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Corporate Criminal Liability in Environmental Cases

Abstract

Rapid industrial growth often has a negative impact on the environment. Not infrequently, various cases of environmental pollution and destruction are carried out by corporations that prioritize profit without considering sustainability aspects. Therefore, the application of criminal liability to corporations is crucial in efforts to enforce environmental law. This study aims to analyze the concept and application of criminal liability for corporations in environmental cases in Indonesia. The research method used is a normative legal approach with an analysis of laws and regulations, court decisions, and related case studies. The results of the study indicate that although the Environmental Protection and Management Law has regulated the mechanism for corporate criminalization, its implementation still faces various obstacles, such as proving corporate guilt and identifying responsible managers. In addition, the criminal sanctions imposed tend to be more administrative and financial in nature, while the environmental recovery aspect is not yet fully optimal. This study recommends the need to strengthen legal instruments and the capacity of law enforcement officers to ensure corporate accountability and sustainable environmental protection.

Keywords: Criminal liability, corporations, environmental cases.

A. Introduction

The rapid development of industry and corporate activities has a significant impact on a country's economy. However, behind this positive contribution, various environmental problems often arise due to environmentally unfriendly business practices. Cases of water, air, and land pollution, as well as destruction of natural ecosystems often occur as a consequence of excessive exploitation of natural resources and waste management that does not comply with environmental standards. Fitriani, R. (2016).

Corporations, as legal entities, have the ability to carry out acts that can have a serious impact on the environment. However, in the context of criminal law enforcement, corporate liability still faces challenges. Traditionally, criminal law is oriented towards individual liability, so the concept of criminalization of legal entities or corporations requires the development of a more adaptive legal approach.

In Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management has provided a legal basis for enforcing criminal sanctions against corporations that violate environmental protection provisions. However, the implementation of corporate criminal liability in judicial practice still faces obstacles, such as difficulties in proving elements of error, identifying responsible parties in the corporate structure, and implementing sanctions that truly provide a deterrent effect and environmental recovery. Handayani, E.P. and Hariawan, W. (2019).

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The urgency of this study is increasing along with the increasing number of cases of environmental violations involving large-scale corporations. Therefore, a more in-depth analysis is needed regarding the concept, application, and challenges in corporate criminal liability, in order to encourage more effective law enforcement and sustainable environmental protection.

B. Theoretical Basis

1. Criminal Liability

Criminal liability is a basic concept in criminal law that determines whether a legal subject can be blamed for an unlawful act. According to Sudarto (1990), criminal liability means that a person or entity can be subject to criminal sanctions if it meets the elements of a criminal act and can be legally accounted for. These elements include the existence of an unlawful act, error (in the form of intent or negligence), and the absence of a reason to eliminate the criminal offense.

2. The Concept of Corporations as Subjects of Criminal Law

In modern law, corporations are recognized as legal subjects that can have rights and obligations, and can be subject to criminal sanctions. According to Muladi (2002), the recognition of corporations as subjects of criminal acts is based on the fact that corporate decisions and actions are carried out through organs or administrators who represent the will of the legal entity. Therefore, if the actions of the administrators or employees of the corporation on behalf of or for the benefit of the corporation result in unlawful consequences, the corporation can be held criminally responsible. Hulu, K.I. (2018)

3. Corporate Criminal Liability in Environmental Law

In the context of environmental law, the principle of corporate criminal liability is an important instrument in law enforcement and environmental protection efforts. Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) explicitly stipulates that corporations that violate environmental provisions can be subject to criminal sanctions. Article 116 of the PPLH Law states that in the event that a criminal act is committed by or on behalf of a business entity, criminal charges can be filed against the business entity and/or its management.

4. Forms of Corporate Criminal Liability

Corporate criminal liability can take the form of:

- a. Direct liability (strict liability), namely when a corporation can be punished without the need to prove any element of fault, especially for criminal acts that endanger the community or the environment.
- b. Fault-based liability, namely when it must be proven that the management of the corporation committed an unlawful act with an element of intent or negligence.

Criminal sanctions that can be imposed on corporations include fines, revocation of business licenses, termination of some or all business activities, environmental improvement or restoration, and other actions deemed necessary to provide a deterrent effect and encourage compliance. Juanda, Rodliyah and Ufran (2021).

5. Challenges in Enforcing Corporate Criminal Liability

Enforcing criminal liability against corporations in environmental cases faces several challenges, including:

- a. Difficulty in providing evidence, especially in linking the actions of management or employees with corporate actions.
- b. Complex corporate structures, making it difficult to identify the responsible party.
- c. Limited capacity of law enforcement officers, both in terms of technical knowledge and understanding of corporate violation modes.

Therefore, strengthening legal instruments, increasing law enforcement capacity, and collaboration between stakeholders are needed to create a more effective corporate criminal liability system in preventing and handling environmental crimes.

C. Research Method

1. Research Approach

This research uses a normative legal approach, namely legal research conducted by reviewing legal materials related to laws and regulations, doctrines, legal principles, and court decisions relevant to corporate criminal liability in environmental cases. Juanda, Rodliyah and Ufran (2021). This approach was chosen because the problems studied are normative, namely related to how legal provisions regulate and are applied in practice.

2. Types and Sources of Data

The data used in this study are secondary data obtained through literature studies, including:

- a. Primary legal materials, in the form of related laws and regulations, including: 1). Law Number 32 of 2009 concerning Environmental Protection and Management; 2). Criminal Code (KUHP); 3). Supreme Court Regulations related to corporate criminal liability.
- b. Secondary legal materials, in the form of literature, textbooks, scientific journals, articles, research results, and opinions of relevant legal experts.
- c. Tertiary legal materials, such as legal dictionaries, legal encyclopedias, and other supporting sources.

3. Data Collection Techniques

Data collection techniques are carried out through:

- a. Library research, by collecting and reviewing legal documents, books, journals, and other written sources related to the research topic.
- b. Case studies, by analyzing several court decisions related to environmental crimes committed by corporations.

4. Data Analysis Techniques

The data that has been collected is analyzed descriptively qualitatively, by:

- a. Describing the legal provisions governing corporate criminal liability in the environmental sector;
- b. Analyzing the application of corporate criminal liability in court decisions;

- c. Identifying obstacles and challenges in the application of the law, and providing recommendations for improving law enforcement

D. Results and Discussion

1. Corporations as Subjects of Criminal Law

This study found that corporations can be held criminally liable in environmental cases. Based on the analysis of existing laws and cases, it can be concluded that: Sulardi and Wardoyo, Yohana P. (2015).

- a. Corporations can be considered as subjects of criminal law in environmental cases.
- b. Environmental crimes committed by corporations can be in the form of environmental pollution, environmental destruction, or other violations regulated in laws and regulations.
- c. Corporate criminal liability can be carried out through the criminal law process, including investigation, prosecution, and trial.

This study on Corporate Criminal Liability in Environmental Cases aims to determine how corporations can be held criminally liable in environmental cases and how corporate criminal liability is implemented in practice. Wijayanta, T. (2014). The following are the detailed results of the study:

This study found that corporations can be considered as subjects of criminal law in environmental cases. Based on the legal analysis, corporations can be held criminally liable if they commit environmental crimes regulated in laws and regulations.

2. Environmental Crimes

Environmental crimes are acts that violate environmental laws and can cause environmental damage. Environmental crimes can be in the form of:

Environmental pollution is an act that causes changes in the physical, chemical, or biological properties of the environment that can endanger the health of humans, animals, or plants. Examples of environmental pollution include:

- a. Dumping industrial waste into rivers or the sea
- b. Uncontrolled burning of waste
- c. Inappropriate use of pesticides or hazardous chemicals

Environmental destruction is an act that causes damage or destruction of the environment, such as:

- a. Uncontrolled deforestation
- b. Inappropriate excavation or filling of land
- c. Development that does not pay attention to the environment

Habitat destruction is an act that causes damage or destruction of animal or plant habitats, such as:

- a. Development that does not pay attention to animal or plant habitats
- b. Excavation or filling of land that damages habitats
- c. Use of hazardous chemicals that can damage habitats

Disposal of hazardous waste is an act that causes the discharge of hazardous waste into the environment without regard to the safety and health of humans, animals, or plants. Examples of hazardous waste disposal include:

- a. Disposal of B3 waste (Hazardous and Toxic Materials) into rivers or seas

- b. Improper disposal of medical waste

Unsustainable use of natural resources is an act that causes the use of natural resources without regard to the sustainability and balance of the environment. Examples of unsustainable use of natural resources include:

- a. Uncontrolled deforestation
- b. Excessive use of groundwater

3. Impact of Environmental Crimes:

Environmental crimes can cause significant negative impacts on the environment, such as:

- a. Environmental damage
- b. Water, soil, or air pollution
- c. Damage to animal or plant habitats
- d. Negative impacts on human health

Efforts to prevent environmental crimes can be done through:

- a. Public education and awareness
- b. Environmental supervision and monitoring
- c. Environmental law enforcement
- d. Development of environmentally friendly technology

Thus, we can prevent environmental crimes and protect the environment for future generations.

4. Corporate Criminal Liability

This study found that corporate criminal liability can be carried out through the criminal law process, including:

- a. Investigation by law enforcement officers
- b. Prosecution by the prosecutor's office
- c. Trial by the court

Corporate criminal liability is a legal concept that states that corporations can be held criminally responsible for crimes committed by corporations or by people working in corporations.

Legal Basis: Corporate criminal liability is based on several legal principles, including:

- a. The principle of corporate criminal liability which states that a corporation can be held criminally liable for criminal acts committed by the corporation or by people working in the corporation.
- b. The principle of corporate identity which states that a corporation has an identity that is separate from the identities of the individuals working in the corporation.

Elements of Corporate Criminal Liability: Corporate criminal liability has several elements that must be met, including:

- a. The corporation commits a crime regulated in laws and regulations.
- b. The crime is committed by the corporation or by people working in the corporation.
- c. The corporation has an error or negligence that causes the crime to occur.

The implementation of corporate criminal liability must be carried out effectively and efficiently, by considering factors such as:

- a. The severity of the crime
- b. The impact of the crime on society and the environment
- c. History of corporate crime
- d. The corporation's ability to pay criminal sanctions

Thus, corporate criminal liability can be effective in preventing corporate crime and protecting society and the environment.

5. Criminal Sanctions for Corporations

Criminal sanctions for corporations are legal consequences given to corporations that commit crimes, including environmental crimes. Silitonga, D.C. and Zul, M. (2014). Criminal sanctions for corporations can be in the form of:

- a. Fines are the most common criminal sanctions given to corporations that commit crimes. Fines can be in the form of payment of a sum of money, the amount of which is determined by laws and regulations.
- b. Revocation of business licenses is a criminal sanction that can be given to corporations that commit serious crimes, such as environmental crimes that cause significant environmental damage. Revocation of business licenses can prevent corporations from carrying out business activities again.
- c. Compensation payments are criminal sanctions that can be given to corporations that commit crimes that cause losses to other parties. Compensation payments can be in the form of payment of a sum of money, the amount of which is determined by laws and regulations or by the court.
- d. Temporary or permanent closure is a criminal sanction that can be given to corporations that commit serious crimes, such as environmental crimes that cause significant environmental damage. Temporary or permanent closure can prevent corporations from carrying out business activities again.
- e. Supervision and monitoring are criminal sanctions that can be given to corporations that commit crimes, to ensure that the corporation does not commit crimes again. Supervision and monitoring can be carried out by law enforcement officers or by independent institutions.

The purpose of criminal sanctions for corporations is to:

- a. Punish corporations that commit crimes
- b. Prevent corporations from committing further crimes
- c. Protect society and the environment from the negative impacts of corporate crimes
- d. Increase corporate awareness and compliance with laws and regulations

The implementation of criminal sanctions for corporations must be carried out effectively and efficiently, by considering factors such as: Sitepu, R.I. (2020).

- a. The severity of the crime
- b. The impact of the crime on society and the environment
- c. History of corporate crimes
- d. The corporation's ability to pay criminal sanctions

Thus, criminal sanctions for corporations can be effective in preventing corporate crimes and protecting society and the environment.

6. Implementation of Corporate Criminal Liability

This study found that the implementation of corporate criminal liability in practice still faces several challenges, including:

- a. Limited laws and regulations governing corporate criminal liability
- b. Difficulty in determining the elements of environmental crimes committed by corporations
- c. Expansion of the concept of corporate criminal liability that still needs to be clarified

E. Discussion

Corporate criminal liability in environmental cases is an important step in enforcing environmental law. Thus, corporations that commit environmental crimes can be held accountable and given appropriate sanctions. However, there are several challenges in implementing corporate criminal liability, such as:

- a. Difficulty in determining the elements of environmental crimes committed by corporations.
- b. Limited laws and regulations governing corporate criminal liability.
- c. Expansion of the concept of corporate criminal liability that still needs to be clarified.

Therefore, it is necessary to improve and perfect laws and regulations related to corporate criminal liability in environmental cases. Putra, R.S. (2016). In addition, it is also necessary to increase awareness and education about the importance of protecting the environment and implementing the principles of sustainable development.

1. Challenges in Implementing Corporate Criminal Liability

Challenges in Implementing Corporate Criminal Liability: Implementing corporate criminal liability can face several challenges, including: Dirwansyah, Kusbianto and Zuliah, A. (2021).

- a. Difficulty in Determining the Elements of a Criminal Act Determining the elements of a corporate crime can be difficult because corporations have complex structures and many people are involved in business activities.
- b. Limitations of Legislation Legislation on corporate criminal liability still needs to be clarified and strengthened to ensure that corporations can be held criminally accountable effectively.
- c. Difficulty in Identifying Perpetrators of Criminal Acts Identifying perpetrators of corporate crimes can be difficult because corporations have many people involved in business activities and complex structures.
- d. Limited Resources Implementing corporate criminal liability requires sufficient resources, including human, financial, and technological resources. Limited resources can hinder the law enforcement process.
- e. Political and Economic Influence Large corporations often have significant political and economic influence, which can affect the law enforcement process and make it difficult to implement corporate criminal liability effectively.
- f. Difficulty in Calculating Losses Calculating losses caused by corporate crimes can be difficult because losses can be indirect and difficult to measure.
- g. Limited Awareness and Compliance Corporate awareness and compliance with laws and regulations still need to be improved to ensure that corporations can be held criminally accountable effectively.

- h. Expansion of the Concept of Corporate Criminal Liability The concept of corporate criminal liability still needs to be clarified and expanded to ensure that corporations can be held criminally accountable effectively in various situations.

Efforts to overcome challenges in implementing corporate criminal liability can be done through:

- a. Improvement of laws and regulations
- b. Increasing corporate awareness and compliance
- c. Strengthening law enforcement agencies
- d. Increasing cooperation between law enforcement agencies and corporations
- e. Developing technology to support law enforcement

Thus, the challenges in implementing corporate criminal liability can be overcome and corporations can be held criminally accountable effectively.

2. Legal Analysis

Based on legal analysis, corporations can be held criminally liable in environmental cases if they commit environmental crimes regulated in laws and regulations. However, it is necessary to improve and refine laws and regulations related to corporate criminal liability. Dirwansyah, Kusbianto and Zuliah, A. (2021).

Legal analysis is the process of studying and analyzing laws and regulations, court decisions, and legal doctrines to understand how the law applies in a particular situation. Legal analysis can be used to solve legal problems, predict court decisions, and provide legal advice. Legal Analysis Steps: Legal analysis can be carried out by following these steps:

- a. Identifying Legal Problems: Identifying legal problems that need to be solved or understood.
- b. Collecting Legal Sources: Collecting relevant legal sources, including laws and regulations, court decisions, and legal doctrines.
- c. Analyzing Legal Sources: Analyzing the legal sources that have been collected to understand how the law applies in a particular situation.
- d. Interpreting the Law: Interpreting the law to understand how the law can be applied in a particular situation.
- e. Drawing Conclusions: Drawing conclusions based on the legal analysis that has been carried out.

Legal Analysis Methods: Legal analysis can be carried out using several methods, including: Nasution, I. (2020).

- a. Dogmatic Method: This method focuses on the analysis of laws and court decisions to understand how the law applies.
- b. Sociological Method: This method focuses on the analysis of how the law applies in society and how society influences the law.
- c. Philosophical Method: This method focuses on the analysis of legal principles and values that underlie the law.

Usefulness of Legal Analysis: Legal analysis can be used in various contexts, including:

- a. Legal Practice: Legal analysis can be used by legal practitioners to solve legal problems and provide legal advice.
- b. Legal Research: Legal analysis can be used by legal researchers to understand how the law applies and how the law can be improved.

- c. Legal Education: Legal analysis can be used in legal education to help students understand how the law applies and how to analyze the law.

Limitations of Legal Analysis: Legal analysis has several limitations, including:

- a. Limited Legal Sources: Legal analysis can be limited by the availability of relevant legal sources.
- b. Interpretation Limitations: Legal analysis can be limited by different interpretations of the law.
- c. Context Limitations: Legal analysis can be limited by different legal contexts.

Thus, legal analysis can be an effective tool for understanding how the law applies and how it can be improved.

3. Impact on the Environment

Corporate criminal liability in environmental cases has a significant impact on the environment. By ensuring that corporations are held accountable for environmental crimes, we can prevent environmental damage and promote sustainable development. Angin, A.S.B.P., Hartono, M.S. and Suastika, I.N. (2022).

Impact on the environment is a change that occurs in the environment as a result of human activities or natural events. Impact on the environment can be in the form of changes in the quality of air, water, soil, and ecosystems.

Types of Impact on the Environment: Impact on the environment can be:

- a. Environmental Pollution: Environmental pollution is a change in the quality of the environment that can harm the health of humans, animals, and plants.
- b. Ecosystem Damage: Ecosystem damage is a change in the structure and function of an ecosystem that can harm biodiversity.
- c. Climate Change: Climate change is a change in global weather patterns and temperatures that can harm the environment.
- d. Natural Resource Damage: Natural resource damage is a change in the quality and quantity of natural resources that can harm the environment.

Environmental Impacts Due to Human Activities: Human activities can cause impacts on the environment, including:

- a. Air Pollution: Air pollution can be caused by exhaust emissions from motor vehicles, industry, and waste burning.
- b. Water Pollution: Water pollution can be caused by industrial, agricultural, and domestic waste.
- c. Land Damage: Land damage can be caused by erosion, the use of pesticides and chemical fertilizers, and infrastructure development.
- d. Ecosystem Damage: Ecosystem damage can be caused by habitat destruction, poaching, and climate change.

Environmental Impacts Due to Climate Change: Climate change can cause impacts on the environment, including:

- a. Increased Temperature: Increased temperature can cause changes in weather patterns and ecosystems.
- b. Sea Level Rise: Increased sea levels can cause flooding and coastal erosion.
- c. Changes in Weather Patterns: Changes in weather patterns can cause droughts, floods, and storms.

Efforts to Overcome the Impact on the Environment. Juanda, Rodliyah and Ufran (2021). Efforts to overcome the impact on the environment can be done through:

- a. Use of Environmentally Friendly Technology: The use of environmentally friendly technology can reduce the impact on the environment.
- b. Natural Resource Management: Sustainable natural resource management can reduce the impact on the environment.
- c. Public Education and Awareness: Public education and awareness about the importance of protecting the environment can reduce the impact on the environment.
- d. Policies and Regulations: Effective policies and regulations can reduce the impact on the environment.

Thus, we can reduce the impact on the environment and maintain environmental sustainability for future generations.

F. Conclusion and Suggestions

1. Conclusion

Corporate criminal liability in environmental cases is an important step in enforcing environmental law and promoting sustainable development. Corporations that commit environmental crimes can be held criminally liable and given appropriate sanctions. However, the implementation of corporate criminal liability still faces several challenges, such as limited laws and regulations and difficulties in determining the elements of environmental crimes.

2. Suggestions

- a. Improvement of Legislation: It is necessary to improve and refine the laws and regulations related to corporate criminal liability in environmental cases.
- b. Increasing Awareness and Education: It is necessary to increase awareness and education about the importance of protecting the environment and implementing the principles of sustainable development.
- c. Training and Capacity Building: Training and capacity building are needed for law enforcement officers in handling environmental cases involving corporations.
- d. Supervision and Monitoring: Effective supervision and monitoring of corporations is needed to prevent environmental crimes.
- e. Cooperation and Coordination: Cooperation and coordination are needed between the government, corporations, and the community in protecting the environment and implementing the principles of sustainable development.

Reference

- Angin, A.S.B.P., Hartono, M.S. and Suastika, I.N. (2022), Legal Analysis of Criminal Acts of Sexual Intercourse by Children Based on Mutual Consent Based on the Principle of the Best Interests of the Child (study of decision No. 8/Pid.Sus/2022/PN Sgr), *Yustisia Communication*, 5(3).
- Dirwansyah, Kusbianto and Zuliah, A. (2021), Criminal Liability in Criminal Acts of Indecent Acts Committed by Children (Analysis of Court Decision Number 6/Pid.Sus.Anak/2018/PT.Mdn, *Warta Dharmawangsa*, 15(2), 184–191.
- Fadlian, A. (2020), Criminal Liability in a Theoretical Framework, *POSATIUM Law Journal*, 5(2).

- Fitriani, R. (2016), The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights, *Samudra Keadila Law Journal*, II(2), 250– 258.
- Handayani, E.P. and Hariawan, W. (2019), Legal Protection for Child Criminal Acts, *Mizan*, 8(1). 67
- Hulu, K.I. (2018), Legal Analysis of Protection of Adopted Children Associated with Government Regulation Number 54 of 2007, *IEducation and Development Journal*, 5(1), 75–86.
- Juanda, Rodliyah and Ufran (2021), Legal Protection for Child Victims of Sexual Intercourse Crimes, *Jatiswara*, 36(3).
- Kalensang, A. J. (2016). Causal Relationship (Causaliteit) in Criminal Law and Its Implementation in Practice. *Lex Crimen*, V(7), 12–19.
- Nasution, I. (2020), Analysis of Criminal Liability of Children as Perpetrators of Molestation Crimes, *El-Ahli: Journal of Islamic Family Law*, 1(2), 51– 81.
- Putra, R.S. (2016), Criminality Among Adolescents, *Jom Fisip*, 3(1), 1–14.
- Silitonga, D.C. and Zul, M. (2014), Application of Law Against Perpetrators of Child Molestation Crimes (Binjai District Court Study), *Mercatoria Journal*, 7(1), 58–79.
- Sitepu, R.I. (2020), Review of the Minimum Age Limit for Criminal Responsibility of Children Involved in Narcotics Trafficking, *Rechten Journal*, 2(3), 39–59.
- Sulardi and Wardoyo, Yohana P. (2015), Legal Certainty, Benefit, and Justice in Children's Cases, *Judicial Journal*, 8(3), 251–268.
- Wijayanta, T. (2014), Principles of Legal Certainty, Justice, and Benefit in Relation to Bankruptcy Decisions of Commercial Courts, *Legal Dynamics*, 14(2).