



Corporation Criminal Liability against Environment Criminal Act

Wahyuni Idrus, M.Said Karim, Amir Ilyas

Faculty of Law Hasanuddin University, Indonesia
Corresponding Author, Wahyuni Idrus

ABSTRACT: *In this paper, discuss about one of the problems often occurs is the environment criminal act in the contamination and stockpiling of B3 waste carried out by company (corporation) that can damage the environment, health, and the survival of humans and other living things. The criminal liability done by corporations in living environment criminal act can be requested to the corporations, and/or the person who gives orders, or the person who acts as a leader of activity based on the work relation or other relationships, acting within the scope of work of the business entity and criminal sanction imposed on the order giver or leader, as well as in a Verdict on the case of PT. Koyama Casting Indonesia by the Karawang State Court vide Bandung High Court imposes a fine on a corporation (company) without penalty for Shigemi Koyama as the head of the company is an inappropriate verdict, because in article 118 UUPPLH determine the sanction is imposed on those who have authority over physical doers and accept the acts of physical doers.*

KEYWORDS: *Living Environment Criminal Act, Liability, Corporation*

Received 13 November , 2018; Accepted 27 November, 2018 © The Author(S) 2018. Published With Open Access At Www.Questjournals.Org

I. INTRODUCTION

Environment criminal act or environmental offenses is a constitution dictation and interdiction for legal subjects which, if violated, will be threatened by imposing criminal sanctions, including imprisonment and fines, with the aim of protecting the living environment as a whole or elements in living environment such as Wildlife, land, air and water, and also humans¹.

Environment criminal act committed by a person or corporate legal entity often occurs around our neighborhood without being aware, especially in an environment full of companies that can pollute the surrounding environment. This is very detrimental to the surrounding society because it will have a negative impact, as it will cause many diseases that will attack many people. Not only that, but the water and the air are also polluted as a result of the companies which commit violations, and dispose of waste without filtering. However, the person and/or the corporate company that commits that violation will get a punishment, but it all depends on the problem faced by them; there are violations based on the Law No. 32 of 2009 about the Protection and Management of an environment.

Environmental issues are becoming increasingly complex; not only practical, conceptual, and economic, but also ethical, both social and business. The criminal law not only protects nature, flora, and fauna (the ecological approach), but also the future of humanity which is likely to suffer due to the environmental degradation (the anthropocentric approach). In addition, the development of laws on the environment, especially in Indonesia, cannot be separated from the worldwide movement to give greater attention to the environment, considering the fact that the environment has become a problem that needs to be tackled together for survival. In this case, the corporation often does not pay attention to the condition of the surrounding environment in its production and business, thus it causes a huge pollution both in quantity and quality of pollution. Pollution produced by the corporation production process is usually much greater than the one by individual human production.

The corporate phenomenon which carries out environmental pollution in order to gain profits through unfavorable waste treatment is not a new item at this time. In Indonesia, the principle of corporate liability is not regulated in the Criminal Code is, hereinafter referred to as the Criminal Code, but is regulated in organic

¹ Takdir Rahmadi, 2011, *Environmental Law In Indonesia*, PT Raja Grafindo Persada, Jakarta, pg. 191.

legislation which is a special criminal law. The unknown principle of corporate liability in the Criminal Code is because the subject of crimes known in the Criminal Code is the person in natural biological connotation (*natuurlijkpersoon*). In addition, the Criminal Code still also adheres to the principle of *societas delinquere non potest*, that is a legal entity (*rechtspersoon*) is deemed unable to commit a crime. Thus, the fictional thought about the nature of a legal entity (*rechtspersoonlijkheid*) does not apply in the field of criminal law².

Observing the current establishment development where a corporation is the key of development acceleration, and the negative impact that may occur due to corporate activity, especially in the field of environmental, criminal law (sanction) must then be the last protector to comply with a condition.

Several cases occurred in the living environment criminal act, one of them is the pollution of landfills of hazardous and toxic materials carried out by PT Koyama Casting Indonesia. PT Koyama Casting Indonesia is a company engaged in the manufacture of AC compressor spare parts, has used the mainframe, bearing plate and cylinder head raw materials, where the raw material is half-finished and imported from Japan. Then after that half-finished material has been processed then it will be sent to PT. Sanyo. This leaves the results of Hazardous and Toxic (B3) material waste in the form of wet iron gram waste and gross dry iron gram waste, as well as grams of fine dry iron which reaches about two to three drums each week. Until 2004 till June 2011, it reached 600 (six hundred) to 800 (eight hundred) drums, and the company did not have a Temporary Storage Place. In the event of storing the waste, it only has a Certificate of Temporary Storage of Hazardous and Toxic Waste Number: 658.11/813/Wasdal on December 10, 2010, but does not implement the provisions as stipulated on that letter.

Through the trial conducted by the Karawang State Court, the Defendant's actions have fulfilled the elements of criminal law, as regulated and threatened with a crime under the Article 103 Jo., Article 116, Section(1), letter (a), Constitution Number 32 Year 2009 about Protection and Management of Living Environment.

The Elements of Article 103 of Law of Protection and Management of Environment are:

1. Every Person;
2. Conducting Actions producing B3 Waste, and does not carry out the management;
3. Deliberately;

Deliberately inside, it consists elements of *Volitief* (volition) and intellectual (knowledge). An accidental action is always *Willen* (desired) and *Wetens* (Realized or Desired), so to be able to enter Article 103 UUPPLH (Constitution of Protection and Management of Living Environment) there must be a desire not to carry out the produced Management of B3 Waste. Whereas the Article 116 Paragraph (1) about UUPPLH reads as follows:

” If the living environment criminal law is committed by, to, or on behalf of a business entity, criminal charge and criminal witness are handed down to:

- a. Business Entity; and or
- b. The person who gives the order to commit the criminal act, or the person who acts as the leader of the activity in that criminal act.”

Taking into account of the formulation of Article 116 Paragraph (1), it can be seen that if the Living Environment Criminal Act is carried out by, for, or on behalf of a Business Entity, a Criminal Claim, and Criminal Sanction can be imposed on a Business Entity, Business Entity and/or a person who gives an order to commit a criminal law; or the person who gives the order to commit the crime, or the person who acts as the leader of the activity in the crime.

II. METHODS OF THE RESEARCH

This research is a normative legal research. Soerjono Soekanto and Sri Mamuji present the notion of normative legal research. Normative legal research or also called literature research is "Legal research conducted by examining library material or secondary data only³."

The type and source of legal material is the Legal Material in the form of Legislation and legal issues related to the corporate criminal liability of the living environment criminal law.

III. RESEARCH RESULT AND DISCUSSION

Corporation Criminal Liability in the Living Environment Criminal Law

Living environmental problems have been the concern of many parties, whether on a local, national, and international scale that arise as a response to the rate of degradation in the quality and quantity of the environment that is accelerating along with the growth rate of the world population. Environmental problems have become a chronic disease which is considered very difficult to recover. Whereas the environmental

²Asmani, *Jentera Jurnal Hukum*, accessed on 14 February 2018, 8.00 p.m., GMT+8

³Soerjono Soekanto and Sri Mamuji, *Normative Legal Research An Short Overview*. RajaGrafindo Persada, Jakarta, 2010, pg. 13-14

problems that have occurred in Indonesia are due to the development paradigm that emphasizes economic growth and ignores environmental factors.

The corporation is an institution that has a unique structure and is equipped with a set of provisions organizing its personnel actions inside, as a legal institution, an institution whose existence and capacity to do something is determined by law, often breaking the law. However, in various ways, corporations often escape the law.

In the case of the living environment, this corporate liability is regulated in Article 116, Section 1 and Section 2 of Constitution No. 32 Year 2009, about Protection and Management of the Living Environment, which essentially can be requested for criminal liability to legal entities and other organizations that are not legal entities, those who give orders to commit criminal acts, those who act as leaders in committing a criminal act, and a combination of both givers command or leadership in committing a criminal act.

Environment criminal law committed for and/or on behalf of the corporation (business entity), at least there should be as follow:

- 1) The illegal act of a corporation and its agents is different to the criminal behavior of the lower socio-economic class in terms of administrative procedures.
- 2) Both corporation (as legal person's subject) and its representative are included as a criminal (as illegal actors), which in judicial practice, among others, depends on the crimes committed, rules and quality of evidence and prosecution.
- 3) Criminal motivation committed by a corporation is not only aimed at personal gain, but at fulfilling needs and achieving organizational benefits.

The criminal responsibility of a business entity in an environmental case is regulated in Article 116 UUPPLH. Based on Article 116 section (1) of the UUPPLH, criminal liability of a business entity can be requested from a business entity, and or a person who gives an order to commit the criminal act or a person who acts as the leader of the activity in the criminal act. Then, Article 116 section (2) stipulates that: "If the living environment criminal law as referred to in section (1) is carried out by a person, based on an employment relationship or based on another relationship acting within the scope of work of a business entity, criminal sanctions imposed on the giver of the order or the leader in the criminal law regardless the criminal act is carried out individually or altogether.

Furthermore, to establish a legal entity or business entity as a perpetrator of environmental criminal act, there are several factors that must be considered, the case is pleased with a criminal act whereby disruption to the protected interest is declared a criminal act, accuracy/precision norms related to disturbing behavior environment, both from the structure and field of work of the legal entity.

Based on the principle of vicarious liability, the head of the corporation or anyone who gives the task or order is responsible for the actions taken by the subordinates or their employees. This responsibility is extended to include actions carried out by people based on work relationship and other relationships. Thus, anyone who works and in any relationship the work is done, as long as it is done in relation to the corporation, is the responsibility of the corporation. According to Article 116 section (2) UUPPLH, the company that gives orders or acts as a leader has the capacity to be liable to be punished

Article 116 UUPPLH functions to anticipate the possibility of corporations being able to take refuge behind the contractual relations that they do with other parties, then Article 116 section (2) UUPPLH provides an expansion of responsibilities, thus conclusions can be drawn from Article 116 section (2) UUPPLH, which are: actions are above the name of the corporation, based on employment or other relationships, act within the corporate environment.

Formulation of living environment criminal provisions as stipulated in the UUPPLH, specifying intentional or negligence/omission elements. The inclusion of intentional or negligent elements, it can be said that criminal liability in the constitution of protection and management of living environment adheres to the liability based on fault principle.

Application of Corporation Criminal Law in Case of Living Environment Criminal Law

In the case of Environmental Crimes carried out by PT KOYAMA CASTING domiciled in Karawang, in its position as a functional legal entity, in this case represented by SHIGEMI KOYAMA as President Director, the company is a company engaged in the manufacture of AC compressor spare parts used mainframe, bearing plate and cylinder head raw material where the raw material is already half-finished imported from Japan, then after the half-finished material is finished in the next process it will be sent to PT. Sanyo, this leaves the results of Hazardous and Toxic (B3) material waste in the form of wet iron gram waste and gross dry iron gram waste and grams of fine dry iron, which reaches about two to three drums every week, up to 2004 until June 2011, 600 (six hundred) to 800 (eight hundred) drums, and the company does not have a Temporary Storage Place, in the event that storing waste, it only has a Temporary Storage Certificate of Hazardous and Toxic Waste Number: 658.11 / 813 / Wasdal on December 10, 2010, but do not implement the provisions as

stipulated on the letter. So the BPLH Karawang confirms the summons of the Director of Shigemi Koyama but does not show up, and the company does not provide information or details related to licensing or environmental documents owned by the company because they do not get permission from the Director.

Through trials conducted by the Karawang State Court, the Defendant's actions have fulfilled the elements of criminal acts as regulated and threatened with criminal offenses under Article 103 Jo. Article 116 Section (1) letter a Constitution Number 32 of 2009 concerning Environmental Protection and Management has been fulfilled, the panel of judges then imposes a fine on the Defendant of PT Koyama Casting Indonesia represented by Shigemi Koyama with a fine of Rp. 1.000.000.000, - (one billion rupiah), provided that the penalty is not paid, replaced with the seizure of assets of PT Koyama Casting Indonesia by the Public Prosecutor for sale auction, covering the fine of a certain amount and ordering Defendant PT Koyama Casting Indonesia to carry out waste management with the business entity who has a permit in the management of Hazardous and Toxic Material waste, as well as carrying out periodic reports 1 (one) time 6 (six) months on the results of environmental management and monitoring.

Based on the Verdict of the Karawang State Court Judge's Tribunal, the verdict of the Bandung High Court Judge Panel in sentencing was charged to PT. Koyama Casting Indonesia (PT. KCI) which in this case is represented by Shigemi Koyama, only a criminal fine, no criminal punishment prison to the Defendant against Shigemi Koyama, which is a mistake in the application of the law, because based on the facts at the trial, that Defendant Shigemi Koyama as Director of PT. Koyama Casting Indonesia (PT. KCI), which instructs its employees to store waste containing B3 Waste in drums, and is placed partially in an open space, and manages waste without management permission from the authorities.

In addition, based on the element of Article 103 UUPPLH that every person who produces B3 Waste and does not carry out Management, as referred to in Article 59, shall be sentenced to the Shortest 1 (one) Year Prison Crime and, a maximum of 3 (three) Years, and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah), and a maximum of Rp. 3,000,000,000.00 (three billion rupiah).

The intentional element referred to in it, contained elements (will) and intellectual (knowledge). Actions intentionally and consciously or required, so in order to enter Article 103 UUPPLH, there must be a will not to carry out the produced management of B3 waste, and pay attention to the formulation of Article 116 Section (1) UUPPLH, can be seen that if living environment criminal act is carried out by, for, or on behalf of a business entity, criminal charges, and criminal sanction can be imposed on the Business Entity and/or the Person giving the order to commit the criminal act, or the person acting as the leader of the activity in the criminal act.

Also, in the formulation of Article 118, it is stated that Against the criminal act as referred to in Article 116 paragraph (1) letter a the sanction imposed on business entity is represented by the authorized management, to represent inside and outside the court, in line with the law and regulation as the functional actor.

Therefore, criminal charges are imposed on leaders of business entities and legal entities because acts of crime and business entities and legal entities are functional criminal law so the criminal is imposed and sanctions are imposed on those who have authority over the physical offender and accept the actions of the physical offender. What is meant to accept actions which include agreeing, letting or not adequately supervising the actions of physical actors and/or have policies that allow the occurrence of such criminal act.

In addition, there is a Supreme Court Decision Number: 1405 K/Pid.Sus/2013 on January 20, 2014, in which the verdict stated that Defendant PT. Karawang Prima Sejahtera Steel (PT.KPPS) represented by Wang Dong Bing was guilty of a criminal act without the permit for dumping waste into the environmental Media and punished defendant Wang Dong Bing with imprisonment for 10 (ten) months and a fine of Rp.500,000,000.00 (five hundred million rupiah).

When referring/guided to the Supreme Court Decision above, the Defendant PT. Koyama Casting Indonesia (PT. KCI) case, in this case, represented by Defendant Shigemi Koyama, can be subject to Criminal Penalty, not only Criminal Fines. The verdict of the Panel of Judges of the Bandung High Court, which only gives criminal penalties for fines, will not have a deterrent effect on the perpetrators of the living environment crime act because they are only sentenced to fines without imprisonment.

In the theory of corporate identification, suggests that in order for a corporation to be liable for criminal liability, the person who commits a crime must be identified first. The new criminal liability can actually be charged to the corporation if the criminal act is committed by a person who is a corporate policy maker to carry out the activity and the corporation. In the case of Defendant Shigemi Koyama, it is clear that the defendant as Director of PT. Koyama Casting Indonesia (PT. KCI), ordered its employees to store waste containing B3 Waste in drums, and placed partially in open space, and managed waste without management permission from the authorities.

Therefore, the Judge in deciding a case must consider the physiological truth (justice), juridical truth (law), and sociological (social) truth. Therefore in deciding a case, the judge must look at these aspects, so the verdict produced by the judge does not override justice, and also does not exclude the rights of the accused. Because actually, the aspect to be achieved is to protect the public from the threat of a crime committed by the

perpetrators and also repressive efforts so that criminal imprisonment makes the perpetrators deterrent and will not commit a criminal act in the future.

IV. CONCLUSION

Based on the explained description of the discussion, the author can draw conclusions as follows:

1. Criminal liability carried out by the corporation can be requested from the corporation and/or the person who gives the order to commit the criminal act, or the person who acts as the leader of the activity in the criminal act, as stipulated in Article 116 UUPPLH. Living environment criminal act committed by a person based on work relationship or other relationships, acting within the scope of work of a business entity, criminal sanction imposed on the giver of the order, or leader in the criminal act regardless the criminal act carried out individually or together, as well as the business entity represented by the authorized management to represent inside and outside the court in line with the law and regulation as a functional actor.
2. The verdict on the case of PT. Koyama Casting Indonesia by the Karawang State Court vide Bandung High Court, only imposed a fine on the corporation without any penalty for Shigemi Koyama as the chairman/Director of the company, is a verdict which is inappropriate because based on the fact of the trial, that Defendant Shigemi Koyama, as Director of PT. Koyama Casting Indonesia, which instructs its employees to store waste containing B3 Waste, which should also be subjected to criminal sanction in prison, as in the elucidation of article 118 UUPPLH, that criminal charges are imposed on leaders of business entity and legal entity, because criminal act of business entity and legal entity are functional criminal act, thus the criminal imposed and the sanction imposed on those who have authority over the physical offender, and accept the actions of the physical offender.

REFERENCES

- [1]. Amir Ilyas. 2012. *Asas – Asas Hukum Pidana*. Yogyakarta: Rangkang Education.
- [2]. Soerjono Soekanto dan Sri Mamuji. 2010. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta : Raja Grafindo Persada.
- [3]. Sutan Remy Sjahdeini. 2006. *Pertanggungjawaban Pidana Korporasi*. Jakarta: Grafiti Pers.
- [4]. Syamsul Arifin. 2012. *Hukum Perlindungan dan Pengelolaan Lingkungan Hidup Di Indonesia*. Jakarta : PT. Sofmedia.
- [5]. Takdir Rahmadi. 2011. *Hukum Lingkungan Di Indonesia*. Jakarta : PT Raja Grafindo Persada.
- [6]. Zainuddin Ali. 2011. *Metode Penelitian Hukum*. Jakarta : Sinar Grafika, Jakarta. 2011
- [7]. Law Number 8 of the year 1981 on the book of the law of Criminal Procedure
- [8]. Law Number 1 Year 1946 regarding the Regulation of criminal law
- [9]. Law Number 32 Year 2009 on the protection and management of the environment
- [10]. Asmani, *that the machines Legal Journal*, accessed on February 14, 2018, at 8 p.m., GMT + 8
- [11]. Dalinama Telaumbanans (2015). *Corporate Criminal liability in the field of the environment*. *Refleksi Hukum*. Volume 9, no. 1, accessed on 13 February 2018, at 2.22 p.m., GMT + 8.