of *Indonesian Sustainable Palm Oil* (hereinafter referred to as ISPO).

In Article 5 Paragraph (1) it is explained that ISPO is a *mandatory* or an obligation for plantation business actors. In line with the research object conducted by the author, the ISPO certification in question is in Article (2) letter is business cultivation of oil palm plantation crops. Therefore, Presidential Regulation No. 44 of 2020 on Sustainable Coconut Plantation Certification System and Regulation of the Minister of Agriculture of the Republic of Indonesia No. 38 of 2020 on The Implementation of certification of Sustainable Oil Palm Plantations there is no criminal sanctions arrangement in it, then the arrangement of criminal sanctions against violations in terms of the management of oil plantation land is associated with applicable laws and regulations.

Table 1. Ministries Mentioned in Statute

No.	Criteria	Compliance
1	Compliance with laws and regulations	Legality of land and legality of plantations.
2	Implementation of good practices	Plantation planning and technical application of cultivation and yield management.
3	Environmental Management	Implementation related to environmental permits; Waste management; Interference from motionless source; Waste utilization; Management of hazardous and toxic materials (B3) and waste B3; Protected areas and areas of high conservation value; Mitigation of greenhouse gas (GHG) emissions and Protection of natural forests and peat.
4	Continuous increase in business	Perform a monitoring system and update the validity period of licensing documents;

2. Factors Inhibiting The Handover of Corporate Criminal Liability in The Management of Oil Palm Plantations in West Kalimantan Province

The handover of criminal liability to corporations is closely related to the state of law enforcement, it is characterized by criminal liability as part of the compliance of law enforcement processes in this case criminal law enforcement. Satjipto Rahardjo defines law enforcement as a process to realize the desires of the law to become reality, further explaining that the desires of the law are the minds of a body of

lawmakers formulated through legislation.²⁵ Environmental law enforcement is needed to solve various violations and/or crimes, especially in the field of oil palm plantation land management in West Kalimantan Province.

Professor Hartiwiningsih's view in his book entitled *Environmental Law in the Perspective of Criminal Law Policy* explained that environmental problems can be solved with the concept of reliable, consistent, and firm environmental law enforcement that is able to prevent and overcome environmental problems.²⁶ The establishment of reliable law enforcement to deal with environmental problems, especially in the management of oil palm plantation land, is important to first assess whether the law is working as it should in the community.

According to William J. Chambliss and Robert B. Seidman the work of law in society is broadly influenced by several factors in the form of normative juridical (formulation stage or rule-making), enforcement (applicative or parties and the role of government), and sociological juridical factors (concerning economic considerations and legal culture of business actors or executions).

a. Formulation Stage

The formulation stage can be interpreted as a legislative policy or the formulation stage of law. The formulation stage is the first step of the overall planning activities of the criminal law functionalization process. Because the formulation stage is the first stage in the process of functionalization of criminal law, the formulation becomes an important aspect. If there is a defect in the formulation stage then the next stage is permanently experiencing disability as well. Formulation of criminal liability in environmental management is regulated in Act No. 32 of 2009 on Environmental Protection and Management in Article 116 paragraph (1) that a criminal offense can be committed for and on behalf of the corporation, then criminal charges and sanctions are imposed on corporations or business entities; corporations or business entities and persons who give orders to commit a criminal act; corporations or business entities and persons acting as leaders of criminal activities; a person who gives orders to commit a criminal offense; and the person acting as the leader of the activity in the crime.

Article 116 Paragraph (1) of the Environmental Protection and Management Act takes the form of a cumulative alternative as evidenced by the phrase "and/or". The cumulative alternative formula in prosecution means that law enforcement officials are given the freedom to determine who should be responsible for a criminal offense committed. This is the first obstacle in criminal law

25 Said. N. L., Political Law on the Environment: The Authority of the Government and Local Government to File Litigation in Law Number 32 Year 2009 on Environment Protection and Management, *Resources*, 2018, page 1.

26 Hartiwiningsih, *Hukum Lingkungan Dalam Perspektif Kebijakan Hukum Pidana*, UNS Press, Surakarta, 2020, page 74

enforcement. The current law only stipulates that a corporation can be liable for crimes committed as in Article 116 paragraph (1) of the Environmental Protection and Management Act however, it does not explain clearly when liability for criminal acts committed by corporations is borne by the corporation itself or when such liability can be delegated to the person acting to give orders (*senior officer*).

Not only the Environmental Protection and Management Act whose formulation is a cumulative alternative without definite criteria, in Act No. 39 of 2014 on Plantations in Article 105 believes in the same reason, where Article 105 explains that *"Every Plantation Company that conducts plantation cultivation business with a certain scale and/or plantation processing business with the capacity of the plant found does not have a permit. Plantation business as referred to in Article 47 paragraph (1) is punishable by imprisonment of a maximum of 5 (five) years and a maximum fine of IDR 10,000,000.00 (ten billion rupiahs)"*. Can see the principle of subsidiarity in the formulation that can be replaced by managers for criminal liability committed by corporations.

The principle of subsidy in corporate accountability is considered ineffective to stop crime by corporations considering that the corporation will easily replace the position of the manager who is responsible for the actions of the corporation.

b. Application Stage

Seidman and Chamblis in their theory of the work of law in society explained that one of the factors that encourage legal work is the application stage or law enforcement process. In West Kalimantan Province from the results of an interview with the Mempawah District Court that the criminal imprisonment of the corporation in terms of the management of oil palm plantation land experienced several obstacles as:

1) Obstacles to the governance of oil palm plantation land licensing.

The governance of plantation licensing is regulated in Act No. 39 of 2014 on Plantations, namely corporations or companies first applying for a principle permit to the regent or mayor if it is in the administrative area of the district / city; must obtain recommendations from the Directorate General of Plantations for corporations or companies using investment facilities; corporations or companies must obtain a principle permit from the governor or regent/mayor if not using investment facilities; Location permits located in the Production Forest (HP) or Forest Conservation Production (HPK) must have a document on the release of forest areas from the Ministry of Environment and Forestry, but if the area is designated for Other Use Areas (APL) then the forest area release document is not required; include AMDAL or UKL/UPL study documents; taking care of The Cultivation Plantation Business License (IUP-B) and Processing

Business License (IUP-P); ownership of The Right to Business and finally the licensing process to conduct *land clearing*.

Against various permits as stipulated in the Plantation Act in the event of a violation, the court is certainly not authorized to act. The authority to act fully is in the Provincial and Regency / City Governments. Criminal position as *ultimum remidium* in The Plantation Act and the Environmental Protection and Management Act become another resistance for the court to act in the event of a violation in licensing governance. In this case, the court can only reproach if the violation in licensing governance has been handled through administrative sanctions but is considered ineffective. In this case, in fact, the court is not authorized to revocation of permits directly to corporations, especially in the field of oil palm plantation land management.

2) Limitations of judges to assess *legal evidence (scientific evidence)*

In Criminal Justice System perspective, evidence has a very important role for declare the guilt of the accused (Ipakit, 2015).²⁷ The arrangement of evidence is regulated in Article 184 paragraph (1) of the Criminal Procedure Law in the form of witness statements, evidence, letters, instructions, and information of the accused.

Evidence is one of the obstacles in proving criminal acts committed by corporations in the field of oil palm plantation land management, especially in West Kalimantan Province. The Mempawah District Court of West Kalimantan Province as a court that often handles criminal acts committed by the corporate in the management of oil palm plantation land said that the judges had limitations in assessing *legal evidence* in this case in the form of *scientific evidence*.

Scientific evidence has a crucial role as a means of evidence to prove *mens reas* in the management of oil palm plantations. *Scientific evidence* is a means of evidence to find a causality relationship between environmental damage in oil palm plantations and actions committed by corporations. In the management of oil palm plantation land in West Kalimantan province, one of the criminal acts that often occurs is the development of land that is part of the management of oil palm plantation land. According to the Mempawah District Court, in front of the Corporate Court often argues that fires that occur on plantation land due to extreme weather or by indigenous peoples who by the Environmental Protection and Management Act Article 69 paragraph (2) justify land management with local wisdom, namely burning land with a maximum area of 2 hectares.

This is what must be proven in court that environmental damages that occur in the territory of corporate rights are the

27 Ipakit, R, Urgensi Pembuktian Alat Bukti Dalam Praktek Peradilan Pidana, *Lex Crime*, Vol. IV No.2 April, 2015, page 88.

fault of the corporation by using *scientific evidence*. However, the limitations of judges in *assessing scientific evidence* become obstacles. So that the role of expert information is needed from the investigation process to the verdict by the court.

c. Execution Stage

The execution stage in criminal law policy is a stage of function by officials who are authorized to make or carry out decisions in the field of criminal law. The execution stage is the executive policy stage that becomes the final part of environmental law enforcement, especially criminal instruments. The form of corporate criminal liability in the management of oil palm plantation land as previously spelled out is a criminal fine.

Criminal fines that must be paid by corporations in the management of oil palm plantation land enter the state treasury as Non-Tax State Revenue (PNBP). Act No. 1 of 2014 on state treasury defines the state's reality as a place of state money deposited by the Minister of Finance as the State General Treasurer who accommodates all state revenues and pays the entire state expenditure.

The inclusion of criminal fines paid by corporations into state regulations becomes the next obstacle in the granting of liability to corporate. The view conveyed by the Mempawah District Court, that the entry of criminal fines into state power will make the execution of damaged environmental recovery as a form of corporate accountability will be slow. This is because there is no clear mapping of funding to restore the environment damaged by the management of oil palm plantation land that is not in accordance with applicable laws and regulations.

D. CONCLUSION

The form of corporate criminal liability that can be given in the management of oil palm plantations in West Kalimantan Province is a criminal penalty of fines. The release of sanctions and fines to the corporate for criminal acts committed considering the form of the corporation as a body cannot be subject to corporate criminal sanctions. In the event of violations and/or crimes in the field of oil palm plantation land management in the form of disorderly licensing, land management that violates environmental quality standards and is not subject to certification in West Kalimantan Province can be clearly held criminally accountable. Factors inhibiting the difficulty of the acquisition of criminal liability to corporations in the management of oil palm plantation land, especially in West Kalimantan Province based on the theory of legal work in the community, namely first, the formulation stage in the form of the absence of criteria for corporate criminal liability and low leveling related to nominal criminal fines against corporations. Second, the application stage is the limitations of the court in licensing governance and limitations in assessing *legal*

evidence. Third, the execution stage is the myopic percentage of finances intended to restore the environment damaged by the management of oil palm plantation land, especially in West Kalimantan Province.

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