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Analysis of the Ideal Concept of Corporate Responsibility in Environmental Crimes

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Abstract: The problem with law enforcement for environmental crimes is that in prosecuting perpetrators of environmental crimes, the emphasis is still on the element of error. The implication of this problem is that it is difficult to prove environmental crimes, considering that the perpetrators of environmental crimes are not only people (natuurlijk person) but also include corporations (recht person). Legislation regarding the environment, especially Law Number 32 of 2009, has determined responsibility for perpetrators of environmental crimes using the strict liability theory. This article will discuss the implementation of strict liability theory to find the ideal concept for dealing with environmental crime. The method used in writing this article is normative legal research with a statutory approach. The results of this research are the ideal concept of corporate responsibility for the occurrence of environmental crimes in the form of payment of compensation (civil) and punishment of perpetrators (criminal sanction).

Keyword: Responsibility, Corporation, Environmental.

INTRODUCTION

Recalling history related to environmental protection, Indonesia was one of the countries that participated in the United Nations Summit in Stockholm, Sweden which was held in 1972. As a country that has natural wealth and biodiversity, Indonesia should show its commitment in preserving the environment in conjunction with development programs carried out by the Government (Manurung & Santosa, 2019). This is necessary to realize development that is environmentally friendly.

Development is something that must be implemented and cannot be denied by every country in the world. In order to maintain its survival, the country must continue to develop and move towards progress. The aim of this development is as a means of fulfilling needs and improving the welfare of people's lives (Nanlohy, 2022). A good economy is proof of a country's resilience from all forms of threats and challenges that come from within and outside.

The development carried out often causes problems for environmental sustainability. Loss of health and decreased quality of life community by pollution or poisoning, damage to

businesses and places lived by erosion and flooding, as well as the emergence of social problems due to displacement population by the government in the interests of entrepreneurs is a reality development in Indonesia. Problems related to development and this environment has long before become the world's concern, this can be seen from progress of the UN congress on The Prevention of Crime and Treatment of Offenders who highlight the dimensions of crime against development (crime against development), crime against social (crime against social welfare), as well as crimes against the quality of life (crimes against the quality of life) (Susila Wibawa, 2019).

These three forms of crime are interconnected and the link between development and environmental problems cannot be separated. This relationship was seen in one of the 7th UN congresses which stated that environmental crime (ecological/environmental crime) is: 2 a. Disturbing the quality of the environment (impinged on the quality of life); b. Disrupting the material well-being of entire societies (impinged on material well-being of entire societies); and c. Has a negative influence on the nation's development efforts (had a negative impact on the development efforts of nations) (Simalango et al., 2021).

In an effort to speed up the development process, business entities (hereinafter referred to as corporations) play an important role in this process. Corporations today have entered all areas of life. Almost none areas of life that do not require corporations in their development. Field agriculture, plantations, forestry, housing, telecommunications, automotive, banking, food and drink, education, even the world of entertainment.

A corporation as an institution has a unique structure and is equipped with a set of provisions which regulates personnel actions within it, as a legal institution, an institution whose existence and capacity to do something is determined by law, often violating the law. However, in various ways corporations often escape the law. Corporations as legal subjects do not only carry out appropriate activities with economic principles (seeking maximum profit) but also has an obligation to comply with legal regulations in the economic sector that the government uses to realize prosperity society and social justice (Fitriya Wardhany, 2022). Considering the nature of the work of corporations which is oriented solely towards obtaining financial profits, it is not surprising that corporations often ignore environmental sustainability.

In connection with the potential for environmental damage due to corporate actions, it is necessary to take efforts to protect the environment as well protection of society itself from pollution carried out by corporations because basically the right to a healthy living environment has been guaranteed and regulated by law.

One of the strong and effective tools in protecting the environment is the law that regulates environmental protection (Pawestri, 2019). A form of protection by the law is basically a law enforcement effort carried out either by government and by society. Conceptual law enforcement is an effort to harmonize the relationship between values that are described in solid rules and manifested in attitudes of action as an expression of values. the final stage to create, maintain and maintain social peace life (Ariyanti, 2019).

According to Satjipto Rahardjo, the law is silent, the law contains promises, Law contains ideas or concepts that are relatively abstract. Just through enforcement by law enforcers then the law can be expressed or concretized. So law enforcement can be said to be a process for making legal desires come true. Legal desires are what is meant here is the thoughts of the legislator as formulated in the legal regulations (Akbar Kusuma Hadi, 2022).

In relation to law enforcement against environmental crimes, Law Number 32 of 2009 concerning the Environment has regulated accountability for perpetrators of environmental crimes. Responsibility regulated under this law includes responsibility for people and corporations who commit crimes against the environment. The theory adopted in formulating this responsibility is the theory of strict liability. This article will discuss the ideal concept of responsibility for environmental crimes committed by people and corporations.

METHOD

This article was written using normative legal research methods with a statutory approach and a conceptual approach. The legal materials used in this research are a statutory approach and a conceptual approach. The technique for collecting legal materials in the process of writing this article uses literature study techniques.

RESULTS AND DISCUSSION

There are 3 (three) types of legal sanctions in the environmental sector namely administrative, civil and criminal legal sanctions. In resolving environmental disputes, then subject to administrative sanctions. Existing Administrative Sanctions in Law Number 32 of 2009 in Articles 76 to Article 83. The application of administrative sanctions concerns permits, and environmental permits are issued by the government central, and local government. The central government referred to is Minister, while the regional government is the Regent/Mayor General Provisions Article 1 Law Number 32 of 2009, paragraph (37) stated, the Central Government, hereinafter referred to The government is the President of the Republic of Indonesia who holds the power of the government of the Republic of Indonesia as follows referred to in the Constitution. Thus, the function of criminal law against material offenses is *ultimum remedium*. as a complement or complement of administrative or civil law or mediation. To the perpetrator's fault is relatively serious and/or the consequences of his actions are relatively large and/or his actions cause public unrest, then Criminal law is no longer the *ultimum remedium* but is *primum remedium* (Badilla & Rado, 2019).

Law Number 32 of 2009 places greater emphasis on application of the *Primum Remedium* principle in criminal law enforcement environment. In Law Number 23 of 1997, it comes into force criminal law provisions pay attention to the principle of *Ultimum Remedium* meaning that criminal law enforcement is a last resort whenever enforcement of civil administrative law or alternative solutions environmental disputes are ineffective. Criminal law enforcement can be *Primum Remedium*, if one of the three things the following happens: If the level of guilt of the perpetrator is relatively serious; If the consequences of the perpetrator's actions are relatively large; and If the perpetrator's actions cause public unrest (Rochmani, Safik Faozi, 2019).

The Criminal Principle "*Primum remedium*" (main remedy) is a legal theory modern criminal law which states that criminal law is a tool key in law enforcement. The criminal principle "*Primum Remedium*" in criminal law cases can be said to be the only thing that can be done except by applying the criminal law, no there are other alternatives as a basis or foundation for establishing something law (Erliyani, 2017). *Primum remedium* means there is no other alternative solution except the law itself Legislation that is an embodiment of one of the efforts to protect and save environment. Law Number 32 of 2009 concerning Environmental Protection and Management, is a regulation umbrella (umbrella act) for other sectoral regulations that regulate environment.

Even though criminal law has become a priority in law enforcement against environmental crimes, there are still problems in proving elements of guilt. It is difficult to prove that there is an element of fault in the corporation and an element of error to someone who works in a corporate environment, to make the system easier criminal liability for corporations, the principle of no crime without error (*geen straf zonder schuld/ doctrine of mens rea*) can be deviated from general principles by using the principle of strict liability or absolute responsibility so that this principle could be a solution so that corporations can still be punished.

This strict liability is different from the principle of criminal law known so far, namely *actus non facit reum, nisi mens sit rea*, or *geen straf zonder schuld* which means no crime without guilt is known as doctrine criminal offense (*mens rea*). Strict liability is defined as an

absolute obligation with the main characteristic of being unnecessary there is proof of guilt (intentional or negligent) on the part of the perpetrator. Criminal act and criminal responsibility can be imposed on the perpetrator even if you don't have the indicated mens rea, it's enough if you can proven that the perpetrator of the crime has committed actus reus (committed acts prohibited by criminal provisions) or not committing such acts required by criminal provisions (Bagus et al., 2016).

Therefore, the most important thing is accountability based on principles this strict liability is in the process of proving a criminal act. Corporations can declared guilty only by proving that a criminal offense has been committed carried out by the public prosecutor at trial. Thus the main function of strict liability relates to procedural law. The burden of proof is like this (proof reversed) is also known in the Corruption Eradication Law, Law Number 31 of 1999 and its amendments to Law Number 20 of 2001. This law adheres to a limited reverse burden of proof where the defendant must prove that he did not commit a criminal act of corruption, however the public prosecutor must also prove his indictment. Which is proven in the indictment are the elements of the indictment, not guilt. There is a new error after the judge's verdict.

Proving environmental crimes committed by corporations as well should apply the principle of strict liability with a reverse burden of proof as contained in the Corruption Crime Law, Law Number 20 of 2001. If in the law the burden of corruption is reverse proof applies in the case of proving the origin of assets in the concept of strict liability which is applied to the corporation that carries it out environmental crime is proof of the element of guilt (Siregar & Junius Fernando, 2021).

Application of absolute responsibility (strict liability) to corporations in the process of proving environmental crimes has no consequences. It is necessary to prove that there is an error, whether intentional or negligent includes the motives of corporations to commit criminal acts as stated in criminal provisions regulated in Law no. 32 of 2009 concerning Environmental Protection and Management. By applying the principles absolute criminal liability with a limited burden of proof, our law enforcers will have no difficulty in proving pollution that happened.

CONCLUSION

Law enforcement against environmental crimes has actually been expressly stated in Law Number 32 of 2009 concerning the Environment, that criminal law enforcement is a premium. This law has also been supported by the theory of strict liability which is embedded in the provisions for liability to individuals and corporations without considering the element of fault. Based on this, the ideal concept of law enforcement against environmental crimes is to apply compensation for perpetrators, whether individuals or corporations, and punishment for perpetrators of environmental crimes, without having the public prosecutor prove their guilt first. Because the proof can adopt a limited reversal of the burden of proof.

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