

Corporate Criminal Responsibility in the Crime of Environmental Pollution in Tourist Areas

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ABSTRACT

WWF data shows that Komodo National Park and the surrounding area collect 13 tons of waste every day. Many natural resources are sacrificed to gain more profit from tourism. Natural damages in tourist areas are due to the overcapacity usage of nature and the lack of supervision from the government in tourism. The corporations who commit the act or negligence that causes environmental damage should be charged with corporate criminal liability. The method used is normative. The corporate criminal liability to the corporations that manage tourist areas in terms of environmental destruction will provide legal clarity and protect nature from further damage.

Keywords: *Environmental Pollution, Corporate Criminal Responsibility, Tourism.*

1. INTRODUCTION

In article 1 point 3, laws of Indonesia number 10 in 2009 about Tourism, a variety of tourism activities supported by various facilities by the community, businessmen, government, and also the local government. Looking at the notion of tourism, various activities in tourism are synergistic with each other that form a system to support tourism activities, both from the community, businessmen, or the government. So that in the process of tourism activities, various facilities turn out to have a direct or indirect impact on the quality or sustainability of the environment. Tourism is one of the industries that hold an essential key towards the environmental damages. According to World Travel and Tourism Council, currently, tourism is the largest industry globally, generating more than \$3.5 trillion in world revenue in 1993 or 6% of the world's gross income. The development of this industry grows very fast until it reaches the point where it causes negative impacts on the environment.

In general, human activities impact the physical condition of the environment, without exception of tourism activities that have an impact either directly or indirectly on the physical condition of the environment. Management, development and various activities related to tourism, for example, the low level of knowledge, level of education and public knowledge about the environment or the management of tourist areas, visitors' living habits can dispose of waste improperly resulting in environmental pollution So environmental pollution can

be sorted out because of the community in the environment itself or tourists visiting the tourism area. So it is necessary legal awareness and sufficient environmental insight for the surrounding community and tourists who visit. Therefore, environmentally friendly tourism is needed so that tourism development can be in line with the preservation of the environment from physical pollution. The thing that needs to be considered in addition to private subjects (people) around and visitors is the Corporation.

Some corporations, such as hotels and resorts, may support this industry, but they are the ones that should be responsible for the environmental damages that occur. One of the examples of environmental damages caused by the activities of the hotels and resorts is waste disposal and water treatment that is not managed well and end up polluting the environment. Hotels and resorts should make sure the activities for their corporations will not cause damage to the environment. Corporate hotel activities should also include attention to the surrounding environment. So that it becomes clear what the hotel corporation's responsibility is to the risk of environmental damage.

Waste is one of the biggest problems in the environmental pollution in the Tourism Area. Based on the research from Bali Partnership, data was obtained that the amount of waste in Bali every day reached 4,281 tons. Of this amount, 11 percent of it flows into the sea. Each year, the amount reaches 1.5 million tons. [1] The hotel industry and other industries related to tourism activities are closely related to waste, where waste is the main issue

in preserving the environment, especially the physical condition of tourism. So when talking about cleanliness in tourism management, it will be very focused on various tourism activities. It is undeniable in this case that hotel activities, which in several cases in Indonesia, apart from supporting tourism, impact environmental pollution. In this regard, it is worth looking at some of the laws and regulations that regulate tourism, hotels, and waste.

Law of Indonesia Number 10 in 2009 with regard to Tourism and Law of Indonesia Number 32 in 2009 on Environmental Protection and Management are as the basis for the corporations' responsibility in preserving nature and the environment in tourist areas, including the charges of corporate criminal liability to the corporations that manage tourist areas in terms environmental destruction. These two laws serve as the basis for corporations conceptually the legal subjects who can carry out criminal responsibility for environmental pollution other than the private sector. This paper will review corporate criminal responsibility in the crime of environmental pollution in tourist areas because it can be understood that the elements of a crime can be distinguished from objective elements and subjective elements. Subjectively there is an element of error (*schuld*), so in this paper, we will investigate further what constitutes an element of error in a legal entity (Corporation). In particular, this paper will examine the specificity of the regulation regarding corporate criminal responsibility for environmental pollution in tourist areas.

The background of this research is the need to have certainty the regulation and in practice regarding Corporation's responsibility in tourist areas to protect the nature from further pollution. From the description above, the problems that become the subject of discussion in this research are: a) How is the corporate criminal liability in the act that causes environmental pollution in tourist areas according to the law? b) How is the government's supervision in the natural protection in the tourism industry?

2. METHOD

This research uses descriptive content analysis to explain and connect corporate responsibility regulation and environmental protection in tourist areas. The analysis is also connected to the normative perspective to determine how the law regulates the supervision in the tourism industry. Legal materials and related resources were used as guidance to conclude the research. Through a normative approach, it will investigate what constitutes criminal charges for corporations, in this case, hotels and resorts, in carrying out their actions of polluting the environment, causing damage to the physical environment. This study will also discuss what is meant by environmental quality standards, which become a benchmark for errors of legal subjects (corporations) in their activities that impact the environment.

3. RESULT AND DISCUSSION

The Corporation as a pseudo legal subject, its liability can come from legislation or other general provisions, from the actions or omission of its directors, employees, or agents. David O. Friedrichs defines *corporate crime* as a crime committed by corporate officials for the benefit of the Corporation or a crime committed by the Corporation itself. [3]. The purpose of corporate criminal liability is to provide an essential impact for directors to regulate effective management so that the Corporation runs by the obligations.

Regarding errors in corporations, Surprapto argues that the Corporation can be blamed if it is intentional or negligent found in the people who are the tools of the equipment. In addition, there is sufficient reason to assume that corporations have guilt because they, for example, received a forbidden advantage. Van Bemmelen and Rummelink argue that corporations can still have errors with error construction board of directors. The principle of no crime without guilt remains not abandoned. Thus, Surprapto, Van Bemmelen, and Rummelink recognize that corporations can still have faults with the construction that the error is taken from the management of board members.

Supreme Court Regulations Number 13 of 2016 also stipulates in prepossessing a crime against corporation, the judge may assess corporate fault for these reasons:

- The Corporation may gain the crime is committed for the benefit of the Corporation.
- Corporations allow criminal acts to happen.
- The Corporation does not take the necessary steps to carry out prevention, prevent more significant impact, and also assure compliance with applicable legal provisions to put off criminal acts. [4]

The tourism industry also has many corporations such as Hotels, tourism resorts, and many more. These corporations also hold the responsibility towards any action that may have harmful impacts on the environment as to how other corporations from other industries do. Article 1 number 11 UUPLH measures the limit or level of living things, substances, energy, or components that exist or must exist and/or tolerable pollutant elements its existence in a particular resource as an environmental element life. In contrast, the definition of the standard criteria for environmental damage according to Article 1 number 13 UUPLH is a limited measure of changes in physical properties and/or living environment that can be tolerated. Quality standards environment is necessary to place whether in area or area environmental damage has occurred, meaning that if environmental conditions have been above the environmental quality standard threshold, the area or area has been polluted. The violation of the quality standard can prove the occurrence of pollution to the environment in the tourist area.

When there is a loss, the Corporation must be responsible for the act or even negligence. It is then

necessary to identify who holds the responsibility for the loss.

The formulation of environmental criminal provisions as regulated in the Law Number 32 in 2009 and Law Number 10 in 2009 include the element of intentional or even negligence. If the element of intention or negligence is included, criminal liability adheres to the principle of liability based on the fault. This means the Law Number 32 in 2009 adheres to the principle of error or culpability. [7]

To assure the natural protection as regulated in Law of The Republic Indonesia Number 32 in 2009 with regard to Environmental Protection and Management Law, wise control efforts are used to exploit the tourism natural resources. One of the control efforts is the supervision so that pollution and natural damage can be prevented and controlled. Control refers to function in functional management that must be carried out by each leader of all units/work units on the implementation of work or employees who carry out their respective main tasks. Thus, supervision by the leadership, especially in the form of built-in control, a managerial activity carried out with the intention that there are no deviations in carrying out the work.

Supervision of corporate compliance in preserving the surrounding environment are internal and external. Judging from the Corporation itself, the internal segment can be conducted by the internal supervisors of corporations and associations in the corporate sector (hotels). In addition to the outside parties, there is layered supervision, namely from internal parties. Then who is the supervisor from the outside?

Based on Law of The Republic Indonesia Number 32 in 2009, environmental supervision is about the activity carried out by the Environmental Supervisory Officer to maintain the level of compliance of the person in charge of the business and/or activity to the provisions of the laws and regulations in Indonesia environmental field. Referring to this legal rule, it is necessary to cooperate the supervisory efforts of the Environmental Supervisory Officer with other environmental observers directed at the private sector in it.

It is stated in the Article 71 of Law of The Republic Indonesia Number 32 in 2009 concerning Environmental Protection and Management Law that the minister, governor, or regent/mayor are obliged to supervise the compliance of the person in charge of business and/or activity with the provisions stipulated in the legislation in the field of protection and environmental management, and may delegate their authority in supervising to the official/technical agency that is responsible for the protection and management of the environment. The official/technical agency in question is an environmental supervisory official who acts as the functional official.

4. CONCLUSION

The tourism industry is one of the industries that work close to environments. It has to hold the responsibility to ensure the environments will not be polluted beyond the quality standards regulated by the law. It is stated in Law Number 32 in 2009 and Law Number 10 in 2009 that anyone whose negligence destroyed nature will be punished. In this respect, the party that causes the nature destruction includes the Corporation in the tourism industry. Nature is a nonliving object that cannot report when it is exploited beyond the limit. That is why the government, as it is regulated in Article 71 of Law of The Republic Indonesia Number 32 the Year 2009, is obliged to supervise the compliance of the responsibilities from the Corporation. This supervision responsibility is delegated to the environmental agency in each city and province. The government, such as ministers, governors, and mayors, also hold the responsibility to supervise the permit for the Corporation to do activities concerning the environment.

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