

Reconstruction of Criminal Law Policy in Combating Environmental Crimes by Corporations

Fevi Febriyanti, Mhd. Azhali Siregar

Abstract

Environmental crime by corporations is an important issue in Indonesia because of its far-reaching impact on ecosystems and society. Criminal law enforcement against corporations faces various obstacles, such as the difficulty of proving collective guilt, low sanctions, and the lack of additional criminal applications. This research aims to analyze the current criminal law policy in tackling environmental crimes by corporations and formulate a more effective and just policy reconstruction. The research uses a normative juridical approach with statute, conceptual, and case approach analysis. Data were obtained through literature studies from primary, secondary, and tertiary legal materials, then analyzed descriptively-analytically and prescriptively. The results of the study show that the reconstruction of the ideal criminal law policy includes strengthening the principle of *strict liability*, optimizing criminal and additional sanctions, integrating penal and non-penal approaches, and strengthening the capacity of law enforcement officials. With the implementation of these policies, law enforcement can be more effective, prevent violations, and encourage corporations to be socially and ecologically responsible.

Keywords: Criminal Law Policy, Corporation, Environmental Crime, Policy Reconstruction

Fevi Febriyanti¹

¹Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: viafevifebriyanti@gmail.com¹

Mhd. Azhali Siregar¹

²Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: azhalisiregar@dosen.pancabudi.ac.id²

2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

Introduction

The development of industrialization and the expansion of natural resource-based business activities have brought serious implications for the quality of the environment in Indonesia. Corporate activities in the mining, plantation, energy, and manufacturing sectors often cause pollution and environmental damage that have a wide impact on the ecosystem and people's lives. Environmental crimes committed by corporations are no longer conventional, but organized, systematic, and have extraordinary crimes. In this context, criminal law is expected to be able to function as an instrument of social control as well as a means of environmental protection effectively.

Corporations in Indonesia have had a huge impact on the environment. The activities of the mining, energy, manufacturing, and waste treatment industries have the potential to cause pollution and damage to the ecosystem, such as coal waste, chemical waste, and water or soil pollution. This impact is not only ecological, but also causes social and economic losses for the affected communities. This phenomenon shows that environmental crimes by corporations are systematic, structured, and complex, so they require effective legal handling. In this context, criminal law should be a strategic instrument to tackle environmental crimes and provide a deterrent effect for corporations that violate the rules.

Normatively, the regulation regarding corporate criminal liability has been accommodated in Law Number 32 of 2009 which affirms that corporations can be held criminally responsible for environmental crimes. In addition, the recognition of corporations as subjects of criminal law is also in line with the development of modern criminal law and the strengthening of regulations through Law Number 6 of 2023 which brings a number of changes in licensing and environmental management policies. However, in law enforcement practice, various obstacles are still found such as proving elements of corporate wrongdoing, low criminal effectiveness of fines, and the nonoptimal application of additional penalties such as revocation of business licenses and environmental restoration.

These problems show that the existing criminal law policy has not been fully able to answer the complexity of environmental crimes by corporations. The ultimatum remedium approach that has been adopted in environmental law often makes criminal law the last resort, so its enforcement lacks a deterrent effect. In fact, in certain cases that cause major ecological losses and have systemic impacts, criminal law should be placed as a strategic instrument (premium remedium). Therefore, an in-depth evaluation of the formulation, application, and execution of criminal law policies in the context of corporate environmental crimes is needed.

Based on these conditions, the reconstruction of criminal law policy is an urgent need to realize a more responsive, progressive, and fair environmental law enforcement system. The reconstruction includes strengthening the concept of corporate criminal responsibility, applying the principle of strict liability more consistently, optimizing sanctions oriented towards environmental recovery, and comprehensive integration of penal and non-penal policies. Thus, criminal law policy not only functions as a means of punishment, but also as an instrument of environmental protection that is sustainable and in the public interest.

Research Methodology

This research uses a normative legal research approach that emphasizes the analysis of legal norms, regulations, and criminal law policies in tackling environmental crimes by corporations. This approach is combined with a statute approach to examine applicable laws and regulations, including Law Number 32 of 2009 and derivative regulations related to corporate criminal liability.

In addition, a conceptual *approach* is used to analyze the theory of corporate criminal liability and the principle of *strict liability*, as well as a *case approach* to review law enforcement practices and court decisions relevant to corporate environmental crimes. This combination of approaches allows research not only to formally assess legal norms, but also the effectiveness of their application in practice.

The sources of legal materials used are divided into three categories. First, primary legal materials, including laws and regulations, court decisions, and official government documents related to environmental crimes committed by corporations. Second, secondary legal materials, in the form of scientific literature, legal journals, books, and the results of previous research that discuss criminal law policy and corporate accountability. Third, tertiary legal materials, namely legal dictionaries and legal encyclopedias that support the understanding of terms and concepts used in research. The data collection technique is carried out through library *research* by searching legal documents, literature, and related scientific publications. The analysis of legal materials is carried out qualitatively, descriptively-analytically, and prescriptively.

The descriptive analysis aims to describe the current state of criminal law policy, including corporate accountability mechanisms, types of sanctions, and obstacles in law enforcement. Prescriptive analysis is used to formulate a reconstruction of criminal law policies that are more responsive, effective, and fair, including strengthening the principle of *strict liability*, optimizing criminal and additional sanctions, and integrating penal and non-penal approaches. With this method, the research is expected to be able to provide a comprehensive conceptual and normative basis for environmental criminal law policy reform in Indonesia.

Discussion 1. Current criminal law policies in tackling environmental crimes committed by corporations in Indonesia

A corporation is a legal entity or business entity that has legal rights and obligations to carry out business activities. In the context of environmental law, corporations are not only considered as economic actors, but also as legal subjects who can be held accountable for the environmental impacts they cause. This means that corporations have an obligation to ensure that all of their operational activities do not damage the ecosystem, water quality, air, soil, and the sustainability of natural resources

The current criminal law policy recognizes corporations as the subject of criminal law through regulations in the environmental sector. The legal basis is contained in Law Number 32 of 2009 concerning Environmental Protection and Management, which states that everyone, including corporations, can be held criminally responsible for acts that damage the environment. In addition, Articles 55 and 56 of the Criminal Code (KUHP) regulate *joint liability* and company leaders for the actions of their subordinates. (Sudarto, 2021)

Indonesia's criminal law policy places corporations as legal subjects who can be held accountable for environmental crimes through applicable regulations. The main basis is found in Law Number 32 of 2009, which states that everyone, including legal entities and corporations, can be subject to criminal sanctions if they commit acts that damage or pollute the environment. In practice, criminal policy currently faces several obstacles, including: (1) the difficulty of proving elements of corporate wrongdoing due to its collective and structured nature; (2) criminal sanctions, most of which are in the form of fines, are not proportional to the profits obtained by the corporation; and (3) the suboptimal application of additional penalties such as environmental restoration obligations or revocation of business licenses.

Therefore, the effectiveness of law enforcement is still limited, so corporations tend to feel less likely to have serious legal risks, especially in the case of dumping industrial waste that has a major impact on the ecosystem. (Nasution, 2020)

Indonesia's current criminal law policy recognizes corporations as the subject of criminal law that can be held accountable for environmental crimes. This is regulated in Law Number 32 of 2009, which emphasizes that everyone, including legal entities and corporations, can be sentenced to criminal sanctions if they commit acts that damage or pollute the environment. Furthermore, Articles 55 and 56 of the Criminal Code explain the principle of joint and vicarious liability of corporate leaders for the actions of subordinates (*joint and vicarious liability*), so that legally, corporate leaders can be held accountable for actions taken by employees or their operational units.

This policy is a normative basis for enforcing the law against the practices of pollution, waste disposal, and ecosystem destruction carried out systematically by corporations.

However, in law enforcement practice, there are a number of obstacles that make the effectiveness of the current criminal policy still limited. First, proving the elements of corporate wrongdoing is challenging because criminal acts are often collective and structured; it is difficult to prove who is directly responsible or whether the actions constitute internal corporate policy. Second, criminal sanctions in the form of fines, which have been the main instruments, are still low compared to the profits obtained by corporations, so that the deterrent effect is minimal. Third, the application of additional criminal penalties, such as environmental *remediation*, revocation of business licenses, or termination of operations, has not been carried out consistently by law enforcement officials, so corporations still have the opportunity to continue practices that damage the environment. Therefore, although normatively criminal law policies have recognized corporate liability, their implementation still faces substantive and procedural obstacles.

The current criminal law has not been able to fully become a strategic instrument to effectively prevent and tackle corporate environmental crimes. This shows the need to evaluate and reconstruct criminal law policies that integrate the principles of *strict liability*, optimization of criminal sanctions, and alignment with administrative and civil mechanisms to ensure stricter and fairer environmental protection. In the practice of environmental criminal law, the concept of the corporation as the subject of this law is very important, because environmental crimes are often collective, carried out through company policies, and involve various operational units. Therefore, principles such as *vicarious liability* (leadership responsibility for the actions of subordinates) and *strict liability* (accountability without proving individual fault) are applied to enforce the law against corporations that damage the environment.

In addition to being a legal subject, corporations have a preventive obligation to prevent environmental damage due to their operational activities. This includes planning environmentally friendly activities, implementing safe waste treatment technology, sustainable management of natural resources, and regular reporting on the environmental impact of business activities. With this preventive obligation, corporations not only avoid legal risks, but also play an active role in maintaining the sustainability of the ecosystem, social balance, and public health affected by their industrial activities. Furthermore, corporations that violate environmental regulations may be subject to criminal liability and administrative sanctions. Criminal liability can be in the form of fines, imprisonment for leaders, or environmental restoration obligations, while administrative sanctions include

revocation of business licenses, cessation of operations, or freezing of production facilities. The principles of *strict liability* and *vicarious liability* are applied to ensure that corporations do not escape punishment just because actions are committed by certain individuals within the company.

With this mechanism, the law emphasizes that corporate responsibility is collective, comprehensive, and oriented towards environmental protection, thereby creating a deterrent effect and encouraging corporations to act socially and ecologically responsible

2. Reconstruction of the ideal criminal law policy to tackle environmental crimes by corporations effectively and fairly.

The reconstruction of criminal law policies in tackling environmental crimes by corporations is needed to overcome the limitations of the effectiveness of the current criminal law. The ideal criminal law policy must be able to enforce corporate accountability in a real way, create a deterrent effect, and at the same time ensure justice for society and the environment. The principle of *strict liability* is one of the important foundations in this reconstruction, namely that corporations can be held criminally liable without having to prove the fault of certain individuals in the organizational structure. This principle emphasizes that corporations as legal entities have an inherent responsibility to prevent and control environmental damage resulting from their business activities. (Lubis, 2019).

A fair corporation is a corporation that carries out its business activities not only for economic gain, but also considers social and environmental impacts. In the context of environmental criminal law, a fair corporation means that the company is responsible for any activities that may cause damage or pollution, and is willing to comply with all applicable regulations. This principle emphasizes that corporations should not put financial gains above the interests of society and environmental sustainability. In other words, the company's strategic and operational decisions must be aligned with the principles of ecological and social justice, so that every action taken always takes into account the rights of the community and environmental sustainability¹.

Furthermore, a just corporation is also realized through transparency, accountability, and restorative responsibility. Transparency is realized by reporting environmental and social impacts openly; accountability through compliance with criminal, civil, and administrative laws; Meanwhile, restorative responsibility is carried out by restoring environmental damage and providing compensation to the affected communities. This concept is in line with the *polluter pays principle*, which emphasizes that the perpetrators of pollution or destruction must bear the cost of recovery. With the application of this principle of justice, corporations not only fulfill their legal obligations, but also play an active role in maintaining environmental sustainability and creating a positive impact on society

Policies must strengthen the application of complementary sanctions that are not only repressive but also restorative. Additional strategic sanctions include environmental *remediation obligations*, termination of operations or revocation of business licenses, and compensation for ecological losses incurred due to corporate actions. This approach is in line with the *polluter pays principle* enshrined in Law Number 32 of 2009 and has become an international standard in modern environmental law. The application of *profit-based penalties* is also recommended so that the fines imposed are more proportional to the economic benefits obtained by corporations from violating the law, so that the deterrent effect becomes stronger

and does not allow corporations to consider environmental violations as ordinary operational costs.

Furthermore, the reconstruction of the ideal criminal policy must also be carried out through the integration of penal and non-penal approaches, namely synergistic coordination between criminal law, administrative law, and civil law. With this approach, law enforcement officials not only demand criminal sanctions, but also ensure the implementation of administrative mechanisms such as the revocation of permits, the freezing of production facilities, or continuous operational supervision. This integrative approach will increase the effectiveness of law enforcement and provide a stronger preventive impact, while encouraging corporations to adopt environmentally friendly industry practices. Finally, criminal policy reconstruction must also pay attention to strengthening the capacity of law enforcement officials, including investigators, prosecutors, and judges, to be able to handle complex corporate cases. This includes improving technical capabilities in assessing environmental damage, mapping the flow of responsibility within the corporate structure, and understanding the mechanisms of profit and legal risks. With these measures, the reconstructed criminal law policy is expected to be not only theoretical, but also implementive, effective, and fair, so that corporations will be encouraged to be socially and ecologically responsible in their business activities. (Nasution, 2020).

In addition to the integration of penal and non-penal approaches, the reconstruction of the ideal criminal policy must also emphasize strengthening monitoring mechanisms and corporate accountability. This includes the implementation of a regular environmental reporting system, *compliance audits*, and the implementation of progressive sanctions for corporations that repeatedly violate. With this mechanism, corporations are not only penalized after a violation, but are also encouraged to prevent environmental damage in the first place. This preventive approach is in accordance with the principles of *preventive law enforcement*, which aims to minimize the risk of pollution and environmental destruction through proactive supervision and compliance, so that criminal law becomes a strategic instrument, not just a repressive tool.

The reconstruction of criminal law policy must consider a *restorative approach*. Corporations that commit environmental violations are required to restore affected ecosystems, including land rehabilitation, replanting, and compensation to harmed communities. This approach emphasizes corporate responsibility to repair damage and balance economic interests with environmental sustainability. With the implementation of an integrated preventive and restorative approach, criminal law enforcement is expected to create a strong deterrent effect, as well as foster corporate awareness to carry out environmentally friendly and sustainable industrial practices.

The countering of environmental crimes by corporations in Indonesia is carried out through a combination of criminal, administrative, and civil legal remedies to ensure effective environmental protection. By criminal law, corporations can be held accountable through fines, additional penalties, and environmental restoration obligations in accordance with Law Number 32 of 2009.

For example, companies that dispose of hazardous waste or pollute rivers may be subject to fines, imprisonment for leaders, and orders to restore environmental damage. This approach aims not only to punish, but also to ensure that environmental damage is remedied in real terms. In addition to being a legal subject, corporations have a preventive obligation to prevent environmental damage due to their operational activities. This includes planning

environmentally friendly activities, implementing safe waste treatment technology, sustainable management of natural resources, and regular reporting on the environmental impact of business activities. With this preventive obligation, corporations not only avoid legal risks, but also play an active role in maintaining the sustainability of the ecosystem, social balance, and public health affected by their industrial activities¹.

Furthermore, corporations that violate environmental regulations may be subject to criminal liability and administrative sanctions. Criminal liability can be in the form of fines, imprisonment for leaders, or environmental restoration obligations, while administrative sanctions include revocation of business licenses, cessation of operations, or freezing of production facilities. The principles of *strict liability* and *vicarious liability* are applied to ensure that corporations do not escape punishment just because actions are committed by certain individuals within the company.

With this mechanism, the law emphasizes that corporate responsibility is collective, comprehensive, and oriented towards environmental protection, thus creating a deterrent effect and encouraging corporations to act socially and ecologically responsible. In addition, countermeasures are carried out through preventive and integrative approaches, which involve coordination between agencies, such as the Ministry of Environment and Forestry, law enforcement officials, and judicial institutions. This approach includes supervising the company's operations, revoking business licenses for violating corporations, freezing production facilities, environmental compliance audits, and providing progressive sanctions for repeated violations. This integration of criminal, administrative, and civil law ensures that corporations are comprehensively responsible, both in terms of law and environmental restoration.

Conclusion

The current criminal law policy in tackling environmental crimes by corporations has provided a normative basis through the recognition of corporations as subjects of criminal law and the application of the principles of *vicarious liability* and *joint liability*. However, the effectiveness of law enforcement is still limited due to the constraints of proving corporate wrongdoing collectively, disproportionate criminal sanctions, and the lack of additional criminal enforcement such as environmental restoration obligations and revocation of business licenses. The ultimatum remedium approach applied also reduces the preventive effect, so that corporations still have the opportunity to continue environmentally damaging practices.

Criminal law policy reconstruction needs to be carried out by strengthening the principle of *strict liability*, optimizing criminal sanctions in the form of *profit-based penalties* and additional penalties, and ensuring integration with administrative and civil policies. In addition, the capacity of law enforcement officials needs to be increased to be able to handle complex corporate cases, including liability mapping, environmental damage assessment, and inter-agency coordination. With these measures, criminal law is expected to function more effectively and fairly, create a deterrent effect for corporations, and encourage socially and ecologically responsible business practices.

References

- [1] Simanjuntak, D., *Environmental Law Policy and Ecosystem Protection*, Jakarta: Kencana, 2022
- [2] Lubis, R. *Corporate Criminal Responsibility in Environmental Law Enforcement*, Bandung: Refika Aditama, 2019.

- [3] Lubis, R., *Strict Liability and Vicarious Liability in Environmental Law Enforcement*, Bandung: Refika Aditama, 2019
- [4] Mulyadi, H. *Corporate Criminal Law Policy in Environmental Protection*. Bandung: Alumni Press, 2018
- [5] Santosa, E. *Environmental Law and Corporate Liability*. Yogyakarta: Student Library, 2020. [6] Fauzi, R. *Corporate Law Liability in Environmental Crimes*. Jakarta: Rajawali Press, 2021
- [7] Nasution, A., Corporate Criminal Liability in Environmental Law, *Journal of Law and Development*, Vol. 50, No. 3, 2020.
- [8] Sudarto, *Indonesian Criminal Law*, Jakarta: RajaGrafindo Persada, 2021.
- [9] Rachmawati, S. "The Effectiveness of Criminal Sanctions against Corporations in Environmental Protection." *Journal of Environmental Law*, Vol. 12, No. 2, 2021
- [10] Wardani, T. "Environmental Protection through the Reconstruction of Corporate Criminal Law Policy." *Journal of Indonesian Legislation*, Vol. 17, No. 1, 2019
- [11] Prasetyo, D. "Implementation of the Polluter Pays Principle in Indonesian Environmental Law." *Journal of Law and Society*, Vol. 22, No. 4, 2020.