

Comparison of Criminal and Civil Liability of Corporations in Environmental Pollution

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Abstract

This research discusses the comparison between criminal and civil liability imposed on corporations in cases of environmental pollution, as well as analyzing the effectiveness and impact of the application of both types of sanctions. In environmental pollution cases, corporations can face criminal sanctions in the form of fines and administrative actions aimed at providing deterrent effects, while civil sanctions focus more on compensation that must be paid to affected communities. The research employs a normative legal method with a legislative and conceptual approach, allowing for an in-depth examination of legal provisions governing criminal and civil liability for corporations that cause environmental pollution. The analysis indicates that the application of criminal and civil sanctions plays different roles in environmental law enforcement; criminal sanctions emphasize preventive and repressive effects against corporate violations, while civil sanctions serve as a mechanism for restoring the rights of affected communities. It is hoped that the findings of this study can contribute to the improvement of environmental legal regulations, particularly regarding the regulation of sanctions against corporations to create a more sustainable environment.

Keywords: Criminal liability, civil liability, environmental pollution, corporations.

1. INTRODUCTION

Article 1, paragraph 1 of Law No. 40 of 2007 concerning Limited Liability Companies defines a limited liability company as a legal entity established based on an agreement, characterized by capital partnerships, with business activities supported by a basic capital divided into shares, and satisfying the requirements outlined in applicable laws and regulations. The term "company" refers to the system of capital division represented by shares, while "limited" signifies the limitation of shareholders' liability to the nominal value of the shares they hold. Recently, the government has established clear regulations through the Limited Liability Company Law (Law No. 40 of 2007) and the

Investment Law (Law No. 25 of 2007) to govern corporate operations. This initiative aims to prevent and mitigate potential environmental damage caused by corporate activities that overlook environmental sustainability and community welfare. This concern is increasingly crucial, as empirical evidence demonstrates the potential negative impacts of corporate actions on social environments and surrounding ecosystems (P. M. Marzuki, 2009).

The term "environment" encompasses everything surrounding humans or living organisms that interact reciprocally and complexly, where every component influences one another. The environment consists of two primary components: abiotic and biotic. Abiotic components include non-living elements such as soil, air, water, climate, humidity, light, and sound; whereas biotic components encompass all living organisms, including plants, animals, humans, and microorganisms (Setiyono, 2005). According to Article 1, paragraph 1 of Law No. 32 of 2009 concerning Environmental Protection and Management, the environment is defined as "a unit of space comprising all objects, forces, conditions, and living beings, including humans and their behaviors, which mutually influence one another, nature itself, the continuity of life, as well as the welfare of humans and other living beings." Environmental pollution is defined as the introduction of contaminants into the environment, resulting in harm to humans or other living beings. These contaminants may be chemical substances or forms of energy, such as noise, heat, or light. Natural substances or energy can become pollutants if their concentration exceeds the natural levels (Abdulkadir, 2010).

Developments in legislation outside the Penal Code, particularly concerning legal subjects in criminal law such as corporations, demonstrate that the definition of corporations in criminal law is broader than in civil law. In criminal law, corporations can encompass both legal and non-legal entities. In environmental law, legal entities are also recognized as legal subjects, in line with societal developments. Legally, this has been regulated in Law No. 23 of 1997 concerning Environmental Management. This study refers to the liability of environmental crime perpetrators by provisions in this law (Wijana, 2016).

Criminal liability regarding environmental offenders is based on Law No. 23 of 1997 concerning Environmental Management (UUPLH), which replaces Law No. 4 of 1982. This law functions as an umbrella statute regulating all legislation about environmental matters in Indonesia. In Article 1, paragraph 24 of UUPLH, the term "person" as a legal subject in environmental crime is explained to include "individuals and/or groups of people and/or legal entities." Furthermore, in Chapter IX concerning Criminal Provisions, Articles 45 and 46 regulate the criminal liability of legal entities such as corporations, partnerships, foundations, or other organizations. Based on these provisions, it can be concluded that, in addition to individuals, legal entities can also be held accountable for environmental crimes and be subject to legal responsibilities (I. Marzuki, 2020).

Regarding corporations, they frequently handle industrial waste carelessly, not conforming to the waste disposal methods set forth by relevant regulations, including Government Regulation No. 18 of 1999 concerning the Management of Hazardous and Toxic Waste. Current environmental pollution is closely related to technological advances, industrialization, and lifestyles that tend to be luxurious and consumer-oriented. The use of chemicals has led to an increase in chemical waste that can potentially pollute the environment if not managed properly. In civil law, the principle of strict liability serves as a form of civil responsibility aimed at addressing shortcomings in environmental law management in Indonesia (Amin, 2018).

The implementation of both criminal and civil liability against corporations engaging in environmental pollution often faces various obstacles that hinder the imposition of appropriate sanctions. One of the main issues is the difficulty of proving corporate culpability, as responsibility is frequently challenging due to the complexity of role distribution within corporate organizational structures, complicating law enforcement efforts to establish direct involvement by responsible parties. Additionally, lengthy civil litigation processes and high costs present significant barriers for affected parties to obtain compensation or environmental remediation, while corporations possess ample resources to prolong legal proceedings.

On the other hand, existing regulations are often insufficiently stringent and inconsistently enforced, allowing corporations to evade or delay the sanctions they should face. These weaknesses may lead to injustices, where corporations do not receive commensurate penalties for the environmental damage they cause, resulting in continued environmental pollution without adequate deterrent effects. The study seeks to gain a thorough understanding of the application of criminal and civil liability in cases of corporate environmental pollution. The main questions to be explored include the types of criminal and civil liability that can be imposed on corporations for environmental offenses, as well as a comparative evaluation of the effectiveness and impact of these sanctions on polluting corporations, particularly regarding their influence on reducing pollution and deterring future infractions.

2. METHOD

The normative legal research method is a widely utilized approach in legal studies that centers on the analysis of legal documents and norms. This methodology aims to scrutinize existing legal rules and their application or interpretation within specific contexts. In normative legal research, primary sources consist of statutory regulations and relevant legal literature. This approach is particularly significant for exploring theoretical and conceptual legal issues, such as the forms of criminal and civil liability imposed on corporations in cases of environmental pollution. It also involves comparing the effectiveness and impact of criminal and civil sanctions on corporations engaged in such pollution, especially regarding their role in mitigating pollution effects and serving as a deterrent to corporate misconduct. One of the key approaches within this methodology is the statutory approach, alongside the conceptual approach (Salim., 2021). The statutory approach entails examining and analyzing various regulations that govern specific issues, such as the Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana), the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), and other relevant regulations. Through this framework, researchers can discuss the nature of criminal and civil liability imposed on corporations in environmental pollution cases, assess the effectiveness and impact of these sanctions, and evaluate their success in reducing pollution as well as their potential deterrent effects on corporations.

3. RESULTS AND DISCUSSION

Forms of Criminal and Civil Liability Imposed on Corporations in Cases of Environmental Pollution

Criminal acts by corporations regarding environmental pollution can be prosecuted if they meet the standards required for legal action against legal entities, such as corporations, partnerships, foundations, or other organizations. Sanctions, both criminal and disciplinary, as stipulated in Article 47, will be imposed on the legal entity, corporation, partnership, foundation, or organization involved, as well as on individuals who ordered or led the criminal act, or on both parties. Criminal charges may also be directed at individuals acting within the context of the legal entity, corporation, partnership, foundation, or organization, whether based on an employment relationship or another connection, irrespective of whether the individual personally committed the crime. Charges against a legal entity, corporation, partnership, foundation, or other organization must be communicated to the management at their residence or onsite where they perform their duties. If the charges are brought against a legal entity represented by someone other than the management, the judge may order the relevant management to appear in court.

According to the criminal provisions in the Environmental Management Law (UU PPLH), penalties that can be imposed on corporations committing environmental crimes include fines, additional penalties, and disciplinary actions. These might encompass the confiscation of profits derived from the crime, the closure of all or part of business premises and/or activities, restoration of damage resulting from the crime, obligations to perform neglected actions, and placement of the corporation under guardianship for a maximum three years. This category of sanctions includes increased fines—by one-third—for those who ordered or led the crime, as well as additional penalties or disciplinary actions. The failure of law enforcement to effectively address corporate environmental crimes, evidenced by the continuing prevalence of pollution cases involving corporations, indicates weaknesses in the existing penal system. These shortcomings undermine the effectiveness of legal enforcement regarding environmental crimes committed by corporations. Consequently, further regulation is needed to refine

penalty structures focusing on environmental conservation, which should include increasing fines, regulating the imposition of fines, and enhancing environmental remediation measures (Amrani et al., 2017).

Liability for environmental pollution based on fault refers to the obligations that arise when pollution or damage to natural resources becomes unavoidable, in which procedural proof of fault is unnecessary. This obligation is inherent to individuals or legal entities that either commit acts, refrain from actions, or allow pollution or damage. The criminal provisions regarding environmental crimes are outlined in Chapter IX of the UU PPLH, from Articles 41 to 48. Compared to the penal provisions in Article 22 of the Environmental Law (UULH), those in the UU PPLH are more detailed and comprehensive. The penalties specified in the UU PPLH involve both imprisonment and fines, setting them apart from the UULH, which includes the option of either imprisonment or fines. Article 41 of the UU PPLH addresses intentional acts, while Article 42 deals with actions taken due to negligence, featuring lighter penalties.

Furthermore, Article 43 delineates specific formal offenses that are comparatively more straightforward to establish, wherein instances of pollution can be substantiated by evidence demonstrating that activities have surpassed the environmental quality standards outlined in relevant regulations. Article 44 addresses negligence related to pollution or environmental damage with lighter penalties. Regarding environmental crimes committed by corporations, the UU PPLH also outlines corporate criminal responsibility in Articles 45 and 46, where fines can be increased by up to one-third if the crime is committed by a legal entity, corporation, partnership, foundation, or any other organization.

Both individuals and corporations can be held liable for environmental crimes. When an environmental crime is committed by a corporation, Article 116, paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management states that criminal liability can be imposed on:

1. The corporation itself; and/or
2. Individuals who ordered the commission of the crime or acted as leaders in its execution.

In addition to fines, other sanctions such as asset seizure and various restrictions on corporations are considered effective forms of "corporate imprisonment." Additional penalties, such as the public disclosure of judicial decisions, can also enhance deterrence against future corporate crimes. However, corporations cannot face primary criminal sanctions aside from fines, and fines alone are often deemed insufficient punishments. Thus, there is a need for provisions concerning stronger additional penalties and the application of supplementary sanctions. If a corporation is proven to have committed an environmental crime, Article 119 of the Environmental Protection and Management Law (UUPPLH) stipulates several types of additional penalties or disciplinary measures, including:

1. Confiscation of profits obtained from the crime;
2. Closure of part or all of the business premises and/or activities;
3. Restoration of the impacts caused by the crime;
4. Obligation to perform certain neglected actions; and/or
5. Placement of the corporation under guardianship for a maximum of three years (Rahmadi, 2020).

The mechanism for imposing civil liability on limited liability companies found guilty of environmental pollution, as regulated by Law No. 32 of 2009 concerning Environmental Protection and Management, can be executed through two avenues: out-of-court settlements and judicial proceedings. Out-of-court resolutions may occur through compensation payments. Conversely, judicial resolutions proceed when out-of-court dispute resolutions fail. Lawsuits can be brought to court by individuals, government agencies, local governments responsible for environmental matters, community groups (class action suits), or environmental organizations.

Law No. 32 of 2009 establishes that parties entitled to file lawsuits against limited liability companies for environmental pollution include not only individuals, but also government agencies, local governments responsible for environmental matters, community groups (class representatives), and environmental organizations. In class action lawsuits, members of the group must share common facts, events, legal bases, and types of claims. Should there be differing claims, the class action can be subdivided into

sub-groups. According to the Supreme Court Regulation No. 1 of 2002 regarding Class Action Procedure, several stages must be followed when filing a class action lawsuit.

A class action lawsuit that grants compensation claims also includes an order for the plaintiffs to notify the group members and establish an independent members commission determined by the court ruling to facilitate smooth distribution. Enforcement of the ruling shall only proceed upon notification of all group members, the establishment of the commission, and in the event that both parties fail to reach a mutually acceptable agreement regarding the compensation settlement. Additionally, enforcement is contingent upon the defendant's failure to voluntarily adhere to the ruling (Sundari, 2002).

The plaintiffs must prove that, in cases of environmental pollution, the defendant caused the losses experienced by the plaintiffs due to the activities of the defendant's industry or factory. This proving process can be particularly challenging due to the complexities of the chemical substances involved and their interactions with abiotic and biotic components in ecosystems, ultimately affecting human health. The losses arising from environmental pollution are not always immediately visible. Hence, expert witnesses are necessary to delineate the damages incurred, including health losses, material losses, environmental aesthetic losses, and conservation-related losses. Expert witnesses may also be required to assess the amount of damage resulting from environmental pollution caused by hazardous and toxic substances (B3) (Husin, 2009).

In tort actions, the element of damage must be demonstrable. Such damages can comprise both material and immaterial losses. Theoretically, aside from financial compensation, restoration can include either reversing unlawful consequences or reinstating conditions wrongfully removed. Vollmar posits that if an individual claims loss due to the inability to enjoy a benefit or a decrease in enjoyment of an item, the loss may be regarded as material damage. The civil responsibility scheme for corporations violating environmental laws entails imposing sanctions on the limited liability company for unlawful acts of environmental pollution by mandating compensation payments to the affected community.

Comparison of the Effectiveness and Impact of the Implementation of Criminal and Civil Sanctions Against Corporations that Commit Environmental Pollution

The application of criminal and civil sanctions against corporations committing environmental pollution produces different impacts in terms of reducing pollution effects and providing deterrent effects. Criminal sanctions, which often involve substantial fines and imprisonment for executives or leaders of corporations, are more effective in deterring and preventing similar actions by other corporations. These sanctions can also expedite the mitigation of pollution consequences, although they are less focused on direct environmental restoration. In contrast, civil sanctions emphasize compensation and the remediation of environmental damage, involving compensation for affected communities and corporations' obligations to restore the environment. However, civil sanctions tend to be slower and costlier to process, and they do not provide significant deterrent effects against corporate executives. Therefore, a combination of criminal and civil sanctions is regarded as more effective in addressing environmental pollution, whereby criminal sanctions offer a deterrent effect, while civil sanctions prioritize environmental restoration and compensation for pollution victims.

One key advantage of criminal sanctions is the stronger deterrent effect they offer, especially when they involve the imprisonment of executives or corporate leaders. This effect arises from the threat of criminal charges against individuals responsible for corporate decisions, making them more aware of the legal risks they personally face. With the threat of imprisonment potentially damaging reputations and restricting personal freedoms, business operators and corporate leaders will exercise greater caution in carrying out activities that pose environmental risks. This deterrent effect also influences other corporations, as they observe serious criminal sanctions imposed on wrongdoers, thereby preventing similar environmental pollution cases due to concerns about severe legal repercussions.

Another benefit is the provision of compensation for environmental damage sourced from criminal fines. The substantial fines imposed as criminal sanctions can be allocated to environmental recovery funds, which assist in accelerating the rehabilitation of pollution-affected areas. These monetary penalties can also be accompanied by

additional obligations for corporations to undertake repairs or cleanup actions. The funding derived from corporate fines allows governments and authorities to respond more promptly to environmental impacts properly and efficiently, as they do not need to wait for the often lengthy civil compensation processes.

An additional benefit of implementing criminal sanctions is the heightened legal compliance among corporations stemming from the threat of severe penalties. With stricter criminal sanctions, companies are incentivized to adhere to environmental regulations and conduct more thorough internal audits and oversight. The potential for criminal repercussions urges corporate leaders and owners to ensure that all operations comply with environmental provisions. This fosters a greater awareness within corporations regarding the significance of environmental responsibility, ultimately leading to improved compliance with established standards and regulations.

However, one of the main drawbacks of criminal sanctions is the difficulty of proving wrongdoing, as establishing criminal liability requires evidence that links pollution to intentional or negligent actions with elements of criminal accountability. Environmental pollution often does not occur overtly and may be hidden or result from a series of actions that are difficult to trace back to specific individuals within the company. Furthermore, the multitude of hazardous substances involved and the complex nature of contaminated ecosystems can complicate prosecutors' efforts to demonstrate the causal relationship between pollution and the harm experienced by the environment and affected communities.

Another limitation of criminal sanctions is the constraints on resources directed toward environmental recovery. The primary focus of criminal sanctions is to punish offenders and provide a deterrent effect, rather than on the direct rehabilitation of impacted environments. While substantial fines can be used for restoration, recovering the environment often requires further actions that the criminal approach does not always accommodate. Consequently, recovery efforts may be incomplete or delayed, as criminal penalties serve more as a warning to the offenders rather than directly resolving the damage incurred. Thus, the potential for environmental recovery from criminal sanctions

tends to be lower when compared to civil sanctions that prioritize remediation and direct compensation.

The primary goal of civil sanctions in cases of environmental pollution is to provide direct compensation or restitution to affected parties, whether individuals, communities, or governments managing the contaminated environment. This mechanism is designed to ensure that the impacted parties, such as communities suffering economic or health losses, receive compensation proportional to the effects they have endured. Additionally, civil sanctions aim to restore the environment affected by pollution to a condition closer to its original state. This restoration encompasses various actions that may include ecosystem recovery, cleaning contaminated areas, or other necessary efforts to return the environment to its proper functioning before pollution occurs. In this context, civil sanctions focus on addressing damage in a concrete and direct manner to yield tangible benefits for the affected parties and the environment, while simultaneously encouraging corporations to take greater responsibility for the impacts of their activities.

The advantage of civil sanctions in environmental damage recovery lies in their direct impact, compelling corporations to take responsibility for remedial actions. By mandating corporations to pay compensation or engage in environmental remediation, they are compelled to take action to rectify the harm they have inflicted through pollution. This responsibility encompasses both financial and technical aspects, allowing recovery to concentrate more closely on the pollution's impacts and how the affected environment or community can recuperate or obtain compensation. In this regard, corporations face sanctions while directly contributing to environmental restoration.

Moreover, civil sanctions provide financial compensation for victims through class action lawsuits or individual claims, enabling affected communities to secure restitution for their losses. For instance, communities experiencing health or economic impacts from industrial pollution may receive funds to cover their hardships. Such compensation plays a critical role in mitigating the negative effects of pollution on the social and economic well-being of local communities, while also serving as a corrective measure for the responsible corporation to recognize the impact of its activities.

One of the key benefits of civil sanctions is the flexibility in resolving disputes. Parties can choose to settle their differences not only through formal court proceedings but also by engaging in out-of-court resolutions, such as mediation or direct negotiations. It allows for more efficient settlements that often better match the needs of both sides. With this flexibility, environmental restoration can be achieved more swiftly and under mutual agreements, minimizing conflict and expediting the recovery process for contaminated environments.

However, civil sanctions present challenges time, and costs, particularly in cases involving class action lawsuits or significant community claims. Such lawsuits can take years to reach a final decision, and the financial burden of litigation often serves as an additional strain for both plaintiffs and defendants. The lengthy processes and high expenses may hinder swift recovery actions concerning environmental damage, resulting in further losses during the proceedings.

Another drawback of civil sanctions is the lack of a strong deterrent effect, as these sanctions primarily focus on compensation and restoration without implying any criminal penalties or punishments for individuals directly responsible for the pollution. Consequently, corporations or their executives may perceive civil sanctions merely as negotiable business risks, without the concern for the more severe consequences associated with criminal sanctions.

Civil sanctions heavily rely on proving the losses suffered by the plaintiffs. This poses a challenge, especially when demonstrating environmental impacts that are intricate or not immediately visible, such as effects on ecosystems or long-term health issues that require in-depth data and analysis. The complexity involved in proving these losses may impede resolution processes and affect the extent of compensation or redress provided, meaning the ultimate outcomes may not accurately reflect the full environmental impact of the pollution.

In terms of reducing pollution impacts, civil sanctions tend to be more effective as they directly target environmental restoration. These sanctions mandate corporations found liable for pollution to assume financial and technical responsibilities, through compensation payments and by taking tangible steps to rehabilitate the damaged

environment. As a result, civil sanctions can promptly provide solutions to address the damage incurred, allowing ecosystems to recover. Conversely, criminal sanctions are more focused on delivering general punishments, which, while effective in enforcing laws and creating a sense of justice, do not require corporations to rectify the damage done directly. Thus, while criminal penalties are important for their deterrent effects, their impact on environmental recovery is often less tangible compared to civil sanctions.

In terms of deterrence, criminal sanctions are more effective than civil sanctions, primarily because they involve severe threats against individuals responsible, such as corporate leaders or executives. Criminal penalties, such as substantial fines or even imprisonment, compel corporations and the individuals within them to consider the significant personal and reputational risks associated with environmental pollution. This threat functions as a strong deterrent, which can also inspire higher compliance levels among other companies witnessing the strict enforcement of criminal sanctions. In contrast, civil sanctions, which focus on compensation and restoration, tend to generate lower deterrent effects since the executives or leaders of corporations are not subjected to direct punishments. Civil sanctions are often viewed as part of the operational risks that can be negotiated or managed, thus failing to create a strong warning for polluters.

4. CONCLUSION

Criminal and civil liability for corporations committing environmental crimes in Indonesia is detailed in Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). Under criminal law, corporations that are found guilty of pollution may incur significant fines and face various disciplinary measures designed to address environmental harm. These measures can include the confiscation of profits, business closures, restoration of damaged areas, and the implementation of guardianship. The UUPPLH introduces stricter regulations, which feature increased fines for intentional actions or negligence, provided there is evidence of pollution that surpasses established environmental quality standards. Additionally, the concept of "corporate imprisonment" is applied as a barrier through the restriction of corporate activities. In the civil realm, accountability can be enforced through dispute resolution mechanisms, either out-of-

court with direct compensation or through lawsuits by individuals, government agencies, environmental organizations, or class action suits following specific procedural steps. Civil lawsuits allow plaintiffs to seek compensation for both material and immaterial losses, which can include health detriments, aesthetic environmental damages, and conservation issues stemming from corporate pollution. This may also involve requests for the defendant to restore environmental conditions. Primary obstacles in proving environmental harm are addressed by presenting expert witnesses who can articulate the impacts of pollution and quantify compensation. This regulatory framework reflects the government's endeavors to enhance the effectiveness of law enforcement against environmental crimes, despite ongoing challenges regarding the imposition of effective sanctions on corporations, thus necessitating the strengthening of enforcement mechanisms and the enhancement of environmental remediation actions as preventive and curative measures against pollution impacts.

The application of both criminal and civil sanctions against corporations responsible for environmental pollution presents distinct advantages and disadvantages in achieving goals of pollution impact reduction and deterrence. Criminal sanctions, which may include hefty fines and threats of imprisonment for company executives, are viewed as effective in creating a deterrent effect due to their direct threat to responsible individuals, encouraging legal compliance among corporations while expediting the mitigation of pollution impacts through fine revenues. However, criminal sanctions have limitations regarding direct environmental recovery, as their primary focus is on punishment rather than rehabilitating damaged ecosystems. Conversely, civil sanctions emphasize environmental restoration and compensation for affected parties, compelling corporations to take concrete responsibility for remediation and providing financial compensation to victims. Nonetheless, civil sanctions often entail lengthy processes, high costs, and a lack of strong deterrent effects, as they may be perceived as negotiable business risks. Consequently, a combination of criminal and civil sanctions is considered the most effective approach to addressing environmental pollution, whereby criminal sanctions provide a strong deterrent and preventive mechanism. While civil sanctions ensure environmental recovery and compensation for pollution victims, they more comprehensively minimize negative impacts on both the environment and society.

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