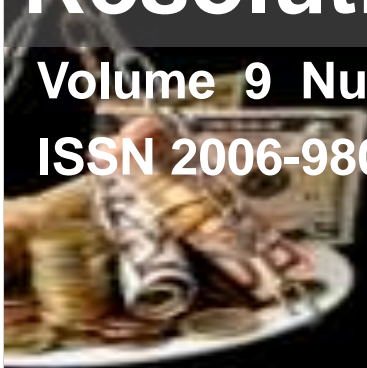


Journal of Law and Conflict Resolution

Volume 9 Number 1 June 2017

ISSN 2006-9804



ABOUT JLCR

The Journal of Law and Conflict Resolution (JLCR) will be published monthly (one volume per year) by Academic Journals.

Journal of Law and Conflict Resolution (JLCR) is an open access journal that provides rapid publication (Monthly) of articles in all areas of the subject such as African literatures, sociolinguistic topics of cultural Interest, music, oral and written traditions etc.

The Journal welcomes the submission of manuscripts that meet the general criteria of significance and scientific Excellence. Papers will be published shortly after acceptance. All articles published in JLCR are peer-reviewed.

Contact Us

Editorial Office: jlcra@academicjournals.org

Help Desk: helpdesk@academicjournals.org

Website: <http://www.academicjournals.org/journal/JLCR>

Submit manuscript online <http://ms.academicjournals.me/>.

Editors

Prof. Christiena Maria Van Der Bank

*Faculty of Human Sciences,
Vaal University of Technology,
P/Bag X021, Vanderbijlpark, 1900
South Africa.*

ASSOCIATE EDITOR

Prof. Chukwunonso Okafo

*Norfolk State University
700 Park Avenue
Norfolk, Virginia 23504
USA.*

Editorial Board

Daniel Anorve,

*University of Guanajuato (Universidad de Guanajuato)
Law, Politics, and Government Division
Department of Political Studies
Lascuráin de Retana #5. Col. Centro. C.P. 36000
Guanajuato,
Mexico.*

Sanja Ivic,

*Institute for European Studies
Trg Nikole Pasica 11
11 000 Belgrade
Serbia.*

Dr.Vicheka lay,

*Cultural Heritage Law Consultant:
Heritage Watch International,
Legal Consultant, BNG – Advocates & Solicitors,
Business Consultant: Aplus Consulting Group
No. 221H Street 93, Sangkat Tuol Sangke,
Khan Russey Keo, Phnom Penh,
Cambodia.*

Nehaluddin Ahmad,

*Principal Lecturer,
Faculty of Business and Law,
Multimedia University,
Jalan Ayer Keroh Lama,
75450 Melaka,
Malaysia.*

Garimella Sai Ramani

*Faculty of Legal Studies,
South Asian University,
New Delhi,
India.*

Paul Mulindwa,

*Mulindwa Paul
P.O.Box 15351,
Mart House, 3rd Floor, Rm 04, Najjanakumbi
Entebbe Road Kampala,
Uganda.*

Prof. Silvia Ciotti,

*Full Professor and Chair, Department of Social, and
Environmental Sciences,
St. John International University,
Della Rovere Castle - Rey Square,
10048 - Vinovo (Turin)
ITALY.*

Dr. Mohammad Reza Noruzi,

*Executive Master ,
Business Administration,
EMBA Islamic Azad University,
IAU,Bonab,
Iran.*

Professor. Mauro Bussani,

*Professor of Private,
and Comparative Law,
University of Trieste Law School.
Greece.*

Journal of Law and Conflict Resolution

Table of Contents: Volume 9 Number 1 June 2017

ARTICLE

Corporate responsibility for environmental crime in Indonesia 1
Slamet Suhartono

Review

Corporate responsibility for environmental crime in Indonesia

Slamet Suhartono

University of 17 Agustus 1945 Surabaya, Indonesia

Received 10 December, 2014; Accepted 18 November, 2016

According to Indonesian law, corporations involve in environmental crime can be held accountable, and may be subject to criminal sanctions. Criminal sanctions can be imposed against those who give orders or the leaders of the corporations. They can be imposed on corporations or their leaders. Sanctions can be fines, restrictions from certain activities with strict principles.

Key words: Corporate responsibility, environmental crime, corporate leadership, alternative cumulative, criminal prison and fines.

INTRODUCTION

Development and environment are like two sides of a coin; both mutually influence each other. If development is a priority, then the environment is a victim; on the contrary, if the environment is a priority, constructions will stop and prosperity will be difficult to achieve. Development is basically using environmental resources for the welfare of the community, but if construction is not done carefully, it would become a disaster for the community. For sustainability between development and environmental, both must be harmonized without sacrificing one for the other.

Conceptually, development policy in Indonesia actually includes the elements of environmental protection, but its implementation often goes wrong. This is reflected in various laws and regulations relating to the management of natural resources and environment. Development policy in Indonesia until now only focuses on optimizing the use of natural resources and the environment, regardless of environmental protection and preservation. Uncontrolled use of the environment became one of the

causes of environmental degradation; The Club of Rome states that the causes of environmental degradation are:

"... population, agricultural production, natural resources, industrial production, and pollution".

A choice of policy was not independent of overall policy.

"It is concerned with what governments do, why they do it, and what difference it makes. Optimizing the utilization of environmental policy in Indonesia is also associated with the investment policy and other economic policies. In this case the government is faced with a variety of policy options to choose which one should be prioritized.

Dye said: "Public Policy is whatever government chooses to do or not to do". In line with this opinion, Friedrich also stated: "It is essential for the policy concept that there be a goal, objective, or purpose"

During this time, optimizing the utilization of

E-mail: slamet@untag-sby.ac.id

Authors agree that this article remain permanently open access under the terms of the [Creative Commons Attribution License 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

environmental policy is the Indonesian government's priority choice, because the environment has a considerable economic potential as a source of state revenue to finance constructions.

Utilization of environment policy in Indonesia has opened way for the owners of capital to exploit natural resources without regard to environmental sustainability (Koesnadi, 2005), through the establishment of a legal entity or corporation, and without taking into account the negative impact that would arise, such as environmental damage and pollution. According to Ismid (2005), there are varieties of damage to natural resources in Indonesia, one of which is caused by a number of sectoral policies and overlapping exploitation in the management of natural resources (Ismid, 2005). Environmental pollution has the potential to cause ecological harm, and a huge economic loss for the Indonesia people, and even the global community.

In Law No. 32 of 2009 on the legislation on protection and management of the environment, hereinafter referred In Law No. 32 of 2009, environmental pollution is categorized as environmental crime Indriyanto (2006). Accordingly, every corporation convicted of environmental pollution can be held accountable for crimes, civil, or administrative. Law No. 32 of 2009 determines that a corporation is subject to the law if it is responsible for acts that cause, or even still have the potential to cause environmental pollution. Such actions are categorized as environmental crime, which under the provisions of Article 69 of Law No. 32 of 2009 may be subject to criminal sanctions.

For environmental crime committed by a corporation related to hazardous and toxic waste, accountability is based on the existence of fault (Schuld). For there to be prosecution, there must be evidence of the alleged environmental pollution. Corporations are sanctioned based on material losses and harm done the environment; such acts are crimes (Mas, 2004).

Statement of problem

How is the corporate responsibility for environmental crime in the legal system in Indonesia?

DISCUSSION

Corporations and corporate crime

In the concept of law in Indonesia, the term commonly used by criminal law experts to describe terms in the field of civil law is referred to as a legal entity, or legal person. Initially, the subject of law was limited to humans, but later evolved into everything that is related to the society, which by law is recognized as a supporter of human rights and obligations. The second notion is called a legal entity (Setiyono, 2003).

In particular, the criminal code does not make provisions / requirements to differentiate offenses. Both types of crimes are just different from the provision of threats and sanctions against both, because a crime is generally more severe compared to breach (Mustafa and Ruben, 1983).

Crime is defined as any act that violates the law specified in the legislation, and obliges the perpetrator to be responsible legally. If such violations are attached to offense, then they are criminal acts (Sutan, 2006). Moreover, if a corporation commits a crime, then the corporation is accountable for its actions to the public, with no option to escape from the legal liability. Thus, sanctions against perpetrators are forced punishment that must be endured by the perpetrators of the crime. For a corporation to be prosecuted for any criminal acts committed, there must be an evidence to proof it. According to Andi (1985), error forms should contain the following elements:

1. Intentional act
2. Negligence and
3. Being justifiable (Andy, 1985).

The third element is a subjective element needed for convictions for offenses and crimes committed by a corporation. According to Sahetapy (1994), formulation of corporate criminal offense (corporate crime) is a dilemma; it is the same with white collar crime which was first introduced by Sutherland, who used stack terms with meanings in different contexts, but in the same scope as well (Sahetapy, 1994).

According to Yusuf Shofie (2002), corporate crime includes all actions taken by the corporation convicted by the state, regardless of the penalties under administrative, civil, or criminal law. Sutan (2006) said that:

"the principle of corporate law determines that, the board is the organ of the organization, the heart is the corporate board, and the board is a physical body of the corporation (Sutan, 2006)".

While Ray (2000) said the corporation is an artificial legal entity or artificial person (man -made) that is capable of taking legal actions through a representative. Therefore, a corporation or company is also the subject of law, independently. Thus, a corporation may have rights and obligations in relation to the law (Ray, 2000).

According to Indriyanto (2001), the criminal offense of corporate perpetrators changes from extended to legal entities which accrue to high socioeconomic ones. They also include the actions carried out in the absence of physical violence, and even constitute a reason for legitimate economic activities, so that these crimes are often said to be part of the "economic crime" ("economic crime") (Indriyanto, 2001).

Orientation corporate crime is directed at "large scale business" instead of "small scale business (Indriyanto, 2001)". All the crimes committed by a corporation result from the thought of a person or persons controlling the corporation or a person who has close relationship with the corporation and understands it. In doing the crime, the criminal is not suspected, and can go free with it.

According to Sutan (2006), corporate criminal liability can be imposed if such corporate actions meet the elements or terms as follows:

1. The offense is committed or ordered by corporate personnel in the corporate organizational structure.
2. The criminal acts are carried out in the framework of the intent and purpose of the corporation.
3. Criminal offenses committed by the perpetrator or on the orders giving by the corporation.
4. The criminal acts committed with the intent to benefit the corporation.
5. Actors cannot be free from liability.
6. Crimes that require an element of the act and the fault element; both elements must not be found in one person (Sutan, 2006).

To determine the presence and absence of a criminal act, according to Moeljatno (1993), there must be proven elements of criminal acts that include:

1. The deed
2. A state that accompanies the act;
3. The occurrence of criminal weighting;
4. The element of unlawful objective;
5. Subjective elements against the law (Moeljatno, 1993).

Subjective element of law is found in people who commit the crime, namely with or without the actors' intention, whereas the elements contained in the objective laws are the birth circumstances that accompany the person who commits the crime. To determine if a corporation commits environmental crime, it must be done carefully by considering various factors to prove that the corporation is actually guilty, for it to be sanctioned. Punishment is intended to deter a corporation from committing the same crime in the future, especially for corporations who have been sanctioned.

Corporate responsibility for environmental crime

Forms of environmental crime

Environmental crime is all kind prohibited by Law No. 32 of 2009, and a person or legal entity that violates it may be subject to criminal sanctions in accordance with the environmental legislation in force. The acts that are prohibited in Law No. 32 of 2009 are specified in Article 69, as follows:

1. Acts that result in pollution and/or destruction of the

environment.

2. Hazardous wastes and toxicity entering the territory of the Republic of Indonesia.
3. Waste originating from outside the territory of the Republic of Indonesia to the environment of the Republic of Indonesia.
4. Disposal of waste in the environment.
5. Hazardous wastes disposal in the environment.
6. Genetically modified products released into the environment contrary to the legislation or environmental permits.
7. Clearing land by burning.
8. Preparing environmental impact analysis without having competence certificate.
9. Providing false information, omitting and damaging information.

Article 97 Law No. 32 of 2009 determined that environmental criminal acts are acts that meet the following elements:

1. Deliberate acts that exceed ambient air quality standards, water quality, marine water quality standard or standard criteria of environmental damage (Article 98):

- a. A minimum imprisonment of 3 years and maximum of 10 years and a fine of at least Rp 3,000,000,000,- and most Rp 10.000.000.000.
- b. A minimum imprisonment of four years and maximum of 12 years and a fine of at least Rp 4,000,000,000,- and a maximum of Rp 12,000,000,000, if it results to injury and / or harm to human health.
- c. Minimum imprisonment of 5 years and maximum of 15 years and a fine of at least Rp 5,000,000,000, - and a maximum of Rp 15,000,000,000, - if it results to severe injury or death.
- d. Negligence that leads to poor ambient air quality standards, water quality, marine water quality standard or standard criteria of environmental damage (Article 99):

1. Imprisonment for 1 year and maximum of 3 years and a fine of at least Rp 1.000.000.000, - and a maximum of Rp 3,000,000,000.
2. Imprisonment for 2 years and maximum of 6 years and a fine of at least Rp 2.000.000.000,- and a maximum of Rp 6,000,000,000, if it results to injury and / or harm to human health.
3. Minimum imprisonment of 3 years and maximum of 9 years and a minimum fine of Rp 3,000,000,000,- and maximum of Rp 9 billion, if it results to severe injury or death .
4. Breaking of waste water quality standards, and standard interference emissions shall be punished with imprisonment of 3 years and fine of Rp 3,000,000,000,- (see Article 100).
5. Releasing and/or distributing the products of genetic engineering to environmental media contrary to the legislation or environmental permits imprisonment of a

minimum of 1 year and at most 3 years and a fine penalty of at least Rp 1.000.000.000,- and a maximum of Rp 3,000,000,000,- (see Article 101).

6. Managing hazardous wastes and toxic without permission leads to a sentence of a minimum of 1 year and a maximum of 3 years and a fine of at least Rp 1.000.000.000,- and a maximum of Rp 3,000,000,000 (see Article 102).

7. Hazardous wastes and toxic produced leads to a sentence of a minimum of 1 year and a maximum of 3 years and a fine of at least Rp 1.000.000.000,- and a maximum of Rp 3,000,000,000 (see Article 103).

8. Dumping of waste and/or materials to the environment without authorization shall be punished by imprisonment of 3 years and a maximum fine of Rp 3,000,000,000 (see Article 104).

9. Inserting waste into homelands will lead to a sentence of 4 years minimum and 12 years maximum and a fine of at least Rp 4,000,000,000, and a maximum of Rp 12,000,000,000 (Article 105 of Law PPLH).

10. Hazardous wastes and toxic entering homeland will lead to a sentence of a minimum of 5 years and a maximum of 15 years and a fine of at least Rp 5,000,000,000, and a maximum of Rp 15,000,000,000 (see Article 106).

11. Importing hazardous wastes and toxicity prohibited by legislation into homeland will lead to a sentence of a minimum of 5 years and a maximum of 15 years and a fine of at least Rp 4,000,000,000, and a maximum of Rp 12,000,000,000 (see Article 107).

12. The burning of land is subject to imprisonment of a minimum of 3 years and maximum of 10 years and a fine of at least Rp 3,000,000,000, and a maximum of Rp 10.000.000.000, (see Article 108).

13. Business and / or in activities without having an environmental permit will lead to a sentence of a minimum of 1 year and a maximum of 3 years and a fine of at least Rp 1.000.000.000, and a maximum of Rp 3,000,000,000, (see Article 109).

14. Preparing EIA without a certificate shall be punished by a maximum imprisonment of 3 years and a maximum fine of Rp 3,000,000,000 (see Article 110).

15. Officials who give the official environmental permits without EIA and/or UKL / UPL will be given a sentence of a maximum of 3 years and a maximum fine of Rp 3,000,000,000 (Article 111 paragraph (1)).

16. Officials who provide business license and/ or activities that are not equipped with environmental permits shall be punished by a maximum imprisonment of 3 years and a maximum fine of Rp 3,000,000,000 (Article 111 paragraph (2)).

17. Officials that deliberately not supervise the compliance of those responsible businesses and/or activity of the legislation and environmental permits causing pollution and/or environmental damage resulting in loss of human lives shall be imprisoned for one year or given a maximum fine of Rp 500.000.000 (see Article

112).

18. Providing false information and omitting information on the supervision and enforcement of laws relating to the protection and management of the environment shall lead to a life sentence of a maximum of 1 year and a maximum fine of Rp 1.000.000.000 (see Article 113).

16. Deliberately preventing, hindering, or frustrating the implementation of the environmental watchdog official duties and or civil investigation authorities shall be punished by a maximum imprisonment of 1 year and a maximum fine of Rp 500.000.000,- (see Article 115).

Under the provisions of the articles aforementioned, there are 17 actions that can be categorized as environmental crimes. However, not all types of criminal offenses can be imposed on corporations, according to Law No. 32 of 2009, because they are not included in the subjectum litis. Article 110 says:

Any person who compiles EIA without having a certificate of competence constituent EIA referred to in Article 69 paragraph (1) letter (i) shall be punished with imprisonment of three (3) years and a maximum fine of Rp 3,000,000,000,- (three billion rupiah).

Article 111 paragraph (1) determines that the donor officials without the necessary environmental permits EIA or Environmental Management Plan/Environmental Monitoring Procedures referred to in Article 37 paragraph (1) shall be punished with imprisonment of three (3) years and a fine of Rp 3,000,000,000- (three billion rupiah); while paragraph (2) says, officials licencing business and / or activities without environmental permits referred to in Article 40 paragraph (1) shall be punished with imprisonment of three (3) years and a fine of Rp 3,000,000,000 (three billion rupiah).

Furthermore, Article 112, Law No. 32 of 2009 determines: Every authority that does not monitor the compliance of those responsible business and/ or activities of the legislation and environmental permits referred to in Article 71 and Article 72, causing pollution and /or damage resulting in loss of human lives, shall be imprisoned for 1 (one) year or given a fine of Rp 500,000,000 (five hundred million rupiah).

Corporate criminal responsibility for environmental crime

The criminal justice system in Indonesia does not specifically regulate the criminal liability corporations (corporate liability), but the setting is scattered in various provisions of the special crimes outside the KUHP hereinafter referred to as Criminal Code. The exclusion of corporate criminal liability in the Criminal Code in Indonesia, due to the subject of the crime of corporate law is not recognized in the Criminal Code, known as the

subject of law in the sense of a person's biological background.

In addition, the criminal code also adheres to the principle of *societas delinquere non potest*, and according to this principle, a legal entity cannot be considered to commit a crime. Thus, the thought about the nature of the legal entity does not apply in the field of criminal law (Rusmana, 2014).

In its development, corporate criminal liability is considered very important, because lately a lot of criminal offenses are committed by the corporation which are very detrimental, such as in banking, and environmental field. The importance of corporate criminal liability may refer to the opinion of Elliot and Quinn, who put forward the basic thought as follows:

1. It is impossible for any criminal liability corporations, companies to refrain from criminal laws and only employees are charged with committing criminal offenses
2. In some cases, for procedural purposes, it is easier to sue the company than its employees
3. In the case of serious criminal offenses, a company has more ability to pay a fine imposed instead of the employee.
4. The threat of criminal charges against the company could encourage shareholders to oversee the activities of companies in which they have invested
5. If a company has to make profits from illegal business activities, the company should also bear the sanctions for criminal acts that have been done instead of the employees
6. Liability corporation can prevent the companies to push their employees, either directly or indirectly, for employees that do not seek profit from illegal business activities; seventh, adverse publicity and the imposition of criminal penalties against companies can serve as a deterrent for companies to carry out illegal activities, where this is not possible if it is demanded of employees (Lucky, 2014).

According to Barda Nawawi Aried as cited by Muladi (1991), for any criminal liability to be obvious, first there must be someone who should be held accountable for any actions carried out, meaning that one must be declared as the perpetrator of a particular criminal offense.¹⁹ Regarding how to determine the criminal liability corporation, lawmakers have established several criteria for criminal liability as follows:

1. Corporate executive board as maker and official who are responsible for imposing certain obligations. The actual obligation is imposed on the corporation. Officers who do not fulfill that obligation shall be sentenced. So that in this system there is a reason to abolish crimes. The rationale is, the corporation itself cannot be held responsible for an offense, but it is always an officer who commits the crime; and therefore the officer is

criminalized and punished.

2. Corporations as makers and administrators responsible. In the case of a corporation as a maker (actor) and an officer who are responsible, A crime is committed by a corporation through the means authorized by the corporation in its base budget. Criminal offenses committed by the corporation are through the caretaker of the legal entity. The nature of the act makes it a criminal offense. People who involve in the corporate criminal are held responsible regardless of whether they know or not about the crime.

3. Corporations also take responsibility for any crime (Muladi-dan, 1991).

Basic reference of the corporation as criminal and legal liability is the development of corporate legal act itself. The law of just imprisoning the perpetrators of criminal acts is not enough, because the legal entity receives public benefits According to Muladi (1991), in determining the responsibility of corporations in environmental crime, the following should be given attention:

1. The corporation includes both legal persons (legal entity) and non- legal entities such as organizations, etc.
2. The corporation can be private (private judicial entity) and may also be public (public entity).
3. If it is identified that the criminal act was carried out in an organizational environment, the natural person (managers, agents, employee) and corporation may be liable either individually or jointly (bi-punishment provision).
4. There is mismanagement in the corporation leading to the so-called breach of a statutory or regulatory provision.
5. The liability of legal entities is done regardless of whether the people responsible in the legal entity have been identified, prosecuted and convicted
6. Any criminal sanctions and measures can basically be imposed on corporations, except death penalty and imprisonment (Muladi-dan, 1991).

A comparison can be put forward regarding corporate criminal offense in the United States, which introduced corporate death penalty. It implies prohibition of imprisoning a corporation to strive in certain business areas, and other restrictions against the corporation, namely;

1. The application of criminal sanctions against the corporation does not eliminate individual errors.
2. The criminal prosecution against the corporation should pay attention to the position of the corporation to control the company, through a policy of the board or the board (corporate executive officers) who has the power to decide (the power of decision).

Environmental offenses in Indonesia are determined in Law No. 32 of 2009; as many as 17 types / forms are

contained in the provisions of Articles 97 - 115. The term "everyone" in the article is a legal subject of crime, except offenses contained in Article 110, Article 111 and Article 112. The definition of the term 'everyone' can be understood through the provisions of Article 1 point 32 Law No. 32 of 2009, that: "Every person is an individual or business entity, whether incorporated or not". The provisions of article further clarify the position of the corporation as a legal subject. Thus, if a corporation commits an environmental crime, of course, can be requested criminal liability. Similar with the above opinion, Mas (2004) states that:

Corporate crime is a formulation of corporate crime set forth in the Code of Netherlands Criminal. Thus, corporation as a legal person can be convicted based on Law No. 32 of 2009 on the Protection and Management of the Environment. Furthermore it is said that, criminal liability of corporate leaders (factual leader) and giving of orders can be punished simultaneously. The sentence was not due to a physical act or fact, but based on the function to which it aspires in a company.

Corporate responsibility in environmental crime can be seen further in the provisions of Article 116 paragraph (1) In Law No. 32 of 2009, which specifies that:

If an environmental criminal act is conducted by, for or on behalf of a business entity, criminal prosecution and criminal sanctions are imposed on:

1. Business entity; and/or
2. The person who gave the order to commit the crime or the person acting as the leader of the criminal offense.

Notwithstanding the above, it can be said that corporations should be responsible for environmental crime committed, if such crime meets the following elements:

1. Carried out by the corporation itself
2. Carried out for the benefit of the corporation, either themselves or for others, or
3. Environmental crime committed in the name of the corporation, and the person who commits the crime representing the corporation. These elements are not cumulative but alternative nature, meaning that if one of these three elements is met, then the corporation can be held accountable for the criminal acts committed.

In addition, the formulation of the provisions of Article 116 is also cumulative relatively; meaning that if the environmental is crime committed by, for and on behalf of the corporation, then the liability is not absolutely borne by the corporation itself, but also by those who give the orders to commit the environmental crime. The liability can be charged only to the corporation or to the person who gave the order or its leader individually, or together.

Criminal liability of corporations may only be imposed if the offense is represented by persons authorized to represent the corporation, both outside and inside the court. The provisions of Article 118 Law No. 32 of 2009 specify that: "Against the criminal acts referred to in Article 116 paragraph (1), criminal sanctions were imposed on business entities represented by the board authorized to represent the court in accordance with the laws and regulations of carrying out its functions". The provisions of that article imply that, in deciding whether or not the corporation is responsible for the criminal acts of the environment, it must be checked whether the people who act on behalf of the corporation have legality.

This provision is in line with Law Number 40 Year 2007 regarding Limited Liability Company, that corporations can only be held accountable for criminal acts committed by representative legitimate corporations, because they are the only legal subjects. However, if the representative in the corporation is not valid, then the corporation cannot be burdened with responsibility, but those responsible are the people who committed the crime of which representativeness is not lawful.

Law No. 32 of 2009 specifies that criminal sanctions can be imposed both on corporations as subjects of law, and against those who give the order to commit a crime, and/or acting as a representative of a corporation. When corporations do environmental crime, no criminal sanctions can be automatically transferred from the corporate crime into a personal crime, or vice versa. Related to the application of criminal sanctions against corporations indulging in environmental crime, Stephen Hariyanto stated that: "in case of environmental crime, the criminal sanctions are corporations, but the board or the management company may also be convicted, if there is a personal crime (Muladi-dan, 1991)".

Criminal sanctions that can be imposed on corporations indulging in environmental crime are criminal fines and additional fines, but do not include imprisonment. This is caused by the nature of the corporations as a legal subject which cannot be equated with human beings, so that the corporations cannot be sentenced to imprisonment. The criminal sanctions based on Article 116 verse (2) are also applicable to offenses committed by employees or people in other relationship that acts within the scope of the corporations. The leader of the crime or those who give orders to commit it, under the provisions of Article 117, can be threatened with imprisonment and fines. The sanctions can be exacerbated by one-third of its original demands.

The criminals are not to be imprisoned, because the purpose of imprisonment is to curb the freedom of the individual; while t corporations are not subjected to human laws. Thus imprisonment is perceived logically as inappropriate and contrary to the legal procedure. Therefore, corporations that commit environmental crime should only be fined and prohibited from performing certain actions as in the United States, and possibly also additional criminal, such as the lifting of certain rights.

According to the provisions of Article 119 Law No. 32 of 2009 (Legislation on Protection and Management Environment), the types of sanctions that can be imposed on corporations in addition to imprisonment and fines, include:

1. Deprivation of profits derived from criminal acts
2. Whole or partial closure of the company
3. Recovery from criminal offenses
4. Doing what is ignored without right; and/or
5. Placing the company under guardianship for a maximum of three years.

Law No. 32 of 2009 also stipulates that if the corporations are prosecuted with additional criminal, then in accordance with Article 120 verse (1), the Attorney should coordinate with the responsible agency in the field of protection and environment management for implementing the execution. Additional criminal acts regulated in Article 119 have something in common with the provision of administrative sanctions, but the the difference indictment verdict must be made with the determination or decision of the court; while administrative sanctions do not require a court decision, but are simply applied by government officials authorized to impose administrative sanctions.

Responsibility of civil corporation for environmental crime

According to Law No. 32 of 2009, in addition to being criminally responsible, corporations that commit environmental crime must also be accountable in civil cases. Law No. 32 of 2009 Article 87 specifies that: "every responsible business that perform unlawful acts in the form of pollution and / or destruction of the environment is obliged to pay compensation and / or perform certain actions". As Article 87 does not clearly arrange the mechanism nor determine the amount of compensation, then the application must relate to Article 1365 of the Civil Code of Unlawful Acts. Based on the provisions of Article 1365 of the Civil Code, procedures for the determination and payment of compensation can only be done through a court decision. This must be done in the court. If in the judicial process it can be proven the existence of corporate actions that pollute the environment, then the court determines the amount of compensation to be paid by the corporation to the plaintiff.

In Article 1365 of the Civil Code, the burden of proof of the corporations error is borne by the plaintiff, because this article adheres to the principle of liability based on fault. As stated by Blair and Bernard, (1978). A breach of duty is imposed by law; a private wrong is distinguished from a crime which is looked upon as a public wrong (Blair and Bernard, 1978). Furthermore, Colossal and

Meyer stated: "all torts involve some act (possibly words as well as physical movement) or an omission when there is a duty to perform. The act must be shown to cause an injury to a party who can recover monetary damages in civil legal action as a result (Blair and Bernard, 1978).

In addition to being accountable for damages based on the provisions of Article 87 Law No. 32 of 2009, Article 1365 of the Civil Code, Article 68 Law No. 32 of 2009 also specify that corporations commit environmental crime by distributing hazardous wastes in the environment , generating hazardous wastes and toxic , and/or engaging in activities that damage the environment. However, this principle is not applied immediately on any actions that pollute the environment, but only applied to certain situations and conditions.

Krier (1970). stated that the doctrine of strict liability for abnormally dangerous activities can be of assistance in many cases of environmental damage. Strict liability is, of course, more than a burden-shifting doctrine, since it not only relieves the plaintiff of the obligation to prove fault but forecloses the defendant from proving the absence of fault (James, 1970). Kolasa and Bernard (1978) also stated that:

"... strict liability, in general requires the same elements as does an action under negligence with the important addition of the existence of an absolute duty to save a situation" (Blair and Bernard, 1978).

The application of strict liability is intended only for environmental pollution that is considered to be very harmful to the environment. The application of the principle of strict liability arises immediately upon the occurrence of the act, regardless of error of the perpetrators. According to this principle, a person alleged to have committed environmental pollution does not need to prove the error or not, but the person directly should be accountable legally, including restitution filed by the injured party/plaintiff.

Conclusion

The responsibility of corporations in environmental crime is regulated in Law No. 32 of 2009, particularly in Article 97 and Article 115; and based on this legislation, the corporation is considered as a legal subject. If convicted of a criminal offense regulated in Law No. 32 of 2009, then the corporation could be held responsible. The responsibility of corporations in environmental crime can only be done if such crime meets the following elements:

1. Carried out by the corporation itself.
2. Carried out for the benefit of the corporation either individually or by another person on the basis of lawful authority, or
3. Environmental crimes conducted on

behalf of the corporation.

These elements are not cumulative but rather alternative, meaning that if one of these three elements is met, then the corporation is responsible for the criminal acts. If the environmental crime is committed by, for and on behalf of the corporation, then the person who gives the orders will be held responsible. In Law No. 32 of 2009, corporations can be subject to criminal sanctions and / or fines alternatively or cumulatively.

In addition to the criminal sanctions, the corporation which has been proven to have conducted criminal offenses in certain environments, including distributing hazardous wastes and toxicity in the environment media, can be held accountable in civil cases on the basis of strict liability, or directly without the right to prove the errors of the corporation and its actions.

CONFLICTS OF INTEREST

The author has not declared any conflict of interests.

REFERENCES

- Andi H (1985). Pengantar Hukum Pidana Indonesia, Ghalia Indonesia.
- Andy H (1985). *Pengantar Hukum Pidana Indonesia*, Ghalia Indonesia,., hlm. 24
- Blair JK, Bernard M (1978). Legal System, Prince Hall, Inc. Englewood Cliffs, V.J., p.625.
- Indriyanto SA (2001). Point of View of Criminal Justice Sistem, Office of Legal Consultan Oemar Seno Adji & Partners, Jakarta.
- Indriyanto SA (2006). Economic Crime, Corporation, Banking Corruption (Subject Modul Corporation Crime Law), Master of Law.
- Ismid H (2005). Pembaharuan Proses Lahirnya Kebijakan Publik dalam Buku Di Bawah Satu Payung Pengelolaan Sumber Daya Alam, , hlm. 9.
- James EK (1970). Environmental Litigation and The Burden of Proof dalam Malcolm F Baldwin and James K.page, Law and The Environment, Walker Publishing Company, New York. p.119.
- Koesnadi H (2005). Pentingnya Payung Hukum dan Pelibatan Masyarakat Dalam Buku Di Bawah Satu Payung Pengelolaan Sumber Daya Alam. hlm. XVI.
- Kolasa BJ, Bernard M (1978). Legal System, Prince Hall, Inc. Englewood Cliffs, V.J.
- Krier JE (1970). Environmental Litigation and The Burden of Proof dalam Malcolm F Baldwin and James K.page, Law and The Environment, Walker Publishing Company, New York,.
- Lucky R (2014). Corporate Criminal Responsibility, <http://raspati.blogspot.com/2007/06/corporatecriminalresponsibility.html>, accessed on March 10.
- Mas AS (2004). Corporate Responsibility in Environmental Case, Jentera Law J. Hukum Online, 23 September .
- Moeljatno KUHP (1993). Principles of Criminal Law, Rineka Cipta, Jakarta.
- Muladi-dan PD (1991). Corporate Responsibility in Criminal Law, Sekolah Tinggi Hukum, Bandung.
- Mustafa A, Ruben A (1983). Essence of Criminal Law, Penerbit Ghalia Indonesia, Jakarta.
- Ray WIG (2000), Corporate Law , Penerbit Megapoin, Jakarta.
- Rusmana QD (2014). Corporate Responsibility in Fisheries Crime. <http://www.solusihukum.com/artikel/artikel45.php>, accessed on March 10.
- Sahetapy JE (1994). Corporate Crime, Eresco, Bandung.
- Setiyono H (2003).Corporate Crime, Bayumedia, Malang.
- Sutan RS (2006). Corporate Criminal Responsibility, Grafiti Pers, Jakarta
- Yusuf S (2002). Pelaku Usaha, Konsumen dan Kejahatan Korporasi, Ghalia Indonesia, Jakarta, hlm. 45

Journal of Law and Conflict Resolution



Related Journals Published by Academic Journals

- International NGO Journal
- International Journal of Peace and Development Studies
- Journal of Public Administration and Policy Research
- African Journal of Political Science and International Relations

academicJournals