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Corporate Responsibility Gap in Environmental Violation Cases in Indonesia

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Abstrak

Penegakan hukum terhadap korporasi dalam kasus perusakan lingkungan menghadapi berbagai kendala, terutama dalam kaitannya dengan kesenjangan antara sanksi perdata dan pidana. Penelitian ini bertujuan untuk mengkaji bagaimana regulasi perdata dan pidana diterapkan dalam kasus-kasus lingkungan, serta mengeksplorasi kesenjangan antara keduanya dan dampaknya terhadap pertanggungjawaban korporasi. Menggunakan metode penelitian hukum normatif, penelitian ini menganalisis peraturan perundang-undangan yang relevan, putusan pengadilan, dan doktrin hukum. Salah satu studi kasus yang digunakan adalah PT. National Sago Prima (NSP), di mana Mahkamah Agung menolak kasasi PT. NSP terkait gugatan perdata atas kebakaran hutan yang disebabkan oleh aktivitas mereka. Meskipun PT. NSP dikenai sanksi perdata yang signifikan, mencapai lebih dari Rp1 triliun, penerapan sanksi pidana tidak sebanding dengan besarnya kerusakan yang terjadi. Temuan penelitian ini menunjukkan bahwa terdapat celah dalam penegakan hukum pidana, di mana standar pembuktian yang lebih tinggi membuat penuntutan korporasi sulit dilakukan. Di sisi lain, hukum perdata, dengan beban pembuktian yang lebih ringan, lebih efektif dalam menuntut tanggung jawab korporasi. Penelitian ini merekomendasikan adanya harmonisasi antara regulasi perdata dan pidana serta peningkatan tanggung jawab individu pengurus korporasi untuk memperkuat efek jera dan memastikan pemulihan lingkungan. Kebaruan dari penelitian ini terletak pada usulan integrasi sanksi perdata dan pidana serta penggunaan teknologi modern dalam pembuktian.

Kata Kunci: *Tanggung Jawab Korporasi, Penegakan Hukum Lingkungan, Sanksi Perdata dan Pidana*

Abstract

Law enforcement against corporations in cases of environmental damage faces various obstacles, especially in relation to the gap between civil and criminal sanctions. This study aims to examine how civil and criminal regulations are applied in environmental cases, and to explore the gap between the two and their impact on corporate accountability. Using normative legal research methods, this study analyzes relevant laws and regulations, court decisions, and legal doctrines. One of the case studies used is PT. National Sago Prima (NSP), where the Supreme Court rejected PT. NSP's appeal regarding a civil lawsuit over forest fires caused by their activities. Although PT. NSP was subject to significant civil sanctions, reaching more than IDR 1 trillion, the application of criminal sanctions was not commensurate with the magnitude of the damage that occurred. The findings of this study indicate that there is a gap in criminal law enforcement, where higher standards of proof make it difficult to prosecute corporations. On the other hand, civil law, with its lighter burden of proof, is more effective in holding corporations accountable. This study recommends harmonization between civil and criminal regulations and increasing the individual responsibility of corporate managers to strengthen the deterrent effect and ensure environmental recovery. The novelty of this research lies in the proposed integration of civil and criminal sanctions and the use of modern technology in evidence.

Keywords: *Corporate Responsibility, Environmental Law Enforcement, Civil and Criminal Sanctions*

INTRODUCTION

Worldwide environmental concerns have centered on four key areas since the early 1990s: climate change, ozone depletion, biodiversity loss, and issues pertaining to international waterways. Overexploitation of natural resources is a major contributor to environmental degradation in Indonesia. Furthermore, overexploitation of natural resources beyond what their ecosystem can sustainably provide is a common issue (Wantu et al., 2023).

These environmental issues are a result of human actions that disregard environmental sustainability and balance. People still don't seem to care that their greed will eventually deplete the planet's resources, so they keep trying to satisfy their wants and requirements. Humans are defined as "people" under Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). This definition include both persons and commercial entities, whether they are legal or not (Abdussamad et al., 2024). Therefore, the word "person" encompasses both natural persons and legal entities such as companies. Businesses have the same rights and responsibilities as any other person or entity under the law.

Corporations play a vital role in economic activity, contributing to economic growth through tax revenues, foreign exchange and job creation.(Bakung et al., 2024). However, in carrying out their activities, corporations often exhibit deviant behavior that can be

categorized as corporate crime. In the environmental sector, corporate crime is a form of deviation that damages the environment. The impact of this deviant corporate behavior is not only limited to environmental damage, but also causes material losses, health, safety of life, and social problems. Corporate behavior that damages the environment shows that a stricter legal and regulatory approach is needed to control and minimize the negative impacts of economic activities on ecosystems and human quality of life.

Damage to ecosystems caused by corporations' failure to uphold their duty to protect the environment is an example of corporate crime in the environmental sector. Material losses, public health disruptions, dangers to life safety, and extensive social difficulties are all results of these activities (Bisschop et al., 2022). As an example of this kind of crime, consider the instance when PT. National Sago Prima (NSP) burned down forests and other land in the Meranti Islands Regency of Riau Province.

The Ministry of Environment and Forestry (KLHK) represented the community impacted by the forest fires in criminal and civil lawsuits against PT. NSP, and at the end of 2018, the Supreme Court (MA) rejected the cassation made by the company in a civil case. The MA determined in the cassation ruling that PT. NSP should pay over IDR 1 trillion in damages and expenditures to restore the environment as a result of the forest fires. Further legal action is therefore futile due to the lack of fresh evidence (novum), so this judgment is in kracht.

Interestingly, the civil litigation against PT. NSP serves as a stronger deterrence than the criminal case. The compensation awarded in the civil lawsuit exceeded IDR 1 trillion, whereas offenders facing criminal charges under Article 108 of Law Number 32 of 2009 regarding Environmental Protection and Management (UUPPLH) face a fine of IDR 3–10 billion and a prison sentence of 3–10 years.

Within the framework of positive law, the UUPPLH and the Civil Code govern civil responsibility for businesses that cause environmental harm. These statutes mandate that wrongdoers pay damages and restore the affected areas as a result of their illegal actions. The victim's actual losses (d}arar) are the foundation for calculating compensation (diat) under Islamic law. In accordance with Islamic principles, victims should get compensation that is commensurate with the nature and extent of their losses. It is possible to apply a multiplication of compensation depending on the specifics of the case and the offender's actions in order to make it more context-specific in certain cases.

One of the biggest issues with dealing with environmental crimes committed by businesses is the lack of strong law enforcement targeting these companies, particularly when it comes to criminal prosecution. Although they are governed by law, many believe

that criminal sanctions do not serve as a sufficient deterrence. Civil penalties are more successful in putting financial pressure on firms that commit environmental crimes, as seen in the instance of PT. National Sago Prima. Criminal punishments, on the other hand, are far lighter. Second, the disparity between criminal and civil rules demonstrates that the current legal framework is inadequate in its approach to addressing environmental harm.

In order for criminal and civil penalties for environmental crimes to complement each other and serve as a deterrence to those responsible, this study suggests that existing rules need to be updated and strengthened. To better comprehend the environmental implications of business activity, future study might investigate a multidisciplinary approach that incorporates not only legal but also economic and social factors.

The following is an explanation and statement of the problem: (1) How can companies that harm the environment be held legally accountable? Furthermore, how does the disparity between criminal and civil laws influence the degree to which corporations are held responsible for their impact on the environment?

RESEARCH METHOD

This study employs the normative legal research methodology, which entails investigating and analyzing judicial judgments, legal concepts, and statutes pertaining to the prosecution of businesses for environmental crimes. Law 32 of 2009 on Environmental Protection and Management (UUPPLH), as well as sections of the Civil Code (KUH Perdata) and the Criminal Code (KUHP), will be the primary areas of examination in this research. To get a better grasp of how the law governs environmental corporate responsibility, we will conduct a qualitative analysis of secondary data by reviewing pertinent literature, case law, and doctrines (Amirudin & Zainal Asikin, 2004).

This research will examine the current regulatory framework and judicial practice surrounding the application of environmental law to businesses via the examination of specific instances like PT. National Sago Prima in order to address the initial statement of the issue. The purpose of this research is to determine whether the disparities between the criminal and civil legal systems serve as a sufficient disincentive for polluting businesses.

This research will investigate the influence of the disparity between criminal and civil legislation on corporate responsibility in order to address the second formulation of the issue. In order to better understand how to address environmental crimes, this research will examine the pros and cons of using civil and criminal punishments, comparing their impact on business practices and environmental remediation initiatives. We hope that our research will help fill in some of the blanks in our current legal framework and provide some

suggestions for how we might make it better able to deal with corporate environmental harm.

RESULT AND DISCUSSION

1. Law Enforcement Against Corporations That Destroy the Environment

One of the greatest obstacles to preserving ecological harmony and environmental sustainability is enforcing laws against polluting companies (Dewanto, 2018). When it comes to extracting resources from the earth, companies are often the driving force behind overexploitation in many nations, Indonesia included. Even though there are explicit legal tools, including the Environmental Protection and Management Law (UUPPLH) of 2009, there are still many impediments to enforcing laws against corporate infractions.

The normative purpose of this rule is to provide a legal framework for the control of environmental impacts of business operations and to create severe penalties for those who violate it. A number of factors, including the impact of powerful businesses' financial interests, the inadequacy of law enforcement agencies, and a lack of cooperation among authorized parties, render law enforcement ineffectual in practice (Muslim, 2022).

Corporations that do harm to the environment in Indonesia may be held accountable via criminal and civil prosecutions thanks to the country's environmental laws. Forest fires, hazardous waste dumps, and other environmental crimes are punishable by fines and jail time according to the UUPPLH, which also controls criminal instruments (Imran et al., 2024). In contrast, when a company violates the law by, say, polluting the environment or damaging natural resources, the state or an affected person may sue the company under the doctrine of civil responsibility. Many believe that civil penalties, such as compensation and environmental restoration responsibilities, are a better way to hold businesses accountable than criminal sanctions, which may be difficult to execute effectively (Gobel et al., 2024).

Despite a well-defined legal structure, law enforcement is often inefficient. The disparity between theoretical principles and their practical application in the field is one component that often proves to be a hindrance. When it comes to economic and political matters, businesses' enormous power often gets in the way of law enforcement. Corporations with deep pockets may influence the judicial system by lobbying, using loopholes in the law, and even outright corruption. Further impediments to swift and focused law enforcement include systemic issues including poor law enforcement quality, lengthy court processes, and insufficient cooperation amongst law enforcement organizations.

There are a lot of outside forces at work, but there are also loopholes in the law. When it comes to big organizations in particular, administrative penalties aren't often enough of a deterrent. The economic gains gained from ecologically harmful operations are often outweighed by administrative punishments, such as fines or permit revocation (Muhtar et al., 2024).

Companies will rather pay penalties than put a halt to their environmentally damaging practices because of this. Legal reforms that remove legal loopholes that corporations can use to evade responsibility, increased capacity for law enforcement, and stronger inter-institutional coordination are all necessary components of an integrative legal strategy to effectively prosecute corporations that cause environmental damage. The evolution of jurisprudence that places a greater emphasis on environmental restoration and the incorporation of the concept of social and environmental responsibility into corporate operations are two examples of recent developments in international law that have an impact on environmental law enforcement practices on a global scale.

Several gaps in the application of current legislation are shown by the prosecution of PT. National Sago Prima (NSP), a company that destroys the environment, particularly via forest burning activities. Evidence gathered from Supreme Court judgment Number 2753 K/PID.SUS.LH/2015 established that PT. NSP had intentionally burned down entire areas of land in order to make way for sago farming. The environmental harm from this activity extended over 2,200 hectares, including peatlands, which play a crucial role in the ecosystem.

Despite the prohibition of land clearance by burning in Law Number 32 of 2009 concerning Environmental Protection and Management, the execution of this law in this instance demonstrates that the restrictions are not always effective. PT. NSP failed to meet the standards set forth by the rule, which included the need to possess an active AMDAL and an environmental permit. This company also failed to meet the standards set forth by Government Regulation No. 4 of 2001 on the Control of Environmental Damage and Pollution in terms of fire protection facilities, including early detection systems, fire extinguisher equipment, and training (Gobel et al., 2024).

The Supreme Court's decision also reflects the weakness in government supervision of large corporations. PT. NSP managed to continue its land burning activities for years before finally being faced with legal proceedings. This shows that environmental oversight mechanisms have not been running optimally, especially in handling corporate activities that have access to large economic resources. In addition, the impact of these fires is not only limited to ecosystem damage but also to the lives of surrounding communities, who are

directly affected by air pollution and land degradation.

Through this case, it is clear that heavier sanctions and tighter supervision are needed to ensure that corporations comply with existing environmental regulations. The decision that imposed responsibility on PT. NSP to pay more than IDR 1 trillion as the cost of restoring damaged land shows that the civil path provides a greater deterrent effect compared to criminal sanctions which are often ineffective in preventing environmental violations in the future. In a deeper analysis, more integrative law enforcement is needed, where criminal and civil sanction mechanisms can complement each other to overcome loopholes that are often exploited by corporations to avoid responsibility. The case of PT. NSP also provides a lesson that although the law has stipulated various obligations, such as ownership of AMDAL and fire prevention systems, without good implementation and strict supervision, these regulations will not provide effective protection for the environment.

2. The Gap Between Civil and Criminal Regulations Affects Corporate Liability in Environmental Aspects

Researchers in the field of environmental law have long been concerned about the disparity between criminal and civil legislation regarding corporate responsibility for harm to the environment. This disparity, say those knowledgeable in environmental law, is indicative of a law enforcement strategy that is too focused on punishment and not enough on prevention. According to international law expert Laurence Boisson de Chazournes, criminal law's function in protecting the environment should center on deterrence, with the use of severe penalties, in order to lessen the likelihood of permanent damage (Chazournes, 2021).

Conversely, proponents of civil law, like Richard Lazarus, contend that it provides a more proactive strategy for addressing environmental harm, thanks to its compensation and restitution processes, as it is focused on reestablishing the damaged environmental state (Chazournes, 2021). But companies may take advantage of gaps in the use of these two legal tools. Many firms would rather risk a modest fine or jail time than face the prospect of more severe consequences for their ecologically harmful actions, especially when the threat of criminal charges is insufficient or takes too long to materialize.

Despite having defined guidelines in Law Number 32 of 2009, environmental criminal law in Indonesia is frequently difficult to apply effectively, according to environmental law specialists in Indonesia like Henny Waluyo. This is because of the difficulties in establishing the criminally necessary malevolent intent (mens rea) and the issue of insufficient law enforcement resources (Winarsa et al., 2022). On the other hand, environmental cases are

more suited to civil law since it just needs evidence of damage caused by illegal conduct, rather than malevolent intent. The environmental recovery procedure may be lengthy, and compensation from civil litigation isn't always enough to pay the costs to the ecosystem, thus the civil mechanism isn't without its flaws.

Antonio Herman Benjamin, a prominent environmental law activist and Brazilian Supreme Court justice, offered an alternative viewpoint, arguing that the two branches of law should complement and synergize with one another. Benjamin argues that in order to prevent future wrongdoing, criminal penalties should be implemented first, followed by civil punishments that guarantee complete compensation for any damages suffered. But this strategy has not been entirely effective in many nations, Indonesia included. Civil penalties, which do compensate victims but do nothing to prevent further breaches of environmental criminal law, are therefore the only real option for firms that break the law.

In cases involving corporate responsibility for environmental harm, there is sometimes a lack of clarity, competing standards, or both due to legal concerns arising from the disparity between criminal and civil legislation (Crismale & Lu, 2018). Concerning the efficacy of penalties and the enforcement procedure itself, environmental law enforcement faces a conundrum due to the discordance between these two areas of law.

The fact that criminal and civil penalties often overlap is one of the most pressing concerns. While businesses may face civil liability for damages in some situations, criminal penalties like fines or jail time are not usually rigorously enforced. Because of this, companies may start to believe that monetary compensation is enough to settle their obligations, rather than facing the kind of criminal consequences that would serve as a stronger deterrence. Particularly with respect to the processes for prosecuting companies in complex environmental matters, the standards controlling the imposition of criminal penalties in this setting do not always provide unambiguous legal clarity.

Corporate management and shareholders' liability in environmental criminal proceedings is another area where standards are lacking. businesses are subject to criminal liability by Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), however there are still significant obstacles to enforcing this law against the people who hide behind businesses. It is fairly uncommon for the corporate body to be held responsible, rather than the management inside it. Given how difficult it is to hold corporations accountable for their environmental harm, this opens a legal loophole.

The context of evidence is another place where normative conflicts may be discovered. Proving corporate malevolence, or mens rea, is a difficult task in criminal law. It is necessary

to establish either the corporation's purpose or its extreme carelessness in causing environmental harm for criminal sanctions to be imposed. However, under civil law, the burden of evidence is lower; in this context, it is enough to show that an illegal conduct caused financial harm; proof of malevolent intent is not necessary. Because of this discrepancy in the burden of evidence, it is not always clear whether businesses should face criminal or civil penalties for environmental harm they produce.

When it comes to deciding on suitable punishments, further uncertainty develops. Like in the PT. National Sago Prima case, civil law may impose far-reaching punishments, including as compensation and environmental rehabilitation, amounting to billions of rupiah. At the same time, although the criminal justice system controls the use of jail time and hefty fines, these punishments are often disproportionate to the harm that really happens. Civil and criminal consequences should be coordinated to discourage wrongdoing and restore damaged ecosystems; however, there is a lack of standards for how these two types of punishments should function together.

The disparity between criminal and civil laws regarding corporate accountability for environmental harm is glaringly apparent in the instance of PT. National Sago Prima (NSP). Decision 2753 K/PID.SUS.LH/2015 of the Supreme Court found that PT. NSP was liable for 2,200 hectares of environmental damage caused by intentional and systematic forest fires inside their concession area. More than IDR 1 trillion was the hefty price tag that PT. NSP was hit with as a result of this decision's environmental repair requirements. Despite the substantial financial impact, this civil sentence failed to discourage future infractions of a similar kind.

Offenders convicted of land burning face fines and jail time under the criminal consequences outlined in Article 108 and Article 69 Paragraph (1) letter h of Law No. 32 of 2009. Although PT. NSP's activities meet the criteria for an environmental crime, the criminal penalties levied against the company do not reflect the seriousness of the harm they caused. One explanation is that the burden of evidence is often heavier and more intricate in criminal law enforcement compared to civil law. It may be difficult to establish explicitly in environmental matters that a business acted maliciously or with gross carelessness, the two elements necessary to suit them for a crime.

Although proof exists that PT. NSP engaged in systematic land burning, the court's primary concern in this case was with determining civil culpability for environmental remediation. The lower standard of evidence under civil law makes it more often used than criminal law. Instead of having to establish that PT. NSP intentionally burned land, the court might simply find that the company's activities resulted in substantial and ecological

damages.

The absence of standards is especially evident when considering the question of criminal responsibility. The decision-makers or managers of PT. NSP were not personally liable, even if the company as a whole was found guilty. The fact that companies may be held jointly liable but individuals are often exempted demonstrates a gap in the law. Indeed, rules or directives from persons at the board or management level of the corporation often lead to the decision to do acts that harm the environment, such land burning.

Furthermore, when it comes to deciding on punishments, norm conflicts often emerge. Civil penalties levied on PT. NSP exceeded IDR 1 trillion, placing significant financial strain on the business. Nevertheless, criminal penalties like fines or jail time are often meted out in an unfair manner. Although serious criminal risks are regulated by the Environmental Protection and Management Law, their execution is often below the full potential required by the law. This demonstrates that weak criminal penalties lessen the likelihood of repeat infractions, even when civil penalties seem to have a stronger pecuniary deterrent impact.

Finally, the PT. NSP case demonstrates that the enforcement of civil and criminal legislation against environmentally damaging enterprises is fraught with dispute and lacks established principles. Corporations take advantage of gaps in criminal liability enforcement since the burden of evidence is higher in civil responsibility and the standard of proof is lower in criminal liability. In order to effectively prevent wrongdoing and hold offenders fully accountable for environmental damage, a more comprehensive overhaul of the law is required to bridge this gap. This reform should include harmonizing civil and criminal punishments.

Any proposals to enhance the enforcement of environmental laws, especially in light of the disparity between criminal and civil rules pertaining to business accountability, have to center on a number of crucial areas that might fortify the efficacy of the legislation and guarantee enhanced legal clarity.

The first step is for criminal and civil penalties to be consistent with one another. The amount of environmental harm produced by businesses is sometimes deemed disproportionate when criminal punishments are imposed, as was the case with PT. National Sago Prima. Thus, it is necessary to amend the Environmental Protection and Management Law to place more emphasis on the implementation of stronger and more proportionate criminal penalties, particularly in instances of grave environmental harm. More substantial penalties, such as fines and jail time, rather than just symbolic ones, may serve as a stronger deterrence.

Second, individual corporation administrators should be subject to stricter criminal penalties.

Rather from identifying and punishing the specific people responsible for ecologically destructive acts, criminal law enforcement increasingly goes after corporations in their aggregate. More explicit language about the accountability of specific administrators, particularly in instances of willful or willful and wanton environmental harm, might be included into future rulemaking. This method might lessen the incentives to violate the law by making sure that both companies and individual decision-makers are held responsible.

Third, the system of evidence and oversight in environmental criminal law has to be strengthened. The burden of proof is with the prosecution in criminal matters, since they must establish either willful or wanton misconduct (mens rea) or extreme carelessness. A combination of technology advancements and enhanced capability within law enforcement agencies is required to address this issue. This includes the use of satellite data for the detection of forest fires and other technologies that may aid in environmental investigations. So that they do not place an undue burden on the burdensome task of demonstrating malevolent intent, laws should also provide room for more malleable standards when it comes to proving complicated environmental instances.

Several parts of this study have the potential to be fresh contributions in terms of its originality. To begin with, this study has the potential to expand upon the idea of more thorough integration of civil and criminal legislation in environmental matters. Criminal and civil laws in Indonesia continue to operate independently at the present time, despite the fact that they need to complement one another in order to serve as a restorative and deterrent. A more equitable enforcement of environmental laws may be achieved by combining civil compensation procedures with stronger criminal penalties.

As a second point, this research might highlight how important it is for environmental situations to have more defined roles for corporate management. Further investigation of the potential criminal liability of people inside a business, as opposed to only the organization itself, might demonstrate the originality of this work. This will provide a fresh viewpoint on regulatory change in Indonesia, a country that has hitherto prioritized group accountability above personal accountability.

Thirdly, by using cutting-edge technologies like drones, satellite imaging, and environmental data analysis, this research may also provide a more progressive method of demonstrating environmental claims. The rules and regulations of Indonesian law have not completely taken this into account. Developing rules that are more flexible to technological advancements may be aided by this research, which emphasizes how technology can enhance environmental inquiry and law enforcement. The study's originality rests in its call to strengthen environmental law enforcement in Indonesia through measures such as

bringing civil and criminal regulations into harmony, holding corporate managers more personally accountable, and making better use of modern technology to gather evidence in environmental cases.

CONCLUSION

Law enforcement against corporations that damage the environment, such as in the case of PT. National Sago Prima, shows that civil law is more effective in providing a deterrent effect compared to criminal law. This is due to the lighter standard of proof in civil law, which makes it easier for the court to demand compensation and environmental restoration. However, criminal law enforcement is often hampered by the difficulty of proving malicious intent and gross negligence, which causes criminal sanctions to be less firmly applied. This gap creates a loophole that can be exploited by corporations to avoid criminal liability. Therefore, harmonization is needed between civil and criminal regulations, where both types of sanctions must complement each other to ensure full responsibility and provide a stronger deterrent effect for corporantions that damage the environment.

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