

The Corporate Liability as Perpetrator of Environmental Pollution Crime

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Abstract. *Corporations grow and develop according to the times, the principle of corporations with the smallest capital to get the maximum profit, making corporations can do anything to gain profits. Corporations are required to run their business in good faith, corporations that do not run their business in good faith can be held criminally liable. The increasing number of corporations as a global impact creates a special concern for environmental impacts. Almost every field of business, whether in mining, trade, industry, natural resource utilization and others, has the potential to cause pollution and damage to the environment. The opposition to the discourse of holding corporations accountable in criminal law has always been justified. The argument is also inseparable from the natural flows of criminal law, both the classical flow (daad strafrecht), the modern flow (dader strafrecht) and the neoclassical flow (daad-dader strafrecht) which only sees individuals as perpetrators or legal subjects. It is not necessary to prove the guilt committed by the Corporation in carrying out its business activities of using, producing, managing hazardous and toxic waste (B3), which as a result of the act poses a serious threat to environmental damage is a positive progress towards the development of criminal law politics in Indonesia. This research is normative juridical in the form of analysis regarding legal norms both international conventions and provisions of Indonesian positive law that regulate corporate liability as perpetrators of environmental pollution crimes. With the formulation of the problem, how is the regulation of environmental management crimes that can be committed by corporations and how is the criminal liability of corporations as perpetrators of environmental pollution crimes. The conclusion show that the Criminal Code (KUHP) only recognizes individuals as subjects of criminal law, while corporations have not been considered as subjects of criminal law.*

Keywords: Corporation; Crime; Environment; Liability; Pollution.

1. INTRODUCTION

The implementation of Indonesia's sustainable development requires all interested parties to protect environmental management in order to provide the benefits of the country's ideals as stated in the constitution can be achieved. Natural resources in Indonesia are abundant and can be utilized in development activities. Natural resources used for development should not be managed carelessly and irresponsibly. Environmental management for the progress and welfare of society must of course be

accompanied by sustainability, many aspects that need to be considered in managing the environment.

Corporations as parties that are heavily involved in environmental management must have a high willingness to pay attention to the sustainability of natural resources and a healthy environment. The limits of business activities of corporations have certainly been regulated in various regulations. Specifically, environmental management is regulated through Law No. 32 of 2009 concerning Environmental Protection and Management.

The environmental management system must be in accordance with the principles of environmental law in Indonesia. The increasing number of corporations as a global impact creates a special concern for environmental impacts. Almost every field of business, whether in mining, trade, industry, natural resource utilization and others, has the potential to cause pollution and damage to the environment. The parties who suffer the most from environmental pollution and / or destruction are the victims. Therefore, every party who carries out activities that harm victims must be responsible for the consequences of their actions.¹

Corporation as a legal subject in criminal law is a necessity considering the reality of the development of corporations that strive to maximize profit brings the consequences of a huge number of victims, not only individuals, but society, nation and state. The victim aspect must get attention considering the sense of justice is also measured from the victim's perspective.²

UUPLH requires that business activities that can pollute the environment carried out by corporations can be categorized as corporate crimes. Therefore, the author is interested in examining how criminal liability for corporations as perpetrators of criminal acts. The problems in this study are how is the regulation of environmental management crimes that can be committed by corporations? And how is the criminal responsibility towards corporation as the perpetrator of environmental pollution crime.

2. RESEARCH METHODS

The type of research used in this study is normative juridical, including research on legal principles³ as well as analysis regarding the principles, objectives, and legislation

¹Loebby Loqman, (2017), Tanggung Jawab Pidana Korporasi Dalam Tindak Pidana Lingkungan, *Jurnal Hukum & Pembangunan* 19, no. 3. P. 242, <https://doi.org/10.21143/jhp.vol19.no3.1145>.

² Yeni Widowaty, (2012), Pertanggungjawaban Pidana Korporasi Terhadap Korban Dalam Kasus Tindak Pidana Lingkungan Hidup, *Jurnal Yudisial* 5, no. 2, 154–69, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/152>.

³ Peter Mahmud Marzuki, (2005), *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, , p. 103. Read also: Bambang Sunggono, *Legal Research Methodology*, (Jakarta: RajaGrafindo Persada, 1998), p. 101. 101. Comparative legal research is to examine legal comparisons between one law and another, for example between colonial product laws and national product laws, as well as examining comparisons between 2 (two) different legal systems, between the European continental legal *system (civil law system)* and the *Anglo-Saxon legal system (common law system)* adopted by one country and another, between the legal system of a unitary state and a federal state. It is further stated that the methodology of comparative law may be applied by using the elements of the legal system as a point of departure for comparison, where the legal system itself includes three elements: (1) legal structure which includes legal institutions, (2) legal substance which concerns the rules or behavior of the apparatus; and (3) legal culture which concerns the set of values adopted. These three elements can be compared with each other or cumulatively.

governing corporate liability as perpetrators of environmental pollution crimes in order to clearly understand where the legal position of the perpetrator corporation and criminal liability that can be imposed on the corporation or corporate management. Normative research, in the form of analysis regarding legal norms both international conventions and provisions of Indonesian positive law that regulate corporate liability as perpetrators of environmental pollution crimes.

3. RESULT AND DISCUSSION

3.1. Regulation of Environmental Management Crimes that Can Be Committed by Corporations

a. Corporations as perpetrators of criminal acts

Corporations as a subject of criminal law are no longer unfamiliar. The number of criminal offenses that can be committed by corporations certainly makes the study of corporations as perpetrators of criminal acts more interesting. The Criminal Code (KUHP) only recognizes natural persons as subjects of criminal law, while corporations have not been viewed as subjects of criminal law. However, in subsequent developments, both in special criminal laws, such as Law No. 7 of 1955 on the Investigation, Prosecution and Trial of Economic Crimes, Law No. 31 of 1999 as amended by Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption, Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of Terrorism. 1 of 2002 on the Eradication of the Criminal Acts of Terrorism as stipulated into law by Law No. 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of the Criminal Acts of Terrorism, as well as in sectoral laws and regulations that contain criminal provisions, such as Law No. 32 of 2009 on Environmental Protection and Management, Law No. 22 of 2001 on Oil and Gas, Law No. 41 of 1999 on Forestry, Law No. 4 of 2009 on Mineral and Coal Mining and others. Based on the above provisions, the corporation has been considered as a subject of criminal law.⁴

Discussions on corporate liability in criminal law cannot be separated from the pros and cons. This cannot be separated from the paradigm of criminal liability in the Criminal Code which is individualized, which does not provide options other than humans (natural persons) as legal subjects. At the time of its formulation, the drafters of the Criminal Code accepted the principle of *universality delinquere non protest*, which means that corporations are unlikely to commit criminal offenses. Corporations are seen as a legal fiction in the civil sphere that is not suitable to be taken over in criminal law.⁵

Consequently, the opposition to the discourse of corporate accountability in criminal law is always justified. The argument is also inseparable from the natural schools of criminal law, both the classical school (*daad strafrecht*), the modern school (*dader strafrecht*) and the neoclassical school (*daad-dader strafrecht*) which only sees the individual as the perpetrator or central legal subject¹. The application of corporate

⁴ Achmad Ratomi, (2018), *Korporasi Sebagai Pelaku Tindak Pidana (Suatu Pembaharuan Hukum Pidana Dalam Menghadapi Arus Globalisasi Dan Industri)*, *Al'Adl*, Volume X Nomor 1, ISSN 1979-4940/ISSN-E 2477-0124, p. 4. <https://media.neliti.com/media/publications/361641-none-be62e080.pdf>

⁵ Hasanuddin, (2016), *Penerapan Pertanggungjawaban Korporasi dalam hukum Pidana*, <https://pntilamuta.go.id/2016/05/23/penerapan-pertanggungjawaban-korporasi-dalam-hukum-pidana> acses on 10, May 2024.

liability will have difficulties because it is inherent in natural human nature such as intent and negligence, material behavior, punishment and action. The criminalization of corporations can also harm innocent people and the possibility of difficulty determining between the boundaries of the management and the corporation.⁶

Meanwhile, the development of social life, especially in the economic field, has given birth to corporations with the spirit of capitalism aimed at obtaining maximum profit. Even these corporations have carried out various transnational economic activities, while developing countries which are the object of globalization generally have characteristics of weak law enforcement, weak supervision and low morale, all of which will increase the prevalence of corporate crime. As a result, the victimological aspects of corporate crime are enormous which can include losses to the state, society, consumers, rival companies, employees, shareholders as well as expensive law enforcement costs.

Therefore, criminal law must be responsive to overcome various crimes committed by corporations by placing them as legal subjects in criminal law that can be held accountable so as to provide a deterrent effect. It must be recognized that the criminalization of corporate management as in Article 59 of the Criminal Code is not sufficient to repress criminal acts committed by corporations.

In Law No. 1 of 2003 concerning the Criminal Code, Article 45 paragraph (1) clearly and explicitly states that corporations are the subject of criminal law. The corporation referred to includes legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or the like, as well as associations both incorporated and unincorporated, business entities in the form of firms, limited partnerships, or the like in accordance with the provisions of laws and regulations. For criminal law, there is no differentiation in the liability of legal entities as well as the liability of legal entities in civil cases.

b. The regulation of corporations as perpetrators of criminal acts in the Environmental Law

Corporations are the object of criminal law according to the Environmental Protection and Management Law, at least this is confirmed in Pasa1 paragraph (32) of the PPLH Law, where the Law emphasizes that every person in every arrangement in the editorial articles regulated in the PPLH Law is an individual or business entity, both legal entities and those that are not legal entities.⁷

Civil associations or partnerships that are legal entities incorporated or not incorporated are equalized criminal liability, meaning that they are able to be responsible for the criminal acts they commit. In UUPPLH there are 15 acts of activities that have an impact on environmental damage that are prohibited by corporations that can be

⁶ Ibid

⁷ Article 1618 of the Civil Code provides the following definition of a Civil Partnership: "Civil partnership is an agreement in which 2 (two) or more persons bind themselves to include something in a joint ownership with the aim of sharing among them the profits/benefits arising therefrom." (*Maatschap is eene overeenkomst, waarbij twee of meerdere personen zich verbinden om iets in gemeenschap te brengen, met het elkander tedeelen*). The Dutch word maat or vennoot means friend or ally, so the meaning of the word maatschap or vennootschap is the same as the meaning of the Indonesian word "fellowship". The same meaning is contained in the English word "partnership". This partnership (maatschap) is the simplest form of cooperation to jointly seek profit.

punished including Article 98, Article 99, Article 100, Article 101 Article 102 Article 103, Article 104 Article 105, Article 106 Article 107 Article 108, Article 109 Article 110, Pasa 113, and Article 115.

The equalization of persons and legal entities as perpetrators of criminal acts against environmental destruction is a progress in the development of criminal law politics. The request for corporations as perpetrators of criminal acts is the seriousness of the government in tackling environmental damage which is already very worrying, increasing global warming has resulted in climate change which has exacerbated the decline in the quality of the environment because it is necessary to protect and manage the environment.⁸ The declining quality of the environment has threatened the continuity of human life and other living things so that it is necessary to protect and manage the environment seriously and consistently by all stakeholders.⁹

3.2. Criminal Liability of Corporations as perpetrators of environmental pollution crimes

The principle of *actus non facit reum, nisi mens sit rea*, or the principle of no punishment without fault is sometimes an obstacle in the application of criminal acts, especially against criminal acts whose perpetrators are corporations. The rigid application of this principle will make it difficult to hold corporations accountable. Corporations that commit acts that have an impact on causing harm to many people are sufficient as a basis for demanding criminal liability for corporations without having to assess the guilt of the perpetrators. This is then outlined in the PPLH Law by regulating absolute liability (doctrine of strict liability).

The doctrine of strict liability or liability without fault is the imposition of criminal responsibility on the perpetrator even though the perpetrator does not have the required *mens rea*. The substance of this doctrine is that the perpetrator can be punished if it can be proven that the perpetrator has committed an act prohibited by the criminal provisions (*actus reus*) without looking at his inner attitude.¹⁰

The application of the doctrine of strict liability is widely opposed because criminal acts (crimes) require mental seclusion for the perpetrators so that the corporation may not have *mens rea*. As a legal fiction, a corporation is unlikely to perform its own legal acts but the acts that bind itself are carried out by its management acting for and on behalf of the corporation. The solution is to issue a legislative policy that provides legitimacy that corporations can be held accountable solely for committing unlawful acts without regard to their guilt.¹¹

Article 88 of UUPPLH states:¹² Every person whose actions, business, and/or activities use hazardous waste, produce and/or manage hazardous waste, and/or pose a serious

⁸ Letter e of the Preface of Law Number 32 of 2009 concerning Environmental Protection and Management.

⁹ Ibid

¹⁰ Hasanuddin. Op.Cit.

¹¹ Ibid

¹² Meanwhile, the Explanation of Article 88 states: What is meant by "absolutely responsible" or strict liability is that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. The provision of this paragraph is a *lex specialis* in a lawsuit regarding unlawful acts in general. The amount of compensation that can be imposed on polluters or destroyers of the environment according to this Article can be set to a certain limit. What is meant by "up to a certain time limit" is if

threat to the environment is absolutely responsible for the losses incurred without the need to prove the element of fault.

It is not necessary to prove the wrongdoing committed by Corporations that have carried out their business activities using, generating, managing Hazardous and Toxic Waste (B3),¹³ which as a result of these actions pose a serious threat to environmental damage, is an advancement towards the seriousness of the government in tackling environmental damage. Corporations that are currently very advanced and developed with the spirit of capitalism that uses the principle with the smallest capital to achieve the maximum profit, making it possible to do the act of utilizing all means to obtain the maximum profit without regard to environmental damage as a result of its business activities.

The principle of no punishment without fault does not need to be too rigidly applied in corporate liability given the widespread victimological aspects of corporate crime. Rigid application of criminal liability for corporations can be a criminogenic factor that will increase the prevalence of corporate crime.¹⁴

Subjective requirements in criminal liability would include culpability, intentionality/negligence and no excuse. If these are to remain in use, then : ¹⁵

First, the concept of functional behavior (*functional daderschap*) must be accepted in criminal responsibility. The distinctive feature of this functional behavior is that the physical act of one (who actually commits) produces a functional act on the other. Thus, the ability to be responsible for people who act for and on behalf of the corporation is transferred to the ability to be responsible for the corporation as the subject of a criminal offense Against this concept, Muladi¹⁶ concretely recommends to see whether the action is in accordance with the objectives of the company's statutes and or with company policy, and the most important thing is if the action is in accordance with the scope of work of the company. In other words, if the prohibited act is to be imposed on the company, then the act must be done in the context of carrying out the duties and/or achieving the objectives of the company.

Second, the issue of corporate intent and negligence can be covered in corporate politics or the actual activities of a company. It can also be explained by looking at the intent or negligence of the corporate management in corporate politics, or being in the real activities of a particular company. So the intent or negligence of the corporation must be detected through the psychological atmosphere that applies to the corporation and to the management acting on behalf of the corporation.

Third, the issue of excuse for corporations still applies by adopting excuse for natural persons. This is as a consequence of the fault of the management acting for and on

according to the stipulation of laws and regulations, insurance is required for the business and/or activity concerned or environmental funds are available.

¹³ Article 1 paragraph (21) states:

Hazardous and toxic materials, hereinafter abbreviated as B3, are substances, energy, and/or other components that due to their nature, concentration, and/or amount, either directly or indirectly, can pollute and/or damage the environment, and/or endanger the environment, health, and the survival of humans and other living things.

¹⁴ Hasanuddin Op.Cit

¹⁵ Ibid

¹⁶ Muladi, (1990), *Functionalization of Criminal Law in Environmental Crimes*, Denpasar: Seminar Paper, Faculty of Udayana.

behalf of the corporation being attributed to the fault of the corporation, so that the elimination of the management's fault due to the excuse of forgiveness also eliminates the fault of the corporation.

Table 1. Corporate liability for environmental pollution

No.	Article	Performers	Subjective Requirements	Actus Reus
1	98	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	Intentional as Intent	committing acts that result in the exceedance of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria.
2	99	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	Negligence	the ambient air quality standard, water quality standard, seawater quality standard, or environmental damage standard criteria is exceeded.
3	100	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	administrative sanctions that have been imposed are not complied with or violations are committed more than once	violate wastewater quality standards, emission quality standards, or nuisance quality standards
4	101	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	releasing and/or distributing genetically engineered products to environmental media in contravention of laws and regulations or environmental permits.
5	102	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	hazardous waste management without a license
6	103	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	generating hazardous waste and not managing
7	104	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	dumping waste and/or materials into environmental media without a permit
8	105	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	introducing waste into the territory of the Unitary State of the Republic of Indonesia as referred to in Article 69 paragraph (1) letter c
9	106	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	introducing B3 waste into the territory of the Unitary State of the Republic of Indonesia as referred to in Article 69 paragraph (1) letter d
10	107	Every person = individual or business entity, both incorporated and	-	entering B3 that is prohibited according to laws and regulations into the territory of the Unitary

		unincorporated (Art. 1 paragraph (32))		State of the Republic of Indonesia
11	108	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	conducting land burning
12	109	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	conducting business and/or activities without having an environmental permit
13	110	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	preparing an EIA without having a certificate of competence for EIA preparation.
14	113	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	-	provide false information, mislead, omit information, tamper with information, or provide incorrect information required in relation to supervision and law enforcement relating to environmental protection and management.
15	115	Every person = individual or business entity, both incorporated and unincorporated (Art. 1 paragraph (32))	Intentionally	prevent, obstruct, or thwart the implementation of the duties of environmental supervisory officials and/or civil servant investigating officials

From the table presented above, it can be seen that of the 15 corporate acts that can be punished, there are 11 criminal acts committed by corporations that mention subjective requirements in the wording of the criminal article. This can be seen in Article 101 to Article 110 and Article 113 of the PPLH Law.

4. CONCLUSION

From what is explained above, it can be concluded that the Criminal Code only recognizes natural persons as subjects of criminal law, corporations have not been seen as subjects of criminal law, this is because the view of criminal liability in the Criminal Code cannot be separated from the individual paradigm, which does not provide options other than humans (natural persons) as subjects of law, but this is not the case in subsequent developments that more specific legislation states that corporations are subjects of criminal law, the affirmation is then clearly and explicitly stated in the new Criminal Code and specific laws and regulations including the Law on Environmental Protection and Management. Corporations that commit the crime of polluting the environment are not required to prove guilt as a subjective reason. Corporations that have carried out their business activities using, generating, managing hazardous and toxic waste (B3), can be held absolutely liable (strict liability), where the act can pose a serious threat to environmental damage, there are 12 out of 15 acts that can be held liable by the Corporation by not mentioning the element intentionally or due to negligence as a subjective element, while 2 of them expressly mention that it must be done intentionally and 1 of them with negligence.

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Regulation:

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