

# Criminal Liability for Environmental Pollution by the Corporate

Muhari Agus Santosa

Associate Professor at the Faculty of Law of Merdeka University Malang

## Abstract

Research on criminal accountability of environmental pollution which is committed by a corporation shows on multinational corporations have shown a massive accumulation of wealth, and creating a wide gap between personal. There is a very rich and still very much the poor. Even large corporations that dominate the world economic system, and can specify the job for many people, the food, drink and clothing, and so forth. Corporations can also threaten the government of a country in which the corporation operates. Whereas in the field of criminal law, which relates to the weight of this responsibility referred to in the draft Criminal Law (Penal Code) only recognize the individual as a subject of criminal law. For the corporation has not been regarded as a subject of criminal law. However, in the subsequent development mentioned in the special criminal law. Relationship with vicarious liability or responsibility of corporations in criminal law can be described as the imposition of criminal responsibility to a person in the capacity of the main actors, based on the act violation or at least there is an element of violations committed by others. Those who do, however, must take responsibility for his actions limited. It required firmness to lay criminal responsibility on offense corporate environment so that corporations that make careless exploit aolam that cause pollution can be imprisoned according degan mistakes. Similarly, it takes socialized to maskarayat about the possibility of environmental offenses that should be accounted for by the corporation. It is thus essential to solicit public participation in maintaining environmental wisdom.

**Keywords:** Criminal accountability, Environmental Pollution, Corporation

## A. Background

Issues regarding the legal entity, particularly a decrease in the Corporation continues to grow. Not only in the field of civil law, but also in the field of administrative law and criminal law courts. It is precisely in the field of criminal law is becoming an exciting development, especially in terms of accountability.

Tracing the development of the legal entity in the form of corporations ranging from medieval times to this century, giving enough information to find the relationship between the corporation's rapid growth with the onset of corporate crime in the criminal law field in question.

In medieval times, the existence of the corporation only as a means of job settings and the establishment of legal entity (legal entity) groups of individuals, such as trade unions, church group, university, or region. At that time, the role of the corporation is more emphasis on cooperation (association) rather than the goal pemanfaatan capital adequacy as corporations in general.

However, along with the expansion of business opportunities, large corporations looking for a variety of new formats for the development of the incorporation of the company, so that in the 1920s, most corporations have reached the whole country. In fact, if back to 1909, in the United States, for example, there are only two industrial enterprises (industrial corporation), the United States Steel and Standard Oil of New Jersey which later changed its name to Exxon.

In the 20th century to the 21st century, there has been growing so fast that multinational corporations, in addition to being able employ millions of workers, are also capable of influencing consumer choice and dependence, as well as segments of the economy dominate the world through their global operations.

Today, multinational corporations have shown a massive accumulation of wealth, even by Barnet and Muller, physical assets owned by global corporations in 1974 has reached more than \$ 200 billion. The implications of the business world dominated by the big corporations, has entered all aspects of human life. Because, can define a job for many people, the food, drink and clothing, and so forth. In addition, a corporation can also threaten the government of a country in which the corporation operates.

This was done, as the policies made by the government is not profitable corporations are concerned, that is the way to move their business to other countries that have weak legal provisions in the regulation of environmental pollution problems or a weak labor safety standards, or cheap labor.

Such actions typically last exodus feared, because it will result in unemployment. As a further consequence, appeared commentary even television debates, which occasionally cornering the government as a correction of the policy executed. May also be included on the Corporate Social Responsibility (CSR).

In facing such corporations, governments have difficulty in set or control it. In general, the corporation has qualified legal counsel, to be able to determine what should be done to avoid a policy that is being undertaken by the State which in turn is expected to reduce profits. Not only that, the corporation can or is capable of playing the law of a country with the aim to reduce the control that is carried out by the state. This

shows that how much power is owned by a corporation.

In Indonesia, lately, not just the numbers increasing, but the emergence of giant corporations, because it is accompanied by the increasing diversification in the business by giant companies that, through joint efforts among domestic companies and companies abroad, have prompted increasing multinational and transnational corporations.

Moreover, with the adoption of a program of industrialization by the government during the Seventh Five-Year Development during the New Order regime (MPR No.II / MPR / 1998 on Guidelines of State Policy Guidelines updated with the next five years). In the Seventh Five-Year Development Priorities, noted: "Structuring and strengthening of national industry which lead to the expansion, strengthening and deepening of the national industrial structure that is more firmly with its spread to the entire territory of Indonesia in accordance with the potential of the region".

Furthermore, at the Target Field Seventh Five-Year Development, stated: "The more dinamais and consolidation of the economy as an integral part of national development, characterized by the growing role of managed markets, continued expansion, strengthening and deepening the industrial structure; ....".

Likewise, if heed President Megawati Sukarnoputri's speech delivered in the Business Forum on South-South Cooperation in Kuala Lumpur, Malaysia, on Sunday, February 23, 2003. It states that: "With the capabilities and resources are limited, and so far almost always drained to resolve the political problems and security in the country. Very difficult for developing country governments everywhere to be able to effectively handle the envisioned building a prosperous life. It is time the government reduce its role and encourage business to do so."

The above is a fresh wind to invest in Indonesia. Admittedly, with the growing proliferation of corporations in Indonesia would help tackle the problem of unemployment and increase tax revenues. But behind it, the impact of the crime committed is also widespread.

On the basis of the above description, the problem under study is about the environmental offense committed by the corporation. For the central theme was: Criminal Liability Environmental Pollution ducted by the Corporation.

## **B. Methods of Research**

### **a. Types of research**

This type of research to elaborate on the problems in the research is a normative legal research. Research conducted on the norms and principles of law that is in the provisions on corporate responsibility in the environmental crime. Especially those committed by the corporation.

### **b.Types Research**

Research on this issue is the synchronization between legislation on and the rules under rules similar to the rules on environmental crime. Particularly in the Penal Code and Law No. 32 of 2009 on the Protection and Management of the Environment and the Law on Limited Liability Company (PT).

### **c. Material Law**

Primary legal materials consist of a basic norm that is the 1945 Constitution and legislation on environmental management. Among others:

1. Law No. 32 of 2009 on the Protection and Environmental Management
2. Law No. 5 Year 1994 on Conservation of Natural Resources and Ecosystems.
3. Law No. 40 Year 2007 regarding Limited Liability Company
4. The Book of Law Criminal Law
5. Other relevant legislation.

Secondary legal materials are those materials that are supporting of primary legal materials. Ie scientific papers that discuss corporate responsibility in the criminal law of the environment.

Tertiary legal materials are materials that explain the law to the primary legal materials. That dictionary and encyclopedia of corporate criminal acts, particularly in matters of environmental crime.

### **d. Materials Collection Procedures Law**

Legal materials are gathered by the study documents are then processed thematically correspond with the problems that corporate responsibility in environmental crime.

### **e. Analysis and Processing of Materials Law**

Analysis of the legal materials made qualitatively. subsequent conclusions drawn deductively, which was to draw conclusions based on the assessment of legal norms as mentioned.

## **C. Review of Literature**

The tragedy of this century cutting edge in the field of environment is occurrence environmental pollution in Sidoarjo by PT. Lapindo Brantas began on May 29, 2006 until now, the victims are not only local people, but also the business world. In fact, those who will be traveling through the airport Juanda Surabaya, and must pass

the drilling site, became concerned because of traffic, best left to worry.

However, the concern of the government rather than to the people who are victims, but instead to the PT. Lapindo Brantas. Namely the issuance of Presidential Decree No. 14 Year 2007 regarding the Sidoarjo Mud Management Agency. It is an effort of the politicization of criminal law. Because there are bigwigs involved, then wanted to hide behind the Presidential Regulation.

The occurrence of these various cases of environmental pollution, a reflection of the lack of a sense of corporate responsibility to the environment around. Can be questionable whether it is not a betrayal of the nation and the State. Imagine, corporations should be obliged to maintain the comfort of the environment, but on the contrary, the unwritten motto is let another person die as long as I live.

Such behavior, by Edward Alsworth Ross, calls the criminaloid terms, this means: actors who enjoy immunity for their sins. Rather sacrifice the public interest, and if convicted or accused of a crime, as if innocent. Where necessary do not hesitate to spend big money to protect its reputation.

Referring to the provisions of Article 74 of Law No. 40 of 2007 Act No. 40 of 2007 on Limited Liability Companies (State Gazette Year 2007 Number 106, dated 16 Agustus 2007) concerning Corporate Social Responsibility (CSR) apparently has caused two views. The views of opposites between the praising of those policies and are criticized because they are deemed burdensome business world.

Apart from the two opposing views of the issue is what is going to be targeted by lawmakers so that CSR incorporated into the provisions of Article 74 of Law No. 40 of 2007. In General Explanation of Law No. 40 of 2007 stated: "In this Act regulates the social responsibility and Environmental Responsibility aimed at realizing sustainable economic development to improve the quality of life and the environment that are beneficial to the Company itself, the local community and society in general.

The above provisions are intended to support the Company's relations harmonious, balanced, and in accordance with the environment, values, norms, and local culture. Then it is determined that the Company's business activities in the field and / or related to the natural resources required to implement the Social and Environmental Responsibility. To carry out the obligations of the Company, the activities of the Social and Environmental Responsibility must be budgeted and accounted for as the Company carried out with due regard to decency and fairness.

The activity is contained in the Company's annual report. In the event that the Company does not implement the Environmental and Social Responsibility, the Company is concerned penalized in accordance with the provisions of the legislation ".

Observing General Explanation, it appears that the legislators want to create relationships of the Company which are harmonious, balanced, and in accordance with the environment, values, norms, and local culture. The will to create such a relationship that it actually is for the continuation of the Company itself, and the surrounding community is part of the Company, and vice versa. The philosophical is harmonization.

However, as I have mentioned above, the provisions of Article 74 of Law No. Unang 40 of 2007, has been widely criticized. Of them from Kadin Chairman Mohamad S. Hidayat, 12 saying: CSR is an activity outside the public liability company and was established in formal legislation, such as order businesses, taxes on profits and environmental standards. If it is set, in addition to conflict with the principle of willingness, CSR also give a new burden to the business world. Chairman of Chambers Of Commerce And Industry (KADIN), in an effort to strengthen his argument compared with European countries, although institutionally much more mature than Indonesia. He stated that CSR is not something that should be regulated.

Opinion of the KADIN chairman questionable whether the legal interests of the European countries mentioned the same in Indonesia ?. Legislative developments in Indonesia so inclined that should be written / arranged. Although it recognized the value of local culture. Because in this country, let alone is not regulated in the sense of not written in the legislation, which is set just like being violated. Of course, also ensuring compliance with the regulations stipulated, the necessary sanctions.

Relevant to the development of the subject clarified the law in criminal law, both in the draft Criminal Law (Penal Code) and outside the Criminal Code. Also in the Draft Bill, 2007, as well as the comments of the experts criminal law. Furthermore, regarding corporate criminal liability connection with the provisions of Article 74 of Law No. 40 of 2007, based on the three pillars of the criminal law. That is a criminal offense; error; and conviction. Then, on the responsibility of corporations to approach the victim with the concept daad-dader-slachtoffer-Strafrecht.

Whereas in the field of criminal law, which relates to the weight of responsibility is referred to in the draft Criminal Law (Penal Code) only recognize the individual as a subject of criminal law. For the corporation has not been regarded as a subject of criminal law. However, in the subsequent development, mentioned in a special criminal law, among others:

1. Law No. 7 Drt. 1955 on Economic Crime, Law No. 31 of 1999 on Corruption Eradication, as amended by Law No. 20 of 2001 on Amendments to the Law No. 31 of 1999 on Corruption Eradication;
2. Law No. 15 of 2002 on Laundering as amended by Law No. 25 of 2003 on the Amendment to Law Number

- 15 Year 2002 concerning the Crime of Money Laundering;
3. Government Regulation No. 1 Year 2002 on Combating Criminal Acts of Terrorism as set into law by virtue of Law No. 15 Year 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 2002 Combating Criminal Acts of Terrorism;
4. Law No. 32 of 2009 on the Protection and Environmental Management;
5. Law No. 22 of 2001 on Oil and Gas), legislation in particular The law has placed the corporation has been regarded as a subject of criminal law.

Similarly, the draft Penal Code, acceptance of the corporation as a subject of criminal law, in line with the development and rapid economic growth today. Corporations huge role in the country's economy, especially in the era of industrialization which is currently being developed by the government.

Therefore, the role of corporations is so great in the growth of the state economy. But a likelihood of crimes committed by corporations in various fields. In General Explanation 2007 draft Penal Code Book I number 4 among others, stated: "Given the progress made in the fields of finance, economy and trade, especially in the era of globalization and the development of organized criminal acts whether they are domestic or transnational. The subject of criminal law can not be limited only to the natural human (natural person) but also includes corporations, namely organized group of people and / or assets, either a legal entity (legal person) and not a legal entity

With embraced understand that corporations are the subject of a criminal offense, meaning the corporation either as a Legal Entity mapun non-legal entities are considered capable of committing a crime and may be liable under criminal law.

The recognition of corporations as subjects of criminal law, is worldwide. This was evidenced, among others, by convening an international conference to-14 on Criminal Liability of Corporation in Athens from July 31 until August 6 1994. Among other things, Finnish previously not regulate corporations as subjects of criminal law, but in its development has admitted the corporation as subject of criminal law and accountable.

Corporate governance as a subject of criminal law background by history and experience that is different in each country, including Indonesia. But in the end there is a common view, namely in connection with the development of industrialization and progress in the field of economy and trade has pushed the idea that the subject of the criminal law is no longer confined to the human nature (natural person) but also includes corporations, due to no specific criminal can also carried out by the corporation.

According to Jan Rammelink, while initially the lawmakers argued that only humans (individuals / individual) which may be subject to criminal law, while the corporation can not be subject to criminal law. The existence of such a view can be traced from the drafting history of the provisions of Article 51 (Article 59 of the Criminal Code), especially on the way in formulating offense always begins with the phrase *hij die, whoever*.

In connection with that, Doelder, professor of the Department of Criminal Law and Criminology, Erasmus University Rotterdam, The Netherlands that the Criminal Law that had existed since 1886 and was written with the idea that only the person (natural persons) who may be subject to criminal liability. The view is in line with Jonkers Doelder citing High Court's decision dated August 5, 1925 wrote that according to the principles of our criminal law (Dutch) legal persons can not do the offense.

The reason is, because the criminal law based on the teachings of personal fault that is directed only to the person of the (people), so that the provisions regarding the criminal subject matter has the properties of personality, especially criminal independence. Likewise, the penalty, because, according to the criminal system of the Dutch East Indies, the corporation can not be sentenced to a fine, because people were sentenced to fines can choose to undergo imprisonment in addition to paying a fine substitute.

According Jonkers, although the corporation can not simply be accounted for in the criminal law, but in fact corporations often committing a crime. However, in the Netherlands there has been a development, in 1976 the legislature decided to amend Article 51 of the Code of Criminal Law by the Law dated June 23, 1976, State Gazette No. 377.

According to the new provisions, all criminal acts can be carried by people and corporations. The provisions contained in Article 51 that has existed since 1951 in the economic criminal law (Article 15 Economic Penal Code). However, the provisions of articles in the economic field had been revoked in 1976, and it has been mentioned in a new Article 51, which means it has ended the fiction doctrine.

The new legislation, it is applicable to the general criminal law and economic criminal law, which is based on the idea that corporations are legal entities and may be committing a crime. Furthermore, a matter that should be mentioned is related to the type of actors consisting of people and corporations.

Understanding the corporation used by the Code of Criminal Netherlands differ with the notion of corporations in civil law, as well as a legal entity that is not a legal entity is viewed as a corporation and may be subject to criminal liability under Article 51.

About how corporate criminal liability relation to the provisions of Article 74 of law no. 40 in 2007, according Packe that the rational basis of criminal law rests on three concepts: crime, guilt, and punishment.

Further Packer that the three concepts that symbolize the three main problems in the criminal law, namely:

- a. what conduct should be regarded as a crime;
- b. provisions or terms of what should be made before a person can be declared to have committed a criminal act;
- c. what should be done to someone who has been known to commit a crime.

These three pillars, is a starting point for assessing corporate criminal liability in connection with the abandonment of its obligations as specified in Article 74 of Law No. 40 Year 2007 regarding Limited Liability Company.

Thus, the scope of this discussion include: crime; corporate criminal liability; and crime and punishment.

#### 1. Criminal Acts

In Chapter V of Law No. 40 Year 2007 on Limited Poerseroan governing Social and Environmental Responsibility. Stated in Article 74, that:

- (1) The Company is conducting its business activities in the field and / or related to the natural resources required to implement the Social and Environmental Responsibility.
- (2) Social and Environmental Responsibility as referred to in paragraph (1) an obligation of the Company's budgeted and accounted for as an expense of the Company which are carried out with due regard to decency and fairness.
- (3) The Company did not exercise kewajian as diaksud in paragraph (1) be sanctioned in accordance with the provisions of the legislation.
- (4) Further provisions on the Social Responsibility and Environmental regulated by Government Regulation.

Under the provisions of Article 74, then the question becomes: if the company does not conduct any liability for social and environmental responsibility is a criminal act? To answer this, have to pay attention to the following criteria:

- a. Development of criminal law should pay attention to national development goals, namely to realize a just and prosperous society based on Pancasila, in connection with the development of criminal law aims to solve crimes for the welfare and protection of society.
- b. Deeds are to be prevented or addressed the criminal law must be an act which is not desired, the act that backfires on citizens.
- c. The use of criminal law should take into account the principle of cost and yield.
- d. The use of criminal law should also pay attention to the ability of law enforcement work.

By paying attention to these criteria, while also considering their losses or casualties, both actual and potential significance of such actions. Because, given the corporate crime victims often do not feel that they have been victimized, and it is different with konvensional crime victims. Moreover, efforts to promote the interests of the victims have been in need of a long journey.

As stated by Sahetapy that history is concerned with the problems of victims requires considerable time and length. After two world wars were great with so many victims, then the United Nations (UN) on December 11, 1985 resulted in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In pespektif victimology, victimology paradigm is not only concerned with crime in the classic sense, but also concerning other acts outside the realm of criminal law. O Abuse of power, clearly indicates, that the act by abusing power means it can also be done by a legitimate authority. That means, that the power does not necessarily have the truth. So, people could be sacrificed for the sake of the ruler or the ruling party without notice or heed or respect the legal norms or morals.

Abuse of power, continues to abuse of power in the economy (economic abuse of power), are as set out in the 6th UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Caracas, Venezuela in 1980.

In one of the considerations listed in the resolution that all 7 of the Prevention of the Abuse of Power, stated that given the abuses of economic power and political cause material loss and great social, which is damaging economic and social development as well as disrupt the quality of life of the people of the world as a whole. Thus, the victim in the new paradigm not only a victim in the sense classic, but also a victim in the context of another dimension, that is no longer an individual but it is abstract (abstract victims), including victims of Companies that ignore social and environmental responsibility. Protection against corporate crime victims, essentially an integral part of the concept of Human Rights (HAM).

With the above reasons companies are not implementing their obligations in the form of social and environmental responsibility should be an act can be imprisoned. In addition, it is also worth considering using the criminal law, which, as written by Clinard and Yeager:

1. degree of social disadvantage;
2. The level of engagement undertaken by corporate managers;
3. The duration of the violation;
4. The frequency of violations committed by the corporation;

5. evidence of intent to commit crime;
6. evidence of extortion, such as in cases of bribery;
7. The number of cases of violations committed by corporations that have been revealed by the media;
8. precedent in law;
9. history of serious violations committed by the corporation;
10. The potential prevention or deterrence;
11. any evidence indicating violations committed by corporations.

Indeed, in general the use of civil law and administrative law is *primum remedium*, and criminal law as *ultimum remedium*. However, in certain cases the use of the criminal law can take precedence.

In the context of vicarious liability or responsibility of corporations, that the criminal law can be described as the imposition of criminal responsibility to a person in the capacity of the main actors, based on the act violation or at least there is an element of violations committed by others.

In Article 74 paragraph (1) of Law No. 40 of 2007 determines: "The company that runs business activities in the field and / or related to the natural resources required to implement the Social Responsibility and environments".

In accordance with the elucidation of Article 74 paragraph (3) of Law No. 40 of 2007, that: "What is meant by" sanctioned in accordance with the provisions of the legislation "is subject to any form of sanctions provided for in the legislation related", then the provisions of the legislation which is close, among them the Law OF No. 23 of 1997 on Environmental Management (State Gazette of 1997 No. 68, dated September 19, 1997).

Nevertheless the question: whether the Act No. 23, 1997 has resolutely set the corporation as a subject of criminal law? In Article 1 point 24 of Law No. 23, 1997 stated: "Man are individuals and / or groups of people, and / or legal entities". Furthermore, what criteria about who can be criminally responsibility?. Article 46 of Law No. 23 of 1997 determines:

- a. If the criminal offense referred to in this Chapter is done by or on behalf of a legal entity, company, association, foundation or other organization, criminal charges are made and criminal sanctions and procedural measures as referred to in Article 47 imposed both against the legal entity, company, association, the foundation or other organization as well as to those who gave the orders to commit the offense or act as leaders in the act or to both.
- b. If the criminal offense referred to in this Chapter is done by or on behalf of the legal entity, company, association, foundation or other organization, and carried out by people, which are based on work relations and based on other relations, acting within the legal entity, company, association, foundation or other organization, criminal charges are made and criminal sanctions imposed against those who gave orders or act as leaders regardless whether such persons, which are based on work relations and based on other relations, committing a criminal act individually or together.
- c. If charges are made against a legal entity, company or other organization, calls for facing and delivery of letters addressed to the board that call at their residence, or where administrators do the work that remains.
- d. If charges are made against a legal entity, company, association, foundation other organizations, which at the time represented by the prosecution and not the board, the judge may order that the board faces in court.

Thus, by virtue of Law No. 23, 1997 that the corporation can be criminal responsibility. This means that companies that ignore the Social and Environmental Responsibility as stipulated in Article 74 of Law No. 40 of 2007 can be accounted for in accordance with the provisions of Article 46 of Law No. 32 of 2009.

## **E. Discussion and Analysis**

### **1. Criminal Liability Law in Perspective Protection Act and Environmental Management.**

#### **1.1. Basic and Environmental Legal Perspective**

The development of modern environmental law in Indonesia was born since the enactment of Law No. 4 1982 On the Main Principles of Environmental Management, dated March 11, 1982 which is commonly abbreviated as UULH 1982. UULH 1982 on 19 September 1997 was replaced by Act No. 23, 1997 and subsequently Law No. 23, 1997 (UULH 1997) was also declared invalid by the Act No. 32 of 2009 on the Protection and Management of the Environment (LN 209 year No. 140, abbreviated with UUPPLH).

According to academics, the legal environment is an area of law called the functional areas of law, which is an area of law which contains provisions of administrative law, criminal and civil. If we carefully good third UULH 1982 UULH UUPPLH 1997 and 2009 contain the norms of legislation that entered into the field of administrative law, criminal and civil.

UUPPLH 2009 as a formal source of major environmental laws in Indonesia besides including legal provisions and legal instruments such as that contained in the previous law, namely UULH UULH 1982 and 1997 also includes the norms and legal instruments to the new law. Several important new legal norms is about legal protection of everyone's rights on the environment, the authority Investigator of Civil Servants (investigators) and the creation of new material offenses. In this paper some new legal norms which will be

described.

First, UUPPLH has explicitly adopted the principles contained in delarasi Rio 1992, namely the principles of state responsibility, of integrity, prudence, justice, polluter pays, participatory and local wisdom. The adoption of a legal politics is important because it strengthens the interests of environmental management mmanakala dealing with short-term economic interests. The judge in adjudicating a case can use those principles to give attention to the interests of environmental management that may not be noticed by businesses or government authorities.

Second, UUPPLH, in particular with Article 66 UUPPLH very forward in providing legal protection to those who fight for the right to environment from potential criminal and civil liability. Legal protection is very important because in the past there have been cases in which environmental activists who reports alleged pollution and destruction of the environment has been sued civilly or prosecuted criminally on the basis of defamation companies that allegedly have caused pollution or destruction of the environment.

In the US legal system and the Philippines, legal protection is called the Anti-SLAPP (strategic legal action against public participation), ie a lawsuit undertaken by the company which is alleged to have contaminating or damaging the environment then sued the reporter or informants or whistle blower allegations of environmental issues with the aim of provoking fear and material losses to the complainant or informer or against other parties in the future.

Lawsuit SLAPP can be deadly courage community members to be critical and to submit a report or information on the alleged or actual problems of the environment by the business sectors that could ultimately derail environmental management involving the active participation of civil society (civil socitey) , The judges in Indonesia is important to understand the presence and usability Article 66 UUPPLH.

Third, UUPPLH has caused changes in the field of investigative authority in cases surroundings. Under Article 6, paragraph (1) of the Law on Criminal Proceedings (Code of Criminal Procedure), the investigator is a police officer of the Republic of Indonesia (hereinafter abbreviated as INP) and officials of Civil Servants (hereinafter abbreviated as investigators) were given special authority given by enactment legislation.

UUPPLH is one of the laws referred to in Article 6 paragraph (1), which became the basis for the existence of civil servant as defined in Article authority of the police other than as mentioned in Article 7 paragraph (1) Criminal Procedure Code, among other things, arrest, detention, search, and confiscation, inspection and seizure of letters and coordinating authority for the implementation of the task of investigators (Article 7 (2), the Police as an institution authorized to submit the case file to the public prosecutor (Article 8 (2).

Thus, based on the system of Criminal Procedure, investigators are not authorized to submit the results of the investigation file directly to the public prosecutor, but must pass the Police. UUPPLH has changed the provisions which currently provides authority to the police as an institution, the only one who can submit the file to the public prosecutor the results of the investigation as stated in Article 8 (2) Criminal Procedure Code. With the enactment of UUPPLH has caused the change.

These changes occur through Article 94 paragraph (6) UUPPLH which states: "the investigations that have been carried out by investigators civil servants submitted to the public prosecutor." Thus, the civil servant investigators (investigators) environment can be and is authorized to submit the file results investigation directly to the public prosecutor without going through the police again. Granting this authority is yet to be demonstrated empirically in the future whether to bring a positive development for criminal environmental law enforcement efforts, or do not lead to any change.

UUPPLH authorize investigators in the investigation to:

1. verify a report or information relating to criminal offenses in the field of environmental protection and management;
2. conduct an examination of any person suspected of committing criminal offenses in the field of environmental protection and management;
3. The request for information and evidence from any person in respect of a criminal incident in the field of environmental protection and management;
4. conduct examination of books, records, and other documents relating to criminal offenses in the field of environmental protection and management;
5. examination in certain places that allegedly contained evidence of materials, books, records and other documents;
6. carry out seizures of infringing goods and materials that can be used as evidence in a criminal case in the field of environmental protection and management;
7. ask for expert assistance in the execution of the duties of investigation of criminal offenses in the field of environmental protection and management for discontinue an investigation;
8. entering certain places, photograph, and / or make audio-visual recordings;
9. conduct a search of the body, clothing, room and / or any other place where he did a suspected criminal offense

## 10. The arrest and detain the offender.

### 1.2. Approach Environmental Criminal

That the criminal law approach not as a last resort - which is commonly referred to as "ultimum remedium" - to punish the behavior of businesses that cause environmental problems. In 1997 UULH criminal sanctions become a last resort after state administrative law enforcement is not effective. In UUPPLH, "ultimum remedium" applies only to one article only, namely Article 100 UUPPLH which states:

- (1) Any person who violates the waste water quality standards, emissions quality standards, or quality standards nuisance shall be punished with imprisonment of three (3) years and a maximum fine of Rp. 000 000 000, 00.
- (2) The offenses referred to in paragraph (1) may only be imposed if the administrative sanctions that have been imposed are not complied with or the offenses are committed more than once.

From the formulation of Article 100 paragraph (2) is clearly understood that the criminal sanctions included in Article 100 paragraph (1) may be charged if the new administrative saknis ineffective or repeated violations. This means that criminal sanctions serve as a last resort.

In this perspective, UUPPLH has firmly laid criminal responsibility on the leadership of business entities which are causing pollution or environmental destruction. In 1997 UULH not expressly stated principal or board business entity may be subject to criminal overall responsibility. UULH 1997 only uses the term "giving orders" or "act as leaders" in a criminal act. In 2009 UUPPLH criminal liability led business entities defined in Article 116 to Article 119.

Nevertheless, it still adopts UUPPLH overall responsibility for business entities (corporate liability). Article 116 UUPPLH contains criteria for the birth liability business entities and who should be responsible.

If judging the formulation of Article 116 UUPPLH, liability business entities arising in one of the following conditions: (1) environmental crime carried out by a legal entity, or on behalf of a business entity or (2) by a person based on employment or other relation act within the scope of the business entity. Because enterprises can not work without the human-driven, then the physical perpetrators of human remains, namely those on behalf of the business entity or individual that is based on the labor agreement, suppose an employee or other relationships, eg chartering agreements work.

The next important thing is to determine who should be held responsible if an environmental crime otherwise have been done by a legal entity or corporation. Article 116 paragraph (1) refers to "criminal prosecution and criminal sanctions imposed on: (a) a business entity and / or (b) the person who gave the order to commit the offense or the person acting as the leader in the criminal act." In addition, the concept of accountability also should be guided UUPPLH provisions of Article 118 which states: The offenses referred to in Article 116 paragraph (1) letter a criminal sanction imposed on business entities represented by the board authorized to represent inside and outside the court in accordance with the legislation of carrying out the functional.

Thus, from the formulation of Article 116 and Article 118 UUPPLH can be seen that there are three parties who may be subject to prosecution and punishment there are three parties, namely:

- a. business entity itself;
- b. those who gave orders or act as a leader of a criminal offense;
- c. board.

Basically, without the provision of Article 118 UUPPLH that mention "sanctions imposed on business entities represented by the board authorized to represent inside and outside the court in accordance with the legislation of carrying out functional", the board stays may also be subject to liability on the basis of the criteria "person who gave the orders or the person acting as the leader of a criminal offense "as defined in Article 116 paragraph (1) letter b.

The difference is the formulation of Article 116 paragraph (1) letter b does require investigators and prosecutor to prove that caretacer which has acted as the person who gave orders or act as a leader of a criminal offense, so it requires hard work investigators and prosecutors to prove the role of administrators in environmental crime.

Instead, according to the provisions of Article 116 paragraph (1) letter b related to the Article 118, the board because of his position is not necessarily or automatically assume criminal responsibility, so much easier in the prosecution because it does not require proof of the role of the board specified in a criminal act neighborhood.

Elucidation of Article 118 UUPPLH reinforces the interpretation that if a business entity environmental criminal offenses, charges and penalties "imposed on the leaders of business entities on the basis of business leaders who have authority over the physical perpetrators and accept such action". Definition of "receiving such action" is "approve, condone or do not sufficiently supervise the physical perpetrator's actions, or have policies that allow for such offenses."



Thus, the director of the company and let employees know the company without going through the sewage release *pengeolahan* considered committing a crime on behalf of a business entity, so that he should be held accountable.

The formulation of the provision and explanation of Article 118 UUPPLH is a breakthrough or progress if judging in terms of efforts to encourage the management of the company in order to seriously implement the prevention, control and recovery of pollution or environmental damage when in charge of a business entity. The formulation of the provisions of Article 118 UUPPLH similar to vicarious liability in Anglo-Saxon legal system.

In this *pespektif*, UUPPLH offense also contains material that apply to government authorities in the field of environmental monitoring. enactment of the offense this material can be seen as a policy of punishment that is advanced in order to encourage government officials to earnestly implement environmental management. The material of the offense defined in Article 112 UUPPLH namely: "Every competent authority is deliberately not to supervise the observance of responsible business and / or activity of the legislation and the environmental permit, as referred to in Article 71 and Article 72 causing pollution or environmental damage resulting in loss of human lives, *pindan* shall be punished with imprisonment of 1 (one) year or a maximum fine of Rp. 500,000,000, 00 (five hundred million rupiah).

Indonesian environmental law develops in addition to the development of such legislation through the enactment UULH 1982, UULH UUPPLH 1997 and 2009, also evolved through court decisions. Two of the court verdict can be seen as the decisions of importance (landmark decisions) is the decision of the Court of the State Central Jakarta, in the case WALHI against PT IJU, Minister of Industry, Minister of Forestry, Ministry of Interior, Ministry of Environment and the Governor of North Sumatra Province Jakarta District Court Center.

The lawsuit WALHI filed during the implementation of UULH 1982 which basically does not expressly recognize the right of NGOs to file a lawsuit of environmental law enforcement, but judges in the case interpreting the right to sue the concept of public participation in environmental management is recognized in UULH 1982 (verdict case WALHI opponent PT IJU No. 820 / Pdt / G / 1988).

This ruling later provide inspiration for legislators to formulate legal standing to environmental organizations in the legislation, namely Article 38 UULH 1997.

Another important ruling is a lawsuit by Smith and colleagues (as many as eight people, including Smith) against the President, the Minister of Forestry, Perhutani, West Java Provincial Government and the Government of Garut district in Bandung district court. The plaintiffs and those represented were victims of landslides Mount Mandalawangi Kadungora District of Garut and have suffered losses in the form of loss of property, destruction of farmland and fields, the death of relatives and the destruction of public facilities as well as damage to the local ecosystem.

District Court panel in *pertimbangannya* (No. 49 / Pdt.G / 2003 / PN.BDG, dated August 28, 2003), among others, said that the state has a responsibility in environmental management. State responsibility was carried out by the government led by President of the Republic of Indonesia, but because the President has established the Ministry of Forestry, the forestry management has become entirely the responsibility of the Minister of Forestry. Minister of Forestry has authorized the Perum Perhutani West Java to manage the forests of Mount Mandalawangi. West Java Provincial Government and the Government of Garut district in accordance with the scope of their respective tasks based on the legislation in force, particularly Law No. 22 Year 1999 on Regional Government - prevailing at the time of the floods and landslides in mountain Mandalawangi.

The judges also in *pertimbangannya* said that there has been a change in forest management policy in Mount Mandalawangi conducted by the Ministry of Forestry, is to change the status of forest land previously protected forest areas then become a limited production forest based on the Minister of Forestry No. 419 / KPTS / II / 1999 with all its consequences such as a reduced number of standing trees and reforestation failure so that the forest area Mandalawangi no longer have the ability to water infiltration.

Furthermore *Majelsi* judge said that the loss of environmental and material damages of the plaintiff caused by floods and landslides in mountain Mandalawangi been factually so no need to prove it again. The legal issue that still needs to be proven is causality, ie changes in the function of forest area of Mount Mandalawangi of protected forests into production forests based on changes in forest policy as reflected in the ministerial decree No. 419 / KPTS / II / 1999 have caused severe flooding and landslides.

The interesting thing is the judges also in consideration refers to the principle of caution (precautionary principle) which is the principle to 15 in the Rio Declaration as a basis for solving the problem of "lack of knowledge" is shown with annotations expert witnesses from both sides contradictory so that their testimony can not be used as evidence to conclude the cause of the facts have been flooding and landslides in mountain Mandalawangi.

Although the principle of caution has not been entered into Indonesian law at the time this case was tried, the judge appeared to have used these principles as the basis for consideration of the decision. Thought and consideration of the judge in this case can not be separated from the fact that one of the judges in the first instance judge had attended training environmental law, among others, discuss the function of the principles

stated in the Rio Declaration as a source of law.

Knowledge acquired during the training has expanded its horizons and is used in the practice of law. This fact also proves the importance of the judge continuously improve knowledge through education degree and non degree, eg training. Therefore, the policy of the Chief Justice to conduct environmental certification program judges as the Chief Justice under Decree No. 134 / KMA / SKIX / 2011 on Certification of Environmental Justice is a right policy because through this program judges' capacity for handling the case of the environment can be improved.

## **2. Corporate Responsibility in Environmental Offense**

### **2.1. The Principle and Application of General Crime**

That in general concerning the determination of criminal sanctions associated with four aspects: first, the establishment of a prohibited act; second, the determination of threat of criminal sanctions against the prohibited act; The third stage of criminal punishment on legal subjects (individual or corporation); Fourth, the implementation phase of the criminal. The four aspects are related to each other and constitute the fabric of the container system of criminal law.

Shape or type of sanctions that can be imposed on a corporation may be criminal principal and additional penalty. During this time various legislation establishes a new criminal penalties as the principal criminal sanctions for the corporation.

#### **a. Criminal sanctions**

While the forms of other criminal sanctions defined by law as a sanction additional criminal or disciplinary action. According to Sutan Remy Sjahdeini, in addition to criminal penalties may also be determined other forms as principal criminal sanctions. Some of the sanctions that are currently defined as an additional penalty should be appointed as the principal criminal sanctions for the corporation. Below is described some form of criminal sanction principal and additional penalty which may be imposed on the corporation, which is the subject of criminal and criminal penalties.

In this connection it should be understood that the only type of criminal sanctions (criminal penalties) that can be levied against the corporation in the UK is a penalty (fine). Therefore, a company can not be prosecuted for murder (murder), because under English law only one form of criminal sanction that can be imposed on a murderer namely life imprisonment.

According to Sutan Remy Sjahdeini, it is not possible to impose criminal sanctions to a corporate form of imprisonment or criminal whip-like force in Malaysia and Singapore as well as countries that implement Islamic criminal law.

Therefore it is not possible to sue a corporation as a criminal by a legislation criminal if the legislation is determined that the sanctions that can be imposed for the criminal is a cumulation of imprisonment and criminal fines (both these penalties are cumulative, ie should the sanctions imposed on the perpetrators of criminal acts are concerned), or in other words, the corporation just might be prosecuted and punished if sanctions of imprisonment and criminal fines in the legislation was defined as a criminal sanction that is alternative (that can chosen by the judges).

#### **b. Announcement of the Decision by Judge**

Announcement of the decision by the judge is intended to embarrass the board and / or the corporation for having committed a crime. Where previously the corporation has a very good reputation, it will betuk-really embarrassed by the judge's verdict through print or through electronic media. Although this form of criminal sanctions is only an additional criminal sanctions, but very useful to achieve the purpose of prevention (deterrence).

#### **c. Dissolution followed by liquidation of the Corporation**

Legislation applicable as exemplified recently by Sutan Remy Sjahdeini (2006: 210), has been set regarding the dissolution of the corporation as a form of criminal liability of the corporation. He gave an example, Law No. 15 of 2002 on Money Laundering as amended by Law No. 25 Year 2003. Article 5 paragraph (2) is a corporation may be imposed additional penalty of "revocation of business license or corporate dissolution followed by liquidation". In Article 5, paragraph (2) of the Act, the revocation of the business license is not an administrative sanction, but is a criminal sanction, which is an additional criminal sanctions.

#### **d. Revocation of Permit followed by the liquidation of the Corporation**

Furthermore Sutan Remy Sjahdeini (2006: 211), propose that "corporations should be also imposed criminal sanctions in the form of revocation of business licenses". He gave the reason that the revocation of the business license, then of course the next corporation can no longer conduct business forever. In order to provide protection to creditors, should the judge's decision in the form of revocation of business licenses are accompanied also by the instruction to the management of the corporation to liquidate the company's assets for repayment of corporate debts to their creditors.

e. Suspension of business

Furthermore, the form of sanctions that can be imposed on the corporation by Sutan Remy Sjahdeini (2006: 211), is the freezing of business activities, whether for a particular activity or all activities for a certain period of time is one form of criminal sanction that can be imposed on the corporation. For example, a hospital may not accept the patient in order to receive prenatal and do parturition (giving birth) because it has been involved in the crime of illegal abortions. The clotting activity can be determined by the judge for a certain period of time or forever.

If the freezing of all the activities carried out for all the verdicts are not a freezing of all business activities, but in the form of dissolution of the corporation or of revocation of business licenses followed by liquidation.

f. Confiscation of Assets Corporation by State

Deprivation of corporate assets by the state to do well against most or all of the assets, the asset either directly used or not used in a criminal offense committed. This is another form of criminal sanction that can be imposed on the corporation. According to Sutan Remy Sjahdeini (2006: 212), "deprived of their assets are then auctioned off to the public, or submitted belong to one specific BUMN treat these assets in its operations."

In addition, the confiscation could be combined with criminal penalties and other types of criminal or other as described above.

g. Corporate takeover by the State

Criminal sanctions for corporations could also form the corporate appropriation by the state, or in other words, the corporation was taken over by the state. This sanction different to sanction confiscation of assets. In criminal asset confiscation, the corporation still belongs to the shareholders, while the resulting deprivation of corporate shares switch owners into state property.

## 2.2 Additional Criminal

Apart form the principal criminal was mentioned above, the corporation can be burdened additional penalty, which could include additional criminal conduct of certain social activities, according to Sutan Remy Sjahdeini (2006: 213) The additional penalty can be:

- a. Conduct environmental cleanup or clean up at their own expense to hand over to the state cleaning up corporate expenses (in addition to performing environmental crime) determined by the judge minimum costs to be incurred by the corporation based on the interpretation of the price by an independent konsutan.
- b. Build or mebiayai development projects related to criminal offenses committed, such as building hospitals or drug rehab center that is determined by the judge minimum costs to be incurred by the corporation based on the interpretation of the price by an independent konsutan.
- c. Perform other social activities, both related and unrelated to the crime have been carried out with the minimum specified time period, and the minimum cost by the judge.

## 3. Criminal Corporate Environment

In the process of modernization and economic development, the reality shows that corporations play an important role in public life. As for the development is not uncommon corporation in achieving its goal conduct activities that deviate or crime committed with a modus operandi business entity. Therefore, the position of the corporation as a legal subject (civil) has been shifted to the subject of criminal law.

On the one hand, in terms of the shape of the subject and motive, corporate crime can be categorized in white collar crime and a crime that is organizationally. For that emphasis on corporate structure, rights and obligations and accountability, so recognizable characters and layout pertanggungjawabannya corporate crime that could ultimately found their juridical solution.

The corporation according Utrecht formulated that the corporation is a combination of people in the legal association to act together as a separate legal subjects personification. The corporation is a legal entity membered, but have rights and obligations itself apart from the rights and obligations of members respectively.

An understanding of the corporation or legal entity is a company which is a legal entity; corporation or peseroaan here in question is a group or organization which by law are treated like human (personal) is a developer (or owner's) rights and obligations have rights or be sued upfront sue the court. Examples of legal entities is P.T (company limited), N.V (Namloze Vennootschap) and foundations (Sticthing); even country also a legal entity.

Rudhi Prasetya states generally corporation has many elements, among others "

- a) set of people and or wealth;
- b) Terorganisir;
- c) Legal entity; and
- d) Non-legal entity.

In this pepsektif, forms of corporate crime can clasification be three (3) types, namely:

1. Corporate Crime in the economy, among other things in the form of the act does not report actual company

profits, avoid or minimize tax payments by submitting data that does not correspond to the actual situation, conspiracy in pricing, gives political campaign contributions illegally.

2. The offense of corporate social field of culture, among others; copyright crimes, crimes against workers, crime narcotics and psychotropic substances; and
3. corporate crimes involving the wider community. This can occur in the environment, consumers and shareholders.

The Criminal accountability by the management corporation, is that in a corporation or company, the directors and commissioners as one of the vital organs in the legal entity is a fiduciary (fiduciary) should behave as befits the holder of the trust.

Here commissioners and directors have a fiduciary position in relation to the company's management and a mechanism should be fair. According to the experience of common law relationships can be based on the theory of fiduciary duty. The fiduciary duty relationship based on trust and confidentiality (trust and confidence) that in this role include, accuracy (scrupulous), goodwill (good faith), and directness (Candor).

Holders in understanding the relationship of trust (fiduciary relationship), the common law recognizes that people who hold trust (fiduciary), it naturally has the potential for misuse of authority. Therefore, holders of the trust relationship must be based on high standards. For abuse no authority to commit the crimes.

In the perspective of criminal acts in the corporate environment, it can be stated that the crimes against the environment in the form of pollution and or destruction of soil, water and air of a region. Thus in environmental crime can be interpreted more broadly in the context of the extensive damage resulting, resulted in disaster and harm to human beings in the form of pollution.

Criminal law in Law No. 32 of 2009 on the Protection and Management of the Environment, introduced a minimum threat in addition to the maximum, the expansion of evidence, convictions for violations of quality standards, integration of criminal law enforcement and the criminal offense of corporate settings.

In his capacity of environmental good and healthy as one of the human rights and the constitutional rights of citizens who synergy with national development organized by the principles of sustainable development and the vision of the archipelago. Basically become a necessity and a buffer system determinants of life, good and healthy environment provides a great benefit to mankind. Therefore, the state, the government and the whole society are obliged to carry out environmental protection and management.

Basically, the corporate criminal offense uu No. 32 of 2009 states in Article-Article of Law No. 32 of 2009 which can be associated with criminal acts katagorikan corporation among others stipulated in Article 116-120.

In Article 116 paragraph (1), environmental crime committed by, for and on behalf of a business entity, criminal prosecution and criminal sanctions imposed on:

- a. Business entity; and / or
- b. The person who gave the order to commit the offense or the person acting as the leader of such crime activities.

Thus themselves responsible is a business entity or person who gave the orders to commit the crimes. In this case also applies to environmental crime people do, which is based on employment or other relationship by acting within the scope of work of the enterprise. Criminal sanctions imposed remains on giving the orders or the leader of a criminal offense regardless of the offense is done individually or jointly.

For criminal charges on criminal offenses in the corporate environment, giving the order a criminal offense, criminal liability imposed form of imprisonment and a fine is increased by one third. (Article 117). While the criminal offense committed by a business entity, criminal sanctions imposed to business entities represented by the board authorized to represent inside and outside the court in accordance with the legislation of carrying out functional.

In the explanation of Act 32 of 2009, the functional actors are business entities and legal entities. Imposed criminal charges against leaders of business entities and legal entities, for the crime of business entities and legal entities is a criminal offense functional, so the subject of criminal and sanctions are imposed on those who have authority over the physical perpetrators and receiving the physical perpetrator's actions.

Receive action in the case in question is giving the order approved, allow, or not enough to supervise the physical perpetrator's actions, and / or have policies that allow for such offenses.

Especially with regard to additional sanctions or criminal, that criminal acts within the corporate environment also imposed additional penalty. Article 119 states that in addition to punishment as stipulated in this law, the business entity may be subject to additional criminal or disciplinary action in the form of:

- a) Deprivation gain derived from the crime;
- b) Closure of the whole or part of a business and / or activities;
- c) Recovery from crime;
- d) The obligation to do what is neglected without right; and / or
- e) Placement of the company under the guardianship of three (3) years.

For the implementation of the provisions of Article 199 letters a, b, c and d, prosecutors coordinate with responsible agencies in the field of environmental protection and management to carry out the execution.

Law No. 32 of 2009 is clear, arrangements concerning the crime of corporate responsibility. In addition, deeper study is needed both in academia, professionals and law enforcement officers in order to establish a theoretical framework for corporate criminal liability.

This should be offset by improving the quality and ability of law enforcement officials who will implement it. They must be able and creative to conduct breakthrough, in the enforcement of criminal acts in a corporate environment is already stipulated in Law No. 32 of 2009, should be a reference in its enforcement, in particular the environmental impacts caused by mining license in Samarinda.

In the future the need for socialization of Law No. 32 of 2009 on the application of criminal sanctions for law enforcement officers, to pay more attention to the interpretation of the principle of *ultimum remedium*.

It is recognized that today the problem of environmental pollution is increasing from time to time, both environmental pollution activities undertaken by individuals or by legal entities (corporations). Environmental crimes committed by corporations should be cautious, because the environmental crimes committed by the corporation is the most potential in the present and certainly very dangerous for the impact that environmental sustainability and its surroundings.

Even Barda Nawawi Arif explained things become a central problem the world today are: the development of congresses United Nations on the prevention of crime and the treatment of offenders in the last two decades have often highlighted the forms dimensional crimes against development (crime against development), crime against social welfare (crime against social welfare), and crimes against the environment quality (crime against the quality of life).

Development is happening on a large scale and without regard to the environmental aspects of the main problems for the environment. Linkages on development issues with the public welfare issues and environmental concerns, in principle, can not be separated.

Today the environmental problem to be most warmly to be highlighted by the various parties. This is because the environment is closely linked to the survival of living beings and the welfare of the living. By looking at the influence of corporations in today's environmental pollution, then it is proper if the corporation criminally held responsible.

History records many nation-states embracing democratic ideas and apply them not only to governance (government), but also to a wide range of governance (governance) community. Various social programs and economic regulation created to protect its citizens. However, starting the end of the 20th century, under pressure from corporate lobbies on behalf of globalization, many governments began to implement neoliberal policies

As a result, the government was marginalized and businesses began to take control. While deregulation of the business release of the rules, privatization allows them (the global corporation) to manage the various areas into sectors to live together, they never touched on. This phenomenon is called 'takeover secretly' (silent take-over). Business in the corporate form was transformed into an institution that is very dominant, the power and influence beyond the state and civil society. As a result, a variety of malpractice committed by the corporation to go on without control.

International Amnesty (2003) and Human Rights Watch (2004) reported a wide range of international business involved extensive human rights violations in the area of their operations around the world began to abuse workers, eviction, exclusion of force, inhibiting labor association, violates the fundamental rights of women workers, hiring child labor, to tear apart the rights of indigenous peoples, as well as damaging the environment.

In response, the conception of CSR which is a form of corporate responsibility, begin to be activated again to the business community. In fact, he is not new. CSR already exists as part of a business strategy in an attempt to add a positive value in the public eye. But, through a lawsuit strict logic of the financiers, corporate responsibility have led to a dilemma.

On the one hand, CSR is a claim on the initiative point out that the business not only operates for the benefit of the shareholders (shareholders), but also for the benefit of the stakeholders in business practice, workers, local communities, government, NGOs, consumers, and the environment life. Global Compact Initiative (2002) calls this understanding with 3P (profit, people, planet). Namely, that while the purpose of business is for profit (profit), it should also improve the life of people (people), and ensure the sustainability of the planet.

Environmental criminal law enforcement can be a preventive and repressive. Enforcement of criminal law is a preventive environmental law enforcement prior to the violation or environmental pollution. It is closely related to the problem of environmental administration, namely: licensing. In granting the operating license, the government should consider the impact of social and environmental impacts that would arise from such business.

While the enforcement of criminal law repressive environment is the rule of law in the aftermath of environmental pollution. In environmental law, law enforcement, preventive should be preferred, because due to

pollution prevention through repressive law enforcement requires a very large cost.

In addition to the losses that would be suffered by the environment as a result of pollution, could not be recovered in a short time. Koesnadi found that environmental law enforcement efforts must be done first is that is compliance, the compliance regulations, or enforcement by supervisory preventifnya

Meanwhile, the application of criminal law in cases of environmental pollution need to observe the principle subsidiaritas as follows: as supporting administrative law, application of criminal law taking into account the principle of subsidiaritas that should the criminal law be used if sanctions in the field of other laws, such as administrative sanctions and civil sanctions, and alternative environmental dispute settlement ineffective and / or the level of blameworthiness relatively heavy and / or due to greater deeds and / or actions cause unrest in society.

In this pespektif, pindana issues related to the legal entity may be clarified when it became subject to the law as follows:

1. Never think of the existence of the legal entity or corporation. Acts committed in relation to the corporation must be viewed as acts committed by the management corporation, so penguruslah responsible. This opinion refers to the general principles in the Code of Penal (Penal Code), namely that a criminal act can only be done by men (naturlijke person). This can be seen in the formulation of Article 59 Criminal Code, which reads: if it is determined a conviction for an offense for administrators, board members or commissioners, then the punishment was not imposed on members of the board or the commissioner, if it is clear that the violation occurred not due to his fault.
2. Recognizing the corporation as a maker but who is responsible is the caretaker.
3. Recognizing that corporations can be a maker and responsible. This opinion is the opinion of most developed that considers the corporation as a legal subject that can be justified by the criminal. The background of this thinking, so that the corporation can be sentenced to criminal penalties, among others, because it was thought that the material benefits obtained by the corporation of the crops is very large, then the sentence imposed on the committee felt not balanced and does not guarantee corporation to not do anything criminal.

Misconduct and crimes against the environment is not just a man as private entities to do so, but the corporation as a legal person can also perform actions that may cause harm to the other party, either an individual or a community.

Criminal provisions in Law No. 32 of 2009 begins with the words of anyone who refers to the notion of people. According to Article 5, paragraph 2 that, "everyone is obliged to preserve the environment and prevent damage and pollution". Furthermore, in the explanation of Article 5 also stated that establish the definition of a person is a person, group of persons or legal entities. Thus it can be said that the individual or legal entity can be the subject of a criminal act in a live environment.

Implementation of the corporation as a legal subject that can be responsible for environmental offenses remains to be seen elemental errors in criminal acts committed by the corporation. Maker of a criminal act will only be convicted if he has a fault in the commission of that offense. In the law this case we are familiar with the principle of "no punishment without guilt (Schuld zonder straf geen)".

Would be contrary to the sense of justice, if there are people sentenced when he is innocent or he does not have an element of error that can dicelakan him as a liability. To determine an error in a person must meet several elements, namely:

- a. Their ability to be responsible of the Creator
- b. Inner relationship between the Creator with actions in the form of intent or negligence.
- c. Not their fault eraser reason or no reason forgiving.

In Chapter IX of Law No. 23 of 1997 on Environmental Management (Law No.23 / 1997), has been set criminal sanctions (imprisonment and fines) to legal entities that pollute. Furthermore, article 46 of Law No.23 / 1997 is declared when a legal entity convicted of criminal offenses, the sanctions imposed in addition to the legal entity, as well as to those who gave the orders or who are leaders in these actions.

Corporate crime in the Indonesian legal system, not only recognized in Law No.23 / 1997. Corruption Law and the Law on Anti Money Laundering (money laundering), also addresses accountability for crimes corporation. Sally S. Simpson stated "corporate crime is a type of white-collar crime". While Simpson, quoting John Braithwaite, defines corporate crime as "conduct of a corporation, or employees acting on behalf of a corporation, the which is proscribed and punishable by law".

In this pespektif, the corporation as stipulated in article 45 and 46 of Law No.23 / 1997 was the formulation of corporate crime as stipulated in the Dutch Penal Code. So the corporation as a legal person, can be convicted under Law No.23 / 1997. According to him, the criminal responsibility (criminal liability) of corporate leaders (factual leader) and giving the orders (instrumentation giver), both of which can be punished simultaneously. The sentence was not due to a physical act or fact, but based on the function to which it aspires in a company.

Thus, it should be charged not only corporations but also individuals deemed responsible for the

pollution, including the director. Stephen explains, there needs to be an understanding that in criminal law there is the principle capability, so it must be proven that a person could be convicted if it is proven guilty. This means that no criminal sanctions can be automatically transferred from corporate crime into a personal crime.

So it must be separated sanctions on corporations and individuals. Indeed, the logic if the corporation's fault then the directors are also at fault, because the action is a corporate board of directors. However, in criminal law, an absolute must prove their intention to commit a criminal act. This is what the principle of mens rea (guilty mind) says Stephen, "an act is a crime Because The person committing it intended to do something wrong, This mental state is Generally Referred to as mens rea"

In this perspective that the judiciary is rather awkward to bring the corporation to court. But he remembered, there had been two similar cases have ever been decided by the court, where the company's director sentenced to imprisonment for a criminal offense committed by the company.

Regarding the alleged violation of their permits corporations. Stephen believes it to be proved first, "If that is breached administrative law means he violated licensing. So it must be proved whether the corporation violated the threshold specified in the permit. The new checked whether a violation of these thresholds cause pollution.

Thus when these offenses cause pollution, the corporation responsible criminally and civil. "That applies in Environmental Law is a formal offense. That is so found to have violated administrative law (threshold) then violated criminal law.

#### **E.Cover**

Whereas the development of Legal Entity form of corporations ranging from medieval times to this century, giving enough information to find the relationship between the corporation's rapid growth with the onset of corporate crime in the criminal law field. Still required more intensive study on the corporate crime.

That multinational corporations have shown a massive accumulation of wealth, and creating a wide gap between personal. There is a very rich and still very much the poor. Even large korporasi so dominate the world economic system, and can specify the job for many people, the food, drink and clothing, and so forth. Corporations can also threaten the government of a country in which the corporation operates.

Whereas in the field of criminal law, which relates to the weight of this pertanggungjawaban referred to in the draft Criminal Law (Penal Code) only recognize the individual as a subject of criminal law. For the corporation has not been regarded as a subject of criminal law. However, in the subsequent development mentioned in the special criminal law.

That in connection with the development of industrialization and progress in the field of economy and trade has pushed the idea that the subject of the criminal law is no longer confined to the human nature (natural person) but also includes corporations, due to no specific criminal can also be done by the corporation, and must dipertanggungjawabkan by the corporation.

That in vicarious liability or responsibility of corporations in criminal law can be described as the imposition of criminal responsibility to a person in the capacity of the main actors, based on the act violation or at least there is an element of violations committed by others. Those who do, however, must take responsibility for his actions limited.

That environmental law is an area of law called the functional areas of law, which is an area of law which contains provisions of administrative law, criminal and civil. Diatur corporate responsibility is not explicitly stated in the Act No. 39 of 2009 on the Protection of the Environment and management. It thus causes difficulty corporate criminal offense applied by environmental offense.

That difficulty corporate responsibility on offense due to their ideological environment, UUPPLH has explicitly adopted the principles contained in delarasi Rio 1992, namely the principles of state responsibility, of integrity, prudence, justice, polluter pays, participatory and local wisdom. The adoption of a legal political important because it may strengthen environmental management interests when dealing with short-term economic interests. But the offense accommodation with the environmental responsibility of corporations is still weak.

In accordance to the above, it is recommended that would lay the necessary rigor for corporate criminal responsibility on the offense so that corporate environmental conduct in exploiting alam negligence which causes pollution can be imprisoned according degan mistakes.

Need more socialized to community about the possibility of environmental offenses that should be accounted for by the corporation. It is thus essential to community participation in maintaining environmental wisdom.

Need more enhanced understanding of law enforcement officers, in terms of recognition and action terhadap corporations that make environmental crime. Thus the corporation would be more careful in managing the environment, when exploiting natural resources by not merely for the sake of economic interests.

## BIBLIOGRAPHY

- Amanwinata. 2010. *Delik Delik Tersebar Di Luar KUHP*. Bandung: Politeia.
- Amintohari. 2010. *Bencana Bencana Abad Ini, Siapa Bersalah Dan Bertanggungjawab?*. Surabaya: Lukito.
- Anam Choirul. 2011. *Perbandingan Sistem Hukum, eropa Kontinental dan Anglo Amerika. Sebuah Telaah Praktis*. Yogyakarta: Dian Rana.
- Arief, Barda Nawawi. 2001. *Tindak Pidana Korporasi*. Bandung: Rajawali Press.
- Hardjasoemantri, Koesnadi. 2005. *Hukum Lingkungan*. Yogyakarta: Universitas Gadjahmada Press.
- Hariyadi. 2012. *Banjir Dimana-mana. Bagaimana Peran Institusi Pelestarian Lingkungan?*. Solo: Panepen Mukti.
- Karmanto, Guntur. 1999. *Korporasi, Permasalahan Dan Prospeknya*. Jakarta: Putra kelana.
- Nasrudin, Dahlan. 2010. *Aspek Pidana dari Analisis Mengenai Dampak Lingkungan*. Yogyakarta: Pustaka.
- Ndaru, Suwito. 2010. *Badan hukum, Perkembangan dan Masalahnya*. Solo: Universitas.
- Rahayu, Umirah. 2010. *Ketika Bencana Lingkungan Datang Silih Berganti. Apa Yang Harus Dilakukan?*. Salatiga: Satyawacana.
- Rangkuti, Siti sundari. 1998. *Hukum Lingkungan di indonesia*. Surabaya: Airlangga Universitui Press.
- Remellink, Jan. 1978. *Hukum Pidana*. Bandung: Politeia.
- Santoso, Budi. 2011. *Peran Polri dari Tindak Pidana Konvensional ke Tindak Pidana Trans nasional*. Bandung: Sutrinido.
- Syahdeini, Sutan Remi. 1998. *Tindak Pidana Korporasi pada Instansi Perbankan*. Surabaya: Amelia.
- Tanujaya, Patuwi. 2010. *Aspek Administrasi Lingkungan Hidup dalam UU No. 32 tahun 2009 Tentang Perlindungan dan pengelolaan Lingkungan Hidup*. Bandung: Lentera.
- Tasrifin. 2011. *Menerapkan Pidana Untuk Korporasi Delik Lingkungan Hidup, Mungkinkah?*. Opini pada Dinamika berita. Banjarmasin. 12 Januari 2011.
- Wilardi, Romli.. 2010. *Perkembangan Asas dan Norma Hukum Administrasi Negara*. Yogyakarta: LP3MN.