

Criminal Liability by Limited Partnerships for Environmental Crimes

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Abstract. *This study aims to determine and analyze the responsibility for environmental crimes committed by Limited Partnerships (CV). The approach method in this study is Normative juridical. Based on the discussion above, it is concluded that limited partnerships (CV) which are a limited liability company (CV) need to be confirmed in terms of criminal sanctions if they commit environmental crimes that can be subject to criminal sanctions in the form of imprisonment and fines for their owners (active partners) and also a return to the original state of the environment in the form of replacement money that has been calculated in advance by an expert from the assets of the active partners and also part of the assets of the passive partners as much as the assets they have deposited.*

Keywords: *Criminal; Environmental; Liability; Limited; Partnership.*

1. Introduction

The environment is one of the important elements that support human life and other ecosystems. Every line of life, especially in Indonesia, is very dependent on the natural resources in the environment and is regulated in Article 33 paragraph (3) of the 1945 Constitution concerning Indonesia's natural resources, namely: The earth, water, and natural resources therein are controlled by the state; and These natural resources are used for the greatest prosperity of the people. Which of course in the utilization of natural resources is expected to benefit the people. However, the increasingly rapid economic development often has a major impact on environmental sustainability, such as the viral incident in Indonesia, namely the environmental crime allegedly committed by PT. Timah. Seeing the incident carried out by PT. Timah, it is possible that there was management of Natural Resources by the Company which resulted in state losses, both from taxes paid not in accordance with those reported, the management permit not in accordance with existing regulations, and the consequences caused by inappropriate management and causing environmental damage.

Environmental pollution or contamination is the entry or introduction of living things, energy substances, and/or other components into the environment or changes in the environmental order by human activities or by natural processes so that the environmental quality decreases to a certain level that causes the environment to become less or no longer able to function according to its designation (Basic Law on Environmental Management No. 4 of 1982). Pollution can arise as a result of human activities or caused by nature (e.g. volcanic eruptions, toxic gases).¹

With the issuance of PP No. 25 of 2024, it provides equal opportunities for all citizens who want to participate in managing natural resources. The regulation offers Increased Legal Certainty and Investment, Empowerment of Communities and Religious Organizations, Simplification of Licensing and RKAB Planning, and emphasizes National Ownership. Therefore, with the PP, it is possible for everyone to manage natural resources, of course there is also one major challenge in environmental management, namely the increasing cases of pollution and environmental destruction carried out by business entities, including Limited Partnerships (CV).

Limited Partnership (CV) itself is a company formed by lending money or also called a limited partnership, established between one person or several partners who are jointly and severally liable for the whole, and one or more persons as money lenders. A company can simultaneously be in the form of a firm company for the firm partners in it and a limited partnership for the money lenders.²This form of business entity is often used by small and medium business actors in Indonesia. CV has unique characteristics, namely it is not a legal entity, but can still carry out business activities independently. In carrying out its operations, especially in the management of Natural Resources, of course CVs that do not follow the rules and requirements of good management can produce waste that pollutes the environment, either through water, air, or soil pollution. This condition makes CV one of the legal subjects that can be subject to criminal responsibility for environmental crimes.

The legal basis for handling environmental crimes in Indonesia is regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). Article 116 of this Law states that corporations, including business entities, can be subject to criminal liability if proven to have committed environmental crimes. However, further regulations related to the form of liability of non-legal entities such as CVs still often cause debate, especially in terms of who is responsible: whether only the management or also involving limited partners.

¹La Ode Rusmin, "Analysis of Environmental Pollution on the Community of Kranjang Hamlet, Wayame Village, Teluk Ambon District", *Pattimura Mengabdi: Journal of Community Service* | May 2024 | Volume 2 Number 2 | Pages 217 – 222

²Article 19 of the Commercial Code (KUHD)

In addition, the law enforcement mechanism against business entities such as CVs often faces obstacles, both in proving malicious intent, identifying the main perpetrators, and implementing criminal legal decisions. For example, environmental pollution cases often stop at administrative sanctions without touching on the criminal aspect.

The absence of firm and comprehensive regulations regarding CV criminal liability results in a legal vacuum that can reduce the effectiveness of environmental protection. Therefore, it is important to examine in depth the form of criminal liability that can be applied to CVs in environmental crimes.

2. Research Methods

The approach method in this study is Normative juridical, with the research specification is analytical descriptive. The type and source of data used in this study are secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data collection method is carried out by literature study. The data analysis method used in this study is a qualitative analysis method of non-statistical or non-mathematical analysis.

3. Results and Discussion

Talking about corporate criminal liability, it cannot be separated from criminal acts. Although in the sense of criminal acts does not include liability Criminal acts only indicate the prohibition of an act. The above view is in line with the opinion put forward by Moeljanto, who clearly distinguishes "the criminality of acts" (de strafbaarheid van het feit or het verboden zijr van het feit) and "the criminality of persons" (strafbaarheid van den persoon), and in line with that he separates between the concept of criminal acts (criminal act) and criminal responsibility (criminal responsibility or criminal liability).³

By giving criminal responsibility to corporations, of course the imposition of criminal penalties contained in Article 10 of the Criminal Code cannot be applied in full, and requires new law enforcement in imposing criminal penalties on corporations. One form of corporation today is the Limited Partnership (CV), a name that has been Indonesianized as a Limited Liability Company or PT which actually comes from the term NV or Naamloze Vennootschap.

A limited partnership is a form of company that is not a legal entity. According to Article 19 of the Commercial Code, Commanditaire Vennootschap ("CV") or Limited Partnership is defined as a partnership established by two or more people, where one party acts as a limited partner or money-leasing partner and the other partner acts as a complementary partner to manage the CV. Based on its capital, a CV in running its business can be reviewed from both internal and external aspects of the CV. Internal capital sources are from capital injections (inbreng) by

³Moeljanto, 2015, Principles of Criminal Law, Rineka Cipta, Jakarta, p. 45

managers and external capital sources, for example through loans from banking institutions or non-banking institutions with certain guarantees.

Based on the definition of CV based on the Commercial Code, CV has 2 (two) partners, namely active partners and passive partners who play the following roles:⁴

a. In Establishment of Owner

Active partners are individuals who manage the company and are fully responsible for the CV's activities, including its debts. While passive partners are individuals who only contribute capital without involving themselves in the day-to-day management of the CV.

b. Organizational structure

Active partners are responsible for acting as management and have the power to make daily decisions. While passive partners are not involved in the management of the CV and only receive profits according to the percentage of capital that has been deposited.

c. Accountability

Active partners are personally liable for all CV debts without limits. While passive partners are liable only for the amount of capital they have contributed.

Furthermore, regarding the liability of passive partners, Yahya Harahap explained that the losses of a Limited Partnership borne by the limited partners are only limited to the amount of capital invested (*beperkte aansprakelijkheid*, limited liability). Meanwhile, members or shareholders who act as administrators (*daden van beheer*) who are called complementary partners have unlimited liability to the extent of their personal assets.⁵

By explaining the responsibility imposed on the members of the CV, the burden of responsibility of each partner is not the same. Of course, this accommodates one of the objectives of criminal law, namely related to "justice" which is not fair for passive partners if they have to bear the criminal acts committed by their active partners. Therefore, with the limitation of responsibility imposed on each partner of the CV, namely for Passive Partners only limited to the assets they have deposited and for Active Partners to be responsible up to their personal assets because there is no separation of assets in the management of the CV.

⁴Ravicha Selvia (et.al). Analysis of Differences in Organizational Structure between CV and PT Companies in the Context of Human Resource Management. Indonesian Journal of Law and Justice. Vol. 1, No. 4, 2024, pp. 3-4

⁵M. Yahya Harahap. Limited Liability Company Law. Jakarta: Sinar Grafika. 2009, p. 20

Criminal sanctions in the event of a crime involving the environment are of course different from those in the Criminal Code. There are differences formulated to accommodate the purpose of making laws, namely to preserve and maintain the environment so that it always has utility value for every Indonesian citizen. Law enforcement has a broad meaning because it includes preventive and repressive aspects, where this is in accordance with the conditions in Indonesia because there are elements in the government that actively increase public legal awareness.⁶

Law Number 32 of 2009 concerning Environmental Protection and Management explicitly stipulates that environmental crimes are crimes. Environmental crimes in this law contain the formulation of material crimes and also formal crimes. Material crimes themselves are crimes that arise due to the impact or consequences caused by the crime committed, such as in the provisions of Article 98, Article 99, Article 112 of Law No. 32 of 2009. Meanwhile, for formal crimes, which are crimes that are considered to be completed without any consequences occurring to the legal acts carried out as formulated in Article 100, Article 101, Article 102, Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, Article 109, Article 110, Article 111, Article 112, Article 113, Article 114, and Article 115.

The application of criminal threats in Law No. 32 of 2009 emphasizes the environmental impacts that occur due to either intentional or negligence/negligence (*culpa*) of the legal subject, so that the actions of the legal subject can result in environmental damage as explained in the formulation of Article 1 paragraph 16 of the Environmental Management Law which states that "Environmental damage is defined as the actions of a person that causes direct and/or indirect changes to the physical, chemical, and/or biological properties of the environment that exceed the standard criteria for environmental damage."

The environment, which should be a means for the state to prosper its people according to the mandate of the 1945 Constitution, has not been maximized until now. There are still many environmental sectors that have not been touched either due to a lack of manpower or a lack of people who have the capability to manage the environment. Management of natural resources contained in the environment is regulated in Law No. 32 of 2009 concerning Environmental Protection and Management.

By regulating the UUPH, it provides an opportunity not only for the state but also for legal subjects of the Company to carry out efforts to manage natural resources in the environmental media. Based on the provisions of Article 1 Number 2 of the UUPH, environmental protection and management are systematic and integrated efforts that are alive and prevent environmental pollution and/or damage which

⁶Sri Sufiyati and Munsyarif Abdul. Chalim, "Criminal Law Policy in Efforts to Overcome Environmental Crimes (Case Study of Handling Solid Hazardous and Toxic Waste Residue from Coal Combustion in Boiler Machines)," *Khaira Ummah Law Journal* 12, no. 3 (2017): 457–466.

include planning, utilization, control, maintenance, supervision, and law enforcement, of course violations in environmental management are also regulated.

Related to environmental management Most legal subjects who manage the environment are corporations, of course the threat of criminal penalties in the form of imprisonment, confinement will not be effective when referring to corporate legal subjects. Fisse and Braithwaite divide the three most basic things in realizing fair and effective law enforcement for corporate crimes, namely: First, part of the responsibility for corporate crimes must be based on the fact that the actions taken by the corporation are not merely actions taken by individuals but by the corporation itself. Second, that the division of corporate crime responsibility is carried out by all related parties. Third, individual responsibility must be avoided so that there are no victims of corporate crimes.⁷

Meanwhile, according to Sutan, corporate criminal liability can be implemented if the corporate action fulfills the following elements or requirements:⁸

The act is carried out and ordered by members/corporate personnel within the corporate organizational structure;

- a. The criminal act was committed within the framework of the corporation's intentions and objectives;
- b. The crime was committed by the perpetrator or based on orders given by the corporation;
- c. The criminal act was committed with the intention of benefiting the corporation;
- d. The perpetrator cannot escape criminal responsibility;
- e. A crime requires an act and a mistake, both of which cannot be found in just one person.

Here it can be seen that there are limitations to criminal sanctions that can be given to legal subjects who commit crimes according to Law No. 32 of 2009. By only using imprisonment and fines, of course it will not provide a repressive purpose against the crime committed so that a corporation may continue to commit the same crime if it commits a similar crime because there is no legal umbrella that underlies the application of other criminal sanctions. Although there

⁷Slamet Suhartono "Corporate Responsibility For Environmental Crime In Indonesia." *Journal of Law and Conflict Resolution* 9.1 (2017): 1-8

⁸Amiq, Bachrul., "Administrative Sanction In Environmental Law", *International Journal Of Research Granthaalayah*, Vol. 6 June 2018

are also fines that can be imposed on corporations, the environmental losses that occur will not immediately return to normal.

Due to the ineffectiveness of the application of criminal sanctions, other steps are needed, such as the application of administrative sanctions against corporations that commit environmental crimes because sanctions in the form of permit suspension, permit revocation, and other administrative sanctions will have a more significant impact on corporations, so that the purpose of providing a deterrent (repressive) effect on the crimes committed will be fulfilled. Then what about the retributive purpose of environmental crimes themselves? Efforts that can be started from the investigation stage where environmental losses are calculated as a result of the crime committed by environmental experts. Furthermore, the results of the calculation are included in the matters demanded of the Company in the form of Compensation for environmental damage due to environmental crimes that occur.

The application of such sanctions can of course also be applied to Limited Partnerships (CVs) which in principle are still in the category of Corporations. Of course, there are differences in the application of sanctions given because there are things that differentiate CVs from other corporations, one of which is the absence of separation of assets between active partners and the CV itself.

So that for criminal acts committed by CV can be held accountable both criminally, namely corporal punishment in the form of imprisonment, criminal fines and also in order to maintain the environment to remain sustainable by implementing compensation for environmental damage that occurs can also be held accountable based on calculations from environmental experts. Of course, in terms of assets used to fulfill the requested compensation can be taken from the personal assets of the active partner, while the active partner is still held accountable but only limited to the assets that are submitted, unless later it is known that the passive partner took part in running the CV which due to the actions of the CV resulted in environmental damage.

4. Conclusion

Based on the discussion above, it is concluded that a limited partnership (CV) which is a limited liability company (LLC) needs to be affirmed in terms of criminal sanctions if it commits an environmental crime which can be subject to criminal sanctions in the form of imprisonment and fines for the owner (active partner) and also a return to the original state of the environment in the form of replacement money that has been calculated in advance by an expert from the assets of the active partner and also part of the assets of the passive partner as much as the assets he has deposited.

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Regulation :

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