

## **Distant Desistance: Corporate Responsibility on Environmental Issue**

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### **INTRODUCTION**

Towards the end of 2020, amid the shocks of the COVID-19 pandemic since March 2020, Indonesia remained committed to maintaining the targets set towards the achievements of SDGs by 2030. It is including the commitment to the environment.

In an effort to mitigate the effects of climate change, the Indonesian Government, working with members of the international community at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”), which took place on 12 December 2015 in Paris, France, has adopted the Paris Agreement to the UNFCCC

Under the mandate of the Regulation, Indonesia has mainstreamed the targets and indicators on the issued Law No. 16 of 2016 on the Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change (“Law 16/2016”). In order to achieve the objectives of the Paris Agreement and national contributions to the ongoing global climate change effort, as set forth under the various Nationally Determined Contributions (“NDC”), all of the relevant state parties are required to implement and communicate their efforts and also to periodically demonstrate their NDC progress. Moreover, Indonesia’s NDC encompasses various mitigation and adaptation initiatives, including a targeted reduction in the country’s Greenhouse Gas Emissions (“GHG”) of between 29% (unconditionally) and 41% (conditionally) against the 2030 business as usual scenario.

Moreover, Indonesia’s commitment is also showed in the 2021 National Development Planning Discussion event, the President of Indonesia delivered his directive based on his commitment to the implementation of SDGs. First, as one of the world’s lung with large tropical forests and mangrove forests, Indonesia must harness this for the well-being of the population. Second, Indonesia must participate in the global trend towards the green economy. Therefore, transformation of energy towards new and renewable energy sources is essential in strengthening Indonesia’s national energy security and its global competitiveness. Third, Indonesia also has the world’s richest maritime biodiversity, which must be harnessed to power sustainable blue economy in all coastal areas. Fourth, Indonesia’s economic growth must be inclusive, equitable and economic fairness being the foundation to achieve Sustainable Development Goals.

However, how this commitment is adapted in the context of corporate responsibility still vague. Corporate is taking strategical role in managing state’s commitment towards its environmental goals. Most of economic access in Indonesia is authorized and managed by company. Besides, the inclusivity principle has remained an anchor in implementing Sustainable Development Goals, which do not only involve ministries and institutions, but also encourage

the partnership of non-governmental organizations, philanthropic entities, universities, the media, the parliament, and corporates as the representation of business sector.

Corporations are legal subjects, carry out their activities in accordance with the economic principles of seeking maximum profits and have an obligation to comply with the legal regulations in the economic field that are used by the government to realise general welfare and social justice. The reason for reluctance to make a crime to the corporation, because it cannot be considered as legal and non-existent of mens rea (error) basically owned by "humans" who do deeds. [1]

The cause of forest fires for example is not only caused by natural factors. Forest fires triggered by lightning and tree friction are rare in Indonesia especially in tropical rainforests. It can occur if forest conditions susceptible to fire, such as during long droughts. Based on the report of a university in Riau, human factors are the cause of forest fires in each province. [2]

Forest fires in Indonesia cannot be separated from the poor pattern of land and forest allotment policies in this country. This routine forest fire for a decade is not solely due to changes in ecological links. However, it was influenced by intentional elements of large-scale plantation businesses in clearing land. This includes the negligence of industrial businesses, as well as the uncontrolled process of issuing regional control permits. This shows that the monitoring and prevention of forest and land fires in Indonesia is still very weak. More than 300 hotspots in Indonesia this year are within Industrial Plantation and plantation estates. This shows that the process of issuing plantation business licenses from the government is not carried out based on adequate studies. As a form of responsibility, the government should immediately revoke the business license at the concession points that experienced the fire. [3]

Forest and peatland fires during the dry season can be caused or triggered by natural events and activities of companies engaged in plantations or human carelessness. Forest and land burning is prohibited because in addition to violating Article 50 of Law Number 41 of 1999 in conjunction with Law Number 19 of 2004 concerning Forestry, it also violates Article 11 of Government Regulation Number 4 of 2001 concerning Damage Control and/or Environmental Pollution Relating to Forest and/or Land Fires, and Article 187 of the Criminal Code and Article 188 of the Criminal Code.

In the development of Indonesian criminal law regulations, corporations can be burdened with criminal liability or can be said to be criminal law subjects. Corporations really exist and occupy important positions in our society and are capable of causing harm to others in society as well as humans. Treating corporations such as human (natural person) and burdensome accountability for criminal acts made by the corporation, in line with the principle of law that anyone is equal before the law (principle of equality before the law).

Corporate criminal responsibility is taking major role in the social policy framework. [4] To assist the policy, criminal policy by means of criminal law (penalty policy) must meet the following elements: legislative policy (formulation stage), judicial policy (application stage), and executive policy (execution phase, namely the implementation stage of criminal law). [5] The legislative policy is the most strategic stage of the reasoning policy because the weakness of the legislative policy can hamper efforts to overcome crime [6] at the application and execution stages. [7] Legislation policies include efforts to eradicate and overcome crime in the context of social defence. [8] This effort must be based on the values of

national life [9] namely Pancasila and the Constitution 1945 and in accordance with the demands of the times (legal reform).

These corporations, which can have a big impact on social life, should also be obliged to respect the fundamental values of our society as determined by criminal law. [10] During a is the existence of corporate responsibility in environmental legislation recognized in practice was never found cases of environmental pollution which penalize corporations, for example in the case of forest fires in Indonesia are carried out by several companies in Indonesia itself.

The formulation of corporate criminal responsibility is the first step in criminal law instruments in overcoming the crime of forest destruction. Effectiveness which means "the effectiveness (effectiveness) or efficacy" of this policy can not be separated from the two characteristic variables, namely the characteristic "object or the intended target" and "the means used" (device criminal law). [11]

For example, forest fires by PT. Bumi Mekar Hijau (BMH), which became a hot talk on various social media because the judge considered the fire did not damage the land because it could still be overgrown with acacia plants. The panel of judges considered that the acacia plant was also burned so that the company suffered a loss. But apart from that, this event has an impact on the losses suffered by the community and the state. Even though the community experienced a direct impact, such as not being able to go to school because the school was closed, flight disruption due to smoke and also the budget disaster mitigation that must be issued by the State . [12] The judiciary's perspective is considered strange and lacks a sense of justice, and does not even show sense of crisis on the impact of forest and land fires on millions of local residents. In fact, the recurrence of fire events from year to year on PT . BMH was not seen by Judge.

Departing from the weak enforcement of the culprit of forest fires in this country, the culprit are still free to carry out their actions to loot the forest. This encourages the writer to look at and re-examine the legal policies, especially the accountability of corporations that commit criminal acts in the realm of the environment in the context of forest protection by raising the title: "CORPORATE CRIMINAL RESPONSIBILITY IN THE ENVIRONMENTAL ON THE FOREST FIRE CASE"

#### Problem Statement

1. How are Corporate Criminal Responsibility of the Environmental on the Forest Fires Case in Indonesia's Positive Law? Has it showed the commitment towards sustainable goals?
2. How is it the Corporate Criminal Responsibility of the Environmental on the Forest Fires Case in the Future?

#### Research Objectives

To know, evaluate, correct and analyze how corporate criminal responsibility of the Environmental on the forest fires case with using Indonesia's Positive Law at this time in the future.

#### **METHOD**

The method used is a normative juridical or legal research literature done by researching library materials and secondary data. The normative law research method in writing this paper is a study of legal principles.

## **DISCUSSION**

### **Corporate Criminal Liability Environment In Forest Fire in the Future**

The Supreme Court issued the Supreme Court Regulation No. 13 of 2016 concerning Corporate Criminal Procedures. This company was signed (ratified) by the Chairman of Supreme Court, M. Hatta Ali on 21 December 2016 and was only promulgated on December 29, 2016. This Supreme Court Regulation serves as a guideline for law enforcement officers and fills legal vacancies related to procedures for handling certain crimes committed by corporations and / or their administrators.

So far, certain laws (laws) have been placed corporation as a legal subject that can be convicted because it is detrimental to the state and or society. However, very little is processed to court because there is no procedural law procedure of investigation, prosecution to the court, especially in formulating indictments for corporate entities.

The Corporate Criminal Law contains the formulation of corporate error criteria that can be called a criminal offences; anyone who can be held responsible for corporate criminal responsibility; procedures for examining (prosecuting) corporations and or corporate administrators; procedures for corporate trials; the type of corporate punishment; decision; and the execution of decisions.

In terms of error criteria there are several things that need to be considered. First, the corporation obtains profits or benefits from certain criminal acts or the crime is carried out for the benefit of the corporation. Second, corporations allow criminal acts to occur. Third, the corporation does not take preventive measures or prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.

"In the event that one or more Corporate Administrators stop, or die does not result in the loss of corporate (criminal) liability," said Article 5 of the Corporate Criminal Code.

The Supreme Court Regulation did not only set the criminal liability of the corporation carried out on the basis of employment or other relationship, but also can ensnare corporate groups and corporations in the merger (merger), consolidation (acquisitions), separation, and will process of disbanding. However, corporations that have disbanded after the occurrence of criminal acts cannot be convicted. However, against corporate assets (which are dispersed) are allegedly used to commit crimes and/or are the proceeds of crime, then law enforcement is carried out in accordance with the mechanism of legislation.

This decree determines the examination of the corporation and/or its administrators as suspects in the investigation and prosecution process either alone or together after the summons (letter) is carried out. This summons letter includes: Corporate name; domicile; nationality of the corporation; corporate status in criminal cases (witness/suspect/defendant); time and place of examination; and a summary of suspected criminal events.

Article 12 Supreme Court Regulation regulates the form of indictments which in part refers to Article 143 paragraph (2) KUHAP with the adjustment of the contents of the indictment containing: the name of the Corporation, place, date of establishment and/or number of articles of association/deed of establishment/regulation/document/agreement as well as the latest changes. place of domicile, nationality of corporation, type of corporation, form of activity/business and identity of the representative board. In addition, it contains a

careful, clear, complete description of the criminal act charged with mentioning the time and place of the crime.

The verification system for handling corporate crimes still refers to the Criminal Procedure Code and procedural law provisions which are specifically regulated in other laws. As with the statements of the defendant, corporate information is a valid evidence in the trial. While the imposition of corporate crimes is the principal criminal form of additional fine and criminal penalties in accordance with the applicable law, such as compensation, compensation and restitution.

If it is not able to be paid, corporate assets are confiscated and auctioned by the Prosecutor to cover the amount of criminal penalties, compensation money, compensation and or restitution (civil claim by the victim) that are sentenced by the court. This criminal penalty can be converted into a prison sentence proportionally after the board has finished serving the principal (prison).

For information, there are about 70 laws that ensnare corporate criminal liability, but are minimally processed and decided up to court. Such as crime of theft of fish, illegal logging, forest fires, criminal acts of corruption, environmental destruction, money laundering by corporations. Because, the Criminal Procedure Code itself has not yet determined the technical instructions for preparing the indictment when the legal subject of the perpetrator is the corporation.

Practice, investigators and prosecutors are reluctant or do not dare to bestow corporate crime cases to court because of difficulties preparing and formulating the indictment in the case of corporate crime. Even the court when prosecuting cases of corporate crime is very dependent on the indictment filed by the public prosecutor. [21]

Accountability of corporate crimes in environmental cases, for example in the form of criminal penalties as referred to in Article 98 paragraph (1) of the Environmental Law concerning actions that result in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard environmental damage criteria which reads as follows:

"Anyone who deliberately commits an act that results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage, shall be sentenced to a minimum of 3 (three) years imprisonment and a maximum of 10 (ten) year and fine of at least Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)."

What is meant by each person here is an individual or business entity, both legal entity and non-legal entity. So that corporations can be held liable for criminal liability even though cases of environmental pollution in the form of forest fires will be difficult to prove by the court. Not because there is no pollution, but the tendency for principled judges to be in doubt (there is pollution), is better to be free.

## **CONCLUSION**

Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction has explicitly affirmed that a corporation is an entity that can commit a crime, and can carry out criminal liability. Corporations referred to in this Law are as stipulated in Article 1 Number 22, namely corporations in the form of legal entities and not legal entities.

Law enforcement of corporate responsibility in these environmental crimes, experienced several obstacles, including:



- i. Simplicity of legal instruments and instruments of legislation.
- ii. Professionalism of environmental law enforcement officers
- iii. Community legal awareness and facilities that support law enforcement.

The Supreme Court issued the Supreme Court Regulation No. 13 of 2016 concerning Corporate Criminal Procedures. This Supreme Court Regulation was signed (ratified) by the Chief of Supreme Court M. Hatta Ali on December 21, 2016 and was only promulgated on December 29, 2016. The Supreme Court Regulation serves as a guideline for law enforcement officers and fills a legal vacuum related to procedures for handling certain crimes committed by corporations and/or their administrators. So far, certain laws (laws) have placed corporations as legal subjects that can be punished because they harm the state and or society. However, very little is processed to court because there is no procedural law procedure of investigation, prosecution to the court, especially in formulating the letter of indictment for corporate entities.

The Corporate Criminal Law contains the formulation of corporate error criteria that can be called a criminal offense; anyone who can be held responsible for corporate criminal responsibility; procedures for examining (prosecuting) corporations and or corporate administrators; procedures for corporate trials; the type of corporate punishment; decision; and the execution of decisions.

Accountability of corporate crimes in environmental cases, for example in the form of imposing fines as referred to in Article 98 paragraph (1) of the Environmental Law concerning measures that result in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard environmental damage criteria life.

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18. Michael J.Allen, Textbook in Criminal Law in Mahmud Mulyadi and Antoni Surbakti, Criminal Law Politics Against Corporate Crimes , op. cit ., p. 57.
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