

The Dynamics of Corporate Criminal Liability in Riau Province as a Result of Forest and Land Fires

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Abstract—This study aimed to analyze the existence of corporations as subjects of criminal law, and how the dynamics of criminal responsibility in Riau against corporations of the crime of burning forests and land fires. The results observations revealed that corporations historically, juridically, and factually recognized its existence as the subjects of criminal law. On the other side, the impact of forest and land fires was still perceived by the government, business world, regional government, and everyone. This confirmed that appropriate preventative efforts and law enforcement had not been found. This condition leads to the fact that forest and land fires become the annual disaster in Riau. It should be the main concern for all parties so that preventive and repressive efforts could proceed as they should.

Keywords: *responsibility, corporation, criminal/punishment*

I. INTRODUCTION

The debate about corporations as subjects of criminal law and accountability is over. The subject of law is the bearer of rights and obligations which consists of human beings and legal entities. Humans as natural legal subjects were not initially debated by all branches of law. Meanwhile, there are differences of opinion related to legal entities. Legal entities, also known as corporations, are not considered as a legal subject in branches of corporate criminal law based on *societasdelinquere non potest* or *Universalitas Delinquere non potest*.

There has been much literature and research carried out about criminal responsibility towards corporations and the crime of forest and land fires. However, this paper looked at and analyzed this issue based on constructivism paradigm [1]. Thus, it was substantially different from others even though there were some similar points in the discussion and analysis.

Indonesia and Netherland initially recognized the corporation not as a legal subject. The arguments are based on: 1) Corporations do not have a *mens rea* (a desire to misbehave); 2) Corporations are not individuals although it can carry out various legal actions that are usually performed by individuals; 3) The corporation has no awareness and does not have an actual body; 4) Corporations cannot be accounted for because if there are directors who commit crimes, it must be an

act outside the articles of association; thus, the director will be personally responsible (*ultra vires doctrine*).

The development of legal politics in Indonesia has finally made the existence of corporations as subjects of criminal law stronger by explicitly and implicitly mentioned in various applicable laws and regulations [2]. Among these laws and regulations are Article 1 section (2) of Law No.5 of 1997 concerning Psychotropic, Article 1 section 3 of Law No. 8 of 1999 concerning consumer protection, Article 1 section (1) and (3) of Law No. 31 of 1999 and Law No. 20 of 2001 concerning the amendment of Law number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law No. 15 of 2003 concerning terrorism, Law No. 21 of 2007 concerning the Eradication of human trafficking, Law No. 25 of 2007 concerning Investment, Law No.24 of 2007 concerning disaster managements, Law No.11 of 2008 concerning Information and Electronic Transactions, Law No.44 of 2008 concerning pornography, Law No.35 of 2009 concerning narcotics, Law No.32 of 2009 concerning environmental protection and management.

The fact that corporations as subjects of criminal law cannot be separated from objective backgrounds, the impact of corporate crime is extremely broad and the loss is high, for example the case of corruption in the forestry sector in Riau done by T. Azmun Jafar, which involved 17 companies. This case revealed that the amount of state losses is greater than the losses incurred caused by individuals. The existence of corporations is increasingly greater for human interests and the interests of the country. In addition to fulfilling human needs, it also plays a role in the national economic growth (revenue (tax)), employments, technology transfers, and the role of banks in sustaining the economy, and most crucial is that corporate crime is categorized as transnational which is organized, involving people in a network and interrelated [3]. Each has its functions, tasks and roles; as a result, it is not easily eradicated because it is formed on three elements: first, a solid criminal group because of ethnic ties, interests and so on, second, the groups that protect (protector) referring to unscrupulous officers and professionals, and third, groups of people who enjoy the results of crimes systematically committed.

Forest and land fires often occur in Indonesia, especially in the province of Riau. It has been considered as one season in Riau because it occurs almost in every dry season every year; thus, it is known as a new season called the smog season. The worst fires occurred in 2015, in which more than 5,595 Ha were burned, 600,000 people suffered from ISPA or URI (Upper Respiratory Tract Infection), and 9 children died (in Riau and South Sumatra); the airport was closed and other material losses were accumulated. In 2016 2,348 ha of land were burned while in 2017 1,052 Ha were burned, and in 2018, it was even wider for about 5,776.46 Ha; at last, in 2019 an area of 108.5 Ha was burned within 12 days [4]. Since Riau has forests and peat lands [5], the fires are hard to extinguish; it quickly spreads and causes long haze [6].

Based on the above background, this study aimed to determine and recognize the existence of corporations as subjects of criminal law and their accountability, and to find out the dynamics of corporate responsibility in the crime of forest and land fires in Riau Province in which preventive and regressive efforts had been carried out, so that smog disaster caused by forest and land fires in Riau province would no longer become an annual disaster.

II. RESEARCH METHODS

The research process can be seen as a series of interrelated phases and cannot be separated from one another. Denzin and Lincoln in "Introduction: Entering the field of Qualitative Research" in the Handbook of Qualitative Research" (1994), as quoted by Agus Salim [7] propose five phases which constitute a series of research processes.

Stand Point: it is associated with traditions guiding researchers throughout the research process [8]. Traditions in research are classified into quantitative research and qualitative research. This research applied the tradition of qualitative research. Bogdan and Taylor define qualitative methodology as a research procedure that produces descriptive data in the form of written or oral words from people and observable behaviors [1].

Paradigm: Etymologically, the word paradigm comes from *para*, which means next to, beside, on the side, side by side, or on the edge, and *deiknunai* or *deigma*, which means seeing or showing [1]. Guba and Lincoln, in the Handbook of Qualitative Research, define paradigm as a major philosophical system, a main part including certain ontology, epistemology and methodology that cannot be exchanged, representing a certain beliefs system which offers the way how the world is seen, understood, and studied. In other words, it links adherents with a particular worldview [9].

Research Strategy: it is related to the term of normative legal research and empirical / sociological legal research. FX. Adji Samekto states that to determine whether the research is normative or empirical, it is seen based on the objectives to be achieved [10]. Soetandyo Wignyosoebroto calls the doctrinal method as a legal research method that relies on rules requiring compliance to be enforced by using state power (normative), acting in the world of necessities (*das sollen*), and its products are also curative [11].

Methods of Data Collection and Analysis: The types of data required in this study were primary and secondary data. Secondary data applied the literature review while the primary data were obtained from the primary source directly in a purposive manner. Primary data sources included: Legislative members (DPRD) and Political Party cadres; executive (Public Health Service); Religious, traditional and community figures; Non-Governmental Organizations (NGOs); Private parties; Regional pers; Academics; College students; and the community. Primary data were collected through surveys and focus group discussions in Pekanbaru. Then, the data were interpreted according to the hermeneutic methodology in the constructivism paradigm.

III. RESULTS AND DISCUSSION

A. Corporations as Legal Subjects and Criminal Liability

The corporation has been widely mentioned both in terms of scholars and in the juridical sense of the laws and regulations, either public or private corporations. The corporation is literally different in each country: *Corporatie*: the Netherlands, *Corporatio*: Britain, *Corporation*: Germany, *Corporatio*: Latin; it is derived from the word *corpus* which means body, gives the body or makes it equal [12].

The scholars provide various restrictions on the corporation in terminology. Subekti and Tjitrosudibio [13] define a corporation as a legal entity. Lobbying Loqman comments that the discussion of scholars derives two opinions about corporation [3], the first of which refers to corporations as a collection of trades with legal entities. In this context, only corporations with legal entities can be convicted. The second opinion describes corporations broadly, in the sense that not only is a legal entity, but also in the sense that every human association, either trade associations or other businesses, can be criminally liable. Some juridical regulations provide restrictions on corporations while others merely refer to the word corporation or business entity as regulated subjects. Some of juridical restrictions include Law 31 of 1999 concerning Eradication of Corruption, Law number 35 of 2009 concerning Narcotics, Law Number 11 of 2008 concerning Information and Electronic Transactions, Article 1 which states: Corporations are collections of people and / or assets that are organized both as a legal entity and not a legal entity.

The fact of legal juridical recognition of corporations as legal subjects in Indonesia is found in various applicable laws and regulations, not only criminal laws, but also administrative laws, civil laws, and other functional laws [2]. Prior to 1951, Indonesia even set up Corporations as subjects of crime. The Emergency Law Number 12 of 1950 regarding circulation tax, the Emergency Law Number 13 of 1950 concerning Emergency Loans, the Emergency Law Number 12 of 1951 concerning the amendments of *Ordonantie Tijdelijke Byzondere Strafbepalingen*, the Emergency Law Number 13 of 1951 concerning the Stock Exchange, the Emergency Law No. 16 of 1951 concerning the settlement of labor disputes. The dynamics of the development of criminal law are increasingly widespread in recognizing corporations as legal subjects. Some of these laws and regulations are Article 1 section (2) of Law No.5 of 1997 concerning Psychotropic, Article 1 number 3 of

Law No. 8 of 1999 concerning consumers' protection, Article 1 section (1) and (3) of Law No. 31 of 1999 and Law No. 20 of 2001 concerning amendments of Law number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, Law No. 15 of 2003 concerning terrorism, Law No. 21 of 2007 concerning Eradication of human trafficking, Law No. 25 of 2007 concerning Investment, Law No.24 of 2007 concerning disaster management, Law No.11 of 2008 concerning Information and Electronic Transactions, Law No.44 2008 concerning pornography, Law No.35 of 2009 concerning narcotics, Law No.32 of 2009 concerning environmental protection and management.

Corporations as subjects in criminal law have consequences of criminal liability although it is not easy and is debatable in practice. However, the theories show that many scholars propose theories that can be used in order that corporations are not free from accountability. There are thirteen relevant theories to be used [3], include: the identification theory, Strict liability or absolute liability, Vicarius Liability Doctrine, Corporate culture model or company culture Theory, Doctrine of Aggregation, Reative Corporate Fault, Management Failure Model, Corporate Failure Model, Corporate Mens Rea Doctrine, Specific Corporate Offences, Blameworthiness Test, Attribution Liability, Deterrence Theory and Rational Choice Theory.

Objectively, as a legal subject, the corporation is internationally well known. The United States has recognized it since 1909, related to the case of New York Central and Hudson Rivers RR vs United States. The Netherlands is known to include corporations as the subject of criminal offenses in economic offenses since June 22, 1950 although it has been

updated as in Article 51 WVSr Ned (Dutch Penal Code) since September 1, 1976. Meanwhile, in Indonesia, corporations have been included since 1951 [12], through Law Number 17 Drt 1951 regarding the investigation, prosecution and trial of economic criminal acts. The existence of corporations from the 72 legislation identified, it can be concluded that the determination of corporations as subjects of criminal law is no longer a debate, although there are various and inconsistent terms, the emergence of corporations is also influenced by the concept of the Criminal Code in 1993 [12].

B. The Dynamics of Corporate Responsibility for Forest and Land Fires in Riau

Riau is a part of the Republic of Indonesia which has 12 districts/ cities, namely [14], Bengkalis Regency (the regency capital is Bengkalis), Indragiri Hilir Regency (the regency capital is Tembilahan), Indragiri hulu Regency (the regency capital is Rengat), Kampar Regency (the regency capital is Bangkinang), Meranti Regency (the regency capital is Selat Panjang), Kuantan Singingi Regency (the regency capital is Kuantan Bay), Pelalawan District (the regency capital is PangkalanKerinci), RokanHilir Regency (the regency capital is BaganSiapiapi), Rokan Hulu Regency (the regency capital is PasirPengaraian), Siak Regency (the regency capital is SiakSriindrapura), Dumai (the capital city is Dumai), and Pekanbaru (the capital city is Pekanbaru).

Geographically, Riau is a strategic area because it borders directly to several neighboring countries, the Straits of Malacca, Malaysia, Singapore [15], the geographical detail of each regency/ city is showed in the table below [16]:

TABLE I. NUMBER AND SIZE OF REGENCIES / CITIES IN RIAU PROVINCE

No	Regencies/Cities	Number		Size (Ha.)	Capital
		Kecamatan (Sub-dsistrict)	Desa/Kelurahan (Village)		
1	Kuantan Singingi	12	209	520.216,13	Teluk Kuantan
2	Indragiri Hulu	14	184	767.626,66	Rengat
3	Indragiri Hilir	20	193	1.379.837,12	Tembilahan
4	Pelalawan	12	105	1.240.413,95	Pangkalan Kerinci
5	Siak	13	113	823.357,00	Siak Sri Indrapura
6	Kampar	21	219	1.240.413,12	Bangkinang
7	Rokan Hulu	14	126	722.977,68	Pasir Pangaraian
8	Rokan Hilir	13	103	896.142,93	Bagan Siapi-api
9	Bengkalis	8	102	833.639,05	Bengkalis
10	Kepulauan Meranti	5	73	370.784,00	Selat Panjang
11	Pekanbaru	12	58	63.300,85	Pekanbaru
12	Dumai	5	32	203.900,00	Dumai
	Provinsi Riau/Total	149	1.517	8.915.015,09	Pekanbaru

Even though forest and land fires occur almost every year in Riau, the community says that there have been several years that had very serious and severe impacts on the community. For example, in 2015 there were 174,000 Ha of forest and land burned; as a result, the government conducted an Audit to 5 companies engaged in the plantations field, 12 forestry companies, and 6 district/ city governments. Based on data from the National Compliance Audit Team, of the five companies in the plantation sector, four companies (PT. MEG, PT. TFDI, PT. JJP, PT. BNS) did not obey the rules and one company (PT. SAGM) extremely violated the rules. Then, out of 12 companies in the forestry sector, one company was less

obedient (PT. SRL Blok V), 10 companies (PT. AA, PT. SSL, PT. SRL Blok IV, PT. DRT, PT. NSP, PT. SG, PT. SPA, PT. RUJ, PT. SPM, PT. RRL) were obedient, and one company was very disobedient (PT. SRL Blok III). After that, out of six district/ city governments, one district (Bengkalis) was classified as obedient, one district (Siak) was quite obedient, and 4 districts (Rokan Hilir , Indragiri Hilir, Meranti Islands, Dumai City) were less obedient [17]. Similar to this, in 2019 the largest area of burned land was in Riau, reaching 49,266 Ha [18], so that the community and neighboring countries called it as the annual smog or *jerebu* season.

Losses due to forest and land fires, according to Dr. Suwondo, MS, as the Coordinator of the Center for Environmental Studies at the University of Riau, reached Rp50 trillion, originating from disruption of trades, services, culinary, plantations, and time delay losses from aviation activities [19]. In addition, there were immaterial losses that were difficult to measure such as the death of children and infants, widespread *ISPA* attacks, the potential for future lung diseases, and other undetectable effects. However, despite the material and immaterial losses due to forest and land fires, the legal entity involved in forest and land fire activities in Riau did not thoroughly touch and reach the relevant intellectual and corporate actors. The dynamics of law enforcements on public reports on corporations were so complicated, as evidenced in 2016, after the 2015 severe fires, Regional Police of Riau issued a letter to stop the investigation (SP3) of 15 companies from 18 companies whose alleged concessions were burned. The depiction of weak law enforcements against forest and land fires made the community apathetic and resigned to the possibility of a repetition of the haze disaster caused by forest and land fires in Riau.

Moreover, focus group discussions from various community elements in Riau in September 2019 resulted in a number of recommendations. First, the budget politics in Riau must be pro to Peat Restoration. Second, a special Regional Apparatus Organ in Riau related to peat restoration was established. Third, an ecological struggle should be strived for the prevention of haze disasters. Fourth, the information about the effects of smog on health must be spread out. Fifth, the community empowerment should be involved to prepare halfway house for the victims of smog. Sixth, people should struggle against corporations as forests and land burners.

IV. CONCLUSION

The existence of corporations has been recognized historically, juridical, and factually as subjects of criminal law so that criminal liability to corporations is no longer a debatable, as a result of criminal acts committed by and on behalf of the corporations. Dynamics existed in the preventive and repressive efforts carried out against corporations involved in the act of burning forests and land. In one side, the effects were felt by the government, business worlds, local governments and everyone. On the other hand, right effort to prevent the forest and land fires and appropriate law

enforcement up to the intellectual actors either corporation or on behalf of the corporation have not been found.

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