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Legal reconstruction of corporate criminal accountability for environmental crime based on justice value

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Abstract
The purpose of this research is to find out what are the current weaknesses of corporate criminal responsibility as perpetrators of environmental crimes and how is the reconstruction of corporate criminal responsibility regulations as perpetrators of environmental crimes based on justice values. The method used in this study uses a normative juridical approach with a constructivist paradigm.
The results of the research show that the Weaknesses in the form of corporate criminal responsibility as perpetrators of environmental crimes are based on two concepts, namely strict liability and vicarious liability, in which the concept of corporate responsibility can be borne by the corporation as well as management or controlling personnel. therefore, the Reconstruction of corporate criminal responsibility as perpetrators of environmental crimes in Law no. 32/2009 concerning PPLH in conjunction with Law no. 11/2020 concerning Job Creation, namely by amending the provisions of Article 88, Article 117, Article 119, and Article 120 of Law no. 32/2009 regarding PPLH. Amendment to Article 88 is intended to restore the concept of absolute responsibility (strict liability) so that according to corporate responsibility there is no need to prove guilt. Amendments to Article 117, Article 119, and Article 120 of Law no. 32/2009 concerning PPLH are aimed at positioning additional sanctions in the form of correction of criminal acts into sanctions for actions that stand alone in addition to the main criminal sanctions in the form of fines imposed on corporations.

Keywords: legal reconstruction, corporate crime, environment, justice value

Introduction

Corporate responsibility is related to the occurrence of environmental pollution and destruction by corporations, before the amendment (revision) to Law no. 32/2009 concerning PPLH through Law no. 11/2020 concerning Job Creation, it is known that there is a system of absolute liability (strict liability). The principle of absolute responsibility is an idea conveyed in Article 88 of Law no. 32/2009 concerning PPLH, which states: "*Any person whose actions, business, and/or activities use B3, produce and/or manage B3 and/or pose a serious threat to the environment are responsible for the losses that occur without the need to prove elements error*".

The absolute liability model related to corporate responsibility is quite relevant to the existence of demands filed by the community against "*compensation*" by corporations due to activities or actions that have been carried out by corporations that have an impact on the environment. This concept is also very relevant in demanding corporate accountability related to the obligation of corporations to provide compensation or restore the environment due to pollution and environmental damage as a result of corporate activities or actions.

However, after the amendment to Law no. 32/2009 concerning PPLH through Law no. 11/2020 concerning Job Creation, the provision regarding "*absolute responsibility*" in Article 88 has been removed so that the corporation can no longer be burdened with absolute responsibility, in the event of environmental pollution or damage related to the actions taken by the corporation in carrying out its business activities.

Furthermore, concerning criminal sanctions that can be applied to corporations in their position as legal subjects in environmental criminal offenses regulated in Law no. 32/2009 regarding PPLH is only in the form of fines. Even though the fines applied to corporations proven to have committed pollution and companies are not small (quite large), the amount of fines is not proportional to the value of the losses incurred as a result of pollution and damage committed by corporations. In other words, fines imposed on corporations in court decisions against corporations will not be sufficient to repair or restore an environment that has been polluted or damaged as a result of criminal acts committed by corporations [1].

In addition, the imposition of criminal fines against corporations in a court decision is not directly aimed at restoring the environment that has been polluted or damaged as a result of criminal acts committed by corporations, but as Non-Tax State Revenue (PNBP) which is deposited in the state treasury.

Meanwhile, environmental pollution and/or damage as a result of criminal acts committed by corporations has caused degradation of environmental functions that require repair and/or restoration, so that the polluted and/or damaged environment can function again.

Environmental restoration due to criminal acts will require quite a large amount of money and quite a long time. Therefore, it is necessary to have another sanction, apart from the main punishment in the form of fines, namely additional criminal sanctions that impose burdens on corporations proven to have polluted and/or damaged the environment to carry out the restoration of polluted and/or damaged environments as a form of responsibility from the corporation [2]. In addition to the main criminal sanctions in the form of fines, corporations may also be subject to

additional criminal sanctions. Criminal sanctions in enforcing environmental criminal law, in addition to the principal and additional criminal sanctions stipulated in Article 10 of the Criminal Code, include 1) revocation of certain rights, 2) confiscation of certain items, and 3) announcement of the judge's decision. There are also additional criminal sanctions, there are several new forms of additional criminal sanctions that are not regulated in the Criminal Code, as regulated in Article 119 of Law no. 32/2009 regarding PPLH.

Additional criminal sanctions for corporations in Article 119 letter c is an attempt to repair or restore the environment, which is part of environmental protection. Article 119 letter c Law no. 32/2009 concerning PPLH, in principle, opens up the possibility of imposing additional criminal sanctions on corporations that commit environmental crimes. However, additional criminal sanctions in the form of reparation for the consequences of a crime cannot stand alone but must be accompanied by the main criminal sanction. This shows that the position of additional criminal sanctions is number two, which results in its implementation not being carried out optimally.

Imposition of additional criminal sanctions for corporations that commit environmental crimes according to Article 119 of Law no. 32/2009 regarding PPLH, is an alternative (optional). This can be seen from the phrase "*may*" contained in the editorial of the article, which states: "*In addition to the punishment referred to in this law, business entities "may" be subject to additional punishment or orderly action*".

The phrase "*may*" in the formulation of the article indicates that the application of additional punishment to corporations is an alternative, that is, it can be applied or it cannot be applied. That is, in enforcing environmental laws related to corporations, judges are not bound to impose additional criminal sanctions. The imposition of additional criminal sanctions in environmental crimes is highly dependent on the understanding and consideration of the panel of judges. Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Corporate Criminal Accountability For Environmental Crime Based On Justice Value*" where the main problem discussed in this article is as follows

1. What are the current weaknesses of corporate criminal responsibility for environmental crimes?
2. How is the Legal reconstruction of corporate criminal responsibility for environmental crimes based on justice value?

Method of research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables [3].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of [4]

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. Current weaknesses of corporate criminal responsibility for environmental crimes

The occurrence of environmental pollution and damage in Indonesia is mostly done by corporations. This statement was affirmed by the Indonesian Forum for the Environment (WALHI) which considers that national corporations and Transnational Companies (TNCs) are the main figures contributing to current environmental degradation through their concessions or exploitation permits. Furthermore, this action is considered a form of planned, systematic crime, which has a broad impact and is very difficult to recover from.

UU no. 32/2009 concerning PPLH has regulated and determined the criteria for imposing penalties on corporations which is a development of the paradigm of criminal law which originally adhered to the principle that "*legal entities cannot commit criminal acts, therefore they cannot be punished*" by the legal adage which says: "*societies deliguence non pottest*". However, along with the development of the economic activity, it shows symptoms of crime, that corporations play many roles in supporting or facilitating the occurrence of various crimes, including crimes in the environmental sector.

In connection with the positioning of the corporation as a subject of criminal law, several main issues are being studied, namely regarding criminal responsibility, criminal sanctions, and punishment against the corporation itself. Concerning this research, namely regarding additional criminal sanctions in the form of reparations for the consequences of criminal acts, the basis for considering the formulation of additional criminal sanctions in the form of reparations for the consequences of criminal acts is that corporate actions that cause pollution and/or environmental damage have caused damage to the environment.

UU no. 32/2009 concerning PPLH in expressive verbs has indeed regulated corporate criminal responsibility and criminal sanctions for corporations as regulated in Articles 116-119 of Law no. 32/2009 regarding PPLH. However, the

construction of criminal sanctions does not guarantee legal certainty regarding the implementation of remedial actions which are essential actions for environmental pollution and/or damage.

It is unfortunate that the formulation of criminal sanctions for corporations in Law no. 32/2009 concerning PPLH, still places fines as the only principal punishment for corporations. When viewed from the perspective of green victimology, it can be seen that environmental victims relate to environmental ecosystems, which include present or future generations as a result of ecological function degradation activities and those caused by business activities carried out by corporations either intentionally or by individual or collective negligence. corporate organization.

Meanwhile, fines imposed on corporations cannot be used for repair/recovery, but instead as non-tax state revenue (PNBP). On the other hand, the additional criminal sanctions provided for in Article 119 of Law no. 32/2009 regarding PPLH is formulated alternatively with the phrase "*can*", which has created legal uncertainty at the applicative level (ius operatum).

Based on the results of research conducted by Azam Hawari, Deni Daniel, and Masrsya Mutmainah [5], from several corporate criminal cases in the environmental field in the 2016-2019 period, it shows that environmental law enforcement, especially corporate responsibility, has not been oriented towards environmental restoration. Of the eight cases examined and tried, only one case was subject to additional criminal sanctions in the form of reparation to the corporation (the convict). Even though the fines imposed on corporations (convicts) are quite large, these fines are not intended for environmental improvement or restoration, but rather as non-tax state revenues deposited into the state treasury. So that the construction of punishment against corporations in Law no. 32/2009 concerning PPLH, when viewed from the point of view of modern punishment it is not an ideal formulation, especially in the perspective of green victimology in the context of protecting the environment [6].

The most important part of enforcing environmental criminal law against corporations in environmental criminal cases is determining the type of sanction, the imposition of sanctions, and the implementation of the punishment, all of which must be oriented and based on the purpose of the punishment. In other words, everything regulated in Law no. 32/2009 concerning PPLH, especially in law enforcement, especially environmental crimes, must be aimed at achieving the ultimate goal, namely to guarantee the carrying capacity and capacity of the environment.

Based on the above considerations, the penal policy through the formulation of criminal sanctions against corporations in Law no. 32/2009 concerning PPLH must be able to realize the criminal objectives to be achieved from the formation of the law itself, namely the existence of guarantees for the protection of the environment through the application of criminal sanctions in the form of repair or recovery measures for polluted and/or damaged living environments [7].

If the additional criminal sanction in the form of improvement as a result of the crime is still positioned in the form of additional criminal sanction, which in practice is still optional, because of the phrase "can" in its formulation, then of course the formulation of sanctions in Law no. 32/2009 regarding PPLH can be said not to be environmentally oriented. This is because additional criminal sanctions in the form of reparation for the consequences of criminal acts in this law are still optional so they have not fully realized the goal and ultimate goal of the formation of the law, namely to realize environmental protection.

2. Legal reconstruction of corporate criminal responsibility for environmental crimes based on justice value

Considering the purpose of imposing criminal sanctions in Law no. 32/2009 concerning PPLH, especially the imposition of additional criminal sanctions in the form of reparation for the consequences of criminal acts against corporations, which in essence aim to protect the environment as a whole and elements in the environment, such as animals, land, air, and water, especially humans, then it is appropriate to place remedial sanctions due to criminal acts as a form of action sanctions that are applied together with the main crime and/or can be applied as alternative punishments applied to corporations proven to have committed environmental crimes.

As a comparison regarding the pattern of applying corrective sanctions as a result of criminal acts as action sanctions, it can be seen in the implementation of rehabilitation for narcotics addicts which are regulated in Article 54 of Law no. 35/2009 concerning Narcotics, stipulates that: "*Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation*". Where medical rehabilitation and social rehabilitation are seen as a sentence (punishment) for narcotics addicts.

It is understood that not all types of punishment contained in laws and regulations can be applied to corporations. Capital punishment, imprisonment, and imprisonment basically cannot be imposed on corporations. Piter Gillies, in Kristian [8] stated that: "*In most cases, the punishment visited upon the corporation will be fine*" (in many cases, the punishment that can be imposed on corporations is only fines).

Furthermore, it is necessary to understand that the emphasis on enforcing environmental law lies in efforts to protect the environment and all the elements contained therein, so it is only natural that additional criminal sanctions in the form of repairs as a result of criminal acts are formulated as sanctions for actions that are applied to corporations, as well as being applied fine penalty. This is because fines applied to corporations do not return to the environment, or in other words, no matter how large the fines applied to corporations concerning enforcing environmental criminal law are not aimed at improving the environment.

Based on the foregoing, it is necessary to formulate and stipulate a new type of punishment that is applied to corporations as an alternative punishment, especially in environmental criminal offenses, namely in the form of remedial actions or remedies as a result of criminal acts as an alternative punishment against corporations, apart from fines.

The development of action sanctions in the form of repairs or recovery as a result of criminal acts against corporations, in addition to criminal fines has long been put forward by the Loeqman Lobby [9], which states that: "*besides criminal fines against corporations, action sanctions can also be applied to restore conditions as before the damage by a*

company." In the author's opinion, fines and/or action sanctions in the form of environmental repair or restoration as a result of criminal acts against corporations are felt to be more effective and efficient for corporations proven to have committed environmental crimes. In addition, the application of fines and/or action sanctions in the form of reparations for the consequences of criminal acts has coherence with the objectives to be achieved in criminal convictions and punishments against corporations, particularly in criminal sentences and punishments against corporations in environmental crimes.

It is said to be effective and efficient because the imposition of punishment in the form of remedial action or restoration of the environment against corporations, in addition to the imposition of criminal fines will have a deterrent effect on corporations. If the legal subject of a person (person) capital punishment becomes a frightening punishment, then criminal sanctions for remedial action and fines will become a frightening specter for corporations if applied consistently, because the corporation concerned will issue a large number of its assets.

The development of sanctions for actions against corporations has also been accommodated in Article 103 Paragraph (1) of the RUU-KUHP, which stipulates that actions that can be imposed together with the main punishment are in the form of a. counseling; b. rehabilitation, c. job training, d. care in institutions; and/or e. remedy for a crime.

Formulation of action sanctions in the form of remedial actions resulting from criminal acts as additional crimes as stipulated in Article 119 letter c of Law no. 32/2009 regarding PPLH, in the writer's opinion, is still not quite right. Considering that the application of these additional criminal sanctions is still optional (facultative), in its application by judges there will be inconsistencies and disparities in several environmental cases, which creates legal uncertainty.

According to the author's opinion, the application of action sanctions in the form of remedial action due to criminal acts should be regulated as action sanctions that can be applied cumulatively together with criminal fines and/or applied as alternative punishments against corporations. Meanwhile, the legal consequences of not implementing corrective action sanctions due to criminal acts by corporations, namely in the form of confiscation of goods or certain benefits obtained from criminal acts which are formulated as additional crimes for corporations. Formulated and regulated repairs due to criminal acts as sanctions for actions in environmental criminal offenses, the criminal system against corporations in Law no. 32/2009 regarding PPLH does not occur, does not overlap and sanctions are too excessive (over). Thus, in the future, the implementation of action sanctions in the form of remedial actions due to criminal acts is expected to be carried out following its objectives, namely to restore environmental conditions that have been polluted and/or damaged as a result of criminal acts committed by corporations [10].

Determination of remedial sanctions due to criminal acts against corporations as sanctions for actions in environmental criminal offenses which are applied cumulatively together with fines and/or applied as an alternative to fines is felt to be able to protect the environment effectively and efficiently. Thus, the use of criminal law sanctions takes into account the utilitarian aspect, which looks at the balance between the costs incurred and the benefits generated.

Based on the description above, according to the ultimate goal of the dissertation research, which is to reconstruct corporate criminal responsibility as perpetrators of environmental crimes, it is necessary to amend several provisions of Articles in Law No.32/2009 concerning PPLH in conjunction with Law No. 11/2020 concerning Job Creation, among the articles that need to be amended as an effort to reconstruct corporate criminal responsibility in environmental criminal offenses, are Article 88. Article 117, Article 119, and Article 120 of Law no. 32/2009 regarding PPLH. Changes to these articles are intended so that the criminal responsibility of corporations that commit environmental crimes can be more just, as well as punishment and criminal convictions against corporations as legal consequences arising from corporate criminal responsibility.

Therefore, the Reconstruction of corporate criminal responsibility as perpetrators of environmental crimes in Law no. 32/2009 concerning PPLH in conjunction with Law no. 11/2020 concerning Job Creation intended by the authors, are done by amending the provisions of Article 88, Article 117, Article 119, and Article 120 of Law no. 32/2009 regarding PPLH. Amendment to Article 88 is intended to restore the concept of absolute responsibility (strict liability) so that according to corporate responsibility there is no need to prove guilt. Amendments to Article 117, Article 119, and Article 120 of Law no. 32/2009 concerning PPLH are aimed at positioning additional sanctions in the form of correction of criminal acts into sanctions for actions that stand alone in addition to the main criminal sanctions in the form of fines imposed on corporations.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses of corporate criminal responsibility for environmental crimes are no longer based on two concepts, namely strict liability and vicarious liability, in which the concept of corporate responsibility can be borne by corporations as well as management or controlling personnel. The concept of corporate criminal responsibility is strictly regulated in Article 116, Article 117, Article 118, and Article 119 of Law no. 32/2009 regarding PPLH.
2. The Legal Reconstruction of corporate criminal responsibility for environmental crimes in Law no. 32/2009 concerning PPLH in conjunction with Law no. 11/2020 concerning Job Creation, namely by amending the provisions of Article 88, Article 117, Article 119, and Article 120 of Law no. 32/2009 regarding PPLH. Amendments to Article 88 are intended to restore the concept of absolute responsibility (strict liability), wherein claiming corporate responsibility does not need to be proven wrong. Meanwhile, changes to Article 117, Article 119, and Article 120 of Law no. 32/2009 concerning PPLH are intended to position additional sanctions in the form of correction of criminal acts into sanctions for acts that stand alone in addition to the main criminal sanctions in the form of fines imposed on corporations.

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