

DISHARMONIZATION OF CORPORATE CRIMINAL LIABILITY ARRANGEMENTS IN FORESTRY LAW

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Abstract: The dynamics of changes in the Act Number 41 of 1999 on Forestry have an impact on the disharmonization of arrangements regarding corporate criminal liability. Referring to the principle of legality, criminal liability must refer to the clarity of the formulation in law. Disharmonization of corporate criminal liability arrangements in forestry law can be a problem in the realm of law enforcement. This research aims to provide an analytical description related to the harmonization of corporate criminal liability arrangements in forestry law. The method used is fully conducted through literature study associated with legal theories related to corporate criminal liability. The results showed that there are several provisions of corporate criminal liability in forestry law that are not synchronized with each other. Therefore, harmonization steps are needed, which in theory and practice. Suggestions that can be submitted to the House of Representatives are: There needs to be fundamental changes, especially regarding corporate criminal liability in forestry law which is regulated separately in the Forestry Law.

Keywords: Harmonization; Criminal Liability; Corporation; Forestry Law.

INTRODUCTION

Corporations as subjects of forestry law are a logical consequence of the existence of the forestry sector which is an important branch of production for the state. In addition to social and ecological aspects, forests store natural resources that have a large share as a source of economic foreign exchange for the country. Business actors in the forestry sector are often also in the form of corporations. Therefore, institutions in the form of forestry law products are needed both as a measure of actions based on law

(*rechtmatige*) and unlawful actions (*onrechtmatige*).

The main parameter in determining criminal liability to legal subjects lies in the provisions formulated in legislation. This is inseparable from the existence of the principle of legality which is a representation of the value of justice and legal certainty. The implication is that all changes that occur in the provisions of laws and regulations have an impact on the law enforcement model. Without exception in the forestry criminal law which has

regulated corporations as one of its legal subjects.

Indonesia has several products of laws and regulations that regulate natural resources. However, in the context of forestry crimes, the main reference is the provisions contained in Law Number 41 of 1999 concerning Forestry (hereinafter referred to as Law 41/1999). In its development, Law 41/1999 underwent several changes, both because it was changed by other laws and changes due to the decision of the Constitutional Court (MK). The law that amends the provisions of Law 41/1999 includes: (1) Law Number 19 of 2004 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law (hereinafter referred to as Law 19/2004); (2) Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (hereinafter referred to as Law P3H); and (3) Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the CK Law).

In 2013, with reference to the provisions of Article 112 of the P3H Law, there were several criminal provisions in Law 41/1999 that were declared invalid. However, Article 112 of the P3H Law was actually revoked by the CK Law (vide Article 37 Paragraph (2) of the CK Law). This condition illustrates the existence of a

disharmonious situation and has an impact on difficulties in the law enforcement process, especially determining which types and rules are used. Thus, there are serious problems in the context of the formulation of forestry criminal provisions. Furthermore, considering that the criminal provisions in Law 41/1999 and the P3H Law amended by the CK Law concern the subject of corporate law, a juridical study is needed related to corporate criminal liability in forestry law.

Examining corporate criminal liability in forestry law based on the CK Law is a novelty form of this research. No other article has been found that discusses harmonization of corporate criminal liability in forestry law. Therefore, this research has novelty value.

Based on the background mentioned above, the problems discussed in this paper are: (1) What is the dynamics of changes in the Law on Forestry? and (2) What is the legal politics of corporate criminal liability in forestry law in the future?

RESEARCH METHODS

Research is the analysis of a phenomenon that is methodical, rigorous, and comprehensive to advance human understanding. While methods are processes, principles, and procedures for solving problems. Thus, research methods can be seen as processes, principles, or procedures for overcoming problems. Problems that

arise when conducting research. Researchers use a type of normative legal research in this study, which is tracing library materials that include primary, secondary, and tertiary legal literature. Because the author of this paper uses normative research methodology, relevant legal norms and laws and regulations are studied to be used as input in this approach.

RESULTS AND DISCUSSION

Dynamics of Changes in the Law on Forestry

The focus of the discussion on the dynamics of the Law on Forestry is the amendment of several provisions stipulated in Law 41/1999 both due to the new Law and as a result of being amended through a Constitutional Court decision. As is known, there are 2 (two) rules repealed by Law 41/1999, namely: (a) *Boschordonnantie Java en Madoera* 1927, Staatsblad of 1927 Number 221, as amended by Staatsblad of 1931 Number 168, last amended by Staatsblad of 1934 Number 63; and (b) Law Number 5 of 1967 concerning Basic Provisions of Forestry (State Gazette of 1967 Number 8, Supplement to the Government Gazette No. 2823).

Systematics Law 41/1999 consists of 84 (eighty-four) Articles and 17 (seventeen) Chapters. The Chapter Division in Law 41/1999 consists of Chapters on General Provisions, Forest Status and Functions, Forest Management, Forestry Planning, Forest Management, Research and Development Education and Training

and Forestry Counseling, Supervision, Transfer of Authority, Customary Law Peoples, Community Participation, Representative Claims, Forest Dispute Resolution, Investigations, Criminal Provisions, Compensation and Administrative Sanctions, Transitional Provisions and Closing Provisions.

In 2004, Law 41/1999 was amended by Law 19/2004, namely the addition of provisions of Article 83A and Article 83B relating to permits or agreements in the mining sector in pre-existing forest areas. In terms of corporate criminal liability, the amendment of Law 41/1999 by Law 19/2004 has no significant impact.

Furthermore, in 2013, there were several provisions of Law 41/1999 which were amended by the P3H Law. Some provisions in Law 41/1999 amended by UUP3H are: (a) The provisions of Article 50 paragraph (1) and paragraph (3) letter a, letter f, letter g, letter h, letter j, and letter k; and (b) The provisions of Article 78 paragraph (1) concerning criminal provisions against Article 50 paragraph (1) and paragraph (2) concerning criminal provisions against Article 50 paragraph (3) letter a and letter b, paragraph (6), paragraph (7), paragraph (9), and paragraph (10).

In 2023 after the enactment of the CK Law, several provisions in Law 41/1999 will be amended. Likewise in the P3H Law. Some provisions of Law 41/1999 amended by the CK Law include Article 15, Article 18, Article 19, Article 26, Article 27, Article 28, Article 29, additional provisions of Article 29A,

addition of provisions of Article 29B, Article 30, Article 31, Article 32, Article 33, Article 35, Article 38, Article 48, Article 49, Article 50, addition of provisions of Article 50A, Article 78 and Article 80.

Some provisions of the P3H Law amended by the CK Law include the provisions of Article 1, Article 7, Article 12, the addition of the provisions of Article 12A, Article 17, the addition of the provisions of Article 17A, Article 18, Article 24, Article 28, the deletion of the provisions of Article 53, the deletion of the provisions of Article 54, Article 82, Article 83, Article 84, Article 85, Article 92, Article 93, Article 96, Article 105, addition of provisions of Article 110A, addition of provisions of Article 110B, deletion of provisions of Article 111 and deletion of provisions of Article 112.

The dynamics of Law 41/1999 in addition to experiencing changes due to the enactment of some of these laws, have also been tested several times in the Constitutional Court. Constitutional Court decisions that have implications for changes to the provisions of Law 41/1999 include Decision Number 34/PUU-IX/2011 which interprets the provisions of Article 4 paragraph (3) of Law 41/1999, Decision Number 45/PUU-IX/2011 which amends the provisions of Article 1 point (3) of Law 41/1999, Decision Number 35/PUU-X/2012 which amends the provisions of Article 1 point (6), interprets the provisions of Article 4 paragraph (3), interpret the provisions of Article 5 paragraph (1), delete the explanation of

Article 5 paragraph (1), delete the provisions of Article 5 paragraph (2), and delete the phrase "and paragraph (2)" in Article 5 paragraph (3) of Law 41/1999. Next is Decision Number 95/PUU-XII/2014 which interprets Article 50 paragraph (3) letter e and interprets Article 50 paragraph (3) letter i of Law 41/1999.

Observing the timing of changes to Law 41/1999 due to other laws and the Constitutional Court Decision, there are disharmonious criminal liability provisions. In this case, Article 112 of the P3H Law which repealed several criminal provisions of Law 41/1999 was repealed by the CK Law. This means that there are several types of criminal liability in the P3H Law that overlap with Law 41/1999. This condition clearly makes it difficult from the law enforcement side.

The Legal Politics of Corporate Criminal Liability in Forest Law

Many problems and obstacles often hinder law enforcement officials, including police and courts, as well as prisons, from carrying out their duties as a system designed to combat crime. It is very difficult to determine whether law enforcement has fulfilled its obligations and performed its duties. Nonetheless, the general public, who follows crime issues through the mainstream media, will most likely not be interested in a variety of complex analyses. If it turns out that crime and lawlessness are common, society will conclude that this system is not working as it should. Similarly, the

public may begin to question the professionalism and violence of police who are still unsure as to which rules to apply or who should handle a case.

When the three pillars of law enforcement—values, regulations, and patterns of conduct—are not aligned, disruption arises. When undirected behavior patterns and competing rules arise due to incongruence of paired values, it disrupts the harmony of social interaction.

The formulation stage or statutory policy becomes the basis, model, and guideline for the operationalization or function of criminal legislation at the next stage. Significant weaknesses in the way criminal law prevents crime will certainly have a significant impact on law enforcement. Related to the current discourse, the researcher intends to elaborate on many elements that have an impact on the effectiveness of law enforcement in Indonesia, with a particular focus on the lack of coherence between criminal laws and regulations.

In his inaugural speech, Harkristuti Harkrisnowo, the Professor, stated that the lack of success in the legislative process so far resulted in the birth of laws that apply to all Indonesian people, thus making matters worse. This method is much more colorful due to the availability of voice trading and logrolling. In addition, the most important factors affecting the quality of legislative results are the ability of the lawmakers themselves, disputes over the method of drafting laws, and

low public involvement. In this context, a number of problems encountered in developing countries include fragmented legal drafting processes (Badilla and Rado, 2019).

The fact that Indonesia has not been able to identify the paradigm to refer to raises serious concerns. One of the main obstacles in developing and enforcing criminal penalties seems to be the lack of criminal policy; If there are no guidelines, all parties involved in the lawmaking process and the application of criminal penalties are free to create and innovate.

The legal politics of corporate criminal liability in forestry law will become increasingly important in the future. Forestry law is a collection of regulations that regulate the relationship between individuals (individuals) and forests and forestry. In the context of forest law, corporate criminal liability is related to crimes involving the use of natural resources, forest areas, and forest products.

Some important aspects of corporate criminal liability law politics in forestry law include:

Forest division

Forestry law regulates the division of forests into state forests (forests controlled by the kingdom) and hutan rakyat (forests owned by communities).

Regulation of mining activities

The politics of forestry law in granting permits for mining activities in forest areas includes the management of natural resources, especially forests that produce injustice (Najicha, 2017).

Prevention and mitigation of forest destruction

Forest law aims to prevent and limit damage to forests, forest areas, and forest products caused by human actions, livestock, fires, natural resources, pests as well as diseases and weeds.

Forest protection

Forestry laws ensure the protection of forests based on their status, such as forests based on their status, forest rights forests (forests that are on land burdened with ownership commonly called people's forests), and community forests (government-dominated national forests).

Natural resource management

The politics of forestry law in granting permits for mining activities in forest areas includes the management of natural resources, especially forests that produce injustice (Najicha, 2017).

In the future, the legal politics of corporate criminal liability in forestry law will become increasingly important to preserve forests and forestry, and respect the rights of communities and individuals in natural resource management. Some regulatory weaknesses in forest law include:

Uncertainty in forest management

Forest law may not cover all important aspects of forest management, so there may be uncertainty in forest management (Rikaltra, 2022).

Lack of importance in forest management

Forest law may not provide enough focus on forest management, which can lead to a lack of interest in forest management (Hidayat, 2019).

Difficulties in [legal enforcement]

In some cases, forestry law may be difficult to implement effectively and efficiently, as there may be uncertainties or limitations in existing regulations (Putra et al, 2022).

Corporate arrangements as forest managers

In some countries, the regulation of corporations as forest managers may cause many problems, such as conflicts of interest between entrepreneurs and communities, as well as entrepreneurs who do not always comply with forest management requirements (Hastutik, 2017).

Deficiencies in the prevention and abuse of forest damage

Forest law may not cover enough aspects in preventing and misusing forest destruction, so there may be deficiencies in efforts to prevent and abuse forest destruction (Rikaltra, 2022).

Although there are some weaknesses in forest law regulations, it is important to continue to develop and improve forest management systems to make them more effective and sustainable. This will help in preserving forests and forestry, as well as respecting the rights of communities and individuals in natural resource management.

Some of the main issues in the Forestry Law that affect regulation include:

1. Definition and boundaries of forest areas

There are eight decisions of the Constitutional Court (MK) that change the contents of the Forestry Law, especially regarding the definition and boundaries of forest areas, the right to control the state which includes individual rights including mining management in forest areas (Hidayat, 2019).

2. Corporate accountability in forestry crimes

Corporate arrangements as forest managers may cause many problems, such as conflicts of interest between entrepreneurs and communities, as well as entrepreneurs who do not always comply with forest management requirements (Hastutik, 2017).

3. Forest fire prevention and management

Cases of forest fires (Karhutla) that occur in various regions in Indonesia are in the spotlight of many. The impact of smoke caused by fires pollutes the surrounding air and millions of children are affected by duct diseases. Law enforcement seems helpless. This condition can be a momentum to revise Law No. 41 of 1999 concerning Forestry (Hidayat, 2019).

4. Protection of indigenous peoples

Indonesia needs firm and binding regulations for all parties in efforts to

prevent forest and land fires and protect customary law communities around forests (Hidayat, 2019).

5. Sustainable forest management

The Forestry Law must pay attention to sustainable forest management, so as to preserve forests and forestry and respect the rights of communities and individuals in natural resource management (Hidayat, 2019).

Deforestation regulations can be improved in forest management through several steps, including:

1. Reconstruction of regulations based

on the value of justice: This step involves updating deforestation regulations by considering the value of justice in forest management (Rikaltra, 2022).

2. Regulatory and law enforcement

interventions: It is important to intervene in regulations and strengthen law enforcement to reduce deforestation rates (Ministry of Environment and Forestry, 2019).

3. Proper land management and

certification: Proper land management and certification of forest areas are needed to prevent deforestation (Tami, 2021).

4. Corporate accountability in forestry

crimes: Regulations need to pay attention to corporate accountability in forestry crimes to reduce the impact of deforestation caused by company activities (Hastutik, 2017).

5. Development of forest management

units: this step is needed to create

sustainable and sustainable forest management (Rahmadanty, 2021).

With these steps, it is hoped that deforestation regulations can be improved so that forest management can be carried out sustainably and reduce deforestation rates.

Harmonization of corporate criminal liability in forestry law is the process of harmonizing and harmonizing corporate criminal law norms in the field of natural resources and the environment, including the forestry sector. Several studies have been conducted to discuss the concept of harmonization of corporate criminal law in the forestry sector, including corporate regulation in Law No. 18 of 2013 concerning the prevention and eradication of forest destruction. In addition, there are also theories of corporate liability such as the doctrine of identification, the doctrine of strict liability, and the doctrine of vicarious liability that can be applied in cases of corporate crime in the forestry sector (Surgana, 2015).

According to Allens' special report, Arthur Robinson to the UN Special Representative of the Secretary General on Human Rights and Business on February 2008 in February 2008 on 55 said that it is not clear whether Indonesia has a system that regulates criminal liability for corporations, because the Indonesian Criminal Code, which is inherited from the Netherlands, does not regulate corporations as legal subjects. There are certain regulations

that have begun to introduce corporations as legal subjects in certain cases. Indonesia is advised in the future to revise its Criminal Code and include provisions on criminal and corporate liability.

There are several laws and regulations outside the Criminal Code that have recognized corporations as legal subjects, but of these regulations there are 3 (regulations) that have focused on regulating this, namely:

1. Law Number 31 of 1999 concerning the Eradication of Corruption

Article 1 number 1

A corporation is a group of people and/or wealth that is organized whether it is a legal entity or a non-legal entity.

Article 20

(1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, criminal charges and convictions can be made against the corporation and/or its management.

(2) The criminal act of corruption is committed by a corporation if the crime is committed by people either based on employment relationships or based on other relationships, acting within the corporate environment either alone or together.

(3) In the event that criminal charges are brought against a corporation, the corporation is represented by the management.

- (4) Management representing the corporation as referred to in paragraph (3) may be represented by other persons.
- (7) The principal crime that can be imposed against the corporation is only a fine, provided that the maximum penalty is plus 1/3 (one third)
2. Law No. 41 of 1999 on Forestry
Article 78
- (14) Criminal acts as referred to in Article 50 paragraph (1), paragraph (2), and paragraph (3) if committed by and or on behalf of a legal entity or business entity, criminal charges and sanctions imposed against its management, either individually or jointly, shall be subject to criminal charges in accordance with their respective criminal threats plus 1/3 (one-third) of the crime imposed.
3. Law Number 32 of 2009 concerning Environmental Protection and Management
Article 116.
- (1) If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed on:
- a) Enterprises; and/or
 - b) the person who gave the order to commit the crime or the person who acted as the leader of the activity in the criminal act.
- (2) If an environmental crime as referred to in paragraph (1) is committed by a person, based

on an employment relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions shall be imposed on the order-giver or leader in the crime without regard to the crime committed alone or jointly.

Article 117.

If criminal charges are filed against the order-giver or leader of the crime as referred to in Article 116 paragraph (1) point b, the criminal threat imposed in the form of imprisonment and fines is increased by one-third.

Article 119.

In addition to the crimes referred to in this Law, business entities may be due to additional crimes or disciplinary actions in the form of:

- a) deprivation of profits obtained from criminal acts;
- b) closure of all or part of the place of business and/or activity;
- c) reparations due to criminal acts;
- d) compulsion to do what is neglected without rights; and/or
- e) Company placement under supervision for a maximum of 3 (three) years.

Based on the articles in the corruption eradication law and the environmental protection and management law above, corporate criminal liability can be grouped into a "derivative" accountability system with the doctrine of *the identification* approach, because the basis of this article is the existence of a person, either by employment or by virtue of other relationships, acting within the corporation either alone or jointly.

In the investigation and prosecution of perpetrators of illegal logging carried out by corporations, where in addition to human actors (*naturlijk person*) the corporation also takes legal action and searches assets resulting from crime and confiscates and confiscates. If this is implemented, it is very unlikely that the perpetrator can continue to do business or continue his business because in addition to being imprisoned, the company managed is also punished and all his assets are confiscated and confiscated.

Law of the Republic of Indonesia Number 41 of 1999 recognizes the classification of formal and material crimes. Formal criminal acts can be found in Article 78 paragraphs (1) and (2), which refer to the provisions in Article 50 paragraphs (1) and paragraphs (3). As for the formulation of material crimes, it can be found in Article 78 paragraph (1), which refers to Article 50 paragraph (2). This law actually recognizes legal entities as perpetrators of criminal acts. This provision is regulated in the provisions

of Article 78 paragraph (14). Looking at the criminal threat, this sanction is included in the severe category, where the perpetrators are subject to the main crime in the form of imprisonment and fines as well as additional crimes of confiscation of all forest products and / or equipment including transportation equipment (Badilla and Rado 2019).

CONCLUSION

Some corporate criminal liability provisions in forestry law are out of sync. Therefore, harmonization steps are needed in theory and practice. As an effort to harmonize criminal law policies, researchers concluded to recodify corporate criminal law norms in various laws to be regulated in separate laws, such as the Forestry Law in the future. Legal regulations regarding the nature and time of corporate crime must be clearly regulated in articles, and all activities or actions that can cause harm must be regulated. When corporations become the focus of criminal activities, the criminal justice system must also be corporation-oriented. That is, specific rules must be established regarding when a corporation is considered to have committed a criminal act, who can be held accountable, how the liability can be implemented, and what sanctions can be imposed on the corporation. Crime must be developed independently of corporations and society. In addition, criminal sanctions should be formulated alternatively or optionally rather than cumulatively

which are strictly imperative. This includes the crime of "committing certain acts" aimed at restoring the function of ecosystems damaged by pollution or destruction of the environment, as well as social and economic costs that must be reimbursed by criminal offenders.

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Diakses pada 25 Desember 2023.



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