

3. Analysis of Law Enforcement Problems Related to Crime of Environmental Degradation Caused by Corporations in Indonesia□

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Analysis of Law Enforcement Problems Related to Crime of Environmental Degradation Caused by Corporations in Indonesia*

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Abstract

Corporations are part of industrialization that destroys the environment. Air pollution has damaged the environment. Criminal action against corporations for destroying the environment must provide a sense of justice. This study intends to examine the obstacles in handling corporate crime, which cause environmental damage, and how to deal with a corporate crime based on the value of justice. In this research, a philosophical approach was taken, namely the study of a case in terms of the ideal in the future. The study results found that there were obstacles in handling criminal cases of environmental destruction, such as those related to regional policies on investment, strong backing, and compensation, which then eliminated criminal cases. The Environmental Law regulates corporations' handling of criminal acts of environmental destruction. Accountability, in this case, is carried out by the business entity and the person in charge of the business entity. A crime can be applied to the management and owner of a corporation as a business entity. An offence is needed for corporations destroying the environment based on justice.

Keywords: Corporation; Crime; Environment; Justice; Indonesia

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Analisis Masalah Penegakan Hukum Terkait Kejahatan Degradasi Lingkungan Yang Disebabkan Oleh Perusahaan Di Indonesia

Abstrak

Korporasi merupakan bagian dari industrialisasi yang merusak lingkungan. Pencemaran udara telah merusak lingkungan hidup. Pidana terhadap korporasi perusakan lingkungan harus memberikan rasa keadilan. Tujuan penelitian adalah mengkaji kendala dalam penanganan tindak pidana korporasi perusakan lingkungan dan cara penanganan terhadap tindak pidana korporasi berbasis nilai keadilan. Penelitian ini menggunakan pendekatan filosofis, yaitu mengkaji suatu kasus dilihat dari sisi ideal ke depan. Hasil penelitian menunjukkan bahwa ada kendala dalam penanganan perkara tindak pidana Korporasi perusakan lingkungan, di antaranya karena kebijakan Daerah Tentang Investasi, Kuatnya backing, dan ganti rugi yang menghilangkan kasus pidana. Penanganan tindak pidana perusakan lingkungan oleh korporasi diatur dalam Undang-undang Lingkungan Hidup. Pertanggungjawaban dilakukan Badan Usaha, dan penanggung jawab badan usaha. Pidana dapat diterapkan kepada pengurus dan pemilik badan usaha. Perlu pidana bagi korporasi perusak lingkungan yang berbasis keadilan.

Kata Kunci: Korporasi; Pidana; Lingkungan Hidup; Keadilan; Indonesia

Анализ Проблем Правоохранительных Органов, Связанных С Преступлением, Связанным С Деградацией Окружающей Среды, Вызванным Корпорациями В Индонезии

Абстрактное

Корпорации являются частью индустриализации, которая разрушает окружающую среду. Загрязнение воздуха наносит ущерб окружающей среде. Уголовное преследование корпораций за уничтожение окружающей среды должно обеспечивать чувство справедливости. Это исследование направлено на изучение препятствий в борьбе с корпоративной преступностью, которые причиняют ущерб окружающей среде, и на то, как бороться с корпоративной преступностью на основе ценности правосудия. В этом исследовании был принят философский подход, а именно изучение случая с точки зрения идеала в будущем. Результаты исследования показали, что существуют препятствия для рассмотрения уголовных дел об уничтожении окружающей среды, такие, как те, которые связаны с региональной политикой в области инвестиций, сильной поддержки и компенсации, которые затем ликвидировали уголовные дела. Закон об окружающей среде регулирует обращение корпораций с преступными актами экологического уничтожения. Ответственность, в данном случае, осуществляет предприниматель и лицо, ответственное за предпринимательскую организацию. Преступление может быть применено к руководству и владельцу корпорации в качестве делового субъекта. Для корпораций, которые разрушают окружающую среду, основанную на справедливости, необходимо совершить преступление.

Ключевые Слова: Корпорация; Преступность; Окружающая Среда; Правосудие; Индонезия

A. INTRODUCTION

There has been a significant impact arising from industrialization and modernization on the sustainability of the environment as a buffer for life and the lives of creatures worldwide. Industrialization and modernization are necessary for economic development to provide welfare for society and the country. Through automation, the wheels of the people's economy will rotate along with their activities that utilize the environment as an economic source, both in the form of industrial raw materials and as food for the community.

The environment is a very vital resource. In this case, the importance of the domain is not only due to its role as a natural resource but also as a component of the climate (Uzzell & Moser, 2006). A quality living environment significantly contributes to the welfare of society as a whole (Keles, 2012). The position of the environment as one of the determinants of the life support system must be maintained continuously. The 1945 Constitution in Indonesia has guaranteed that the earth and natural resources contained therein are controlled by the state and utilized as optimally as possible for the welfare of the people. (Herlan, 2016)

The corporation is an inseparable part of industrialization. The existence of a corporation is a legal subject that contributes greatly to increasing economic growth and national development (Arman & Haris, 2020). Corporations increase state revenue through tax revenue, create jobs and transfer technology. (Puspitasari & Devintawati, 2018)

It must be realised that corporations may also damage environmental sustainability in their economic activities, including air pollution. Water pollution caused by industrial waste treatment is also known to be the cause of dirty rivers and community water sources. Further environmental pollution can cause health problems for the communities around the factory. Soil pollution causes the appearance of substances in the soil that harm humans (Zwolak, et al., 2019). If environmental harm's impact is allowed, living ecosystems' survival will also be disturbed.

The people of Indonesia and neighboring countries such as Malaysia and Singapore feel the impact of environmental damage done by corporations. The two neighbouring countries protested the density caused by burning peatlands in Kalimantan and Sumatra. The peat burning aims to develop oil palm and mining areas. Another example is the impact of hot mud gushing into residential areas in the Sidoarjo area by PT. Lapindo Brantas. This incident forced the community to move to another residential location because the impact of the mud could not be overcome. The case of pollution in Buyat Bay due to activities

carried out by PT. Another example is Newmont Minahasa Raya exploiting gold and dumping waste directly into the sea. In this case, the impact is exposing the surrounding community to an outbreak of Minamata disease. ([Roup, 2017](#))

Since the 1990s, the importance of the corporation's study of crimes and environmental hazards has begun to be noticed ([Brisman & Avi, 2019](#)). Exploitation by corporations can endanger lives globally and have long-term consequences for animals, humans and non-humans, as well as the biosphere due to reduced environmental carrying capacity. Activities that have the potential to result in reduced environmental carrying capacity or environmental pollution are not merely individual activities. What is worse in this case is precisely what corporations do ([Nurse, 2014](#)). Legal protection is required for communities affected by environmental destruction. Criminal threats to perpetrators of environmental crimes need to be applied, not only to individuals, but also to corporations. Crime is considered very important to create *ultimum remedium* for perpetrators of environmental destruction.

In practice, the concept of sustainable development that is put in place as a policy actually leads to uncontrolled management of natural resources, which results in environmental pollution that disturbs the preservation of nature. Environmental destruction has a major impact on the preservation of nature and human health, raising awareness of the need to regulate environmental problems with the enactment of legal instruments. Therefore, an Environmental Law was issued, which is expected to protect the biotic and abiotic communities to avoid pollution caused by human activities. Legal protection instruments provide criminal threats to perpetrators of criminal acts of environmental destruction by individuals and corporations ([Herlan, 2016](#)). This law is the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the Environmental Law). The aim is to create a corporate management that supports and maintains a good living environment for humans and provides justice for society. Ideally, the presence of a corporation is within the framework of sustainable economic development and impacts justice for society in the form of increased welfare, justice and prosperity. ([Arman & Haris, 2020](#))

Based on the above background, the problems taken to be discussed in this study are the problems faced in handling criminal acts of environmental destruction committed by corporations in Indonesia. In addition, it also discussed the idea of handling criminal acts against corporate environmental destruction based on the value of justice in the future.

B. METHODS

This research was a research library. Library research is research that is done on library materials or secondary data. This research includes literature research, considering that the data used is secondary, primarily in legal documents. The approach taken was philosophical (Ali, 2019). The philosophical approach in legal research is to examine law from an ideal point of view. The philosophical approach was taken because the object under study is the law at a perfect level. The data source used in this research was secondary data. Secondary data is data obtained indirectly or has been provided by other parties. Secondary data is used as the primary reference, readily available in the form of writing in books, scientific journals, and other written sources. The data collection techniques used were conventional and online searches. Literature transmission is conventionally carried out by searching for library sources in data storage places, while online search searches for library sources in cyberspace via the internet network (Hamzani, 2021). Literature research is conventionally carried out by searching for library materials, purchasing books and journals and attending scientific activities (seminars). Online research was carried out by browsing the internet. The data analysis method used was qualitative, which involves organizing and sorting data into patterns, categories and basic description units so that themes can be found and presented in narrative form (Hamzani, 2021). This study took qualitative data analysis because the data was raised in a narrative-descriptive manner, not in numerical or numerical form.

C. RESULTS AND DISCUSSION

1. Problems in the Handling of Crime of Environmental Destruction Caused by Corporations in Indonesia

Environmental law enforcement as an act and coercion process to obey laws which are carried out based on statutory regulations is still problematic. Ideally, law enforcement should be able to communicate clear moral messages regarding the criminal character of violations of environmental damage (Huisman & Van Erp, 2013). The Environmental Law has emphasized three steps to enforce the law systematically. Hierarchically, these are administrative, dispute settlement outside court, and through court as a criminal.

Many obstacles are found in the enforcement of criminal acts of environmental destruction. Regional policies regarding investment that do not use the principle of sustainable development are severe problems. The

Indonesian Center of Environmental Law (ICEL) reports increasingly gloomy environmental law enforcement indicators. This is shown by the failure of various ecological law enforcement efforts initiated by the government or society. Some of the dominant obstacles are as follows:

a. Misuse of permits aimed at personal interests by the Regional Head

Many regional officials still take advantage of permits for personal gain and investment policies that are not equipped with efforts to embody the principles of *Good Sustainable Development Governance (GSDG)*. One of them is environmental preservation, the most essential prerequisite for sustainable development (Roy & Tisdell, 1998). Sustainable development represents the ideology of development strategies (Stojanović et al., 2016). On the other hand, many policies have been made to support the exploitation of natural resources. For example, mining policies in protected forest areas have resulted in transgenetic principles that ignore the 'precautionary principle.' (Hamid, 2016)

The licensing process carried out by local governments refers to the principle of regional autonomy, where investment is a necessity. Often, local governments ignore environmental sustainability aspects. Many green zones and agricultural areas were built for factories only because the corporations gave them hefty licensing fees and investments. This condition causes ecological impacts because the factory may greatly disturb the community. Floods and the emergence of soils containing chemical elements are found in various places. In this case, water is the primary necessity of people's lives and is sedimented by factory waste.

b. The Strong backing owned by environmental destroying corporations

The existence of a corporation is one thing that cannot be avoided. The corporation is one of the business entities needed in the development and economy of Indonesia. One sign of a developed or developing country is increasing corporate activity. The corporation will also provide added value economically to the local government and the central government.

The government, both central and local governments, always provides encouragement and convenience for the emergence of new industries and the development of existing industries. The government also tends to provide easy licensing for new businesses or the development of existing companies (Dewanto, 2015). The role of local governments as representatives of the state providing permits cannot be avoided because there is pressure from the owner

of the Corporation. Many of the Corporation owners have strong backings, wherein they have an invisible strong support, which protects the owners of large Corporations.

c. There are differences in law enforcement officials' understanding of applying environmental law

There are differences in the understanding of the application of environmental laws regarding who is responsible for the executions. Data obtained from the Ministry of Environment shows that the criminal acts of ecological damage the Ministry of the Environment handles are 68 cases. There are 21 cases in the collection of materials and statements, while 27 issues are currently in the investigation stage. Seventeen patients have been submitted to the prosecutor's office. However, they are still being reviewed by the Research Prosecutor. Two cases are in the trial stage, and 1 claim has been completed.

Given these conditions, environmental investigators and police investigators must improve coordination and equalize mutual perceptions and understandings. These parties need to share experiences in handling environmental criminal cases through the corridor of the Mutual Agreement to enhance the performance of law enforcement officials in upholding environmental law (Nurdin, 2017).

d. Compensation that eliminates a criminal case

Destruction of the environment and natural resources is a criminal act that causes losses to the state, both in economic and ecological terms. Investigators in this case are trying to encourage the state to recover losses. Investigators can face problems if state losses are recovered, but the continuation of the legal process may stop. Investigators have been continuing the criminal process. An example is the government filing a lawsuit against a company suspected of burning land (Nurdin, 2017). Sinar Maskalah Group is the company that was sued for this forest destruction crime. After carrying out administrative fines, there were no reports of criminal cases. Of course, this will deter several other companies not deterred from committing criminal acts of environmental destruction. This is because as long as the company can pay a fine, everything can be resolved without needing a legal process.

10 Handling of Crime of Environmental Destruction caused by Corporations Based on the Value of Justice in the Future

Environmental law enforcement in Indonesia based on criminal law instruments is regulated in articles 83 to 93 of the Environmental Law. Its main function is to create a deterrent effect and a suffering effect on perpetrators of environmental destruction. Environmental crimes include crimes because the consequences they cause threaten the sustainability of the environment, which in turn will be detrimental to the long-term welfare of human and non-human life. ([Halsey, 1997](#))

The use of criminal law instruments is based on two characteristics: criminal law as an ultimatum remedium. This is a criminal law as a last resort, for example, if the action has been committed more than once and the perpetrator does not comply with administrative sanctions. Second, criminal law is a premium of remidium, which is an effort to give the offender the effect of suffering from the start if there is an act against the law. ([Samekto, 2020](#))

22 Following the criminal justice system adopted in Indonesia, the criminal process starts with the police as investigators. However, apart from the police, crimes other than general crimes also involve the prosecutor's office and certain civil servant officials within government agencies. 13 Specifically, civil servant officials are called Civil Servant Investigators, whose scope of duties and responsibilities is in environmental protection and management. Implementation must coordinate with the police as the principal investigator.

Criminal provisions related to environmental crimes committed by legal entities, better known as corporations, are regulated in Articles 116 to 119 of the Environmental damage cases and are closely related to the economy, business and industry, which are mainly carried out by legal entities. The corporation must be criminally responsible if its industrial activities cause environmental pollution and damage.

Corporate liability in environmental crimes must pay attention to the following matters: a). Corporations, in this case, include legal and non-legal entities, such as organizations; b). Corporations can be private or public; c). if it is identified that environmental crime is committed in an organizational form, naturally (managers, agents, employees), the corporation can be convicted individually or collectively; d). liability by corporations must be carried out regardless of whether the people responsible for legal entities are successfully prosecuted or not; e). all criminal sanctions can be imposed, except for capital

punishment and imprisonment; and f). the imposition of criminal sanctions on corporations does not erase one's mistakes.

The criminal acts that can be held accountable by the corporation are all acts that include criminal acts committed by persons who have a functional position in a legal entity and who commit such actions in the business environment, according to the articles of association. A corporation is deemed to have committed an environmental crime if it is committed by people who have a working relationship with the corporation or other relationships with the corporation acting in the environment of the corporation's business activities concerned. The working relationship here is a legal relationship between an entrepreneur/individual and a worker based on a work agreement. Both corporations and people who give orders or act as leaders in the corporate business activity environment can be prosecuted and subject to criminal sanctions and disciplinary action.

Environmental law enforcement is a preventive and repressive effort to overcome environmental pollution and destruction. Preventive measures mean active supervision carried out in compliance with regulations without an immediate incident involving a concrete incident. Meanwhile, preventive efforts are conducted through counselling, monitoring, and supervisory powers. Repressive measures are carried out when an act violates the rules, where this effort aims to end the prohibited show. Preventive and repressive measures in law enforcement will only be effective if legal substance, law enforcement structures, and adequate legal culture support environmental law enforcement.

So that crime as a means of environmental law enforcement can encourage the birth of environmentally sound business activities, criminal prosecution should be directed at employees as physical perpetrators and in acts of environmental pollution or destruction ([Cusato, 2017](#)). Illegal acts should also be directed at those who control and determine the company's running, namely managers and managers. The threat of crime will encourage them to make decisions and lead employees to pay more serious attention to environmental protection efforts as a cross-sectoral problem whose implications are closely related to human rights, security and others so that it will improve management performance—business entity environment. ([Takdir, 2019](#))

The study of the accountability of business entities, or what in academia is also called corporate responsibility in Indonesia, has emerged since the late 1980s. There are three corporate criminal liability systems, including: a). Management as maker and responsible; b). The corporation as the responsible maker and manager; and c). The corporation as a maker and also a responsible

person. The liability of a legal entity still opens the possibility to prosecute and criminalize individuals, including managers or managers, in addition to the legal entity itself. The role of humans or individuals is still essential. Therefore, they still need to be the target of prosecution. Managers have social position or power, at least within the scope of the company where they work. Not only enjoying social position, it also needs to be accompanied by responsibility as reflected in the expression: *“Where social power exists, so does responsibility.”*

According to academics, the concept of criminal liability by a business entity or corporation also needs to be examined about how the concept is formulated according to the norms of environmental law in Indonesia. Criminal liability by business entities formulated in Article 116 to Article 119 of the Environmental Law, which contains criteria for the birth of accountability of business entities and who should be responsible (Roup, 2017).

Criminal liability for a business entity arises in the following conditions: First, environmental crime is committed by a business entity or on behalf of the business entity. Second, by people based on work relations or other relationships which act within the scope of work of the business entity. Since a business entity cannot work without being moved by humans, the physical actor is still a human, namely a person on behalf of a business entity or a person based on a work agreement, for example, a work contracting agreement.

The next important thing to consider is determining who should be responsible if an environmental crime is declared to have been committed by a business entity or corporation. Article 116 paragraph (1) states that “criminal charges and criminal sanctions are imposed on: (a) a business entity and/or (b) the person who gave the order to commit the crime or the person who acts as the leader in the crime.” Besides, the concept of accountability must also be guided by the provisions of Article 118, which states: “Concerning criminal acts as referred to in Article 116 paragraph (1) letter a, criminal sanctions shall be imposed on business entities represented by managers who are authorized to represent inside and outside the court following statutory regulations as a functional actor.”

Three parties can be charged with prosecution and punishment: a). the business entity itself; b). a person giving orders or acting as a leader in a criminal act; and c). management or head of business entities. This is based on the formulation of Article 118, which states that penalties are imposed on a business entity represented by a management authorized to represent inside and outside the court as a functional actor. Managers can still be held accountable based on criteria if they are “the person giving orders or the person acting. The difference

is that the formulation of Article 116 paragraph (1) letter b does require the investigator and public prosecutor to prove that the management has acted as the person giving orders or as the leader in a criminal act. It takes hard work from investigators and public prosecutors to prove the role of management in environmental crimes.

Company managers who know and allow company employees to release waste disposal without going through treatment are deemed to have committed a criminal act on behalf of the business entity and, therefore, must be held responsible. This provision is a breakthrough or progress from an effort to encourage company management to take measures to prevent, control and restore environmental pollution or destruction when leading a business entity.

The Board of Directors can also be held accountable. Still, it must be sorted out or differentiated among them, considering that the Board of Directors can consist of a President Director and other Directors. These issues should be reviewed on a case-by-case basis. Suppose it can be proven that the violation has been discussed in a leadership meeting, and the directors agree to allow the violation to occur for reasons of seeking company profits. In that case, they can together and equally be seen as the main perpetrators of the offence. If one of the directors can prove that he is not present at the leadership meeting and has never heard of any violations, he can be exempted from prosecution.

Types of crimes for business entities proven to have committed environmental crimes are as follows: a). deprivation of profits from a criminal act; b). the closure of all or part of the place of business and/or activities; c). restoration due to criminal acts; d). Obligation to do what is neglected without rights; and e). The company's placement is under siege for a maximum of 3 years.

The formulation of article 119 does not explicitly state whether this type of punishment is alternative or can be imposed on two or more simultaneously. Of these types of penalties, two or more types can be applied depending on the case by case or the consequences of the offence. ([Takdir, 2019](#))

Corporations' criminal responsibility must be fulfilled to provide a sense of justice³ to society. Justice is the main goal of law enforcement. The primary purpose of justice is to guarantee the stability of human life and the balance between personal life and community life by balancing the needs of society, victims and offenders. ([Preston, 2011](#))

³ The structure of a just ideal society is the basic structure of the original society, in which basic rights, freedom, power, authority, opportunity, income and overall welfare are fulfilled. This ideal category of social structure is used to

assess whether the existing social institutions have acted relatively or not. In addition, the perfect society structure is also used to correct social injustices. The cause of injustice is the social situation, so it is necessary to re-examine which principles of justice can be used to form a good community situation.

Correction of injustice is carried out by returning society to its original position. This fundamental position is the origin of the original agreement between community members on an equal basis. The main principle of creating justice is equal freedom as long as possible, as long as it benefits all parties. Apart from that, one must also pay attention to the principle of inequality, which should be used to help the weakest. This principle combines the principles of difference and equality of opportunity.

The first assumption used in this case is the natural desire of humans to achieve their interests before the public interest. This desire is to achieve happiness, which also measures achieving justice. There must be freedom to fulfil the interests of justice. However, the reality of society shows that freedom cannot be fully realized due to different conditions in society. This difference becomes the basis for providing an advantage for those who are weak. If there is equality, then all must have the same opportunity to fulfil their interests. Although later it will lead to differences, this is not a problem as long as it is reached based on the same agreement and the point of departure.

D. CONCLUSIONS

Referring to what has been discussed previously, it is concluded that the handling of criminal acts of environmental destruction by corporations has several obstacles. These constraints include regional policies on investment that do not use the principle of sustainable development, strong backing, differences in understanding of law enforcement officials, and compensation, which often eliminates criminal cases. The handling of criminal acts of environmental destruction by corporations, in this case, is regulated in the Environmental Law. The Business Entity and the person in charge of the business entity carry out accountability. Criminal action can be applied to the management and owner of a corporation that has illegally destroyed the environment. It is necessary to handle criminal acts of environmental destruction by justice-based corporations. Two criminal threats are even more likely to be applied to managers and owners of corporate business entities. In addition to providing a deterrent effect, this serious follow-up often ends the case just because the Mamou company pays compensation. The criminal responsibility committed by the corporation is in the context of providing a sense of justice. Justice is the primary goal of law

enforcement. ³ The main interest of justice is the guarantee of the stability of human life and balance, especially between personal and collective life.

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