

# VICARIOUS LIABILITY IN CORPORATE CRIME CASES AGAINST ENVIRONMENTAL CRIMES IN THE FORESTRY SECTOR

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**Abstract:** The concept of principle of error is born of the concept of no criminal without error (geen straf zonder schuld beginsel). A person will be held accountable for his unlawful actions. Vicarious liability is the legal responsibility of one person for the wrongful acts of another. In this study, the author used a type of normative legal research, namely research that uses secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials as the main data. Based on the case examined in the judgment No. 927 K/Pid.Sus-LH/2021 Defendant PT. NATURAL PERSADA MANDIRI has committed a criminal act of environmental corporation in the field of forestry and is obliged to carry out criminal liability represented by Nico Fernandus Sinaga as the management/director of the company imposed a fine as stipulated in Article 89 Paragraph (2) letter a juncto Article 17 Paragraph (1) letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

**Keywords:** Surrogate Liability; Corporate Crime; Environment.

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## INTRODUCTION

So far, criminal liability in Indonesia adheres to the principle of guilt in addition to the principle of legality which states that a person is responsible for his own actions. The concept of the principle of error was born out of the concept of no criminal without error (geen straf zonder schuld beginsel). That principle is a very important principle in accounting for the maker of a criminal act for having committed a criminal act. A person is considered unpunishable if he has no wrongdoing, either in the form of willfulness or negligence. The principle is that the principle departs from criminal liability based on the principle of guilt (liability based of fault) (Fines Fatimah And Barda Nawawi Arief, 2020).

A person will be held accountable for his unlawful actions. Criminal liability is something that must be accounted for by the maker for the actions he has done (criminal acts) (Atmasasmita, 1989).

Vicarious liability is actually nothing new, this concept of liability has become known in the civil law environment. In civil law vicarious liability is applied to cases of loss (tort). Tort is the payment of compensation for acts committed by workers that harm third parties. In civil liability Vicarious is regulated in Article 1367 of the Civil Code paragraph (1) which reads "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are dependent on him or caused by goods under his supervision" (Candra, 2013).

Vicarious liability is the legal responsibility of one person for the wrongful acts of another. In short, vicarious liability is often interpreted as substitute liability. The substitute liability is formulated in the Criminal Code in Article 37 paragraph (2) which states that in the event prescribed by law, any person may be held liable for a criminal offence committed by another person." In Indonesia, the concept of substitute criminal liability is well known. However, it is only limited to command liability and corporate criminal liability (Atmasasmita, 2009).

The vicarious liability formulation policy in Indonesia is currently more focused on corporate crime. In the concept of vicarious liability for corporate criminal acts, if a person or corporate worker acts within the scope of his work and with the intention of benefiting the corporation, and commits a crime, then his criminal responsibility can be imposed on the company. In reality, it is not so easy to impose criminal sanctions on corporations. This is due to the difficulty of determining the presence or absence of guilt in a corporation because the corporation as a subject of the Criminal Law does not have a psychiatric nature like a human being and sometimes in a case the company cannot be convicted of the guilt of a worker. This paper will discuss and analyze related to criminal liability to corporations that commit environmental crimes (Tawalujan, 2012).

## MATERIALS AND METHODS

### 1. Types of Research

The author uses a type of normative

legal legal research, namely research that uses library materials or secondary data consisting of primary legal materials, secondary legal materials and legal materials.

## 2. Data Types and Sources

The source of the data used is the judge's ruling Number. 927 K/Pid.Sus-LH/2021, while regarding the type of data, it is in the form of secondary data obtained by collecting and reviewing literature or documents related to this writing. Where the data consists of (Soekanto, 1986):

### A. Primary Legal Materials

That is a binding legal material consisting of basic norms or methods. The primary legal materials used in this study are:

- (1) Law No. 8 of 1981 concerning the Criminal Procedure Law.
- (2) Law No. 32 of 2009 concerning Environmental Protection and Management.
- (3) Law Number 19 of 2004 jo. 41 of 1999 concerning Forestry.
- (4) Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems.
- (5) Judge's Ruling No. 927 K/Pid.Sus-LH/2021 concerning the criminal act of environmental destruction in the forestry sector.

### B. Secondary Legal Materials

Namely legal materials that provide instructions and explanations to the primary law, the secondary legal materials used include:

- (1) Law Books.
- (2) Results of research, seminars, scientific discoveries.

(3) Other provisions that are directly and related to the object of study.

C. Tertiary Legal Materials Namely, legal materials that provide explanations of primary legal materials and secondary materials, including (Ali, 2009):

- (1) Encyclopedia.
- (2) Internet.
- (3) Indonesian dictionary

## 3. Secondary Data Collection Techniques

Data collection begins with tracing laws and regulations and positive legal sources that are considered relevant to the subject matter at hand (Ali, 2009).

### 1. Research Approach

To answer the problems in this study, an approach was used, namely:

- a. Statutory approach (statute approach) Statutory approach relating to the issues that the author will discuss.
- b. The case approach to the case approach is carried out by reviewing cases related to the legal issues faced that have become decisions in court and have permanent legal force.

5. Data Analysis Techniques The analysis of legal materials used in writing a thesis or legal memorandum is to use a qualitative data analysis method, namely research that refers to legal norms contained in laws and regulations and court decisions and legal norms that exist in society (Ali, 2009).

## RESULTS AND DISCUSSION

### A. The occurrence of Environmental Pollution carried out by the Corporation

The environment has the ability to absorb the waste discharged into it. This

ability is unlimited. If the amount and quality of waste discharged into the environment exceeds its ability to absorb, it is said that the environment is polluted. The ecosystem of an environment can be disturbed by its sustainability due to pollution and destruction of the environment. People often mix the definitions of pollution and environmental destruction even though there are differences. Wirjono Prodjodikoro also stated that the element of error is closely related to the mental state. This mental state will certainly not be found in the subject of corporate law. Because this element is an element found only in humans as a subject of natural law (*natuurlijke persoon*). This is certainly a problem for corporations as legal subjects in determining the element of guilt as the basis for criminal liability (Hendra Wijaya, 2021).

In addition to the problem of the element of guilt in the corporation as a legal subject, actually against the corporation as a legal subject, problems arise in terms of determining who the maker is. Barda Nawawi Arif stated that for criminal liability, it must first be clear who can be accounted for (Muladi, 2011).

According to the doctrine of "strict liability", a person can already be held accountable for a certain criminal offense even though there is no wrongdoing in that person (*mens rea*). Briefly "strict liability" is defined as criminal liability without fault "liability without fault". Meanwhile, "vicarious liability" is a criminal liability imposed on someone for the actions of others. Such accountability, for example, occurs in the event that the acts committed

by others are within the scope of their work or position. So in general it is limited to cases that concern the relationship between the employer and the laborer, helper or subordinate. Thus in this sense of "vicarious liability", even if a person does not commit a criminal act himself and has no fault in the usual sense, he is still appropriately accountable. When compared between "strict liability" and "vicarious liability" it is clear that the similarities and differences. The apparent equation is that neither "strict liability" nor "vicarious liability" requires the existence of "mensrea" or an element of guilt in the person being criminally prosecuted. The difference lies in the "strict liability" of criminal liability directly imposed on the perpetrator, while in "vicarious liability" criminal liability is indirect (Hendra Wijaya, 2021).

## **B. Corporate criminal liability for environmental pollution crimes (Case of PT. NATURAL PERSADA MANDIRI in Judgment No. 927 K/Pid.Sus-LH/2021)**

### **1. Position Case**

The defendant carried out mining activities located in Morombo Village Pantai, Lasolo District, North Konawe Regency, Southeast Sulawesi Province based on an oral agreement between the Defendant and PT. Bososi Pratama since 2018 with a contract that the Defendant is a contractor of PT. Bososi Pratama which mines Ore Nickel PT. Bososi Pratama will pay a down payment of IDR 2,500,000,000.00 (two billion five hundred million rupiah) while PT. Bososi Pratama will pay USD 9 per tonnage for each shipment made. That the basis of the Defendants

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conducting nickel ore mining in cooperation with PT. Bososi Pratama is a Defendant who has a Mining Service Business License (SIUJP) and a Trade Business License (SIUP) as well as PT. Bososi Pratama is the holder of a Production Operation Mining Business Permit (IUP OP) so that it shows the location where the Defendant conducted mining in the IUP op area of PT. Bososi Pratama. Bososi Pratama is the Head of Mining Engineering (KTT), namely Witness Darwis by showing the coordinate points and a map of the location of the coordinate points.

That initially the Defendants obtained permission orally to conduct mining in area 1 UP OP PT. Bososi Pratama with the coordinate points shown at that time, but because the drilling results were not good, then PT. Bososi Pratama through PT. Bososi Pratama shows a new location according to PT. Bososi Pratama is an expansion area of 1 UP OP PT. Bososi Pratama so that the Defendant only followed the orders of the PT. Bososi Pratama, however, it turns out that there are already large former openings and there are already 4 to 5 companies that Joint Operation with PT. Bososi Pratama. Bososi Pratama so that because of the position of the Defendant who is only a contractor from PT. Bososi Pratama, then the Defendant continued to be asked to shift until finally at the last location that the Defendant himself knew that the location was an area outside the IUP op PT area. Bososi Primary.

That the Defendant did not object to being told to shift because the Defendant was only a Mining Contractor who only had the obligation to do mining under an order from PT. Bososi Pratama while several other

companies are Joint Operations that are authorized to mine and sell nickel ore and have clear boundaries of mining work areas. In addition, even though it has been reported to PT. Bososi Pratama, Andi Uci as President Director of PT. Bososi Pratama conveyed to the Defendant that the last area or location outside the IUP OP area had been released, which means that it had been paid so that mining could be carried out in the area and also assured the Defendant that

The location is an expansion of the IUP OP area owned by PT. Bososi Primary. Thus the Defendants continued to mine on the basis of what had been agreed between the Defendants and the PT. Bososi Primary.

That then a field examination was carried out and the taking of coordinate points at the last location of the defendant's mining with the conclusion that the location was outside the area of IUP OP PT. Bososi Pratama is 1.7 kilometers away and turns out to be included in the protected forest area according to the Decree of the Minister of Environment and Forestry Number SK.8115 / MENLHK-PKTL / KUH / PLA.2 / II / 2018 dated November 23, 2018. Thus, the defendant's actions have fulfilled the criminal element of Article 89 Paragraph (2) letter a juncto Article 17 Paragraph (1) letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Companies, That the fine imposed on the Defendant is the minimum crime as stipulated in Article 89 Paragraph (2) letter a juncto Article 17 Paragraph (1) letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

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In addition, based on the facts revealed in the trial that the Defendant earned a profit of Rp. 100,000,000.00 (one hundred million rupiah) to Rp. 150,000,000.00 (one hundred and fifty million rupiah) per shipment in the mining activity so that the total profit obtained by the Defendant was Rp. 2,000,000,000.00 (two billion rupiah). based on the facts revealed that there were already many companies that were mining before the Defendant so that the environmental damage could not be immediately charged to the Defendant, and also PT. Bososi Pratama himself who was the party who ordered and got the greater benefit was not made a Defendant at all until the appeal was filed.

## 2. Analysis

In corporate crimes, the management in doing its actions is for and on behalf of the corporation and is intended to provide profits or avoid losses to the corporation. If only the corporation can be held criminally liable, while the administrator does not have to bear responsibility, this system provides a great opportunity for the administrator to take refuge behind the body of the corporation so that he will always escape the bondage of responsibility. Corporations can also be held accountable based on identification theory, where mens rea administrators are considered to be corporate children. The board is considered the same as the corporation. So, in addition to corporations, administrators must also be responsible. Thereby it would close the opportunity for the management of a corporation to act without taking into

account the possibility of being held from itself criminal liability as well (Hendra Wijaya, 2021).

That every person and corporation can be the subject of environmental crimes and can be accounted for. That way, in the case of a corporation that should be subject to criminal liability in the event that a criminal act is committed by a corporation, then according to Article 116 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, criminal liability may be imposed on, (1) Business entities; and/or, (2) The person who gave the order to commit the crime or who acted as the leader of the activity in the crime.

Based on the case of corporate crimes regarding the environment in the forestry sector researched by the author that in the Southeast Sulawesi High Court Decision Number 96 / PID. B/LH/2020/PT KDI dated October 19, 2021 which corroborates the Decision of the Unaaha District Court Number 114/Pid.B/LH/2020/PN Unh dated September 9, 2020, As the defendant was sentenced to a criminal offense based on Article 89 Paragraph (2) letter a juncto Article 17 Paragraph (1) letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

Defendant PT. NATURAL PERSADA MANDIRI in this case has committed a corporate crime and is obliged to carry out criminal responsibility in this case The criminal liability committed by the defendant is to impose a criminal penalty of fine represented by NICO FERNANDUS SINAGA, S.T., therefore with a fine of Rp2,000,000,000.00 (two billion rupiah).

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Make a return for compensation to the owner, namely 3 (three) piles of nickel ore from PT. NPM with coordinate points and made ba measurement at the crime scene and made to check the results of the Nickel Ore Testing laboratory, and 1 (one) stretch of nickel ore mining area mined by PT. NPM covering an area of + 2.6 Ha, in Morobo Pantai Village, Lasolo District, North Konawe Regency, Southeast Sulawesi Province in a Protected Forest area.

## CONCLUSIONS

Vicarious liability has been accommodated in at least three laws that regulate criminal acts outside the Criminal Code, namely Law Number 20 of 2001 concerning Amendments to Law 31 of 1999 concerning Corruption Crimes, and Law Number 26 of 2000 concerning Human Rights Courts and Law Number 32 of 2009 concerning Environmental Protection and Management.

Based on Article 116 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, criminal liability may be imposed on business entities; and/or The person who gave the order to commit the crime or who acted as the leader of the activity in the crime.

Defendant PT. NATURAL PERSADA MANDIRI in this case has committed a corporate crime and is obliged to carry out criminal charges then imposed a criminal fine on the Defendant represented by NICO FERNANDUS SINAGA, S.T., therefore with a fine of Rp2,000,000,000.00 (two billion rupiah) as stipulated in Article 89 Paragraph (2) letter a *juncto* Article 17 Paragraph (1)

letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

## REFERENCES

Atmasasmita, Romli. Principles of Comparative Criminal Law, (Jakarta: LBH Foundation, 1989)

Atmasasmita, Romli. Comparison of Contemporary Criminal Law. (Jakarta: fikahati aneska, 2009)

Ali Kusumo, Bambang, Corporate Criminal Liability in Criminal Law in Indonesia, Journal of Legal Discourse, Volume VII, No 2, Okto. 2008

Candra, Septa "Criminal Law Renewal; The Concept of Criminal Liability in the Upcoming National Criminal Law " Journal of Legal Minds, Vol. I No. 1 June 2013

C.M.V. Clarkson, Understanding Criminal Law, Second Edition, Sweet & Maxwell, London, 1998

Erlangga Kurniawan, The Concept of Corporate Responsibility in Indonesia, (Newsletter: Vol 1 No.3 December 2019)

Grace Yurico Bawole, Legal Analysis of Forms of Criminal Liability Based on the Concepts of Strict Liability and Vicarious Liability, Journal of Lex et Societatis Vol. VI/No. 8/Oct/2018. See also, C. M. V. Clarkson, Understanding Criminal Law, Second Edition, Fontana Press, London, 1995.

Grace Yurico, Op.Cit, Hlm.18. Lihat Juga, Wayne., R., Lafave, Handbook On Criminal Law, West Publishing Co,

- 1972, Hal. 219 Dan Henry., Campbell, Black's Law Dictionary, West Publishing Co, St. Paul Minn, 1979.
- Khanna, Corporate Liability Standars: When Should Corporation Be Criminality Liabel?, American Criminal Law Review, 2000.
- Kristian, the corporate criminal liability system is reviewed from various international conventions, PT. Refika Aditama, 2017.
- Nawawi Arief, Barda Finez Fatimah, Vicarious Liability in Criminal Law Formulation Policy in Indonesia, Diponego University Journal Law Article.
- Nawawi Arief, Barda Comparative Criminal Law, Raja Grafindo Persada, Jakarta, 2010
- Reksodiputro, Mardjono. Criminal Justice System, (Jakarta : Pt.Raja Grafindo, 2020.
- Remy Sjahdeni, Sutan. Corporate Criminal Liability, Grafitipers, Jakarta 2007.
- Saleh, Roeslan Thoughts on Criminal Liability, First Printing, Jakarta, Ghalia Indonesia
- Tawalujan, Jimly "Corporate Liability To Crime Victims" Lex Crimen Vol.1/No.3/Jul-Sep/2012



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