

Corporate Responsibility For Forest Fires In Connection With The Implementation Of Environmental Law

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Abstract

Due to the actors who burn the forest to open land oil palm plantation company allegedly is a corporation, the corporation issues related to speak also to the issue of accountability. In terms of corporate accountability is possible through to the doctrine of strict liability which, in this teaching criminal liability can be imposed on perpetrators of criminal acts in question with no need to PROVE the existence of fault actors. But the emphasis is placed on it, as a result of his actions have caused loss to the community. Suffice it proven that the Offender has committed an unlawful act, or not doing that is required by the criminal provisions.

Keywords: Corporate Liability, Forest fires, applications of Environmental Law.

1. Introduction

1.1 Background

Criminal responsibility, in foreign terms also called *toerekenbaarheid* or criminal responsibility, which is suggestive of criminal offenders with a view to determining whether an accused or a suspect be held accountable for a crime that happened or not. To be convicted offender, required that the offense is doing it must meet the elements that have been determined by law. Judging from the ability to be responsible, then someone who is able to be responsible can be held accountable for his actions (Muladi, 2010;34).

Criminal liability has a close relationship with the determination of the criminal law. The subject of criminal law in the statutory provisions is a criminal offense that can be accounted for on all legal actions undertaken as a manifestation of the responsibility for his mistake against another person.

That the system of criminal liability is based to Schuld the offender. Someone is not enough for convicted if the person committed an unlawful act, fulfill the formulation of the offense and can be

justified on the basis that the action was subjektive guilt. As has been outlined by Act No. 23 of 1997 on Environmental Management as amended by Act No. 32 of 2009 on the Protection and Environmental Management. Pollution of soil, water and air is essentially as grow up implications of industrial activity and the use of pesticides is a problem that can not be avoided. The destruction of forests and lands that have an impact on the long drought and the resulting flooding is a problem more aftershocks. Until now, various problems arising from its activities have an important impact on the **Environment and Natural Resources Management (PSDA)**. To that end, various environmental problems requiring immediate management, planned, measured and targeted so as to compensate for the rapid development and industrialization activities which often ignore the paradigm of preservation of the environment. One of the efforts is through the process of law enforcement to hold them accountable for mistakes offender.

Act No. 23 OF 1997 (UUPH) stipulated that every person has the same rights to a healthy environment is good and everyone is obliged to preserve the function of the environment and prevent and mitigate pollution and environmental destruction as well as prevent and mitigate pollution and environmental destruction life. This subject is the continuation of the burden of environmental pollution and accountable to the polluters and destroyers, so that legal sanctions accountable to those who pollute and damage the environment.

In terms of the environment, corporate responsibility is stipulated in clauses 46 of Law No. 23 of 1997 on Environmental Management which basically can be held criminal liability on any person, legal entity and/or its officers. According KoesnadiHardjasoemantri (2004:60) that the consequences of the application of the provisions on corporate responsibility must be thoroughly understood by employers, so that should take care and manage the company to refrain from acts that lead to employers subject to imprisonment, in addition to the company fined for having pollution and/or destruction of the environment caused by business and/or activities that.

Congress of the United Nations VII in 1985, of which address the types of crime in the theme of "*New Dimensions of Crime in the Context of Development*", and see the symptoms of crime, which is a continuation of economic activity and growth in which the corporation of a role in it, such as: the occurrence of tax fraud, damage to the environment life, insurance fraud, fraudulent ads that impact can damage the joints of the economy of a country. Seeing the development and growth of the corporations that have a negative impact, the position of the corporation began to shift from the civil law subjects only be included also the subject of criminal law. In the context of criminal offenses in this study were forest fires that damage the environment.

Now, times are growing and people's lives has become more complex, and therefore an understanding of a criminal also be shifted from opinion is the long time. It is inconceivable how the concept with glasses classic used to photograph offenders now grown to include not only the human form in a sense no longer a conventional crime, now has shifted, as well as by subjects of human law, but it can also be done by actors likened to a man that is a corporation. Thus the long course eye glasses are no longer hit the target again if it persisted for use in the present. Then inevitably the focus of the study of criminology needs to develop is through critical examination of the various forms of phenomena in the life of modern-paced society.

KUHP has not been set regarding corporate criminal responsibility in the sense of not knowing the corporation as subject follow. KUHP used until now still adheres to the idea that an offense can only be done by men (*Natuurlijkpersoon*). Article 59 of the Criminal Code is: "In cases where a criminal offense against the board determined, members of the Board or the board of commissioners, board members or commissioners who did not intervene commit criminal offense". The meaning is that the criminal act was never carried out by the corporation but is done by the managers. Penal Code only regulates the criminal acts committed by individuals who are accountable also be done individually.

Restrictions understanding is then had to cover or protect the legal entity of all the crimes that have been carried out. On behalf of the legal entity (corporation) actors to be safe and protected from the law and be free to act. There is no criminal law sanctions which can be imposed on legal entities teersebut because at that time there was no legal arrangements governing the criminal liability for any civil cases for example by requesting payment for damages because of the actions of civil legal entity that has hurt other legal subjects.

Expansion of legal subjects in this Act to be one of its own specificity compared with other crimes, which can dipidananya corporation (legal entity) that is not contained in the Criminal Code. However, legal entities as subject to the law already recognized in the Draft Bill which baru. Kejahatan corporation is a new form of crime and will become a trend in the future. According to AndiNirwanto, as Attorney General for Special Crimes (*Jampidsus RI*), states that: "In the frame of mind, it is precisely when this corporate criminal liability entered into in the Draft Bill. In addition intended to in the Draft Bill, corporate crime should also be regulated in the Criminal Procedure Code or the Criminal Code, one example, Article 143 of the Criminal Procedure Code which regulates the indictment, there would call identity that there are 9 items, ranging from full name, age, gender, and etc. But the question is when the criminal act is done later corporation, then it does not exist. In order to prevent criminal offenses corporations in government agencies or state owned enterprises, so that every institution and company should be openness. It is accountability may be able to prevent the crime of the corporation (<http://news.detik.com>, 2013).

Attorney General for Special Crimes (*Jampidsus*) have been handled some corporate crime criminal one conducted by PT. GiriJaladiwarna and PT. IM2. PT GiriJaladiwarna already convicted by the Supreme Court (MA) to pay compensation Rp 1.3 billion in the case of the construction of the central market in Banjarmasin. There is another case of PT. IM2. There is another case of PT. IM2 on Corruption Jakarta, PT. IM2 incur additional penalty to pay cash instead Rp 1.3 trillion, and this is one example of Corporate criminal law enforcement.

Determination of the corporation as a principal and also as responsible for his motivation is to pay attention to the development of the corporation itself, that turned out for some particular offense alone as the enactment of the board can be imprisoned was not enough. In the corruption offense is not impossible that the fine imposed as a penalty to the board compared to the benefits that have been received by the corporation to commit a criminal act, it is larger than the fines imposed as punishment. The purpose of corporate criminal liability that gives an important impact on the director to set up an effective manajemen that corporate run in accordance with the obligations of the corporation. Criminal

prosecution against the corporation, basically have the same goal with the criminal law in general, namely:

1. To stop and prevent crime in the future;
2. Containing elements of the judgment which reflects the obligation of the society to punish those who bring harm;
3. To rehabilitate criminals corporation;
4. Criminalization corporation must realize the nature of clarity, predictable and for efficiency
5. For justice ".

The problem of forest fires is related to forest management that emphasizes the principles of sustainability. There are some principles known in the environmental field, or the so-called principles of environmental management. In Article 2 of Law No. 32 of 2009 on the protection and management of the environment, which states that: The protection and management of the environment carried out under the principles of:

1. state responsibility;
2. preservation and sustainability;
3. harmony and balance;
4. alignment;
5. benefit;
6. prudence;
7. justice;
8. ecoregions
9. biodiversity;
10. polluter pays;
11. participatory;
12. local wisdom;
13. good governance;
14. special autonomy.

Similarly, what happened with the development of oil palm plantations. In practice, the development of oil palm plantations do not pay attention to the principles of sustainable management / sustainability. Oil palm plantation business has been based on the economic interests of certain groups. The government as the main organizer of natural resources for the people of many countries, not paying attention to these principles. It can be seen from the various policies operationalization, and monitoring work does not lead to those principles. Similarly, in terms of management of forest fire preventive measures. Preventive measures/participatory forest fire prevention, right strategy, monitoring, and conflict resolution in to the institutions that have local knowledge in the prevention of forest fires. The government can accommodate the rules agreed upon in the regional and national levels to further streamline its decision.

Law purposes of environmental protection and management is creating a harmonious balance environmental capabilities (syamsul, 2012). Therefore, the protection and management of living lingkungan is a systematic and integrated efforts are being made to preserve the function of the

environment and prevent pollution and/or destruction of the environment that includes planning, utilization, control, maintenance, supervision, and enforcement. Thus, it is worthy of writing journal with the title: Corporate Responsibility towards Forest Fire In conjunction with the Environmental Law Enforcement for further investigation.

2. Problem Formulation

Based on the description of the background of the above, the formulation of the problem in writing this journal is as follows:

1. How does corporate responsibility towards the crime of forest fires?
2. How does the responsibility of corporations against forest fires in the implementation of environmental law?

3. Discussion

3.1 Responsibility Corporate Crime Against Forest Fires

Land and forest fires in Indonesia especially in West Kalimantan are fairly common, and even most people assume that the land and forest fires in West Kalimantan as seasonal, meaning that almost every year the fires and land by/as a result of human activity is a legal event, which event or events that give rise to legal consequences. Forest and land fire events not only adversely affect natural ecosystems and artificial ecosystems, but also give rise to liability for the culprit. Even obliging the government and law enforcement officials to pursue legal action required under the authority and duties. Community luasapun have a social responsibility to prevent the occurrence of fires and the land (Amanda, 2013;2).

Land and forest fires in Kalimantan Barat often occur in the area of business and plantation area community property. In view of the legal framework, forest fires and land associated with forestry regulations, in plantation, and in the environmental field.

At the level of law enforcement, turned out to have quite a lot of obstacles. In addition to its vagueness formulation of the offense and a variety of sanctions, the proof is also quite difficult, except in the case caught red-handed. Strictly speaking, the act of preventive and repressive law enforcement in cases of forest fire following the impact of the ecosystem is still not effective. That fact can be seen in the lack of resolution of cases of forest and land fires are brought to trial. In fact almost nonexistent forest and land fires in West Kalimantan are entangled with the law sanctions as above.

The government has a very high attention to the development efforts of palm oil in Indonesia as a very important position in the economic structure of the country. The economic role of oil palm plantations in this important inter alia as job creation, improved living standards for people who are in the plantation area, and as a contributor to the country's foreign exchange so that the government gives facilities the most important for the existence of oil palm plantations the facility to acquire land and labor Cheap and political protection, provided by the government to investors.

Problems plantation relics government programs 80 patterned pure oil palm plantations, projects government projects and patterns of self-sufficiency. Business strategies developed by the company's plantation in West Kalimantan Sambas Regency generally and in particular is to maintain a balance between growth and profitability, implement Operational Excellence, develop Intellectual Capital, to develop the downstream industry that adds value, and establish strategic alliances for mutual benefit.

The business strategy is then developed further in the form of business policy, which includes: control to business through performance indicators primary, imposed a Standard Operation Procedure (SOP) that support the new paradigm of the company, to manage the business based on values gradually implement leadership transformasional, and cultivate innovation which increases the innovations that improve productivity significantly.

Development of oil palm plantations bring a positive impact to the development of city strong economy, so it needs to be improved in order to improve the welfare of society in accordance with the purpose and function of plantation development. But the positive effects arising from the business of the estate on the other hand had a negative impact, which is one of the forest fires and land in the plantation area on the other side also had a negative impact, which is one of the forest fires and land area under plantation as happened in PT. Wilmar Sambas Plantation (WSP) and PT. Reed cawang Plantation (BCP) Sambas incur losses in ecological, economic, social and cultural, so we need the rule of law.

In conjunction with land and forest fires, there are several penal provisions in Forestry Law, Law of Plantation and Environmental Law are on the sanctions from the consequences of forest fires and land. Article 50 paragraph (3) letter d of Law No. 41 of 1999 on forestry only formulate the act "a fire". This formula is not clear categories of offense, offense formal or material and/or offense pollution/degradation of the environment. Similarly, the setting of sanctions, namely:

1. If intentional punishable under the provisions of Article 78 paragraph (3), crimped imprisonment of lama15 (fifteen) years and a maximum fine of Rp 5,000,000,000 (five billion rupiah).
2. If, as oversight punishable under the provisions of Article 78 paragraph (4) with a maximum imprisonment of five (5) years and a maximum fine of Rp 1.5000.0000, - (one billion five hundred million rupiah).
3. Explanation of Article 50 paragraph (3) d, exclude from criminal threats against the "limited forest burning" which is allowed only for a specific purpose or condition that can not be circumvented, such as forest fire control, eradication of pests and diseases, as well as the development of a natural habitat and animals must obtain permission from the competent authority ".

The problem is, what if the actions are excluded forest burn it, turned out to cause pollution and/or destruction of the environment? Forest and fire cases land on which the plantation owned by PT. BCP and PT, WSP has conducted law enforcement by using the provisions of criminal sanctions in the Law on the environment, and based on the decision of the District Court Singkawang two companies have been acquitted, so the verdict Prosecution statement appeal, and then the decision of Cassation rejected the Prosecution general.

Thus, limits the applicability of the Act No. 32 of 2009 on the protection and management of the environment is associated with a result of the forest fires which reduces the environmental quality standards. As with the limitations of Act No. 41 of 1999 on Forestry governing forest fires. Therefore, the Forestry Law is a *lex generalis* *lex derogat* namely UUPPLH. with other words, the proposed law is more specific regulations and specific about the special forestry while Law PPLH better regulate the global environment, or as a result of the forest fire ,

3.2 The process of corporate responsibility in Environmental Law Enforcement.

It can be said, that the first post in retaining and maintaining the environmental law is in the hands of officials administration, since it is they who issue permits and naturally they are first to know if there is no permit or the conditions in the permit are violated (AndiHamzah, 147). Search of documents (license) and the division of work in the position contained in the legal entity in question would produce file, information and facts the negative impact caused by the activities of the business concerned and control and monitoring has been done to this effect. Of these documents can also be shown, how the rights and obligations of the board director of the company, may be to monitor, prevent and control the negative impacts of corporate activities. So from that search, will also evident whether the pollution and / or destruction of the environment occurs due to deliberate or gross negligence (syahrulmachmud, 147).

Enforcement of criminal law is ultimumremedium or last legal effort because the aim is to punish the offender by imprisonment or fines. Thus, enforcement of criminal law is not serve to fix the polluted environment. However, enforcement of criminal law is always applied selectively (sukarnihusin, 121).UltimumRemediun associated with the Article 100 of Law No. 32 of 2009 on the protection and management of the Environment has highlighted that there are three (3) violations in the environmental field, namely:

1. Pelanggaranwaste water quality standard;
2. Violation of emission quality standards;
3. Violation of quality standards for interference.

Associated with a court ruling, then KPT ADEL PLANTATION & INDUSTRY proven legally and convincingly guilty of committing a crime because of her negligence over standard criteria of environmental damage ". Convict against Defendant therefore punished by a fine Rp 1,500,000,000 (one billion five hundred million rupiah) provided that if the fine is not paid to be replaced with imprisonment represented by Br. Kei Tan Yoong for five (5) months. In addition to the defendant's criminal PT.ADEI PLANTATION AND INDUSTRY form of repairs resulting from criminal acts to restore land damaged by fire, the land area of 40 ha through composting, with a cost of Rp.15.141.826.779 (fifteen billion one hundred and forty-one million eight hundred twenty-six thousand rupiah) .With such, when the defendant Br. Tan Kei Yong regional as Director of PT. Adei not carry out the dictates of the court's ruling, then he is liable to imprisonment for a minimum 3 (three) years and a maximum fine of Rp 3,000,000,000 (three billion rupiah).

Law No. 32 of 2009 on the Protection and Management of the Environment recognizes about corporate responsibility as stipulated in Article 116 to 119. Under Article 117, if the offenses are committed by or on behalf of a legal entity, company, association foundation or other organization, the criminal threat is exacerbated third. Besides the penalty, the corporation who committed the crime can be sentenced to the principal form of ay the fine and additional penalties in the form of procedural measures as follows:

1. The seizure of profits derived from the crime
2. Closure in whole or part of the company.
3. Requiring do what is done without rights.
4. Recovery from crime.

5. Eliminates what is neglected
6. Putting the company under the guardianship maximum of 3 years ".

Because the provisions of Article 119 of Law OF No. 32, 2009 are not explicitly mention whether this punishment may be imposed alternative or two or more at a time, the authors also argue that the types of penalties may be imposed grief or more at a time depending on a case-by-case or the consequences of delinquency.

With the use of strict liability as the new legal system, the constraints experienced by the patient can be breached. Based on this system, the verification is no longer charged to the partiesclaimants (injured victims), as has been commonly adopted. But charged to the offender action against the law. Here the reverse burden of proof applies.

Further related judgment justice perpetrators of crimes committed by a corporation in the environmental field (corporation may be liable), the criminalization of corporate regulated in Law No. 32 of 2009 on UUPPLH particularly Article 98 paragraph (1) contains several elements that must be met within the framework of the application of criminal, namely: First element of anyone. Secondly, it is against the law. Finally, intentionally. Fourth, acts which resulted over capacity ambient air quality, water quality, water quality criteria for sea or environmental damage.

Based on the formulation of Article 116 paragraph (1) above requires that the criminal prosecution against the corporation that do damage to the environment can be imposed to business entities, and or the person who gave the order to commit the offense or he is act as leaders in the activities of the criminal act. Therefore corporations in environmental management efforts have an obligation to develop policies / measures that must be taken are:

1. Whether the case relating to criminal offenses where disruption to the protected interest is expressed as a criminal offense;
2. Norms of accuracy / precision that is related to the environment disruptive behavior;
3. The nature, structure and areas of work of the legal entity.

Associated with cases of forest fires on 17 and June 18, 2013 in oil palm plantations PT. Adei. Then responsible for a business and/or activity is the corporation it self (PT. Adei) Therefore, PT. Adei ought to apply the principle of strict liability for his actions resulted in a prolonged fire until 2 (two) weeks, causing environmental contamination and smoke nuisance whose impact extends to neighboring countries. Therefore, by applying the principle of strict liability then the least damage to the environment can minimize impact of the damage and the victims receive compensation of losses suffered.

The process of corporate responsibility in environmental law enforcement starts from the investigation, the investigation conducted by the investigators of the Environment and can be coordinated with the National Police Investigator Coordinator PPNS-LH supervisor. Furthermore, the process of transfer of case files following suspects to the prosecutor in the State Attorney locals for prosecution, if the dossier is considered complete, then Attorney Researchers will issue a P-21, or if the dossier is considered incomplete, then Attorney Researchers will issue a letter P-19, which contains instructions to the investigators to conduct investigations in accordance with Attorney Researcher directives in order to do the prosecution in trial. Once the process is completed, then the following case

files suspects be transferred to the District Court in order to do the proceedings to examine the case in accordance with the charges of the Public Prosecutor.

4. Conclusions and Recommendations

4.1. Conclusion

After a discussion concerning the conclusion it can be done as follows:

4.1.1 Corporations are committing a crime against the law to intentionally perform acts that result in criminal liability forest fires be held under Article 49 of Law No. 41 of 1999 on Forestry, which states that: "the right or license holder is responsible for the occurrence of forest fires in the working area". By law, the Article 49, an incoming accountability to the corporation. In Act No. 18 Year 2013 on the Prevention and Eradication of forest destruction has been regulated in Article 18, that: "In addition to subject to criminal sanctions, violation of the provision of Article 12 Hufuf a, b, c, Article 17 paragraph (1) b, c, e, and Article 17 paragraph (2) b, c, and e are carried out by legal entities or corporations subject to administrative sanctions in the form of: a. Government coercion; b. Forced money; and / or c. Withdrawal ", demands can be carried out using the provisions of the corporation, which means that the legal subject who commit a criminal act of arson and land company (corporation). Criminal offense subject is a person who can incur criminal liability. In the civil law concept which was later adopted in the laws of the public, the person is a term that includes two legal subjects namely humans and other subjects are by law defined as a legal subject. In categorizing the legal entity as a legal subject. However, in a further development, the legal entity subject law as/However, in a further development, the subject of criminal law is not only human and legal entities but also include the name of the corporation.

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4.2 Recommendations

From the conclusions that have been mentioned above, it can be put forward some suggestion as follows Better Living PPNSor forestry investigators can coordinate with the Police Investigator Coordinator of Trustees of investigation in order to obtain mature plans and strategies to uncover and make clear and distinct criminal case to destruction of the environment or forest fires. This is because the corporation has to have people who are paid to do the crime of burning forests and the land and so - olah- though the forest and land fires are not related to the corporation, but, after all silent, corporate will do above activities land burned by person messengers of the corporation.

References

- Muladi dab DwidjaPriyatno, Criminal liability corporation, (Jakarta: K AndiHamzah, Codes, (Jakarta: Rineka Copyright, 1990), p. 28.
- Detiknews, "Attorney General Crime of the Criminal Code of Corporate Sign Bill", published Wednesday, October 30, 2013, <http://news.detik.com/read/2013>.
- SyamsulArifin, Legal Protection and Environmental Management in Indonesia, (Jakarta: Sofmedia, 2012).
- Article 1 paragraph (2) of Law No. 32, 2009 quiet Protection and Environmental Management.
- Amanda, "Synchronization Environmental Criminal Law Enforcement Act With The Learning Environment (Case study forest fires)", Student Journal, Journal of Laws Magisteer NESTOR 2, no. 2, 2013.
- Law No. 41 of 19 999 on forestry.
- Law No. 18 of 2004 on the plantation.
- Magazine Media Information and Communication Society of Sawit Watch, "JefriGedeon S: Criminalization Behind Bulk Oil Palm Plantation Expansion Promises Manis", Vol. 1 Year 7, 2007, p. 16.

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