

Corporate Criminal Liability Against Pollution Environment Life

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ABSTRACT. Environmental pollution that exceeds quality standard is often carried out by corporations. Law enforcement in the environmental sector, in addition to resolution through administrative law, also through the application of criminal law. In recent developments, law enforcement in the environmental sector has moved closer to a premium remedy. This research aims to analyze feasibility effective application of law in the environmental sector through normative legal research or library legal research using a juridical approach. In this research, it can be concluded that by implementing administrative sanctions against corporations, we should also apply criminal law to corporations that have repeatedly polluted the environment, so that the aim of the law, namely justice, can be accepted by the living creatures affected by it.

Keyword : Accountability, Corporation, Pollution, Environment

INTRODUCTION

Background Behind the Problem

Environmental pollution can reduce environmental quality, which affects the entire entity where living things exist. For ordinary people its importance an environment, then in his view, the environment is just a simple object that is merely related to plants and animals, even though in state development and community empowerment, activities always have a relationship to the environment which must have certain points and boundaries. The concept of sustainable development has been established as a policy, however, in practical experience so far, there has actually been uncontrolled processing of natural resources resulting in environmental damage that disrupts natural sustainability.

The role of corporations in the economic development of society not only has a positive impact, but also has negative impacts, one of which is the development of deviant behavior carried out by corporations with economic motives whose characteristics and modus operandi are different from conventional crimes in general so that law enforcement requires handling with special instruments. This is in line with what stated in in Regulation Court great Republic Indonesia Number

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¹ 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations which states that corporations are the legal subject of their existence.

Munadjat Danusaputro believes that development means processing and changing environmental resources in the form of human resources and natural resources, to achieve a certain goal (Munadjat Danusaputro, 1985: 5). Development industry in something area will influence the condition of the surrounding community, including both positive and negative factors from the development of an industrial area. The positive factors resulting from the development of this industry include the following:

1. By increasing the number of factories or companies being established, it means that more jobs will be opened, thereby reducing the unemployment rate in society;
2. Increased per capita income for communities around the industrial area.

The factors that ⁶ have a negative impact on society, due to the development of this industry, include:

1. The occurrence of various kinds of environmental pollution around the community, this results in health problems for the community;
2. Apart from that, such a situation will change the system or structure of the land, for example the level of soil fertility and agricultural yields will decrease or even become no longer productive. Environmental pollution that occurs in

Most environmental legal policies are expressed through statutory regulations and implementing legal policies. The ³ Environmental Protection and Management Law (UUPPLH) regulates law enforcement in the environmental sector which can be classified into 3 (three) categories, namely:

1. Enforcement Environmental Law pathway State Administrative Law ;
2. Enforcement Law Path environment Law Civil; And
3. Enforcement Law Path environment Criminal law .

The government should be able to take steps to take legal action against environmental pollution in accordance with the damage done by corporations, such as law enforcement above. One form of environmental pollution carried out by corporations is, PT. SMGP in Mandailing Natal, North Sumatra, where gas leaks of environmental pollution have repeatedly occurred so that they exceed air quality standards has resulted in approximately 100 (one hundred) people being poisoned, but this is not the first time this gas leak has occurred.

The regional government and Gakum of North Sumatra Region should be more assertive For take action to PT. SMGP, Because remember This is not the first time a gas leak has occurred by PT.SMGP and the victims are still local people who do not live there far from the PT.SMGP.

Formulation of the problem

From background behind it arise a question:

What is the form of legal liability for corporations that pollute the environment?

METHOD STUDY

The research method used is the normative juridical research method, which is done with method examine various draft, theory, nor principle law from literature, statutory regulations, articles and other related documents .

DISCUSSION

A. Form of legal responsibility for corporations that pollute the environment

Corporations play an important role in the economic development of a country, especially society. This is because corporations have a very strategic role in relation to meeting community needs as well as economic growth. Corporations contributing to state financial revenues such as taxes and so on can also help reduce unemployment through providing employment opportunities. The definition of corporation cannot be separated from civil law, because it is a terminology that is closely related to legal entities (*rechtspersoon*).

According to Article 1 Number 1 of the Corruption Crime Law, a corporation is an organized group of people and/or assets, whether a legal entity or not. Based on this, starting from the terminology of legal entities which is closely related to civil law (relating to corporations), a corporation according to the concept of criminal law is a collection of people or assets, whether in the form of a legal entity or No.

Indonesian positive law recognizes 2 (two) legal subjects, namely every person and association of people who are legal entities (companies). Initially, Indonesian criminal law, formally juridical, did not recognize corporations as subjects of criminal law. Humans were the only ones known as subjects of criminal law at that time. This can be traced through the provisions of the Criminal Code (*Wetboek van Strafrecht*) which view that an offense can only be committed by humans. You can be more specific seen in Chapter 59 Book Constitution Law Criminal (*Wetboek vans*

⁸ *Strafrecht*) which reads: In cases where a violation is determined to be a criminal offense against the management, members of the management body or commissioners, then the management, members of the management body or commissioners who apparently did not interfere in committing the violation are not punished.

Article 51 *Memorie van Toelichting* Ned. Article 59 of the Criminal Code (*Wetboek van Strafrecht*) more clearly states that a strafbaarfeit only can be realized by man And fiction about legal entities (read corporations) do not apply in the field ⁶ of criminal law. This thinking was motivated by the Dutch state, which in 1886 formulated the Criminal Code (*Wetboek van Strafrecht*), where the drafters accepted the principle of *societas or universitas delinquere non potest*. This means that legal entities or associations cannot commit criminal acts.

Then the form of law enforcement to ensnare corporations so that they can have an effect that can improve the management system for controlling environmental pollution is:

- ³ 1. Enforcement Environmental Law pathway State Administrative Law ;
2. Enforcement Law Path environment Law Civil; And
3. Enforcement Law Path environment Criminal law .

Refer form enforcement law through Constitution Number ¹¹ 32 years 2009 about Protection And Management Environment Life jo Constitution Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

Seeing leaks gas Which happen in Mandailing Christmas, Sibanggor allegedly from pipes and gas wells of PT. Sorik Merapi Gheothermal Power (PT.SMGP), Incident biggest happen on 25 January 2021 know Then, at least There is five residents who died. Two of the victims who died are suspected of inhaling gas the is small child, as well as dozens inhabitant rushed to House Sick. One year later, on March 6 2022 PT. SMGP is again threatening the lives of local residents. At least 57 residents were rushed to hospital after inhaling gas suspected to be leaking Hydrogen Sulfide (H₂S). At the end of the following month, on Sunday (24/4/2022), a similar incident happened again. At least 21 people were rushed to hospital at that time. Finally, last Friday (16/9), local residents had to be rushed to hospital again after inhaling gas which was thought to be the result of PT SMGP's activities. At least eight people were rushed to two different hospitals.

Then the gas leak which was suspected to be from the PT.SMGP well recurred on February 22 2024 resulting in around 101 (one hundred and one) residents being confused and

rushed to the local hospital. So far there has been no significant action from the Regional Government, while gas leaks have recurred. The role of law seems to have a very big influence on the changes that occur, where the law will further strengthen aspects of planning and law enforcement .

In Subardan Rochmat's opinion, environmental pollution that is. Air Pollution, foreign objects entering the air layer which then affect the air quality in a certain area. Types of air pollution (G. Tyler Miller Jr, 1979) are mainly in the form of: carbon oxides (CO and CO₂), sulfur oxides (SO₂ and SO₃), nitrogen oxides (N₂O, NO and NO₂), hydrocarbons (CH₄, C₄H₁₀ and C₆H₆), photochemical oxidants (O₃, PAN and various aldehyde), particulates (smoke, dust, fog, soot, asbestos, PB, Be, CD, oils, sprays, sulfate salts), other inorganic compounds (asbestos, HF, H₂S, NH₃, H₂SO₄, HNO₃), other organic compounds (pesticides, herbicides, various alcohols, acids, other chemicals), radioactive substances (tritium, radon, emissions from fuel, power plant installations), heat, and noise.

The principles of modern criminal law, including environmental crime, are known to have 2 (two) principles that are widely used today, namely *ultimum remedium* and *primum remedium* . *Ultimum remedium* is an attempt application of criminal law as a last resort when other legal instruments are ineffective in reducing a criminal act. *Primum remedium* is an effort to apply criminal law as the main tool to create a deterrent effect both for the perpetrator of a criminal act and for all people so that they will not commit a criminal act. is related to the *ultimum remedium* in perspective Eddy OS Hiariej is essentially the same, that criminal law is the last law to be used if other legal instruments cannot be used or cannot function as they should.

1. Accountability Administrative Law

The determination of the occurrence of environmental pollution can be seen from the exceeding of environmental quality standards. This refers to Article 20 of Law No. 6 of 2022 concerning the Establishment of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law in conjunction with Law No. 32 years 2009 concerning Environmental Protection and Management, namely.

Raw Environmental Quality Life includes:

- a. standard water quality ;
- b. standard quality wastewater ;
- c. standard quality sea water ;
- d. standard quality ambient air ;

- e. standard emission quality ;
- f. standard quality disturbance; And
- g. standard quality other in accordance with development knowledge knowledge and technology.

Environmental Pollution carried out by PT.SMGP The Central Government or Regional Government should supervise the company regarding whether or not the environmental approval given to the corporation is carried out. Central Government or Government Area Can do supervision through Service Environment Life as an extension of his hand.

If environmental pollution occurs repeatedly, the Ministry of Environment's Law Enforcement (GAKUM) should be able to carry out investigations into corporations that commit pollution, so that the results of these investigations can provide recommendations to the Central Government or Regional Government to take legal action as to what should be done. in accordance with Article 500 of Government Regulation No. 22 of 2021.

Referring to UUPH No. 32 of 2009 in conjunction with Law No. 6 of 2022, the administrative sanctions are as follows:

- a. reprimand written;
- b. coercion government;
- c. administrative fines ;
- d. freezing Licensing Try; and or
- e. revocation Business Licensing .

More precisely, the Central Government or Regional Government should apply government coercive administrative witness to stop corporate activities Which defiling environment so that No happen repetition And while recovering and correcting deficiencies in the results of the investigation referred to in Article 511 of Government Regulation no. 22 of 2021. Looking at the example of a case of environmental pollution committed by PT.SMGP in Sambungan, the government should be able to implement administrative sanctions to force the government to temporarily suspend business activities.

2. Accountability Criminal law

The application of criminal law provisions still takes into account the principles *ultimum remedium...*" implies that the application of criminal law for environmental violations applies the principle of *ultimum remedium*. To be applied in cases of violations of

environmental law (criminal law in the field of administrative law), the principle of ultimum remedium can be interpreted as follows:

a. Criminal as Procedure Ultimate "Ultimate remedy"

Criminal procedures are utilized for environmental violations only after administrative law, civil law and alternative dispute resolution procedures fail or are ineffective in achieving environmental law enforcement objectives. Criminal law is placed purely as the ultimate weapon or ultimum remedium after the implementation of other legal sanctions is ineffective for the case in question.

b. Criminal as penalty alternatives

Criminal procedures are used as an alternative witness if the settlement procedure through alternative dispute resolution fails and other sanctions are deemed to be ineffective and/or the level of guilt of the perpetrator is relatively serious, the consequences of his actions are relatively serious and/or his actions cause public unrest.

c. Criminal as penalty cumulative

Criminal procedures and the imposition of criminal sanctions are used as sanctions that are combined with other sanctions. Compilation of criminal sanctions with penalty other possible if sanctions other No effective and/or

1). The perpetrator's level of guilt is relatively serious; 2). The consequences of his actions were relatively large; and/or his actions cause public unrest.

d. Criminal as witness alternative Which stand Alone

Different from the previous interpretation, this fourth interpretation places criminal procedures and criminal sanctions as alternative witnesses that stand alone. This means that the use of criminal procedures and witnesses is not connected with sanctions from other branches of law. Criminal procedures were taken if it meets the requirements, both alternative and cumulative; 1). The degree of culpability of the perpetrator relatively heavy; 2). Consequence deed perpetrator relatively big; 3). Actions the perpetrator caused public unrest .

If a business commits a violation more than once, then indeed administrative law is not utilized or does not work well. Applying criminal law in a *primum remedium* manner to formal offenses on the grounds that the offense has been committed more than once violates the mandatory provisions for implementing criminal law enforcement as a last resort. Limiting the application of *the ultimum remedium principle* only on Certain formal offenses, namely crimes involving violations of waste water quality standards, emissions and disturbances, do not provide further explanation.

It can be seen in regulations related to the environment that include criminal liability for corporations. Because in reality, corporations carry out their activities in the environmental sector for sure will touch with environment life That Alone. in activity There are often violations or crimes that need to be held accountable. Because the main reason is that if a corporation commits (criminal) actions that involve increasing and harming public welfare or " *public welfare offenses* " they can be held accountable.

Both nationally and internationally, it has been recognized that the existence of corporations can be held accountable under criminal law. In fact, criminology experts have produced various theories which are then used by criminal law to construct a corporation as a subject of criminal law and can be held accountable under criminal law.

Corporate criminal liability is a necessity in criminal law considering that corporations have become the subject of criminal law. So instead of that, Muladi and Dwidja Priyatno presented several models, including:

1. Corporate managers as creators and administrators are responsible;
2. Corporation as maker And administrator responsible; And
3. Corporations as makers and also as responsible; Punishment of corporations can be seen from Article 98 of Law No. 32 of the year 2009 about Management Protection Environment Life jo Law invite No 6 years 2022 about Determination Regulation Government Substitute for Law Number 2 Year 2022 about Create Work become Constitution. Refer on Chapter the pollution environment Which happen in Mandailing Christmas, Connection Which done by corporation move in The natural gas mining sector can be held criminally liable because the pollution has been carried out repeatedly and resulted in injuries and deaths to victims (people).

Based on theory policy law criminal, so usage principle The *ultimum remedium* still applies to corporations that commit criminal acts of environmental pollution. Even though the PLH Law has separate penalties related to environmental pollution, several existing articles still depend on licensing provisions which are in the realm of administrative law.

CONCLUSION

If environmental pollution occurs repeatedly, the Ministry of Environment's Law Enforcement (GAKUM) should be able to carry out investigations into corporations that commit pollution, so that the results of these investigations can provide recommendations to the Central Government or Regional Government to take legal action as to what should be done. in accordance with Article 500 of Government Regulation No. 22 of 2021.

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