

CORPORATE RESPONSIBILITY FOR ENVIRONMENT DAMAGE DUE TO FOREST FIRE IN RIAU PROVINCE BASED ON THE PROVINCE'S STRICT RESPONSIBILITY POLICY

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ABSTRACT

The occurrence of forest and land fires in the regions of Riau Province has gradually occurred from year to year which has attracted a lot of attention in various circles and is very worrying, the forest fires that occur need serious handling from various parties, especially the government that has policies. One of the factors in the occurrence of forest fires is the impact of the corporations in the surrounding area itself, so the application and imposition of sanctions against related corporations in order to prevent the occurrence of forest fires in Riau Province. Approximately 300 areas in Riau Province were affected by forest fires in 2015 which were deformed by HTI (Industrial Plantation Forest). The granting of licenses to corporations operating in plantations and forests is more stringent As a form of obligation, the government authorities should immediately revoke the license to operate in the focus of a concession that is experiencing fire. The results of this study are, in the application of the principle of strategic liability for companies to be responsible for the expansion of forests in the region of Riau Province.

Keywords: *Corporate Liability, Environmental Damage, Forest Fires, Strict Liability Principles.*

A. PREMILIARY

The occurrence of forest and land fires in the regions of Riau Province has gradually occurred from year to year which has attracted a lot of attention in various circles and is very worrying, the forest fires that occur need serious handling from various parties, especially the government that has policies. One of the factors in the occurrence of forest fires is the impact of the corporations in the surrounding area itself, so the application and imposition of sanctions against related corporations in order to prevent the occurrence of forest fires in Riau Province. Approximately 300 wilayah in Riau Province were affected by forest fires in 2015 which were deformed by HTI (Industrial Plantation Forest) (Cahyono, 2015).

More than 300 land areas in Riau in 2015 were in HTI (Industrial Plantation Forest) and plantation concessions. This shows that the cycle of granting plantation business permits to operate from public authorities is not carried out with adequate scrutiny of corporations around the Riau province. As a form of accountability, the government and the place must immediately revoke the permit for the operation of the corporation which is the impact of forest fires in the area.

DITRESKRIMSUS (Directorate of Special Criminal Investigation) Polda Riau, noted the results of forest and land fires that occurred in Riau Province, there were 5 (five) corporate bodies involved in forest fires in Riau Province, 3 (three) corporations were still in the interaction of the investigation and 2 (two) corporations have entered P21 (Erdiansyah. 2015.). This shows that the occurrence of forest fires is one of the factors is the lack of effectiveness in the implementation of a corporate management system that has an impact on forest and land fires.

Strict liability immovability is characterized as criminal responsibility by not requiring the perpetrator to be blamed for an act done. This very heavy strict liability is a duty without error (responsibility without benefit). This tends to underline that in a serious criminal act only requires doubt or information about the perpetrator is sufficient to ask for a criminal charge from him (Roeslan Saleh, 1982). The system and principles of strict liability are the basic principles of thought used to ask for criminal responsibility with the perpetrator being a legal legal entity and the legal subject is a human being who has committed a criminal act with the act of the offense committed. The implementation of strict liability with the perpetrator of a criminal act is a legal element,

The impact of forest fires that occurred in Riau Province, has created a fog that interferes with the activities of individual and group life on the daily lives of the people, which incidentally are around the area near the forest and in general the community at large, the number of victims due to forest fires that spread smoke causing this air quality reaching approximately 61,017 victims. And also the Health Office noted that the consequences of forest fires that occurred in Riau Province were around 50,741 people with ARI, 893 people with pneumonia, 2,409 people with asthma, 3,040.the number of eye pain sufferers, and 3,943 the number of skin infections.



Figure 1. Forest Fires in Riau Province



Figure 3. Fire Brigade Officers Extinguishing Forest Fires and Assisted by Helicopters in Riau Province



Figure 3. Community Land Affected by Forest Fire in Riau Province

The problems that occur in the lives of the people of Riau Province due to forest and land fires, then matters related to violations and misuse of corporate operational authority, so in this paper the author needs to complete further writing regarding the company's obligations related to forest fires that occur in Riau Province, then the review in this matter is to use the principle of strict liability.

The occurrence of forest and land flaring that occurred in Riau Province during the dry season can be analyzed from factors triggered by incidents and corporate violations in the surrounding area, or other factors that cause forest fires

as well as careless human behavior, whether intentionally or not. intentionally burned the forest. The occurrence of forest and land burning by corporations and human behavior itself is an act that violates the following regulations

"Article 50 of the Undang-Undang Nomor 41 Tahun 1999 concerning The Undang-Undang Nomor 19 Tahun 2004 concerning Forestry, also violates Article 11 of the Peraturan Pemerintah Nomor 4 Tahun 2001 concerning Environmental Control. Regarding Forest and Land Fires, the Undang-Undang Nomor 18 Tahun 2004 concerning the Environment, the Peraturan Pemerintah Nomor 45 Tahun 2004 concerning Forest Protection, the Undang-Undang Nomor 32 Tahun 2009 concerning Protection and Management of the Environment, the Undang-Undang Nomor 18 Tahun 2013 concerning Prevention and Eradication of Forest Destruction and Article 187 and Article 188 of the Kitab Undang-Undang Hukum Pidana."

Of the many laws and regulations that have been made by the Government and none of these regulations permit illegal use of forests and land by communities or companies / individuals, because this can be imposed with a criminal obligation given the fact that the area affected by fire and the contributing factor is that the corporation and human behavior itself can be criminalized.

Corporate activities in clearing land by burning the land and the area are activities that can harm all parties, namely the environment and the community itself. Providing punishment and responsibility for companies or corporations involved in burning land, this is in accordance with the legal rules that everyone is equal under the law (the principle of equality before the law). The act of burning forests by companies or corporations can affect local public activities, but companies must also be obliged to pay attention to the essential qualities of the community which are controlled by the criminal law itself, Sutan Remy (Sjahdeini, 2016).

B. LITERATURE REVIEW

a. Corporate Criminal Liability

Tjitrosudibio inside Pandiangan (2016) states that what is meant by corporate or corporation is a company which is a legal entity. Based on Article 116 the UUPPLH Tahun 2009, it can be said that corporate criminal acts in the environmental sector (environmental corporate crime) are as follows:

1. A criminal act committed by or on behalf of a legal entity, company, association, foundation or other organization. Criminal sanctions are imposed not only on the corporation, but also on those who give orders to commit criminal acts, or who act as leaders in the act or both. According to Article 117 the UUPPLH, criminal sanctions are increased by one third;
2. A criminal act committed by or on behalf of a legal entity, company, association, foundation or other organization, and is committed by people, both based on work relations and based on other relationships, who act in a legal entity, company, association, foundation, or other organization.

b. Environmental damage

According to Khimkawati (2018), environmental damage is an action that causes direct or indirect changes to physical or biological characteristics which results in the environment becoming less or less functional in supporting sustainable development. Environmental damage will result in a change in the characteristics and elements of the environment which results in disturbing the role and importance of the environment for life, even no longer functioning.

There are five forms of environmental damage, namely, environmental pollution, critical land, ecosystem damage, forest damage, and biodiversity extinction.(Keraf, 2010).

According to Chaerina inside Sutiyaniti et al. (2016) The factors that cause environmental damage in the view of society are natural factors and human factors such as uncontrolled development, lack of knowledge of ecological interests, and bad behavior patterns and habits as well as economic and social factors.

c. Strict Liability

Strict liability can literally be translated into Indonesian into: Firm, precise, thorough. Thus literally the term strict liability is translated into firm responsibility, proper responsibility, thorough responsibility, and strict responsibility. (Pandiangan, 2016).

Law science recognizes 2 (two) types of accountability, namely liability based on fault and liability without fault or what is also called strict liability. In addition to adhering to accountability based on mistakes, the UUPPLH imposes strict liability, namely activities that use hazardous and toxic materials and / or that pose a serious threat to the environment. (Rahmadi, 2011).

Environmental laws regarding Strict Liability include:

1. The Undang-Undang Nomor 4 Tahun 1982 concerning Basic Provisions for Environmental Management
2. The Undang-Undang Nomor 23 Tahun 1997 regarding Environmental Management
3. The Undang-Undang Nomor 32 Tahun 2009 concerning Environmental Protection and Management.

According to Pandiangan, (2016) The principle of absolute liability, which is better known in the Anglo-American legal system as the term strict liability, is only applied to environmental disputes due to qualified businesses and/or activities:

1. Has a big and important impact on the environment (Article 35 paragraph (1) the UUPPLH);
2. Using hazardous and toxic materials (Article 35 paragraph (1) the UUPPLH);
3. Produce hazardous and toxic waste (Article 35 paragraph (1) the UUPPLH);
4. Environmental damage pollution due to nuclear losses in the management of radioactive substances and / or waste (Article 28 of the Undang-Undang Nomor 10 Tahun 1997 on Nuclear Energy)

C. METHOD

Research in writing is research that uses the type of empirical research, another term used in research is sociological exploration or also known as field research. This research is a descriptive study, with the aim of gathering information in accordance with the authenticity of the data under study, then the information is collected, prepared and investigated to provide an outline of the problem to be studied. The place or location in this study is the province of Riau, the reason for choosing this location is that there is an act of forest burning by corporations in the Riau Province area. Collecting data using interview methods, literature study and documentation. The analysis stage carried out by the writer from the information obtained in the form of discussions with depictions of sentences and various kinds of information from the concrete data obtained. The results of this information are resolved deductively, especially perspectives that make determinations from general explanations or arguments made in certain statements, and draw conclusions to suggestions.

D. DISCUSSION

As an example in the case of forest burning, the authors take an example of the case as follows:

"the Perkara No. 54/Pid.Sus/2014/PN.MBO, PT. SPS was charged with Article 108 Jo Article 69 paragraph (1) letter h Jo Article 116 paragraph (1) letter a of the Undang-Undang Nomor 32 Tahun 2009 concerning Environmental Protection and Management Jo. Article 64 paragraph (1) the KUHP "

The explanation and sound of each of these articles are:

- 1) Article 69 paragraph (1) letter h, which reads: "Everyone is prohibited from clearing land by burning."
- 2) Article 108 of the UUPPLH which says: "Every person who commits the act of burning the land as referred to in Article 69 paragraph (1) letter h shall be punished with imprisonment of at least 3 (three) times long term and a time limit of 10 (ten) years and a fine of at least- lack of Rp. 3,000,000,000.00. (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)."
- 3) Article 116 paragraph (1) letter a reads: "If a criminal offense is committed by, for, or on behalf of a business entity, criminal charges and penalties shall be imposed on the business entity."
- 4) Article 64 paragraph (1) of the Kitab Undang-Undang Hukum Pidana reads: "Among several acts, even though each person commits a crime and violation, there is a relationship such that it must be seen as a continuous legal process, only one criminal rule is applied; and if they differ, then the heaviest basic threat of punishment is applied. "

Components of a crime based on Article 108 Jo Article 69 paragraph (1) letter h Jo Article 116 paragraph (1) letter a of the Undang-Undang Nomor 32 Tahun 2009 concerning Protection and Management of the Environment Jo. Article 64 paragraph (1) of the Kitab Undang-Undang Hukum Pidana are:

- (1) Everyone;
- (2) land clearing;
- (3) By means of incision;
- (4) Several acts of

conduct which are related in such a way as to be considered as continuing ”.

Reviewing the regulations contained in Article 108 of the UUPPLH, it can be seen clearly that the criminal act of burning forest and land is not a material offense but a formal offense. The difference between a material offense and a formal offense is that a material offense is considered complete, with the consequences of a prohibition by obtaining the law, whereas a formal offense is an offense that is considered to have been completed and is threatened with statutory penalties (PAF Lamintang, 1997). .

Article 108 of the UUPPLH does not require any results that are exempted by law as an act of burning and damaging the environment as a result of crimes and actions. Thus, if the act and act of burning forest and land referred to in Article 108 of the UUPPLH, the said act and act is a criminal act and the perpetrator of burning the forest can be subject to criminal punishment.

The elements of error in the principle of strict liability are explained in Article 108 of the UUPPLH, Alvin Syahrin argues as follows:

"That deliberate action is clearly found in material offenses, whereas in formal offenses there is only a deliberate structure. Although Article 108 of the UUPPLH does not explicitly state "deliberate", if seen from the words used there is a deliberate action against the perpetrator, "deliberate" eating can also be concluded with the word "clearing land". To do is a form of "verb", and "tkerja" in the details of the UUPPLH is a form of deliberate action. "

The principle of strict liability, regulation and provisions is regulated in Article 88 of the UUPPLH which reads:

"Every person whose activities, business and/or activities use B3, produces and/or manages B3, and / or which causes serious harm to the environment, is fully responsible for the losses incurred without the need to show proof of error".

Given the arrangements contained in Article 88 of the UUPPLH above, it is very likely that it is known that the UUPPLH is based on the principle of strict liability. However, the principle of strict liability in the UUPPLH is limited, that is, it will only be applied to activities identified by the utilization and management of hazardous and toxic substances (B3). In addition, the explanation of Article 88 makes it clear that the strict liability rules in Article 88 UUPPLH are expected not to be applied in criminal law, but in cases of compensation for activities and actions that are against the law (PMH).

The complete sound of Article 88 of the UUPPLH is as follows:

"What is meant by" absolute responsibility "or strict liability in which the element of guilt does not need to be proven by the plaintiff as a basic compensation. The setting of this section of this clause is that Lex Specialist is specialized in lawsuits on unlawful acts in general. The size of compensation in this action imposed by polluters or destroyers of the natural environment in the provisions of this article is determined only to a certain extent. Certain limits in statutory terms are mandatory provisions for the business concerned in the environment " .

In connection with the explanation, it can be concluded that although the

principle of strict liability is stipulated and regulated in the UUPPLH, its application is indeed limited, that is, it must be used in cases of civil general provisions where the losses are caused by violations of the use of B3. Then, what about the judge's decision in the Perkara No. 54/Pid. Sus /2014/PN. MBO which applies the standard principle of strict liability in violations of forest and land burning.

In the criminal act of forest and land burning, whether the principle of strict liability can be applied to the related corporations, to explain this, the author will describe this discussion as follows:

One type of problem solving for accountability issues related to the actions and actions of a person who works in a company to a corporate company is by applying the strict liability principle system. According to this rule, criminal responsibility can be borne by the perpetrator of the action concerned without needing to show that the perpetrator was wrong (intentionally or carelessly). Because in the principle of strict liability, the application of punishment to the perpetrators is not a problem, then the principle of strict liability is also called absolute liability or in Indonesian it is called absolute responsibility (Sjahdeini 2016).

According to Barda Nawawi Arief, the definition of strict liability in other words is as follows:

"Liability without fault or it can be said as "the nature of strict liability, liability offense is that they are crimes which do not require any mens rea with regard to at least one element of their actus reus".

Basically, the principle of absolute strict liability (without error) is a type of wrongdoing which does not require a blame component in punishment, but only seen from the conditions of the action. What is needed in committing a criminal act that is strict liability for the perpetrators is held accountable. Therefore, there is no problem in the existence of mens rea (error) because the principle of strict liability is that actus reus is an aspect (action), so what must be shown and proven is actus reus, not mens rea (Barda Nawawi Arief: 2011).

The statutory regulations that determine a case court are as follows:

- 1) Corporations or facilities running their business without a license.
- 2) Corporations or companies that obtain business licenses but violate licensing rules
- 3) The corporation operates uninsured corporate vehicles on public roads.

The view raised by LB Curzon, the principle of strict liability which demands in criminal law must be based on three premises, Hamzah Hatrik, 1996.

- 1) Public welfare is an essential aspect that corporations must pay attention to in running their business.
- 2) The means rea element will be tightened if there are violations committed by corporations to the public environment.
- 3) Forest burning by corporations will have a major impact on society.

Another expert's view, namely Romli Atmasasmitra, is that the application of the principle of strict liability determines the specific criteria in criminal law as follows:

- 1) Criminal acts committed under the principle of strict liability are not

considered serious crimes

- 2) The law on and the threat of punishment is not a serious crime
- 3) *Means trea* will only obstruct the objective of implementing legislation
- 4) The crime that has been committed is a law of coercion against the rights of others
- 5) The means trea requirement is not applied.

As for the application of the principle of strict liability as mentioned above, the application of strict liability is also guided by the criteria according to M. Yahya Harahap as follows:

- 1) The main criteria in the principle of strict liability pay attention to the effects of social conditions and are not general in nature
- 2) It must be against the law and contrary to the principles of prudence and compliance.
- 3) Such actions must have a major factor in the social conditions concerned with public safety and health and be against moralism.
- 4) There is no preventive action against the impact which is carried out fairly.

Based on the explanation described above, it can be concluded that the principle of strict liability in criminal law cases is as follows:

"(1) certain limited actions; (2) the act is an act that is strictly prohibited by law; (3) the actions that have been committed have the potential to cause danger to the health, safety and morals of the community; (4) the act was not accompanied by proper prevention".

With regard to the question that whether the principle of strict liability for a criminal act in the act of burning forest or land, based on the explanation and findings from the description above, the authors find that the application of strict liability to the crime of forest burning is viewed from two aspects and the constraints are as follows:

"First, the concept of strict liability in general is usually only applied to minor crimes. This is as stated by Muladi that the application of the doctrine of strict liability should only be applied to types of violations that are light in nature, such as in traffic violations. Whereas if the strict liability doctrine is to be aimed at corporate criminal responsibility, then the selected case is about protection of public/community interests, protection in the field of food, beverage, and environmental health. On the basis of this doctrine, the facts that tell the perpetrator/victim are in accordance with the adage "res ipsa loquitur", the facts speak for themselves. "

"Second, the application of strict liability must be limited and certain, namely the criteria for determining strict liability in criminal cases, in principle, should not be generalized. So not all criminal acts may be applied. However, they have specific characteristics, namely: (1) The provisions of the laws themselves determine or at least the laws themselves tend to demand strict liability; (2) Its application is only determined for criminal acts that are specific or prohibited in nature".

This explanation is explained by Article 32 paragraph (3) of the RKUHP Tahun 2011-2012, which reads as follows:

"The provision in this paragraph is also an exception like paragraph (2).

Therefore, it does not apply to all criminal acts, but only for certain crimes stipulated by law. For certain crimes, the perpetrator of the crime can be convicted only because the elements of the criminal act have been fulfilled by the act. Here the mistake of the perpetrator of the crime in committing the act is no longer considered. This principle is known as the principle of strict liability ".

The provisions as explained, it can be found that the principle of strict liability in the RKHUP, can only be applied to a certain act or criminal act with the condition that the action has first been stipulated by law, because in the criminal act must be based and not arbitrary in establish criminal law, because in principle the strict liability. The reason why in the principle of strict liability must be based and not carelessly because actions and actions against forest and land burning are regulated in Article 108 of the UUPPLH, in this article it also does not stipulate that the principle of strict liability cannot be applied to acts or acts of burning forest and land. If the act of burning forest can be convicted,

Based on data from Ditreskrimsus Polda Riau, besides that the changes to the Environmental Management Law are not yet comprehensive in sectoral terms, while the implementation of the legal umbrella itself in the past has encountered many obstacles. This fact is what causes misinterpretation in handling environmental cases, especially those committed by corporations

E. CONCLUSION

Based on the results of the discussion on Corporate Liability for Environmental Damage Due to Forest Expansion in Riau Province Based on the Principle of Strict Liability, which the authors describe above, the conclusions of this discussion are:

The principle of strict liability in cases of forest burning by corporations is reviewed by criminal action law, as follows:

- (1) Certain limited actions;
- (2) Actions are actions that are expressly prohibited by law
- (3) The actions that are carried out have the potential to cause harm to the health, safety and morals of the community
- (4) The act was not accompanied by proper prevention;

The Undang-Undang Nomor 32 Tahun 2009 regarding Environmental Protection and Management Jo. Article 64 paragraph (1) of the Kitab Undang-Undang Hukum Pidana. The explanation and sound of each of these articles are:

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sanctions are imposed on the business entity".

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