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Recontruction of Corporate Criminal Sanction in the Crime of Forest Destruction

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ABSTRACT

Forests are national resources that must be protected by everyone, regardless of their political affiliation. Many forests have been lost as a result of human and corporate devastation. The reconstruction of corporate criminal sanctions in the crime of forest destruction is the subject of this study. The objecrtive of research covers, first, how is the nature of corporate crime in forest destruction crimes in Indonesia, second, how is the implementation of corporate crime in forest destruction crimes, and third, how is the ideal model of corporate crime in accordance with the principles of justice. The method used is a normative juridical research method, namely research on legal principles using secondary data. While the data analysis method used is a qualitative method and the data collection tool used is the study of documents. The result of this study is that corporations as legal subjects must be responsible (*strafrechtelijke aansprakelijkheid*) if they are legally proven to have committed forest destruction. Then the implementation of corporate crime, there is no procedural law for investigation, prosecution and court examination, especially in formulating indictments for corporate entities. Finally, the ideal model of corporate crime is by direct punishment for those who destroy forests and those who participate (*Deelneming*) as stipulated in Article 55 of the Indonesia Criminal Code. The suggestion for this research is that the Government should immediately regulate corporate criminal sanctions in criminal acts of forest destruction explicitly and clearly in a statutory regulation.

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Introduction

The Indonesian Constitution protects all the resources contained in this country that can be utilized for the benefit of the lives of many people. Forests are one of the resources contained In Indonesia that are very valuable and can provide benefits to mankind, so they need to be managed and utilized optimally, and preserved for the greatest prosperity of the people. This is in line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as the constitutional basis of the Indonesian state which states "Earth and water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people."

Forests as the lungs of the world play an important role in human life. As the definition of forest in the Forestry Law, the forest is dominated by trees that produce oxygen for the

breathing of humans and animals. In addition, the forest is also a place to live for animals, plants, or natural resources (Mukhtar & Rahayu, 2019).

Forests are natural resources as a gift from God Almighty as mandated by Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). Forests are also a national wealth that is used to achieve the greatest prosperity of the people. Therefore, the Government pays special attention to the existence of forests by stipulating three main functions of forests, namely: conservation forests, protection forests, and production forests.

Deforestation has evolved into a serious crime with far-reaching consequences that is well-organized and involving a wide range of national and international actors. The damage done has reached a point where the nation's and state's survival is in jeopardy. As a result, the management of forest damage must be done in a unique way (Pandiangan et al., 2017). The efforts of the Indonesian state in protecting forest areas in the context of forest utilization in general are regulated in Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2004 concerning Amendments to Laws Law Number 41 of 1999 concerning Forestry and Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

Logging, theft of timber and transportation taken from forest areas without a valid permit from the government, based on the results of several seminars, is known as illegal logging and causes forest destruction. Illegal logging activities are currently running more openly, transparently and many parties are involved and profit from timber theft activities, the usual mode is to involve many parties in a systematic and organized manner. In general, those who play a role are laborers / loggers, financiers, transportation providers and business security (often as business security is from the bureaucracy and government officials

Forest damage caused by forest fires has been more common in recent years, both publicly and covertly. The perpetrators of these forest fires include both people and corporations. In 2019, the Ministry of Environment and Forestry investigated at least 5 other firms and sealed 51 entities, including one controlled by an individual, with a total land area of 8,931 hectares (Lubis & Siddiq, 2021).

In 2019 the number of forest fire and forest fire suspects set by the National Police Criminal Investigation Unit reached 365 people and 22 corporations, while in 2020 there were 129 forest fire suspects and 2 corporations.

Corporations as legal institutions that are given normative rights to carry out business activities do not all carry out the orders of the law. Some even carry out negative activities that are destructive to the forest. This condition is certainly very sad where by nature, the corporation can survive because it enjoys the function of the forest itself, including the forest as a producer of oxygen and wood for office buildings.

It will bring hope and optimism for attempts to probe corruption as thoroughly and effectively as possible by making corporations the target of criminal conduct. Corporations

as targets of illegal acts are not new, but the law enforcement process, according to Muladi and Dwidja Priyatno, is still exceedingly slow (Anggaraini et al., 2016).

Deviant corporate goals and interests in relation to their role in the utilization and management of forest resources, industrial activities by utilizing advanced science and technology to achieve development targets in the economic sector, thereby placing forests as objects, are the source of crimes committed by corporations in the forest sector. It is a commodity that can be exploited for profit.

Given those corporate crimes in the forestry sector can have a significant and complicated impact, affecting not only the Indonesian people and nation, but also other communities and countries, serious and serious efforts in implementing the rule of law against criminals who damage forests are required. The employment of criminal law, specifically through criminal law policies, is one of the initiatives to combat corporate crime in the forestry sector.

The legal issues in the research are, first, how is the nature of corporate crime in forest destruction crimes in Indonesia, second, how is the implementation of corporate crime in forest destruction crimes, and third, how is the ideal model of corporate crime in accordance with the principles of justice.

Methodology

This study takes the form of a juridical normative study, in which written legal standards are examined directly on the subject matter of the study. The data used in this study, namely secondary data obtained through the process of searching for library materials rather than directly from the field, and secondary legal material in the form of theories drawn from various literature works, the Republic of Indonesia's Constitution of 1945, and laws and regulations. Researchers employed document studies, theories, and current legislation as data collection strategies. Because data processing is not done by measuring secondary data related to it, but descriptively analyzing the data, the data analysis method utilized in processing the data related to this research is a qualitative method. Research processes create descriptive analytical data in a qualitative approach.

Results and Discussion

Determining corporate guilt is very difficult because the blame assigned to the corporation is not the corporation personally, because in essence the person who commits the crime is the person (corporate management). Likewise, the problem of criminal sanctions in the laws and regulations relating to corporate liability, it has not been clearly defined which are the main crimes, additional penalties, and actions. As a result of this uncertainty, law enforcement officers will hesitate to ensnare corporations as the subject of criminal acts, so that legal certainty will be difficult to achieve (Hikmawati, 2021).

Efforts to eradicate forest destruction are the responsibility of the Government and Regional Governments. Forest devastation is eradicated through pursuing legal action against the offenders of forest destruction, either directly or indirectly, as well as other parties involved. Investigation, investigation, prosecution, and court examination are all examples

of legal activity. Unless otherwise specified in that Legislation, investigations, investigations, prosecutions, and exams in court processes in cases of criminal actions of forest damage are conducted in accordance with the appropriate criminal procedural law (Aryani & Widiastuti, 2016).

In Law Number 18 of 2013, it is regulated that criminal liability is a legal subject is a corporation or legal entity. A criminal act or a criminal act if committed may be subject to criminal provisions as contained in Article 109 paragraphs (5) and (6), the main crime that can be imposed on a corporation is a fine as referred to in Article 82 to Article 103, in addition to that the corporation may be sentenced to additional penalties in the form of closing the whole or part of the company (regulated in Article 10 of the Criminal Code), and violations as stipulated in Article 18 of Law Number 18 of 2013, legal entities or corporations may be subject to administrative sanctions in the form of; government coercion, forced money and/or license revocation (Wirya, 2015).

Forest and land fires are generally caused by natural and human factors. The cause of this human factor is done either intentionally or due to negligence, both of which are elements of criminal acts. Burning forest and land is against the law because it is not only against the Criminal Code but also against Law no. 32 of 2009 concerning Environmental Protection and Management (Edorita, 2011). Talking about criminal liability, it cannot be separated from criminal acts. Although in the sense of a crime it does not include a problem of responsibility. A criminal act refers to the prohibition of an act. Criminal liability is the passing of objective and subjective reproaches on a person who meets the requirements to be punished for his actions (Hikmawati, 2017).

When someone is said to have made a mistake is a matter of criminal liability. A person has an error when at the time of committing a crime, from a social perspective he can be reproached because of his actions. Corporate criminal liability is strongly linked to the idea of identification, which argues that the actions of some corporate agents are regarded to be the actions of the corporation itself as long as the actions are tied to the corporation. According to this hypothesis, certain corporate operatives are referred to as "directing minds." These people' behaviors and motives are then linked to the corporation. Individuals' mens rea constitutes the corporate mens rea if they are permitted to act on behalf of and in the course of carrying out the corporation's operations (Susanti & Putri, 2020). They are not substitutes and therefore corporate liability is not of a personal nature. In relation to the description, the agent or person -people who, when committing a crime, are responsible for the corporation, their actions are actually identical to those of the corporation.

Corporations are in many ways equated with the human body. Corporations have brains and nerve centers that control what they do. It has hands that hold tools and act according to directions from the nerve center. Some people in the corporate environment are only employees and agents who are nothing more than hands in doing their work and cannot be said to be the inner attitude or will of the company (Widjojanto, 2017). On the other hand, the director or equivalent officer represents an inner attitude that directs, represents the will of the company and controls what is done. Their inner attitude is the attitude of the corporation

Furthermore, related to Strict liability theory, it is defined as a criminal act by not requiring the perpetrator to make a mistake against one or more of the actus reus. Strict liability is liability without fault. This concept is formulated as the nature of strict liability offenses is that they are crimes which do not require any mens rea with regard to at least one element of their "*actus reus*". there is an element of error, but it is only required that an action be taken).

L.B. Curzon suggests three reasons why in strict liability the fault aspect does not need to be proven. First, it is essential to ensure compliance with certain important regulations that are necessary for the welfare of society. Second, proving the existence of mens rea will be difficult for violations related to public welfare. Third, the high level of social danger posed by the act in question. The next theory is vicarious liability or what is usually known as substitute criminal liability, which is defined as someone's responsibility without personal fault, is responsible for the actions of others (a vicarious liability is one where in one person, though without personal fault, is more liable for the conduct of another). Barda Nawawi Arief argues that vicarious liability is a concept of a person's responsibility for mistakes made by others, such as actions taken that are still within the scope of his work (the legal responsibility of one person for wrongful acts of another, as for example, when the acts are done within the scope of employment).

For the corporate culture model, criminal liability is charged to the corporation if it is found that someone who has committed an unlawful act has a rational basis for believing that a member of the corporation who has the authority has given authority or allowed the criminal act to be committed.

There are several theories related to the model of corporate responsibility. First, the management of the corporation as the maker and at the same time is responsible. This theory is still based on the principle of "*Societas/University Delinquere non potest*" (legal entities cannot commit criminal acts). This principle actually applies in the past century to all countries of Continental Europe. This is in line with the opinions of individual criminal law from the classical school prevailing at that time and later also from the modern flow in criminal law.

The second is the corporation as the maker but the management is responsible. In this model the corporation as the maker and the manager is responsible, it is emphasized that the corporation may be the maker. The management is appointed as the person in charge with the condition that is seen as being done by the corporation is what is done by the equipment of the corporation according to the authority based on its articles of association. A criminal act committed by a corporation is a crime committed by a certain person as the administrator of the legal entity. The nature of the act that makes the crime is "on-personlijk". The person who leads the corporation is criminally liable, regardless of whether or not he knows about the act.

The third is the corporation as the maker and also as the responsible person, meaning that by paying attention to the development of the corporation itself, namely that it turns out that for certain offenses, the stipulation of administrators as those who can be convicted is not enough.

According to the author, this model is the most relevant and in accordance with several court decisions related to forest destruction crimes. Some of these decisions try and decide on convicts based on Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction and Article 55 of the Criminal Code. Some of these decisions are Supreme Court Decision Number 2095 K/PID.SUS.LH/2017 dated 5 February 2018, Supreme Court Decision Number 2981 K/Pid.Sus/2015 dated 25 February 2016, Supreme Court Decision Number 28223 K/Pid.Sus LH/2018 dated January 8, 2019.

Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction explicitly states that corporations can be accounted for as perpetrators of criminal acts. Article 1 point 21 states that what is meant by "everyone" is an individual and/or corporation that commits acts of forest destruction in an organized manner within the Indonesian jurisdiction and/or has legal consequences in the Indonesian jurisdiction (Yatini et al., 2019). Meanwhile, Article 1 point 22 states that a corporation is an organized collection of people and/or assets, both in the form of legal entities and non-legal entities. The law also regulates when it is said that a criminal act was committed by a corporation. Article 109 Paragraph (2) states that the act of logging, harvesting, collecting, controlling, transporting, and distributing timber resulting from illegal logging is carried out by a corporation if the crime is committed by an individual, either based on a work relationship or other relationship, acting within the corporate environment. both individually and together.

Although Law No. 41 of 1999 concerning Forestry as amended by Law No. 19 of 2004 concerning Stipulation of Perpu No. 1 of 2004 concerning Amendments to Law No. 41 of 1999 concerning Forestry into Law does not explicitly mention the term corporation, but this Law recognizes that legal entities and or business entities may become the subject of forest crime perpetrators (Aryani & Widiastuti, 2016) Although the corporate criminal liability formulation policy in the Environmental Management Act has already regulated the subject of corporate criminal acts, when corporate crimes occur and who can be held criminally responsible, to avoid uniformity in the application policy stage, in the future comes need to be emphasized again a. Using corporate terminology strictly to replace the term legal entity.

The concept of giving punishment to the convicts in the above decision is actually responsible for the leadership of the corporation as the subject who gives orders to violate the law and the person who commits a criminal act. This is an ideal concept for criminals in the field of forest destruction which in practice is carried out in groups, structured, systematic, and brutal. A little review in the Netherlands which at the time the Criminal Code was formulated by its compilers in 18864, accepted the principle of Societas/university delinquere non potest "that legal entities or associations cannot commit criminal acts. This was a reaction to the absolute power practices prior to the French Revolution of 1789, which allowed collective responsibility for one's mistakes. Thus, according to the basic concept of the Criminal Code, criminal acts can only be committed by natural humans (natuurlijke persoon) (Situmorang et al., 2016).

Criminal law sanctions will be applied to corporations when other means are inadequate. This means that before the use of criminal law means, other means of settlement (civil law, administrative law), settlements outside the formal process (such as the Restorative

approach) must be prioritized. In this case, criminal law is used as a subsidiary tool. The application of restorative justice within the framework of the ultimum remedium principle is only applied to corporate crimes by applying alternative sanctions that must be limited to types of administrative offenses and formal offenses that are mala prohibita, while to criminal acts that are mala perse (mala in prohibita). As far as possible criminal law should be prioritized (Barus et al., 2015)

The emphasis on criminal sanctions as the ultimum remedium for corporate criminal liability is in line with the concept of Pyramid enforcement proposed by Brent Fisse, as well as Ayres and Braithwaiten. Pyramid enforcement according to Brent Fisse as quoted by Dwija Priyatno13, that the imposition of sanctions for corporations must start from actions that are persuasion, advice, warning, civil monetary penalties, accountability agreement, voluntary disciplinary of remedial investigation, accountability order, court ordered disciplinary of remedial investigation, corporate criminal sancstion and corporate capital punishment. Meanwhile, according to Ayres and Braithwaiten as followed by Rufinus Hotmaulana Hutauruk, stated that the imposition of criminal sanctions against corporations must be carried out in stages starting from persuasion (persuasion) to an act of warning or reprimand (warning letter), to civil sanctions (civil penalty), increasing to the use of criminal sanctions, suspension of permits or licenses to revocation of permits, as the culmination of the pyramid.

The restorative approach is a process in the resolution of criminal cases where all parties with an interest in a particular crime are involved to jointly find solutions to problems in dealing with events after the onset of the crime, and how to overcome its implications in the future The restorative approach as an effort to achieve justice, which is called restorative justice is related to efforts to rebuild good relations (relationships) after a crime has occurred. Combating crime (especially corporate crime) with a criminal policy approach (penal policy) has been criticized by many experts as containing many weaknesses or limitations. At least it can be seen from two angles, namely the limited capacity of criminal law from the point of view of the nature of the occurrence of the crime and from the point of view of the nature of the functioning / working (sanctions) of the criminal itself.

The imposition of criminal charges against corporations, although often related to financial matters, actually has a deeper purpose. According to Suzuki, the imposition of corporate crimes in the form of closing all or part of the business is carried out carefully. If not done carefully, it will have a very wide impact and will have an impact on innocent people, such as workers. Providing insurance to workers is the right way to prevent the negative impact of criminal prosecution on corporations. In various countries, to prosecute and impose criminal penalties against corporations, bipunishment provisions are usually adopted, which means that both the perpetrator (manager) and the corporation can be subject to criminal acts (Intansasmita, 2015).

Likewise, in the Criminal Code Bill, the acceptance of corporations as subjects of criminal law, is in line with the development and rapid economic growth today, where corporations have a very large role in the intricacies of the country's economy, especially in facing the era of industrialization which is currently being developed by our government. Therefore,

the role of corporations is so large in the country's economic growth, but behind that it is possible that there are crimes committed by corporations in various fields (Ratomi, 2018).

In many countries, corporate leaders/managers can be sentenced individually or jointly with corporations, for a crime. Stessens stated that in France, the Netherlands, England and Wales, and Canada this punishment of corporate leaders/managers can be applied together with corporate liability. Meanwhile, in Belgium, what happened was the punishment for corporate leaders/managers. In addition, Anderson added that several countries also allow criminal penalties to be imposed on corporate leaders/managers themselves, namely: China, Hong Kong, Malaysia, South Korea, and South Africa (Wibisana, 2016).

Muladi's opinion can be considered for corporations who commit crimes in the field of forest destruction. Muladi's opinion can be resolved. To account for corporations, it can be solved by looking at: Are the actions of the corporate management within the framework of the objectives of the corporation's statutes and or in accordance with company policies. In fact, it is actually sufficient to see whether the actions of the corporation are in accordance with the scope of work (*feitelijke werkzaamheiden*) of the corporation. Corporate behavior is not easily accepted, if corporate actions in the community are not considered as corporate behavior. Furthermore, to determine the intentionality and negligence of the corporation, it can be done by looking at: Whether the intentional act of the corporate management is in fact included in company politics, or is in the real activities of a company. So, it must be detected through the psychological atmosphere (*psychish klimaat*) that applies to the corporation. With the responsibility construction (*tearekenings-constructie*) the intention of an individual (*naturlijk persoon*) acting on behalf of the corporation can become a corporate intention.

As a comparison, we will describe the opinion of Roeslan Saleh. The manager has committed an economic crime, namely setting a price higher than the price allowed by the government. The director has committed a criminal act, the same as his manager. The position of the director in committing the criminal act can be referred to as a person who participates in committing or assisting each other depending on the nature of the cooperation between the Director and the Manager. A legal entity (corporation) has committed a criminal act that is prohibited by law.

Criminalization (imposing sanctions) against corporations, is often associated with financial problems, but actually has a deeper purpose. This can be seen from the views of Wolfgang Friedmann in his book entitled Law in Changing Sosiety as quoted by Muladi, which states "the main effect and usefulness of a criminal conviction imposed upon a corporation be seen either in any personal injury or, in most cases, in the financial determination, but in the public opprobrium and stigma that attaches to a criminal conviction".

In the US, the responsibility of corporate leaders or administrators can be based on three reasons as stated by Webb, et al. the following: First, there is direct participation in criminal acts. In this case, personal responsibility is intended so that an actor cannot avoid accountability by taking refuge behind corporate responsibility.

The interpretation of law enforcement regarding criminal acts and corporate responsibility can also be seen in the Decree of the Chief Justice of the Supreme Court and the Regulation of the Attorney General. In the Appendix to the Decree of the Chief Justice of the Supreme Court No. 036/KMA/SK/II/2013 concerning Guidelines for Handling Environmental Cases, it is explained that if an environmental crime is committed by, for, or on behalf of a corporation, criminal charges and sanctions will be imposed on: a), the corporation, b). The person who gives the order, namely the person with the appropriate position or the Management/director in accordance with the Articles of Association; c). Business entity leader.

Conclusion

The result of this study is that corporations as legal subjects must be responsible (*strafrechtelijke aansprakelijkheid*) if they are legally proven to have committed forest destruction. Then the implementation of corporate crime, there is no procedural law for investigation, prosecution and court examination, especially in formulating indictments for corporate entities. Finally, the ideal model of corporate crime is by direct punishment for those who destroy forests and those who participate (*Deelneming*) as stipulated in Article 55 of the Indonesia Criminal Code. The suggestion for this research is that the Government should immediately regulate corporate criminal sanctions in criminal acts of forest destruction explicitly and clearly in a statutory regulation.

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