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Corporate Criminal Liability for Environmental Crimes According to Company Culture Theory

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ABSTRACT
The current concept of corporations involves treating their wealth, rights, obligations, and specific interests or goals as separate from the individuals who manage and operate these legal entities. Criminal responsibility for actions committed by corporations is assigned to both the corporations themselves and their managers through the lens of company culture theory. The challenge lies in understanding how the application of company culture theory influences the criminal liability of corporations, particularly in cases of environmental crimes, as reflected in court decisions. This study reveals that when assessing criminal liability based on company culture theory, corporations are viewed as real entities accountable for their own mistakes. These mistakes may arise from corporate procedures, policies, or practices that are generally accepted within the organization. For example, in the Decision of the District Court No. 349/Pid.B/LH2019/PN PLW, the judge considered the failure of PT. SSS to comply with its company culture. This non-compliance refers to practices that are typically accepted and implemented within its business operations.

Keywords: Criminal Liability; Corporations; Company Culture.

I. INTRODUCTION

Law encompasses various fields, one of which is criminal law. This area regulates offenses against public interest and imposes criminal sanctions(Hamzah, 2017). Criminal law is divided into two main categories: material criminal law and formal criminal law. Material criminal law defines prohibited acts and specifies the corresponding penalties for those acts(Hamzah, 2017). It outlines what behaviours are not permitted and under what circumstances a perpetrator may be subjected to punishment. On the other hand, formal criminal law details the procedures and processes for enforcing penalties against individuals who commit crimes(Hamzah, 2017). Studying criminal law involves examining the acts that are deemed illegal, which reflect society's condemnation of certain behaviours(Huda, 2015). Through both government action and community response, society denounces these acts. The blame for these reprehensible actions is assigned to the perpetrator, who, from society's perspective, should have chosen a different course of action(Huda, 2015). This assignment of blame leads to the concept of criminal liability, which can be imposed not only on individuals (natuurlijkpersoon) but also on corporations (rechtpersoon).

The element of fault is crucial in determining the responsibility of a perpetrator in a crime (Huda, 2015). While the definition of a criminal act establishes what constitutes a crime, it does not inherently address criminal responsibility. This leads to the question of whether a person who commits an act can be punished, which depends on whether they were at fault in doing so (Hamzah, 2017). Thus, the principle in criminal liability is "no criminal liability without fault." However, there are several theories of corporate criminal liability that deviate from this principle, such as strict liability and vicarious liability (Huda, 2015).

The Criminal Code only holds individuals, specifically corporate administrators (naturalijkpersoon), criminally liable, as stated in Article 398. Furthermore, the Criminal Procedure Code does not recognize corporations as subjects of criminal law. However, corporate criminal liability has been addressed in Article 49 of Law Number 1 of 2023 concerning the Criminal Code. This article specifies that liability for criminal acts committed by corporations is imposed on the corporations themselves, as well as on their administrators in

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functional positions, order givers, control holders, and/or beneficial owners. Nonetheless, the regulation does not explicitly clarify how criminal liability is attributed to corporations.

Corporate liability is also addressed in various special laws and specific criminal statutes. One such law is Law Number 32 of 2009, which pertains to Environmental Protection and Management. This law recognizes corporations as legal entities and outlines the forms of corporate criminal liability, including strict liability and vicarious liability, as detailed in Articles 88 and 116 to 119 of Law No. 32 of 2009. It specifies the ways in which corporate managers can be held accountable for environmental crimes committed by, for, or on behalf of the corporation.

Several theories can be applied to the study of corporate criminal liability. One such theory is the identification theory, which establishes limitations on which managers can cause a corporation to be held criminally liable (Mulyati, 2018). Another important theory is the functioneeldaderschap, which posits that corporations can be held criminally responsible for the collective errors made by their managers (Institute for Criminal Justice Reform, 2015). These errors are considered collective rather than individual because they pertain to the corporation as a whole. In practice, applying this theoretical framework to cases of environmental crimes committed by corporations can be challenging. This difficulty arises from the principle of derivative liability, which requires that individuals in specific positions within the corporation be identified first. Their mistakes are then attributed to the corporation (Robinson, 2018). However, in many cases of environmental crimes, the exact cause remains unknown, making it difficult to pinpoint the individual responsible for the crime.

The issue addressed in this paper arises from the court decision number 349/Pid.B/LH 2019/PNPLW. In this case, the land owned by PT. SumberSawit Sejahtera (PT. SSS) was burned, which is suspected to have occurred due to weather conditions that led to the fire spreading. However, since the exact cause of the fire remains unknown, the weather factor alone cannot be deemed responsible. Consequently, it is also unclear whether the manager or workers were responsible for the burning. The judge employed different assessment factors to determine criminal liability in this case. Therefore, this study aims to examine the criminal liability of corporations as applied in this environmental crime case. When analyzing the corporation's position as the subject of the crime through the lenses of identification theory and functional liability theory, it becomes evident that the corporation is not constructed as a separate entity distinct from its management. This perspective suggests that a corporation is essentially a collection of individuals (its members) (Gindis, 2009). The role of corporations is still limited by the notion that they are not real entities; instead, matters concerning them are accounted for by individual rights rather than being regarded as "imaginary entities" (corporations) (Gindis, 2009).

The concept of corporations is evolving to recognize that they possess their own wealth, rights, and obligations, as well as distinct interests or goals separate from those of the individuals who operate these legal entities (Muladi and Priyanto, 2010). Corporations are viewed as having separate identities from their managers, which implies that their mistakes can also be distinguished from those of their managers (Dixon, 2017). One relevant theory for assigning criminal liability to corporations is the Company Culture Theory. According to this theory, corporations can be deemed guilty if they foster a culture that either allows criminal acts to occur or fails to take necessary steps to prevent these acts, mitigate their impacts, or ensure compliance with applicable legal regulations(Pieth and Ivory, 2011).

The problem studied in this paper is to analyze the concept of corporate criminal liability based on company culture theory in environmental crimes in its application through court decision number 349/Pid. B/LH 2019/PN Plw.

Research Method

The research method used is the case study research method, namely, this research is conducted by examining cases related to the issues faced, and has become a court decision that has permanent force. This research also uses a comparative method, namely analyzing the factors causing the occurrence or emergence of a particular symptom in one place with another place, at one time with another time, at one event with another event.

This research is classified as normative legal research, utilizing various types of legal materials for data collection. Primary legal materials comprise laws and regulations. Secondary legal materials include books, dissertations, journals, research articles, and other written legal sources relevant to corporate criminal liability, Company Culture Theory, and environmental crimes. Tertiary legal materials consist of legal dictionaries, the Great Indonesian Dictionary,

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Black's Law Dictionary, encyclopedias, and similar resources.

II. RESULTS AND DISCUSSION

1. Theoretical Framework of Corporations and Criminal Liability

Understanding corporations as legal entities is crucial for determining how responsibility is assigned to them. This study employs the corporate theory proposed by Otto Gierke, specifically the real entity theory, also referred to as the natural entity theory. According to this theory, a corporation is more than just a collection of individuals (corporate members); it is recognized as a distinct legal subject. The real entity theory asserts that a corporation exists as a "real collective unit," separate from merely being a group of people. This theory defines a corporation in the following way: it is "no fiction, no symbol... no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. It can will, it can act; it is not a fictitious person, but a group-person, and its will is a collective will" (Gindis, 2009).

The corporation is recognized as a distinct entity with its own will and actions that are separate from those of its members. The actions of the corporation are carried out by its governing bodies, as though they represent the will and actions of the legal entity itself, without the need for intermediary representation (Schillig, 2021). The real entity theory acknowledges that a legal person exists only through the law's legitimizing force, meaning the state has the authority to establish the prerequisites for such recognition. However, the law does not create the actual basis for this legal personality; it merely selects which entities will receive legal recognition among those found in the real world (Petrin, 2013).

Corporations possess a legal personality that is granted through legal recognition, which is determined by the state. However, this theory assumes that the corporation exists as a real entity even before receiving such recognition, and the law merely decides which of these entities will acquire legal personality. According to this theory, corporations are accountable for their actions and can face criminal liability(Schillig, 2021). Therefore, corporations can be held criminally responsible without the need to directly link their actions to the management of the corporation.

The Company Culture Theory serves as a framework for understanding corporate criminal liability. This theory highlights that corporate errors can stem from deficiencies in procedures, operating systems, or the overall corporate culture (Wells, 2001). These factors are elements of the Corporation's Internal Decision-Making Structure (CID) (Wells, 2001). Corporations can be held accountable if their culture, work ethic, policies, work systems, or generally accepted practices contribute to or allow criminal activities to occur (Mulyati, 2018).

The assessment of corporate wrongdoing does not require that management itself engage in any wrongful thoughts, actions, or behaviors(Mulyati, 2018). Instead, corporations can commit crimes through their internal decision-making processes, which may stem from corporate culture or disorganization (Robinson, 2018). This theory focuses solely on the corporation's internal efforts to comply with relevant regulations (Wellner, 2005). Companies must ensure compliance in all their activities and business operations. Therefore, the Company Culture Theory evaluates whether the corporation has taken appropriate steps to ensure compliance within its business environment (Robinson, 2018).

This theory examines the situations in which corporations may expect non-compliance with applicable regulations, even when they possess documents (such as standards or regulations) that mandate such compliance (Belcher, 2006). Additionally, corporate culture can be a contributing factor if it implicitly endorses reckless behavior(Belcher, 2006). According to MardjonoReksodiputro, there are three systems of corporate criminal liability: 1. Corporate management is the responsible party, and management must be held criminally accountable. 2. The corporation is seen as the responsible party, yet management must still bear criminal responsibility. 3. Both the corporation and management are viewed as responsible entities, and both must be held criminally accountable(Manullang and Pasaribu, 2020). Furthermore, an additional system of corporate criminal liability has been proposed, which involves situations where both managers and corporations engage in criminal acts, thus placing criminal responsibility on both the corporations and their management(Yudoprakoso, 2020).

In addition to the three corporate criminal liability systems mentioned earlier, there are two additional models of corporate criminal liability: derivative liability and organizational liability. The derivative liability model states that a corporation is responsible for the actions of individual offenders within the organization (Robinson, 2018). On the other hand, the organizational liability

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model holds the corporation accountable for its own mistakes, rather than for the errors made by individuals (Robinson, 2018).

When examining the two models of corporate criminal liability, it becomes clear that the concept of organizational liability is centered on a fault-based approach. Under this method, a corporation can only defend itself if it proves its innocence; if successful, all charges against it would be dismissed, and it would be relieved of liability(Robinson, 2018). Thus, theories of corporate criminal liability within the framework of organizational liability focus on the attribution of fault to the corporation. The key questions are whether the corporation can be held accountable for the crime and whether any fault can indeed be attributed to the corporation.

The method of criminal liability based on fault aligns with a dualistic perspective. This perspective asserts that two elements are necessary for punishment: the objective element (the criminal act) and the subjective element (responsibility)(Muladi and Priyanto, 2010). Therefore, if a person is proven to have committed a prohibited act, they cannot be punished immediately; there must also be evidence of subjective fault (schuld) on the part of the perpetrator. This principle is known as the principle of fault, or the principle that there can be no criminal liability without fault.

2. Corporate Criminal Liability for Environmental Crimes

Corporations can be held accountable for environmental crimes as outlined in various environmental laws and regulations. This study focuses on Law No. 32 of 2009, which addresses Environmental Management and Protection, and Law No. 39 of 2014, which pertains to Plantations. Corporations, as legal entities, are granted legal personality through official recognition. As a result, these legal entities can be held criminally responsible for their rights and obligations. Corporations that qualify as legal entities may include limited liability companies, foundations, cooperatives, or associations that have been legally established (Yudoprakoso, 2020).

Article 116 of Law No. 32 of 2009 regulates the form of corporate criminal liability as follows; paragraph (1) if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions are imposed on: a) the business entity; and/or b) the person who gave the order to commit the crime or the person acting as the leader of the activity. Paragraph (2) if the environmental crime as referred to in paragraph (I) is committed by a person based on an employment relationship or other relationship acting within the scope of the business entity's work, criminal sanctions are imposed on the person who gave the order or the leader in the crime without considering whether the crime was committed independently or together. Furthermore, Article 118 of Law No. 32 of 2009, namely, for the crime as referred to in Article 116 paragraph (l) letter a, criminal sanctions are imposed on the business entity represented by the management who is authorized to represent in and outside the court by the laws and regulations as the functional actor.

Law No. 39 of 2014 concerning Plantations regulates criminal penalties that can be imposed on corporations. Article 113 of this law establishes a system of criminal liability for both corporations and their managers. It specifies whether corporate liability is based on fault (mens rea) or merely on the action taken (actus reus). Further details regarding corporate criminal liability are outlined in Articles 103 and 106 of Law No. 39 of 2014, which identify certain acts that can be committed by corporations. These articles specifically apply to certain officials, such as those who issue business licenses, as well as ministers, governors, or regents/mayors. Additionally, Articles 110 to 112 of Law No. 39 of 2014 define the subject of crimes as "every person" and "every plantation business actor." This means that both legal and non-legal entities involved in plantation activities can be subject to these regulations.

The form of corporate criminal liability regulated in the Law is still centered on the corporate management, or known as the derivative liability model. This means that the corporation and its management are considered not to have different personalities. Thus, the form of corporate criminal liability is not in line with the current concept of corporations. Derivative liability itself is a model of liability, that "the corporation is liable for the acts of individual offenders(Robinson, 2018). The two laws on the environment, that identification theory and functioneeldaderschap are theories of criminal liability that use the actions of management attributed to the corporation as the corporation's own fault. The application of derivative criminal liability has several difficulties, one of which is "from a practical perspective, it can be very difficult to identify the employee who committed the wrongful act or had the culpable state of mind"(Robinson, 2018).

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According to Company Culture Theory, also called the holistic model theory, because this theory uses a holistic approach. This approach "does not require the imputation of human thoughts, acts, and omissions to the corporation (Pieth and Ivory, 2011). This approach sees that each corporation has a different personality and is independent of certain individuals who control or are employed by the corporation (Dixon, 2017). This theory is included in the organizational liability model, because the corporation will be punished for its own mistakes, not for the mistakes of others (Robinson, 2018). This theory assumes that corporations are capable of committing crimes themselves through internal patterns of decision-making (corporate culture or corporate (dis)organization) (Pieth and Ivory, 2011).

Coffee (2001) provides a clearer explanation of compliance programs. A corporation can be considered in violation if the violation is a foreseeable outcome of the corporation's failure to design and implement preventive measures, monitoring systems, or safety controls. This includes the failure to adopt and maintain an effective compliance program. Such failures can lead to serious deviations from the standards and procedures that should be observed by entities in similar situations.

Corporate criminal liability, as outlined in Environmental Law, is governed by Supreme Court Regulation Number 13 of 2016, which details the procedures for handling criminal cases involving corporations. Article 4, paragraph (2) of this regulation specifies several factors that judges may consider when assessing corporate guilt. These factors include: (a) whether the corporation gained benefits or advantages from the crime, or if the crime was committed for the corporation's benefit; (b) whether the corporation allowed the crime to occur; or (c) whether the corporation failed to take the necessary steps to prevent the crime, mitigate its impacts, and ensure compliance with applicable legal provisions to avoid the occurrence of the crime.

According to Company Culture Theory, assessing corporate wrongdoing is linked to the planning and implementation of compliance programs related to applicable regulations. This evaluation of corporate error can be observed in two laws within the environmental sector, as well as in Supreme Court Regulation No. 13 of 2016, which outlines the procedures for handling criminal cases involving corporations. The assessment of corporate wrongdoing takes into account several factors: the benefits obtained by the corporation, the corporation's failure to address the occurrence of criminal acts, and the absence of rational and necessary measures to prevent further impact from these acts while ensuring compliance with legal requirements. The formulation of this article in legislation has established the criteria for Company Culture Theory, as it emphasizes considerations related to corporate error in the internal efforts of a corporation to adhere to applicable laws.

3. Corporate Criminal Liability for Environmental Crimes in Court Decision Cases

The court decision being referred to is case number 349/Pid.B/LH.2019/PN Plw, issued by the District Court in Pelalawan Regency. In this ruling, the judge took into account the findings of the Pelalawan Regency Plantation and Livestock Service Team regarding the failure of PT. SumberSawit Sejahtera (PT. SSS) to comply with regulations aimed at protecting its plantation. This non-compliance is linked to several legal frameworks, including the Environmental Protection and Management Law (PPLH Law), the Plantation Law, and Government Regulation Number 4 of 2001, which addresses the Control of Environmental Damage and/or Pollution related to forest and land fires. The lawsuit was filed because PT. SumberSawit Sejahtera (PT. SSS) has a plantation area of approximately 5,604 hectares that was burned, leading to the conclusion that PT. SSS, as a legal entity, has committed an environmental crime.

PT. SumberSawit Sejahtera (PT. SSS) has faced repercussions for non-compliance with regulations due to a deficiency in fire control facilities and infrastructure, which was identified by the Plantation and Livestock Service Team. Additionally, PT. SSS does not possess an authorized Plantation Land Opening and/or Processing Work Plan document, as required by the Head of the Pelalawan Plantation Service. Furthermore, PT. SSS has failed to carry out the plantation land opening and processing in accordance with established regulations. In the judge's assessment, PT. SSS has the financial capability to address the deficiencies in fire control facilities and infrastructure. However, the company has opted not to take any action to rectify these issues and has instead accepted the ongoing lack of necessary facilities and infrastructure. Consequently, the non-compliance has been tacitly accepted by PT. SSS due to its failure to follow up or take corrective measures as advised by the Plantation and Livestock Service Team.

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According to Company Culture Theory, a corporation can be held accountable if it fails to make a rational and necessary effort to comply with relevant regulations. In the case of PT. SSS, there has been a lack of effort to meet these provisions, even though the company has the capability to do so. This assessment of negligence falls under the company's work practices, which are typically accepted by PT. SSS. The passive attitude of PT. SSS—characterized by inaction or silence—regarding its awareness of non-compliance, combined with its financial ability to address the shortcomings, can be described as neglectful. This apathy led to inadequate fire suppression efforts, resulting in more extensive damage as the fire spread to other plantation areas owned by PT. SSS. Consequently, this fire compromised ambient air quality standards, water quality standards, and other environmental damage criteria.

One important consideration mentioned by the judge is whether there are any warnings or threats of sanctions directed at the management or employees responsible for providing facilities and infrastructure. If the rules of PT. SSS do not address sanctions for management that violates regulations related to prevention efforts, it can be argued that PT. SSS has effectively allowed non-compliance. Therefore, the corporate culture, reflected in the company's rules, serves as a basis for assessing any errors. The shortcomings in PT. SSS's corporate culture, particularly regarding the tolerance of non-compliance, can be demonstrated through written documentation, such as warning letters issued to management or specific regulations set by PT. SSS, which are more straightforward to verify.

PT. SSS can be said to meet the conditions where formal documents contain elements of compliance, despite the expectation of non-compliance with some aspects. The provisions for fire control facilities and infrastructure have been outlined in the ANDAL and/or RKL/RPL documents, which are integral components of the AMDAL held by PT. SSS. However, these provisions were not implemented by the company. In assessing this issue, the judge must determine whether PT. SSS intended to clear land in the burned area, thereby allowing the fire to spread. This intention can be evaluated through the land clearing plan or planning map. If PT. SSS has a plan to clear the land, it raises the suspicion that the company deliberately allowed the fire to spread throughout the area. The land clearing plan is considered a part of the corporate culture in terms of procedure. However, PT. SSS does not possess a documented land-clearing plan.

If the judge considers PT. SSS's mistakes in relation to Supreme Court Regulation No. 13/2016, then the assessment of these errors falls under Article 4, paragraph (2), letter c. This states that "the corporation did not take the necessary steps to prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts." This element highlights PT. SSS's failure to effectively prevent and control land and/or forest fires. According to Article 14, paragraph (1), every business entity is required to have adequate facilities and infrastructure in place to prevent forest and/or land fires. The lack of such facilities and infrastructure led to ineffective fire extinguishing efforts at PT. SSS, allowing the fire to spread to other blocks within the plantation area and causing environmental pollution and damage. In summary, PT. SSS did not take the necessary steps to mitigate the impact of the fires.

The judge also noted that PT SSS's actions violated Article 109 of the Plantation Law, which states: "not implementing Environmental Impact Analysis or Environmental Management Efforts, and Environmental Monitoring Efforts, including environmental risk analysis and environmental monitoring." This article clearly outlines the prohibited actions, specifically the failure to implement the required documents. Additionally, the judge emphasized that PT SSS did not comply with Article 64 of the Regulation of the Minister of Environment and Forestry No. P.32 [MenLHK/Setjen/Kum/3/2016] regarding Forest and Land Fire Control. This regulation mandates that "every plantation business operator is required to prepare facilities and infrastructure necessary for the implementation of the main tasks and functions related to controlling plantation fires and other land in accordance with applicable laws and regulations." The specifics of these facilities and infrastructure are detailed in the Regulation of the Minister of Agriculture of the Republic of Indonesia No. 05/PERMENTAN/KB.410/1/2018, which pertains to the Opening and/or Processing of Plantation Land Without Burning.

These considerations illustrate that PT. SSS is recognized as an entity with its own legal personality, which includes legal rights and obligations, distinct from its managers. PT. SSS has the capacity to undertake actions independently, as explained by the Real Entity Theory. Consequently, the judge does not conflate the mistakes of the managers with those of PT. SSS. Even though certain managers are authorized to make decisions

related to budgeting, purchasing infrastructure, supervising operational activities of plantations and processing plants, managing fire safety, and other internal matters, these actions are still regarded as part of PT. SSS's internal decision-making process.

In this decision, the application of corporate criminal liability follows the organizational liability model, meaning that PT. SSS is accountable for its own mistakes. This model is also aligned with Company Culture Theory. The judge did not attribute the management's errors to PT. SSS; instead, the mistakes were considered to be those of PT. SSS itself. These were evaluated based on the operational practices accepted by PT. SSS, reflecting the actions and intentions of the company as a whole.

III. CONCLUSION

Corporate criminal liability under the Company Culture Theory asserts that a corporation is a distinct entity accountable for its own mistakes, often reflected in its internal procedures, policies, or widely accepted practices. These mistakes center on the corporation's internal decision-making processes. A corporation is held responsible when its culture does not prioritize compliance with relevant regulations. This lack of compliance can result in the corporation failing to mitigate the impacts of an incident or to prevent criminal acts from occurring. However, a corporation can absolve itself of criminal liability if it can demonstrate that it has made reasonable efforts and exercised due diligence to foster a culture of compliance.

According to District Court Decision Number 349/Pid.B/LH 2019/PN, the judge applied the Company Culture Theory to assess the non-compliance of PT. SSS with accepted practices in its business environment. The court found that PT. SSS has the financial capacity to address the deficiencies in its fire control facilities and infrastructure, which it was aware of. However, PT. SSS has simply accepted these shortcomings, which is in violation of its obligations under Government Regulation No. 4 of 2001 and the Regulation of the Minister of Agriculture No. 05 of 2018. As a result, PT. SSS has failed to foster a Company Culture that emphasizes compliance, leading to widespread fires and a significant negative impact on the environment.

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