

Reconstruction of Corporate Environmental Crime Liability Law Based on Justice Value

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Abstract

The main problem discussed in this research is to find out what factors cause the law enforcement on environmental corporate criminal liability to be unfair and how to reconstruct environmental corporate criminal liability law that are able to achieve justice in the future which will be researched using the socio-legal research method which relies on the qualitative data obtained by the author in the field where the results are processed using data triangulation to obtain a relevant and accurate analysis. The results of the study indicate that the factors that cause environmental criminal law enforcement to be unfair are influenced by 3 factors, namely the law structure, substance, and culture that are still weak. In order to solve this problem there needs to be a reconstruction of the environmental corporate criminal liability reconstruction that are contained in Article 46 paragraph 1 of Law No. 23 of 1997 as amended by Law No. 32 of 2009 namely Article 116 (1) as it cannot provide adequate justice yet therefore reconstructing it must be done in order to comply with the value of justice.

Keywords: Reconstruction, Environment, Corporate Crime, Justice Value.

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INTRODUCTION

The environment in which humans live which is a heritage property that must be kept intact from irresponsible hands seems to be unsustainable, as a result of human greed in fulfilling economic needs as satisfaction and economic needs in a consumptive modern society, human greed, corruption, and conspiracies carried out by the ruling elite with world-class businessmen is the cause of the emergence of various deviations in environmental management, whether carried out by the authorities, businessmen and the community.

For example, in May 2000, Lake Wanagon, where PT. Freeport Indonesia (PTFI)'s tailings dump, collapsed for the third time [1]. This incident immediately sparked a debate about the scale of PT Freeport Indonesia's production being increased to 300,000 tons per day. The Indonesian Forum for the Environment (Walhi)'s campaign is then rallied, demanding an independent external audit and renegotiation of PTFI's contract of work (COW) has become a discourse among the DPR and the government, but unfortunately, there is no clarity in the

resolution of this case where even though the Lake Wanagon incident was expected to be an example of solving a criminal case against the environment, the resolution of this problem was never completed. Even when this article was made, there is no report to the public on what sanctions the government has imposed on this company.

Other than this, there are many cases of environmental crimes on a large scale that occurred almost every year that are carried out by various corporations. Walhi has recorded that there are land fires in 2015 where as many as 439 companies were involved in burning in 5 provinces, 308 of which were palm oil companies. According to the Indonesian Forum for the Environment, 308 companies set fire to plantations (181 companies in Central Kalimantan, 31 in West Kalimantan, 15 in Riau, 68 in South Sumatra, and 13 in Jambi), 71 companies burned in industrial plantation forests (12 companies) in Central Kalimantan, 14 in West Kalimantan, 14 in Riau, 25 in South Sumatra, 6 in Jambi). Additionally, there are 58 companies that also guilty of burning natural forests in Central Kalimantan [2].

The problem of the case handling of the corporate criminal liability for criminal acts is not a simple matter, considering that corporations are legal entities. This problem stems from the principle of no-fault crime. Mistakes are *Mens Rea*, that is attitudes that naturally exist deep in people's consciousness [3]. *Mens rea* is an element that is difficult to prove from a corporation that is considered to have committed a crime, considering that corporations can only take action through the organs of the board of directors. A corporation can be considered to have committed a crime based on the actions of a person who controls the management of the corporation. The juridical construction used to say that a corporation has committed a criminal act is if the crime was committed by the management or employee of the corporation who is still within the scope of their authority and for the benefit of the corporation.

Regarding this problem, Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is in fact only links responsibility, loss, and environmental pollution/damage stating that "*every person in charge of businesses and/activities that commits unlawful acts in the form of environmental pollution and/or destruction that causes harm to other people or the environment is obliged to pay compensation and/or damage to the environment or to perform certain actions*". The quote above shows that in addition to the basis of liability in the form of unlawful acts (PMH). Another important element of the article is the existence of pollution/or environmental damage that causes losses.

From a historical perspective, the recognition of corporations as legal subjects who can commit criminal acts and can be held criminally responsible is regulated in the Emergency Law Number 7 of 1955 concerning Economic Crimes, namely; "*If an economic crime is committed by or on behalf of a legal entity, a company, an association of persons or a foundation, then criminal charges are made and criminal penalties and disciplinary actions are imposed either on the legal entity that is the company, to the association or foundation, or to both of them who gave the order to commit the economic crime and the one who acted as a leader in the act or omission or on both the leader and the company itself*".

In the process of modernization and economic development, the reality shows that corporations play an important role in people's lives. In its development, it is not uncommon for corporations in achieving their goals to carry out deviant activities or crimes with a modus operandi carried out by business entities. the motive for a corporate crime can be categorized as white-collar crime and is an organizational crime. For this reason, the emphasis is on the corporate structure of rights and obligations as well as responsibilities so that the character of corporate crime can be identified and

the location of the responsibility that can ultimately be found a juridical solution. Regulations related to criminal liability for corporations in the statutory system in Indonesia, in particular the regulation of laws that can result in legal uncertainty and disharmony of regulations that can result in obstruction of law enforcement where in this case, there is a need for reconstruction related to the regulation of criminal liability for the management of the company's management in order to create legal objectives, namely justice, certainty, and expediency.

These problems are what urges the author to study it further in research with the main problem as follows:

1. What are the factors that cause the law enforcement on Environmental corporate criminal liability law to be unfair?
2. How is the Reconstruction of Environmental Corporate Criminal Liability Law in order to Achieve Justice in the future?

METHOD OF RESEARCH

This type of research is a kind of empirical juridical, or referred by field research that examines the provisions of applicable law and what happens in reality in society.[4] Juridical empirical research is legal research on the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society. Or in other words, a research conducted on the actual situation or real conditions that occur in the community with the intention of knowing and finding the facts and data needed and to differentiate with previous research whether it is intended or not [5], after the required data has been collected then leads to the identification of the problem which in turn leads to problem solving.

RESEARCH RESULT AND DISCUSSION

1. Factors That Cause The Law Enforcement On Environmental Corporate Criminal Liability Law To Be Unfair

To examine more deeply the factors that influence the Corporate's environmental criminal law enforcement process, The Author uses Friedman's theory as quoted by Hartiwingsih [6], which states that in order for a legal rule or written regulation to really function, it must be seen from 3 factors, namely:

a. Substance

Regulations/norms are the basis for the process of applying the law, the success or failure of a law enforcement process is highly dependent on whether existing regulations regarding certain areas of life are hierarchically or horizontally without conflict, whether quantitatively and qualitatively are sufficient, whether existing regulations give rise to multiple, systematic interpretations and the publication is in accordance with existing juridical requirements. When it is associated with the current success of environmental criminal law enforcement, it tends to increase both in quantity and

quality, this is strongly influenced by the quantity and quality of the available environmental laws and regulations and especially regulations relating to criminal aspects in the environmental field, both of those are contained in the environmental law. Inside and outside of Law no. 23 of 1997 concerning Environmental Management and UUPPLH, there are still imperfections in terms of formulation, there are regional regulations in the environmental field which are vertically contradictory to the laws above, and to make matters worse, there are laws that are horizontally contradictory to other laws.

Furthermore, in terms of quality, there are still imperfections in terms of the formulation of criminal acts, criminal liability, as criminal sanctions both contained in and outside of Law no. 32 of 2009 concerning Environmental Management Protection like in Article 41 (1) (2) of Law No. 32 of 2009 where this article is difficult to apply because the verification process is very difficult and it does not even protect the environment. Furthermore, Article 41 (2) and Article 44 (1) also have weaknesses even though this article is a breakthrough in the field, proves, and is an advancement contained in Law No. 32 of 2009 which is known as a formal crime because it makes it easier for law enforcement officers to prove the existence of pollution, but in practice there is a very high administrative dependence, meaning that even though there has been evidence of pollution, but no administrative violation has been violated, then this article fails to apply.

b. Legal Culture

According to Friedman [7], legal culture is a human attitude towards the law and it is a system of beliefs, values, thoughts, and expectations. Legal culture is a social mood that determines how the law is used, avoided, or abused. These attitudes, thoughts, values, and expectations are identified with the attitudes, thoughts, values, and expectations of officers who enforce or law enforcement officers who apply laws and regulations are one of the main supporting factors for the success of law enforcement. No matter how good a statutory regulation is if it is not supported by good and reliable law enforcement officers, then the enforcement will not be successful, and on the other hand, no matter how bad a statutory regulation is, if it is supported by good law enforcement officers who had morals, then the enforcement of the law will work. Both are mutually supportive, influencing, but the real problem really depends on human resources. Furthermore, when viewed from the side of the quality of law enforcement officers, the result is not as expected as this can be seen from the current success of environmental criminal law enforcement, as evidenced by the 127 companies participating in PROPER (company performance ranking) where none of them have received a gold rating. The same thing can also be seen in the number of corporate environmental crime

cases handling at the national and regional levels that have not been successful, because of 117 cases throughout Indonesia, of it are 33 criminal cases and only 6 cases have been decided. This small number of environmental criminal cases that have been successfully resolved, and the absence of companies that have received a gold rating as stated above are closely related to the poor quality condition of law enforcement officers from a moral point of view. The occurrence of a conspiracy between law enforcement officers and businessmen by providing a number of funds so that the case is terminated or the sentence is commuted is a common sight within the judiciary. Based on an interview with Sutarno, the Head of the Criminal Investigation Division of the Karanganyar District Attorney's Office, [8] such a conspiracy is no longer a secret. Likewise, the culture of entrustment, whether it is a deposit from the authorities or from the Chairperson of the Court or other interested parties.

In terms of the quality of law enforcement officers, it can be said that they have not mastered the ins and outs of environmental law and not to mention that the introduction of environmental law is very lacking. This can only be overcome by education and training besides the person having to learn on his own by reading books, attending scientific meetings. Broad knowledge usually leads to increased self-confidence and will then lead to honesty. In addition, there is no specialization in this field, no special environmental prosecutor, no special environmental police, let alone special patrols that constantly monitor environmental issues.

The success of environmental criminal law enforcement is not only determined by the adequacy of the quality and quantity of law enforcement officers, judges, prosecutors, police, and The PPNS, but is also greatly influenced by the quality and quantity of available environmental laws and regulations. The creation of quality regulations in the environmental field is also greatly influenced by the quality of human resources who formulate them. If you look at the condition of human resources who formulate laws and regulations, the target of the discussion will be on the people's representatives who sit in the People's Legislative Assembly where the members of the council are sheltered. Because of this, some question arises, What is the current condition of the People's Representative Council, does it contribute to the failure of law enforcement? As the amendment to the 1945 Constitution Article 5 (1) gives the power to make laws that were previously in the hands of the President with the approval of the DPR to turn into the hands of the DPR. This institution then holds the power to make laws, while the President only has the right to submit draft laws and ratify them after being discussed and approved by the DPR. This can be seen from the number of laws that are far more proposed by the Government than at the initiative of the DPR.

This condition of legal awareness of the community towards laws and regulations in the field of environment and environmental conservation is very low because the community, which includes businessmen, government officials, law enforcement officers, and the community in general. Therefore, it is necessary to continue to strive to increase public legal awareness of the importance of environmental sustainability and compliance with regulations in the environmental field by providing counseling to people who do not have knowledge in the environmental field, providing strict sanctions, deterrent and indiscriminately to environmental destroyers, both businessmen, officials, law enforcement officers, and the public.

c. Legal Structure

The legal structure includes the work of institutions and their performance as well as various facilities that can be formulated as a means to achieve goals. Its scope is primarily physical advice which serves as a supporting factor. The physical advice can be in the form of material or money, infrastructure in the form of laboratories, buildings, cars, judicial institutions, and other physical facilities. Addressing environmental problems requires large costs in addition to mastering technology and management. Then how about the available infrastructure currently? Has it been able to support law enforcement in the expected environmental sector? Enforcement of environmental criminal law is more complicated because, in addition to having to be handled by professional people who master the environmental field, it also requires more complicated infrastructure and more expensive costs. Such as laboratory facilities that function as measuring or detecting pollution, as well as more expensive costs because in one case of pollution there must be several points that must be checked in the laboratory, whereas to check just one point requires a large amount of money.

In addition to the obstacles in the process of enforcing environmental criminal law, there is not yet an integrated strategy for enforcing environmental law, which is expected to provide a sense of justice for the community. Various efforts, strategies, tips have been carried out by the Government, non-governmental organizations, and communities who care about the environment to develop an integrated strategy. Namely the emergence of an idea to develop an integrated strategy in the form of structuring and enforcing environmental laws so far. The government's solution to the failure of environmental law enforcement, in general, has never emerged fully and integrated but is more partial and technically pragmatic.

The problem of law enforcement is closely related to the application of the rule of law in society. A rule of law that must be able to be applied in society must meet juridical, sociological, and philosophical

requirements. The requirements for the rule of law apply juridically if the determination is based on a higher level rule or if it is shaped according to a prescribed method, applies sociologically if the legal rule is effective, meaning that the rule can, in theory, be enforced. by the ruler or the rule is valid because it is accepted and recognized by the community, and the rule of law applies philosophically, meaning that it is in accordance with the ideals of law as the highest positive value. Thus, all three of these factors must exist when the rule of law is being applied in society so that the law enforcement can also run well [9].

In addition to the three conditions for the application of the rule of law, there are also factors that influence the functioning of the rule of law in relation to law enforcement in society, Sodikin [10] mention that these factors are:

- a. The rule of law or regulation itself;
- b. Officers who apply or enforce the rule of law;
- c. Facilities that are expected to support the implementation of the rule of law;
- d. Community members who are affected by the scope of the regulation.

In order for law enforcement to be achieved, the four factors for the functioning of the rule of law must exist, which in fact are closely related among the four, because if only one or among the four factors, one of which is absent or inadequate, then law enforcement will also experience obstacles. These are matters relating to law enforcement which in fact relate to the problem of the validity and functioning of the rule of law in society. Thus, it is emphasized again that law enforcement is closely related to obedience to users and implementers of laws and regulations, in this case both the community and law enforcers. The existence of a signal that the law is obeyed by the community is a sign that the purpose of the creation of the legislation is achieved. Law enforcement that contains compliance does not arise suddenly but through a process that is formed from the awareness of every human being to carry out and not carry out according to the sound of existing laws and regulations. The process does not come from top to bottom or vice versa, but does not care where it comes from, because the obligation to comply with all forms of legislation belongs to all.

1. Reconstruction Of Environmental Corporate Criminal Liability Law In Order To Achieve Justice In The Future

With the occurrence of corporate crime in the environmental field, there should be a clear regulation regarding who the manager of this corporate is responsible for, because in the *ius constitutum* regulation it is still not clear which management is obliged to take responsibility if the manager of the corporate company has made a mistake. Given that the purpose of punishment according to this absolute theory is to provide retaliation, especially for the managers of

corporate companies that commit crimes, especially in the environmental field.

According to the Relative Theory [11], the purpose of punishment is to find the basis of criminal law in carrying out public order and consequently, the purpose of preventing the occurrence of crime, this relative theory requires deterrence. The deterrence is intended to deter criminals so that there is a sense of deterrence or fear so that criminals are afraid to commit another crime, in this case, the company manager who commits a crime in carrying out its business activities. Because in essence, the company manager is the most guilty parties if an error occurs in the management of environmental management which can result in losses to the environment and society, the loss is caused by an error in the mechanism in the environmental management process.

Next, according to the theory of sustainable development in the formulation of articles in future laws and regulations, so that in making the formulation of articles in laws and regulations, it is also necessary to side with the people, in this case, especially the people or communities who are victims of corporate activities as legislation should benefit current and future generations.

Sustainable development with an environmental perspective is one of the principles of environmental law, which at the empirical or operational level can be utilized to prevent the existence of the environment from all threats of pollution and damage because the philosophy of thoughtfulness underlies this principle, which is to integrate the needs of the present and future generations. will come to a good and healthy living environment and strive for environmental quality to be maintained from all negative impacts caused by national development.

It is undeniable that the negative consequences or impacts of development are the emergence of environmental pollution and damage, although legal instruments such as UUPPLH have been applied as preventive and repressive measures to environmental sustainability from threats and disturbances carried out by the community or business actors in carrying out their economic activities. Therefore, the existence of this legal instrument is expected to minimize ecological risks arising from the impact of development that does not pay attention to aspects or aspects of environmental sustainability. In addition, it must also be accompanied by serious efforts from the state in carrying out law enforcement against environmental business actors who cause environmental pollution and destruction.

The absence of regulations regarding which party in the corporation must be responsible in the event that the corporation commits a crime in the environmental field will make it difficult for law

enforcement officials to process legal cases with corporate actors. Legislators should pay attention to how law enforcement officers, the police, and the prosecutor's office, in particular, to determine who is obliged and must be responsible for unlawful acts or criminal acts committed by a corporation. The urgent necessity of this regulation is solely to provide a deterrent effect for corporate actors and to protect victims of this illegal business activities carried out by corporations.

Based on the explanation above, there are several matters related to the scope of regulation of corporate criminal liability that must be regulated in the laws and regulations in Indonesia which must include:

- a. Arrangements regarding the responsibilities of the management;
- b. Pattern/model of corporate criminal liability formulation;
- c. Corporate compensation for people who are victims of corporate activities.

Based on the important things that are regulated related to criminal liability in the field of the environment based on the value of justice, the reconstruction that needs to be manifested in future legal arrangements (*ius constituendum*) is more appropriate, especially if it is regulated, because it has a weakness, namely that it does not mention business entities or corporations only by mentioning legal entities and not explaining in detail the meaning of them so that the reconstruction as intended is as follows:

Article 46 paragraph 1 of Law No. 23 of 1997 as amended by Law no. 32 of 2009 namely Article 116:

1. If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges, and criminal sanctions will be imposed on:
 - a. Business entity; and/or
 - b. The person who gives the order to commit the crime or the person who acts as the leader of the activity in the crime.
2. If the environmental crime as referred to in paragraph (1) is committed by a person, based on an employment relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions will be imposed on the giver of the order or the leader in the crime without regard to the crime. The crime is committed individually or jointly.

CONCLUSION

1. Law enforcement in environmental crimes is not only to impose sanctions on environmental destroyers or polluters, it is also intended to prevent the occurrence of actions that can cause damage and or pollution of the environment. Therefore, law enforcement in environmental crimes is not only repressive but also preventive. As for the factors

that cause criminal law enforcement to be unfair, environmental law enforcement is influenced by at least 3 factors, namely: legal substance, legal structure, and legal culture where in order for law enforcement to be able to be effective, all three of these factors must run well.

2. The Reconstruction of the regulation of corporate criminal liability in the environmental field based on the value of justice is an answer to the basic problem substantially related to the regulation of corporate criminal liability in the laws and regulations in the environmental field based on justice value as legal certainty as the arrangement must be able to accommodate protection for victims of corporate crime collectively and also for its implementation, Therefore, the reconstruction referred to is in the regulations that are contained in Article 46 paragraph 1 of Law No. 23 of 1997 as amended by Law No. 32 of 2009 namely Article 116 (1) as it cannot provide adequate justice yet therefore, reconstructing it must be done in order to comply with the value of justice.

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