Law Enforcement of Environmental Criminal Actions Performed by Corporations in North Sumatra[1]

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Abstract
The environmental condition in North Sumatra continues to decline which can endanger the surrounding community, the mangrove forest area has changed its function to become an oil palm plantation in Langkat Regency as if its existence is approved by the local government, the PT.Perkebunan Nusantara 2 (PTPN 2) plantation area in the Deli Serdang Regency area has changed its function to become a residential area elite and hotels, the existing forests around Karo district have been completely depleted due to illegal logging, the existence of floating cages and hotels around Lake Toba Toba Regency has also been polluted by hotel, factory and other waste disposal, on the other hand the floods that hit The city of Medan has also not been able to be overcome by the local government, seeing the damaged and polluted environmental conditions in North Sumatra, of course the main factor or main actor is none other than the company or also called the Corporation. The Law on the Protection and Management of the Environment has made guidelines as contained in Article 116 paragraph 1 concerning criminal sanctions committed by corporations, so those responsible are the business entity itself, the person giving the orders and the management. The formulation of the problem in this research is who should be responsible for environmental crimes by corporations and what is the authority of the local government? Method This research uses a normative approach, namely by analyzing related regulations. The results of this study indicate that determining who is responsible for environmental crimes by corporation the public prosecutor must be able to prove who the

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parties are involved, while the regional government has the authority to take legal action through article 90 UUPPLH which regulates the right to sue government agencies and local governments.

1. Introduction

The main basis for implementing activities at the North Sumatra Province Environmental Service is the concept of environmentally sustainable development, which means that everyone has obligations and responsibilities in caring for and preserving the environment, both for now and in the future.

The concept of Sustainable Development implies a balance in Social Aspects, Environmental Aspects and Economic Aspects[2] in the implementation of development in North Sumatra. However, in reality the decline in environmental quality is still occurring, among others caused by environmental pollution due to liquid waste from industrial activities, hospitals, domestic waste which has not been properly managed; air pollution from mobile sources (motorized vehicles), immovable sources from factory chimneys and forest fires; coastal and marine damage caused by land conversion; access to information about the environment that has not been utilized and followed up optimally.

It is undeniable that current environmental conditions are the impact of increased development activities and excessive exploitation of natural resources and development programs that are not environmentally minded.[3] In early December 2019, floods and landslides hit several districts and cities in North Sumatra, in Medan, for example, floods caused five people to die, two went missing and tens of thousands of people were affected. Various groups, from environmental activists to experts, say that floods and landslides are not just the result of rainfall but the impact of environmental damage, such as the forest upstream continues to shrink, or the watershed is critical because it switches functions for various uses. They urged that there must be serious remedial steps so that the disaster does not continue to recur.[4]

[2] Eric Rahmanul Hakim, 'Penegakan Hukum Lingkungan Indonesia Dalam Aspek Kepidanaan', *Media Keadilan: Jurnal Ilmu Hukum*, 11.1 (2020), 43 <https://doi.org/10.31764/jmk.v11i1.1615>.
[3] Helmi, 'Hukum Lingkungan Dalam Negara Hukum Kesejahteraan Untuk Mewujudkan Pembangunan Berkelanjutan', *Inovatif: Jurnal Ilmu Hukum*, 4.5 (2011), 100.
[4] Sayyidatiihayaa Afra Geubrina Raseukiy, 'Membaca Kebijakan Hukum Dalam Pemenuhan Hak Atas Lingkungan Yang Bersih, Sehat, Dan Berkelanjutan Sebagai Hak Asasi Manusia Universal', *Jurnal Hukum Lingkungan Indonesia*, 9.1 (2023), 1–24 <https://doi.org/10.38011/jhli.v9i1.508>.

Raditya Jati, Head of the BNPB's Disaster Data, Information and Communication Center, said the high intensity of rains had caused the Deli River, Babura River and Denai River to overflow. The sub-districts affected by the floods are Medan Johor, Medan Maimun, Medan Sunggal and Medan Tuntungan. (Interview with BNPB Team November 2022)

The Medan City Regional Disaster Management Agency (BPBD) together with a combined-team, evacuated 181 people, including 67 children and 26 elderly people. Losses, 1,493 houses, one mosque and 69 hectares of land submerged. Raditya said that the public can access the BMKG Info application to get weather forecasts down to the sub-district level. This step, he said, can help self-preparedness and family members. "The public is advised to always be alert to the potential hazards of hydrometeorological disasters such as floods, flash floods, landslides and strong winds," he said.

The environmental damage in North Sumatra is considered to be quite severe due to the neglect and practice of taking advantage of every type of business that disturbs environmental sustainability. "Environmental conditions in North Sumatra are no longer a cause for concern, but are already acute," said Deputy Head of the North Sumatra Environmental Service, Eddi Rangkuti (Interview with Deputy DLH Provsu November 2022), according to Eddi, there were two main factors that caused environmental damage so severe that it created various potentials vulnerability to disasters. The first factor is the omission of various environmental damaging practices,[5] either due to the absence of binding regulations or limited supervision. Meanwhile, the second factor is the practice of commercialization by turning environmental issues into a profit-seeking arena.

Indications of this commercialization can be seen from the various permits issued for land use as a business activity. "As long as it's profitable, take it. Give permits without calculation. Even you can be bought," which is very unfortunate for the attitude of policy makers who don't care about environmental sustainability in granting business licenses, both in property development and in the utilization of forest areas. "As long as it's easy on the pocket, permission is easy to give. They don't care that their children and grandchildren will suffer in the future," (interview with Syahrul Isman, member of the North Sumatra Environmental Service, November 2022).

The high level of environmental damage in North Sumatra can be seen from the frequent occurrence of natural disasters in the area. The high level of environmental damage in North Sumatra is very real and can be seen by the eye, and the effects have been felt directly by the community. Apart from the frequent occurrence of floods and landslides, the high local warming that has occurred in North Sumatra recently can be evidence that the environmental damage is very

[5] Nina Herlina, 'PERMASALAHAN LINGKUNGAN HIDUP DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA Oleh : Nina Herlina, S.H., M.H. *) ABSTRAK', *Unigal.Ac.Id*, 3.2 (2017), 1–16.

worrying. Ironically, this condition is exacerbated by the unfinished spatial planning concept governing the use of forests and various other strategic areas.

This condition is useful because there is sectoral ego among government agencies, starting from the Forestry Service, Public Works Service, to the National Land Agency so that they are unable to coordinate and synergize properly. "In fact, if it is quickly completed, all areas can have status," (Results of an interview with Doctor Indra, one of the North Sumatra Forum for the Environment (Walhi). Therefore, according to him, it is not surprising that environmental damage in North Sumatra continues to occur which causes the existing conditions to get worse. In addition to the degradation of forest areas, environmental destruction that continues to occur is the destruction of almost all mangrove forests, starting from the coastal outskirts of Langkat Regency to Labuhan Batu and the border of Riau Province.

Even worse, the destruction of the mangrove forest is accompanied by the conversion of its function to an oil palm plantation which is not environmentally friendly. "Everyone already knows that palm oil is not environmentally friendly. Apart from sucking up high levels of nutrients, palm oil also sucks up the availability of groundwater because it requires 100 liters of water per tree," he said. With these various considerations, starting from commercialization to the unfinished spatial concept, it is not surprising that environmental damage appears to be deliberately left unchecked because it provides distinct benefits for policy makers. "That does not rule out the possibility because there is an opportunity to make changes to the designation (of certain areas). [6]

The formulation of criminal provisions in Law no. 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH) is a development and revision of the formulation of criminal provisions in the 1997 UULH and 1982 UULH. In both the 2009 UUPPLH and the 1997 UULH both regulate criminal acts of material offenses and formal offenses. Material offenses mean offenses or actions that are prohibited by law which are considered perfect or fulfilled if the action has caused consequences, whereas formal offenses are offenses or actions prohibited by law which are considered perfect or fulfilled once the act is committed without requiring that there be a consequence of the act.

The UUPPLH 2009 in formulating material offenses related to environmental pollution no longer uses words or terms environmental pollution but conceptually does not change the desired meaning and purpose. The formulation of the UUPPLH is no longer abstract, but more concrete because it uses the term "exceeded by multi-ambient standards or water quality standards". In other words, environmental pollution occurs when the ambient air quality standards in terms of air pollution or water quality standards in terms of surface water pollution and seawater quality standards in terms of sea water pollution

[6] Shira Thani, 'Peranan Hukum Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup', *Jurnal Warta*, 51 (2017), 1829–7463.

have been exceeded. The formulation of this material offense can be found in Article 98 paragraph 1 and Article 99 paragraph 1.

Article 98 paragraph 1 states:

"Anyone who intentionally commits an act which causes the ambient air quality standards, water quality standards, seawater quality standards, or environmental quality standard criteria to be exceeded, shall be punished with an imprisonment for a maximum of 3 years and a maximum of 10 years and a fine of at least 3 billion and a maximum of 10 billion.

Pollution cases committed by corporations in North Sumatra are not only financially detrimental to the surrounding community but also cause non-financial losses. In addition, the factor of the complexity of the law enforcement system in terms of evidence to state elements of corporate wrongdoing has caused the law enforcement process against environmental crimes to become complicated and slow to implement.

Therefore, it is necessary to have a legal instrument that accommodates the certainty of law enforcement regarding corporate criminal acts in the environmental sector in order to create a balance between industrialization and environmental preservation. In this regard, Law Number 32 of 2009 concerning the Protection and Management of the Environment (UU PPLH) was drafted as one of the instruments for enforcing the law on corporate criminal acts in the environmental field. The UU PPLH stipulates that a corporation or business entity that commits environmental crimes has 3 (three) models of criminal responsibility where this is stated in Article 116 paragraph (1) part a, and b, as follows:

If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on: a. business entity; and/or b. the person giving the order to commit the crime or the person acting as the activity leader in the crime. (2) If the environmental crime as referred to in paragraph (1) is committed by a person based on a work relationship or based on another relationship acting within the scope of the business entity's work, criminal sanctions are imposed on the giver of the order or the leader in the said crime without regard to the criminal act. The crime was committed individually or jointly.[7]

In this case, those who are often subject to criminal sanctions are the management of a corporation, but are rarely held accountable by the corporation. An example is the panel of judges at the Balige District Court, North Sumatra, who stated that PT Gorda Duma Sari (GDS) had been proven convincingly to have violated environmental protection and management in the Tele Forest, Samosir. The Director, Jonni Sihotang, was sentenced to 4.6 years and fined IDR 5 billion. In the verdict, the panel of judges chaired by Riana Pohan stated that from the examination of witnesses and evidence, the company was proven to

[7] Solikin, 'Penegakan Hukum Lingkungan Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan', *Kanun: Jurnal Ilmu Hukum*, 12.3 (2010), 543–63.

have violated Law 32 of 2009, specifically the violation of permits to use wood in the Samosir forest, which resulted in extensive damage to the area.

The company led by Jonni is operating without an environmental permit and intentionally committing acts that exceed the ambient air quality standards, seawater quality standards, or environmental damage standard criteria.

The accountability of leaders and corporations for these environmental crimes, in the Environmental Protection and Management Law (UU PPLH), is made possible. It is stated in Article 116 paragraph 1 part b, if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime. From the analysis of the case, the problem in this study is how the legal basis or provisions for enforcing the law on corporate crime against environmental damage and how it is applied to the legal system in Indonesia in the form of court decisions that occurred in North Sumatra.

2. Research Method

This study uses an empirical legal research method approach, which is an approach in understanding law from a social context; in this case law is functioned to maintain social order. The constructivism of this research is to obtain empirical and non-empirical material data, in practice the methodology is carried out with case studies on the practice of settling environmental criminal cases committed by corporations. In this research, the construction of social reality is carried out, by prioritizing the interaction between researchers and what are the sources and informants as well as paying attention to the context of the data to help and support the validity of this research.

3. Results and Discussion

Regulating Corporate Crime Against the Environment

In order for criminal sanctions as a means of enforcing criminal environmental law to encourage the practice of environmentally sound business activities, criminal charges should not only be directed at employees as physical actors in acts of pollution or environmental damage, as in the case of the defendant S employee of PT. Nasuba Exvert No. 04/Pid-B/2017/PN.MDN, 29 May 2017, but also to those who control and determine the running of the company, namely the management board.

The threat of criminal prosecution will encourage them to make decisions[8] and lead employees to always pay serious attention to efforts to protect the environment, which in turn will improve the environmental management

[8] Ahmad Suganda, 'Urgensi Dan Tingkatan Maqashid Syari'ah Dalam Kemaslahatan Masyarakat', *Jurnal At-Tadbir : Media Hukum Dan Pendidikan*, 30.1 (2020), 1–16 <https://doi.org/10.52030/attadbir.v30i01.28>.

performance of the business entity. The question that needs to be discussed is on what basis the administrators, including managers, can be prosecuted.

In Indonesia, studies on the responsibility of business entities or what in the academic world is also called corporate responsibility have emerged since the late 1980s through the holding of a national seminar on Corporate Studies at Diponegoro University in 1984. Reksodipuro revealed that there are three systems of corporate criminal responsibility, namely:

a. Managers as creators and administrators are responsible;
b. Cooperatives as creators and administrators are responsible
c. The corporation as a maker and also as responsible. [9]

Thus the responsibility of the legal entity remains open to the possibility of prosecuting and convicting individuals, including administrators or managers, in addition to the legal entity itself.[10] How does the role of humans or individuals remain important and therefore they still need to be the target of prosecution in accordance with the following views:

How do we make corporation and other organizatiuon comply? They have no arms. No legs, no conscience if you cut them, they don't bleed, you can't fine them enough to get their attention.....Individuals make a difference in corporation. They are not naleless and faceless. They can go to jail. We can go to get their attention.

Managers are individuals who have a position or social power, at least within the scope of the company where they work. Therefore, apart from enjoying social position, it is also necessary to be accompanied by responsibility as reflected in the expression: "where social power exists, so does responsibility."[11]

After briefly discussing the concept of accountability for business entities or corporations and the reasons for the need for accountability for business entities according to academics,[12] it is also necessary to examine how this concept is formulated in environmental law norms in Indonesia, specifically in UUPPLH. In the UUPPLH the accountability of business entities is formulated in articles 116 to 119.

Article 116 UUPPLH contains criteria for the emergence of corporate accountability[13] and who should be responsible. if judging from the formulation

[9] Hanafi Amrani, Ayu Izza Elvani, and Iryadi Suparno, *Urgensi Pertanggungjawaban Pidana Korporasi Sebagai Pelaku Tindak Pidana Lingkungan Hidup Dan Pola Pemidanaannya*, 2017.
[10] H Mulkan and S Aprita, 'Sistem Penegakan Hukum Lingkungan Pidana Di Indonesia', *Justicia Sains: Jurnal Ilmu Hukum*, 07.01 (2022), 97–112.
[11] Arvin Asta Nugraha, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha, 'Peran Hukum Lingkungan Dalam Mencegah Kerusakan Dan Pencemaran Lingkungan Hidup', *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 7.2 (2021), 283–98 <https://doi.org/10.55809/tora.v7i2.8>.
[12] Abdurrakhman Alhakim and Wilda Lim, 'Penegakan Hukum Lingkungan Di Indonesia: Kajian Perspektif Hukum Pidana', *Maleo Law Journal*, 5.2 (2021), 44–56.
[13] Aditia Syaprillah, 'Politik Hukum Perlindungan Dan Pengelolaan Lingkungan Hidup Di Indonesia', *Fairness And Justice : Jurnal Ilmiah Ilmu Hukum*, 9.1 (2009), 1–24.

of article 116 UUPPLH, the responsibility of a business entity arises in one of the following conditions, namely: (1) an environmental crime is committed by a business entity, or on behalf of a business entity or (2) by a person based on a work relationship or based on another relationship acting within the scope of work of the business entity. Because a business entity cannot work without being moved by humans, the physical actor is still a human being, namely a person on behalf of the business entity or a person based on a work agreement, for example an employee or other relationship, for example a work charter agreement.[14]

The next important thing is to determine who should be responsible if an environmental crime is declared to have been committed by a business entity or corporation. Article 116 paragraph states "criminal charges and criminal sanctions are imposed on: (a) business entities and/or (b) people who give orders to commit these crimes or people who act as leaders in these crimes." In addition, the concept of accountability must also be guided by the provisions of article 118 UUPPLH which states:

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

Thus, from the formulation of article 116 and article 118 UUPPLH it can be seen that there are three parties that can be recognized as demands and punishments, there are three parties, namely:

a. The business entity itself;
b. A person giving orders or acting as a leader in a criminal act;
c. Managers or heads of business entities.[15]

Basically, without the formulation of article 118 UUPPLH which states "sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with statutory regulations as functional actors",[16] managers can still be held accountable on the basis of the criteria of "person who gives orders or who acts as a leader in criminal acts" as defined in Article 116 paragraph (1) part b. The difference is that the formulation of Article 116 paragraph (1) part b does require investigators and public prosecutors to prove that it is the administrators who have acted as people giving orders or who have acted as leaders in criminal acts, so that it requires the

[14] Budi Endarto, Fikri Hadi, and Nur Hidayatul Fithri, 'Politik Hukum Green Bond Di Indonesia', *Bina Hukum Lingkungan*, 7.1 (2022), 1–21 <https://doi.org/10.24970/bhl.v7i1.303>.
[15] Aminah AMINAH, 'Penegakan Hukum Lingkungan Yang Seimbang (Studi Kasus Pembakaran Hutan)', *Pranata Hukum*, 13.2 (2018), 115–25 <https://doi.org/10.36448/pranatahukum.v13i2.165>.
[16] Mulyadi Mulyadi, Fahrul Siregar, and Inayatullah Abdul Hasyim, 'Environmental Pollution and Damage Control Through Management of Licensing At the Regional Level', *De Rechtsstaat*, 4.2 (2019), 93–104 <https://doi.org/10.30997/jhd.v4i2.1535>.

hard work of investigators and public prosecutors to prove the role of administrators in environmental crimes. [17]

Conversely, according to the provisions of Article 116 paragraph (1) part b associated with Article 118, administrators because of their position automatically or automatically assume criminal responsibility, making it easier for prosecution efforts because they do not require proof of the role of administrators specifically in an environmental crime incident. [18] The elucidation of article 118 UUPPHL reinforces the interpretation that if a business entity commits an environmental crime, charges and penalties "are imposed on the management of the business entity on the basis of the leadership of the company having authority over the physical perpetrator and accepting the action."[19] The definition of "accepting the action" is "approving, allowing or not sufficiently supervising the actions of the physical perpetrator, or having a policy that allows the crime to occur."[20]

Thus, company management who knows and allows company employees to dispose of waste without processing it is deemed to have committed a criminal act on behalf of the business entity, so they must be held accountable. The formulation of the provisions and explanation of article 118 UUPPLH is a breakthrough or progress when examined in terms of efforts to encourage company management to seriously carry out efforts to prevent,[21] control and restore environmental pollution or damage when leading a business entity.[22] The formulation of the provisions of Article 118 UUPPLH is similar to vicarios liability in the Anglo Saxon legal system which is also discussed in the following sections of this book. In addition, the formulation of article 118 UUPLH is also in line with the academic concept put forward by Reksodiputro.[23]

In terms of the directors who can be held accountable, how the burden of responsibility is imposed, whether all elements of the directors bear

[17] Franky Butar Butar, 'Penegakan Hukum Lingkungan Di Bidang Pertambangan', *Yuridika*, 25.2 (2010), 151–68 <https://doi.org/10.20473/ydk.v25i2.252>.

[18] Niken Aulia Rachmat, 'Hukum Pidana Lingkungan Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup', *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2.2 (2022), 188–209 <https://doi.org/10.15294/ipmhi.v2i2.53737>.

[19] Budi Prastowo, 'Tindak Pidana Lingkungan Sebagai Tindak Pidana Ekonomi Dalam Sistem Hukum Pidana Indonesia', *Hukum Pro Justitia*, 2006.

[20] M Nainggolan, 'Penegakakan Hukum Lingkungan Hidup Melalui Sistem Peradilan Pidana', *The Juris*, V.2 (2021), 327–41.

[21] Edra Satmaidi, 'Konsep Deep Ecology Dalam Pengaturan Hukum Lingkungan', *Supremasi Hukum: Jurnal Penelitian Hukum*, 24.2 (2017), 192–105 <https://doi.org/10.33369/jsh.24.2.192-105>.

[22] KLHK, 'Status Lingkungan Hidup Dan Kehutanan 2020', *Kementerian Lingkungan Hidup Dan Kehutanan*, 2020, 14–50.

[23] Luqman Hakim and Luqman Penegakan Hukum Lingkungan Hidup Melalui Gugatan Perbuatan Melawan Hukum, 'Citation Structure Recommendation', 2.12 (2021), 1264–75.

responsibility as intellectual actors or can be separated or differentiated between them considering the directors can consist of one other Main Director.[24]

This problem must also be seen from a case by case basis. If it can be proven that the violation has been jointly known by the directors, for example it has been discussed in a leadership meeting, they, the directors, agree to allow the violation to occur for reasons of seeking company profits, the directors jointly and in balance can be installed as main perpetrators of violations.[25]

However, if one of the directors can prove that he was not present at the leadership meeting and never heard of any violations that occurred, he can be released from prosecution or punishment. The practices and decisions of courts in the Netherlands and the United States which are discussed in the following sections of this book can enrich our knowledge about the criminal responsibility of directors or management or company leaders.[26]

If a business entity is proven to have committed an environmental crime, the types of penalties against the business entity are referred to in Article 119 UUPPLH, namely:

a. Deprivation of profits derived from criminal acts
b. Closure of all or part of the place of business and/or activity
c. Correction due to crime
d. The obligation to do what is neglected without rights and/or
e. Placement of the company under guardianship for a maximum of 3 (three) years.[27]

Because the formulation of article 119 UUPPLH does not explicitly state whether this type of punishment is an alternative or can be imposed two or more at once, the authors are of the opinion that these types of punishments can be imposed two or more at once depending on the case by case or the result of the violation. [28]

The threat of criminal penalties for people who give orders or leaders in environmental crimes in the form of imprisonment and fines is increased by one third of the threats listed in each offense contained in the UUPPLH.[29] Strangely, criminal threats for administrators in the context of Article 116 paragraph (1) part

[24] Yudelmi and M. Chairul Idrah, 'Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencemaran Lingkungan Hidup', *Jurnal Legalitas*, I.2 (2010), 161–207.
[25] - Risfalman -, 'Sejarah Perkembangan Hukum Lingkungan Di Indonesia', *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial*, 8.2 (2019), 185–96 <https://doi.org/10.22373/dusturiyah.v8i2.4364>.
[26] Lidya Suryani Widayati, 'Ultimum Remedium Dalam Bidang Lingkungan Hidup', *Jurnal Hukum Ius Quia Iustum*, 22.1 (2015), 1–24 <https://doi.org/10.20885/iustum.vol22.iss1.art1>.
[27] Idi Amin, 'The Corporate Liability in Environmental Crime', *Jurnal IUS Kajian Hukum Dan Keadilan*, 6.2 (2018), 259.
[28] Muhamad Sadi Is, 'Legal Certainty for Environmental Protection and Management in Indonesia', *Jurnal Yudisial*, 13.3 (2020), 311–27 <https://doi.org/10.29123/jy.v13i3.345>.
[29] N K T Srilaksmi, 'Penegakan Hukum Lingkungan Dengan Sanksi Administrasi Bagi Pelaku Pencemaran Lingkungan Di Masyarakat', *PARIKSA: Jurnal Hukum Agama …*, 2021.

a, and Article 118 are not accompanied by criminal threats that are one third of the threats listed in each offense.

Analysis of Corporate Crime Cases Against the Environment in North Sumatra

Supreme Court Decision No.862K/Pid.Sus/2019 is a decision at the cassation level against the defendant Kim Young Woo, Director of PT. Gunawan Dianjaya Steel (PT. GDS). Briefly the case position is as follows. PT. Gunawan Dianjaya Steel (PT. GDS) is a corporation founded in 2010. PT. Gunawan Dianjaya Steel (PT. GDS) is engaged in the service of treating hazardous and toxic liquid waste (B3) which is domiciled in the jurisdiction of the Medan District Court.

The PT's main task is to receive liquid waste from other companies, then process it into non-hazardous solid waste. Then send the processed waste products to the Industrial Waste Management Infrastructure (PPLI) in Bogor for complete destruction which does not have further negative effects on the environment.

But in the period 2010-2015, waste processing did not work as it should. Processed waste products that should have been sent to PPLI for complete destruction were only thrown away by PT. Gunawan Dianjaya Steel (PT. GDS) on an empty land in the Bekasi area. Disposal on the land has a negative effect on the surrounding environment. For example, the majority of local residents suffer from respiratory tract infections and heartburn.

From the case above, there are two different decisions. The first is the Medan District Court decision No.457/Pid.B/2011 which was upheld by the Medan High Court decision No. 157/Pid/2013. The essence of the decision was to legally and convincingly convict Kim Young Woo and Kim Byung Seup for violating Article 41 Paragraph 1 of Law No. 32 of 2009 concerning Environmental Management and imposes a prison sentence of 6 years and a fine of IDR 100,000,000.00. The second decision is the decision of the Supreme Court No. 862K/Pid.Sus/2010, which will be the object of analysis, because this decision talks about the punishment of the corporation PT. Gunawan Dianjaya Steel (PT. GDS).

From the decision of the Supreme Court No. 862K/Pid.Sus/2015 there are several interesting things to analyze related to corporate criminal responsibility, namely:

The first concerns the legal subject. In the Supreme Court decision No.862K/Pid.Sus/2010, the legal subject is a natural human being, namely Kim Young Woo as President Director of PT. Gunawan Dianjaya Steel (PT. GDS), as contained in page one of the decision.

Examining special criminal cases at the cassation level has been as follows in the Defendant's case:

Name : KIM YOUNG WOO ,
Place of birth : Seoul ,
Age /date of bith : 58 years/05 January 1950, Sex: Male,
Nationality : South Korea,

Residence : Medan
Religion : Katholik,
Job : PT. Gunawan Dianjaya Steel (PT. GDS)

If you look far back, namely the demands of the Public Prosecutor at the District Court level, the subject of the lawsuit is a natural person, namely Kim Young Woo as the President Director. As stated on page 71 of the Court's decision.

Read the criminal charges of the Public Prosecutor's Office of the Cikarang District Attorney dated 4 May 2009 as follows:

Declare the Defendant KIM YOUNG WOO (in this case representing PT. DONGWOO ENVIRONMENTAL INDONESIA) guilty of committing an environmental crime as charged by the Public Prosecutor in the Primary Indictment for violating Article 41 (1) of Law No. 23 of 1997 concerning Environmental Management jo Article 45 of Law No.23 of 1997 in conjunction with Article 47 of Law No.32 of 2009 concerning Environmental Management in conjunction with Article 64 (1) of the Criminal Code,

Sentenced a sentence against Defendant KIM YOUNG WOO (in this case representing PT. Gunawan Dianjaya Steel (PT. GDS)) with a fine of IDR 325,000,000.00 (three hundred twenty five million rupiah) subsidiary 6 (six) months in prison.

The criminal acts formulated in the articles demanded by the prosecutor are:

Article 41

Whoever unlawfully commits an act that results in environmental pollution and/or damage is punishable by a maximum imprisonment of ten years and a maximum fine of IDR 500,000,000.00 (five hundred million rupiahs).

Article 45

If the criminal act referred to in this Chapter is committed by or on behalf of a legal entity, company, association, foundation or other organization, the threat of a fine is increased by one third

Article 47

In addition to the criminal provisions referred to in the Criminal Code and this law, perpetrators of environmental crimes may also be subject to disciplinary measures in the form of:

a. Confiscation of profits derived from criminal acts, and/or
b. Complete or partial closure of the company, and/or
c. Improvement as a result of a crime, and/or
d. Obliges to do what is neglected without rights, and/or
e. Negate what is neglected without rights, and/or
f. Place the company under guardianship for a maximum of three years.

From the articles indicted by the prosecutor, it can be seen that the subject of the prosecutor's demands in this case was the corporation, PT. Gunawan

Dianjaya Steel (PT. GDS). This can be seen from the formulation of the article being demanded, juxtaposed with Article 45 of Law no. 32 of 2009. The contents of that article regulates if a corporation becomes one of the criminal offenders. However, the formulation of the subject of the prosecutor's demands was the defendant Kim Yung Woo, who in this case represented the corporation in his position as President Director.

The formulation of the prosecutor's demands above becomes interesting when we look at the decision at the Bekasi District Court level, as stated in the Supreme Court's cassation decision on page 72. In the Bekasi District Court decision there is a discrepancy in terms of the subject of the decision with the following demands:

a. Decision of the Bekasi District Court No.458/Pid.B/2008/PN.Bks dated June 22, 2009, in full as follows:
b. Declare the Defendant PT. Gunawan Dianjaya Steel (PT. GDS), in this case represented by Kim Young Woo has been proven legally and convincingly guilty of committing the crime "Environmental Sustainability as the Primary Indictment",
c. Sentenced the criminal therefore to the Defendant with a fine of IDR 325,000,000.00 (three hundred twenty five million rupiahs) and if the fine is not paid then it is replaced by imprisonment for 6 (six) months.

If analyzed, the decision contains discrepancies in its subject. In the demands of the public prosecutor, the subject being prosecuted (the defendant) is a natural human being, Kim Young Woo as the President Director of PT. Gunawan Dianjaya Steel (PT. GDS). But in the decision of the Bekasi District Court, it was decided that the defendant was PT. Gunawan Dianjaya Steel (PT. GDS) represented by the President Director, who was proven legally and convincingly guilty of continuing environmental crimes. In theory, corporate criminal liability, the discussion of legal subjects is very important because natural human legal subjects and legal entities are very different things.

The second point in the Bekasi District Court decision above is the second decision. The second decision imposed a penalty on the defendant in the form of a fine of IDR 325,000,000.00 (three hundred and twenty-five million rupiahs) and if the fine was not paid, it was replaced with imprisonment in lieu of a fine in the form of imprisonment for 6 (six) months. From this decision it can be analyzed that the essence of the Medan District Court decision is to punish corporations. This can be seen in the second ruling which only imposed a fine on the defendant PT. Gunawan Dianjaya Steel (PT. GDS)

Even though Article 41 Paragraph 1 threatens a cumulative penalty of imprisonment and fines for violating this article. Just imposing a fine is a strong foundation that the target of the decision is the corporation. What must be examined in the decision regarding the fine is the existence of a fine in lieu of imprisonment. The question is, if in the Medan District Court decision the

defendant is a corporation, then to whom is the imprisonment in lieu of the fine imposed?

The decision at the appeal level of the Medan High Court on the Medan District Court decision simply upheld the Medan District Court decision, the substance of which was no different from what was discussed previously regarding the content of the verdict.

The next analysis is an analysis of the Supreme Court's decision, namely how the judges of the court see the quo case. This is important because as the last gate of law in our country, the Supreme Court has the opportunity to create quality and useful jurisprudence in the field of corporate responsibility, especially because the development of the concept and theory of corporate responsibility at the level of law enforcement practice still leaves problems. When at the statutory level there is a problem, then the smart solution is through the judiciary, namely the court's decision becomes the jurisprudence for the next decision.

In the a quo case, the Supreme Court decision in broad terms granted the cassation request of the cassation applicant and annulled the decision of the Bandung High Court and tried the case himself, whose cassation decision stated:

Declare the Defendant PT. Gunawan Dianjaya Steel (PT. GDS), represented by Kim Young Woo has been legally and convincingly proven guilty of committing the crime of "Continuous Environmental Pollution as the Primary Indictment,"

Sentenced punishment therefore on the Defendant with a fine of IDR 650,000,000.- (six hundred and fifty million rupiah) and if the fine is not paid, then it is replaced by imprisonment for 6 (six) months.

Looking at the Supreme Court decision above which tried the PT Dongwoo case itself, it can be seen that the substance of the decision has not changed. What has changed is only the amount of fines imposed on corporations. Problems such as those in the Medan District Court decision were repeated in the Supreme Court decision. The Supreme Court as the highest authority in deciding a criminal case is apparently unable to read the problems in law enforcement in the field of crimes committed by corporations. The first is regarding the subject of the decision; it is clearly stated in the decision that the words of the prosecutor's charge were directed at Kim Young Woo as the defendant. Even on the first page of the cassation decision it was confirmed that the defendant was Kim Young Woo. However, in the Supreme Court ruling, it was stated that the defendant was PT. Gunawan Dianjaya Steel (PT. GDS). From here there is a lack of synchronization as to who the accused is.

In the opinion of the author, the subject of the lawsuit and the decision should have been the corporation, namely PT. Gunawan Dianjaya Steel (PT. GDS) because corporations are subject to criminal law in environmental laws. Indeed, in the trial process was represented by Kim Young Woo, but the emphasis should be on the corporation.

The second problem concerns fines. The Supreme Court's decision shows that the decision is indeed aimed at corporations. It was proven that the sentence

imposed was only a fine whereas Article 41 of the Environmental Law adheres to cumulative imprisonment and fines. If the Supreme Court only imposes fines, it can be concluded that the target in the decision is the corporation. The problem arises with the imprisonment as a substitute for fines as a mechanism if criminal fines are not paid. In the verdict, the convict is a corporation and is sentenced to a fine. The next question is, to whom is the confiscation in lieu of the fine addressed? Of course not for corporations, Can it be concluded that the person serving the crime is the one representing the corporation, in this case Kim Young Woo? If it's Kim Young Woo, doesn't that mean that the one who is ultimately convicted is a natural human being? If later it turns out that the director of the company has been replaced, who is obliged to undergo imprisonment in lieu of the fine?

Kim Young Woo has been separately convicted in the same case. This meaning he has to serve two sentences for the same case. Normatively, the Environmental Law does not regulate the complete mechanism for imposing criminal penalties on corporations. Based on the adage lex specialis legi generalis, if the more specialist provisions do not regulate, then return to general provisions, in this case the Criminal Code. However, the problem is that corporations are not yet recognized as a subject of criminal law in the Criminal Code.

What is regulated only is that if the criminal fine cannot be paid, then imprisonment is imposed in lieu of a fine as stipulated in Article 30 Paragraph 2 of the Criminal Code. In this matter, the Supreme Court should try to fill the legal vacuum. In reality there are problems in enforcing corporate criminal law because the arrangements are still sectoral in nature, not yet generally regulated in the Criminal Code as general provisions of criminal law. Even in sectoral arrangements, it is still not complete and comprehensive. The Environmental Law only regulates corporate punishment in articles 46-47. Its contents only include who represents the corporation and in what cases the act is considered a corporate act. Haven't touched on more detailed matters, for example if the fine is not paid, then what mechanism will be used.

4. Conclusion

To determine who should be responsible if an environmental crime is declared to have been committed by a business entity or corporation. Article 116 paragraph states "criminal charges and criminal sanctions are imposed on: (a) business entities and/or (b) people who give orders to commit these crimes or people who act as leaders in these crimes." Apart from that, the concept of accountability must also be guided by the provisions of article 118 UUPPLH which states: Against the crime referred to in Article 116 paragraph (1) part a, criminal sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with laws and regulations as a functional actor. the formulation of article 118 UUPPLH which

states "sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with statutory regulations as functional actors", administrators can also still be held accountable on the basis of the criteria "person who gives orders or a person who acts as a leader in a criminal act.

The problem found in cases related to corporate crime both in environmental, forestry and mining crime cases is when criminal responsibility is imposed on corporations or corporate management. In Decision No. 862K/Pid.Sus/2019, for example, both directors; Deputy Director; and an employee responsible for environmental affairs from PT. Gunawan Dianjaya Steel (PT. GDS) was charged because the company he leads which is engaged in the service of hazardous and toxic liquid waste (B3) has been dumping into environmental media without permission. In this case, it is basically quite clear that the act was a corporate crime. However, the managers of the corporation were the only defendants. This corporate criminal matter has indeed been further regulated by the Supreme Court through Supreme Court Regulation number 13 of 2016 concerning Procedures for Handling Corporate Crime, but unfortunately the PERMA does not explain when a crime allegedly committed by a corporation can only be prosecuted against corporations; corporate management or both together.

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