

Reformulating Corporate Liability for Environmental Crimes: Implications of the National Criminal Code

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ABSTRACT: Corporate activities in various industrial sectors have both positive and negative impacts on the country. The positive impact of corporate industrial activities brings strengthening to national economic development. Meanwhile, negative impacts occur as a result of excessive activities of corporations in carrying out industrial activities to the occurrence of criminal offences in the field of environment. Environmental criminal offences by corporations such as pollution or destruction of the environment can be held strictly criminally liable. Law No. 32/2009 on Environmental Protection and Management (UUPPLH) has regulated corporate criminal liability, but has not comprehensively regulated the position of corporations in a criminal offence, liability and criminal sanctions given to corporations that commit criminal offences. The enactment of Law Number 1 Year 2023 as the Indonesian National Criminal Code brings a new paradigm in recognising corporations as subjects of criminal offences and establishing more comprehensive criminal liability. This research aims to assess the effectiveness of UUPPLH in practice and examine the urgency of reformulating the provisions of UUPPLH based on the National Criminal Code. Through normative legal research, this study concludes that the reformulation of UUPPLH is urgently needed to be in line with the National Criminal Code in order to strengthen the effectiveness of law enforcement of environmental crimes and ensure that corporations can be held criminally liable fairly and proportionally.

KEYWORDS: Corporation, Environmental Crimes, Criminal Liability, National Criminal Code, Legal Refomulation

I. INTRODUCTION

The era of globalisation brings progress to the economic, financial and trade sectors which opens up great opportunities for corporations as the main actors of the economy. Corporations also contribute to the country's income through taxes and provide jobs for the community. In addition to having a positive impact on the country's economy, corporations that run their business in various industrial sectors in an excessive manner can have a negative impact on the environment, such as environmental pollution, destruction of natural resources and damage to ecosystems.(1) This can be said to be a crime committed by corporations. The development of organised crimes, both domestic and transnational, is then responded by policy makers by expanding the subject of criminal law which is no longer limited to humans but includes corporations as entities capable of committing and benefiting from a criminal act.(2)

Awareness of the importance of expanding the subject of criminal offences is reflected in the enactment of Law No. 1 of 2023 which expressly formulates the subject of criminal offences not only as natural human beings, but also as corporations. These corporations include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises or their equivalents, associations incorporated or unincorporated, business entities in the form of firms, limited partnerships or their equivalents.(2) Currently, a corporation is declared capable of committing a criminal offence and can be held criminally liable in the event that the criminal offence is committed by a manager with a functional position or a person who has a working relationship or other relationship acting for and on behalf of the corporation. With the enactment of the new Criminal Code which introduces the concept of corporate criminal liability in Book 1 of the Criminal Code, the responsibility is not only imposed on the individual administrators but also on the corporation as an institution. Book 1 of the Criminal Code as a general rule of criminal law based on Article 187 of the National Criminal Code, the provisions of Book 1 apply to criminal offences both within and outside of the National Criminal Code. This includes Law Number 32 Year 2009 on Environmental Protection and Management (UUPPLH).

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The UUPPLH contains provisions on criminal liability for corporations in environmental crimes. However, the regulation is still limited and not as comprehensive as in the National Criminal Code. The UUPPLH has not systematically established a mechanism for imposing sanctions on corporations and additional penalties for corporations that fairly sanction corporations that commit criminal offences. Whereas environmental criminal offences are crimes that have a major impact on the sustainability of the environment, the lives of current and future generations. In practice, many environmental criminal offences committed by corporations, law enforcement is not resolved fairly by demanding full responsibility from corporations that receive benefits from a criminal offence that occurs. In connection with this situation, legal reform is needed in line with the new paradigm, namely corporate liability regulated in the National Criminal Code. Thus, the reformulation of corporate liability provisions in Law Number 32 Year 2009 is very urgent. This reformulation not only aims to avoid overlapping regulations with the National Criminal Code, but also to strengthen legal instruments in ensnaring perpetrators of environmental crimes effectively and fairly. Harmonisation of these two regulations is expected to provide legal certainty, effectiveness of environmental crime enforcement and reinforce the position of corporations as subjects of criminal law that can be held accountable for any actions that harm the environment and society. Therefore, this article will discuss how the effectiveness of Law No. 32 Year 2009 in prosecuting corporate liability for environmental crimes and how the concept of UUPPLH reformulation in prosecuting corporate criminal liability in environmental crimes?

II. METHODS

This research is a normative research, namely research conducted by analysing primary, secondary and tertiary legal materials. In this research, legal materials are used, namely laws and regulations, in this case the UUPPLH and the National Criminal Code, doctrines, legal principles, court decisions, books and research reports. The approaches used in this research are statutory approach, comparative approach and conceptual approach. Data analysis is conducted qualitatively by focusing on normative interpretation of legal materials related to corporate liability. The results of the analysis are then arranged systematically to answer research questions and provide recommendations for the necessary legal policies.

III. RESULTS AND DISCUSSION

A. The Effectiveness of Law No. 32 Year 2009 in Prosecuting Corporate Liability for Environmental Crimes

Environmental damage in Indonesia is increasing with the increasing intensity and scale of violations committed by corporations. Industrial mining activities, large-scale plantations and illegal waste disposal are the main contributors to environmental damage. This act of environmental violation by corporations can be said to be an environmental offence. Environmental offences are regulated in several regulations, namely in the UUPPLH and criminal provisions formulated in other laws and regulations as long as the formulation of the regulations is aimed at protecting the environment. There are two categories of activities included in environmental offences, namely acts of polluting the environment and acts of damaging the environment. Acts that damage the environment can include logging in protected forests, hunting, capturing and killing protected animals, and taking, destroying and trading protected plant species.(3)

In UUPPLH, there are two types of offences, namely formal offences and material offences. UUPPLH contains several types of formal offences aimed at business actors, government officials and AMDAL drafting personnel. In UUPPLH there are 16 types of formal offences regulated in Articles 100-111, Articles 113-115. While the provisions regarding material offences in UUPPLH are more emphasised on environmental pollution. In the UUPPLH, the formulation of material offences is divided into two aggravation categories, namely the first category is causing injury to people and/or harm to human health. The second aggravation category is causing serious injury or death.

In many cases, violations in the environmental field are often carried out in a structured, organised manner and involve corporations as the main perpetrators. Corporate crime is categorised as a form of white collar crime.(4) In response to these environmental issues, the Indonesian legislators passed Law No. 32/2009 on Environmental Protection and Management (UUPPLH) which explicitly regulates corporate criminal liability.

In UUPPLH there are principles and objectives in environmental protection and management. The principles of environmental protection and management consist of 14 principles, namely: (a) state responsibility for environmental sustainability, (b) sustainability and sustainability in resource utilisation, (c) harmony and balance in resource utilisation, (d) integration between sectors and policies, (e) benefits for the greatest welfare of the people, (f) prudence in every activity that has an impact on the environment, (g) justice, (h) ecoregion, (i) protection of biodiversity, (j) polluter pays as a form of environmental protection, (k) participation of all parties in environmental policy making, (l) recognition of local wisdom, (m) good governance, (n) regional autonomy. (5)

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In addition, there are objectives of environmental protection and management as stipulated in the UUPPLH, namely: (a) to protect the territory of the Unitary State of the Republic of Indonesia, (b) to ensure safety, health and human life, (c) to ensure the continuity of life of living beings and the preservation of ecosystems, (d) to maintain the preservation of environmental functions, (e) to achieve harmony, harmony and environmental balance, (f) to ensure the fulfilment of justice for present and future generations, (g) to ensure the fulfilment and protection of the right to the environment as part of human rights, (h) to control the wise use of natural resources, (i) to realise sustainable development, (j) to anticipate global environmental issues. (5)

In line with the principles and objectives of protection, environmental criminal offences by corporations will be sanctioned and regulated in Article 116 to Article 118 as an effort for corporations to be held criminally liable for environmental criminal offences committed for and on behalf of the corporation. Article 116 of UUPPLH regulates criminal liability in environmental criminal offences committed by corporations: in paragraph (1) it is stipulated that in the event that an environmental criminal offence is committed for and on behalf of a business entity, criminal sanctions may be imposed on (a) the corporation, (b) the person who gives orders or acts as the leader of the environmental criminal offence committed. In paragraph (2) Article 16 of UUPPLH expands the scope of criminal liability to individuals within the corporate structure if the criminal offence is committed by a person acting in a working relationship or other relationship within the corporation, the criminal sanction shall be imposed on the person giving the order or the leader who commits the criminal offence regardless of whether the criminal offence is committed alone or jointly. So it can be interpreted that if an employee commits an environmental criminal offence in his capacity as an organ of the company, the superior or leader who gave the order for the criminal act can be subject to criminal sanctions. This can prevent corporate impunity, where the perpetrators of criminal offences hide behind the name of the company.

Article 117 of UUPPLH is an additional punishment provision where in Article 116 paragraph (1) letter (b) which regulates environmental criminal offences committed for and on behalf of business entities by persons who give orders or act as leaders in committing criminal offences can be held criminally liable. Article 117 provides more severe legal consequences to the person who gives orders or acts as a leader with the threat of punishment being aggravated by one third of the basic punishment. In corporate criminal offences as a result of an order from someone who has power in a corporation, this is the result of someone going further than the behaviour of the corporation management should be and this will lead to several relational actors with the company which will make criminal offences by corporations difficult to stop.(6)

Then in Article 118 UUPPLH it is stipulated that for criminal offences committed for and on behalf of a corporation, criminal sanctions are imposed on the corporation represented by the management acting as the legal representation of the corporation in the judicial process. The provisions of Article 118 confirm the position of corporations as subjects of criminal law that can be held accountable for their actions through structures or organs that act as their representatives. In other words, Article 118 is a rule that represents business entities in criminal proceedings which is not to prosecute personally, but to ensure that the corporation as a legal subject can be legally processed through its legal representatives. Although UUPPLH normatively regulates corporate liability clearly, the effectiveness of criminal liability in the field faces various challenges. There are several environmental criminal offences committed by corporations that have occurred in Indonesia that show the lack of success in punishing corporations fairly, these cases are as follows:

One of the cases of environmental crime committed by corporations is the pollution of Buyat Bay by PT Newmont Minahasa Raya (PT NMR) by dumping waste into the bottom waters of Buyat Bay in Sulawesi. In this case, the disposal of waste into the bay has caused residents to experience skin diseases. In that case PT NMR has committed a criminal offence, namely the disposal of hazardous and toxic waste without a permit. The Buyat Bay pollution case shows the direct impact of environmental offences on people's lives and environmental sustainability. In this NMR PR case, corporate liability has not yet been imposed on the corporation, even though the corporation committed an environmental criminal offence for and on behalf of the corporation.

Another case of environmental crime by a corporation occurred in the case of PT Sinar Baskara Sejati, which dumped waste into environmental media without a permit by, for or on behalf of a business entity. That in this case PT SBS whose business is engaged in the textile industry in the form of fabric dyeing which produces B3 solid waste remaining from the dyeing process dumping waste into environmental media. For this case, PT SBS, represented by its Managing Director, was charged with committing a criminal offence in Article 104 jo Article 116 paragraph (1) letter a jo Article 118 jo Article 119 of the UUPPLH. For this case, PT SBS was sentenced to a fine of Rp. 400,000,000, - and the imposition of punishment in the form of repairs due to criminal acts by cleaning up hazardous solid waste. Indeed, in this case, the corporation was convicted by imposing criminalisation on the corporation, but the provisions in Articles 116-118 do not comprehensively regulate criminal liability as regulated in the National Criminal Code.(7)

The next case is an environmental crime committed by PT JO-A Texville, where the company is dumping waste into environmental media without a permit, which fulfils the provisions of Article 104 jo Article 60 paragraph (1) jo Article 116 paragraph (1) letter a jo Article 118 UUPPLH. In this case, the Judge of Bandung District Court imposed a penalty on PT JO-A Texville represented by its

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director with a fine of Rp. 50,000,000, - with a period of 1 month of payment if it exceeds that, the property of the corporation will be confiscated and auctioned to pay the fine.(8)

The practice of enforcing environmental crimes committed by other corporations is the case of PT Citra Krida Bahari, in this case PT CKB committed environmental pollution where the act occurred on the orders of its main director to transport hazardous materials that could cause pollution. In this case, the main director was sentenced to 2 years imprisonment and a fine of Rp. 100,000,000,- with the provision that if the fine is not paid by the defendant, he will be given imprisonment in lieu of a fine for 6 months. (9)

Based on the description of these criminal offences, it shows that for corporations that commit environmental crimes, the criminal liability is often imposed on the management of the corporation. In several cases of environmental criminal offences in Indonesia, the courts have imposed punishment only on the management of the corporation. This is considered by Andri Gunawan as a form of inconsistency in the interpretation of corporate liability and the liability of corporate managers.(10) Or if sanctions are given to corporations, the criminal liability given is only limited to the provision of fines or the obligation to repair the consequences of the criminal act that occurred. This is considered not to provide a deterrent effect for corporations. This is a consequence of the regulation in UUPPLH in general is still limited to fines without detailed and progressive rules on sanctions against corporations that commit environmental crimes. The absence of sanctions as regulated in the National Criminal Code which consists of main and additional punishment for corporations causes the sanctions to be disproportionate to the magnitude of the ecological impact caused by environmental criminal offences by corporations.

B. Reformulation Concept of UUPPLH in Prosecuting Corporate Criminal Liability in Environmental Crimes Based on the National Criminal Code

In the National Criminal Code, corporate liability is regulated in Articles 45 to 50. These provisions recognise corporation as a subject of criminal offence that can be held criminally liable for the criminal offence committed. Article 45 regulates the recognition of corporation as a subject of criminal offence and the limitation of what bodies are categorised as corporation. Article 46 of the National Criminal Code provides rules regarding corporate criminal offences as well as criminal offences by administrators who have functional positions in the organisational structure or persons who have working relationships or other relationships acting on behalf of the corporation. The provisions of Article 47 regulate the commanders, controllers or beneficial owners of the corporation who are outside the corporate structure who commit criminal offences can also be categorised as corporate criminal offences.

Article 48 stipulates provisions regarding corporations that commit crimes that can be held accountable in the following cases: first, if the crime is committed within the scope of the corporation's business scope as stated in the articles of association. This shows a direct connection between the criminal act and the purpose and scope of the corporation's business. Second, the crime provides benefits or advantages for the corporation that are carried out in an unlawful manner. Third, the crime as referred to must be identifiable as part of the corporation's policy, either explicitly through managerial decisions. Thus, the corporation is considered to have supported the crime as part of its operational strategy. Fourth, that the corporation can be held accountable if it does not make efforts to prevent the crime from occurring, does not anticipate wider impacts, or ensures that all operational activities are subject to laws and regulations. Failure to take these preventive measures indicates corporate negligence in carrying out its duties. Fifth, the corporation does not make efforts to prevent or stop the crime from occurring.

The National Criminal Code stipulates that corporations can be subject to criminal penalties consisting of principal and additional penalties. Article 119 stipulates that the principal penalty for corporations is a fine. Meanwhile, the additional penalties regulated in Article 120 consist of 12 types of penalties, including the following: (a) compensation, namely compensation given by the corporation to victims of criminal acts who suffer losses. This is a legal responsibility given by the legislator to corporations that commit crimes. (b) reparations due to criminal acts, namely real actions by the corporation to repair or return to the original state before the crime was committed, (c) carrying out obligations that have been neglected, for corporations that do not carry out the obligations imposed on them, additional penalties can be imposed on the corporation to fulfill the legal obligations imposed on them, (d) for corporations that commit crimes, penalties for fulfilling customary obligations can be imposed. With the recognition of customary entities in Indonesian law, corporations that commit crimes that harm indigenous communities can be held accountable in the form of fulfilling customary obligations. (e) corporations may also be subject to criminal sanctions for financing work training as a form of corporate responsibility for the socio-economic impacts that occur as a result of the criminal acts they commit, (f) Confiscation of goods or corporate profits obtained through illegal actions, so that the corporation does not benefit from the crime committed, (g) announcement of the judge's decision, one of the additional penalties that can be given to the corporation is the publication of the decision which will have implications for the reputation of the corporation. Corporations as entities that do not work independently certainly need a good reputation so that the corporation can be accepted and given trust

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by the community and its colleagues to carry out work for the sustainability of the corporation's operations, (h) revocation of certain permits, as an additional penalty is a sanction that has a sufficient effect on the operational activities of the corporation. So that by giving this sanction, it will provide a deterrent effect for the corporation not to commit crimes in the future, (i) a permanent prohibition sanction to carry out certain acts is a sanction given with the aim of limiting the scope of movement for the corporation as a result of the criminal act committed to prevent the corporation from committing crimes again, (j) a sanction to close all or part of the business premises and/or corporate activities, this sanction is a restriction on the corporation's operations, (k) freezing all or part of the corporation's activities can be given temporarily to demand that the corporation comply immediately with the legal recommendations given, (l) the most severe sanction is the dissolution of the corporation. For corporations that commit a serious crime, the law will provide a penalty in the form of dissolution of the entity. Which sanction can be equated with the death penalty for corporations.

Table 1. Comparison of corporate criminal liability regulations in the UUPPLH and the National Criminal Code

Aspect	UUPPLH	National Criminal Code
Legal Subject	Business Entity and/or individual giving orders or leaders (116)	Corporations as subjects of criminal law (Articles 45-50)
Form of accountability	Corporation and/or giving orders/leaders	Corporations can be held accountable without proving the perpetrators are from corporate organs
Legal Representation	Business entities represented by authorized management (Article 118)	Corporations are represented by management in the judicial process
Criteria for Accountability	Criminal acts committed by, for or on behalf of a corporation	Criminal acts are committed within the scope of corporate activities, business scope and for the benefit of the corporation
Criminal Sanctions	Imprisonment and/or fines for individual perpetrators; fines for corporations	The principal criminal offence is in the form of fines and additional criminal offences
Criminal Aggravation	Criminal sanctions against leaders or those giving orders are increased by one third	There is broad discretion by the judge as regulated in Article 51 which contains reasons for forgiveness and justification.
Relationship to Environmental Crimes	Lex specialis in environmental criminal law	General rules for general crimes and special crimes in this case environmental crimes

Regarding the rules on corporate liability, even to the point of imposing criminal penalties for corporations in the National Criminal Code, this is an effort by lawmakers to realize the protection of legal entities for criminal acts committed by corporations. In the UUPPLH which regulates corporate liability in terms of environmental crimes by corporations as discussed in the first discussion, it is necessary to reformulate based on the rules on criminal liability as regulated in the National Criminal Code in order to realize a coherent, harmonious and applicable legal system. Andri Gunawan's opinion states that the UUPPLH is considered not to adhere to corporate responsibility, either in the sense that the corporation is responsible for the actions of a person or itself, this is based on the phrase "criminal charges are imposed on the head of a business entity or legal entity, which according to Andri Gunawan, the charges and sanctions are given to the head of the corporation, not to the corporation itself. (11) Therefore, the following reformulation is needed: (1) confirming the corporation as a non-criminal subject that can be held accountable without having to prove the guilt of the management who runs the corporation, (2) regulating the forms of additional criminal penalties as regulated in the National Criminal Code (3) regulating legal considerations that must be made regarding the criminalization of corporations as regulated in the National Criminal Code, (4) regulating sanctions for corporations in environmental crimes with provisions that are preventive and progressive in nature by adjusting the rules on criminal sanctions in the National Criminal Code. In the reformulation of the UUPPLH, a legal harmonization approach is used by integrating the normative approach of the National Criminal Code into the rules in the UUPPLH while maintaining the nature of *lex specialis* in environmental law.

IV. CONCLUSION

The effectiveness of the UUPPLH in demanding corporate criminal liability has not fairly sanctioned corporations that commit environmental crimes. Although the UUPPLH has positioned corporations as subjects of criminal acts in environmental crimes, its legal formulation does not reflect a new paradigm for law enforcement of corporate crimes. The provisions of Articles 116-118 do not systematically regulate the accountability mechanism, punishment models and various sanctions that can cover the

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complexity and ecological impacts caused by environmental crimes by corporations. This has implications for the weak effectiveness of the law in imposing proportional sanctions, creating a deterrent effect and realizing justice in environmental crimes committed by corporations.

The National Criminal Code offers a new paradigm that is progressive and worthy of being adopted as a model for reformulating the UUPPLH. The National Criminal Code brings fundamental changes in the construction of corporate criminal liability by making rules regarding the recognition of corporations as legal subjects, the formulation of accountability criteria and the imposition of principal and additional penalties proportionally. This reformulation of the UUPPLH will certainly strengthen the provisions regarding environmental legal instruments and create synergy between environmental protection

SUGGESTION

It is necessary to revise and harmonize regulations by revising the provisions on corporate criminal liability in the UUPPLH by harmonizing criminal liability in the National Criminal Code. In addition, it is necessary to conduct training and increase the knowledge capacity of law enforcement officers related to corporate criminal liability in environmental crimes according to the new norms contained in the National Criminal Code.

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