

## Criminal Liability Committed by Corporations for Environmental Damage as a Result of Forest and Land Fires (Case Study Case Number 59/PID). B/LH/2020/PN. RGT)



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**ABSTRACT:** The deforestation process that occurs in Riau is very worrying, forest and land fires are proof that environmental management and utilization are no longer reliable. These forest and land fires are proven to involve companies involved in the cultivation and utilization of forest products. For this reason, the corporation must be criminally responsible because UUPPLH No. 32 of 2009 has recognized the corporation as the subject of criminal law. Efforts to hold companies accountable aren't easy — many companies actually stop investigations because they don't have enough evidence. Therefore, the author wants to know the criteria of corporations that are said to commit forest and land fire crimes, as well as how the form of criminal accountability. This research method uses normative legal methods and sculptural approaches that are approaches through legislation. The results of the investigation, the criteria of the corporation to commit the crime of forest and land fires if it meets the elements in the preparation of articles of forest and land fires, namely land clearing by burning and exceeding environmental quality standards. The violation is committed by a person for work or other relationship reasons within the scope of the business entity. If the crime is committed by, for, or on behalf of a business entity, it shall be considered a corporate act. The form of corporate criminal liability in the criminal act of forest and land fires is preliminary, because the error lies with the corporate administrator (director) who is the mastermind or owner of control of the company's operational activities (Director Mind). Because in PP No. 4 of 2001 Article 13 that the director as the person in charge of all commercial activities whose business can cause damage and environmental pollution must comply with government regulation No. forest and land fires.

**KEYWORDS:** Criminal liability, corporation, crime, forest and land fires

### I. INTRODUCTION

#### A. Background

Indonesia is one of the tropical climate countries because of its location on the equator. These two seasons are characteristic of tropical countries, namely the dry season and the rainy season that occurs throughout the year in Indonesia. However, it seems that both seasons are attached to disasters that seem to threaten and are exacerbated by the current conditions of global warming.<sup>1</sup>

Global warming conditions are affected by erratic weather or even extreme weather in 2019, of course this greatly affects environmental conditions caused by forest and land fire disasters. Forest and land fire disasters occurred in 2015 to 2019 reaching 2.6 million hectares of area and 1.6 million hectares of forest and burned land throughout Indonesia. As a result of the identification of the area of forest and land fires in 2019, Indonesia experienced forest and land fires covering 1.15 million hectares of area (70%) in mineral soil and 0.49 million hectares (30%) in peatlands. Based on the distribution of South Sumatra Province (336,798 hectre area) and Central Kalimantan Province (317,749 hectares area) became the province with the highest area of forest and land fires compared to other provinces in Indonesia. Based on the analysis of regional functions, the burned area within the forest area is 912,924 hectares (55%) and outside the forest area (other use area) 736,334 hectares of area (45%). Burned area in the forest area consists of Fixed Production Forest of 325,970 hectares area (36%); Conservation Forests amounted to 226,559 hectares of area (25%); Conversion Production Forest amounted to 159,138 hectares of area (17%); Protected Forest amounted to 122,740 hectares of area (13%); and Limited Production Forests amounted to 78,517 hectares of area (9%). While based on the analysis of land

<sup>1</sup> Ministry Milieu Live And Forestry, *Analysis of Acreage Data Fire Directorate General Planology Forestry - Tata Milieu Directorate Inventory & Peman Tauan Source Power Forest Forest & Land Government department Milieu Live & Forestry Year 2019*, Loaded deep <http://appgis.menlhk.go.id/appgis/download/>. Accessed at date 10 May 2021.

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closures, fires that occurred on forested land covering an area of 1,551,749 hectares (94%), while fires on wooded land were 97,508 hectares of area (6%).<sup>2</sup>

Then the data obtained from the Directorate General of Forestry Planology and Environmental Governance (PKTL) KLHK Number: SP. 162/PR/PP/HMS.3/4/2020 based on the results of Indonesia's 2019 forest monitoring, shows that the area of forested land throughout Indonesia's land area is 94.1 million hectares of area or 50.1% of the total land. "Of these, 92.3% of the total forested area, or 86.9 million hectares, is within the forest area," he said. Data from the Directorate General of PKTL also shows Indonesia's deforestation trend is relatively lower, and tends to be stable. Sigit explained, net deforestation in 2018-2019, both inside and outside Indonesia's forest area is 462.4 thousand hectares of area. This figure comes from the gross deforestation rate of 465.5 thousand hectares of area with reduced reforestation (satellite imagery monitoring results) of 3.1 thousand hectares of area. The highest deforestation area occurs in the secondary forest class, which is 162.8 thousand hectares of area, of which 55.7% or 90.6 thousand hectares of area is within the forest area and the remaining 72.2 thousand hectares of area or 44.3% are outside the forest area. For comparison, the results of Indonesia's forest monitoring in 2018 showed that net deforestation in 2017-2018 both inside and outside Indonesia's forest areas amounted to 439.4 thousand hectares of area, which came from gross deforestation rate of 493.3 thousand hectares of area minus reforestation (satellite imagery monitoring results) of 53.9 thousand hectares of area. Taking into account the monitoring results in 2018 and 2019, it can be seen that Indonesia's net deforestation in 2018-2019 increased by 5.2%, but for gross deforestation there was a decrease of 5.6%.<sup>3</sup>

Then data from the Aceh Disaster Management Agency (BPBA) showed that the area of forest and land burned in January 2020, only 8.1 hectares. However, it increased in February (103 hectares) and to 139 hectares in March 2020. The location of this burning is in Aceh Jaya, Nagan Raya, South Aceh, Southeast Aceh, Langsa City, and Lhokseumawe City. In Aceh Jaya and Nagan Raya regencies, generally burned are forests and peat areas so the team has difficulty extinguishing. Bpba Chief Executive Officer, Sunawardi, in early April 2020 said, the period January-March 2020, there were 156 fires. Up nearly 100 percent from a year ago, the same period. Sunawardi said that the participation of all parties including the community is very important. "Fires cause environmental damage, health problems to the economy, and create a bad image of Indonesia. Prevention efforts are certainly very important by adding facilities and infrastructure" Sunawardi reminded, the community or corporation will be subject to layered articles if caught burning land. There are several contained in the Criminal Code, namely Article 187, 188 of the Criminal Code, Articles 98, 99, and 108 of Law No. 32 of 2009 on Environmental Protection and Management. The perpetrators can also be subject to Article 108 of Law No. 39 of 2014 on Plantations. Of all the rules, the perpetrator is threatened with a prison sentence of 12 years and a fine of Rp 10 billion.<sup>4</sup>

Forest and land fires are indicated to have involved corporations engaged in forest management and industrial crops such as oil palm plantations and the utilization of timber crop forest products. Forest and peatland fires in Indonesia even reached 2.6 million hectares. Burning forests to open this land is done by corporations because clearing land by burning costs less than cutting down trees using tools and takes a faster time. Clearing forest land by burning is more profitable than using tools. These costs are suppressed or avoided by corporations to reduce production costs by ignoring sustainability and even endangering the environment.<sup>5</sup>

Furthermore, the regulation of Environmental issues in Indonesia began with the Environmental Law, namely Number 4 of 1982 on the Basic Provisions of Environmental Management (State Gazette of 1982 Number 12 Supplementary State Gazette Number 3215) which marked the beginning of the construction of legal devices as the basis for environmentally sound development efforts that in their development were refined and replaced by Law Number. 23 of 1997 on Environmental Management and most recently Law No. 32 of 2009 on Environmental Protection and Management essentially provides protection to *biotic communities* and *abiotic communities* to avoid pollution caused by human activities themselves. The protection of the law is among others given by giving criminal sanctions to perpetrators of environmental crimes. Humans as absolute subjects sometimes intentionally pollute and destroy the environment. Perpetrators of environmental crimes not only involve humans as legal subjects that can be punished, but business entities / corporations are also subject to criminal law so that they can be prosecuted and punished or criminal sanctions or known as corporate criminal liability. Delik conducted by corporations is called <sup>6</sup> *corporate crime*.<sup>7</sup>

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<sup>2</sup> EndrawatiAnd, Purwanto, J., Nugroho, S., & Agung, R, *Identification Area Former Fire Forest And Land Use Analysis Semi Automatic Image Satellite Landsat*. Loaded deep In *National Seminar Geomatics* Volume. 2, 2018, Pp. 273-282.

<sup>3</sup> Nunu Aguerah, *Forest And Deforestation Indonesian Year 2019*, Loaded deep [PPID | Ministry Milieu Live and Forestry Forest and Deforestation Indonesian Year 2019 \(menlhk.go.id\)](#). Accessed at date 12 May 2021.

<sup>4</sup> Zenwen Pador, *Questioning Countermeasures Karhutla and Inconsistencies Government*, Loaded deep [Questioning Countermeasures Karhutla and Inconsistencies Government - Mongabay.co.id : Mongabay.co.id](#). Accessed at date 13 May 2021.

<sup>5</sup> *Ibid*.

<sup>6</sup> Hengki Firmanda, *Fact Contract According to Roscoe Pound dan Relevance towards Contract that Associated with Milieu Live*, Loaded deep *Journal Juridical*, Volume 3 Number 1, 2016, Pp. 10-19.

<sup>7</sup> Shahrul Machmud, *Enforcement Law Milieu Indonesian* (Yogyakarta: Graha Science, 2012), Pp. 137.

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In order to determine who is responsible among the managers of a legal entity that must bear the burden of criminal liability, it must be traced in terms of AMDAL documents, permits (licenses) and the division of work duties in the position contained in the legal entity (corporation) concerned. The documents can also be known, how the rights and obligations of the managers of the company, to monitor, prevent and control the negative impact of the company's activities. From the search it will also be evident whether the pollution and / or destruction of the environment occurred due to intentionality or due to negligence.<sup>8</sup>

Article 116 paragraph (2) of Law No. 32 of 2009 on Environmental Protection and Management in which there is a "*vicarious liability* principle", which states that business actors can be held responsible for their actions, including the actions of others, but still in the environment of their business activities or consequences stemming from their activities that can harm others. The company that gives the order or acts as the leader, has the capacity to be held accountable to be punished. Article 116 of Law No. 32 of 2009 on Environmental Protection and Management serves to anticipate the possibility of corporations being able to take refuge behind contractual relationships that they do with other parties, then Article 116 paragraph (2) of Law No. 32 of 2009 on Protection and Management of the Environment provides an expansion of responsibility, so that the conclusions that can be drawn from Article 116 paragraph (2) of Law No. 32 of 2009 on Protection of Environment and Environmental Management, namely: Deeds are in the name of corporations; Based on working relationships or other relationships; Act within a corporate environment. Viewed from the subject of *liability*, the meaning of Article 116 paragraph (2) of Law No. 32 of 2009 on the Protection and Management of Lingkungan Hidup, the responsible parties are the givers or decision makers or who act as leaders; Based on work relationships or based on other relationships.<sup>9</sup>

Alone or collectively/together. Formulation of environmental criminal provisions as stipulated in Law No. 32 of 2009 on Environmental Protection and Management, lists elements of intentionality or negligence/ negligence. The inclusion of intentional or arbitrary elements, it can be said that criminal liability in Law No. 32 of 2009 on Environmental Protection and Management adheres to the principle of *liability based on fault* (accountability based on error). This means that Law No. 32 of 2009 on Environmental Protection and Management adheres to the principle of error or culpability. Although Law No. 32 of 2009 on Environmental Protection and Management has included corporations as parties that can be criminally burdened, based on the results of research conducted by Iwan Arto Koesoemo found the fact that there is difficulty to prove corporate criminal responsibility in order to meet the elements of criminal delik.<sup>10</sup>

Related to the above opinion, that corporate criminal accountability and holding corporate criminals accountable is not easy, because corporate crime is an organized crime, complex, difficult to see, the occurrence of spread of responsibility and difficult to prove. Moreover, in Indonesian criminal law that still demands that acts against the law must be done by someone who can be accounted for. This can be seen from the least number of corporations found guilty in court for committing environmental crimes, especially forest fires and the number of corporations that are stopped by the police because there is not enough evidence to ensnare the corporation as a criminal perpetrator that can be held accountable.<sup>11</sup>

The burning of forests by corporations certainly has an impact on major environmental damage. From the legal side, the burning of this forest has a legal impact both in terms of administrative law and criminal law. In the context of criminal law, Law No. 32 of 2009 on Environmental Protection and Management should be a guideline in law enforcement to hold criminal liability because in the law has recognized that corporations (business entities) are the subject of criminal law that can be held accountable. In addition to this, Law Number. 32 Of 2009 has also regulated what things should be done and prohibited in the protection and management of the environment.<sup>12</sup>

In fact, the author obtains from electronic media related to legal events conducted by employees in a company or corporation, it can be illustrated that:

"Investigators of the Directorate of Special Criminal Investigation or Task Force Gakkum Karhutla Polda Riau, carrying out phase two, namely handing over suspects and evidence. This was done after the file was completed by the Riau High Prosecutor's Office, at 14.00 WIB. Met in his office on Friday, February 7, 2020, the Head of Public Relations of Riau Police Kombes Pol Sunarto said that three investigators of the Riau Police Special Criminal Investigation Directorate who are members of the Riau Police Gakkum Task Force have carried out the submission of suspects and evidence (Phase two) for the Karhutla Corporate Criminal Case PT. Teso Indah to the Riau High Prosecutor's Public Prosecution Team. This case is based on Police Report No: LP/464/X/2019/Riau/ditreskrimsus dated October 15, 2019." Furthermore, in his statement, Sunarto said that the area of oil palm plantations belongs to PT. Teso Indah, located in The Area of Rantau Bakung Block

<sup>8</sup> Hussein Aaron M, *Milieu Live: Problem, Management and Enforcement Legal*, (Jakarta: Earth Script, 1996), Pp. 180-181.

<sup>9</sup> Law Number 32 Year 2009 Article 112 verse (2) about Protection and Management Milieu Live.

<sup>10</sup> Ivan Arto Koesoemo, *Corporation As Perp Follow Punishment Milieu Live: Studies About Constraints That Faced By Apparatus Enforcement Law Deep Application Rule Punishment Deep Skeleton Prosecution Towards Corporation As Perp Follow Punishment Milieu Live Of Indonesian* Jakarta: Thesis University Indonesia, 2005, Pp. 183.

<sup>11</sup> Andi Hamzah, *Criminal Code and Kuhap*, (Jakarta: PT Rineka Copyright, 1990), Pp. 28.

<sup>12</sup> Law Number 32 Year 2009 about Protection and Management Milieu Live.

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T18, T19 & T20 covering an area of 31.81 Ha bordering the Kerumutan Wildlife Nature Reserve and Block N14, N15 & N16 covering an area of 37.25 Ha in The Village of Rantau Bakung West Rengat District Indra Hulu. "Here the total area of land burned is an area of almost 70 hectares, and in the case of Karhutla this is a corporate case, established as a suspect is Askep PT Tesso Indah, namely Sutrisno,"<sup>13</sup>

From the chronology of the case above, legal proceedings have been carried out against the company (corporation) as contained in the Rengat District Court Decision No. 59 / Pid.B / LH / 2020 / PN.Rgt on behalf of Sutrisno as in the indictment of the Public Prosecutor, where Sutrisno as a person who gave orders or people acted as the leader of activities because his negligence resulted in the exceeded ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage" as stipulated in Article 99 paragraph (1) *jo* Article 116 paragraph (1) letter (b) of the Law of the Republic of Indonesia Number 32 of 2009 on Environmental Protection and Management".<sup>14</sup>

The phenomenon mentioned above, shows the law enforcement carried out by law enforcement officials in applying Law Number. 32 of 2009 on Environmental Protection and Management due to the inequality of law enforcement when all people and legal entities are considered *equality before the law* for that when corporations are suspected of committing crimes for the environment, it must be processed in accordance with the applicable Law, especially the Environmental Protection and Management Act. For that in this study the author tried to examine the extent to which corporations can be ensnared in accordance with Law Number. 32 of 2009 on Environmental Protection and Management or other laws and regulations.

Based on the above description, the author in this thesis proposal will discuss the "**Criminal Liability Committed by Corporations for Environmental Damage as a Result of Forest and Land Fires (Case Study No. 59/Pid.B/Lh/2020/Pn.Rgt)**".

### **B. Problem Formulation**

From the description above, that the problems in this thesis, are:

- a. What is the urgency of criminal liability committed by corporations for environmental damage as a result of forest and land fires according to Article 99 paragraph (1) *jo* Article 116 paragraph (1) letter (b) of Law No. 32 of 2009 on Environmental Protection and Management (UUPLH)?
- b. What is the form of criminal liability and ideal pattern of prosecution against corporations that do environmental damage as a result of forest and land fires in case 59/Pid.B/LH/2020/PN.Rgt?

## **II. RESEARCH METHODOLOGY**

### **1. Research Approach**

The approaches used in legal research as according to Peter Mahmud Marzuki are as follows:<sup>15</sup>

- a. *Case approach (case approach)*
- b. *Statutory approach (statute approach)*
- c. *Pendekatan historis (historical approach)*
- d. *Comparative approach (comparative approach)*
- e. *Pendekatan konseptual (conceptual approach)*

### **2. Type of research**

This type of research in legal research is normative or doctrinal legal research. Peter Mahmud Marzuki defines that doctrinal legal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzing the relationships between regulations explaining areas of difficulty and possibly predicting future development.

### **3. Source of Research Data**

Data sources used in a study can be in the form of data obtained through library materials and / or directly from the community. Data obtained directly from the community is called primary data, while data obtained through library materials and documentation is called secondary data, and tertiary data is data that is used to explain primary and secondary legal data.

## **III. DISCUSSION**

### **A. Urgency of Criminal Liability Committed by Corporations For Environmental Damage as a Result of Forest and Land Fires According to Article 99 Paragraph (1) Jo Article 116 Paragraph (1) Letter (B) of Law No. 32 of 2009 on Environmental Protection and Management (PPLH Law)**

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<sup>13</sup> Pearl Romdhoni, *File Complete, Polda Riau Turn over Thing Proof Karhutla PT Tense Beautiful Wed Kejati*, Loaded deep <https://www.inaneews.co.id/2020/02/>. Accessed at date 14 May 2021.

<sup>14</sup> Directory Verdict Court Great Republic Indonesian Loaded deep <https://putusan3.court.go.id/directory/verdict/009a>. Accessed date 15 May 2021.

<sup>15</sup> Peter Mahmud Marzuki (A), *"Revised Edition Legal Research, 12th Print"*, (Jakarta: Prenada Media Group, 2016), p. 57.

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Understanding corporations according to the Supreme Court regulation of the Republic of Indonesia Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations is a collection of people and / or wealth that is organized, whether it is a legal entity or not a legal entity. Corporations are one of the legal subjects stipulated in Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH). This means that corporations are recognized as the subject of environmental crimes considering that the Law regulates criminal provisions related to the environment. Both regulations have not placed corporations as subjects in criminal law. Related to this, theoretically known there are two motives of corporate crime, namely:

- a. The purpose of the corporation to obtain the maximum profit reflected in individual characteristics; and
- b. There is a contradiction between the goals of the corporation and the needs of competitors, countries, workers, consumers, and society.<sup>16</sup>

Corporations as the subject of criminal law indicate that criminal liability can be imposed on corporations. Muladi and Dwidja Priyatno argue that regarding corporations, corporations according to positive law in Indonesia as criminal perpetrators can be criminally accounted for and can be criminally prosecuted. This is evidenced by the regulation of corporate criminal acts in laws and regulations of a general and special nature, such as Law No. 31 of 1999 <sup>17</sup>*jo.* Law No. 20 of 2001 on The Enforcement of Criminal Acts of Corruption, Law No. 32 of 2009 on Protection and Management of the Environment, Law No. 8 of 2010 on Combating Money Laundering Crimes, and other laws and regulations. The Criminal Code (Criminal Code) does not regulate corporations as the subject of criminal law, as well as Law No. 8 of 1981 on Criminal Procedure Law or known as the Criminal Procedure Law (KUHAP).

Some examples of environmental criminal cases involving corporations one of them in the case study of this research discussion are related to PT Tesso Indah Land that burned twice during August 2019 in Rantau Bakung Estate, West Rengat Subdistrict, Indragiri Hulu, Riau. First, on August 19, 2019 in Block T 18.19 and 20 covering an area of 28.1 hectares. Second, on August 26, 2019 in Blocks N 14, 15 and 16 covering an area of 35.1 hectares. Total 63.2 hectares.<sup>18</sup>

Forest and land fires in Indonesia, during 2019, until September reached 857,756 hectares. For this reason, KLHK continues to socialize to the site level to change people's behavior. If you look at the spread of the area, the area burned, among others, especially in the Riau Islands area there was a fire area of 6,124 hectares.<sup>19</sup>

Based on the KLHK report, it said, legal proceedings have been carried out against 79 concessionaire companies and one individual, both sealing and lawsuits. "Based on the type of company, it consists of 24 foreign companies and 52 domestic companies. The Director General of Law Enforcement is conducting investigations and investigations, "A total of 79 companies consist of 59 oil palm plantations, one sugarcane plantation, 15 HTI, three HPH, and one ecosystem restoration. The area burned in the concession area as a whole was 27,192,271 hectares and individual land was 274 hectares. If you look at the distribution of territory, the 70 companies are spread in several regions, such as West Kalimantan 33 concessions, Central Kalimantan (11), South Kalimantan (2), East Kalimantan (2), North Kalimantan (2), Riau (10), Jambi (7) and South Sumatra (12).<sup>20</sup>

In this study, the case study is Verdict No. 59/Pid.B/Lh/2020/Pn.Rgt and is associated with the urgency of criminal liability committed by corporations for environmental damage as a result of forest and land fires will be outlined as follows:

"On Monday, August 19, 2019 at around 10:30 pm there has been a fire in the Kerumutan Forest that borders Block T.19 of pt. TESO INDAH Estate Rantau Bakung where the location includes locations that must be protected, managed and environmental monitoring for activities carried out by PT. TESO IS BEAUTIFUL."<sup>21</sup>

That based on the benchmarks for the results of the sample test above using the basis of PP Number: 04 of 2001 on Damage Control and / or Environmental Pollution Related to Forest and or Land Fires, so that from the results of testing conducted by Land Damage Experts Due to Forest and Land Fires in his Expert Certificate DR. Ir. Basuki Wasis, M.Si concluded:

- a. There has been land and environmental damage due to land fires in PT. Teso Indah Rantau Bakung Village, West Rengat District, Indragiri Hulu Riau Province covers an area of 63.2 hectares.
- b. The results of field observations and analysis of soil and environmental damage showed that indeed at the location of the burned land there had been soil and environmental damage because it had entered the standard criteria of damage (PP Number

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<sup>16</sup> Sri Wulandari, "Accountability Law Punishment Towards Crime Corporation of Field Economics", repository.untagsmg.ac.id. Accessed at date 25 May 2021.

<sup>17</sup> Muladi and Dwidja Priyatno, *Accountability Punishment Corporation*, (Jakarta: Prenadamedia Group, 2010), Pp. 110.

<sup>18</sup> Judge Law PT Tesso (Tesso) Beautiful: Punishment Fine Rp 10 AD and Punishment Addition Rp 24 Billion. <https://sena.rai.or.id/wp-content/uploads/2021/04/Bentangan.pdf>. Accessed at date 28 May 2021.

<sup>19</sup> Mongabay Site News Milieu. <https://www.mongabay.co.id/2019/10/22/kebakaran-hutan-dan-lahan-sampai-september-2019-hampir-900-ribu-hektar/>. Accessed On May 29, 2021.

<sup>20</sup> *Ibid.*

<sup>21</sup> Directory Verdict Court Great Verdict Number 59/Pid.B/Lh/2020/Pn.Rgt. [file:///C:/Users/HP/Downloads/putusan\\_59\\_pid.b\\_lh\\_2020\\_pn\\_rgt\\_20210823.pdf](file:///C:/Users/HP/Downloads/putusan_59_pid.b_lh_2020_pn_rgt_20210823.pdf). Accessed at date 1 June 2021.

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- 4 of 2001) at PT. Teso Indah Rantau Bakung Village, West Rengat District of Indragiri Hulu Riau Province for the criteria for damage parameters of species diversity and flora population and damage to subsidence parameters.
- c. The results of field observations and environmental damage analysis showed that indeed at the location of the burned land there has been damage to the land and environment because it has entered the standard criteria of damage (PP No. 4 of 2001) for the criteria for damage parameters of species diversity and population of fauna / soil animals.
  - d. The results of soil analysis in the Environmental Biotechnology Laboratory (ICBB) have occurred soil damage because it has entered the standard criteria of damage (PP Number 4 of 2001) for parameters pH, organic C, N total, cation exchange capacity (KTK), and available water content".<sup>22</sup>

That based on the information of Land Damage Experts Due to Forest and Land Fires in his Expert Certificate DR. Ir. Basuki wasis, M.Si, stated that land damage due to forest and land fires as in the Expert Certificate above is Alternative, meaning that if one of the 4 (four) criteria for damage as stated above then the damage that occurred has exceeded the standard criteria of environmental damage, While that has been tested from laboratory results there are 4 (four) criteria that have been met beyond the standard criteria of environmental damage function.<sup>23</sup>

Considering, that in the case of a quo the Defendant has been charged by the Public Prosecutor with Alternative Charges namely:

"The First Primair Article 98 Paragraph (1) Jo Article 116 Paragraph (1) Letter (B) of Law Number: 32 of 2009 concerning Environmental Protection and Management; Subsidair Article 99 Paragraph (1) Jo Article 116 Paragraph (1) Letter (B) of Law Number: 32 of 2009, Concerning Protection and Management of the Environment; Or Second Article 109 Jo Article 68 of Law No. 39 of 2014 concerning Plantations".<sup>24</sup>

In view of the legal and legal provisions relating to this ruling, in particular Article 98 paragraph (1) jo Article 116 paragraph (1) letter (b) of Law Number: 32 of 2009 on Protection and Management of the Environment and Article 99 paragraph (1) jo Article 116 paragraph (1) letter (b) of Law Number: 32 of 2009, on Protection and Management of the Environment and other relevant laws:

"Declaring Defendant Sutrisno Bin Fahrudin Alias Sutris Has Been Proven Legitimately and Convincingly Guilty of Criminal Acts "Because His Negligence Resulted in the Exceeded Ambien Air Quality Standards, Water Quality Standards, or Standard Criteria for Environmental Damage. Dropping The Criminal Against The Accused The Refore With Imprisonment For 1 (One) Year And 4 (Four) Months and Criminal Fines amounting to Rp.1,000,000,000,- (One Billion Rupiah) With The Provision If The Fine Is Not Paid Replaced With a Criminal Confinement For 2 (Two) Months".<sup>25</sup>

Based on the case studies described above that become the urgency of criminal liability committed by corporations for environmental damage as a result of forest and land fires can be explained in the following points.

### **1. Impact on Society**

According to Geis, every year corporations are responsible for thousands of deaths and bodily disabilities that occur around the world. The risk of death and disability caused by the corporation can be caused both by products produced by the corporation and in the production process. The community is one of the victims of corporate criminal acts in the field of environment either directly or indirectly, especially people who live around the industry, who experience material losses, health problems, and safety.<sup>26</sup>

This is seen in the case of land burning in Riau where PT Teso Indah land burned twice during August 2019 in Rantau Bakung Estate, West Rengat Subdistrict, Indragiri Hulu, Riau. First, on August 19, 2019 in Block T 18.19 and 20 covering an area of 28.1 hectares. Second, on August 26, 2019 in Blocks N 14, 15 and 16 covering an area of 35.1 hectares. Total 63.2 hectares.

In addition, corporate criminal acts in the field of the environment also cause losses in the social and moral fields. The impact of corporate crime is to undermine public confidence in business behavior. *The President Of the Commission on Law Enforcement and The Administration of Justice* once stated that corporate crime is the most important crime of concern not only because of its enormous losses, but its damaging consequences to moral measures of American business behavior. Business crimes (corporations) undermine public confidence in the business system, because such crimes are integrated into the structure of legitimate business.<sup>27</sup>

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Kristian *Urgency Accountability Punishment Corporation*, Quoted from website: [jhp.ui.ac.id/index.php/article/36](http://jhp.ui.ac.id/index.php/article/36). Accessed at date 27 May 2021.

<sup>27</sup> *Ibid.*

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## 2. Impact on the Environment

The impact of corporate crime in the environmental field in general not only drains natural resources, but also human capital, social capital, even sustainable institutional capital. So this corporate crime will not be solved just by providing victims, but the impact on environmental damage due to exploitation that drains natural resources certainly takes a long time to be able to return to the way it was, some even can not return because of its nature. Related to this, the recovery of rivers and rice fields that are victims of Rancaekek environmental pollution due to the disposal of factory waste takes a long time and costs are not small. The lapindo mud case is one example of victims of pollution / environmental damage who may not be able to recover or return to their original state considering the fact that the mud bursts still occur today. This means that corporate criminal acts in the field of environment cause environmental damage that can be temporary or permanent so that the criminal act not only needs to be repressively enforced but also preventive. Criminal law as one of the law enforcement instruments stipulated in the PPLH Law must play an effective role as a repressive and preventive enforcement of environmental criminal acts.<sup>28</sup>

## 3. Impact on the State

The 5th Congress on the Prevention of Crime and the Development of Law Breakers organized by the United Nations Agency in September 1975 in Geneva provided understanding by expanding against *illegal abuse of economic power*, such as environmental pollution. Environmental crimes due to industrial activity have a large financial loss that disrupts the economic stability of the country considering the decrease in state revenue due to the cost of recovery of pollution / environmental damage incurred by the state.<sup>29</sup>

It can also result in national development in order to prosper the community is hampered because the state finances that should be used for the public interest are diverted as the cost of restoring the polluted environment. This fact is seen in the case of environmental pollutants due to land burning. Which resulted in a haze disaster has damaged air quality to be unhealthy even into the dangerous category. As a result of this haze disaster, the impact is not only felt in the territory of Indonesia, but also the impact is also felt by neighboring countries such as Singapore, Malaysia and Brunei Darussalam. Of course, the problem of this haze disaster is a serious disaster so it needs serious handling also in terms of stopping the asab fog disaster and in terms of law enforcement.<sup>30</sup>

The negative impacts of corporate criminal acts in the vast and complex environmental field cause the need for corporations to be held accountable for environmental crimes committed. Things that can be used as a basis for improvement or reasons that the corporation as a maker and at the same time responsible are as follows:

- a. Because in various economic or *fiscal* crimes, the profits obtained by corporations or losses suffered by the community are so large that it is impossible to balance if the criminal only funds the board;
- b. By only funding the board, there is no or no guarantee that the corporation will not repeat the criminal act again. So that if it funds the corporation with its type and weight in accordance with the nature of the corporation, it is expected that the corporation can comply with the relevant regulations"<sup>31</sup>

Corporate justification can be accounted for according to Muladi based on the following:

- a. On the basis of an integralistic philosophy, that is, everything should be measured on the basis of balance;
- b. On the basis of family;
- c. To eradicate *the anomie of success* (success without rules);
- d. For consumer protection; and
- e. For the advancement of technology."<sup>32</sup>

In this regard, Elliot and Quinn presented several reasons regarding the need for the loading of criminal liability to corporations, as follows:

- a. "Without corporate criminal liability, companies are not impossible to avoid criminal regulations and only their employees are prosecuted for committing criminal acts that are actually criminal acts and mistakes from business activities carried out by the company.
- b. In some cases, for procedural purposes, it is easier to sue a company than its employees.

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<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> Tim Anti Corruption Clearing House, *Crackdown Perp Combustion Forest With Pendekatan UU Corruption*, <https://acch.kpk.go.id/id/component/content/article?id=218:penindakan-pelaku-pembakaran-hut-an-with-approach-law-corruption>. Accessed at date 3 June 2021.

<sup>31</sup> *Sri WulandariPlace. Cit*

<sup>32</sup> Yudi Chrismen, *Accountability Punishment Corporation deep Crime Economics*, [ejournal.unri.ac.id/index.php/JIH/article/view/2089](http://ejournal.unri.ac.id/index.php/JIH/article/view/2089). Accessed at date 28 May 2021.

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- c. In a serious criminal offense, the company has more ability to pay the fines imposed than employees of the company.
- d. The threat of criminal charges against the company can encourage shareholders to exercise oversight of the activities of companies in which they have invested.
- e. If a company has profited from illegal business activities, then the company should bear sanctions for criminal acts committed, not employees of that company.
- f. Corporate criminal liability can prevent the company from pressuring its employees, either directly or indirectly, so that the employee seeks profit not from doing illegal business activities.
- g. Adverse publicity and the criminal imposition of fines against the company can serve as a deterrent for the company to carry out illegal activities, which is unlikely to happen if the person charged is its employee."<sup>33</sup>

Sutan Remy Sjahdeini stated that it is necessary to apply the concept of The Board and the corporation both as criminal perpetrators and both must bear criminal responsibility in corporate crimes, which are based on the following:

- a. "If only the manager is burdened with criminal liability, it becomes unfair to the people who have suffered losses because the manager in doing his actions is for and on behalf of the corporation and is intended to provide benefits or avoid reducing financial losses for the corporation.
- b. If the criminal liability is only a corporation while the administrator does not have to assume responsibility, then this system will be able to allow managers to act "throw stones hiding hands" or divert accountability. In other words, the board will always be able to take refuge behind the back of the corporation to release itself from responsibility on the pretext that its actions are not personal acts and not for personal gain, but are actions that it does for and on behalf of the corporation and for the benefit of the corporation.
- c. The disclosure of criminal liability to corporations may only be *vikarius*, or not directly (doctrine of vicarious liability), the liability for non-criminal acts committed by someone is charged to the other party. In the case of criminal liability, the corporation is transferred its criminal liability to the corporation. The disclosure of criminal liability to the corporation is only possible in a *vikarius* because the corporation cannot do itself a legal act. That is, all legal acts that are right or wrong both in the civil field and regulated by criminal provisions, are carried out by humans who carry out corporate stewardship"<sup>34</sup>

The criminal liability of the corporation must still pay attention to the criteria presented by Clinard and Yeagar as follows:

- a. *The degree of loss to the public.* (Derajat kerugian terhadap *public*);
- b. *The lever of complicity by high corporate managers.* (Tingkat keterlibatan oleh jajaran manager);
- c. *The duration of the violation.* (Lamanya pelanggaran).
- d. *The frequensi of the violation by the corporation.* (Frekuensi pelanggaran oleh korporasi);
- e. *Evidence of intent to violate.* (Evidence intended to commit an offense);
- f. *Evidence of extortion, as in bribery cases.* (Evidence of extortion, such as in bribery cases);
- g. *The degree of notoriety engendered by the media.* (The degree of public knowledge about the negative things brought about by media coverage);
- h. *Precedent in law.* (Jurisprudensi); *The history of serious, violation by the corporation.* (Riwayat pelanggaran-pelanggaran serius oleh korporasi);
- i. Deterrence potential. (Possible prevention);
- j. *The degree of cooperation evinced by the corporation.* (Degree of corporate cooperation indicated by the corporation)".<sup>35</sup>

### **4. Answers to the Urgency That Occurs Against Criminal Liability Committed by Corporations For Environmental Damage As a Result of Forest and Land Fires**

According to Article 1 paragraph 1 perma ri No. 13 of 2016, on the Procedure for Handling Criminal Cases by corporations, the corporation, explained the corporation is a collection of people and / or wealth organized, whether it is a legal entity or not a legal entity. While according to Article 3, it is explained that criminal acts by the Corporation are criminal acts committed by people based on working relationships, or based on other relationships, either alone or together acting for and on behalf of the Corporation within and outside the Corporate Environment.<sup>36</sup>

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<sup>33</sup> Sutan Remy Sjahdeini, *Accountability Corporation, Quoted from Hanafi Ag and Mahrus Ali, System Accountability Punishment: Development and Application*, (Jakarta: Rajagrafindo Persada, Mold First, 2015), Pp. 169-170

<sup>34</sup> Sutan Remi Sjahdeini, "Accountability Punishment Corporation", (Jakarta): Graffiti Press, 2006), Pp. 162-163.

<sup>35</sup> *Ibid.*

<sup>36</sup> Regulation Court Great Ri No. 13 year 2016 about Ordinances Handling Things Follow Punishment by Corporation.



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Before it goes far, corporations have some responsibilities. In uuplh also regulated about corporate responsibility, namely in Article 45 and Article 46. In Article 45 of the ACTPLH explains that if a corporate criminal act has a criminal threat of fines aggravated by a third.<sup>37</sup>

With regard to corporate responsibility based on the above provisions, that the corporation as a legal subject who commits a criminal act can be held criminally responsible by law, related to this in the science of criminal law, criminal liability there are 2 (two) views, including monistic views and dualistic views. The monist view was among others put forward by Simons who formulated "*Strabaarfeit*" as "*Eene Strafbaar geste/de, onrechmatige, met schuld in verband staande hendeling van een orekeningvatbaar*" (an act which by law is threatened with punishment, contrary to the law, committed by a guilty person and that person is held responsible for his actions). According to the monist view of *Strabaarfeit* or *criminal act* argues that the elements of criminal liability that concern the delik maker include:

- a) Responsible ability;
- b) Errors in the broadest sense (intentional or accidental);
- c) There is no excuse for forgiveness and forgiveness."<sup>38</sup>

Speaking of this, the question arises whether it is appropriate when criminal charges are charged to corporations. Sutan Sjahdeini, in criminal law, once argued that: "The understanding of corporations is not always about legal entities, because it includes those that are not legal entities that include not only foundations, legal entities, corporations or limited distributions, but also such as firms, CVs, or fellowships (*maatschap*)".<sup>39</sup>

Corporation as the subject of criminal acts formulation is in the laws and regulations outside the Criminal Code, then the next step in charging criminal liability to the corporation is to determine the rules or conditions regarding when a corporation is said to commit a criminal act. In other words, it must be determined the guidelines or limits of a criminal act can be committed by the corporation. In Law No. 32 of 2009 concerning Environmental Protection and Management Article 99 Paragraph (1). "Any person who due to his negligence results in the exceeded ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage, is punished with a prison sentence of at least 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and at most Rp3,000,000,000.00 (three billion rupiah)". Similarly, the provisions of Law No. 32 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, especially Article 20 paragraph (2) specified that: "The crime of corruption is committed by the corporation if the criminal act is committed by people both based on working relationships and based on other relationships, acting in the corporate environment both alone and together". Under these provisions, a criminal offence is said to be committed by a corporation if based on a working relationship or other relationship, and in a corporate environment. The condition of "based on other relationships" is still too broad, because it could be people who do not have a direct working relationship with the corporation, can cause the corporation to take responsibility for criminal acts committed.<sup>40</sup>

In summary, is there corporate involvement in forest burning cases? In fact, there is. Corporations in this case have an interest in clearing land and to do oil palm cultivation, and then also in line with the statement that the corporation has a responsibility as the holder of regional control, because 99% of forest burning in this case is human. The burning of forests here can be prevented and does not happen again as a recurring disaster. Then the next question that arises is, how is the accountability? Therefore, the source replied that the responsibility here is absolute through *strict liability* that has previously been discussed. Later *strict liability* here as a basis to ask for compensation that later the compensation is given to the community or plaintiffs who have been harmed by their constitutional rights as Indonesian citizens who have the right to have a good living environment.

Referring to this, the main motivation of the corporation to commit the crime of burning forests in Pelalawan is because by clearing land or *land clearing* through burning, the costs incurred will be cheaper and the implementation time is faster, even in this case the corporation considers that burning ash can increase land smelting, increase the pH of the land and be able to control the burned land. While what is done with land clearing without burning or PLTB, will cost a lot, which is estimated to be between 30 to 40 million rupiah per hektarnya. In this case, burning forests is enough to cost 3 to 4 million rupiah. The source added that in fact land clearing without burning or PLTB takes a relatively long process and involves a lot of labor, this is seen by corporations as heavy treatment because they have to pay wages for existing workers, therefore corporations tend to choose to burn land.

In fact, the legal policy issued by the government in tackling forest fires is generally in all regions of Indonesia and generally in this study in the Riau Islands Province in the period 2015 to this second, has issued Presidential Decree No. 11 of 2015 on land

<sup>37</sup> Koesnadi Hardjasoemantri, *Law System Milieu*, (Yogyakarta: Gadjah Fashion University Press), Pp. 436.

<sup>38</sup> Erdiansyah, "*Implementation Accountability Punishment Corporation Combustion Forest and Land of Province Riau*", *Journal Science LawFull*. 4, No.3, September 2014-January 2015, Pp. 142

<sup>39</sup> Sutan Remy Sjahdeini, *Accountability Punishment Corporation*, (Jakarta: Graffiti Press, 2007), Pp. 164.

<sup>40</sup> Chairul Huda *From Follow Punishment Without Offence Towards To No Accountability answer Punishment Without Offence*, (Jakarta: Mold Wed-2, Gold, 2006), Pp. 68.

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fire management which was later updated with Presidential Decree No. 3 of 2020. Presidential Decree No. 3 of 2020 corrects the previous Presidential Decree by giving greater authority to the local government, both the governor and the regent / mayor with the task of making the local government as the commander of the task force that is expected to be part of overcoming the threat of forest fires that occur every year, especially in Riau.<sup>41</sup>

This understanding is intended that the ministry of environment has now been given the authority to be a monitoring team or monitoring team in order to monitor forest fires, in addition to the formation of task forces in each province and city, in this case, supervision is supervised by the active Regional Disaster Management Agency, such as Manggala Agni involved. This effort is carried out in order to achieve the minimum target of fires in Riau during the period 2016-2019. Even the implementation that can be proven is that the Manggala Agni Task Force and blackout helicopters have been widely deployed.

The government conducts a criminal formulation in this case is to apply Law No. 32 of 2009 on Environmental Protection and Management. Where also applied *double track system* which means, considering that the corporation can not be imprisoned, then the main penalty is a fine. The fine in this case is further regulated by PERMA No. 13 of 2016, that the fine will be used as the main criminal. While the actions that can be done to ensnare the corporation as the main perpetrator of forest burning are divided into 6, namely:

1. Deprivation of profits earned by corporations through the criminal act of burning forests
2. Closure of all or part of the business premises (where activities are carried out)
3. Repairs due to criminal acts, such as repairing sewerage plants (IPAL),
4. Making payments that in this case are categorized as medical expenses for surrounding communities affected by forest burning, such as the treatment of communities affected by upper respiratory tract infections (ISPA).
5. Do what you've neglected.
6. The closure of the company has been under construction for three years."<sup>42</sup>

These six things can be done if the actions of a corporation or corporation in it commit an act that violates the provisions of the law and with violations committed by it has been carried out throughout the law enforcement process which is finally in the process of proving a criminal case trial. Also not enough of this, then the community must also play an active role in preventing and minimizing fires that occur in the Riau Islands Jurisdiction, especially in the Rengat State Watering Law Area. Referring to this problem, the government is considered very necessary to socialize, considering the number of people who do not understand about forest education, in addition, the community is also asked to remain cooperative in order to facilitate government regulations. Even so, the government also formed a task force that has been distributed in several regions, then the government empowers existing facilities and infrastructure. Then so that the community is enthusiastic, then there is the enactment of honor and provide training for forest and land fire management for the community itself. The community is expected to play an active role in reporting forest burning crimes that must later be passed on to the relevant and authorized parties in the area.<sup>43</sup>

### **B. Form of Criminal Liability and Ideal Pattern of Prosecution Against Corporations That Do Environmental Damage As a Result of Forest and Land Fires Case Number 59/Pid.B/LH/ 2020/ PN.Rgt**

Criminal liability imposed on the corporation for environmental crimes committed causes the corporation to be criminally punished for its actions. In this regard, the purpose of the corporate application concerns an integrative purpose that includes:

- a. The purpose of the prosecution is prevention (general and special). The purpose of special prevention is to educate and correct its criminals; While the general purpose of prevention is so that others do not commit such crimes. So if it is associated with the corporation, then the purpose of the corporate punishment so that the corporation does not commit criminals again, and so that other corporations are prevented from committing criminal acts, with the aim of public ordering.
- b. The purpose of the prosecution is the protection of the community. The protection of society as the purpose of the application has a very broad dimension, because it is fundamentally the purpose of all prosecutions. It is narrowly described as the subject of the court's discretion to seek a way through a criminal offence. Community protection is often said to be across prevention and includes so-called inadequacy. When associated with a corporation, so that the corporation can no longer commit a criminal act.
- c. The purpose of the prosecution is to maintain community solidarity. The maintenance of community solidarity in relation to the purpose of the prosecution is for the enforcement of community mores, and to prevent individual revenge, or unofficial revenge. This sense of solidarity is also often associated with the issue of compensation to victims of crimes committed by the

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<sup>41</sup> Inpres Number 11 Year 2015 About Countermeasures Fire Land.

<sup>42</sup> Understanding Accountability Corporation That Yes Get Dropped Punishment Him As Body Law So Shape Sentence Anyway Be Tumbling Fine. Law Number 32 Year 2009 About Protection And Management Milieu Live and Regulation Court Great Republic Indonesia No. 13 year 2016, about Ordinances Handling Things Follow Punishment by Corporation.

<sup>43</sup> Chairul Huda *From Follow Punishment Without Offence Towards To No Accountability answer Punishment Without Offence*, (Jakarta: Mold Wed-2, Gold, 2006), Pp. 68.

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state. If connected with the corporate application of compensation to victims is done by the corporation itself taken from the wealth of the corporation, so that social solidarity can be maintained.

- d. The purpose of the prosecution is the weighing or balance, namely the existence of a comparison between the criminal and the individual accountability of the perpetrator of the criminal act, taking into account several factors. The suffering attributed by the criminal must contribute to the process of rejuvinating the convict to the daily life of society and in addition the severity of the criminal must not exceed the guilt of the accused not even for any general preventing reasons."<sup>44</sup>

Criminals that can be imposed on corporations under the criminal provisions of Law No. 32 of 2009 on Environmental Protection and Management are criminal fines and additional criminal or acts of order in the form of confiscation of profits derived from criminal acts, closure of all or part of business premises and / or activities, improvement due to criminal acts, revelation of doing what is neglected without rights, and/or placement of the company under a maximum of 3 (three) years. But in its development, the criminal is considered to have not increased the effectiveness of corporate criminal law enforcement in the field of environment. This is seen from the still rampant cases of environmental pollution that occurred some time ago caused by corporate industrial activities, for example, land fires caused by negligence in the area of PT Tesso Indah which burned twice during August 2019 in The Rantau Bakung Estate, West Rengat Subdistrict, Indragiri Hulu, Riau. First, on August 19, 2019 in Block T 18.19 and 20 covering an area of 28.1 hectares. Second, on August 26, 2019 in Blocks N 14, 15 and 16 covering an area of 35.1 hectares. Total 63.2 hectares.

The form / type of sanctions for corporations and corporate administrators in it that commit environmental crimes as mentioned above are criminal fines with the provision of criminal threats of fines imposed to the giver or leader of the criminal act is aggravated by one-third, and additional criminal or acts of order. Related to this, *the ineffectiveness* of corporate criminal enforcement in the environmental field as seen from the fact that there are still many cases of environmental pollution committed by corporations raises several ideas related to the right pattern of prosecution to be applied in the enforcement of corporate criminal law in the field of environment, or in other words, the pattern of prosecution that has been regulated by Law No. 32 of 2009 on Protection and Management. The environment still has some weaknesses so that it becomes one of the factors of enforcement of corporate criminal acts in the field of ineffective environment. Therefore, it is necessary to regulate several provisions related to the pattern of prosecution based on environmental conservation, namely the imposition of criminal fines, regulation of the implementation of criminal fines, and environmental recovery measures.

### 1. Criminal Penalty

Criminal fines are originally a civil relationship that is when a person is harmed, it can demand damages compensation that depends on the amount of losses suffered, as well as the social position of the harmed. Criminal fines are the third type of criminal in Indonesia's criminal law, which basically can only be imposed for adults. Regarding criminal fines, Principle 16 of Rio's declaration on the concept of Development<sup>45,46</sup>

Continuously mention that:

*"National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the costs of pollution, with due regard to the public interest and without distorting international trade and investment".<sup>47</sup>*

*Polluter pays principle* (PPP) means that criminals must be responsible and must pay. The principle of polluters must pay can be understood as a distributive consideration, that is, when the polluter is a rich person (industry) and the victim is the poor (general public) then the principle of "deep pocket" or "ability to pay", namely PPP. Polluters must pay meaning that the criminal imposed should not be considered as a cost in conducting business activities. To ensure full accountability in cases of environmental violations, a given criminal must take into account the interests of the immediate victim who suffered harm as a result of the violation as well as the interests of the crowd.<sup>48,49</sup>

The imposition of criminal fines is expected to reduce criminal acts in the environmental field so that the criminal fines imposed must be greater than the profits obtained by the perpetrator from the proceeds of the crime. Related to this, the PPLH Law

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<sup>44</sup> H. Setiyono, *"Crime Corporation Analysis Victimology and Accountability Corporation Deep Law Punishment"*, (Unfortunate: Edition Second Mold First, Banyumedia Publishing, 2003), Pp. 121-123.

<sup>45</sup> Syaiful Bakhri, *Development System Punishment Indonesian* (Yogyakarta Ctk.Pertama Total Media, 2009), Pp. 129-130.

<sup>46</sup> P.A.F. Lamintang, *Law Penitensier Indonesian*, (Bandung Edition First Armico), Pp. 80.

<sup>47</sup> Michael Faure then Göran Skogh, *The Economic Analysis Of Environmental Policy And Law An Introduction*, (United Kingdom: Edward Elgar Publishing Limited, 2003), Pp. 26.

<sup>48</sup> *Ibid*, Pp. 26-27.

<sup>49</sup> Hartwiningsih, *Law Milieu Deep Perspective Policy Law Punishment*, (Surakarta: Mold First UPT Publishing and Printing UNS (UNS Press), 2008, Pp. 43

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stipulates that the threat of criminal fines for corporate actors is aggravated by a third. This provision makes the purpose of the criminal imposition of fines not realized when the profits obtained by the corporation from environmental crimes committed are greater than the criminal fine imposed on the corporation, considering the maximum threat of criminal fines in Law No. 32 of 2009 on Environmental Protection and Management is only Rp 15 Billion.

Michael Faure and Göran Skogh argue that:

"In determining the magnitude of the criminal fine, it must also be considered the seriousness of a crime, the deterrent effect of a criminal sanction, and the cost of prosecution for the benefit of the community and the convicted"<sup>50</sup>

An environmental crime that has a broad impact on the environment, the perpetrator is punishable by a large fine or a charge that provides a deterrent effect for corporate managers who commit criminal acts on behalf of their corporate interests. So, the greater the damage, the greater the sanctions. This aims, in addition to improving the polluted and /damaged living environment, also to provide a deterrent effect on criminal offenders. The imposition of a fine in accordance with the level of environmental damage makes the perpetrator know the extent of the impact of the crime he committed so that the perpetrator can regret his actions and not repeat his actions. The cost of prosecution is a cost incurred by the State to finance the process of imposing sanctions on perpetrators, including operational costs in court proceedings. Thus, the cost of imposing a sanction is added to the sanction because the social loss caused by a criminal act is a direct and indirect loss consisting of the cost of imposing sanctions.<sup>5152</sup>

In addition, the determination of the magnitude of criminal sanctions must also consider the amount of profit obtained by the perpetrator from the crime (*actual cost*), the cost of investigation, and the cost of restoring the polluted and / or damaged environment due to the crime. The greater the profit an person is expected to earn from a criminal act, the greater the sanction, for greater gain requires a large sanction also to carry out a prevention. This is because the perpetrators of criminal acts in the form of business entities commit criminal acts with the aim of obtaining profits. When the expected profit of a criminal act is not obtained by the perpetrator, because of the magnitude of the criminal fine and the existence of *sanksi* action in the form of confiscation of the proceeds of a criminal act, it can prevent the perpetrator to commit a criminal act again and prevent the prospective perpetrator of the crime to commit the crime. The size of sanctions should be increased to reduce the possibility of reuse of sanctions.<sup>5354</sup>

The amount of criminal fines must also take into account the cost of investigation, namely the costs incurred by the State in conducting the investigation process of the case or criminal act. In addition, a polluted and/or damaged environment due to a criminal act requires recovery efforts for the realization of environmental conservation where the recovery effort requires costs. The above exposure shows the need for changes in the criminal regulation of fines against corporations that commit environmental crimes to overcome the *ineffectiveness* of the imposition of criminal penalties. One of the ideas that emerged related to this criminal fine is regarding the imposition of criminal threats of fines. The pattern of prosecution related to criminal enforcement that should be used is with a *kalilipat* system by not formulating the nominal amount of fines in the formulation of each article that there is a criminal threat. With this pattern, the amount of fines that must be paid by the perpetrator must be greater than the seriousness of the crime committed as in the theoretical assumption of prevention theory (*deterrence*). In addition, there must be an arrangement that determines that the amount of fines paid by the perpetrator to the state is used directly in environmental conservation efforts. If there is no arrangement, then the pattern of criminal threat of fines with the *kalilipat* system will not be related to environmental conservation.<sup>5556</sup>

### **2. Arrangement of Criminal Implementation of Fines**

Criminal fines stipulated in the law in the field of environment require an implementing rule in order to still ensure the implementation of environmental conservation by criminal offenders even though the criminal fine cannot be paid by the perpetrator of the crime. Related to this, Law No. 32 of 2009 on Environmental Protection and Management does not regulate the provisions of the criminal implementation of fines that are not paid by the convict so that general provisions are applicable as stipulated in

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<sup>50</sup> *Ibid.*

<sup>51</sup> Steven Shavell, *Economic Analysis of Public Law Enforcement and Criminal Law*, Chapter 21-Page 6, [http://papers.ssrn.com/abstract\\_id=382200](http://papers.ssrn.com/abstract_id=382200). Dikases at date 28 May 2021.

<sup>52</sup> *Ibid*, Chapter 22 – Page 4.

<sup>53</sup> *Ibid*, Chapter 22 – Page 5.

<sup>54</sup> *Ibid*, Chapter 22 – Page 13.

<sup>55</sup> Herbert Hovenamp, "Rationality in Law and Economics", *George Washington Law Review*, No. 60, Year 1992, Pp. 293; Thomas J. Miles, "Empirical Economics and Study of Punishment and Crime", *University of Chicago Legal Forum*, 237, 2005, Pp. 238. deep Mahrus Ali, *Half Enforcement Threat Punishment Based Conservation Milieu Live: Study above Law of Field Milieu Live*. aifisdigilib.org/uploads/1/3/4/6. Accessed at date 30 May 2021.

<sup>56</sup> *Ibid.*

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Article 30 of the Criminal Code which states that if the criminal fine is not paid then it is replaced by the criminal cage where the criminal confinement should not be more than 8 (eight) months. The provision causes criminal penalties to be ineffective.<sup>57</sup>

Environmental crimes as one of the economic crimes are committed with the motive of getting the maximum profit. This means that the criminal fine threatened is aimed at preventing the perpetrator from benefiting from environmental crimes that he commits so that the perpetrator does not do so. The existence of a substitute cage causes the convict who commits a criminal act of economically motivated fisheries prefers to undergo a criminal replacement confinement with a short period, no more than 8 (eight) months, and do not pay a fine so that he still benefits from the fishery crime that he did.

The above explanation shows the need for Law No. 32 of 2009 on Environmental Protection and Management to contain specifically the rules of criminal implementation of fines for the achievement of environmental protection and management based on environmental conservation. Here are the rules of criminal implementation of fines stipulated in several laws and regulations:

### **1. Draft Criminal Law Law (Criminal Code Bill) of 2016**

#### **Chapter 84 Verse (1) :**

- a. Criminal fines can be paid by installment or adries within a period of time in accordance with the judge's ruling.
- b. If the criminal fine as referred to in paragraph (1) is not paid in full within the stipulated time frame then for the criminal unpaid fine can be taken from the wealth or income of the convict"<sup>58</sup>

#### **Chapter 85 Verse (1) :**

- a. If the taking of wealth or income as referred to in Article 84 paragraph (2) does not allow then the unpaid fine is replaced with a criminal social work, criminal supervision, or imprisonment, with the provision that the criminal fine does not exceed the category I fine.
- b. The duration of the substitute criminal as referred to in paragraph (1) is:
  - a) for criminal supervision, at least 1 (one) month and a maximum of 1 (one) year, the conditions as referred to in Article 80 paragraph (3); or
  - b) for the criminal imprisonment of substitutes, at least 1 (one) month and a maximum of 1 (one) year which can be aggravated at the latest 1 (one) year 4 (four) months, if there is a criminal penalty for concurrent or due to the criminal enforcement factor as referred to in Article 134.
- c. The calculation of the length of the replacement criminal is based on the size for each criminal fine of Rp15,000.00 (fifteen thousand rupiah) or less, combined with:
  - a) one hour of criminal social work substitute; or
  - b) one day of criminal supervision or a substitute prison sentence. (4) If after undergoing a substitute criminal, a portion of the criminal fine is paid then the length of the substitute's criminal is reduced according to the appropriate size in accordance with the provisions referred to in paragraph (3)".<sup>59</sup>

#### **Chapter 86 Verse (1):**

- a. If the taking of wealth or income as referred to in Article 84 paragraph (2) cannot be done then for criminal fines above category I unpaid is replaced with a prison sentence of at least 1 (one) year and the longest as threatened for the criminal offence concerned.
- b. The provisions referred to in Article 85 paragraph (4) apply also to paragraph (1) as long as the criminal offense is substituted."<sup>60</sup>

### **2. Law No. 8 of 2010 on Prevention and Eradication of Money Laundering (UUTPPU):**

#### **Article 87:**

- a. In the event that the convict's property is not sufficient to pay the criminal fine as referred to in Article 3, Article 4, and Article 5, the criminal fine is replaced with a maximum imprisonment of 1 (one) year 4 (four) months. Article 9 (1) In the event that the Corporation is unable to pay the criminal fine as referred to in Article 7 paragraph (1), the criminal fine is replaced with the confiscation of property belonging to the Corporation or Corporate Controlling Personnel whose value is equal to the criminal penalty imposed.
- b. In the event that the sale of property owned by the Corporation seized as referred to in paragraph (1) is insufficient, the criminal confinement of a replacement fine is imposed against the Corporate Controlling Personnel taking into account the fine that has been paid.<sup>61</sup>

<sup>57</sup> Republic Indonesian Book Law Law Punishment Article 30.

<sup>58</sup> Design Book Law Law Punishment (Criminal Code Bill) Year 2016 Article 84 Verse (1).

<sup>59</sup> Design Book Law Law Punishment (Criminal Code Bill) Year 2016 Article 85 Verse (1).

<sup>60</sup> Design Book Law Law Punishment (Criminal Code Bill) Year 2016 Article 86 Verse (1).

<sup>61</sup> Law No. 8 Year 2010 about Prevention and Eradication Follow Punishment Laundering Money Article 87.

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### 3. Sanctions of Remedial Action Due to Criminal Acts are Imperative

Criminal law in its efforts to achieve its goals is not only to impose criminals, but also there are times when using acts of action. Action is a sanction as well, but there is no retaliatory nature to it. The purpose of the action is to maintain the safety of the community against people who are widely or slightly seen as dangerous, and feared to commit criminal acts.<sup>62</sup>

The sanctions of action depart from the basic idea of "what is the application for" so that the sanctions of actions are more anticipatory against the perpetrators of such acts. The focus of sanctions is more focused on trying to help the perpetrator to change. Actions are different from punishments, because the purpose of the act is social, while the punishment is focused on the criminal applied to the crime committed. In addition, the sanctions of action stem from the basic idea of community protection and the construction or care of the maker. So, sanctions actions are more educational in nature.<sup>63,64,65,66</sup>

The environmental law contains obscurity in distinguishing the types of criminal sanctions, namely in the actions contained in additional criminals. Additional criminality in its development in Indonesia is as a social act, so it is not a punishment and was originally only applied in Java and Madura only. Additional criminals cannot be imposed alone, but are imposed together with the principal criminal, and are different from the principal criminal convictions.<sup>67</sup>

In addition, if you look at the concept of criminal enforcement oriented to environmental conservation has implications for inappropriately placing "the deprivation of profits derived from criminal acts", "the closure of all or part of the place of business and / or activities", "improvement due to criminal acts", "the implementation of what is neglected without rights", and / or "placement of companies under the establishment" in Law No. 32 of 2009 concerning Protection and Environmental management as an additional criminal. Because judging from the quality, these forms of sanctions are more severe than prison sentences, imprisonment and criminal fines. For example, when a person is sanctioned in the form of an obligation to repair the entire consequences of a criminal act because it is proven to cause severe environmental damage, the costs that must be incurred are far greater than the criminal penalty of a fine of 5 billion. Thus, it can be concluded that the sanctions of actions stipulated in the laws and regulations in the field of environment should not be regulated as additional criminals, but stand alone as sanctions so that the enforcement / enforcement of sanctions should not be cumulative with the main criminal, in this case criminal fines.

One of the sanctions of actions stipulated in environmental crimes is the improvement of criminal acts. In this regard, in some environmental laws, judges can impose direct actions to convicted polluters, such as the obligation to repair the damage they have done, for example in the form of repairs due to criminal acts, with the aim that criminals are aware of their mistakes and can correct themselves so that they become law-abiding citizens. Criminal offenders who are punished for improving the environment that has been polluted and / or damaged due to his actions can know firsthand the difficulty of restoring the environment to its original condition before the occurrence of the criminal act and the negative impact of his actions so that it is expected that the perpetrator realizes his mistake and tries to correct himself so as not to repeat the same mistake.<sup>68</sup>

For example, the perpetrators of river water pollution crimes are punished for restoring river water to its original condition before the occurrence of pollution can know the difficulty of returning the condition of the river water to its original state. Likewise, the criminal act of burning land and forests should be punished to restore it. This aims, so that the perpetrators can know the damage to the river water ecosystem directly, for example many fish in the river die where the fish can be a source of income for residents who live near the riverbank. As a result, the perpetrator realizes how widespread and serious the impact of the criminal act that he has committed where in the end the criminal perpetrator regrets his actions and tries to improve his own diriya so as not to repeat his actions.

Sanctions in the form of improvements due to the crime (restoration of environmental circumstances) in Law No. 32 of 2009 concerning Environmental Protection and Management are facultative. Sanctions actions that are facultative can hinder the implementation of environmental conservation. This is because the sanctions for improvement due to criminal acts are not always imposed on the perpetrators of environmental crimes while the sanctions for improvement due to criminal acts actually include sanctions that should take precedence to be applied because of the form of actions that aim directly to improve and / or restore the environment to its original state before the occurrence of criminal acts so as to realize environmental conservation. Therefore, the sanctions for improvement due to the crime should be imperative for the realization of a pattern of enforcement based on environmental conservation against corporations that commit environmental crimes.

The expansion of criminal liability as a subject of law is a form of expansion of criminal liability outside the criminal code, in the basic criminal law known as the expansion of criminal liability that is subject to *inclusion (deelneming)* is regulated in article

<sup>62</sup> Ruslan Saleh, *System Punishment in Indonesia*, (Jakarta: Mold Fifth Script New, 1987), Pp. 47.

<sup>63</sup> M. Sholehuddin, *System Penalty Deep Law Punishment*, (Jakarta: Edition First Rajagrafindo Persada, 2004), Pp. 17.

<sup>64</sup> J.E Jonkers, *Book Guidelines Law Punishment Indian Dutch*, (Jakarta: Mold First Building Script), Pp. 350.

<sup>65</sup> Sudarto, *Law Punishment Volume I A, Quoted from M. Sholehuddin, Loc. Cit.*

<sup>66</sup> *Utrecht Series Sari Lecture Law Punishment II, Quoted from Ibid.*

<sup>67</sup> Syaiful Bakhri *On. Cit, Pp. 216.*

<sup>68</sup> Michael Faure then Göran Skogh *On. Cit, Pp. 299.*

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55 of the Criminal Code, in the concept of participation cannot be enforced in article 116 paragraph 2 of the Environmental Protection and Management Act. Corporations that were not initially the subject of law in the criminal type of misconduct that can be caused are always shaped intentionally because participation involves the intention of the perpetrator to become an <sup>69</sup> *intellectualist auctor* behind the occurrence of delik by moving others.

- 1) "Judging by the aspect of norms there is a weakness of Article 69 paragraph 2 of the PPLH Law, allowing clearing land by burning forests. The provisions of Article 69 paragraph 2, used as a basis by stakeholders in the area to make implementing rules that allow clearing land by burning forests. The Forestry Law also has not given adequate attention to fire suppression efforts. Examples of prohibitions on burning forests can be countered for special purposes as long as they obtain permission from authorized officials (Article 50 paragraph 3 huruf d).
- 2) The next obstacle, not a single forest burner in 2015, was processed in court and received a permanent judge's ruling. Whereas forest burning crimes enter the category of *white collar crime*, *corporate crimes* and *extra ordinary crimes* because it needs extraordinary handling (Hartiwiningsih, 2015). Failure of enforcement can be seen, in 1998-2003 there were 49 cases, only 2 cases have received court rulings, namely PT. Adei Plantation & Industry, proven to burn 40 hectares of forest, sentenced to one year in prison and fined 15 billion rupiah, PT. National Sago Plantation burned three thousand hectares, losses worth 1.04 trillion rupiah, a fine-free verdict of two billion rupiah (Daryono, 2007). The reason is that judges don't have environmental certificates, and wildfire experts are scarce."<sup>70</sup>

From this, it can be concluded that in the end the judge must also understand about the principle *in dubio pro natura* which means that if there is doubt about the evidence and scientific evidence, the judge should side with the environment itself.

### **IV. COVER**

#### **A. Conclusion**

Based on the description of the previous chapters can be concluded as follows:

1. The urgency of criminal liability to corporations as perpetrators of environmental crimes is because corporate criminal acts in the environmental field have a widespread and complex negative impact that not only causes direct harm to society and the environment but also disrupts the financial and economic stability of the country, considering that environmental crimes are carried out in economic motivated. Impacts on society include material losses, health problems, safety, and losses in the social and moral fields, namely damage to public confidence in business behavior. The impact on the environment is a corporate criminal act in the field of environment that causes environmental damage that can be temporary or permanent so that the criminal act not only needs to be repressively enforced but also preventive. The impact on the state is related to the fact that environmental crimes resulting from the burning of land and forests in the interest of clearing corporate land have a large financial loss that disrupts the economic stability of the country considering the decrease in state revenue due to the cost of recovering pollution / environmental damage incurred by the state, and also has an impact on the harmony of international relations with other countries that are affected both from the effects of smog and climate change which if not prevented decisively and measured by the country through law enforcement of environmental crimes will further worsen the global climate.
2. The pattern of prosecution of corporations that commit environmental crimes in Law No. 32 of 2009 on Environmental Protection and Management still has some weaknesses so that it becomes one of the factors of enforcement of corporate criminal acts in the field of ineffective environment where this is seen from the number of corporations that commit environmental crimes. This fact gives rise to several ideas related to the right pattern of prosecution to be applied in the enforcement of corporate criminal law in the field of environment, namely the regulation of provisions related to the pattern of prosecution based on environmental conservation which includes the enforcement of criminal fines, regulation of criminal implementation of fines, and sanctions of remedial action due to criminal acts. The criminal penalty that should be used is by the kalilipat system by not formulating the nominal amount of fines in the formulation of each article that there is a criminal threat. Criminal fines stipulated in Law No. 32 of 2009 on Environmental Protection and Management require a special implementing rule so as not to apply general rules in the Criminal Code whose criminal code is too low for the achievement of environmental protection and management based on environmental conservation. The sanctions act stipulated in Law No. 32 of 2009 on Environmental Protection and Management should not be regulated as an additional criminal, but stand alone as a sanction of action so that its penetration should not be cumulative with the principal criminal. In addition, the sanctions for improvement due to criminal acts imposed on corporations should be imperative for the realization of a pattern of prosecution based on environmental

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<sup>69</sup> Eddy O.S, Hiariej, *Principles Law Punishment, Light Throw Book Group*, (Yogyakarta: This 1 University Throw Jaya, 2014), Pp. 55.

<sup>70</sup> [News.ipb.ac.id/News/id/b04367b62775d5a80983110e0676db14/gum-besar-kehutanan-ipb-jerat-pembakar-hutandeng-anpasalberlapis.html](https://news.ipb.ac.id/News/id/b04367b62775d5a80983110e0676db14/gum-besar-kehutanan-ipb-jerat-pembakar-hutandeng-anpasalberlapis.html)). Accessed at date 10 June 2021.

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conservation. And for criminal acts committed by the board / directors of corporations that commit environmental crimes stipulated in Law No. 32 of 2009 on Environmental Protection and Management must be further aggravated from the criminal sanctions as well as for fines that cannot be paid in the provisions of the Criminal Code can be replaced with additional criminals which in the rules are only limited for 8 (eight) must be limited to the limits or held payment provisions. Half of the criminal fines because if it remains with the provisions that exist today the criminal fine will never run optimally even though from the fine can be reused to repair the damaged environment.

### **B. Suggestion**

From what has been described in the writing in the previous chapters, there are several suggestions that want to be put forward as input, including the following:

In order for corporate subjects who commit criminal acts of burning forests and land can be aggravated the application of criminal penalties that are expected to increase the effectiveness of corporate criminal law enforcement in the field of environment in order to achieve environmental protection and management based on environmental conservation. in order to provide a deterrent effect and to restore the polluted environment as a result of the burning of forests and land.

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