



Politics of Criminal Law of Justice Collaborator in Environmental Crimes

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Abstract. Environmental crime is one of the fields that often causes debate in the practice of applying the law. It is undeniable that the environment is a field that is very vulnerable to practices against criminal law; even acts against the law are not only done alone but together. So the practice of law enforcement is needed an innovative step that can overcome criminal trials in the environmental field. In the discussion through a limited perspective, environmental crimes are often synonymous with a systematic or organized mode so that the character of the Justice Collaborator becomes appropriate in handling cases of environmental crimes. When someone who has been arrested by law enforcement reveals a partner or party invited to organize a crime, this will make it easier for law enforcement to uncover crimes. However, this also needs to be regulated in such a way in the regulation of environmental crimes as applicable so far.

Keywords: Legal Politics · Justice Collaborator · Environmental Crime

1 Introduction

Discourse on the environment is not new in the legal sciences. However, this discussion remains an exciting theme to be discussed from various perspectives with orientation to the goals to be achieved in the environmental field. As it is known that the objectives to be achieved are stated in Article 3 of Law No. 32 of 2009 concerning Environmental Protection and Management.

If studied more deeply, of course, this is in line with the development of human life, which is increasing rapidly in line with the number of people in the world and the desire of every human being to fulfill their individual needs. So it is very natural that in the course of many human interests, their fulfillment was forced to satisfy individuals and groups of individuals, which impact the destruction of the environment.

This has been proven from many cases of pollution, or other types of damage to the environment that have occurred in various regions in Indonesia, for example, the Supreme Court Decision Number 90 K/Pid.Sus-LH/2022 with the defendant “H. Muhammad Jabir Se, MM alias Daeng Bonto” who was initially tried at the Makassar District Court because he was declared legally and convincingly guilty of having committed a crime. Commits a criminal act of cutting down trees in a forest area without having the right or

permission from the competent authority so that the defendant is sentenced to imprisonment for 1 (one) year and a fine of Rp. 1,000,000,000.00 (One billion rupiahs) provided that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months. Until based on this Supreme Court Decision, the Makassar High Court Decision Number 442/PID.SUS/2021/PT MKS dated 19 August 2021 confirmed the Makassar District Court Decision Number 163/Pid.Sus/2021/PN Mks dated 14 June 2021 concerning the qualification of the criminal act committed by the defendant to be "Together cutting down trees in the forest area without permission from the authorized official."

If we look closely, the word "together" means that the implementation of the action that is qualified as an act against the criminal law/criminal act is not carried out alone. Based on the facts, as revealed in the trial, it was interpreted that the convict was cutting trees with 2 of his colleagues. However, it is possible that the criminal act was carried out at the behest of a company or group (corporation). Once again, the authors stated this is only an illustration of one case that has been decided.

When discussing law enforcement, the main point is law enforcers in the field of criminal acts, especially in the environmental sector. As is well known regarding formal criminal law enforcement, the process is under the legal umbrella of the Criminal Procedure Code (KUHAP). So, it is undeniable that there must be several processes that must be passed, namely pre-adjudication, adjudication phase, and post-adjudication phase. According to Luhut M.P. Pangaribuan (2013), criminal justice in the Criminal Procedure Code is divided into three phases, namely pre-adjudication, adjudication, and post-adjudication. The pre-adjudication phase is the investigation and/or investigation phase, the adjudication phase is the judge's examination phase in court, and the post-adjudication phase is the correctionalization of a convict (Pangaribuan, 2013).

The witnesses can be qualified as *a charge* witnesses, and a *de charge* witnesses. It can be explained that based on its nature and existence, a charge witness is a testimony that is incriminating for the defendant and is usually submitted by the prosecutor/public prosecutor. Meanwhile, a *de charge* witness is the testimony of a witness with the nature of mitigating the defendant and is commonly submitted by legal counsel (Mulyadi, 2012). In the complicated development, there are no special crimes that are corporate or transnational in nature, so law enforcers in the pre-adjudication and adjudication phases need reinforcement in supporting the goal of obtaining data or facts in the case being examined. Along the way, the term justice collaborator emerged, which is generally applied to corporate crimes. This justice collaborator is, in fact, an actor but is not classified as the main actor in a corporate crime that, without an element of coercion, has the intention to tell facts or actual events that occur related to criminal problems involving him who is in the process of being investigated.

Based on the explanation above, in this study, two legal issues are discussed: (1) what is the legal basis for corporate responsibility in environmental crimes? (2) What is the urgency of regulating justice collaborators in environmental corporate crime in the future?

2 Method

This research is categorized as normative legal research because it focuses on written regulations for studying justice collaborator arrangements in environmental corporate

crime. The approach used is the Legislation approach and the Legal Concept analysis approach. The sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials.

3 Result and Discussion

3.1 The Corporations as Subjects of Criminal Law

Article 1 point 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations reads, “Corporation is organized collections of people and/or assets, both legal entities and non-legal entities.”

From the contents of Article 1 above, corporations in criminal law, apart from being legal entities, also include non-legal entities as long as they fall into the categories included in the formulation of the article. Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) is another rule that can serve as an example of corporate regulation as a subject of criminal law. The provisions regarding the recognition of corporations as subjects of criminal law can be seen in the General Provisions section of Article 1 Number 32, which stipulates: “Every person is an individual or a business entity, both legal and non-legal entities.” From the provision, Article 1, number 32 of the PPLH Law has expanded the elements of “everyone,” including corporations which in this law are referred to as “business entities.”

3.2 The Corporation as Elements in the Characteristics of Environmental Crimes

Three things that can consider are the concept that exists in the PPLH Law and the provisions of criminal acts contained in the Act. Firstly, in the PPLH Law, criminal acts besides individuals can be legal entities or unions, organizations, and the like. At the same time, in the Criminal Code, they can be used as perpetrators only in the form of humans or people. Secondly, the PPLH Law uses disciplinary measures to maintain norms, apart from using primary criminal sanctions and additional criminal sanctions as in the Criminal Code. Thirdly, in the formulation of punishment, vague norms use the word “and/or” to make the law hesitate to impose cumulative or alternative sanctions. Lastly, the PPLH Law sees criminal law as the *ultimum remedium* for certain formal crimes. In contrast, other crimes use the principle of *premiun remedium* (preceding the implementation of criminal law enforcement). The PPLH Law is still not adequate for the punishment of individuals for environmental crimes.

Characteristics of a legal entity as a subject of criminal law are individuals who are the founders, have separate assets separate from the assets that establish and manage them, and have rights and obligations in addition to the rights and obligations of the founders and administrators. In essence, corporations have differences in the legal subject of people. People who become legal subjects have an inner soul and attitude; corporations do not have an inner attitude (*Mens Rea*). The soul and inner attitude of the corporation are contained in its management, who acts for or on behalf of the corporation. *Mens Rea* is a requirement that must include in corporate responsibility. In

addition, corporations cannot attend in person at the hearing. The difference between natural law subjects (humans) and corporate legal subjects. In connection with the principle of error, namely: *Nulla poena sine culpa* (no crime without error), only criminal law subjects with *mens rea* can be burdened with criminal responsibility. Legal subjects who do not have an inner attitude cannot be given criminal responsibility. Therefore, the corporation, as a subject of criminal law, cannot be held criminally accountable.

3.3 The Legal Basis of Corporate Responsibility in Environmental Crimes

Regulation of the Supreme Court Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, as a guide for law enforcement officers in handling criminal cases committed by corporations. Following Article 4 paragraph (2) of Perma 13/2016, in imposing a crime against a Corporation, the judge can assess the corporation's faults with the following parameters, namely:

1. The corporation may obtain profits or benefits from the crime or the crime is committed for the benefit of the corporation;
2. Corporations allow criminal acts to occur; or
3. The corporation does not take the necessary steps to prevent, prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of criminal acts

Implementing Corporate Responsibility, as for sanctions or laws that can be imposed on Corporations according to the guidelines outlined in Article 25 paragraph (1) of Perma 13/2016 are the principal and/or additional penalties. The principal penalty that can be imposed on a corporation is fine. Meanwhile, additional penalties imposed on corporations are in accordance with those stipulated in other laws and regulations, such as in Article 10 of the Criminal Code and provisions for other types of crimes that are spread in other laws as *lex specialis* of the Criminal Code, which is *legi generali*.

Corporate criminal liability in environmental cases, for example, in the form of imposing fines as referred to in Article 98 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management, which regulates actions that result in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage which in full reads as follows:

“Everyone who intentionally commits an act that results in exceeding the ambient air quality standard, water quality standard, sea water quality standard, or environmental damage standard criteria shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp.3.000.000.000.00 (three billion rupiahs) and a maximum of Rp.10.000.000.000.00 (ten billion rupiahs).”

3.4 The Concept of Justice Collaborator in Criminal Law Evidence

Justice collaborators have a significant role in assisting investigators and public prosecutors in proving a criminal case. The basic concept of Justice Collaborator is a joint

effort to find the truth to reveal justice to be conveyed to the community. The search for the truth collectively is the context of collaborators from two diametrically opposite sides: law enforcers and law breakers.

The regulation of Justice Collaborators in the criminal justice system in Indonesia is new compared to legal practices that occur because the Criminal Procedure Code and other laws do not explicitly regulate justice collaborators. The use of justice collaborators in criminal justice is one form of extraordinary effort used to eradicate environmental crimes involving perpetrators of these crimes. The perpetrator is willing to cooperate with law enforcement officials in dismantling an environmental crime. With this collaboration, it is hoped that it will facilitate the performance of investigators in their investigations, prosecutors in the prosecution process, and judges in conducting examinations and evidence in court later.

3.5 The Weaknesses of Justice Collaborator's Criminal Arrangements in Environmental Corporate Crimes

The regulation of punishment for justice collaborators in environmental corporate crime has not been regulated in the Environmental Law. This is one of the weaknesses of punishment for justice collaborators. However, on December 14, 2011, a Joint Regulation was issued between the Minister of Law and Human Rights of the Republic of Indonesia (Number M.HH11.HM.03.02.TH.2011), Attorney General of the Republic of Indonesia (Number PER045/A/JA/12/2011), the Head of the Indonesian National Police (Number 1 of 2011), the Corruption Eradication Commission of the Republic of Indonesia (Number KEPB-02/01-55/12/2011), and the Head of the Witness and Victim Protection Agency of the Republic of Indonesia (Number 4 of 2011), regarding Protection for Whistleblowers, Reporting Witnesses and Collaborating Perpetrators.

This Joint Regulation provides a definitional limitation to the term Collaborating Perpetrator Witness as a witness who is also a perpetrator of a criminal act who is willing to assist law enforcement officials in uncovering a criminal act or a criminal act will occur to return assets or proceeds of a crime to the state by providing information to law enforcement officials and giving testimony in the judicial process.

The rights that can be obtained by the Witness of Cooperating Actors, as regulated in this Joint Regulation, include physical and psychological protection, legal protection; special handling; and awards. The award that can be given to the Cooperating Perpetrator Witness can be in the form of:

- a) leniency of prosecution, including seeking probation; and/or
- b) granting additional remission and the rights of other prisoners in accordance with applicable laws and regulations if the Witness of the Cooperating Perpetrator is a prisoner

This Joint Regulation also provides regulations regarding the procedure for granting rights, cancellation of such rights, as well as other provisions of a technical nature related to the presence of the Witness Acting Cooperating.

3.6 Justice Collaborator Sentencing Arrangements Politics in Environmental Corporate Crimes (*Ius Constituendum*)

The Criminal Procedure Code has not regulated provisions regarding justice collaborators except for the Republic of Indonesia Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. This law also does not give “privileges” to a justice collaborator. However, legal loopholes for justice collaborators are not without risk, both in terms of the interests of the protection concerned and in terms of the interests of a fair and equal judiciary from the investigation process to the correctional process. Both of these risks depend on the readiness and foresight of investigators to prevent the efforts concerned from being “taken at the flood” or even the authorities taking advantage of this.

The use of a Justice Collaborator in criminal justice is one form of the extraordinary effort that can be used to eradicate corruption. The definition of a Justice Collaborator, according to the Circular Letter of the Supreme Court No. 4 of 2011, is someone who is one of the perpetrators of a crime, admits the crime he has committed, is not the main perpetrator in the crime, and provide testimony as a witness in the judicial process which is very significant so that it can reveal the crime in question effectively.

The justice collaborator arrangement in Indonesia is still experiencing a vacuum or vacuum of law. Criminal law reform or new rules regarding Justice Collaborator are very necessary for the legislative body in Indonesia to think about (Wijaya, 2012). Seeing the role of the Justice Collaborator which is very important for disclosing criminal cases in Indonesia, in this case, the environmental case, is very common and concerning. Environmental crimes are crimes that cause harm to the country’s natural resources; of course, the effect will be felt indirectly by the Indonesian people. Thus, all efforts to disclose every environmental crime case in Indonesia must involve the role of the Justice Collaborator, whose security and contribution deserve more attention.

4 Conclusion

The implementation of corporate responsibility, as for sanctions or laws that can be imposed on the Corporation according to the guidelines outlined in Article 25 paragraph (1) of Perma No. 13 of 2016, is a principal crime and/or additional punishment. The principal penalty that can be imposed on a corporation is fine. Justice Collaborator has a significant role in assisting investigators in uncovering environmental corporate crimes. However, the judicial collaborator’s sentencing arrangements have not been specifically regulated in environmental or other laws. The current justice collaborator arrangement still refers to Perma No. 13/2016. Therefore, the justice collaborator’s sentencing arrangement must be set out in the form of a law.

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