



Research Paper

## Criminal Liability of Corporation Taking Criminal Actions in the Mining Sector

Fadilla Nur Islamia, Setiyono, and Indrawati

(University of Merdeka Malang, Indonesia)

Corresponding Author: Fadilla Nur Islamia

**ABSTRACT:** Compared to the previous three laws and regulations of the Mining Law there is no regulation about the qualification of time the corporations carry out criminal acts and how the corporations' responsibility that perform criminal act of that field. The objective of this research are to identify and analyse the period and accountability of the corporations that execute the mining criminal acts. The research designs are normative legal research, based on conceptual approach, historical approach, legal approach, and comparative approach. Refer to Article 163 in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the provisions when the corporations perform the mining criminal are not regulated. In relation with Vicarious Liability Theory substitute liability which has the meaning of "substitute liability for all forms of criminal acts and all acts carried out by all people who act for corporations such as managers, employees, workers, employees or agents become the responsibility of the corporation" it is concluded that the mining law does not regulate how corporations are accountable in criminal law.

**KEYWORDS:** liability, corporation, mining

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### I. INTRODUCTION

A corporation crime is a criminal acted by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law. This broadens the definition of crime beyond the criminal law, which is the only governmental action for ordinary offenders.

Corporate crime is one of the new paradigms in the legal world today, so that the laws and regulations have not explicitly stated the boundaries of corporations and how they are held accountable. (Yusuf, 2002:45). Corporate crime as described above can be concluded that corporate crime is an unlawful act committed by a corporation so that the corporation can be subject to both civil and criminal sanctions. (Nasution, 2021)

Provisions regarding corporations performing criminal acts in the mining sector are stated in Article 63 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, which states as follows: (1) in the event that the criminal act as referred to be carried out by a legal entity, in addition to imprisonment and a fine against the proponent, the punishment that can be imposed on the legal entity is in the form of a fine with a weighting plus 1/3 (one-third) times the maximum penalty imposed; 2) in addition to the fine as referred to in paragraph (1), a legal entity may be subject to additional penalties in the form of: a) revocation of business license; and/or. ; b) revocation of legal entity status. The theory of corporate criminal responsibility has developed from time to time historically that responsibility arises because of the relationship between workers and employers by means of workers binding themselves to do a job by receiving a reward in the form of wages while the employer binds himself to pay a sum of money or goods by obtaining a work performance of a worker. (Setyono, 2009)

Refer to Male, Sambali and Karwur (2021) also state that the application of sanctions against corporations according to statutory regulations takes several forms, namely criminal fines, additional penalties, and administrative sanctions, which have the aim of law enforcement where corporate crimes can be assessed as causing losses on a large scale, both for the community and the state.

Provisions regarding corporations doing criminal acts in the mining sector are as regulated in Article 163 (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This conventions, when compared with the provisions of the 1955 Emergency Law, Customs Law, and Excise Law, if examined closely, this Mining Law does not regulate period of time when a corporation carry out a crime in the mining sector and what is the responsibility of a corporation that execute a crime in the mining sector.

Based on the analyses the researcher find differences that are essential when compared to the research that the researcher wants to do. The theme and subject of the author's research which focuses on the aspect of period time or when corporations carry out criminal acts in the mining sector and the responsibility for criminal acts committed by corporations in the mining sector in accordance with Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral Mining and Coal.

Supported by Hanapi, Khatimah and Aswandi (2019) that the main focus of corporate crime is on the production sector, the main purpose of which is to maximize corporate profits and/or reduce production costs, by carrying out production activities and neglecting the obligation to preserve environmental functions, resulting in pollution and damage to environmental

## **II. LITERATURE REVIEW**

### **Legal Certainty Theory**

The legal certainty theory basically has two aspects, the first is about how the law can be determined (bepaalbaarheid) in concrete terms, in other words, parties seeking justice want to know how the law is in a particular case before starting a case, while the second is certainty. Law means legal security means protection for the parties against the authority of the judge (Van Apeldoorn, 2000:117)

The definition of legal certainty above can be understood that before starting a case it is necessary to know how the law regulates the case so that it can be "protection for the parties against the authority of the judge". Thus, these two meanings are an inseparable unit.

According to Radbruch (in Notohamidjojo (2011:34) stated that the main demand in legal certainty is that the law be positive, in other words the law must be obeyed and thus the law must be truly positive. Based on the theory of Radbruch it can be interpreted that the purpose of legal certainty is to obtain positive legal provisions.

The theory of legal certainty put forward by Gustav Radbruch above explains that the formation of a company has a purpose, one of which is certainty for determination so that this theory will be used by researchers to answer questions in the first problem formulation, namely when or when a corporation commits a crime in the mining sector as regulated in provisions of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

## **III. RESEARCH METHODS**

The design of this research are using normative legal research. According to Doni Alfianda (2021) stated that it is a legal research carried out by researching library materials or only secondary data. Supported by Mukti Fajar and Yulianto Ahmad (2020) present that normative legal research is legal research that puts the law as a system of norms which means the normative system are about the principles, norms, rules of regulations, laws and regulations.

The approaches used in this study are 1) Conceptual approach is carried out when the researcher does not move from the existing legal rules; 2) Historical approach is legislation basically has a different history from one another. (Bahtiar, 2018:84)

Refer to the historical perspective, the interpretation of each statutory regulation has two kinds of interpretation, namely: a) Interpretation based on the history of law (rechts historice interpretatie); b) Interpretation based on the history of the stipulation of statutory regulations (wets historice interpretatie); 3) The Comparative approach is a study of comparative law, both concerning comparisons of legal systems between countries, as well as comparisons of legal products and legal characteristics across time in one country. (Kusumadi, 1976:64)

The understanding of the comparative approach as explained earlier is that the comparative approach is the approach used in comparative research on legal systems between countries, legal products, and the character of law in one country.

## **IV. RESULTS AND DISCUSSION**

### **4.1. The Criminal Liability of Corporations Performing Criminal Acts in Mining Sector**

Refer to Law Number 3 of 2020 focus on Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the criminal liability according to science means that criminal responsibility can be equated

with mistakes/error in the broadest sense. Criminal responsibility in a foreign language is called "toerekenbaarheid", "criminal responsibility", "criminal liability". Criminal liability as mentioned in a foreign language above is intended as a benchmark whether the actions carried out by a person can be accounted for or not before criminal law.

According to Simons (2020) states that "mistake/error" is the existence of a certain psychological state in the person who carryout a criminal act and there is a relationship between this condition and the act committed in such a way that the person can be reproached for committing the act.

Supported by Sudarto (2020) says that in mistakes there must be ethical reproaches, no matter how it is little. At least the perpetrator can be reproached for not respecting the order in society, which consists of his fellow life, and which contains all the conditions for living together.

Mistakes/errors stated by Simons and Sudarto are someone who commits an act that violates the order in society which results in that person being reproached by the general public. Based on the explanation above, it can be said that mistakes or errors are placed as a measure of criminal responsibility for actions committed by someone. Thus, the act and the mistake are one unit before criminal liability.

Criminal provisions for corporations that conduct criminal acts in the mining sector are regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

The first amendment to article 158 which states "Everyone who conducts mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah)". The explanation that is meant by the explanation of article 158 which is meant by the article here is for everyone who carries out mining while article 35 point (1) explains that the mining business is carried out based on a business license from the central government.

The criminal convention governing corporations that perform criminal acts in the mining sector can be found in the statement of article 163 paragraph (1) if the provision regulates corporations in the form of legal entities but does not regulate how the criminal liability of corporations that commit crimes in the mining sector.

#### **4.2. Analysis of the Criminal Liability of Corporations Conduct Criminal Acts in the Mining Sector**

Provisions for corporations that conduct criminal acts can be found in the provisions of Article 163 paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

In the event that the criminal act is committed by a legal entity, in addition to imprisonment and a fine against its management, the punishment that can be imposed on the legal entity is in the form of a fine with a weighting plus 1/3 (one third) times. of the maximum penalty impose

The comparison of the provisions of Article 163 paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining with the provisions of Article 15 paragraphs (3) and (4) of the Emergency Law of the Republic of Indonesia Indonesia Number 7 of 1955 concerning Investigation, Prosecution and Judiciary of Economic Crimes, Article 108 paragraphs (3) and (4) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995.

The provisions in this Mining Law do not yet regulate the liability of corporations that commit criminal acts in the mining sector, which is different from the provisions of the 1955 Emergency Law, Customs Law, and Excise Law that the liability of corporations who commit criminal acts of prosecution are represented to one of the managers within the scope of the corporation to held accountable for the corporation.

Thus, based on the above descriptions which state that Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining has not stipulated provisions regarding the liability of corporations who commit criminal acts in the mining sector if they are associated with Vicarious Liability Theory or substitute liability which has the meaning of "substitute liability for all forms of criminal acts and all acts committed by all people who act for corporations such as managers, employees, workers, employees or agents become the responsibility of the corporation" it can be said that the mining law does not regulate how corporations are accountable in criminal law.

## **V. CONCLUSION**

In conclusion based on the comparison of the provisions of Article 163 paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining with the provisions of Article 15 paragraphs (3) and (4) of the Law Emergency of the Republic of Indonesia Number 7 of 1955 concerning Investigation, Prosecution and Judiciary of Economic Crimes, Article 108 paragraphs (3) and (4) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, and Article 61 paragraphs (3) and (4) of Law Number 39 of 2007.

Regarding Amendments to Law Number 11 of 1995 concerning Excise. The provisions in this Mining Law do not yet regulate the liability of corporations that commit criminal acts in the mining sector, which is different from the provisions of the 1955 Emergency Law, Customs Law, and Excise Law that the liability of corporations who commit criminal acts of prosecution is represented to one of the management within the scope of the corporation to held accountable for the corporation.

Thus, based on the above descriptions which stated that Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining has not stipulated provisions regarding the liability of corporations who carry out criminal acts in the mining sector if they are associated with Vicarious Liability Theory or substitute liability which has the meaning of "substitute liability for all forms of criminal acts and all acts committed by all people who act for corporations such as managers, employees, workers, employees or agents become the responsibility of the corporation" it can be said that the mining law does not regulates how corporations are accounted for in criminal law.

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