

Environmental Criminal Responsibility for Mining Corporation Through the *Ultimum Remedium* Principle

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Abstract

Mining crimes on the development of environmental law issues in Indonesia are not only carried out by individuals but also by corporations. The violations committed by mining corporations are a violation of criminal law. Company management related must be responsible for the violations that occurred. Thus, the principle of *ultimum remedium* is very important for the enforcement of criminal law in environmental issues. The main problems in this research study are how the corporation's responsibility towards environmental criminal law violations and the application of the principle of *ultimum remedium* in the enforcement of environmental criminal law. The research method used was normative juridical and descriptive-analytical. The results of the study show that the applications of the principle of *ultimum remedium* in mining criminal law are not implemented following the applicable laws and regulations. The law No. 4 of 2009 regarding Minerals and Coal states that the environmental law enforcement violations must be settled through administrative law first, before being settled in criminal law as an embodiment of the *ultimum remedium* principle.

Keywords: *responsibility, criminal, environmental*

1. INTRODUCTION

Indonesia is a country that has abundant natural resources. Its natural wealth is on the surface of the earth and in the bowels of the earth. Based on its availability, natural resources are divided into two parts, renewable natural resources, and non-renewable natural resources. Non-renewable natural resources consist of petroleum, natural gas, minerals, and coal. Indonesia has a strategic geographical position located on three collisions of the earth's crustal plate, the Eurasian Continent, the Indian-Australian Continent, and the Pacific Ocean Plate. Therefore Indonesia has the potential of natural resources in the form of mining minerals, one of which is coal mining. Article I of Law Number 4 of 2009 concerning Mineral and Coal Mining states that coal mining is a non-renewable natural resource, coal is a deposition of organic carbon compounds that are formed naturally from the remnants of plants [1]. The corporation, in this case, manages the potential of natural resources. The definition of a corporation in Indonesian criminal law is broader than the understanding of legal entities as in the concept of civil law. In various Indonesian criminal law regulations, the definition of a corporation is a collection of organizations that are legal entities or not [2]. Corporation as a subject of criminal activity in the renewal of national criminal law policy attaches to the principle of criminal law. Special laws outside of the Criminal Code (KUHP) regulate corporations as subject to criminal acts.

The activities of the coal mining industry cause air pollution, which has an impact on public health disorders.

Mining threatens human health in various ways, including the following:

1. Dust, chemical spills, toxic fumes, heavy metals, and radiation can poison miners and cause health problems throughout their lives, such as skin diseases, cancer, etc.
2. Lifting heavy equipment and working in an improper body position effect injuries to the hands, feet, and back.
3. The use of rock drills and vibration machines have an impact on nerve damage and blood circulation. Dangerous infection such as gangrene can result in death.
4. Loud and constant noise from equipment can cause hearing problems such as hearing loss.
5. Long hours of work underground with low light bring on damage eyesight.
6. Working in hot conditions without drinking enough water is causing stress and overheating.
7. Water pollution and excessive use of water resources bring on many health problems.
8. The damaged land is causing food difficulties and hunger.
9. Air pollution from power plants and smelting plants built close to mining areas can cause serious illnesses [3].

Furthermore, Law Number 32 of 2009 concerning Environmental Protection and Management, guarantees legal certainty and protects the right of everyone to live in a good environment, through the imposition of criminal penalties and criminal sanctions that are quite severe [4]. Law Number 4 of 2009 concerning, Mineral and Coal Mining provides administrative, criminal provisions in the form of criminal offences for persons or corporations in article 158 through Article 165. Moreover, in the regulation of the minister of energy and mineral resources No. 11 of 2018 regulates the procedures for granting territories, permits, and reporting on mineral and coal mining business activities. The subject of criminal law in this law is not only for individuals but also for corporations, both legal and non-legal entities. Governments should provide legal protection to every citizen. So that citizens can protect their lives from the threat of a person or group intending to commit a crime [5]. Criminal law enforcement still considers the principle of *ultimum remedium*, which requires the application of criminal law enforcement as a last resort after the failure of administrative law enforcement. The application of the principle of *ultimum remedium* only applies to formal criminal acts such as criminal punishment for violations of the quality standards for wastewater and emissions. In other words, violations other than the principle of *ultimum remedium* by prioritizing the implementation of criminal law [6].

2. RESEARCH METHOD

2.1. Research Specifications

Based on the formulation of the problem in compiling this study, the type of this research is normative or doctrinal legal research. Normative legal uses secondary data sources or examines existing library materials. The research is descriptive-analytical, where it aims to describe the existing phenomena. Furthermore, descriptive research attempts to define and interpret something, for example, the conditions or relationships, developed an opinion, ongoing processes, consequences or effects that occurred, or about the ongoing trends to be analyzed and taken the conclusions.

2.2. Approach Methods

The research study applied a statute approach. This approach examines all laws and regulations relating to the related legal issues. Another approach used is a legislative approach which is using legislation and regulation.

2.3. Data Sources.

The secondary data used in this study include the following:

Primary legal material which is a regulatory document that is binding and stipulated by the competent authority and secondary legal materials that are relevant documents,

such as seminar books, journals, magazines, scientific papers. Tertiary legal materials are all documents that contain concepts and information statements that support primary legal materials and secondary legal materials, such as dictionaries and, encyclopedias.

Data collection was conducted by library research and direct interviews with informants (field research). The results of the assessment are then systematically summarized as the essence of the results of the study document study. The purpose of this documentation techniques is to look for conceptions, theories, opinions.

3 Data analysis.

Processing, analyzing, and constructing data on normative legal research are carried out by analyzing legal rules. The construction process is undertaken by inserting articles into the legal system category. The results were concluded using the logic of deductive thinking method, done by reading, interpreting and comparing the relationships of concepts, principles and related rules.

3. RESULT AND DISCUSSION

3.1. Corporate Criminal Liability For Environmental Law

The establishment of a corporation as the subject of a criminal offence causes criminal liability demands. As a legal subject, the determination of corporate criminal mechanisms starts from the process of investigation, prosecution, and examination in the court proceedings[7]. Corporate crime, which is usually in the form of white-collar crime, is generally committed by a company or legal entity that engaged in the business field with a variety of actions that are contrary to applicable criminal law. Based on the experience from various developed countries where the corporate crimes occurred such as violations of monopoly laws, fraud in tax and excise payments, price provisions, production of goods that endanger health, corruption, bribery, administrative, labor, and pollution [8]. Based on the criminal law theory, there are two criteria for determining corporations as perpetrators of crime, **namely the Rolling and the Iron Wire Criteria**. Based on the criteria of corporation rolling, criminal liability occurred when prohibited acts are carried out in the implementation of a corporation or to achieve corporate objectives. According to Iron wire criteria, criminal penalties for corporations occurred if two conditions are met. First, corporations have *de jure* and *de facto* powers to prevent or stop perpetrators from executed prohibited activities. Second, the corporations accepted the actions of perpetrators as part of corporate policy[9]. Special laws outside the Criminal Code (KUHP), there is an expansion of the subject of criminal law, which means not only a person but also a corporation that is both a legal entity and not a legal entity. Law Number 4 of 2009 concerning Mineral and Coal Mining is only for corporations with legal entities. In-Law Number 4 of 2009, there is not a single article that regulates how or when corporate criminal liability. However, the expansion of the subject of criminal law in Law Number 4 of 2009 has a legal basis, which is the provisions of the Criminal Code Article 103. So that it can be said the responsibility of the management and corporation is as a

subject of criminal law in Act Number 4 of 2009 concerning Mineral and Coal Mining based on Article 163 paragraph (1). Unfortunately, the law always mentions everyone as the legal subject such as article 158, 160, 161, 162, and Article 165. However, the definition of each person is unclear.

3.2. Application Of Remedium Ultimum Principles In Environmental Crime Enforcement

The use of criminal law only occurs when other sanctions have been applied and following the relatively large degree of violations by the public or cause public unrest. The principle of subsidiarity places criminal law as an ultimum remedium, which is the last resort if other sanctions are inadequate. However, in principle, the application applies if the business actor is a recidivist who commits a criminal offence. The application of criminal sanctions is for environmental cases in general and mining in particular where criminal provisions for violating Law No. 4 of 2009 concerning Mineral and Coal Mining, especially in Article 158 through Article 165. Problems in mining include the issue of data disclosure to licensing issues that indicate corruption. Making coal mining permits allows collusion between employers and officials in the local area [10]. Administrative errors in granting mining permits by authorized officials have the potential to lead to criminal acts. This act has the potential to lead the abuse of authority. Analysis of administrative errors can be through the character of authority and the validity of government action. However, not all abuse of authority can be subjected to criminal sanctions unless there is a state financial loss. A government official who does not have the authority to take legal action, cannot be declared as an agent of abuse of power if they carried out an act or decision on state administration which is not within the scope of their authority [11]. The imposition of criminal sanctions in the form of imprisonment is what makes the criminal law as a last resort (ultimum remedium) to improve human behavior, especially perpetrators of crime, and provide psychological pressure so that others do not commit crimes [12]. Ultimum remedium is one of the principles contained in Indonesian criminal law, which states criminal law should be the last resort in law enforcement. At the level of norms, the implementation of the state in the context of law enforcement must refer to the moral law itself and is also part of law [13].

4. CONCLUSION

Corporations, as the subjects of criminal offences in the renewal of national criminal law policies, positioned the principle of criminal law in the form of corporate responsibility in a natural person. Mining industry activities caused pollution that impacts on public health disorders. Therefore, the mechanism of a legal settlement in the mining sector should be carried out through criminal law enforcement based on the principle of ultimum remedium.

So that the penalties can be undertaken by the instructions of the law.

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