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Working Paper

Corruption and Corporate Criminal Liability in Natural Resources Sectors

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ABSTRACT

This study strives to look at developments in the regulation of doctrines in several laws, a Supreme Court regulation, Attorney General regulation and jurisprudence on corporate liability for companies operating in natural resources sectors in Indonesia. This paper finds that despite provisions on corporate liability in some laws already being adequate, they have been supplemented by a Supreme Court regulation and an Attorney General regulation on corporate criminal liability standards. However, criminal law should only be used as a last resort when administrative sanctions fail to ensure corporate liability in natural resources sectors due to its potential impact on the national economy.

Key words: *corporation – liability – Supreme Court - jurisprudence*

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I. Introduction

Indonesia experienced 23.5 million hectares of deforestation from 2000-2017.[1] In 1991, the World Bank published a report saying Indonesia was clearing more than one million hectares of its forests annually. This depletion of carbon stock leads to potential loss of biodiversity and losses for communities whose livelihoods depend on forest products.[2] Further, environmental or natural resource degradation has already reached worrying levels in Indonesia, with serious impacts on humans, including global warming, depletion of natural resources, degradation of water resources, high levels of water and air pollution and loss of life. Degradation in natural resources sectors is often closely associated with the levels of compliance of companies operating in natural resources sectors, such as estate crops, forestry and mining companies.

Non-compliance is frequently closely linked to poor natural resources or forestry sector governance, for instance: opaque permitting processes and oversight, weak law enforcement, and widespread corruption, with state capture and bribery being the most prevalent forms. Increasing corruption in Indonesia not only causes financial losses to the State, but also damages the economy and degrades the environment and/or natural resources. An Indonesian Corruption Watch (ICW) publication from 2019 shows state losses of IDR 43.3 billion (forty-three billion, three hundred million rupiah), seventy percent (70%) of which was due to cases in the mining sector.[3] Many corruption crimes involving State actors and/or regional government officials, like the case of corruption perpetrated by the governor of Southeast Sulawesi, usually include elements of misuse of power for personal gain.

Based on Corruption Eradication Commission (KPK) corruption crime statistics for 2004 to 2020, KPK has handled 1,075 corruption cases with a breakdown as follows: bribery (708 cases), goods and services procurement (224), misuse of budgetary funds (48), money laundering (36), extorsion (26), licensing (23) and obstructing law enforcement (10).[4]

KPK has also established the National Movement for Saving Natural Resources or Gerakan Nasional Penyelamatan Sumber Daya Alam (GNP-SDA) together with several ministries and non-governmental organizations such as WALHI, ICW, Jikalahari and KOMIU. This

[1] IPB University Student Executive Body, "Revealing the Dark Agenda behind Natural Resources Policies", IPB University, Bogor, 2020, p. 11.

[2] Agoeng Wijaya et al., "Investigating Corporate Fires", Majalah Tempo, 12 September 2020, pp. 1-4.

[3] IPB University Student Executive Body, "Revealing the Dark Agenda behind Natural Resources Policies", Op. Cit., pp. 2-4.

[4] Corruption Eradication Commission, "Corruption Crime Statistics by Offence", accessed on 13 September 2020, https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-jenis-perkara.

movement has had little success in curbing the rates of corruption in natural resources sectors, and bribery is frequently linked to licensing processes in the natural resources and/or environment sectors.

According to the Bogor IPB University Student Executive Body (BEM IPB), a number of points are vulnerable to corruption in natural resources sectors, specifically in agrarian affairs and agriculture: *firstly*, permit system governance, including permits for forest conversion; *secondly*, non-disclosure of information; *thirdly*, oligarchical power; and *fourthly*, abuse of authority.[5] In natural resources sectors specifically, many cases of corruption are exacerbated by the practice of state capture where the State is used as an instrument for group interests and detrimental rules can be legitimized to suit oligarchical interests.[6]

A lot of corruption also involves the private sector, where corporations frequently pass bribes to secure business and land clearing permits. In other instances, corporations commonly pass bribes to win tenders for procuring goods and services. Corporations can also be abused to perpetrate corruption, and to accommodate and launder the resulting proceeds. Corruption, narcotics and natural resource sector crime, such as forestry and environmental crime, are the three predicate crimes for money laundering in Indonesia.[7]

In money laundering typologies collected around the world by the 161 member countries of the Egmont Group of financial intelligence units, many money laundering practices involve abusing controlled companies through concealment within business structures, misuse of legitimate business, and using secrecy jurisdictions like the British Virgin Islands.[8] In a crime, a company can be the perpetrator of money laundering, be misused by the perpetrator, or as a place for receiving the proceeds of a crime. In addition, companies are frequently made a means for beneficial owners to hide, despite prohibitions on nominee arrangements.[9]

On close inspection, many perpetrators of forest and land fires are corporations in the form of limited liability companies or *perseroan terbatas*. Forest and Land Fire Prevention Compliance Audits in Riau Province were conducted by the Presidential Working Unit for Development Oversight and Control (UKP-PPP)[10]

to secure information on levels of company and regional government compliance in preventing forest and land fires. These audits covered systems and institutions, facilities and human resources, and biophysical and societal aspects of seventeen (17) companies owning seventeen (17) concessions and six (6) district/ municipal governments in Riau province. Findings relating to companies from these audits were as follows:

5 IPB University Student Executive Body, "Revealing the Dark Agenda behind Natural Resources Policies", Loc. Cit.

6 *Ibid*., p. 3.

7 NRA Indonesia Update Team, "Money Laundering in Indonesia Risk Update 2015", Financial Transaction Reports and Analysis Center, 2019, p. 22.

8 See one hundred money laundering case typologies published periodically by the Egmont Group.

9 Article 33 paragraph (1) Law No. 25/2007 on Foreign Investment Markets.

10 Presidential Working Unit for Development Oversight and Control (UKP-PPP) *et al*., Executive Summary from Compliance Audits in a Framework of Forest and Land Fire Prevention in Riau Province, Jakarta, 2014. The study was conducted in 2014 by UKP-PPP, the Ministry of Forestry, Ministry of Agriculture, Ministry of Environment, the Agency for Reducing Emissions from Deforestation, Forest Degradation and Peatlands (BP+) and the Riau Provincial Government. Audits were conducted by a Joint Team comprising representatives from the above institutions under the leadership of Bambang Hero Sahardjo, based on Head of Presidential Working Unit for Development Oversight and Control Decree No. 01/2014 on Establishment of a Joint Team for Compliance Audits in a Framework of Forest and Land Fire Prevention and Management.

1. All companies were conducting operations on fire-prone deep peat soils.
2. There was a close correlation between companies' inability to guard their concessions and forest and land fires.
3. Company reporting was not comprehensive, making early detection difficult.
4. Companies had yet to meet their minimum obligations for forest and land fire prevention.[11]

Of the seventeen audited plantation and forestry companies, two (2) companies were severely noncompliant, fourteen (14) were noncompliant, and only one (1) was somewhat compliant. None of the companies were fully compliant. This research could be said to provide a general illustration of compliance levels among corporations operating in natural resources sectors throughout Indonesia. These findings align with the emerging opinion that many forest and land fires are perpetrated by companies.[12] Therefore, it is essential to invoke corporate criminal liability for natural resource degradation and/or forest and land fires.

The questions are: How do applicable regulations/material and formal law in Indonesia regard corporate criminal liability? What efforts should be made to promote corporate criminal liability to bring about a deterrent effect for corporations? And to what extent should beneficial owners of corporations be held liable?

[11] *Ibid*., Executive Summary, pp. 8-9.

[12] Agoeng Wijaya *et al*., "Investigating Corporate Fires", Op. Cit, pp 1-3.

II. Corporate Criminal Liability Doctrines

There are nine doctrines or concepts in academic studies on corporate criminal liability. These are as follows:[13]

1 Doctrine of strict liability

2. Doctrine of vicarious liability

3. Doctrine of delegation

4. Doctrine of identification

5. Theory of expanded identification

6. Doctrine of aggregation

7. Doctrine of corporate culture model

8. '*Combined doctrine*'

9. Theory of reactive corporate fault.

These doctrines or theories are useful in determining whether an act carried out by a person or persons is a corporate act subject to criminal liability. These doctrines can also help to establish corporate culpability. Not all the above theories are used or found in laws or legislation regulating corporate criminal liability in Indonesia. When laws do not clearly regulate corporate criminal liability or use these doctrines and theories, the doctrine of vicarious liability provided in Supreme Court Regulation No. 13/2016 on Procedures for Handling Corporate Crime can be used to fill the corporate criminal liability void. Below is a brief overview of each of these doctrines.

1. Doctrine of strict liability

According to this doctrine, criminal liability can be imposed on a perpetrator without the need to prove culpability. This doctrine, also called the doctrine of absolute liability, originates from civil and administrative law, and is used, for instance, for product liability in consumer protection regulations. It is also used for compensation resulting from environmental problems as provided under Article 88 of Law No. 32/2009 on Environmental Protection and Management (UU PPLH), which stipulates, "*that any person whose actions, business, and/or activities use hazardous and toxic materials (B3), produce and/or manage hazardous toxic waste and/or bring about serious threats to the environment are liable absolutely for any damage occurring without the need for proof of culpability*." In addition, this doctrine can also be found in Article 4 paragraph

[13] Corruption Eradication Commission and Supreme Court Working Group Team for Preparation of Guidelines on Corporate Criminal Liability, 2017, p. 25.

(2) of the Supreme Court regulation on corporations.

2. Doctrine of vicarious liability

As in Article 1,367 paragraph 3 of the Civil Code (*KUH Perdata*), there is a civil nuance to this doctrine determining that, in principle, employers/corporations are responsible for the actions of their employees. This employer liability becomes increasingly clear when an employee is at fault during working hours, in the workplace, and in relation to work. For instance, when a bank employee accepts a deposit from a customer but fails to record the deposit, or even embezzles it, externally the bank is liable for replacing the customer's money. In corporate criminal liability, when an employee violates a criminal provision, then the corporation is liable. This doctrine is used in the United States of America and in Indonesia, as laid out in Article 20 of Law No. 31/1999 on Corruption Eradication (as amended by Law No. 20/2001), and Article 3 of the Supreme Court regulation on corporations.

3. Doctrine of delegation

According to this doctrine, a reason for charging criminal liability to a corporation is the actuality of delegation from a superior, officer or director to another person, where normally the subordinate does the job of the official delegating the task. In practice, such delegation is usually in written form, but can also be relayed verbally or via another means of communication. This type of delegation is commonplace in companies and government institutions.

4. Doctrine of identification

This doctrine is also known as the 'organ theory' or 'alter ego theory'. If a crime is perpetrated by a 'directing mind', then the corporation is liable. A 'directing mind' is a person holding a high-ranking position in a company. This doctrine is used in Article 116 paragraph (2) and Article 118 of the Law on Environmental Protection and Management. This theory is also used by the United Nations Convention against Transnational Organized Crime ratified by Indonesia through Law No. 5/2009 on Ratification of the United Nations Convention against Transnational Organized Crime.

5. Theory of expanded identification

This theory is a progression of the doctrine of identification. This theory is also called the 'management failure' theory when management fails to prevent a crime being committed by a corporate official. Due to the corporation's failure to prevent a crime being committed by a corporate official, employee or hired contractor, then criminal liability is imposed on the corporation.

6. Doctrine of aggregation

This doctrine is also called the 'theory of collective intent'. According to this theory, when more than one person does something, it is sufficient for only one person to be identified as representing a company. This theory is the opposite of the doctrine of identification as it allows a combination of transgressions by a number of people to be a justification for imposing liability on a corporation. According to this doctrine, all acts or all mental elements (conscious attitudes) of a number of people relevantly related to a company can be treated as if they are the acts of an individual.[14]

[14] Ibid. Sutan Remy Sjahdeini in Preparing Guidelines for Corporate Criminal Liability, p. 32.

7. The corporate culture model

This theory, also called 'organizational theory', refers to corporate culture, and has already been accepted in Australia. This approach focuses on corporate policies, either expressed or implied, that influence the workings of a corporation. Liability can be imposed on a corporation when there is a rational basis to believe that when someone has broken the law, a member of the corporation has given them the authority or allowed them to do so.[15]

8. '*Combined doctrine*'

This approach, introduced by Mardjono Reksodiputro and Sutan Remy Sjahdeini, combines several other approaches or principles such as the doctrine of identification and doctrine of aggregation. In their opinion, the imposition of corporate criminal liability can take place if all the following elements are fulfilled:

a. The crime (either by commission or omission) is committed by or at the order of corporation personnel holding a position in the organizational structure as a 'directing mind' of the corporation.

b. The crime is committed for company purposes and objectives.

c. The crime is committed by a perpetrator or at the order of a superior in a framework of duties within the corporation.

d. The crime is committed with the intention of benefitting the corporation.

e. The perpetrator or order issuer has no legal justification or legal excuse to be exempt from criminal liability.

f. For a crime necessitating an objective element (*actus reus)* and intention (*mens rea*), these two elements do not have to exist in only one person.[16]

9. Theory of reactive corporate fault

This approach is an alternative approach proposed by Fisse and Braithwaite, where if the *actus reus* of a crime is proven to have been perpetrated by or on behalf of a corporation, the court issues an order for the corporation to:

a. Conduct its own investigation into who in the company is liable.

b. Take disciplinary action against those responsible.

c. Send a report detailing any actions the company has taken.

Consequently, when a corporation has fulfilled an order of the court and reported doing so to the court, then criminal liability shall not be imposed on the corporation in question.[17]

Of the nine doctrines or theories above, the most widely used is vicarious liability, known in the United States as the doctrine of *respondeat superior*, as provided under Article 20 of Law No. 31/1999 on Corruption Eradication (*UU Tipikor*), Article 116 paragraph (2) of the Law on Environmental Protection and Management, and the Supreme Court regulation on corporations. This doctrine is quite simple and can be

[15] *Ibid.*, p. 33.

[16] *Ibid.*, pp. 34-35.

[17] *Ibid.*, pp. 35-36.

invoked easily. Conversely, the 'combined doctrine' theory is relatively difficult to invoke due to requirements for sentencing having to be met cumulatively. The lack of provisions in laws, or difficulties in invoking corporate criminal liability can be overcome by using the Supreme Court regulation on corporations.

III.Legal Bases and Jurisprudence

The legal bases for corporate criminal liability not only take the form of international conventions, but also laws, an Attorney General regulation and a Supreme Court regulation, as well as jurisprudence of the courts.

A. International conventions

The United Nations Convention against Transnational Organized Crime (UNTOC), known as the Palermo Convention and ratified by Law No. 5/2009 on Ratification of the United Nations Convention against Transnational Organized Crime recognizes corporate criminal liability as provided under Article 10 of UNTOC. In addition, the Financial Action Task Force on Money Laundering, which sets international standards for the prevention and eradication of money laundering, also recognizes corporate criminal liability as provided under Recommendation Number 3. Many countries, such as the United Kingdom, the United States, Australia, France, Japan, China and the Netherlands, already recognize and apply corporate criminal liability. The Netherlands included corporate criminal liability in its Penal Code in 1976. Nevertheless, there are still countries, like Germany, that have yet to recognize corporate criminal liability and only impose fines on corporations through administrative bodies.[18]

B. Laws

At the national level, Indonesia has the Penal Code or *Kitab Undang-undang Hukum Pidana* (KUHP), laws and other forms of legislation. The KUHP, which is a legacy of Dutch colonial times, does not recognize the concept of corporate criminal liability, and only acknowledges human responsibilities or those of each individual. This is reflected in its use of the term "any person" in its wording. Article 59 of the Penal Code provides, that in instances where a corporate official, member of an executive board or a commissioner perpetrates violations deemed to be criminal offences, then corporate officials, executive board members or commissioners not participating in the perpetration of those violations are not culpable.

With developments in criminal law in Indonesia, provisions on corporate criminal liability have been regulated outside the Penal Code (KUHP). According to Chapter I Legislation Framework No. 119 in Law No. 12/2011 on Establishment of Laws and

[18] *Ibid.*, p. 15.

Regulations, "*If a Criminal Provision applies to anyone, the subject of the criminal provision is formulated with the phrase "every person*". Consequently, criminal provisions in laws outside the Penal Code are formulated using the phrase "every person".

Corporate crime is regulated under at least a hundred laws in Indonesia, these include: Republic of Indonesia Emergency Law No. 7/1955 on Investigation, Prosecution, and Judicature of Economic Crimes, which was the first and most comprehensive law regulating corporate crime and remains applicable as a positive law to this day.[19] This law, residing outside the Penal Code, regulates corporate criminal liability relating both directly and indirectly to natural resources and the environment. Other laws *directly* relating to natural resources are:

1. Law No. 21/2001 on Oil and Natural Gas
2. Law No. 7/2004 on Water Resources
3. Law No. 18/2004 on Plantations
4. Law No. 31/2004 on Fisheries (amended by Law No. 45/2009)
5. Law No. 26/2007 on Spatial Arrangement
6. Law No. 4/2009 on Mineral and Coal Mining (amended by Law No. 3/2020)
7. Law No. 32/2009 on Environmental Protection and Management
8. Law No. 18/2013 on Prevention and Eradication of Forest Destruction.

Meanwhile, laws *indirectly* relating to natural resources include:

1. Law No. 31/1999 on Corruption Eradication (amended by Law No. 20/2001)
2. Law No. 8/2010 on Prevention and Eradication of Money Laundering (UU TPPU)
3. Law No. 8/1981 on Criminal Procedures Law as the procedural law applicable to criminal offences.

The large number of laws regulating corporate criminal liability does not guarantee large numbers of convictions for corporations as relatively few have been convicted. One example of a conviction against a corporation is the case of PT Adei Plantation in Pelalawan District Court[20], where the defendant PT Adei Plantation and Industry was alleged to have burned land or caused land to be burned due to its negligence and resulting in environmental degradation. Another case is that of PT Kalista Alam in Aceh where a verdict of the Meulaboh District Court in Nanggroe Aceh Darusallam province[21] sentenced the corporation PT Kalista Alam to pay a fine of IDR 3,000,000,000 (three billion rupiah) for repeated instances of environmental crime.

An instance of a corporation being tried in a corruption case under the context of the corruption eradication law is the case of PT Giri Jaladhi Wana's involvement in corruption when collaborating in the construction and management of Antasari

[19] *Ibid*., p. 103.

[20] Palalawan District Court Verdict No. 228/Pid.Sus/2013/PN.PLw in conjunction with 286/Pid.Sus/ 2014/PT PBR.

[21] Meulaboh District Court Verdict No. 131/Pid.B/2013/PN.MBO.

Central Market in Banjarmasin, South Kalimantan province.[22] Another instance of actual corporate conviction is the case of PT Trada where the company was sentenced to pay a fine of five hundred million rupiah under Article 3 and Article 5 of the money laundering law. Company assets were insufficient to pay the fine, so the beneficial owner's assets could be seized to cover the fine payment. As those assets were also insufficient, the beneficial owner was given a six-month prison sentence.[23] This verdict sets a new and progressive precedent.

There are at least two reasons behind the low numbers of corporations being convicted. *Firstly*, the wide variety of provisions in so many laws lead to problems with interpretation, perception and implementation, for instance, in establishing which corporate officials or personnel should be held responsible, the objective element (*actus reus*), regulating intention (*mens rea)*, primary sentencing, additional sentencing, criteria for determining acts and corporate culpability, and replacing fines with imprisonment. As yet, none of these have been regulated adequately or are regulated in a wide variety of ways. *Secondly*, procedural law remains inadequate for invoking corporate criminal liability.

For the reasons above, the Supreme Court issued Supreme Court Regulation No. 13/2016 on Procedures for Handling Cases of Corporate Crime (Supreme Court regulation on corporations) on 21 December 2016. Prior to that, on 1 October 2014, the Attorney General had already issued Attorney General Regulation No. PER.028/A/JA/10/2014 (Attorney General regulation on corporations). Both regulations make is easier to implement laws regulating corporate criminal liability in Indonesia.

C. Attorney General regulation

Chapter II of Attorney General Regulation No. 28/2014 on Guidelines for Handling Criminal Cases with Corporations as Subjects of Law (Attorney General regulation on corporations) regulates several criteria on what acts relate to criminal cases with corporations as subjects of law:

1. *Corporate acts* subject to criminal liability.
    a. Criteria for corporate acts subject to criminal liability are those provided in applicable laws.
    b. Criteria in letter a are met when the following qualifications are fulfilled:
        1) All forms of acts based on decisions of corporate officials who commit or participate in the commission of such acts;
        2) All forms of acts, either by commission or omission, perpetrated by someone in the interests of a corporation, either because of their job or any other relationship;
        3) All forms of acts that use human resources, funds, and/or all forms of support or other facilities from a corporation;

[22] Banjarmasin District Court Verdict No. 812/Pid.Sus/2010/PN.Bjm in conjunction with Banjarmasin District Court Verdict No. 04/PID.SUS/2010/2011/PT.BJM.

[23] Semarang District Court Verdict No. 47/PIDSUS-TPK/2019/PN SMG.

4) All forms of acts committed by a third party at the request of or by order a corporation and/or corporate official;

5) All forms of acts in a framework of conducting a corporation's day-to-day business activities;

6) Corporations explicitly accommodating the proceeds of crimes with corporations as subjects of law; and/or

7) All other forms of acts subject to corporate liability under laws.

2. *Corporate officials* subject to criminal liability:

   a. Every person who commits, participates in the commission of, orders the commission of, recommends the commission of or assists in the commission of a crime;

   b. Every person who has control or authority to take steps to prevent a crime, but does not take the necessary steps and is aware of receiving a significant risk if the crime takes place;

   c. Every person who has knowledge of the existence of a significant risk, or is aware of a crime committed by a corporation; and/or

   d. All other forms of acts subject to liability of corporate officials under laws

D. Supreme Court regulation

According to Article 1 paragraph (1) of the Supreme Court regulation on corporations, a corporation is an organized group of people and/or assets, either in the form of an incorporated or unincorporated legal entity. This definition originates from various laws, including the Money Laundering Law. Most companies operating in natural resources sectors, such as plantation and forestry companies, take the form of limited liability companies. Corporate crimes are crimes where criminal liability can be charged to corporations in accordance with legislation regulating corporations.[24]

At least two important things are governed by the Supreme Court regulation on corporations: how to determine whether an action constitutes an action of a corporation, and how to establish corporate culpability. *Firstly*, Article 3 of the Supreme Court regulation on corporations determines that corporate crime is crime committed by a person or persons based on a work relationship, or based on another relationship, either individually or collectively, acting for or on behalf of a corporation within or outside the corporation workplace. Here, the theory of vicarious liability is used to determine a company action. If there is a work or any other relationship, such as power relations, between the corporation and the perpetrator, then the act of the person(s) is considered an act of the corporation. According to this theory, establishing whether or not an act of a person(s) is an act of the corporation is extremely simple. Article 3 of this Supreme Court regulation makes it easier to apply laws that have yet

[24] Article 1 number 8 of Supreme Court Regulation No. 13/2016.

to regulate the determination of acts of a corporation.

Secondly, how to establish corporate culpability. Article 4 of the Supreme Court regulation on corporations uses several criteria for establishing corporate culpability:

1. A corporation securing profits or benefits from a crime committed in the interests of the corporation;
2. A corporation allowing the commission of a crime;
3. A corporation not taking the necessary steps to prevent, prevent greater impacts or ensure compliance with applicable legal provisions to forestall the incidence of crime.

The provision in number 3 above uses the principle of strict liability, where without the need to prove a perpetrator's fault, a corporation is automatically deemed liable if it does not take preventative measures or prevent greater impacts. For example, a corporation unable to oversee its concession, and not having adequate fire extinguishing apparatus when a forest or land fire occurs is automatically deemed liable without the need for proof of any fault.

IV. Corporate Criminal Liability in Natural Resources Sectors

Corporation is a term used by criminal law experts and criminologists to refer to that which under other forms of law (particularly civil law) is called a legal entity (*rechtspersoon*).[25] One popular example of a corporation is a limited liability company or *perseroan terbatas* (PT). A a limited liability company is strictly recognized as a legal entity capable of acting under the law or having relations with other parties under the law in the same ways as a person. A legal entity itself is basically an entity that has the same rights and responsibilities as a person to carry out an act, have its own assets, and to try or be tried in a court of law.

Limited liability companies have their own capital and assets separate from those of their founders. The function of a limited liability company's capital is to cover company risks or obligations. Companies are set up deliberately to limit risks faced when running business. When there is a significant risk of danger or loss, the risk is limited to the capital deposited by the founder and does not affect the company founder's personal assets. In colonial times, for instance, these took the form of companies like the VOC (*Verenigde Oost Indische Company*). This is one reason why many businesspeople own companies that constitute conglomerations, with many companies taking the form of special purpose vehicle companies (SPVs) or even purposely created paper companies.

A corporation or company usually has a beneficial owner (beneficiary) who controls the company or group of companies. Group companies are usually related to each other in terms of ownership, management or financial relations. Therefore, when wishing to invoke corporate liability, whether civil, administrative or criminal, it is necessary to look at the conglomerate and determine the identity of the ultimate beneficial owner of the company or company group. This is essential bearing in mind companies can easily change owners and names. Knowing the true identity of the ultimate beneficial owner is important for knowing who the real taxpayer is, and for seeking material truth in corporate criminal liability.

With the existence of international conventions,

[25] Zulkarnain, Criminal Law Policies on Corporate Crime and Criminal Liability Systems in Efforts to Eradicate Corporate Crime, Widyagama University Faculty of Law, Law Review Vol. XI No. 3 March 2010, p. 333, in Corruption Eradication Commission and Supreme Court, Working Group Team for Preparation of Guidelines on Corporate Criminal Liability, Op. Cit., p. 16.

various laws, the Attorney General and Supreme Court regulations on corporations, as well as jurisprudence of the courts, implementation of corporate criminal liability has become far easier. Some pieces of legislation clearly and concretely regulate how to determine whether an act is an act of a corporation, and how to establish corporate culpability.

V. Recommendations

The State, through the Government of Indonesia in its obligation to protect the citizens and native land of Indonesia, should carry out fair and firm oversight and law enforcement measures against the many corporations committing transgressions. Measures to eradicate violations that damage natural resources should not only be taken against perpetrators on the ground, but also against corporations. Action against corporations necessitates various legal approaches using criminal, administrative and civil law. Companies and company management can be tried on criminal charges. Where necessary, additional penalties can also be imposed, such as suspension of business activities and revocation of business licenses. Corporations can be sued to pay compensation for any losses incurred.

In the context of implementation, not only one, but various laws should be used cumulatively to precipitate robust synergy. For instance, by combining Law No. 32/2009 on Environmental Protection and Management (UU PPLH) with Law No. 8/2010 on Money Laundering (UU TPPU), assets of errant corporations could be seized for the State.

Inter-institution coordination is absolutely essential for ensuring successful law enforcement, as is proper and effective international cooperation with various parties. In seeking material truth, it is also vital to seek the identities of beneficial owners who control companies committing violations in order to invoke criminal, civil and administrative liability.

Bearing in mind private sector corporations and conglomerates frequently coopt governments through political parties,[26] it is important to be wary of this, particularly when preparing legislation, to prevent state capture, which harms the people but benefits corporations by opening the door to corruption. In addition, corporate criminal liability should be applied cautiously as it can have significant impacts, not only on corporations but also on the economy and society. Therefore, technical guidelines on convicting corporations should be established for investigators.

Before instituting criminal proceedings, it is best to apply administrative sanctions beforehand, such as those provided under Article 76 of the Environmental Protection and Management Law (UU PPLH). These include: the government compelling a corporation to redress any violations. If the corporation fails to do so, then criminal provisions (Article 114 of UU PPLH) can be invoked. In criminal law enforcement processes it is necessary to pursue the ultimate beneficial owner to seek material truth for corporate criminal liability.

26 Komaruddin Hidayat, "*Market State and Religion*", Harian Kompas, 18 September 2020, p. 6.

Finally, in enforcing the law, it is also necessary to consider a restorative justice approach by combining criminal, civil and administrative approaches, for instance, in the form of a deferred prosecution agreement. Through such an approach, a corporation could be subject to an administrative fine on the condition it is cooperative, exposes any violations committed, and promises never to commit such violations again. Compensation payments should be aimed not only at covering state losses, but also at covering reparation of the impacts of environmental and natural resource degradation caused by corporations.

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