

Corporate Criminal Liability in Environmental Crime Related To Unlimited Waste Dumping in Mining Companies

A. Muh. Ilham¹, Herman Bakir², Azis Budianto³
Ilofajar10@gmail.com¹, hukkrim@yahoo.com³

Universitas Borobudur^{1,2,3}

Abstract. The criminal responsibility of enterprises in ecological violations, particularly in regard to wrongdoings connected with unloading waste without a grant and not overseeing B3 squander is controlled in Articles 103 and 104, while the partnership is depicted in Article 116 section (1) letter an of Regulation Number Long term 2009. PT. Indominco Mandiri is a mining organization situated in East Kalimantan. In this review, the creator utilizes a regulating juridical examination technique, which examines corporate criminal obligation in natural wrongdoings utilizing the entire hypothesis of criminal obligation against enterprises, to be specific the hypothesis of severe risk, vicarious responsibility, the tenet of designation, ID, and corporate organs.

Keywords: Corporate Criminal, Obligation, Natural Wrongdoing.

1. Introduction

Initially, the legal subjects in criminal law were only humans, and along with the development of criminal law, corporations, both those with legal entities and those without legal entities, were also included as legal subjects. Guidelines viewing partnerships as legitimate subjects should be visible in the arrangements of criminal demonstrations outside the Crook Code (KUHP), one of which is stressed in Article 1 number 32 of Regulation Number 32 of 2009 concerning Ecological Security and The board.

The emphasis in criminal responsibility is the element of error known as the adage "no crime without fault". Criminal liability can only be imposed on every legal subject, both humans and corporations, who are proven to fulfill the element of error in committing a crime.

The corporate crime that has received the most attention from the world is a crime against the environment, this is very possible because every corporate activity is always in contact with the environment. This encourages the state through the

Regulation Number 32 of 2009 concerning Ecological Insurance and The board requires each organization to have a natural grant.

Sanctions that can be forced on organizations demonstrated to have perpetrated criminal demonstrations comprise of authoritative approvals directed in Article 76 of Regulation Number 32 of 2009 concerning Natural Security and The executives, criminal authorizations controlled in Articles 97 to Article 115 of Regulation Number Long term.

2009 concerning the Security and The board of the Climate, as well as the extra

punishments and techniques controlled in Article 119 of Regulation Number 32 of 2009 concerning the Insurance and The executives of the Climate.

Even though laws and regulations related to environmental protection and management have been promulgated, in fact in Indonesia there is still a lot of pollution and damage to the environment and natural resources by corporations. Environmental pollution can occur in the air, soil, and water, one of which is caused by the dumping of B3 waste left over from production activities without a permit.

"Dumping is an activity of disposing of, placing and/or entering waste and/or materials in a certain quantity, concentration, time and location with certain requirements into certain environmental media."

In view of the portrayal, a few issues can be formed as follows:

1. How is corporate criminal responsibility in environmental crimes?
2. What is the form of implementation of corporate criminal responsibility in environmental crimes against corporations related to the dumping of waste without a permit?

This exploration is standardizing juridical examination, specifically research led by analyzing the hypotheses, ideas, legitimate standards, and regulations and guidelines connected with the object of examination. The information utilized in this exploration is auxiliary information which comprises of essential legitimate materials, optional lawful materials, and tertiary lawful materials. Optional information was gotten through library research, to be specific by inspecting books, writing, articles, inclusion, papers, and regulations and guidelines. Besides, the optional information were examined subjectively and introduced spellbindingly. That is, this research only describes the problems studied in detail.

2. Literature Review

2.1 Criminal Acts

The term "crime" or what is known as "criminal act" comes from the Dutch language, namely "strafbaar feit". The definition of a crime can be understood from the opinions of several legal experts, including Pompe, Moeljatno, and Hazwinkel-Suringa.

According to Pompe:

"Criminal acts can be interpreted in two kinds of sense, namely the understanding that is theoretical and statutory in nature. The theoretical definition is a violation of norms (rules; legal order) which was carried out due to the violator's mistake, and which must be given a penalty to be able to maintain the legal order and save the general welfare."

Moeljatno prefers to use the term criminal act in interpreting it strafbaar feit. According to him, criminal acts are:

"An act prohibited by a rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition. It can also be said that a criminal act is an act that is prohibited by a rule of law and is punishable by punishment, as long as it is kept in mind that the prohibition is directed at the act (i.e. a situation or event caused by a person's behavior), while the criminal threat is directed at the person who caused it. that incident. There is a close relationship between prohibition and punishment because, between the incident and the person who caused the incident, there is also a close relationship. One cannot be separated from the other. An incident cannot be prohibited, if the person who caused it is not a person, and a person cannot be subject to criminal sanctions if it is not because of the incident caused by it. And it is precisely to express this close relationship that the word deed is used,

which is an abstract notion that refers to two concrete circumstances: first, there is a certain event, and secondly, there is a person who did the thing that caused the incident.”

Hazwinkel-Suringa does not want to provide an understanding of criminal acts because in his opinion this understanding can reduce or expand the description of the offenses contained in the Criminal Code. According to him, a crime is:

"Actions that have been carefully considered and pondered profusely, are selected for any prohibited behavior accompanied by a criminal threat, whether it consists of doing (done) or neglecting (later)."

An action is said to be a crime if it fulfills the elements outlined in the formulation of the law. The description of the elements referred to is not always explicit, because there are elements that are not mentioned in the article but are recognized as elements, for example, elements against the law that are material and there is no justification. Elements that are not expressly mentioned in the law can be called tacit elements, which do not need to be included in the indictment of a public prosecutor in arguing for the defendant's guilt.

Even though the formulation is different, criminal acts have the same elements, namely:

- a. action/behavior (active/positive or passive/negative);
- b. consequences (specifically for criminal acts that are formulated materially);
- c. against the law (against formal law relating to the principle of legality, and against material law/secret elements; and
- d. no justification.

An explanation of each element of the crime will be described as follows:

1. Elements of Action/Behavior (Active/Positive or Passive/Negative)
2. A crime is realized because of an active/positive act/behavior by the description of the crime that requires it.
3. Positive action/behavior is the desired muscle movement that is carried out to cause a result.
4. Consequence Elements (Especially for Material Formulated Criminal Acts)
5. Criminal acts that are formulated materially emphasize consequences as the main element. As a consequence, a criminal act has occurred.
6. Against the Law (Against the Formal Law Relating to the Legality Principle, and Against the Material Law/Secret Elements)

Criminal law experts agree that breaking the law is an element of every crime, whether stated explicitly or not (secretly). Moeljatno states that the elements or elements of a crime are:

- a. behavior and consequences;
- b. matters or circumstances accompanying the action;
- c. additional circumstances aggravating the crime;
- d. objective unlawful elements;
- e. subjective element of lawlessness.

The rationale for not including the word against the law in the criminal formula is:

- 1) if from the formulation of the law, the actions listed are of such a natural nature against the law, that there is no need to state them explicitly;
- 2) An unlawful act means that a person's actions violate or conflict with the material norms that apply to him, therefore it automatically means that punishing a person who has not committed a criminal act is onzining, unreasonable, the unlawful nature of the act is one of the conditions for sentencing.

2.2 No Justification

Defense reasons will be reasons that eradicate the unlawful idea of a wrongdoing.

Theoretically, justification is realized when the unlawful nature of an act is eliminated. Examples of justification reasons can be found in Article 44 of the Criminal Code which stipulates that a criminal act cannot be held accountable because there is a cause for loss of reason or mental illness or in other cases carrying out orders, for example in cases where the perpetrator is insane or insane so he cannot be held accountable for his actions.

The division of criminal acts into several types will lead to certain consequences. Criminal acts known in criminal law in Indonesia are divided into several types as follows:

- a. The Criminal Code divides the types of criminal acts into two, consisting of crimes (*misdrijven*) or legal offenses as stipulated in Book II which regulates actions that are deemed to have to be punished even though they have not been regulated, and violations (*overtredingen*) or legal offenses stipulated in Book III which means that an action is said to be a crime if it is regulated in law;
- b. formal criminal acts that require the action to be completed, and material criminal acts that focus on the consequences that arise without questioning how the action was carried out;
- c. crime of commissions, namely an act that is prohibited by law, and crime of omissions, namely an act required by law;
- d. criminal acts committed intentionally (*dolus*) and criminal acts committed with negligence (*culpa*);
- e. ordinary criminal acts for which prosecutions can be directly carried out when the action occurs, and criminal offenses for complaints (*klacht*) for which prosecutions are only carried out based on a complaint from an interested party or a person who has suffered a loss;
- f. general crimes (*delicta communia*) which can be committed by anyone, and special crimes (*delicta propria*) which are only committed by people who have certain qualities or characteristics, for example, civil servants or members of the military.

2.3 Criminal Sanction

A criminal act committed will result in criminal sanctions for the perpetrator. The definition of sanctions in the formulation of criminal law means punishment, namely sanctions imposed on legal subjects who violate the law. Coercive criminal sanctions that are threatened or imposed on acts or perpetrators of criminal acts that harm and harm legal interests, as an effort to provide learning.

Criminal sanctions in English are called criminal sanctions and in Dutch, they are called *strafrechtelijke sancties*. According to Black's Law Dictionary Eight Edition, sanctions (sanctions) are:

"A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for the discovery of abuse)". (A penalty or coercive measure resulting from failure to comply with a statute).

According to R. Soesilo, sanction with punishment means:

"It is an unpleasant feeling (miserable) that the judge has given a sentence to a person who has violated the criminal law."

According to N. E Algra, the meaning of sanctions is:

- a. confirmation, approval from superiors, reinforcement of an action without which it will not be lawful;
- b. in criminal law, a staff sentence;
- c. means of coercion, other than by punishment, also to comply with the provisions stipulated in the regulations or agreements, conditions that are held.

In Indonesia, there are for the most part something like three sorts of legitimate assents, specifically criminal approvals, common authorizations, and authoritative approvals. Penalty

Criminal discipline is partitioned into two kinds, specifically head discipline and extra discipline. Article 10 of the Crook Code specifies that the chief sentence is partitioned into capital punishment, detainment, restriction, fines, and detainment. While extra discipline is separated into the disavowal of specific privileges, seizure of specific things, and the declaration of the adjudicator's choice.

Principal punishment is described in more detail as follows:

- a. Death penalty is a crime in the form of taking life which is imposed on convicts or convicts violating serious statutory provisions.
- b. Imprisonment is a crime that has a period of execution and detention of a prison sentence.
- c. Imprisonment is a form of punishment similar to imprisonment but the term is shorter than imprisonment, which consists of principal imprisonment and subsidiary imprisonment (instead of fines).
- d. Fines are the oldest form of punishment imposed on minor offenses or crimes, therefore fines are the only punishment that can be borne by someone other than the convict and can be replaced with imprisonment if the defendant is unable to pay the fine.
- e. Punishment provided for politicians who commit crimes because of their ideology by placing convicts in a special place called the prosecution house, which is generally handled by the Minister of Defense.

2.4 Environmental Crime

Natural regulation has complex perspectives since it covers numerous areas of legitimate science, to be specific managerial regulation, criminal regulation, and common regulation. Natural regulation is a regulation that controls the ecological request, covers all items and conditions, including people and their activities that are contained in the space where people are, and influences the endurance and prosperity of people and other residing living beings. Moenadjat argues that:

"Modern environmental law stipulates provisions and norms to regulate human actions to protect the environment from damage and deterioration in quality, to ensure its sustainability so that it can be directly used continuously by present and future generations".

Environmental law does not only regulate environmental responsibility but also regulates social responsibility. This social responsibility involves the field of criminal law which regulates an action that is categorized as an environmental crime. Provisions regarding material and formal environmental crimes are regulated in Articles 97 to.d. Article 120 Law Number 32 of 2009 concerning Environmental Protection and Management.

Environmental crimes are crimes, the material criminal acts of which are regulated in Articles 98, 99, and 112, while the formal criminal acts are regulated in Articles 100, 111, 113, and 115. All the elements in the formulation of the crime must be proven at trial, as is the case with the elements in the crime of environmental damage regulated in Articles 98 and 99 of Law Number 32 of 2009 concerning Protection and Environmental Management including:

- a. each person;
- b. intentionally or through negligence;
- c. perform deeds;
- d. resulting in exceedance of ambient air quality standard, water quality standard, seawater quality standard, or environmental damage standard criteria;

- e. cause injury to people and/or endanger human health; And
- f. result in serious injury or death.

In environmental crimes, there are several principles, namely:

- a. The principle of legality stipulates that an action is an environmental crime if there are statutory provisions governing it before the action is carried out.
- b. The principle of development which requires responsibility for environmental preservation as a system that guarantees the arrangement of environmental law related to sustainable development.
- c. The principle of prevention confirms that prosecution of a crime must be carried out in stages.
- d. The principle of control regulates criminal sanctions that are only applied if there are ineffective administrative law sanctions, civil law, and alternative dispute resolution outside the court (ultimum remedium).

Environmental criminal responsibility must meet several requirements, namely:

- a. There is a criminal act committed by the maker (the existence of a criminal act).
- b. some makers are capable of being responsible.
- c. There is an element of error in the form of intentional negligence.
- d. No excuses.

The four requirements can be described as follows:

- a. the requirement "there was a criminal act committed by the maker" contains 5 (five) elements that must be fulfilled, namely:
 - 1) behavior and consequences (actions). each of these actions has been born since the occurrence of a legal event;
 - 2) matters or circumstances accompanying the action. a criminal act must accompany the circumstances in an act;
 - 3) additional circumstances aggravating the crime, these additional circumstances occur if the criminal event has already occurred;
 - 4) objective unlawful elements. the nature of the unlawful act lies in the objective circumstances as stipulated in the law;
 - 5) the subjective element of unlawfulness, the nature of the unlawful act lies not only in objective circumstances as stipulated in the law but also depends on the subjective state of the perpetrator;
- b. the requirement "whosoever" which includes anyone as a legal subject, as a supporter of rights and obligations and does not apply legal exceptions to him as stipulated in several articles in the Criminal Code;
- c. The requirement "there is an element of error" in principle applies to environmental crimes, but in environmental criminal liability there is a specificity in the form of absolute liability, namely responsibility without having to prove the existence of an error, where an action can already be prosecuted. accountability even though there is no element of guilt at the perpetrator, as stipulated in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management.
- d. the condition "absence of forgiveness" relating to the state of the offender who is under pressure so that they can be released from prosecution.

3. Discussion

3.1 Corporate Criminal Responsibility in Environmental Crimes

As described above, initially legal subjects can commit a crime and are subject to limited criminal responsibility to human legal subjects (natuurlijk persoon), but along with developments regarding legal subjects which also include legal entities (rechtspersoon), an entity The law can also commit criminal acts and be subject to criminal liability based on the provisions of the applicable laws. However, even though business entities can be held criminally liable, this has specificity compared to criminal liability imposed on human legal subjects. Criminal responsibility as a consequence of the commission of a criminal act by a legal entity is still carried out by the management of the legal entity, for example, the Director who is given the authority to represent the legal entity, inside or outside the courtroom.

The legal entity (rechtspersoon) as a legal subject which is the object of this research is PT. Indominco Mandiri. In carrying out its business, PT. Indominco Mandiri has fulfilled the legal requirements stipulated by the applicable laws and regulations, therefore PT. Indominco Mandiri is a legal subject that can be held criminally liable if a crime is committed.

Criminal acts as regulated in Article 104 Jo. Article 116 paragraph (1) letter a Law Number 32 of 2009 concerning Environmental Protection and Management regulates dumping of waste without a permit. Whereas a corporation can legally be said to have committed an environmental crime related to the dumping of waste without a permit, causing pollution due to B3 waste (hazardous and toxic materials) called fly ash and bottom ash.

When linked to the corporate criminal liability system, the criminal liability imposed on PT. Indominco Mandiri adheres to a criminal responsibility system that regulates corporations that commit crimes, it is the corporations that must be held accountable for these actions. However, a corporation has nobody, so physically the main director who undergoes the entire examination process in court is the main director, which is part of his duty to represent PT. Indominco Mandiri inside and outside the court.

3.2 Application of Corporate Criminal Liability in Environmental Crime Against Corporations Related to Unlicensed Waste Dumping

In examining, adjudicating, and deciding this case, the Panel of Judges applied the basic legal form used in a corporate case by using existing legal theories and opinions. In essence that PT. Indominco Mandiri as a legal subject has fulfilled the element of "everyone" because it justifies and acknowledges the identity of the Defendant as stated in the Public Prosecutor's Indictment. This means that PT. Indominco Mandiri can be burdened with criminal liability.

Furthermore, the form of law application used by the Panel of Judges in providing legal considerations related to criminal liability for a legal entity with several theories of responsibility, namely the theory of strict liability (absolute responsibility), the theory of vicarious liability, the theory of doctrine of delegation, the theory of identification, and the theory of corporate organs. Dumping (disposal) to environmental media without permission by PT. Indominco Mandiri can be applied based on the theory of absolute liability (strict liability). In this case, the actions taken by PT. Indomicono Mandiri has been proven guilty of dumping waste without a permit in environmental media which causes damage and pollution to the environment, according to the theory of error there is no need to doubt because there has been a loss in it, as stipulated in Article 88 of Law Number 32 of 2009 concerning Protection and Environmental Management which reads:

"Anyone whose actions, business, and/or activities use B3, produce and or manage B3 waste and/or pose a serious threat to the environment, is responsible for the losses incurred as

long as the losses are caused by the person concerned."

PT. Indominco Mandiri is a business entity engaged in coal mining and can be held liable because it is the corporation that enjoys the profits. But PT. Indominco Mandiri does not pay attention to environmental aspects, resulting in pollution which becomes a social problem because it harms people a lot. PT. Indominco Mandiri has a Steam Power Plant (PLTU) with a capacity of 2x7 MW which is used for mine operational needs, where the fuel for the PLTU is coal. The results of burning coal used to fuel PLTU PT. Indominco Mandiri, namely B3 waste in the form of low-quality fly ash and bottom ash which are unsold in the market. PT. Indominco Mandiri has a licensed Temporary Storage Area (TPS) which is used for the utilization of B3 fly ash and bottom ash waste into paving blocks, but because PT. Indominco Mandiri was unable to manage the B3 waste, in 2013 a contract was signed with PT. Holcim

Indonesia, Tbk, and PT. Kutai Kartanegara Waste Management. However, it turned out that the facts revealed that piles of fly ash and bottom ash were placed outside the Temporary Storage Area (TPS).

For this situation, the Board of Judges likewise viewed as that in light of narrative proof as Research facility Examination consequences of PT. ALS Indonesia Number ALSI12898 dated 25 February 2016 that the waste created contains fly debris and base debris from explicit sources as per Unofficial law Number 101 2014 concerning Dangerous Waste Administration with code B409 for fly debris and B410 for base debris. In the wake of hearing the safeguard of the Lawful Guidance which expressed that the waste created by PT. Indominco Mandiri isn't named B3 squander, however for this situation, the Board of Judges thinks about that the waste created is B3 squander by the class code in view of Unofficial law Number 101 concerning B3 Squander The executives and the Board of Judges didn't find matters that could dispose of criminal obligation, either as defense reasons and additionally pardons.

4. Closing

In light of the above conversation, the accompanying ends can be drawn:

1. Criminal responsibility in ecological violations carried out by lawful elements perceives a few speculations, to be specific the hypothesis of criminal obligation for partnerships, in particular the hypothesis of severe risk, vicarious responsibility, the teaching of designation, ID, and corporate organs.
2. In convicting PT. Indomico Mandiri which has been proven to have dumped waste without a permit in environmental media causing damage and pollution to the environment, the Panel of Judges put the entire theory of criminal responsibility into its legal considerations, which then focused on the theory of strict liability contained in Article 88 of the Law on the Environment. Therefore, the verdict in this case is correct.

References

- [1] Law Number 32 of 2009 concerning Environmental Protection and Management.
- [2] Amir Ilyas, Asas-asas Hukum Pidana, Yogyakarta: Rangkang Education, 2012.

- [3] Andi Sofyan dan Nur Azisa, Hukum Pidana, Makassar: Pustaka Pena Press, 2017.
- [4] Azis Budianto, Hukum Lingkungan, Jakarta: Cintya Press, 2012.
- [5] Bryan A. Garmer, Black's Law Dictionary 8th Edition, Minnesota USA: Thomson West, 2004.
- [6] Gatot Suparmono, Hukum Pertambangan Mineral dan Batu Bara di Indonesia, Jakarta: Rineke Cipta, 2012.
- [7] Lukman Hakim, Asas-asas Hukum Pidana: Buku Ajar Bagi Mahasiswa, Yogyakarta: Penerbit Deepublish, 2019.
- [8] Masrudi Muchtar, Perlindungan dan Pengelolaan Lingkungan Hidup, Jakarta: Prestasi Pustaka, 2015.
- [9] Muhammad Akib, Hukum Lingkungan Prespektif Global dan Nasional Edisi Revisi, Jakarta: PT. RajaGrafindo Persada, 2016.
- [10] Rodliyah dan Salim HS, Hukum Pidana Khusus: Unsur dan Sanksi Pidananya, Jakarta: PT. RajaGrafindo Persada, 2017.
- [11] Ruslan Renggong, Hukum Pidana Lingkungan, Jakarta: Prenadamedia, 2018.
- [12] Siswanto Sunarso, Hukum Pidana Lingkungan Hidup dan Strategi Penyelesaian Sengketa, Jakarta: Rineka Cipta, 2005.
- [13] Soerjono Soekanto, Pengantar Penelitian Hukum, Jakarta: UI Press, 2012.
- [14] Teguh Prasetyo, Hukum Pidana Edisi Revisi, Jakarta: PT. RajaGrafindo Persada, 2017.
- [15] Zuleha, Dasar-Dasar Hukum Pidana, Yogyakarta: Penerbit Deepublish, 2017.