Corporate legal responsibility against environmental damage

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Abstract. The purpose of this study was to determine the form of legal responsibility due to the environmental damage done by corporations in the mining industry. This research uses normative legal research typology, especially those relating to the enforcement of corporate criminal sanctions in the fields of mineral and coal mining. The results of the research obtained are forms of penalties in the form of criminal sanctions for corporate actors who carry out environmental damage due to mining where law enforcers must provide strict sanctions to the perpetrators of destruction where the sanctions are strict liability, for the perpetrators of environmental destruction, who can create the legal entity has been dropped in the form of a criminal fine with a spread plus 1/3 of the provisions of the maximum criminal penalty imposed.

1. Introduction
In a simple sense, environmental law is defined as a law that regulates the environment, where the environment includes all objects and conditions, including human beings and their behavior in the space where humans are and affect the survival and well-being of humans and other living bodies [1]. In a modern sense, environmental law is more environmentally oriented or Environment-oriented Law, while environmental law classically emphasizes Use-Oriented Law.

The state fully controls all the wealth contained in the earth and is used as well as possible for the prosperity of the people. However, in reality, the people carry out mining activities by not paying attention to the important aspects in it, such as not paying attention to the consequences caused or influenced by the existence of the mining (illegal mining), but it does not rule out mining also carried out by mining companies that have official permits. The management of minerals or the mining sector in Indonesia, as well as the legal basis of other fields in general, namely starting from the government of the Dutch East Indies [2]. So that, up to the Old Order government, concrete management arrangements for mining or mining still use the law of the Dutch East Indies product which was immediately adopted into Indonesian mining law. Furthermore, several important issues related to mining are policy uncertainty, illegal mining, conflict with local communities, mining sector conflicts with other sectors [3].

Based on the elements of a criminal offense, the action of local mining can be included in a criminal act, if the local mining meets the elements regulated in the law, which can then be identified
as the classification of criminal acts. Mining law is a special provision that regulates mining rights [4] (parts of land containing precious metals in soil or rocks) according to established rules. The legal rules in mining are divided into two types, the rules of written and unwritten mining law. Written mining law is the legal principles contained in laws and regulations, treaties, and jurisprudence. Unwritten mining law is legal provisions that develop in the community. The form is not written and is local, meaning only applies in the local community. To ensure the preservation of environmental functions, all actions that are engaged in mining are required to do:

a. Mining actors are required to have an analysis of environmental impacts or a study of the large and important impacts of planned activities on the environment that are needed for the decision making process regarding the implementation of activities. The things analyzed include the climate and air quality, physiology and geology, water quality, land, flora and fauna, social and public health.

b. Mining actors are required to manage waste from the results of their business and activities.

c. Mining actors are required to manage hazardous and toxic materials. Law enforcement in Indonesia can be likened to enforcing wet threads. At least there are five factors that influence law enforcement, including a. legal substance, namely legislation, b. The factor of the legal structure, namely law enforcement (which applies the law), c. factors of facilities or facilities that support law enforcement, d. Community factors, namely the environment of the four laws are applicable or applied, and cultural factors, namely work, copyright, and e. a sense that is based on human intention in life.

Mining with Law Number 32 of 2009 [5] has a close link because the management of natural resources through mining must have environmental-based benchmarks based on legal norms by taking into account the condition of the community following global developments. Law No. 32 of 2009 which limits if the mining process carried out has detrimental consequences on the environment and the communities surrounding mining, whether it is in the form of environmental pollution or environmental damage.

2. Methods
Following the research method known in the legal literature, this study uses a normative legal research typology specifically related to the enforcement of corporate criminal sanctions in the fields of mineral and coal mining. Legal research is conducted to produce legal arguments, theories or concepts as prescriptions for solving the problems at hand. The results of the study of legal norms from the positive law inventory can help to get the right view of the enforcement of criminal sanctions on corporations in the mining of minerals and coal. This will be one of the products of abstraction analysis of positive legal norms. Marzuki [6] stated that legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand.

3. Results and discussion
Criminal sanctions in environmental law include two types of activities, namely: the act of polluting the environment and actions that damage the environment. In the case of criminal acts of environmental damage caused by corporate activities in Article 88 UUPPLH, it has regulated strict liability. Article 88 states that "every person whose actions, business, and activities use B3, produce and manage B3 waste, and that poses a serious threat to the environment are responsible for the losses incurred without the need to prove the element of error."

Strict liability is the maker has been able to be convicted if he has committed an action as formulated in the law without seeing how his inner attitude, which can also be interpreted as "liability without fault" (accountability without error). The responsibility of corporate environmental crime must pay attention to the following:

a. Corporations cover both legal entities and non-legal entities such as organizations and so on.

b. Corporations can be private (private juridical entity) and can also be public (public entity).
c. If it is identified that environmental crime is carried out in an organizational form, natural persons (managers, employees) and corporations can be both individually and jointly punished (punishment provisions).
d. There are management errors within the corporation and what happens is called a breach of a statutory or regulatory provision.
e. The liability of legal entities is carried out regardless of whether the persons responsible in the legal entity have been successfully identified, prosecuted and convicted.
f. All criminal sanctions and basic actions can be imposed on corporations, except capital punishment and imprisonment.
g. The application of criminal sanctions against corporations does not eliminate individual errors.
h. Criminalization of corporations should pay attention to the position of the corporation to control the company, through the policy of the management or the executives (corporate executive officers) who have a lack of decision (power of decision) and the decision has been accepted by the corporation.

UUPPLH acknowledges corporate responsibility as stipulated in Article 116 UUPPLH to 119 UUPPLH. According to Article 117 UUPLH, if a criminal offense is committed by or in the name of a legal entity, company, foundation or other organization, the criminal threat is weighed by a third. Besides criminal penalties, corporations that commit criminal acts can be sentenced to basic penalties in the form of fines and additional penalties in the form of disciplinary actions as follows:

a. Deprivation of profits obtained from a criminal offense (fruit of crime);
b. Closure of all or part of the company;
c. Repair due to criminal acts;
d. Require to do what is done without rights;
e. Exclude what is neglected without rights;
f. Placing the company under a maximum of 3 (three) years.

The principle of strict liability in RI Law No. 32 of 2009 concerning Environmental Protection and Management. The term strict liability translates into, explicit responsibility; proper responsibility; careful responsibility, and hard responsibility.

The legal science environment recognizes two types of accountability, namely liability based on fault (liability based on fault) and liability based on no liability (fault without fault) or also called strict liability. In addition to continuing to embrace accountability based on errors, UUPPLH also imposes accountability without errors (strict liability), namely for activities that "use hazardous and toxic materials or produce and manage hazardous and toxic material waste and that pose a threat serious about the environment."

In contrast to the UUPLH, which uses the term responsible for "paying compensation directly and instantly" and the exception of the enforceability of absolute accountability, UUPPLH uses the term absolute responsibility without the need to prove the element of error and the absence of exception provisions.

Specific elements that characterize this type of special responsibility are a strict liability, whose main characteristics include the emergence of direct and immediate responsibility at the time of the act so that it does not need to be associated with a fault, schuld. UUPPLH introduces the principle of specific responsibilities called strict liability.

4. Conclusion

Regarding criminal liability, the Minerba Act recognizes not only individuals as subjects but also corporations. By understanding the three categories of mining business actors, it will be easy to understand that corporations can also carry out criminal acts of mineral mining and therefore, can be held accountable for crimes. In the case of a criminal offense committed by a legal entity, in addition to imprisonment and fines against its management, the criminal sanctions that can be imposed on the legal entity are in the form of criminal penalties with a spread plus 1/3 of the maximum criminal
penalties imposed. Also, the law adheres to a system of criminal liability based on the principle of error, because there is no clear regulation and mention of deviations from the principle.

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