



Analysis of Legal Certainty Regarding the Fulfilment of The Element of Intentional and Negligence in Corporate Criminal Liability

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Abstract

In cases related to environmental damage, corporations are considered as legal subjects that can be held responsible if they have intentionally or negligently carried out their obligations, related to errors committed by corporations, the study of the fulfillment of the elements of intentionality and negligence is a problem of legal certainty in handling cases that use legal basis Article 98 or Article 99 of Law Number 32 of 2009 concerning Environmental Protection and Management. The research method used is normative legal research. The approaches used are the statutory approach and the comparative approach. The data analysis technique is deductive analysis. After analysis, a conclusion was determined, namely the fulfillment of the elements of intentionality and negligence in the UUPPLH, including first, the element of every person, meaning an individual or business entity, secondly, the element of deliberate or negligence as an element of an environmental offense, related to intention or inner attitude (mens rea). from the perpetrator of the crime. Third, the element of the act is no longer emphasized that the act is against the law (wederrechtelijk, unlawful). Fourth, elements resulting in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria. Furthermore, in criminal liability, corporations are legal subjects that can be held responsible for their mistakes, whether intentional or negligent, based on Article 98 and Article 99 of the UUPPLH with the threat of penalties for intentional offenses that are more severe than for offenses of negligence.

Introduction

Forest and land fires are occurrences characterized by the combustion of forest or land regions, leading to detrimental effects on the environmental quality (López et al., 2021). These fires pose a potential threat to the sustainability of human existence and other forms of life. Therefore, it is imperative to implement measures aimed at safeguarding and effectively managing forest and land areas. Based on the data spanning from 2019 to 2021, a significant number of hectares were affected by forest and land fires. Specifically, in 2019, the total area of land and forest that succumbed to fire was recorded at 2,635,233 hectares. In the subsequent year of 2020, the extent of forest and land burned decreased to 1,629,757.02 hectares. However, in 2021, the area ravaged by forest and land fires experienced a notable increase, reaching 3,553,072.01 hectares.

Nevertheless, environmental degradation is not solely attributable to incidents occurring in forested regions; rather, it is largely influenced by human conduct characterized by consumerism, greed, and a narrow focus on self-preservation. Forest fires continue to frequently occur, with one of the contributing factors being the irresponsible actions of individuals, resulting in adverse consequences for the affected communities. The consequences of forest and land fires extend beyond ecological implications, encompassing economic, social, and cultural dimensions as well (Robinne & Secretariat, 2021). On March 11, 1982, a

fundamental regulation pertaining to environmental management was enacted, known as Law Number 4 of 1982, which addresses the fundamental provisions for environmental management. Its purpose is to establish a framework for the regulation and oversight of environmental management practices.

Regional planning plays a pivotal role in identifying suitable areas for conservation, protection, and utilization (Huang et al., 2021). This aspect assumes paramount significance and warrants careful consideration. Due to alterations in the societal landscape within the realm of environmental management, the aforementioned regulation underwent its initial amendment on September 19, 1997, resulting in its transformation into Law Number 23 of 1997, which pertains to the subject of Environmental Management. Subsequently, the aforementioned legislation underwent a secondary amendment on October 3, 2009, resulting in its transformation into Law Number 32 of 2009, which pertains to the subject of Environmental Protection and Management (UU PPLH).

The objective behind the enactment of the PPLH Law is to ensure legal certainty and afford protection to individuals' entitlement to a favorable and salubrious living environment, thereby contributing to the safeguarding of the overall environmental ecosystem. It is imperative to ensure the protection and meticulous regulation of the environment in Indonesia, in accordance with the principles of justice, state responsibility, and sustainability.

To ascertain the classification of an action as an environmental crime under criminal provisions, it is imperative to possess a comprehensive understanding of the definition and parameters of an environmental crime (Thomson et al., 2020). The components of environmental harm, as stipulated in Article 1 number (16) of the UUPPLH, pertain to activities that result in direct or indirect alterations to the physical and/or biological characteristics of the environment, surpassing the established benchmarks for environmental detriment. According to Article 21, paragraph (1) of the Unified Environmental Protection Law and Hazardous Waste Management (UUPPLH), there is a provision that outlines the process of assessing environmental damage. This involves the establishment of standardized criteria for determining the occurrence of such damage.

The establishment of environmental damage standards is in accordance with Article 1, number (15) of the Environmental Protection and Management Law (PPLH Law). Article 1, number (16) of the UUPPLH encompasses various aspects of environmental degradation. These include activities that result in direct or indirect alterations to the physical and/or biological attributes of the environment, surpassing the established benchmarks for environmental harm. According to Article 21, paragraph (1) of the PPLH Law, there exists a provision that outlines the establishment of standard criteria for the purpose of assessing environmental damage and determining its occurrence. One fundamental occurrence in environmental degradation is rooted in the PPLH Law, specifically Article 1, number (15).

The regulations stipulated in the PPLH Law pertaining to criminal provisions, specifically from Article 97 to Article 120, generally encompass the formulation of environmental crimes that are categorized as both material criminal acts and formal criminal acts. The present discourse concerns criminal activities involving environmental harm perpetrated by individuals or corporate entities, whether through deliberate actions or as a result of negligence. This phenomenon gives rise to a multitude of challenges in the enforcement of environmental criminal law pertaining to corporate involvement in land fires, whether they are deliberate or a result of negligence. There have been several legal cases pertaining to the enforcement of the PPLH Law involving companies such as PT. Arrtu Borneo Perkebunan, followed by PT. Sinar Karya Mandiri, and subsequently PT. Kumai Sentosa. These three legal cases provide evidence

supporting the necessity of ensuring justice in the enforcement of the PPLH Law in response to corporate land fires, which pose a significant threat to ecological integrity and public health.

The regulations of the PPLH Law pertain to the imposition of sanctions for criminal offenses related to environmental damage, which are committed with either intentional (*dolus*) or negligent (*culpa*) actions. Specifically, the provisions outlined in Article 98, paragraph (1) pertain to deliberate actions, (2) deliberate actions leading to minor harm, and (3) deliberate actions resulting in fatalities or severe injuries. Additionally, Article 99, paragraph (1) addresses acts caused by negligence, (2) negligence leading to minor injuries, and (3) negligence resulting in death or serious injury. The acts specified in Article 98 and Article 99 of the UUPPLH are categorized as substantive criminal offenses due to the potential consequences they pose, namely environmental pollution and/or damage. In order to establish the validity of Articles 98 and 99 of the PPLH Law, it is crucial to satisfy the requisite criteria for an environmental offense. This entails demonstrating that each individual, whether through deliberate or negligent actions, has engaged in conduct that surpasses the threshold of environmental pollution or harm.

With respect to the constituents, each individual or business entity can be classified as either a legal or non-legal entity (Schroeder et al., 2020). The causation of pollution can be attributed to corporations, which subsequently results in environmental degradation. Corporate responsibility is governed by Articles 116, 117, and 118 of the PPLH Law. As per the provisions stated in Article 116 of the Law on Environmental Protection and Management (PPLH Law), legal entities may be held criminally liable for their actions, as well as individuals who issue instructions to perpetrate such unlawful acts. In the event that an individual with an employment affiliation to a business entity engages in an environmental criminal act, the person responsible for issuing the directive for said criminal act is subject to criminal sanctions. This holds true regardless of whether the criminal acts were carried out concurrently or independently. Business entities are unable to evade criminal liability if their actions or the outcomes of their actions satisfy the criteria for an environmental offense.

The concept of criminal offense, as understood in the field of legal science, is defined by the attribution of distinct characteristics to cases involving criminal behavior. An abstract comprehension of crime is derived from specific occurrences within the realm of criminal law (Birks et al., 2020). As per Simons (year), the term "strafbaar feit" refers to an action that intentionally or negligently contravenes the law, committed by an individual who bears responsibility for said action. Furthermore, it is explicitly defined in legal statutes as an act that warrants punishment.

Legal empowerment within the framework of environmental conservation is imperative, given the escalating pace at which human activities are causing the destruction of biodiversity. The legal ramifications pertaining to corporate land fires possess the capacity to induce ecological harm and jeopardize the well-being of communities impacted by such incidents (Pivello et al., 2021). Land fires incur significant expenses for the restoration of ecosystems in the areas affected by fire. Consequently, it is imperative to impose stringent penalties on corporate entities engaging in criminal activities to deter further environmental degradation.

Based on the aforementioned background information, a comprehensive legal research was conducted with the objective of analyzing the legal certainty pertaining to the fulfillment of the elements of intention and negligence in corporate criminal liability for plantation land fires. This analysis was based on the provisions outlined in Law Number 32 of 2009, which specifically addresses environmental protection and management.

Methods

The research method based on the doctrine of Peter Mahmud Marzuki is a way to determine a legal discovery related to legal principles or legal doctrines to answer a legal issue. The aim of normative legal research is to explain arguments originating from the laws and regulations in force in Indonesia. Therefore, this research conducted studies on the principles, doctrine and legal elements in cases of corporate land fires which are categorized as environmental crimes based on the UUPPLH.

Results and Discussion

The Assurance of Legal Certainty in Cases of Criminal Acts Committed by Corporations in Accordance with the Elements of Intention and Negligence as Stipulated in Law Number 32 of 2009 on Environmental Protection and Management.

The field of criminal law has undergone significant development throughout its history. In the beginning, offenders of criminal acts were primarily individuals (Fovet et al., 2020). However, over time, the scope of this legal concept was broadened to encompass a collective entity known as a corporation. Consequently, the actions of such a group could be subject to legal scrutiny and potential liability within a court of law. In accordance with the theoretical framework expounded in Chapter 2, it can be inferred that a corporation, as commonly understood, refers to an assemblage of individuals who collectively engage in a pursuit for the betterment of the collective and its constituents.

According Narziev (2021) to the viewpoints of various experts, the categorization of companies/corporations can be classified into two distinct types: legal entities (such as limited liability companies, foundations, and cooperatives) and non-legal entities (including civil partnerships, firms, and Commanditaire Vennootschap). If a corporation is recognized as a legal entity, it follows that the primary objective of its business activities is to maximize profits. In this particular case, the company in question is a Limited Liability Company (PT), which was previously governed by the Commercial Code (KUHD) and is currently regulated by the applicable law. The subject of discussion is the Law No. 40 of 2007 regarding Limited Liability Companies (UUPT). In the Uniform Unincorporated Nonprofit Association Act (UUPPLH), corporations are synonymous with the term business entity. This correlation is evident in the provisions outlined in Article 1, Number 32, which states:

Each individual or business entity, regardless of their legal status, can be considered as a distinct entity. Based on the case examples provided in the background section, the corporation under investigation in this research is PT, as it pertains to PT. Companies such as Arrtu Borneo Plantation, PT. Sinar Karya Mandiri, PT. Kumai Sentosa, and various others are engaged in business activities under the legal entity of a private limited company (PT). The aforementioned infractions represent a limited selection of environmental transgressions that were perpetrated either deliberately or inadvertently (due to negligence) as a result of corporations exhibiting minimal or no regard for the surrounding ecosystem during the course of their operations.

Despite the expansive nature of the concept of a corporation, legal provisions restrict its application specifically to corporate entities in the form of companies. Certain laws impose additional restrictions on corporations, specifically targeting companies that possess legal entities. In contrast, there are other laws that govern both companies with legal entities and those without such legal structures.

Moreover, with respect to the definition of criminal law, it can be delineated as an integral component of the legal system that operates within a sovereign nation (Singh & Azman, 2020).

This branch of law governs actions that are expressly forbidden or mandated, imposing punitive measures upon individuals who contravene the proscriptions or fail to comply with the mandates. It encompasses the jurisdiction of the state, exercised through its authorized representatives, in the investigation, prosecution, and adjudication of criminal offenses.

After providing a concise explanation of the concept of corporations and criminal law within the established theoretical framework, the subsequent phase pertains to the aspect of legal certainty. One must first acquire knowledge regarding the corporations that may be subject to investigation and prosecution in cases involving criminal activities. In relation to the matter of legal certainty, the Supreme Court, being the highest judicial authority, has enacted regulations pertaining to the corporations that are eligible for examination and trial. These regulations are outlined in Supreme Court Regulation (PERMA) Number 13 of 2018, which specifically addresses the procedures for handling criminal cases involving corporations. According to Provision No. 13 of 2016 in the PERMA (Regulation of the Minister of State-Owned Enterprises), there are stipulations that specify the specific type and legal status of the corporation being referred to as a Company.

In Article 1, sections 2 and 3, the terminology "legal entity company" is employed, which unequivocally suggests that a corporate entity that is subject to legal proceedings takes the shape of a company and possesses the legal status of a distinct entity. The term "company" is found in Article 1, specifically in sections 4, 5, and 6. Based on the provisions outlined in PERMA No. 13 of 2016, one can deduce that the sole aspect of corporate legal certainty that can be subject to temporary evaluation is the company itself. The aforementioned entity is a Limited Liability Company (LLC), subject to the regulations outlined in Law no. 40 of 2007 pertaining to Limited Liability Companies.

While it is true that there exist cooperatives that are legally incorporated corporations and are recognized as companies under Law no. 25 of 1992, which pertains to the Principles of Cooperatives, it is important to note that cooperatives differ from conventional companies in terms of their capital structure. Unlike companies, cooperatives do not rely on share capital; instead, their funding is derived from the savings contributed by their members. Hence, in the event of the commission of a criminal act, the management may be subject to punitive measures. In addition to this, there exist corporations that possess legal entities known as foundations, as stipulated by Law no. 16 of 2001 in conjunction with Law no. 28 of 2004. These foundations, being distinct from companies, are not subject to corporate punishment due to their non-profit nature and their focus on social, religious, and humanitarian endeavors.

Therefore, considering the principle of legal certainty, it is imperative that the corporation, in the form of a private limited company (PT), assumes responsibility for its actions within the judicial system. In order to initiate legal proceedings against a corporation, it is imperative that criminal regulations are established in accordance with the principle of *nullum delictum nulla poena sine praevia lege poenali*. In this context, as stated by Setyono, the concept of corporate liability within our criminal justice system is not specifically addressed in the general criminal law (KUHP). Instead, it is dispersed throughout specialized criminal legislation. It is important to note that the principle of corporate responsibility does not pertain to its literal interpretation in the context of natural persons.

There are factors that contribute to the potential imposition of criminal penalties on corporations. Merely penalizing company managers is insufficient in effectively curbing instances of corporate crime. It has been observed that corporations are assuming an increasingly significant role. In order to enhance societal protection through the imposition of penalties on corporations. Crimes perpetrated against corporations represent an endeavor

aimed at penalizing entities that are not inherently vulnerable, such as company management or employees.

When examined through the lens of Munir Faudy's theory, corporate crime exhibits distinct characteristics. One notable characteristic of corporate crime is its detrimental impact on individuals or society at large. A prime example of such consequences can be observed in crimes committed within the environmental sector, which leads to extensive societal damage.

The term "criminal law provisions" refers to the legal regulations that pertain to the prosecution and punishment of individuals involved in environmental violations. Specifically, in this context, the acronym UUPPLH represents the specific set of regulations governing the enforcement of criminal law in cases related to environmental offenses (Alcadipani & de Oliveira, 2020). The criminal provisions outlined in the UUPPLH (Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup) allow for corporations to undergo investigation and prosecution, as stipulated in PERMA No. 13 of 2016. It is important to acknowledge that criminal activities within the environmental domain are not explicitly addressed in the Criminal Code. However, the specific criminal acts in question are governed by Chapter XV, which pertains to Criminal Provisions, encompassing Article 97 through Article 120 of the PPLH Law. This chapter comprises a total of 24 articles. Due to the fact that criminal acts in the environmental sector are governed by regulations outside the purview of the Criminal Code, they do not fall under the category of general offenses.

The principle of *lex specialist derogat legi generali* is applicable as a special criminal provision. In cases involving criminal acts pertaining to the environment, the perpetrator is subject to the criminal provisions outlined in the UUPPLH. Unless the criminal act is not governed by the Uniform Code of Public and Penal Health (UUPPLH), the general provisions outlined in the Criminal Code shall be applicable. In a manner consistent with the provisions outlined in the Criminal Code, the scope of legal liability extends beyond individual perpetrators to encompass corporations under the UUPPLH law. In addition to the aforementioned point, it is worth noting that the UUPPLH acknowledges the imposition of criminal sanctions.

The regulation pertaining to infringements of environmental quality standards is addressed in Articles 98 to 100 of the Environmental Protection and Management Law (PPLH Law). Nevertheless, the objective of this research is to establish legal certainty regarding the intentional or negligent violation of environmental quality standards. When considering the matter at hand, it is important to note that intentional actions, as outlined in Article 98, carry a more severe punishment. Conversely, accidental actions are subject to a lighter penalty, as stipulated in Article 99 of the Universal Uniform Penal Code for Legal Harmonization.

In the case of a criminal act, regardless of whether it is classified as a *dolus* offense (intentional) or a *culpa* offense (negligent), the severity of the punishment is determined by the extent of harm inflicted upon the victim, ranging from minor injuries to serious injuries or even death. This escalation in punishment is stipulated in paragraph (2) and paragraph (3) of Article 98/Article 99 of the Unified Penal Code for Public Health and Safety (UUPPLH). Hence, the commission of a criminal offense involving the violation of environmental quality standards is deemed a substantive offense. This is due to the fact that any act resulting in the surpassing of ambient air quality standards, water quality standards, sea water quality standards, or established criteria for environmental damage or pollution, as well as causing environmental harm leading to loss of human life, is subject to legal punishment.

In order to establish the presence of negligence and intent as evidentiary elements, it is necessary to provide a comprehensive description of the constituent elements in both formulations of the offenses. In accordance with the provisions outlined in Articles 98 and 99

of the Uniform Code of Penal Procedure for Environmental Offenses (UUPPLH), the constituent components of environmental transgressions encompass:

I would like to request your assistance in resolving an issue that I am currently facing. Ladies and gentlemen;

The user's text is missing. Please provide the text that needs to be rewritten. Whether by deliberate action or as a result of carelessness;

The user's text is too short to be rewritten. Please provide a longer text for me to rewrite Engaging in activities;

The user's text is missing. Please provide the text you would like me to rewrite in a formal The outcome may involve surpassing the established standards for ambient air quality, water quality, sea water quality, or criteria for environmental damage.

With respect to the inclusion of every individual in the aforementioned legislation, it was articulated employing the terminology pertaining to the individual in question. In the literature of legal science, the term "person" is commonly used to refer to both individuals and legal entities, encompassing all individuals and organizations recognized as legal subjects. Similarly, according to Article 1, point 32 of the Universal Uniform Personal Property and Land Rights Handbook (UUPPLH), the definition of each individual is inclusive of both natural persons and corporate entities, regardless of their legal status. The inclusion of deliberate or negligent conduct as a component of an environmental offense pertains to the intention or internal mindset (*mens rea*) of the individual responsible for committing the offense. Hence, the demonstration necessitates distinct knowledge and competencies.

Moreover, with respect to the components of the legislation, there is a diminished emphasis on the illegality of the act. This assertion is supported by Muhammad Akib, an authority in the field of criminal environmental law. Akib contends that the explicit inclusion of this element is not of significant importance, as the violation of the provisions outlined in the UUPPLH inherently constitutes an unlawful act. This viewpoint aligns with the perspective of Van Hamel and Hoge Raad, who assert that an act is deemed unlawful when it is executed "without proper entitlement or authority" (*zonder eigenrecht of zonder eigen bevoegheid*). According to established principles, these legal actions can be classified into two categories: *wederrechtelijk formeel* and *wederrechtelijk materieel*. The former refers to acts that are explicitly prohibited by law and carry the risk of punishment, while the latter pertains to actions that are contrary to the law, even if they are not expressly forbidden or subject to legal sanctions.

Moeljatno articulated a viewpoint that aligns closely with the notion that unlawful actions can be analyzed through both a formal and material lens. From a formal standpoint, the concept of unlawfulness entails that any criminal act necessitates the prior existence of legal regulations, as per the principle of legality. From a material standpoint, an action is classified as a criminal act if it is deemed impermissible or prohibited from being executed. This attribute is commonly referred to as the illegality of the action (*wederrechtelijkheid der gedraging*). The review encompasses not only a formal legal analysis but also delves into a more profound and fundamental examination of the subject matter. In practical application, acts that are generally considered unlawful are those that contravene established legal statutes. Environmental cases are inherently challenging to substantiate, thus necessitating the judge's fortitude to broaden the scope of legal culpability beyond mere legality, encompassing matters of ethical impropriety.

In conclusion, with respect to the factors that contribute to the surpassing of ambient air quality standards, water quality standards, sea water quality standards, or criteria for environmental

damage. In the preceding legislation, the components of outcome were articulated in the manner of environmental pollution and/or harm. The legal ramifications of these two provisions are essentially identical, as environmental pollution and/or damage can be understood as the act of surpassing established quality standards and criteria for environmental harm.

The present inquiry examines the evaluation of corporate criminal liability for environmental harm within the framework of legal enforcement as stipulated in the Unified Environmental Protection and Management Law (UUPPLH).

A criminal act refers to an action that contravenes or violates established legal norms, and is perpetrated by an individual who bears legal liability for their actions. Hence, criminal liability is intricately connected to acts that are deemed unlawful and errors committed by individuals. Therefore, criminal liability arises as a result of the satisfaction of the constituent elements of a criminal offense, specifically the characteristic of contravening the law and the presence of culpability on the part of the offender, whether it be due to negligence or intention.

Based on the expert opinion presented in the theoretical framework of Chapter II, it can be inferred that errors can serve as the determining factor in establishing an individual's accountability. From a doctrinal perspective, it is recognized that errors can manifest in two distinct forms: intentional and negligent. The matter pertaining to criminal liability is also addressed in the provisions of Article 98 of the UUPPLH (Intentional) and Article 99 of the UUPPLH (Negligence). Negligence is regarded as a type of error that is less severe than intentional misconduct. This distinction is evident in the criminal penalties outlined in Article 99, where negligence is punishable by imprisonment for a minimum of one year and a maximum of three years. In contrast, intentional misconduct, as stated in Article 98, carries a maximum sentence of three years, which can be extended to a maximum of ten years.

In accordance with Article 1, number 32 of the Uniform Unincorporated Personal Property Act for Limited Liability Holdings (UUPPLH), the term "every person" refers to both individuals and business entities, regardless of their legal status. This includes both legal entities and non-legal entities. Corporations are recognized as legal entities capable of being held accountable for criminal offenses. The regulation of corporate criminal responsibility can be found in Articles 116, 117, and 118 of UUPPLH-2009. The primary provisions are governed by Article 116 of the Unified Uniform Public Procurement Law and Handbook (UUPPLH), as stated:

In cases where an environmental offense is perpetrated by, on behalf of, or in relation to a corporate entity, legal authorities enforce criminal charges and impose corresponding penalties. Commercial organization; and/or the individual who issues the directive to execute the unlawful act or assumes the role of the principal figure in the criminal undertaking.

If an individual engages in an environmental criminal act as described in paragraph (1), whether through a professional or personal relationship within the context of a business entity, the person who issues the order or leads the criminal act will be subject to criminal sanctions, irrespective of the specific offense committed. The commission of the crime can occur either individually or collectively.

Based on the stipulations outlined in Article 116 of the Unified Uniform Principles of Public Law Harmonization Act of 2009 (UUPPLH-2009), it becomes evident that the attribution of criminal liability to legal entities encompasses both the entity itself and its corporate executive officers, also known as managers. According to the stipulations outlined in Article 118 of the UUPPLH-2009, it is indeed possible to impose criminal penalties on corporate entities, specifically targeting administrators who possess the power to act as representatives for said entities, both within and outside of the judicial system. Specifically, individuals who issue

directives or hold positions of authority in illicit activities will face augmented criminal penalties as stipulated in Article 117, which are elevated by a factor of one third.

Therefore, based on the existing body of research, it can be asserted that in order to establish the criminal responsibility of corporate entities in cases of environmental offenses, the following actions and factors must be undertaken and taken into account:

Corporations encompass various legal entities, such as organizations and similar entities (Allen et al., 2021). Corporations can exist in two forms: private, which refers to a juridical entity that is privately owned, and public, which denotes a corporate entity that is publicly owned. In the event that an environmental offense is determined to have been committed within an organizational framework, both natural persons (such as managers, agents, and employees) and corporations may face punitive measures, either individually or collectively, as stipulated by the relevant legislation. The corporation is experiencing a management error, resulting in a breach of a statutory or regulatory provision. The accountability of legal entities is enforced irrespective of the successful identification, prosecution, and punishment of the individuals responsible within the legal entity. In essence, corporations are subject to a wide range of criminal sanctions and actions, with the exception of capital punishment and incarceration. In this particular instance, it is important to acknowledge that within the United States, there has been an emergence of the concept commonly referred to as the "corporate death penalty" or "corporate imprisonment." This concept entails the imposition of restrictions on a corporation, including the prohibition of its engagement in specific business sectors, as well as other limitations on its operational activities. The implementation of penal measures on corporations does not eradicate individual errors.

The imposition of penalties on corporations necessitates careful consideration of the corporation's hierarchical structure, particularly the influence exerted by management policies and corporate executive officers who possess decision-making authority. It is imperative to acknowledge that these decisions are not only made but also endorsed by the corporation as a whole.

Legislators and judges must give careful consideration to the following eight aspects when formulating or modifying environmental legislation and adjudicating environmental criminal cases. This is particularly relevant in determining the individuals and legal entities (whether public or private) that can be held criminally liable, the appropriate sanctions to be imposed, and any associated limitations. Various business sectors in relation to endeavors aimed at mitigating environmental degradation and/or pollution.

An equally significant aspect of enforcing criminal law in the environmental sector pertains to the ongoing debate surrounding the appropriate use of criminal law as either a last resort ("ultimum remedium") or a primary recourse ("premium remedium") in enforcing environmental legislation. If deemed a "ultimum remedium," the utilization of criminal law represents the final recourse after other legal avenues have proven unsuccessful or ineffective. Conversely, as a "premium remedium," the application of criminal law serves as the primary remedy.

This interpretation is also embraced in UUPPLH-2009, as affirmed in General Explanation number 6, which states:

The enforcement of environmental criminal law adheres to the principle of ultimum remedium, which necessitates the utilization of criminal law enforcement as a final recourse subsequent to unsuccessful attempts at administrative law enforcement.

The ultimum remedium principle is exclusively applicable to specific formal criminal acts, specifically pertaining to the punishment for infringements related to waste water quality standards, emissions, and disturbances. Upon careful examination of the legal framework outlined in the formulation of articles within the UUPPLH or sector laws, it becomes evident that no provision exists that explicitly prohibits the utilization of criminal law as a "premium remedium" when deemed necessary. In specific instances, such as when there is evident environmental pollution and/or destruction, criminal law can be employed without necessitating the prior application of other legal sanctions. The UUPPLH does not mandate the imposition of penal measures as alternative sanctions, nor does it prohibit the imposition of penal measures alongside other sanctions in a cumulative manner.

Hence, it is stated in the overall explanation that the ultimum remedium principle is applicable exclusively to specific formal criminal offenses, specifically pertaining to the punishment for infringements related to waste water quality standards, emissions, and disturbances (Jadidah, 2023). In addition to specific formal criminal offenses, criminal law can be utilized as a valuable remedy.

Based on the aforementioned explanation, it is crucial to reiterate that the present application of criminal law predominantly adheres to the principle of premium remedium, with the exception of specific formal criminal offenses as elucidated in General Explanation number 6 of the UUPPLH. If, based on the findings of the investigation, there is a substantial suspicion that another formal criminal act has taken place or that pollution and/or damage has occurred, then the utilization of criminal law can be considered as a last resort.

In order to facilitate the resolution of criminal cases involving corporations, judges are obligated to adhere to PERMA No. 13 of 2016. This regulation stipulates that criminal acts committed by corporations are essentially the result of actions carried out by individuals within the context of their employment or other affiliations. These individuals may act independently or collectively, representing and acting on behalf of the corporation, both within and outside of its organizational boundaries.

Moreover, when imposing criminal liability on a corporate defendant, the judge has the authority to determine the corporation's culpability in accordance with Article 4, paragraph (2). This provision states that the corporation may be deemed at fault if it derives profits or benefits from the criminal act, if the criminal act was committed for the corporation's benefit, if the corporation permits criminal acts to take place, or if it fails to take necessary measures to prevent such acts, mitigate their consequences, and ensure compliance with relevant legal provisions in order to prevent criminal behavior.

Conclusion

Corporations are a legal subject referred to in UUPPLH. Based on examples of cases of environmental destruction by corporations that often occur, such as those involving PT. Arrtu Borneo Plantation, PT. Sinar Karya Mandiri, PT. Kumai Sentosa, and several other examples are carried out by corporations with legal entities in the form of PT. Therefore, the main thing in providing legal certainty for PTs that commit criminal acts based on the fulfilment of the elements of intent and negligence based on the UUPPLH is the fulfilment of the elements of negligence and the elements of intent for evidentiary purposes by detailing the elements of environmental offenses in the formulation of Articles 98 and 99 of the UUPPLH which includes first, everyone; secondly, intentionally or through negligence; Third, do the deed; fourth, resulting in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria. Thus, the details of fulfilling the elements of intentionality and negligence in the UUPPLH are as follows:

The element every person means an individual or business entity, whether a legal entity or not a legal entity. The element of deliberate or negligence as an element of an environmental offense is related to the intention or inner attitude (*mens rea*) of the perpetrator of the offense. Therefore, the proof requires separate knowledge and skills. The element of the act is no longer emphasized that the act is unlawful (*wederrechtelijk*, unlawful). The definition of going against the law is not just against the law, but also against propriety.

The element that results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage has actually the same legal implications, namely pollution and/or environmental damage is nothing more than exceeding quality standards and standard criteria for environmental damage. If these elements have been fulfilled, then the person whose actions cause pollution and/or environmental damage is appropriate to use the legal basis of Article 98 UUPPLH (Intentional) or Article 99 UUPPLH (Negligence).

Criminal liability is a manifestation of the fulfilment of the elements of a criminal act, namely the nature of being against the law (contrary to the law) and the existence of a mistake on the part of the perpetrator (human or person). Mistakes can be the basis for whether a corporation is held accountable or not by setting out the criminal provisions in Article 98 UUPPLH (Intentional) and Article 99 UUPPLH (Negligence). Looking at the criminal provisions in these two articles, it can be concluded that negligence (Article 99) is a lighter form of error with "...a minimum prison sentence of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000. 000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)" rather than intentionally (Article 98) with "...a minimum prison sentence of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah)." The UUPPLH also does not prohibit the use of criminal law as a "premium remedium" if that is necessary, except for certain formal criminal acts as explained in the General Explanation number 6 of the UUPPLH, for example where there is clear environmental pollution and/or destruction, then criminal law may be used. without having to wait for the implementation of other legal sanctions first. UUPPLH does not require criminal sanctions as alternative sanctions and also does not prohibit the application of criminal sanctions in addition to other sanctions (cumulative). Furthermore, for the purposes of adjudicating criminal cases carried out by corporations, judges are bound by PERMA No. 13 of 2016 by considering Article 3, and in imposing a crime on a corporate defendant, the judge can assess the corporation's guilt based on Article 4 paragraph (2).

For legislators and judges, in drafting or amending environmental laws as well as in examining and deciding environmental criminal cases they must be able to provide clearer certainty in determining who and what legal entity (public or private) can be held accountable criminal penalties, forms of sanctions, and restrictions on certain business fields in relation to efforts to control environmental destruction and/or pollution. For corporations, they must prioritize the continuity of environmental preservation and public health in carrying out work that involves environmental management. This can be done by utilizing sophisticated technology in managing the environment in accordance with the standards mandated in UUPPLH as an effort to minimize and overcome negative effects on environments such as forest fires.

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