

“BENEFICIAL OWNER” CRIMINAL LIABILITY FOR CORPORATE CRIMES IN THE ENVIRONMENT SECTOR

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ABSTRACT

This paper is inspired by a criminal law policy in Indonesian criminal law regulations that recognizes corporations as subject to criminal acts and criminal liability, but has not had a significant impact on law enforcement against criminal acts that occur within the scope of the corporation. The fact that this problem has not yet been divided has led to unsatisfactory developments in the development of accountability and criminal prosecution of the perpetrators. This research is a normative juridical research. The legal research method used is the statutory approach, conceptual approach and case approach. This research shows the tendency of various corporations to anticipate the possibility of criminal prosecution by building a structure by which separating the distance between criminal acts committed by corporate employees and decision makers or holders of corporate control. This act can be done in the form of a "Beneficial Owner" or forming a "Holding Company", with which can close the trail of criminal liability and actual criminal conviction, but only on corporations that directly realize the offense. Even though the big profit is not on the corporation or its direct agent. This issue is a matter of criminal law policy when formulating criminal provisions in related legislation. The formulation of criminal provisions is a very strategic initial stage of the "in abstracto" law enforcement process while the second and third stages constitute the "in concreto" law enforcement stage.

KEYWORDS: Criminal liability, Beneficial Owner, Corporations.

INTRODUCTION

Criminal liability for criminal acts that occur within the scope of the corporation, still leaves various problems in criminal law. This is not only in the theoretical field, but further in the practice of criminal law. Although the criminal law policy in Indonesian criminal law regulations indicates the existence of corporate recognition as a subject of criminal law and criminal liability, it does not appear to have a significant effect on law enforcement against criminal acts that occur within the scope of the corporation. The reality in practice is the tendency of various corporations to anticipate the possibility of criminal prosecution by building a structure by which separates the great distance between criminal acts committed by corporate employees and decision makers or holders of corporate control. For example, by forming a "holding company", with which can close the trail of criminal liability and actual criminal conviction, but only on corporations that directly realize the offense. Even though the biggest advantage is not the directors or corporations of the direct actors, but there are other parties who get the benefit or benefit (beneficial owner) as the holder of control. The fundamental issue

regarding this is to what extent if a graded criminal liability will be applied. The fact that this problem has not yet been divided has led to unsatisfactory developments in the development of accountability and criminal prosecution of crimes that occur within the scope of the corporation. As William S. Laufer said, "the evolution of corporate criminal law was and is predictably disappointing", which is a disappointing development¹.

The latest developments in corporate practice require its regulation in criminal law. That is, the science of criminal law is demanded to be able to provide justification in terms of accountability and criminal impose on those who should be responsible. The modern organizational structure within the corporation allows the transfer and distribution of responsibility for decision making, which causes accountability and criminal liability to be very complex, when the crime occurs within the scope of the corporation. This causes the determination of who the actual crime is accounted for as a new problem².

On the other hand, the presence of a corporation cannot be denied to have an important role in spurring the economic growth of a country or even the world, but the corporation also has a negative impact that ends with the birth of various crimes. Various crimes that are the effects of corporate activities are environmental pollution, forest destruction, corruption in the form of bribes and money laundering. Piter said that: "The corruption wreaking havoc in these countries is a direct agreement of the behavior of multinational companies based in rich industrialized countries that don't hesitate to hand out generous bribery in order to land contracts"³.

In Indonesia the existence of corporations is spread in various fields of life. Some are engaged in the mining, forestry, fisheries, plantation and other sectors. Not infrequently among these corporations are not Indonesian companies. A number of large companies engaged are not Indonesian companies, but are foreign companies as owners and get benefits / benefits called beneficial owners and holding companies are not domiciled in Indonesia, but are in other regions outside Indonesia, such as Singapore. and Malaysia and other countries. In addition, the relationship between holding companies and companies operating in Indonesia is often indirect, but is covered by a number of SPV or also known as shell companies that are deliberately located in the area of *secrecy jurisdiction*⁴.

¹ Laufer, S. William. *Corporate Bodies and Guilty Mindes: The Failure of Corporate Criminal Liability*. Chicago: The University of Chicago Press. 2006. hlm. 42

² Huda, Chairul. *Perkembangan Terakhir Korelasi Antara Pertanggungjawaban Pidana dan Penjatuhan Pidana, dalam 'Hukum Pidana Masa Kini'*. Yogyakarta. Total Media dan Mahupiki. 2014. hlm. 39

³ Gelinas, Jacques. *Juggernaut Politics: Understanding Predatory Globalization*. New York: Harvard University Press. 2003. hlm. 72

⁴ *Secrecy jurisdiction* are places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction to facilitate its use *secrecy jurisdictions* also create a deliberate, legally backed veil of secrecy that ensures that those from

The issue of criminal liability and criminal conviction of a beneficial owner within the scope of a corporate criminal offense is a matter of criminal law policy when formulating criminal provisions in the relevant laws and regulations. The formulation of criminal provisions is a very strategic initial stage of the "in abstracto" law enforcement process while the second and third stages constitute the "in concreto" law enforcement stage. Therefore, mistakes (weaknesses) at the policy stage of legislation (formulation) are strategic mistakes that can be a barrier to law enforcement efforts 'in concreto'. It said a strategic policy because it provided the foundation, direction, substance and limits of judicial and executive authority. This strategic position has the consequence that the weakness of the criminal law formulation policy will affect the criminal law enforcement policy and crime prevention policy⁵.

The same thing was said by Satjipto Raharjo⁶ who said that the law enforcement process also reached the stage of making laws (the law). The formulation of the thinking of lawmakers as outlined in the legislation will also determine the law enforcement as it will be carried out. Furthermore, criminal law policies essentially contain state policies in regulating and overcoming power, both the authority of the community in general to act and behave as well as the power or authority of the authorities / law enforcers in carrying out their duties to ensure that the public obeys and complies with the established rules.

Legislation is part of a particular policy, in determining, outlining or designing a policy. The law is not only a tool for carrying out wisdom. By establishing the behavior as a new crime, the government becomes authorized to order law enforcement to enter the new field. If we look at the contents of the determination of the new crime, it can be seen that the provisions contain more policies governing criminal law norms in interfering with social and economic life, traffic, job security, public health and the environment⁷. This is in line with the politics of criminal law in the 21st century, which is a series of processions for the formation of criminal law based on the results of social, economic, and political evaluations that develop in society with the aim of creating order, accuracy, fairness and usefulness

outside the jurisdiction making use of its regulation cannot be identified to be doing so. Lihat selanjutnya dalam Tax Justice Network, "Financial Secrecy Index", <http://www.financialsecrecyindex.com/>, diakses (1 Oktober 2015).

⁵ Nawawi Arief, Barda. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenada Group. 2010. hlm. 223

⁶ Sarikat Putra Jaya, Nyoman. *Kapita Selekta Hukum Pidana*. Semarang: Badan Penerbit Undip. 2005. hlm. 23

⁷ Campur tangan negara (*welfare state*) atau pemerintah di bidang kependudukan dan pengelolaan kesejahteraan pada umumnya merupakan tujuan dari negara kesejahteraan modern (*modern welfare state*), yakni karakteristik negara yang menjadi fenomena khas Eropa. Dalam hal ini pemerintah harus proaktif dalam pengaturan dari perencanaan (*planning*), pengorganisasian, pelaksanaan atau penerapan setiap kebijakan (*policy*) pemerintah demi kesejahteraan rakyat secara umum. Lihat. Pantja Astawa, I Gde dan Na'a, Suprin. *Memahami Ilmu Negara & Teori Negara*. Bandung: PT. Refika Aditama. 2009. hlm. 120-122

that are measurable and accurate⁸.

This paper only limits its discussion of criminal liability to beneficial owners in environmental legislation, including: Law No. 32 of 2009 concerning Environmental Protection and Management, Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, and Law Number 39 of 2014 concerning Plantations. The three laws chosen above, because they are the main laws in the environmental field. In addition, various crimes and violations in the environmental field that have occurred so far have more to do with forest destruction caused by business actors in the plantation sector which then have an impact on the occurrence of damage to the environment as a whole.

Research Methods

This research is a normative juridical research. The legal research method used is the statutory approach, conceptual approach and case approach. The legislative approach is carried out by examining several laws in the environmental field. While the conceptual approach is carried out by analyzing various concepts of corporate criminal liability in environmental legislation and the concept of corporate criminal liability in the formulation of the RKUHP as *ius constituendum*. The case approach is carried out by reviewing court decisions related to criminal offenses occurring within the scope of the corporation and forms of criminal liability and conviction.

ANALYSIS AND DISCUSSION

1. Corporate and Beneficial Owner

One of the actors of globalization is national and multinational corporations. The corporation plays an important role in the flow of change and growth in the world economy. The existence of a corporation is also related to global financial mastery or global business. The existence of a corporation is also related to the mastery of various global businesses which causes a corporation to monopolize certain business fields. This happens because there is competition between corporations that allows them to defeat and dominate each other. When a corporation wins a competition, it will easily dominate others. At this point, there is what is called global capitalism. A condition where the world economy is only controlled by certain countries by relying on national or multinational corporations⁹.

In the process of the formation of economic capitalism by corporations, Eigan said that, economic capitalism played by multinational corporations or transnational corporations or multinational corporations had carried out operations throughout the developing countries, but they were not subject to that country, but were subject to their original legal state or international tribunals or international

⁸ Atmasasmita, Romli dan Wibowo, Kodrat. *Analisis Ekonomi Makro Tentang Hukum Pidana Indonesia*. Jakarta: Prenada Media Group. 2016. hlm. 193-194

⁹ Bederman, David. J. *Globalization and International Law*. New York: Palgrave Macmillan. 2008. hlm. 104-105

arbitration tribunal. Even Peter said that: "I worked a long time for the world bank and, at the end of my career. I concluded that all the projects I had worked on had been undermined, and even destroyed, by corruption ... totally useless projects would be created because it was more lucrative for some to repair to repair the existing roads"¹⁰. This fact is reinforced by the tendency in the practice of various corporations to anticipate the possibility of criminal prosecution by building a structure by which separates the great distance between criminal acts committed by corporate employees with decision makers or corporate control holders. This act can be done in the form of a "beneficial owner" or forming a "holding company", with which it can close the trail of criminal liability and actual criminal conviction, but only on corporations that directly realize the offense. Even though the big profit is not on the corporation or its direct agent.

Beneficial owner is a term that originally came from common law countries. In common law, there are two forms of ownership of assets, namely legal and beneficial¹¹. Beneficial owner is a party who fulfills the criteria as the owner, without the need for recognition of ownership from a legal point of view¹². on the other hand, civil law countries believe that ownership of wealth cannot be distinguished between the legal owner who bears the legal title and the beneficial owner who benefits from the wealth. Civil law countries assume that the rights and obligations relating to others are for those who carry the legal title. Rights owned by third parties can be requested from those who carry the legal title.

The concept of beneficial owner does not only develop in the national law of each country, but also develops in a number of international organizations and conventions. This concept is known in the Organization for Economic Co-operation and Development (OECD) in the OECD Model Tax Convention, Financial Action Task Force (FATF) in the FATF Recommendation, G20 countries in the G20 High-Level Principles on beneficial ownership Transparency, and also in a system called Automatic Exchange of Information (AEOI) initiated by the OECD.

Meanwhile, in the statutory regulations in Indonesia the concept of beneficial owners can be found in several regulations that apply in Indonesia, such as in the tax sector regulations, financial sector regulations, as well as in Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing the Beneficiary Owners of Corporations in the framework of Prevention and Eradication of Criminal Acts of Money Laundering and Criminal Funding of Terrorism which

¹⁰ Gelinas, Jacques. *Juggernaut Politics: Understanding Predatory Globalization*. New York: Harvard University Press. 2003. hlm. 12

¹¹ Kepemilikan secara legal adalah kepemilikan yang dapat dipindahkan, dicatat, didaftarkan atas nama tertentu. Sementara, secara beneficial, kepemilikan dalam jenis ini lebih menggambarkan jenis kepemilikan suatu pihak yang berhak atas penggunaan dan manfaat dari property meskipun pihak tersebut tidak memiliki kepemilikan secara legal.

¹² Anthony Tiono dan R. Arja Sadjiarto. 2013. "Penentuan beneficial owner Untuk Mencegah Penyalahgunaan Perjanjian Penghindaran Pajak Berganda", *Jurnal Tax & Accounting Review*, Vol. 3 No. 2. hlm. 3

specifically regulates the obligation to determine and transparency of beneficial owner data.

Definition of beneficial owner in Perpres No. 13 of 2018 is as follows¹³:

"Individuals who can appoint or dismiss directors, boards of commissioners, management, Trustees, or supervisors of the corporation, have the ability to control the corporation, are entitled to and / or receive benefits from the corporation, directly or indirectly, are the true owners of the funds or corporate shares and / or meet the criteria referred to in this Presidential Regulation ".

Therefore, a beneficial owner is a natural person who ultimately receives benefits obtained from beneficial ownership of the securities, and / or has the power to control or influence the voting rights attached to the shares (even if legally the shares are documented on behalf of the person other / held by others). Although the beneficial owner is usually associated with a natural person, it must be noted that the legal person can also be the highest owner if the most beneficial owner is the state or BUMN¹⁴.

If seen from the purpose of the issuance of this Perpres is to increase the transparency of the beneficial owner data of a corporation. More about the scope of the corporation referred to in this Perpres is a corporation in the form of a legal entity or not, located in Indonesia or outside. In addition, the existence of this regulation provides legal certainty for criminal liability because it facilitates the search for identity in exposing various crimes that occur within a corporation.

Regarding the definition of ownership in Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) regulates that¹⁵: "The Company was established by 2 (two) or more people with a national deed made in Indonesian". Then, in paragraph (2) reads that: "every founder of the Company must take part of the shares when the Company was founded". In the Company Law there are no explicit rules regarding the nominee agreement of share ownership in the establishment of PT, so the legal basis is based on Article 1338 BW. Then the Company Law only stipulates in Article 48 paragraph (1) that¹⁶: company shares are issued in the name of the owner, but there is no prohibition on the use of nominee shares. So if there is the use of nominee shareholders in a PT, legally the party that owns the shares is the party borrowed by name (nominee). However, in Article 33 paragraph (1) of Law Number 25 Year 2007 concerning Investment (the Investment Law) regulates that both domestic investors and foreign investors are prohibited from making agreements

¹³ Peraturan Presiden No. 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi dalam rangka Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Tindak Pidana Pendanaan Terorisme.

¹⁴ The Organization for Economic Co-operation and Development (OECD), "Disclosure of Beneficial Ownership and Control in Listed Companies in Asia", 2016.<https://www.oecd.org/daf/ca/Disclosure-Beneficial-Ownership.pdf>.accessed (14 october 2019)

¹⁵ Pasal 7 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

¹⁶ Pasal 7 ayat (2) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas

and or statements confirming that ownership of shares in a Limited Liability Company for and on behalf of another person. In this regard, the legal consequences stipulated in paragraph (2) have been determined where the agreement or statement is declared null and void¹⁷.

However, regarding the nominee Board of Directors and Board of Commissioners is not specifically regulated in the Company Law or the Investment Law. This legal loophole makes it in practice to show nominee Directors and Board of Commissioners with the aim that the management and / or shareholders of a Limited Liability Company can be directed so that they have a perception in line with the policies desired by the beneficial owner. This appointment can be categorized as a pseudo agreement because although legally the nominee organ has the authority to act on behalf of the company's interests, in reality the nominee organ does not have any authority because it is fully controlled by the party that appoints the nominee or the actual company owner or beneficial owner who even maybe the name doesn't appear on the company's articles of association¹⁸.

On the other hand, corporate crime has a wide impact on society, nation and state, considering that corporations play an important role in the country's economy. Therefore, the urgency of formulating the provisions of criminal liability for the beneficial owner of the occurrence of corporate criminal acts needs to be regulated in statutory regulations in Indonesia within the framework of criminal law policies. That is, it needs to be emphasized that the beneficial owner can be a participant in a criminal offense. Considering that in the case of corporate criminal acts, liability can occur either to individuals such as owners, administrators or commanders or to the corporation itself. The affirmation regarding who is seen as the responsible maker must be determined in law.

2. Beneficial Owner Argument in Corporate Crime in the Environment Sector

In the practice of criminal acts that occur within the scope of the corporation, one of the modes used to carry out criminal acts in the environmental field is to use nominees and beneficial owners. In this case the nominee is someone who represents the interests of other parties. Nominee here is different from a power of attorney because it becomes the owner of an object that includes interests or rights that are born from a different agreement in its handling, while the recipient of the power of attorney has never been the owner of the object including the interests that are managed by the nominee. The use of nominee structure will involve two parties, namely nominee and beneficiary. Nominee is the party representing the interests of the beneficiary, while the beneficiary is the true owner.

Indonesia is one of the countries that does not recognize the validity of nominees in statutory

¹⁷ Pasal 33 ayat (1) dan (2) Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal

¹⁸ Salim. Denny. 2016. "Aspek Hukum Pertanggungjawaban Komisaris Nominee Dalam Perseroan Terbatas Atas Tindak Pidana Yang Dilakukan Perseroan". 8. *Premise Law Jurnal*. hlm. 4

regulations. Although in practice it is widely used when several business transactions are carried out in Indonesia. Especially its use in terms of share ownership. This practice is carried out by the owners of capital (shares) in order to anticipate the distance as far as possible with the corporation he made and to avoid the provisions on foreign investment in legislation in Indonesia.

In corporate practice in the environmental field, the occurrence of various criminal acts within the scope of the corporation are always those that are held accountable and convicted by the criminal is the management of the corporation and / or its corporation both individually and collectively. Whereas the results of the criminal acts committed by the management and / or corporation are enjoyed by people who have the control to regulate all policies in the corporation. In this case those who receive benefits are those who can appoint or dismiss directors, the board of commissioners, management, coaches, or supervisors of the corporation, have the ability to control the corporation, are entitled to and / or receive benefits from the corporation, directly or indirectly, who is the true owner of corporate funds or shares. However, those who are held liable for criminal liability and only those within the organizational structure are sentenced to the criminal.

In Muara Enim District Court's decision No. 149 / Pid.B / 2010 / PN.ME, dated 23 December 2010 which convicted Ir. MUZRAV SJAB, as the President Director of PT. Bukit Kendi because the corporation has "without permission to exploit mining material in the forest area", even though the actual crime occurred during the leadership of Ir. MUNANDAR alias MUNANDAR SAI SOHAR, which was released from all lawsuits by the Muara Enim District Court, based on Decision No. 215 / Pid.Sus / 2010 / PN.ME, dated December 22, 2010, because it only avoids violating the principle "against a criminal offense can only be sentenced to the culprit". The problem here when seen from the actions carried out is "without permission to exploit mining material in the forest area", if viewed from the act certainly is not the will of the President Director alone, but there is the same will of the corporation and the corporate control holder as the giver of the order. So that actions must be seen as jointly desired actions and jointly held criminal responsibility.

In another case, the Supreme Court through Decision Number: 1363K / Pid.Sus / 2012, dated 10 October 2012 which stated Ibrahim Lisaholit bin Husein Lisaholit as Estate Manager of PT. Kalimantan Overlays Oil Palm (PT. KHS) is guilty and convicted because they are considered responsible for the occurrence of environmental damage. The defendant is guilty of not having the facilities and infrastructure for fire prevention such as not having a special fire fighting team or special equipment to control fires. In this case, it has been shown nakedly that the fault is only in the management of the corporation (Estate Manager) without further seeing the error in the corporation and controlling the corporation as a beneficial owner. The unavailability of fire prevention facilities and infrastructure should have been known from the beginning by the corporation and the real owner. But it is indifferent and does not heed obligations as they should be done. The attitude that has been

shown by the corporation or beneficial owner should be seen as a form of error and therefore liable for criminal liability. The knowledge of the beneficial owner is the basis for assessing intentionality (dolus) or at least negligence (culpa). This means that the actions carried out by the corporate management are not solely the will of the corporation, but are the joint will of the corporation, corporation and corporate controller as the beneficial owner.

3. Responsibility of Criminal Beneficial Owners Against Corporate Crimes in the Field of Environment.

Accountability of a person in criminal law does not only mean that it is lawful to impose a crime against that person, but it can also be fully believed that it is indeed in place to hold them accountable for the crime committed. In general, criminal liability requires mistakes in the perpetrators themselves. This is based on the theory of 'no criminal without error' in criminal law. In corporations the terms of error can be seen from whether the corporation has made it possible to avoid criminal acts as part of its policy in conducting business. It is the corporation's obligation to always take as far as possible with the occurrence of a criminal offense. If these obligations are not fulfilled, the corporation can be denounced if a criminal act occurs.

Before holding a person accountable in criminal law, the law must first determine the act he committed as a criminal offense. This determination includes the determination of who (the subject of a criminal offense) the law addresses. Thus, who is the maker of an offense or subject of law intended from a criminal act formulation, is a matter of criminalization or criminal law policy. Who is the subject of a criminal offense is who by law is seen as a criminal offender. Whether the subject is then convicted depends on the mistakes made by the vicarious liability crime. The error is considered to be 'strict', without further proof of its existence¹⁹.

So far, corporate criminal liability has basically been imposed on corporate management formally or based on articles of association or corporate documents. Whereas in practice, it is found that there are main controllers who get corporate benefits, are the main actors or people who in fact control or participate in influencing corporate policies and take advantage of corporate criminal acts they do. The problem is that the beneficial owner cannot be reached legally so that criminal liability cannot be imposed and criminal liability is imposed.

Penalties against the beneficial owner in this case should be determined in advance, that the subject of criminal law in such crimes also includes the beneficial owner. That is, it needs to be emphasized that the beneficial owner can be a participant in a criminal offense. Thus, regarding the matter of his

¹⁹ Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Kencana Prenada Media Group. 2008. hlm. 48

actions, namely whether the beneficial owner can be said to have committed a criminal offense needs to be confirmed and become part of the provisions regarding participation, while regarding criminal liability, whether it is strict liability or otherwise, it is formulated in the provisions regarding criminal liability. Regarding criminal liability to the beneficial owner, it must first determine how the mistake can be attached to the beneficial owner of the corporation. In this case the error of the beneficial owner of the corporation can be determined by the presence of knowledge or will in itself in the form of determining policies and controls over the course of corporate activities, so that it is assessed as a form of intent on the beneficial owner when carrying out the act. Thus, the legislators must formulate it in the environmental legislation as a form of criminal law policy. With the recognition of the beneficial owner as the subject of a criminal offense and criminal liability, a criminal conviction can also be made.

Unfortunately, in the current environmental legislation the formulation of the beneficial owner criminal act and the form of responsibility has not yet been formulated. The existing legislation only regulates the issue of corporate criminal liability without relating it to criminal acts and criminal liability to the beneficial owner. Confirmation of the concept of a criminal act and criminal liability to a beneficial owner like this is very much needed, so that the legal rules that enable the beneficial owner to commit a crime and therefore be accounted for, can really be applied in legal practice. It does not contradict the principle of legality and is not merely a theoretical possibility.

In Law Number 32 of 2009 concerning Environmental Protection and Management, business entities (corporations) have been recognized as subject to criminal acts and criminal liability. Based on the provisions of Article 116 paragraph (1) which reads that: if an environmental criminal offense is committed by, for, or on behalf of a business entity, criminal prosecution and criminal sanctions are imposed on: (a) business entity, or (b) the person giving the order to commit the crime or the person acting as the leader of the activity in the crime, or (c) the business entity and the person giving the order or the person acting as the leader. Then, in paragraph (2) reads, that: if the environmental crime as referred to in paragraph (1) is committed by a person based on an employment relationship or based on other relationships acting within the scope of work of the business entity, criminal sanctions are imposed on the instructor or leader in the criminal act without regard to the criminal act is carried out individually or together. Then, in the provision of Article 109 paragraph (1) of Law Number 18 Year 2013 concerning Prevention and Eradication of Forest Destruction, formulating corporate construction as the subject of criminal acts of forest destruction, namely in terms of acts of logging, harvesting, collection, control, transportation, and distribution illegal logging is carried out by or on behalf of a corporation, criminal charges and / or convictions are made against the corporation and / or its management.

In Article 109 paragraph (2) states that acts of logging, harvesting, collection, control, transportation,

and distribution of timber from illegal logging are carried out if the criminal act is committed by an individual, based on work or other relationships, acting within the corporate environment both alone or together. From this formulation, it can be seen that firmly corporations can become perpetrators of criminal acts and be held liable for criminal liability. In the event that a criminal complaint is committed against a corporation, the corporation is represented by the management.

Then, in Article 113 paragraph (1) of Law Number 39 Year 2014 concerning Plantations, it is also formulated that: "in the case of acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 corporations are liable to a maximum fine plus 1/3 (one third) of the criminal fine of each of them ". However, the law does not regulate the provisions regarding how a criminal offense is carried out by or on behalf of a corporation, then in terms of how criminal prosecution and criminal imposed on the corporation and / or its management.

Meanwhile in RKUHP²⁰ as *ius constituendum*, it has regulated matters relating to corporate criminal liability and criminal acts, but has not yet regulated related acts of beneficial owner of corporations, even though criminal liability has been regulated. Though it is not enough if the problem of criminal acts and criminal liability of the beneficial owner is regulated merely as a matter of responsibility. In the formulation of Article 46 of the RKUHP it is formulated that "criminal offenses by corporations are criminal acts carried out by management who have functional positions and organizational structures of corporations or persons based on work relationships or based on other relationships acting for and on behalf of the corporation or acting in the interests of the corporation, within the scope of business or corporate activities, both individually and jointly ". Then in Article 47 of the RKUHP it is said that a criminal offense by a corporation can be carried out by the issuing order, the control holder, or the beneficial owner of the corporation that is outside the organizational structure, but can control the corporation. Regarding criminal liability towards Article 46 and 47 of the Criminal Code Code, it can be done if (1) is included in the scope of business or corporate activities as specified in the articles of association or other provisions applicable to corporations, (2) benefits corporations unlawfully, and (3) accepted as a corporate policy. The responsibility for corporate criminal acts is imposed on corporations, managers who have functional positions, give orders, control holders, and / or owners of corporate benefits.

From the formulation of criminal acts and criminal liability in the environmental legislation above, the liability liability of beneficial owners of corporations for criminal acts in the environmental field is still difficult to implement. Considering that the current formulation has not explicitly formulated criminal acts and corporate criminal liability with the beneficial owner. This issue can only be answered if the legislators in formulating criminal provisions explicitly formulate criminal acts and criminal liability of the beneficial owner as part of the criminal law policy. The demand to formulate a beneficial owner's criminal liability on a corporation has been alleged in Presidential Regulation

²⁰ Rancangan Kitab Undang-Undang Hukum Pidana. Persi September Tahun 2019

Number 13 Year 2018 which aims to increase the transparency of the beneficial owner data of a corporation. With the obligation to determine and transparency of beneficial owner data, it is indirectly easier to determine the parties that must be responsible for criminal acts that occur within the scope of the corporation. In this case the assessment of the actions carried out can use the construction of inclusion (*deelneming*) or assistance. Where people who have control and authority to take preventive actions but do not take these actions, and realize there is a significant risk with such omission and people who have knowledge of a significant risk, are descriptive conditions in identifying intentional or negligent from corporate management that is outside the corporation, but can control the corporation. Under these conditions criminal liability may be imposed on corporate controllers even though they are not within the organizational structure, but they benefit from the actions carried out by the management and or the corporation. Because, there is a legal obligation to the corporate controller as the direct owner to pay attention to the actions carried out by the management and or corporation.

CONCLUSIONS

The tendency of corporations in the environmental field to anticipate the possibility of criminal prosecution is currently done by building a structure by which separating the great distance between criminal acts committed by corporate employees and decision makers or beneficial owners. The criminal liability of a beneficial owner in a corporation can be done by determining both the matter of the liability of the beneficial owner and his criminal actions. It is not enough if the problem of criminal acts and criminal liability of beneficial owners is regulated only as a matter of responsibility.

By determining when a beneficial owner commits a criminal offense in legislation, it can easily hold criminal responsibility to account and therefore be sentenced to criminal. This issue is a matter of criminal law policy when formulating criminal provisions in environmental legislation. The formulation of criminal provisions is a very strategic initial stage of the "in abstracto" law enforcement process while the second and third stages constitute the "in concreto" law enforcement stage. This multidoor approach needs to be carried out in order to minimize the chance of escape from corporate crimes to the beneficial owner as the mastermind of a criminal offense in the environmental field.

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