



# The Implementation of Criminal against Corporation in Environmental Crime

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## Abstract

This study aims to identify and analyze the Implementation of criminal against corporation in environmental crime. This research uses empirical legal research methods, which examines the law as a social phenomenon. The random sampling method was used to collect samples from the Department of Environmental Services and the Makassar District Court. Data collection techniques are based on the needs of analysis and evaluation and are carried out in two ways: directly in interviews and through library research. The results of the study indicate that the implementation of punishment against corporations for environmental crimes is carried out if the settlement through administrative and civil sanctions is ineffective, with the goal of providing a different effect on corporations that commit environmental crimes.

**Keywords:** Corporate; Criminal; Environmental damage.

## 1. Introduction

Environmental problems are essentially ecological problems, particularly human ecology, which is the incompatibility of humans and their environment. Meanwhile, environmental problems in a broad sense include problems caused by human activities (anthropogenic problems) as well as problems caused by natural forces such as volcanic eruptions, earthquakes, and tidal waves (geological problems) (tsunami). Both environmental problems caused by human activities and those caused by natural forces or events contain an equation that the disruption of the environment's balance is caused by the presence of certain natural resources as ecosystem elements that do not function, such as forest natural resources that lose their ecological function and/or economic and socio-cultural function.<sup>1</sup> In general, environmental issues arise as a result of pressure that exceeds the capacity of the environment in question.

In Indonesia, environmental problems arise as a result of human activities that are caused or influenced by four major factors: (a) population and community development; (b) natural resource and environmental development; (c) technological and cultural developments; and (d) international development. Furthermore, there are always other sources depending on the dynamics and developments of life that they are confronted with.<sup>2</sup>

<sup>1</sup> Otto Soemarwoto, *Ekologi: Lingkungan Hidup dan Pembangunan*, Cet. Ke-6, Jakarta: Djambatan, 1994, hal. 6-9. Dapat juga dilihat pada Yunus Wahid A.M., *Pengantar Hukum Lingkungan*, Jakarta: Prenadamedia Group, 2018, hal. 54-55

<sup>2</sup> Hardjasoemantri, Koesnadi, *Hukum Tata Lingkungan*, Cet. Ke-20, Yogyakarta: Gadjah Mada University Press, 2009, hal. 52-55

The expansion of developed countries' international scope has a significant impact on developing countries such as Indonesia in terms of technology, views, and so on. The main principle in the majority of these developed countries is the market mechanism's freedom. Production technology and consumption patterns advance without regard for their environmental impact. Natural resource management, according to this viewpoint, is not accompanied by renewal efforts. Garbage, dirt, pollution, and waste generated by industrial activities are not included in the company's cost calculation because they are all disposed of for free. This condition then leads to ongoing economic development and sustainable development that harms the environment; furthermore, this frequently occurs as a result of the Corporation because every activity carried out by the Corporation is in constant contact with the environment.

The role of corporations in national economic development provides benefits for economic growth, but it can also lead to crime, particularly among those seeking to maximize profits. Clinard stated in several of his studies on corporate crime that :<sup>3</sup>

Corporate crime has recently been perceived by society as the most serious and dangerous crime, surpassing traditional crimes such as robbery or violent theft, because the consequences of corporate crime are far more devastating than those of traditional crimes.

Criminal law has long been concerned with the development of corporate crime in the environment, beginning with Law No. 23 of 1997, which was later perfected and replaced by Law No. 32 of 2009 concerning the Protection and Management of the Environment, known as the master law in the environmental field. The PPLH Law contains a number of national environmental legal norms that will serve as the legal foundation for Indonesia's development of an environmental management system. Including the corporate regulation specifically on Environmental Crimes in Article 116 UUPLH and Supreme Court Regulation (PERMA) No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, with the goal that if a business entity commits a fraudulent act in the course of its business.

Then in Law no. 32 of 2009 concerning Environmental Protection and Management is regulated regarding corporate responsibility in Article 116 Paragraph (1), it is stated that:

If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on the business entity and/or the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime.

Corporations are increasingly committing environmental crimes. One of them is what happened in the case of PT. Tompo Dalle's crime of Mangrove Destruction and Logging in the green open space of Lanterbung, Bira Village, Tamalanrea District, Makassar City. The Makassar City Environment Service team discovered activities such as clearing mangrove trees, road construction and filling with heavy equipment, and fence construction at points S 050 04' 29.09 "and 1190 28' 06.62" carried out by PT. Tompo Dalle. Road construction and stockpiling activities, as well as fence

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<sup>3</sup> Arif Amirullah, *Kejahatan Korporasi*, Malang: Bayumedia Publishing, 2006, hal. 129.

construction, began in 2019, with the clearing or cleaning of mangrove trees beginning in 2020, with the intention of constructing resort housing and golf courses.<sup>4</sup>

As a result of this activity, there was death and environmental damage to mangrove forests covering an area of 97m x 14m and 440m x 14m where the company PT. Tompo Dalle does not have an environmental permit as stipulated in Article 36 paragraph (1) that every business and/or activity that is required to have an Amdal or Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) must have an environmental permit.

In the case of the Crime of Mangrove Destruction and Logging, this relates to the granting of rights in relation to the planned use of the land area. The actions of PT. Tompo Dalle, which destroys mangrove forests, cannot stand alone without involving the authority of the Regional Government, which grants land management rights. However, PT. Tompo Dalle's Human Resources and General Affairs claimed that his party already had a reason for the land rights, which consisted of three Building Use Rights documents issued by the Makassar City Land Office.<sup>5</sup>

PT Tompo Dalle has also filed a pre-trial lawsuit to the Makassar District Court for the determination of himself as a suspect by the Sulawesi LHK Law No. However, the judge of the pre-trial lawsuit decided to reject the pre-trial lawsuit filed by PT Tompo Dalle. The Sulawesi Anti-Corruption Committee (ACC Sulawesi) agency urged the Public Prosecutor to detain the suspect because PT Tompo Dalle was considered inactive because he attempted to fight back by filing a pre-trial lawsuit against the determination of his status as a suspect, and to prevent the suspect from fleeing because Gakkum investigators had not arrested the suspect previously. This act of destroying the mangrove forest area has violated Article 98 Paragraph 1 and/or Article 99 Paragraph 1, and/or Article 109 jo. Article 36 Paragraph 1 jo. Article 116 jo. Article 119 of Law no. 32 of 2009 concerning the Protection and Management of the Environment with a maximum imprisonment of 10 years and a maximum fine of Rp. 10 billion.<sup>6</sup> The Makassar City Government has previously imposed administrative sanctions on PT Tompo Dalle, which in its decision confirmed the company's activities and asked the company to restore the damaged mangrove forest area.

Corporations cannot always be punished for the commission of criminal acts by corporations that result in only administrative sanctions, as has frequently occurred in the past. The existing rules only govern the types of criminal sanctions for corporations, such as fines and additional penalties such as the revocation of corporate rights. The action does not become an alternative type of sanction for the corporation in this case because, while there are different types of sanctions, the action is only intended for individual legal subjects. These people's trials and punishments are not only essential for achieving a degree of justice, but also for public exposure and condemnation of their crimes.<sup>7</sup>

In terms of law enforcement's application to corporations in environmental crimes, it appears that it is still falling short of expectations, so that environmental

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<sup>4</sup> [http://sipp.pn-makassar.go.id/index.php/detil\\_perkara](http://sipp.pn-makassar.go.id/index.php/detil_perkara) diakses pada tanggal 17 Juli 2021 Pukul 19.50 WITA.

<sup>5</sup> <https://www.mongabay.co.id/2020/05/04/kasus-pengrusakan-mangrove-di-lantebung-makassar-terus-diusut-aktivis-harap-ada-sanksi-pidana/> diakses pada tanggal 17 Juli 2021 Pukul 20.03 WITA.

<sup>6</sup> <https://www.liputan6.com/regional/read/4404521/menanti-babak-baru-kasus-perusakan-kawasan-hutan-mangrove-makassar> diakses pada tanggal 17 Juli 2021 Pukul 20.25 WITA.

<sup>7</sup> Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan*, Jakarta : Kencana, Prenada Media Group, 2012, hal. 255

criminal law enforcement appears powerless to confront corporate crimes. Environmental cases are also difficult to resolve because facts and evidence are required in each case to prove that scientifically must be proven, so law enforcement officers must exercise caution when dealing with environmental cases, particularly those involving corporations as perpetrators of criminal acts.

In an effort to overcome corporate crime by using the means of criminal law, it is an integral part of law enforcement policies. To ensure legal certainty and to perfect the set of environmental legal norms, it is necessary to know how far the implementation of punishment for corporations in environmental crimes has progressed.<sup>8</sup>

Based on the background above, the problem can be formulated, namely How is the implementation of punishment for corporations that commit environmental crimes?

## 2. Methods

The research method used is empirical research (socio-legal research). Empirical research is a study that examines real-world conditions that occur in society in order to obtain the necessary facts and data.<sup>9</sup> The authors then chose the Makassar Environmental Service and the Makassar District Court as research locations in order to find accurate legal materials. This research also employs a statutory approach, which entails reviewing all laws and regulations pertaining to the legal issues under consideration.<sup>10</sup>

Collecting legal materials is accomplished through the use of documentation studies and direct and open interview techniques presented by visiting respondents or resource persons with research expertise. The obtained data (primary or secondary data) are then studied and analyzed in a qualitative descriptive manner, namely by linking the legislation with legal theories relevant to the discussion and practice of enforcing the law that raises the issue.

## 3. Results and Discussion

Criminalization of corporations in order to protect the public from potentially harmful actions by trading or industrial businesses. In Article 4 of the Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it is explained that when imposing a crime against a Corporation, the Judge may assess the guilt of the Corporation as referred to in paragraph (1), among other:

- a. Corporations can profit or benefit from criminal acts committed for the benefit of the Corporation
- b. Corporations allow criminal acts to occur; or

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<sup>8</sup> Rachmadi Usman, *Pembaharuan Hukum Lingkungan Nasional*, Bandung: PT. Citra Aditya Bakti, 2003, hal. 27-30

<sup>9</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika, 2021, hal.15

<sup>10</sup> Irwansyah., *Penelitian Hukum, Pilihan Metode & Praktek Penulisan Artikel (Edisi Revisi)*, Yogyakarta : Mirra Buana Media, 2020. hal. 133.

- c. The corporation does not take the necessary steps to prevent, prevent a larger impact, and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

Environmental law enforcement is defined as an act or process of coercion to obey the law based on environmental provisions, regulations, and requirements. There are three systematic law enforcement steps, namely administrative law enforcement, civil law enforcement, and criminal law enforcement by conducting environmental crime investigations. As a result, environmental law enforcement is not directly involved in enforcing criminal or sentencing laws, but rather must go through administrative and civil law enforcement first. The administrative law enforcement process will be distinct from the civil and criminal law enforcement processes.

In general, the problem of environmental law violations begins with individual community members who become aware of a violation or the occurrence of a violation and then file a complaint with the Makassar City Environmental Service, because it is important to note that the community also plays a role in administrative decision-making processes such as environmental impact analysis, procedures and planning, licensing, and regulation making.<sup>11</sup>

The Makassar City Environmental Service, on the other hand, routinely supervises businesses and activities in Makassar City, including bodies or corporations. This supervision aims to determine the level of obedience of the person in charge of the business or activity to the provisions of environmental laws and regulations, as regulated in Articles 71 and 74 of Chapter XII Supervision and Administrative Sanctions Part One Supervision of Law No. 32 of 2009 concerning Environmental Protection and Management that the Environmental Supervisory Officer.<sup>12</sup>

In the case of public complaints or the discovery of activities that are not in accordance with the provisions of laws and regulations in the environmental field during supervision, this cannot be brought directly into the realm of criminal law because there are previous rules that must be implemented first.<sup>13</sup> The rules referred to here are giving a written warning in advance to business activities or entities/corporations found to have violated the provisions of laws and regulations in the environmental sector, as regulated in Article 76 of Law No. 32 of 2009 concerning Environmental Protection and Management, which states that administrative sanctions are applied to the person in charge of a business and/or activity if a violation of the environmental permit is discovered under supervision. Administrative sanctions include a written warning, government coercion, the freezing or revocation of environmental permits.

A warning is already a sanction in the enforcement of environmental administration law. In practice, government warnings can generally be interpreted as part of the guidance so that industrial pollution and/or environmental damage are not

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<sup>11</sup> Laode M. Syarif, et. al., *Hukum Lingkungan : Teori, Legislasi dan Studi Kasus*, Jakarta : PT. RajaGrafindo, 2010, hal. 110

<sup>12</sup> Berdasarkan hasil wawancara dengan Bapak Irwan, Kepala Seksi Pengawasan dan Penegakan Hukum Lingkungan, pada hari Jumat, 12 November 2021, pukul 09.45 WITA

<sup>13</sup> Berdasarkan hasil wawancara dengan Bapak Irwan, Kepala Seksi Pengawasan dan Penegakan Hukum Lingkungan, pada hari Jumat, 12 November 2021, pukul 09.45 WITA

repeated as a result of threshold violations or the non-applicability of environmental management provisions stated in environmental management documents.<sup>14</sup>

In addition to warnings, administrative sanctions also contain concrete actions that are coerced by the government in the form of temporary cessation of production activities or suspension of all activities or other actions to stop violations. This is done in order to restore the environment. Concerning the suspension of permits to be executed or granted to an agency or corporation if it is proven that they have polluted the environment. If an entity or corporation is granted a license suspension, the corporation is legally prohibited from carrying on its business or activities.<sup>15</sup>

Conceptually, sanctions are imposed sequentially because sanctions such as government coercion cannot be imposed if there has been no prior warning, and suspension of permits cannot be imposed if the government has previously been coercive. So far, most agencies or corporations have received warnings and have been given one month to provide clarification to the Makassar City Environmental Service. These agencies or corporations can collaborate to make repairs or recoveries so that problems can be resolved up to the warning stage. As a result, it does not proceed to the stage of settlement with civil and criminal law instruments.<sup>16</sup>

Several complaints were filed with the Makassar City Environment Agency, and nearly all of them were resolved to the point of administrative sanctions. This is because the corporation's reported parties may wish to collaborate in order to carry out environmental repairs and restoration of environmental damage caused by pollution and environmental damage caused by the corporation.

Administrative officials are in charge of enforcing environmental law because they are the ones who issue permits and, as a result, are the first to know if there is no permit or if the conditions of the permit are violated. It does not, however, imply that administrative sanctions are imposed for violations of environmental law. Because some damage cannot be repaired or restored, such as tree felling, the killing of protected birds or animals, or the inclusion of irreparability. Physical damage cannot be repaired or restored, whereas the use of administrative instruments is intended to restore the condition or repair the damage, or in other words, it is aimed at his actions.<sup>17</sup>

The use of criminal law instruments is aimed at the person or maker in the hope that it will not only serve as a deterrent to the person committing the violation, but also to show others not to commit the same act if they do not want to face criminal sanctions. Furthermore, the imposition of criminal law sanctions will be able to better satisfy the people who have suffered as a result of the corporation's environmental damage.

In the event that the corporation is the subject of a responsible criminal act, then:

1. It can be imposed on the corporation (legal entity);
2. It can be imposed on those who give orders or act as leaders in criminal acts (management);

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<sup>14</sup> Adji Samekto, *Hukum Lingkungan*, Banten: Penerbit Universitas Terbuka, 2020, hal. 41

<sup>15</sup> Berdasarkan hasil wawancara dengan Bapak Muchtar, Plt. Kepala Bidang Pengendalian Pencemaran dan Kerusakan Lingkungan Hidup Dinas Lingkungan Hidup Kota Makassar, pada hari Jumat, 12 November 2021, pukul 10.12 WITA

<sup>16</sup> Berdasarkan hasil wawancara dengan Bapak Irwan, Kepala Seksi Pengawasan dan Penegakan Hukum Lingkungan, pada hari Jumat, 12 November 2021, pukul 09.45 WITA

<sup>17</sup> Andi Hamzah, *Penegakan Hukum Lingkungan*, Jakarta: Sinar Grafika, 2008, hal. 63-64

3. It is imposed on corporations as well as those who issue orders or act as leaders in committing the crime (management), or both, namely legal entities and management.<sup>18</sup>

Environmental pollution and/or damage have elements that include planning, utilization, control, maintenance, supervision, and law enforcement, according to the definition of Environmental Protection and Management regulated in Article 1 paragraph 2 of Law No. 32 of 2009 concerning Environmental Protection and Management. The definition of law enforcement is the process of making legal desires come true. The legal desires in question are legislative ideas that are formulated into legal regulations that will be applied in all aspects of social and state life. Law enforcement entails aspects of the legality of a regulation or law that are applied to every person and or legal entity, such as orders, prohibitions, and sanctions that can be imposed on violators who are found guilty based on a judge's decision with binding legal force.<sup>19</sup>

#### **4. Conclusion**

Corporations can be punished for environmental crimes if they have been subjected to administrative and civil sanctions that have been deemed ineffective, in accordance with the principles of the *ultimum remedium*. Similarly, corporations that are responsible for environmental crimes consider whether or not environmental crimes committed in an organizational form, as well as those who are responsible for legal entities, are successfully prosecuted.

It is hoped that in the future, corporations committing environmental crimes will be sanctioned immediately in accordance with the severity of the violations committed by the corporation, rather than having to pass a warning letter.

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<sup>18</sup> Nandang Alamsah dan Sigid Suseno, *Tindak Pidana Khusus*, Tangerang Selatan : Penerbit Universitas Terbuka, 2020, hal. 78

<sup>19</sup> Nandang Alamsah dan Sigid Suseno, *Op.Cit*, hal. 72

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