ENFORCEMENT OF LAW AGAINST CORPORATIONS THAT COMMIT ENVIRONMENTAL CRIME AND TRANSNATIONAL CRIME

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ABSTRACT

Objective: This research wants to explore the following. Analysis of Environmental Crime as a Transnational Crime Involving Corporations and Analysis of Law Enforcement Problems Regarding Company Responsibility as Perpetrators of Environmental Crime.

Methodology: This research is a normative legal research based on empirical cases using a statutory approach. Techniques for obtaining through Normative law by researching legal material, primary, secondary legal material, and also tertiary legal material. In empirical legal research, data collection techniques exist 2 (two) techniques that can be used, either individually or together. An interview is a direct question-and-answer session between researchers and respondents or sources for getting information.

Results: The results of this research show that the problems in law enforcement against corporations in environmental crimes can be grouped as follows: There is no legal provision that regulates the definition of corporations, or sanctions for corporations that commit environmental crimes; Law enforcement is still offender oriented without any legal protection for victims; Weak evidence and lack of expert witnesses. Document study is a method of collecting data use and study documentation or documents in the form of archives, notes, and tables, places used as research.

Conclusion: Environmental crime is a transnational crime because most environmental crimes often involve corporations. Legal regulations for environmental crimes against corporations are still very difficult to implement and encounter various problems. The problem of law enforcement against corporations can be grouped with legal provisions governing corporations, for corporations that commit environmental crimes, due to weak evidence and a lack of expert witnesses.

Keywords: enforcement law, corporation, environmental crime, transnational crime.

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RESUMO


Metodologia: Esta pesquisa é uma pesquisa legal normativa baseada em casos empíricos usando uma abordagem estatutária. Técnicas para obtenção através do direito normativo pesquisando material legal, material legal primário, material legal secundário, e também material legal terciário. Na pesquisa jurídica empírica, existem técnicas de coleta de dados 2 (duas) técnicas que podem ser usadas, individualmente ou em conjunto. Uma entrevista é uma sessão direta de perguntas e respostas entre pesquisadores e entrevistados ou fontes para obter informações.

Resultados: Os resultados desta pesquisa mostram que os problemas na aplicação da lei contra corporações em crimes ambientais podem ser agrupados da seguinte forma: Não há nenhuma disposição legal que regule a definição de corporações, ou sanções para corporações que cometem crimes ambientais; A aplicação da lei ainda é orientada para infratores sem qualquer proteção legal para as vítimas; Fraca evidência e falta de testemunhas especialistas. O estudo documental é um método de coletar dados, uso e estudo de documentação ou documentos na forma de arquivos, notas e tabelas, lugares usados como pesquisa.

Conclusão: O crime ambiental é um crime transnacional, porque a maioria dos crimes ambientais muitas vezes envolve corporações. Regulamentações legais para crimes ambientais contra corporações ainda são muito difíceis de implementar e encontram vários problemas. O problema da aplicação da lei contra as corporações pode ser agrupado com disposições legais que regem as corporações, para corporações que cometem crimes ambientais, devido a provas fracas e falta de testemunhas especialistas.

Palavras-chave: aplicação da lei, corporação, crime ambiental, crime transnacional.

1 INTRODUÇÃO

The environment is an absolute part of human life because humans cannot live without the environment. Humans in fulfilling their needs, such as in finding food and drink, are very dependent on the environment. This is because the environment also provides various natural resources which carry the capacity for human life. (Istianah, 2015) However, over time, various environmental damages have occurred. In pursuing an improvement in the quality of life, humans, especially corporations, are starting to develop behaviors that damage the environment and disrupt the sustainability of natural resources. (Dermawan, 2009) Meanwhile, various environmental damages have occurred in various parts of the world with various types of damage. This can be seen in the following data:
Figure 1: Data on Types of Environmental Damage in the World

Based on the data above, it can be seen that there have been various types of environmental damage in various parts of the world. The most common types of damage are air pollution, damage to forests and wildlife, climate change, emissions, global warming, and so on. (Bej, 2020) Even Indonesia is also not immune from various environmental damages, as can be seen in Figure 2 below:

From Figure 2 above, it can be seen that the most common environmental problem in Indonesia is waste. Uncontrolled waste in Indonesia will cause the next environmental problem, namely flooding. Yudelmi, & Idrah, M. C. (2010). As well known, one of the causes of flooding is piles of garbage that cannot be controlled and even the river becomes a garbage dump. Then it becomes the next most environmental problem, namely polluted rivers.

The existence of various environmental problems in Indonesia has made Indonesia get an environmental sustainability score of 28.2 out of 100. Yeni Widowaty. (2012). This score places Indonesia in 164th place out of 180 world countries. In other words, the score is so low that even when viewed on the Asia Pacific scale, Indonesia's position is also in the lower ranks with the lowest score, as shown in Figure 3 below:

Indonesia is ranked 22nd out of 25 Asia Pacific countries or 8th out of 10 ASEAN countries. In this report, Indonesia scores low for all indicators, with details of an ecosystem vitality score of 34.1, an environmental health score of 25.3, and a climate change mitigation policy score of 23.2 out of 100. As previously mentioned the environment is an important part of human life, so it is not surprising that various environmental issues now become the world's attention, especially the international community. Even the international community agrees to categorize perpetrators who
damage the environment as perpetrators of transnational crimes. In other words, actions that have an impact on environmental damage are classified as transnational crimes because they are extraordinary crimes. (Elliott, 2012) Due to its extraordinary nature, law enforcement for perpetrators of crimes against the environment must also be carried out seriously and extraordinarily. However, the fact is that law enforcement against perpetrators of environmental crimes often raises problems, especially in Indonesia.

Legal provisions related to the environment are Law Number 32 of 2009 concerning the Protection and Management of the Environment or UUPPLH. Even so, there are still various legal issues related to the environment. Legal instruments in the environmental sector in Indonesia are still incomplete and the mechanism is unclear. Wijaya, H., Santoso, B., & et al., (2021). This often creates confusion among law enforcers and the public and often leads to accusations of collusion. In addition, the focus of attention of law enforcers is still on conventional crimes. This legal issue has also had an impact on many cases of environmental pollution in Indonesia, for example, the contamination of Situ Citongtut, coal mining in South Kalimantan which destroys aquatic ecosystems, and various other environmental cases as if the perpetrators were not afraid of the law that could ensnare them.

The application of corporate crime in Indonesia has not been maximized because of the problem of corporate criminal attribution and responsibility which has not been regulated. The attribution of guilt in corporate crime has not accommodated developed theories. Wibisana, A. G. (2016). In addition, Indonesia has not separated corporate responsibility from management. Current practice shows that administrators are blamed only because of their position as administrators. Whereas supposedly, administrators are only punished if they have their own mistakes such as helping or encouraging criminal acts and failing to carry out supervision.

2 THEORETICAL FRAMEWORK
2.1 DEFINITION OF CORPORATION

Corporation is a term often used by criminal law experts and criminology experts to refer to what in other fields of law, especially the field of civil law, is a legal entity in Dutch it is called rechtspersoon or in English the term legal person or legal body. H. Setiyono (2004:2)
The general definition of a corporation is that the law does not only regulate humans as legal subjects, but apart from individuals, there are also other legal subjects, namely legal entities which have legal rights and obligations as natural persons as legal subjects. This is because the term corporation is very closely related to the term "legal entity" which is known in the field of civil law. (Kristian, 2014:50).

2.2 CORPORATE CRIMINAL LIABILITY

Corporate responsibility is the same as the concept of criminal responsibility in general. In criminal law, it is known as the concept of liability or "accountability" and is a central concept known as the doctrine of error. In Latin, the doctrine of error is known as mens rea.

The doctrine of mens rea is based on an act that does not make a person guilty unless the person's thoughts are evil. In English, this doctrine is formulated as an act that does not make a person guilty, unless the mind is legally blameworthy. Susilawati, E. Y. (2009). Based on this principle, two conditions must be fulfilled to convict someone, namely that there is a prohibited external act/criminal act (actus reus), and there is an evil/disgraceful inner attitude (mens rea). Corporate responsibility emphasizes that there are 4 (four) systems for imposing criminal liability on corporations. Namely:

a. Corporate managers are perpetrators of criminal acts, so therefore it is the management who must bear criminal responsibility.

b. Corporations are the perpetrators of criminal acts, but the management must bear criminal responsibility

c. Corporations are the perpetrators of criminal acts and the corporations themselves must bear criminal responsibility.

d. Both the management and the corporation are perpetrators of criminal acts and both must bear criminal responsibility.

2.3 UNDERSTANDING THE ENVIRONMENT

The definition of the environment according to Article 1 point 1 is: According to Munadjat Danusaputro, the living environment is all objects and forces and conditions, including humans and their actions, which exist in the space where humans exist and influence the survival and welfare of humans and other living organisms, thus including aspects of the physical environment and aspects of the cultural environment. Sembiring.
One aspect of environmental law in Indonesia includes environmental pollution law (about, for example, pollution by industry and so on).

Environmental law is the latest result of the legal civilization of nations which is called modern. Emergence appears to have revolutionary characteristics, namely in its quality to challenge the practice of 34 industrialization which was previously unrivaled, then starting from facing existing obstacles.

2.4 UNDERSTANDING ENVIRONMENTAL POLLUTION

Article 1 number 14 of Law Number 32 of 2009 concerning Environmental Protection and Management. Santoso, M. A. (2016). States that environmental pollution is the entry or importation of living creatures by human activities so that they exceed the established environmental quality standards.

Elements whose data cause environmental pollution:

a. The entry or inclusion of living things, substances, energy, and/or other components
b. Into the environment
c. Human activities
d. Exceeds established environmental quality standards.

2.5 CORPORATE RESPONSIBILITY THEORY

There are several theories of criminal responsibility carried out by corporations that can be used as a basis for imposing criminal responsibility. These theories or teachings are the Theory of Absolute Criminal Responsibility (Strict Liability), the Vicarious Liability Theory, and the Identification Theory.

a. Strict Liability Theory. According to this theory, criminal responsibility is imposed on the person concerned without needing to prove that there was any fault (intentional or negligence) on the part of the perpetrator. According to the doctrine of Strict Liability, criminal responsibility for the perpetrator does not matter whether the criminal act was carried out with the perpetrator having an element of criminal responsibility.

b. Vicarious Liability Theory. This theory teaching or doctrine is taken from civil law in the context of liability for unlawful acts applied to criminal law. Vicarious Liability usually applies in criminal law regarding unlawful acts based
on the respondent superior doctrine. In civil actions, an employer is responsible for mistakes committed by his subordinates as long as they occur in the context of his work.

c. The identification theory states that corporations can commit several offenses directly through people who are closely connected with the corporation and are seen as the company itself. In such circumstances, they are not substitutes and therefore corporate liability is not vicarious liability.

d. Environmental Protection Theory The environment is the surrounding conditions that influence the development and behavior of living things. Language Center Dictionary Preparation Team (2005:877). Everything around humans that influences the development of human life, either directly or indirectly, is also defined as the environment.

3 METHODOLOGY

This research is a normative legal research based on empirical cases using a statutory approach. The primary data from this research uses national legal regulations and applicable international conventions. Lexy J. Moleong, (2018). The secondary data of this study uses books, journals, and online media. The data obtained will be analyzed in a qualitative legal way and then a normative juridical analysis will be carried out with a clear mind from the point of view of normative juridical logic. Furthermore, concluding using the inductive method, is a way of thinking that concludes a statement or proposition specific to a statement or case in general.

3.1 DATA COLLECTION TECHNIQUE

a. Literature study, namely data collection by collecting data sourced from legal materials in the form of legislation or research studies of written works, whether from books, journals, or newspapers as well as other related materials with consumer protection.

b. Field data, namely data collection by conducting in-depth interviews directly with respondents to obtain clarity and accurate data, was carried out using a structured list of questions.
3.2 DATA ANALYSIS

The data obtained from the results of this research and data collection are arranged systematically and logically to obtain a broad and clear picture regarding law enforcement against companies that violate

4 RESULTS AND DISCUSSION
4.1 ANALYSIS OF ENVIRONMENTAL CRIME AS A TRANSNATIONAL CRIME INVOLVING CORPORATIONS

The environment is an absolute part of human life because humans are very dependent on the environment to meet their needs. It can be seen that humans, animals, plants, water, air, and soil are ecosystem units that cannot be separated from one another.(Khristyawan Wisnu Wardana, 2005) The importance of the environment makes the entire world community form various legal regulations related to the environment, both within the scope of national law to the international legal environment. In international law, legal provisions related to the environment are divided into several branches such as protection of the marine, air, biological, climate, and so on environment. Here are some examples of international law conventions related to the environment: Convention on International Trade on Endangered Species (CITES) 1973, Vienna Convention for the Protection of the Ozone Layer 1985, 1974 Paris Convention for Prevention of Marine Pollution from Land-Based Sources. (Pitaloka, 2021)

The importance of the environment for all mankind makes the perpetrators of environmental damage or environmental crimes as perpetrators of transnational crimes or in other words environmental crimes are categorized as transnational crimes. Broadly speaking, the United Nations in 1990 stated that transnational crime is a crime or crime that crosses national borders, which includes money laundering, terrorism, theft of art and cultural objects, theft of intellectual property rights, environmental crimes, firearms smuggling, aircraft hijacking, and piracy. sea, human trafficking, trafficking in human bodies, banking crimes, corruption, and embezzlement of state funds.(Nalole & Sakharina, 2023) According to Bassiouni, the elements of transnational crime consist of:(Putri et al., 2022)

a. An act that has an impact not only on one country but on several countries.
b. Actions that have an effect or impact on citizens of various countries/not just one country.
c. The methods and facilities used in crimes cross the boundaries of the territory of a country.

From these elements, it is clear that environmental crimes are categorized as transnational crimes. This is because various forms of environmental crimes can be felt by other countries. Such as smoke from forest fires and water pollution which have an impact on neighboring countries because smoke and pollution can spread. Then crimes against flora and fauna were sold to various countries of the world resulting in extinction. (Sembiring & Adzkia, 2015) Environmental crimes can be said to be transnational crimes because the implementation of environmental crimes can involve various other types of crimes such as corruption and money laundering. Transnational crime originates from illegal money circulation which results from various crimes or illegal activities. One of these activities is environmental crime, particularly trade in wild animals and timber. This crime often occurs in developing countries where the government often cannot regulate the effective and efficient exploitation of natural resources. So the existence of poor management of natural resources can lead to corruption and even violent conflict when managing the environment. (UNODC, 2010)

Indonesia is a country that often becomes a target for transnational criminals. One type of transnational crime that often occurs in Indonesia is environmental crime. (Rahmanidar, 2014) With the existence of various environmental problems and environmental crimes, Indonesia has also formed various legal regulations related to the environment as a background. Legal provisions related to the environment have been stated in the fourth paragraph of the Preamble to the 1945 Constitution or the 1945 Constitution. Then, more specifically, the environmental provisions are regulated. In addition, environmental regulations which are the basis for enforcing environmental criminal law have been regulated in Chapter IX Article 41 to Article 48 of the Indonesian Criminal Code. Along with the times, provisions related to the environment are regulated in special regulations known as UUPPLH. (Rachmat, 2022) These regulations also accommodate related sanctions for perpetrators of environmental crimes.

Meanwhile, most environmental crimes often involve corporations, in the sense that these crimes are committed within the scope of the corporation's work and to benefit the corporation. (Wibisana, 2016) Multinational corporations have demonstrated massive accumulation of wealth and created wide interpersonal gaps. Even large corporations, so dominate the world economic system and determine jobs for many people, food, drink
clothing, and so on. However, corporations can also threaten the government of a country in which the corporation operates. According to International Amnesty and Human Rights Watch reports various multinational corporations have been extensively involved in human rights violations in conducting international business. These violations are carried out in every area of their operations throughout the world, such as from torturing workers, evictions, forced evictions, preventing workers from forming unions, violating the basic rights of women workers, employing child labor, to destroying the rights of indigenous peoples, as well as environmental damage. life. (Santoso, 2016)

4.2 ANALYSIS OF LAW ENFORCEMENT PROBLEMS REGARDING COMPANY RESPONSIBILITY AS PERPETRATORS OF ENVIRONMENTAL CRIME

Legal regulations regarding corporations as perpetrators of environmental crimes are regulated in Article 116 paragraph (1) and paragraph (2) and Article 118 UUPLH. Natural Gas and Article 48, Article 50, Article 51, Article 52, and Article 53 of the Indonesian Criminal Code or Criminal Code 2023. Corporate responsibility for environmental crimes can be implemented with civil sanctions, criminal sanctions, and regulations, respectively regulated in Article 1365 and Article 1366 of the Civil Code of the Civil Code, Article 87 paragraph (1), paragraph (2), paragraph (3), paragraph (4) UUPLH and Article 116 and Article 119 UUPLH.(Ni Nyoman Arif Tri Noviyanti, 2019)

In practice, law enforcement against corporations that commit environmental crimes is very difficult to implement. Among them are caused by several factors, first: law enforcers are still fixated on the principle of no crime without fault adhered to by Indonesian general criminal law, second: the carelessness of investigators or prosecutors in drafting charges or indictments that do not include the corporation as the party held criminally responsible; the inability of the prosecutor to prove corporate guilt, so that the concept of corporate criminal responsibility cannot be accepted by investigators, prosecutors, and judges.(Putra Adi Fajar Winarsa, Mien Rukminib, 2022) In Indonesia, law enforcement against corporations as perpetrators of crimes in the environmental and natural resources sector is not easy because it is a highly organized crime, so it is often not easy to uncover. Apart from this, crimes in the field of environment and natural resources involving corporations as the perpetrators of these crimes are often related to
public officials who hold and use their political authority to protect the perpetrators of these crimes. (Muslim, 2021)

Handling environmental issues is a complicated issue, both from the evidence and who is involved (in this case the company). Daud Silalahi also stated that almost all environmental cases that were processed in court were not resolved using good law. Enforcement of environmental law in the field of criminal law tends to use criminal law in its settlement which ends unsatisfactorily. The difference here can be noticed that some corporate criminal liability is decided on the corporation directly and there is also a decision that is born by the individual as the representative of the corporation. (Sanggup Leonard Agustian, Fajar Sugianto, 2020) The problems in law enforcement against corporations in environmental crimes can be grouped as follows.

Table: Law Enforcement Problems on Corporate Responsibility as Perpetrators of Environmental Crimes

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<th>No</th>
<th>Problems</th>
<th>Description</th>
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<tr>
<td>1.</td>
<td>There are no legal provisions governing the definition of a corporation or sanctions for corporations that commit environmental crimes.</td>
<td>Even though corporate criminal liability for environmental crimes has been regulated in the UUPLH. However, the regulations have not accommodated provisions regarding when corporate crimes can occur and who can be held criminally responsible. This is because the non-uniformity of corporate terminology is expressly regulated in legal sources to replace the term legal entity. In addition, no formulation explicitly regulates what sanctions can be imposed on corporations as perpetrators of environmental crimes. Herlan, (2016:213). As regulated in Part c Article 119 UUPLH which regulates additional punishment for perpetrators of environmental crimes, one of which is “improvement due to criminal acts.”</td>
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<td>2.</td>
<td>Law enforcement is still offender-oriented without any legal protection for victims.</td>
<td>Most of the criminal sanctions imposed on perpetrators of environmental crimes in Indonesia are still focused on offenders. So far, the orientation of Indonesian criminal law has been more offender-oriented, namely that the perpetrators of crimes are the main focus of criminal law. Even though imposing sanctions on the perpetrators is not enough without considering the condition of the victim. When referring to the concept of law as a “protector” the law must protect everyone both as suspects, defendants, or convicts (offenders) as well as victims, then criminal law violators, in their status as suspects, defendants or convicts have received protection in the Criminal Procedure Code, while victims of crime whether its status as a reporter, witness or aggrieved party has not received legal protection. (Yeni Widowaty, 2012)</td>
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<td>3.</td>
<td>Weak evidence and lack of expert witnesses</td>
<td>The difficulty in proving corporate criminal responsibility is due to the weak evidence obtained by investigators. As well as the lack of ability of the panel of judges who handle environmental cases even though there has been a Decree of the Chief Justice of the Supreme Court Number 134 of 2011 concerning Certification of Environmental Judges, Decree of the Supreme Court Number 26 of 2013 concerning the System for Selection and Appointment of Environmental Judges and Regulation of the Supreme Court. In addition, the lack of expert witnesses in the environmental field is also one of the factors in the difficulty of proving corporate criminal responsibility, so that many cases are not optimal. Novalina Romauli Sirait, (2018:48).</td>
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Corporations are responsible to individuals based on the principle of identification. For example, a company is accused of having committed a "common law" offense, namely agreeing to embezzle/defraud, an offense that requires "men's rea" and does not allow for "vicarious liability". In this case, the court views or considers, that the inner actions and attitudes of certain clear officials which are seen as a manifestation of the establishment of the corporation are the inner actions and attitudes of the corporation. In this case, the corporation is not seen as responsible based on accountability for the actions of its officials, but the corporation, like in violation of legal obligations, is seen as having committed the offense personally. Muslim, M. (2021). Based on the above, namely that it is very difficult to prove the existence of a corporation error because those who have errors are generally accepted as people. To facilitate a system of liability based on the principle of guilt for corporations, it seems that the makers of the Criminal Law need to consider deviating from the principle of error by adhering to the doctrines of "strict liability" and "vicarious liability". (Wijaya et al., 2021)

5 CONCLUSIONS

Based on the results of the discussion above, it can be concluded that crimes against the environment have been regulated by international law and national law. Environmental crimes can be said to be transnational crimes because the impact of environmental crimes can be felt in more than one country and environmental crimes are also connected to other crimes such as corruption and money laundering. Indonesia is a country that often becomes a target for transnational criminals. Environmental crime is a type of transnational crime that often occurs in Indonesia and most of the environmental crimes in Indonesia often involve corporations. Even though Indonesia has regulated various regulations related to environmental crimes, in practice law enforcement against corporations that commit environmental crimes is still very difficult to implement and encounters various problems. The problems in law enforcement against corporations in environmental crimes can be grouped as follows: There is no legal provision that regulates the definition of corporations, sanctions for corporations that commit environmental crimes; Law enforcement is still offender-oriented without any legal protection for victims; Weak evidence and lack of expert witnesses.
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