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Corporate Criminal Liability as a Performance of Forest Fire based on Strict Liability Principles

Afryadin Rusdyani[1], Alfitra[2]

Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta
Jl. RS. Fatmawati Raya, Pondok. Labu, Kecamatan Cilandak, Jakarta Selatan, 12450, Indonesia
afrydogmatic[at]ymail.com
fitratira[at]yahoo.co.id

Abstract: ***Environmental issues are often a hot topic of discussion when a disaster occurs, but when everything is safe, environmental awareness will soon sink behind the hustle and bustle of development. The objectives to be achieved through writing and legal research are to identify and examine the application of the principle of strict liability to corporations that commit criminal acts based on Law no.32 of 2009 concerning the Protection and Management of the Environment and the obstacles faced by the government in terms of the application of the principle of strict liability to corporations that commit criminal acts based on Law no.32 of 2009 concerning Environmental Protection and Management. This research is a normative juridical research, using a descriptive analytical approach. It was concluded that the enforcement of criminal law in the Law on Environmental Protection and Management introduces the threat of minimum punishment in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crimes. Environmental criminal law enforcement continues to pay attention to the ultimum remedium principle which requires the application of criminal law enforcement as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle only applies to certain formal criminal acts, namely the punishment of violations of quality standards (measurement limits or acceptable levels of pollutants to be included in the media) wastewater, emissions, and disturbances. There are many obstacles faced by the government in terms of implementing the principle of strict liability related to law enforcement, including the constraints on Human Resources (HR) of law enforcement is a factor in the ineffectiveness of environmental criminal law enforcement, especially in regions, it cannot be said that law enforcers have master the ins and outs of environmental law, even the introduction of environmental law is still lacking. Apart from environmental crimes, environmental crimes have not become a priority compared to other cases, such as theft, murder, corruption and others. The reason is proof, determining the causal relationship between the act of pollution and the victim of an environmental crime where pollution occurs requires experts and special laboratories.***

Keywords: Criminal, Environment, Corporate, Responsibility

1. Introduction

Environmental issues are often a hot topic of discussion when a disaster occurs, but when everything is safe, environmental awareness will soon sink behind the hustle and bustle of development. Forest fires are one of the most worrisome disasters because they have multidimensional impacts, both on the economy, health and of course on the environment. As in the past dry season, several parts of Indonesia occurred, especially in the islands of Sumatra, Riau, Kalimantan and several other areas.

Forest and land fires, especially peatlands, tend to be a 'scourge' for central government officials and affected regions. The impact of forest fires not only covers the area that pollutes several provinces but also sends smoke across countries to Singapore and Malaysia, so that neighboring countries often file protests to Indonesia. Not only exporting smoke, but public health is also declining due to suffering from upper respiratory infections (ARI), sore eyes, and disrupting school activities and daily work. Areas affected by fires include forest areas and outside forest areas, especially in peat ecosystem areas.

Based on data from the Recapitulation of Forest and Land Fires Area (Ha) per Province in Indonesia in 2013 - 2018, the forest fire disaster that hit Indonesia was quite large and was in the spotlight both nationally and internationally, where the area of forest and land fires at that time was 261, 060.44 Ha., with details of 5 (five) provinces with the most extensive forest fire areas, namely Central Kalimantan Province (122, 882.90 Ha), South Sumatra Province (30, 984.98 Ha), Lampung Province (19, 695.86 Ha), Jambi Province (19, 528.00 Ha). Ha), and East Kalimantan Province (19, 179.86 Ha).

In handling cases of fires that occur, there are several factors that must be known. Among them are human actions, climate, physical condition of the peat ecosystem and the combination of these factors. The factor of human actions that carried out the burning was shown by the arrests of a number of people in charge of the company and community members by the police because they were suspected of having set fire to it. Climate change factors can also cause fires due to an increase in air temperature that is getting hotter. The destruction of the peat ecosystem caused by business activities without regard to the characteristics of the peatlands also contributes to the occurrence of fires.

Which factor is the most dominant will continue to be a never - ending debate because of the many interests both social and economic and political in the fire area. The same is true of who was involved in the arson. Allegations of involvement of community members in the burning to gain access to control and utilize parts of land already owned by companies in the forestry and plantation sectors also surfaced. Companies holding certain permits and land rights are suspected of being involved in burning for efficiency, although this needs to be further proven in the judicial process.

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Corporations as legal subjects, carry out their activities in accordance with economic principles, namely seeking the maximum profit and have an obligation to comply with legal regulations in the economic field used by the government to realize general welfare and social justice. In legal cases involving corporations, there are few judges' decisions that impose criminal penalties on corporations, this is because corporations are not recognized as legal subjects and there is no element of mens rea (error) which is basically owned by "humans" who commit acts. This is an obstacle to punishing corporations with appropriate sanctions considering that in Indonesian criminal law there is a principle that characterizes the Criminal Code, namely geen straf zonder schuld (no crime without fault).

Today, if observed together, crime has developed along with the development of globalization, where crimes that occur in agrarian societies are different from crimes that occur in industrial societies. Even if viewed from the point of view of the perpetrators, originally the perpetrators who could be accounted for in the Criminal Law were only individuals or individuals, but now also corporations or legal entities or also called rechts persons, because it turns out that legal entities or corporations can also commit crimes that can be punished.

In relation to corporate crime, Soedjono Dirdjosisworo, as quoted by Muladi, stated that: "That economic progress also gives rise to new forms of crime that are no less dangerous and the number of victims it causes. "[1]

One form of corporate crime that has become a concern is the form of corporate crime in the environmental field (environmental crime), for example the alleged forest fires, which has recently become a central issue in the life of the state. This is because of its tremendous impact on the health, ecosystem and economic life of surrounding communities, even across neighboring countries. This corporate crime in the environmental sector can have large and complex impacts and victims, which not only depletes natural resources, human resources, social capital, and even sustainable institutional capital.

The case of forest burning by PT. Bumi Mekar Hijau, for example, has become a hot topic in various social media because the judge assessed that forest fires are considered not to damage the land because acacia plants can still grow. But apart from that, this event has an impact on the losses suffered by the community and the state. Whereas the community experienced direct impacts, such as not being able to go to school because schools were closed, flight disruptions due to smoke and also the disaster mitigation budget that the State had to spend. [2]
But now the problems that exist and occur are so complex in the order of the environmental system, that there is only the interest in the use of natural resources without paying attention to the impacts that will arise from existing business activities. Environmental problems in developing countries such as Indonesia are different from environmental problems in developed or industrialized countries. Environmental problems in developed countries are caused by pollution as a result of the side effects of using advanced technology energy materials that waste energy in transportation and communication activities and other economic activities, while environmental problems in Indonesia often stem from underdevelopment of development as the cause of environmental problems. which exists.

Conceptually, development policy has included environmental sustainability as an absolute thing to consider, but in its implementation there has been an error in policy orientation which is reflected in various regulations related to natural resources. The regulations made tend to optimize the use of natural resources without adequate protection, thereby opening up as much space as possible for the owners of capital. [3]

Environmental pollution directly or indirectly can reduce the quality of the environment, and in turn can cause damage to biotic and abiotic communities. Humans as one of the biotic components can also be affected by the environmental pollution either directly or indirectly.

Environmental pollution that causes damage to environmental quality, of course, will reduce the carrying capacity of the environment. The reduced environmental carrying capacity results in reduced environmental benefits for humans. In fact, it is not uncommon for environmental pollution not only to reduce the carrying capacity of the environment but can cause certain diseases in humans because humans consume food produced from a polluted environment. Even diseases arise as a result of breathing polluted air, or drinking polluted water and so on. Thus environmental pollution also has an impact on human health. Environmental pollution besides causing environmental damage, decreasing environmental carrying capacity, threatening human health, also threatens the sustainability of the environment itself. In terms of the survival of human life is very dependent on the available resources both biotic and abiotic. Therefore, it is necessary to think about how to manage resources that can preserve the environment. In the context of development, the concept of sustainable development is known.

It is true that the concept of sustainable development has been laid down as a policy, however in practice experience so far, there has been an uncontrolled processing of natural resources with the result of environmental damage that disrupts the preservation of nature. The potential for environmental problems that can have a major impact on the preservation of nature and human health raises awareness of the need to regulate environmental problems with legal instruments. The regulation of environmental issues in

[1] Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, Cetakan Ketiga Edisi Revisi, (Bandung: Kencana, 2012), hlm. 3
[2] M. Daud Silalahi, *Dalam Sistem Penegakan Hukum Lingkungan Indonesia*, (Bandung : Alumni, 2001), hlm. 6-7.

[3] Koesnadi Hardjasoemantri, *Pentingnya Payung Hukum dan Pelibatan Masyarakat dalam Buku Di Bawah Satu Payung Pengelolaan Sumber Daya Alam*, 2005, (Yogyakarta: Penerbit FH UGM, 2015), hlm. 16

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Indonesia began with the Environmental Law, namely No.4 of 1982 concerning the Basic Provisions for Environmental Management, Law no.23 of 1997 concerning Environmental Management and the latest is Law No.32 of 2009 concerning Environmental Management and Protection.

Because activities that have the potential to result in reduced environmental carrying capacity or environmental pollution are essentially not merely human activities, but corporate activities, of course, protection to the community is carried out by providing criminal sanctions to perpetrators of environmental crimes not only provide criminal sanctions to human legal subjects but also provide criminal sanctions to corporate legal subjects or what is known as corporate criminal liability.

The case regarding forest fires that allegedly caused environmental damage, for example, was the decision of the Palembang High Court which overturned the decision of the Palembang District Court (PN) on December 30, 2015, which rejected the civil lawsuit from the Ministry of Environment and Forestry (KLHK) against PT. Bumi Mekar Hijau (BMH) related to the case of forest and land fires covering an area of 20 thousand hectares in Ogan Komering Ilir (OKI) Regency, South Sumatra 2014, is good news for environmental activists.

In this case, the civil lawsuit from the Ministry of Environment and Forestry to PT Bumi Mekar Hijau (BMH) worth Rp.7.8 trillion was rejected by the panel of judges at the Palembang District Court. The judge considered the accusations given to the company could not be proven.

There are several theories of corporate criminal liability, including the direct liability doctrine or identification theory or also called the "alter ego" or "organ theory" theory or doctrine. The actions or mistakes of “senior officers” (senior officers) are identified as corporate actions or mistakes. Starting from the doctrine of "respondeat superior". It is based on the employment principle that the employer is the main person responsible for the actions of workers or employees and the strict criminal liability doctrine according to the law, namely in the event that the corporation violates or does not fulfill certain obligations or conditions or situations determined by law. Violation of corporate obligations can be applied to the doctrine of strict criminal liability according to the law or strict liability, especially if the corporation runs its business without a permit, or a corporation holding a license violates the conditions specified in the permit. [4]

Strict Liability is liability without fault, in which case the maker can be punished if he has committed a prohibited act as formulated in the law, without looking further into the inner attitude of the maker. [5]

A crime committed by a corporation is the expression of certain aspirations or motivations from the corporation (not the spark of feelings or thoughts of human beings). Faced with these social conditions, in addition to coloring the general social phenomena that are routine and natural, they also give birth to forms of corporate crime. [6]

Thus, it means that there is a desire from lawmakers to apply the principle of strict liability in general in Indonesian criminal law, both to impose penalties on humans and corporations as criminal law subjects.

Based on what has been stated above, the writer is interested in writing a law in the form of a thesis with the title: "Criminal Liability as a personnel of forest fire based on strict liability principles"

2. Problem Identification

Based on the above background, the formulations in this legal research are:

1) How is the application of the principle of strict liability to corporations that commit criminal acts based on Law no.32 of 2009 concerning Environmental Protection and Management?
2) What are the obstacles faced by the government in terms of applying the principle of strict liability to corporations that commit criminal acts based on Law no.32 of 2009 concerning Environmental Protection and Management?

3. Previous Research/ Literature Review

Previous research aims to obtain material for comparison and reference. In addition, to avoid the assumption of similarity with this study. So in this literature review the researchers include the results of previous studies as follows: A. Reza Fadhli; CORPORATE CRIMINAL LIABILITY IN CRIMINAL ACTS OF FOREST AND LAND FIRES; The criteria for a corporation to be said to have committed a criminal act of forest and land fires must prove the elements of the Articles of a criminal act of forest and land fires, namely in Article 69 letter h, 98 paragraph (1), 99 paragraph (2), namely clearing land by burning and intentionally or due to negligence causing the environmental quality standard to be exceeded. Because it is impossible for a corporation to commit a crime without the help of others. So what is proven first is the actions carried out by people in work relationships or other relationships within the scope of business entities. If the act is carried out by, for or on behalf of a business entity not for personal interests, then the act is considered a corporate act. In the case of forest fires that the author refers to in the decision no.27/Pid. Sus/2015/PT. PBR, corporations commit forest and land fires in Article 99 paragraph (1) due to negligence (negligence) by the management (director) as the person in charge of the business entity causes the environmental quality standard to be exceeded. In this case the corporation is represented by the director, does not complete the facilities and infrastructure in Government Regulation No.4 of 2001 to prevent the possibility of forest and land fires this is because corporations engaged in industry or utilization of forest

[4] Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman (Lembaran Negara Tahun 2009 Nomor 157 Tambahan Lembaran Negara Nomor 5076).
[5] Buchhari Said, H, Averroes, *Tindak Pidana Korporasi,* Bandung, Fakultas Hukum Universitas Pasundan, 2013, hlm. 61-62
[6] *Ibid,* hlm. 65

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products are prone to causing environmental damage and pollution and The form of corporate criminal responsibility in the crime of forest and land fires is identification. Because the fault lies with the corporate management (director) who is the brain or the holder of corporate operational control (Directing Mind). Because in Government Regulation no.4 of 2001 Article 13 states that the Director as the person in charge of activities whose business causes or has a major impact on environmental damage and pollution must complete government regulation No 4 of 2001 Article 14 concerning the control of environmental damage and pollution, all of which are related to facilities and infrastructure. to prevent/possible forest and land fires.

B. Hariman Satria; CORPORATE CRIMINAL LIABILITY IN CRIMINAL ACTS OF NATURAL RESOURCES; In the ius constitutum SDA, at least corporate criminal liability is regulated by five laws. First, the law on fisheries and forestry has the same formulation that corporations as makers and administrators are punished. Second, the plantation law, the corporation as the maker - corporation is punished. Third, the environmental law, the corporation as the maker - corporation and the person giving the order are punished. Fourth, the Minerba Law, corporations as administrators and corporations are punished. Strictly speaking, there are inconsistencies in the regulation of corporate criminal liability in the natural resources sector, which creates legal uncertainty.

4. Methods

Legal research According to Soerjono Soekanto, in his book Introduction to Legal Research explains that legal research is: [7]

“Legal research is basically an activity scientific method, which is based on certain methods, systematics and thinking which aims to study one or several certain legal symptoms by analyzing them, except that an in - depth examination of the legal facts is also carried out to then seek a solution to the problems that arise. arise in the symptom concerned. "

This legal research is based on the rules and research methods, as follows:

1) Type of Research

This type of research includes normative legal research, which is a type of research that focuses on secondary data, which consists of primary legal materials covering applicable legal norms or statutory regulations and secondary legal materials covering legal opinions both orally and in writing from experts. or authorities and other sources related to the problem written.

2) Approach Method

The author uses a normative juridical approach or library law research which is carried out by researching library materials and secondary data. [8]

The normative legal research method in writing this thesis is research on legal principles. The research on legal principles according to Scholten, as quoted by Amiruddin and H. Zainal Asikin, is a tendency to give an ethical assessment of the law, which means to give an ethical assessment. These legal principles are drawn from where they come from and what factors influence them. [9]

3) Research Stage

The data used in normative juridical research is secondary data. Secondary data is data obtained indirectly from the object of research. Secondary data was obtained by tracing materials related to the problem of applying the principle of strict liability and Law no.32 of 2009 concerning Environmental Protection and Management, for corporations, namely:

Library Research, according to Ronny Hanitijo Soemitro, what is meant by library research are:

“Research on secondary data. Secondary data in the field of law (in terms of binding strength) can be divided into primary legal materials, secondary legal materials, and tertiary legal materials.

a) Primary legal materials, namely binding legal materials, include:
   - The Criminal Code;
   - Law no.32 of 2009 concerning Environmental Protection and Management
b) Secondary legal materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, including:
   - Laws and regulations;
   - The results of scientific work of scholars.
c) Tertiary legal materials, namely materials that provide information on primary legal materials and secondary legal materials, including:
   - Like a bibliography
   - Cumulative index.

4) Data Collection Method

The method used in data collection is Library Research, namely by reading and studying various kinds of literature related to this thesis. According to Koentjoronigrat says: [10]

"These studies are very useful in helping research in general to gain knowledge close to the symptoms studied, by providing understanding, formulating appropriate problems, sharpening feelings for research, making analysis and opening opportunities to expand scientific experience".

Primary data, and secondary data obtained from the literature. However, this research prioritizes and focuses on secondary data, considering that this research is more of a normative legal research, while the primary is only a supporting one. The data sources used consist of primary and secondary data sources, which are studied include

[7] Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cetakan-III, (Jakarta: UI Press, 1986), hlm. 3

[8] Amiruddin dan Zainal Asiki n, *Pengantar Metode Penelitian Hukum*,(Jakarta: PT Raj agrafindo Persada, 2004, hlm. 118-119

[9] *Ibid*, hlm. 123

[10] Koentjoronigrat, *Metode-Metode Penelitian Masyarakat*, (Jakarta: Gramedia, 1991), hlm. 65.

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primary legal materials, secondary legal materials, and tertiary legal materials.

5) Data Collection Tool

To obtain library data, the tools used to collect data in writing this thesis are writing instruments, namely to record materials obtained from books, then electronic devices (computers) for typing and compiling the materials that have been obtained. While the tools used to collect data from the field using stationery. What is clear is data that is relevant to the problem under study to serve as a data source.

6) Data Analysis

After the necessary and relevant data have been successfully collected in the research, the secondary data is analyzed by normative juridical and presented qualitatively and then analyzed descriptively - analystically, namely examining secondary data processed, analyzed and constructed, and presented qualitatively. [11]

That is, the existing problem, namely the problem of corporate crime in forest fires in the Riau province based on the principle of strict liability, is linked to Law no.32 of 2009 concerning Environmental Protection and Management.

5. Research Results/ Results/ Findings

1. Application of the Strict Liability Principle to Corporations Committing Crimes Based on Law no.32 of 2009 concerning Environmental Protection and Management

Criminal responsibility in foreign terms is called teorekenbaarheid or criminal responsibility which leads to the criminalization of the perpetrator with the intention of determining whether a defendant or suspect can be held accountable for a criminal act that occurred or not. [12]

Accountability in criminal law (Criminal Responsibility) means: "A person who commits a crime does not necessarily have to be convicted, but must be held accountable for his actions that have been done". A person who does or does not do an act that is prohibited by law and is not justified by the community. For criminal liability, it must be clear in advance who can be accounted for, this means that it must first be ascertained who is declared the maker of a crime.

Criminal liability is defined as a criminal legal obligation to provide retaliation to the perpetrator of a crime because someone else has been harmed. Criminal liability concerns the provision of punishment for an act that is contrary to criminal law. Mistakes (schuld) according to criminal law include intentional and negligence. Intentional (dolus) is part of the fault.

The perpetrator's error is related to psychology which is closely related to a prohibited act because an important element in intentionality is the intention (mens rea) of the perpetrator himself. The criminal threat for wrongdoing is heavier than negligence or omission (culpa). There are even certain actions that if done by negligence are not criminal acts, other things if they are done intentionally, then it is a criminal act.

A criminal act is an act that is prohibited by a rule of law accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the applicable legal rules. The impact of a crime and violation is criminal liability. The definition of criminal liability is someone who is criminally responsible for someone who commits a criminal act or crime. Acts that have fulfilled the formulation of offenses or criminal acts in the law may not necessarily be punished because they must first be seen by the person or perpetrator of the crime.

Criminal liability leads to the punishment of the perpetrator, if he commits a criminal act and fulfills the elements that have been determined by law. Judging from the occurrence of prohibited acts, a person will be held accountable if the act violates the law. Criminal liability is born with the forwarding of objective reproaches (vewijbaarheid) against actions that are declared as applicable criminal acts, and subjectively to the perpetrators of criminal acts who meet the requirements to be subject to criminal penalties for their actions.

Viewed from the point of view of the ability to be responsible then only people who are able to be responsible can be held accountable Generally, criminal liability is formulated negatively. This means that in Indonesian criminal law, the law actually formulates conditions that can cause the maker to be held accountable. The negative formulation of criminal liability can be seen from the provisions of Articles 44, 48, 49, 50, and 51 of the Criminal Code (Book of Criminal Law). All of them formulate things that can exclude the maker from imposing a sentence on the perpetrator of a crime. [13]

In a criminal liability, it cannot be separated from the theory of responsibility. The theory of criminal responsibility is as the Theory of Absolute Liability (Strict Liability).

The theory of absolute liability (strict liability) is responsibility without fault, where the maker can be punished if it has been proven to have committed a criminal act. This principle is defined by the term without fault which means that a person can be punished if he has committed a criminal act. So the element of strict liability is an act (actus reus) so that what is proven is only actus reus and mens rea.
The application of strict liability is closely related to certain and limited provisions. For more details on the application of strict liability, there are several benchmarks as follows:

a) It does not generally apply to all types of criminal acts, but is very limited and certain, especially regarding anti - social crimes or those that endanger social life.
b) The act is completely against the law (unlawful) which is very contrary to the prudence required by law with propriety.

[11] Soerjono Soekanto, *Op. Cit*, hlm.
[12] Amir Ilyas, *Asas -Asas Hukum Pidana*, Rengkang Education Yogyakarta, Yogyakarta, 2012, hlm. 20.
[13] Leden Marpaung, *Asas Teori Praktik Hukum Pidana*, Cetakan Ketujuh, (Jakarta: Sinar Grafika, 2011), hlm. 22.

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c) Such acts are strictly prohibited by law because they are considered potentially dangerous acts.
d) The act is carried out by not taking reasonable precautions. [14]
e) In the perspective of ius constituendum, the accountability system has been formulated in the Draft Draft Criminal Code which reads:
f) "Some exceptions to the principle of statutory error may stipulate that for certain criminal acts the maker may be convicted solely of having fulfilled the elements of a criminal act by his actions, without paying further attention to the error in committing the crime".
g) This article is an exception because it does not apply to all criminal acts but to certain and limited matters. For certain crimes, the perpetrators can already be punished because the elements of a criminal act have been fulfilled by their actions. Here the error of the maker in doing the act is no longer considered.

The enforcement of criminal law in Law Number 32 of 2009 concerning Environmental Protection and Management introduces the threat of minimum punishment in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crimes. Environmental criminal law enforcement continues to pay attention to the ultimum remedium principle which requires the application of criminal law enforcement as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle only applies to certain formal criminal acts, namely the punishment of violations of quality standards (measurement limits or acceptable levels of pollutants to be included in the media) wastewater, emissions, and disturbances.

The provisions regarding the prohibition of land burning are contained in Article 69 Paragraph 1 letter d of the UUPPLH which states: everyone is prohibited from clearing land by burning. Whereas in Chapter V the criminal provisions are explained in Article 108: "everyone who commits land fires as referred to in Article 69 paragraph (1) letter h, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp.3, 000, 000, 000.00 (three billion rupiah) and a maximum of Rp.10, 000, 000, 000.00 (ten billion rupiah). "

However, in this forest and land fire, the defendant was charged with Article 98 Paragraph 1, which stipulates:

"Everyone who intentionally commits an act that results in exceeding the ambient air quality standard, water quality standard, sea water quality standard, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years. year and a minimum fine of Rp.3, 000, 000, 000.00 (three billion rupiah) and a maximum of Rp.10, 000, 000, 000.00 (ten billion rupiah). "

[14] M. Yahya Harahap, *Beberapa Tinjauan tentang PermasalahanHukum*, Cetakan Pertama, (Bandung: PT Citra Aditya Bakti, 1997), hlm. 37-38.

Corporations can be held accountable, this is explained in 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. the 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 said 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 another relationship acting within the scope of work of a business entity, criminal sanctions will be imposed on giving orders or leaders in the crime without regard to the crime. are carried out alone or together.
Article 117 stipulates, "If a criminal charge is submitted to the giver of the order or the leader of the criminal act as referred to in Article 116 paragraph (1) letter b, the criminal threat imposed is in the form of imprisonment and a fine is increased by one third".

Article 118 stipulates, "For criminal acts as referred to in Article 116 paragraph (1) letter a, criminal sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with the laws and regulations as functional actors".

Article 119: In addition to the penalties as referred to in this Law, business entities may be subject to additional criminal or disciplinary actions in the form of:
a) Deprivation of profits derived from criminal acts;
b) Closure of all or part of the place of business and/or activity;
c) Repair of the consequences of a criminal act;
d) Obligation to do what is neglected without rights; and/or
e) Placement of the company under the supervision of a maximum of 3 (three) years.

2. Obstacles Faced by the Government in the Implementation of Strict Liability Principles Against Corporations Committing Crimes Based on Law no.32 of 2009 concerning Environmental Protection and Management

One of the crucial issues in this country is the issue of law enforcement. The problem that arises is whether law enforcement in an effort to realize the law supremacy agenda can be achieved properly. It depends on various obstacles. There are many obstacles faced by the government in terms of implementing the principle of strict liability related to law enforcement.

It is undeniable that law enforcement's Human Resources (HR) constraints are a factor in the ineffectiveness of environmental criminal law enforcement. Especially in the regions, it cannot be said that law enforcers have mastered the ins and outs of environmental law, even the introduction of environmental law is still lacking. This can only be overcome by education and training in addition to people having to learn on their own by reading books, attending scientific meetings, such as seminars and others. In addition, there are no special investigators and public prosecutors for environmental crimes.

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Environmental crimes have not become a priority compared to other cases, such as theft, murder, corruption and others. The reason is evidence, determining the causal relationship between the act of pollution and the victim of an environmental crime where pollution occurs requires experts and special laboratories. Although Article 96 of Law No.32 of 2009 has regulated the Article of Evidence which states: Legal evidence in the prosecution of environmental crimes consists of:

a) Witness testimony
b) Expert description
c) Letter
d) Hint
e) Defendant's statement; and/or
f) Other evidence, including evidence regulated in laws and regulations.

Article 183 of the Criminal Procedure Code clearly determines the function of evidence as one of the conditions for judges to impose a sentence. Because of its function in collecting strong and valid evidence, investigators need to be careful because the technique of taking and determining evidence in environmental crimes is very difficult and complex.

Law No.32 of 2009 concerning Environmental Management and Protection has regulated integrated law enforcement in Article 95 paragraph (1) stating: in the context of law enforcement against environmental crimes, integrated law enforcement can be carried out between civil servant investigators, police, and prosecutors under Minister coordination.

Coordination between police investigating agencies, prosecutors and civil servant investigators (PPNS) in environmental crimes has not gone well. Many crimes in the environmental field are usually related to regulation or related to acts of violation of the policies of the administrative authorities which are usually preventive in nature, and are related to the prohibition of acting without permission. This has led to an opinion that the authority of criminal law to carry out investigations and the rest of the examination will only be possible if other means of law enforcement have been attempted and the working power of criminal law subsidiarities fails.

6. Conclusion

The enforcement of criminal law in the Law on Environmental Protection and Management introduces the threat of minimum punishment in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crimes. Environmental criminal law enforcement continues to pay attention to the ultimum remedium principle which requires the application of criminal law enforcement as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle only applies to certain formal criminal acts, namely the punishment of violations of quality standards (measurement limits or acceptable levels of pollutants to be included in the media) wastewater, emissions, and disturbances.

There are many obstacles faced by the government in terms of implementing the principle of strict liability related to law enforcement, including the constraints on Human Resources (HR) of law enforcement is a factor in the ineffectiveness of environmental criminal law enforcement, especially in regions, it cannot be said that law enforcers have master the ins and outs of environmental law, even the introduction of environmental law is still lacking. Apart from environmental crimes, environmental crimes have not become a priority compared to other cases, such as theft, murder, corruption and others. The reason is proof, determining the causal relationship between the act of pollution and the victim of an environmental crime where pollution occurs requires experts and special laboratories.

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Author Profile

Afryadin Rusdyani, Born in Garut, 24 April 1993, Gender Male, Islamic Religion, Indonesian Nationality, Married Status, Height 169 cm, weight 68 Kg, Address Kp. Sukatani Rt.03/ Rw.03 Sukatani Village, Cisurupan District, Garut Regency, West Java. No. Wa 085795771887. Email. afrydogmatic[at]ymail. com

Dr. Alfitra, SH. MH, Gender Male, Status of Civil Servant Lecturer, Head of Lecturer Position 550, Islamic Criminal Law Department Unit, Faculty of Sharia and Law, Islamic Criminal Law Study Program (Jinayah). Email alfitra[at]uin. jkt. ac. id

Educational background

SD IN [PRESNO.10/73 AIR BANGIS
SMP AIR BANGIS
SMAS TAMANSISWA
S1 UNIVERSITAS BUNG HATTA
S2 UNIVERSITAS MUHAMADIYAH JAKARTA
S3 UNIVERSITAS ISLAM BANDUNG

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