

CORPORATE CRIMINAL LIABILITY ON THE ENVIRONMENTAL CRIME IN INDONESIA

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ABSTRACT

The criminal complexity which related with environmental that's done by corporation comes to question "is it possible the formulation in article 116 of the act number 32 year 2009 on Environmental Protection and Management, considering that corporation is legal body, surely it has no intention to act the crime. Yet what criminal sanction that suitable to implement for corporation. By the problem mentioned above, it is difficult to determine corporate criminal liability. Hence if it is used conventional liability concept which ought to have a crime that done by perpetrator, it is ought to have guilty element (schuld) as intentionally (dolus) or negligently (culpa), it is must have perpetrator who is capable to responsible, and no excuse reason. The problem of criminal liability is impossible to be thought considering there is intention or negligence, if the person is not able to be responsible. And so it can't be thought concerning excuse reason, if the person is not able to be responsible and there is no intention or negligence. In the principle corporation can be burdened responsibility as person. This only the formulation in Article 116 of the Act number 32 of 2009 on Environmental Protection and Management does not explain limitatively when it can be considered that corporation has been acted crime, it is because corporation is not human, surely it has no intention to commit the crime.

Keywords: Corporate Criminal, Environmental Crime, Indonesia.

INTRODUCTION

In the Act number 32 of 2009 on Environmental Protection and Management, that corporation can be requested for criminal liability accordingly as mentioned in the formulation of Article 116: (1) In the case of environmental crime being committed by, for and on behalf of a business entity, the criminal offense and penalty shall be imposed on: (1) the said business entity; and/or (2) person ordering the crime or person acting as activity manager in the crime; (2) In the case of the environmental crime as referred to in paragraph (1) being committed by a person acting the working scope of business entity on the basis of working relations or other relations, the penalty shall be imposed on the ordering party or leader in the crime without regarding whether the crime is committed individually or collectively. From the above formulation how to determine corporate criminal liability, concerning the modus of corporate crime is usually relating to the white collar crime, because in general corporation formed in legal body, automatically it has structures of organization (Ningsih et al., 2018; Nwafor 2013; Wibisana 2016).

As it has been said by Marshal B. Clinard and Peter C. Yeager that: Corporate crime is white-collar crime; but is of particular type. Corporate actually is organizational crime occurring in the context of complex relationships and expectations among board of directors, executives,

and managers, on the one hand, and among parent corporations, corporate divisions, and subsidiaries, on the other (Clinard & Yeager, 1990). The sense of white-collar crime as mentioned by Donald J. Newman based on the thought of Sutherland, that white-collar crime is a crime committed by a person of respectability and high social status in the course of this occupation (Geist & Meier, 1997).

In white-collar crime there are two forms of crime namely; occupational crime and corporate Crime, that is meaningful as follows; occupational crime which is covered; criminal offense by businessmen, the chairman of labour unity, politicians, lawyers, doctor, pharmacy expert, employee embezzles the money of company, etc. Corporate crime which covered the actings as evade taxes of income, manipulation the income of product selling, deceit in repairation vehicle equipments, television and the equipments of house hold (Clinard and Yeager 1990). From the two forms of white-collar crime mentioned above, the problem will be solved is the corporate crime that has been formulated according to Marshal B. Clinard and Peter C. Yeager namely a corporate crime is any act committed by corporations that is punished by the state, regardless of whether it punished under administrative, civil, or criminal law (Clinard and Yeager 1990). While Shapiro in Marshal B. Clinard and Peter C. Yeager explained corporate crime is the crime that is committed by collective or individuals association with different occupation. The point is to be mentioned corporate crime if official or functionary of corporation commits law violation/break the law for the interest of corporation.

If corporation is made possible to be liability according to criminal act, so what type of corporation it is. According to David J. Rachman et al., as quoted by I.S. Susanto in general corporation has 5 (five) important characteristics as bellows (Susanto, 1995):

1. It is artificial of law subject which has the special law position;
2. It has the priod life time unlimited;
3. It has power (from the state) to do the certain business activity;
4. It is owned by share holder;
5. Share holder responsibility to corporation loss usually to own share only.

By the characteristics mentioned above, it is integral part from corporation in narrow sense which limited to the sense of legal body that formed the limited liability companies (Inc'Ltd) in doing it's activity (Disemadi & Nyoman, 2019; Salam et al., 2019; Wibisana & Marbun, 2018). While in this writting corporation is purposed not only legal body that formed the limited liability companies but also various of legal bodies, examples union, foundation, C.V, Firm and also including which is unformed legal body, the most important it has property or wealth which is organized.

By the corporation sense above, it is clear to the limited companies included corporation part with all the structures effort to be the largest and be able to dominate many people. The implication of the extra ordinary growing up to the asset and selling activity of the biggest corporations and conglomerate which reaches billion dollars, it makes corporation has economy, social and politic power. Meaningly corporation can control economy growing, social and politic state. Eg. The Campbel Soup Company "*in America controls 95% of material soup of four food companies which supply 90% of all breakfast. So does in Indonesia, there are some biggest and conglomerate companies dominate some manufactures such as wheat, certain food, automotive, transportation and other products*" (Susanto, 1995).

It is so large the corporation role (narrow sense) in society life in this global era, so it need thought how corporation in acting the activity have regulations, especially criminal law (Colvin, 1995; Firdaus et al., 2020; Henry & Joni, 2019). Though some acts in Indonesia has put into effect corporation as law subject, but the form is different from law subject of human. Corporation is the form of organization that has purpose and activate in economy or business sector. That's why to appreciate the fact of criminal corporation as organized crime, this is *“a crime happening in the context complex relations and hopes among directors, executive and manager council in other side”* (Susanto, 1995).

Some actings against the law that involve company or it is category in criminal corporation, it can be seen among others at environmental company. In Indonesian acts, environmental crime regulated in the Act number 32 of 2009 on Environmental Protection and Management (in Indonesia called UU PPLH). The news of environmental pollution and damage occurred almost everyday informed by news paper, electronic and on line media. Various forms of environmental pollution and damage from just smoke or scent which is out of a factory, waste industry that bothers health till the scale biggest environmental company that caused lives or property victims (Jimenez, 2019; Kurniawan & Siti, 2014; Mardiya, 2018).

Besides, the cases of environmental pollution and damage is not only occurred in Jakarta but also in big industry towns, but including all places where investment growing up in whole regions in Indonesia. Since it can be read in publication from books or media news, environmental pollution and damage occurred among others as the case Rubber Waste Company Padang West Sumatera (PT.Limbah Karet Padang Sumatera Barat), Various Mine Company Ltd East Bintan Riau archipelago province (PT Aneka Tambang (Tbk) at East Bintan, Kepulauan Riau), The high Electric Air Channel (Saluran udara tegangan tinggi/SUTET) in Cirebon west Java, environmental pollution of Buyat Bay by the gold mine in Menado north Sulawesi and petroleum-kerosene exploitation Lapindo Brantas in Sidoarjo east Java (Sukanda, 2009).

The case that almost the same, also occurred in Jambi Province. The number of companies or corporation it is private as well as state company body in international scale as well as multy national that are operating now in this region dig and empower resource nature owned by Jambi province. The company mentioned is Jambi exploration Business Unit Pertamina Limited Company (called Pertamina UBEP Jambi).

In acting the operation Pertamina UBEP Jambi because of the weakness of operation procedure that caused environmental pollution and damage. The pollution occurring among others because of leaking pipe the crude distribution owned by Pertamina UBEP Jambi in Jalan Lirik Komperta OEP Jambi Kenali Asam Jambi town that occurred on June 17, 2000. The leaking pipe has caused number of societies who live around the location lost clean water resource and means of livelihood, it impacts their plantation and fish pond broken (Copy of the verdict of Indonesian Republic of Supreme Court number: 3273K/Pdt/2001).

By the criminal complexity which related with environmental that's done by corporation comes to question is it possible the formulation in Article 116 of the Act number 32 of 2009 on Environmental Protection and Management, considering that corporation is legal body, surely it has no intention to act the crime. Yet what criminal sanction that suitable to implement for corporation. By the problem mentioned above, it is difficult to determine corporate criminal liability. Hence if it is used conventional liability concept which ought to have a crime that done by perpetrator, it is ought to have guilty element (schuld) as intentionally (dolus) or negligently (culpa), it is must have perpetrator who is capable to responsible, and no excuse reason.

According to Roeslan Saleh concerning criminal liability, it is impossible can be thought considering there is intention or negligence, if the person is not able to be responsible. And so it can't be thought concerning excuse reason, if the person is not able to be responsible and there is no intention or negligence (Saleh, 1983).

Thus in the principle corporation can be burdened responsibility as individual. This is only the formulation in Article 116 of the act number 32 of 2009 on Environmental Protection and Management does not explain limitatively when it can be considered that corporation has been acted crime, it is because corporation is not human, surely it has no intention to commit the crime.

After being questioned about corporate criminal liability above, then it appears another problem, how is the criminal sanction can be imposed to the corporation that acting business and against the law? The problem giving the penal sanction to the corporation has been solved by formulation team of new penal code in their report in 1985, stated that motivation to burden criminal liability to corporation is: By taking note the corporation development that it is obviously some certain offenses are determined to executive board only, the fact is not enough. In economy offense it is not impossible that fine will be imposed as the punishment to the executive board compared to benefit that they have received by corporation because of the acting, or the loss effected in society, or suffered by their competitors, benefit or losses it is bigger than fine that imposed as sentencing. The sentenced executive board doesn't guarantee enough that corporation will not do the acting that is forbidden by the law.

In the Act number 32 of 2009 on Environmental Protection and Management regulated in Article 117 it explains about criminal offense with formulated "If criminal offense is filed to the ordering party or leader in the crime as referred to in Article 116 paragraph (1) letter b, the imposed penalty shall be in the form of imprisonment and fine weighted by one thirds". Besides there is additional criminal sanction as regulated in Article 119 In the Act number 32 of 2009 on Environmental Protection and Management, it is mentioned "Besides the penalty as referred to in this law, the business entities shall be liable to additional penalty or disciplinary measures in the form of: (1). seizure of profits earned from the crime; (2). closure of business and/or activity place wholly or partly; (3). improvement of impacts of the crime; (4). requirement for working what is neglected without right; and/or (5). placement of companies under custody for 3 (three) years at the maximum.

The problem appears "*how if does corporation not want to pay fine?*". If the perpetrator is person it is as mention in Article 30 (2) of Penal Code, can be substituted by light imprisonment, it need to be examined deeply the problem of criminal sanction formulation to corporation, could criminal act be function as ultimum remedium with criminal sanction formulation that has formulated in Article 117 and Article 119 of the Act number 32 of 2009 on Environmental Protection and Management. Based on the explanation and the thought mention above, then the problem will be solved in this working paper are: (1). Can the norm formulation about corporate liability on criminal act of Environmental put into effect operationally?; (2). Can the criminal sanction system on the Act of Environmental Protection and Management be applied to corporation.

METHODOLOGY

This research used secondary data in the form of literature study approach or literature study with qualitative analysis technique. A conceptual approach was conducted by referring to

some sources, such as scientific journals, online articles, and the search of online literature. Then, all of the ideas and suggestions obtained for all those sources were combined into one framework of thought.

The Norm Formulation about Corporate Liability on Criminal Act of Environmental in Indonesia

As it has been touched the norm formulation about corporate liability on criminal act of Environmental, regulated in 5 (five) articles, they are from article 116 to article 120 of the act number 32 year 2009 on Environmental Protection and Management, it is fomulatted fully as follows:

Article 116

- 1) In the case of environmental crime being committed by, for and on behalf of a business entity, the criminal offense and penalty shall be imposed on: a). the said business entity; and/or b). person ordering the crime or personacting as activity manager in the crime;
- 2) In the case of the environmental crime as referred to in paragraph (1) being committed by a person acting the working scope of business entity on the basis of working relations or other relations, the penalty shall be imposed on the ordering party or leader in the crime without regarding whether the crime is committed individually or collectively.

Article 117

If criminal offense is filed to the ordering party or leader in the crime as referred to in Article 116 paragraph (1) letter b, the imposed penalty shall be in the form of imprisonment and fine weightened by one thirds.

In legal theory as it has been solved largely in chapter II concerning corporate criminal liability, that corporation can't do the acting by itself, thats why the burden of criminal liability to corporation, it can be done only by criminal act of individual or people who run organization management or the corporation activity itself.

Relating to law construction to sue corporate criminal liability, it is appropriate what has been said Mardjono Reksodiputro quoted by Tabrani, that it need examine or construct two points, they are,: firstly, it is concerning the management acting or other person. Secondly, concerning corporation faults, how it can be said that the acting which is committed by one or more management members or others, as corporation employee or not the employee but it may be have authority, this acting must be considered as the corporation acting itself?, emphasis when can it be said that the corporation itself has been committed the criminal act? (Tabrani, 2000).

To find the problem solving from the burden criminal liability to corporation from the acting person by person based on combiination of theory, doctrine and principles of corporate criminal liability as solved before, Sutan Remy Sjahdeini said that the criminal act that is committed by some one it can be the burden criminal liability to corporation, if it fulfills all elements as follows (Sjahdeini, 2006):

1. The criminal act (it is in the form of comission or omission) done or instructed by corporation personnel in the organization structure who has directing mind position of corporation;

2. The criminal act is committed in the connection of corporation intention and purpose, it means that if it is intra vires activity, it is appropriate with the intention and by purpose of corporation as determined in the statutes of its corporation, then the management acting liability can be burdened to corporation;
3. The criminal offence done by perpetrator or ordered by instructor in relating his duty in the corporation. It means, if the criminal offence does not relate with the perpetrator's duty or the instructor's duty in the corporation, therefore the personnel does not have authority to do the acting that binds corporation, then corporation must not burden criminal liability;
4. The criminal act done by intending to give benefit for corporation. Meaningfully, corporate criminal liability is only if the person done the acting since the beginning having purpose or intention in other than the criminal act give benefit for corporation;
5. Perpetrator or ordering instructor does not have the justification reason or excuse reason to be released from criminal liability;
6. For criminal act that has to require *actus reus and mens rea*, both actus reus and mens rea must not be obtained in only person.

According to the elements of the burden corporate criminal liability that said by Sutan Remy Sjahdeini above, it is clear that legal remedy to sentence corporation, it can be only done after the court states that person or the people who run the management or corporation activity itself has been proven legally and convinced that it has committed the criminal act of environment.

By another word, after the court has decided that the person who run management or corporation activity proven guilty acting the criminal act of environment or committing the activity against the criminal law, then it can be constructed to see, is the management activity or the people who have given authority to run corporation becoming the burden of corporate criminal liability (Firdaus et al., 2020; Rezeki, 2015; Sari & Nyoman, 2020).

From law sight, opinion or view victim party, certainly it is not right fully therefore it need to be correct. Verdict of private law mentioned that the accused party has committed the activity against the law, it can not be automatically converted to verdict of criminal law. As it has been solved before, the imposition of criminal law verdict can be done if the criminal acts elements suspected to some one according the facts in hearing and based to judge's conviction and it has fulfilled totally (Naldo et al., 2019; Sinaga et al., 2019). Thus for the second view, if the manager of company stated guilt and imposed sentence, it is not automatically the company can be sentenced. As it has been noticed before that it is needed process relative complex to prove that criminal act of person or people who run or given authority to run company, it is the criminal act of company.

As commonly evidence crime supposition to person by person, where it must be proven the criminal act elements, therefore the evidence crime supposition to legal body or company or corporation, it also must be done by proving the criminal act elements of corporation.

If it is noticed the content of the Act number 32 of 2009 on Environmental Protection and Management, thus the elements criminal act of corporation can be seen in Article 116 clause (2) with formulation: *"In the case of the environmental crime as referred to in paragraph (1) being committed by a person acting the working scope of business entity on the basis of working relations or other relations, the penalty shall be imposed on the ordering party or leader in the crime without regarding whether the crime is committed individually or collectively"*.

The elements criminal act of corporation in the criminal act of environment above according to the researcher it consists of:

1. Committed by person whether it based on the working relation or other relation;
2. They are who give order or acting as leader;
3. Acting the working scope of business entity; and
4. Committing the criminal act individually or collectively.

If it is noticed in normative scope or at the side of legal theory, the formulation of the corporate criminal regulation in the act on Environmental Protection and Management, it resources from theory, doctrines and principles of corporate criminal corporation. In conjunction with the formulation of the corporate criminal regulation related to theory, doctrines and principles of corporate criminal corporation the researcher has an opinion that elements "*person whether based on the scope working relation or based other relation*" and element "*They are who give order or acting as leader*", it is the form of doctrine of identification.

The element "*person whether it based on the working relation or other relation*" it consist of two group person. First group it is "*person based on the working*" and Second "*person based on other relation*" they are who have working relation as management or employee, they are based on the statute of corporation and its changing, based on appointment as employee and working agreement with corporation, based on letter of appointment as employee or working agreement as employee.

Then, intended with person based other relation' is the person who have other relation beside working relation with corporation. They are among others who delegates corporation to do law activity for and on behalf based the giving authority, based on agreement with authority gift or based on delegation of authority.

While intended "*working scope of legal body*" according to the writer, it is the form of ultra vires doctrine that puts into effect universally in corporation law. Where in the doctrine stated if it is only the activity that intra vires, it is meant according to the intention and purpose of legal body as regulated in the statute and or to the purpose that has benefit for legal body, then the activity management can be burdened the criminal liability to legal body. By another word, if the criminal act committed or ordered in other committed by other it is th acting called ultra vires, it means it is not suitable with the intention and purpose legal body as regulated in the statute, therefore the legal body can not be burdened criminal liability. Thus, the conduct of ultra vires is the action must be burdened by personel of legal body to be responsibility who conduct the action or who orders in other the action is done by others.

Then the element of "*committing the criminal act individually or collectively*". It is based on aggregation theory, where this theory is possible to be aggregation or faults combination of some people to be atributive to legal body, therefore it can be burdened the liability.

By other words, noticed from theory, doctrines and principles of corporate criminal corporation. The criminal act of Environmental Protection and Management has been contained the regulation clearly and toghly concerning the corporate liability in polution and damage of environmental.

Related to the case the polution of environmental that occured the dispute enviromnetal between the society and Pertamina UBEP Jambi caused the leaking of distribution crude pipe that Pertamina UBEP Jambi owner at RT 12 Kel. Kenali Asam Bawah Kec. Kotabaru Kota Jambi it occured on June 17, 2000.

The environment dispute began the leaking of distribution crude pipe that Pertamina UBEP Jambi owner that has been caused polution in environmental by occuring the crude

flooding on the land of society about one hectar which is located in Kel. Kenali Asam Bawah Kec. Kotabaru Kota Jambi (the Verdict the Supreme Court of Indonesia number: 3273K/Pdt/2001)

The environment pollution among others the victim is Mrs. Herdi simanjuntak and friends they are heirs of Washington Mulia Pasaribu, having land width ± 1.350 M2 with certificate of property right number 493 located in RT 12 Kel. Kenali Asam Bawah Kec. Kotabaru Kota Jambi (the Verdict the Supreme Court of Indonesia number: 3273K/Pdt/2001). The problem is: can the victim be sued Pertamina according penal law, then the law challenge is to find the evidences to support the complying of the elements the criminal act of corporation

Notice the regulation of Article 116 of the Act number 32 of 2009 on Environmental Protection and Management, the evidences to support the complying of the elements the criminal act of corporation, among other needed are:

1. Is there prove concerning the order that made by corporation personnel of the organization structure of Pertamina who has position as directing mind to let the crude pipe leaking after they know that there is leaking?;
2. Is the crude pipe leaking any benefit for Pertamina?;
3. Is there any evidence that the crude pipe leaking is pure as the negligence of Pertamina?

To the evidences above, if it can be found sufficient proof to the three questions above, then the elements of the criminal act of corporation has become fully. It means Pertamina can be responsibility according penal law. Vice versa, if the evidences that regulated in the Act number 32 of 2009 on Environmental Protection and Management above can not be present fully or difficult to be found, thus the sentencing to Pertamina and it's management becomes difficult to be implemented or uneffectivly to do so.

The Criminal Sanction System on the Act of Environmental Protection and Management in Indonesia

In the Act number 32 of 2009 on Environmental Protection and Management has been regulated limitatifly concerning criminal sanction that can be imposed to corporation, as follows: withregards to the crime as referred to in Artide 116 paranraph (1) letter a, penalty shall be imposed on business entities represented by executives aithorized to represent the business entities inside and outside the court in accordance with legislation as functional executives.

Besides fine criminal saction that can be imposed to corpration, sanction disciplinary measures as regulated in Article 119 the act of Environmental Protection and Management, as mentioned, besides the penalty asreferred to in this law, the business entitles shall be liable to additional penalty ot disciplinary measures in the form of:

1. Seizure of profits earned from the crime;
2. Closure of businessand/or activity place wholly or partly;
3. Improvement of impacts of the crime;
4. Requirement for working what is neglected without right; and/or
5. Placement of companies under custody for 3 (three) years at the maximum.

If sanction disciplinary measures is imposed to the corporation based on court verdict, then the execution based on Article 120 the Act of Environmental Protection and Management, as mentioned:

1. In executing the provision as referred to in Article 119 letter a, letter b, letter c, and letter d, prosecutors shall coordinate with institution in charge of environmental protection and management affairs to implement execution;
2. In executing the provision as referred to in Article 119 letter e, the government shall be authorized to manage business entities subject to sanction of placement under custody to implement the legally fixed court Verdict.

Based on the articles that regulated in the Act of Environmental Protection and Management, that regulated criminal sanction to corporation above as the fixed criminal sanction policy, certainly can be imposed to corporation, where sanction disciplinary measures has the quality very economy characteristic and tendency adopts administratif sanction.

In law of administration known some special sanctions, among others (Hadjon, 1994):

1. Compulsion to govern (government coercive);
2. Redrawing the verdict (decree) that is benefit (licence, payment, subsidy);
3. Administratif fine imposition;
4. Money coercive imposition by government.

To administratif sanction for common citizen it always looks the possibility to submit appeal to the court (administrative). The court among other examined, is it really the faults by citizen and is it really suitable with the good governance (Hadjon, 1994). The difference between administration sanction and criminal sanction can be noticed from the purpose of sanction imposition itself. Administration sanction is directed to misdemeanours conduct, while criminal sanction is directed to offender by imposition the sentence in sorrow (Mujiono and Fanny, 2019; Wibisana, 2016).

Administration sanction is meant in other the offence action is end, sanction characteristic is "*reparatoir*". It means it is restoration to beginning condition. Besides in the law enforcement, administrative sanction is imposed by state administration official without court procedure, while criminal sanction can be only imposed by criminal court with court procedure (Hadjon 1994).

By having the differences implementation between administrative sanction and criminal sanction above, clearly it gives picture processing to imposed criminal sanction with long process from investigation, prosecution and court trial, then it can verdict criminally. With too long the process to be done, then it appears question, (1). Is criminal sanction in the positive law above for sanction category appropriate and consistent? (2). Is there the possibility another sanction that can be imposed to corporation considering corporation characteristic is exclusive and economy contain.

To solve the problem, firstly concerning sanction category, it need tracing by serious-light sanction and meuserment to be imposed to the perpetrator of criminal offence, it is important to be guided for law enforcer. It can be seen in article 10 of penal criminal code, consist of basic punishment and additional punishment:

1. Basic punishments are capital punishment, imprisonment, light imprisonment, fine; and replacement punishment based on the Act number 20 of 1946;
2. Additional punishments are: deprivation of certain rights, forfeiture of specific property, and publication of judicial verdict.

While in the Act number 32 of 2009 on Environmental Protection and Management as positive law there is no uniformity in determination serious-light sanction and meuserement to decide the sanction. Eg. No differentiation between additional punishment and administrative action, all become acting sanction.

For the reason, according to writter it need sanction category model clearly to corporation to differ criminal sanction category to person (Noviyanti et al., 2019; Salam et al. 2019; Wibisana, 2016). Model means showing something that can be used as model, refference, holding or guidance to make or arrange something. Thus shortly it can be said that sentencing model meant is refference, holding or guidance to make or arrange criminal sanction system. Stressing of term to make or to arrange criminal sanction system is to differ sentencing model with guidance of sentencing (Muladi, 2010). The guidance of sentencing is more guidance for judge to impose or to implemet sentencing, while sentencing model is more as refference or guidance for legislator in making or arranging the acts that contains criminal sanction. Thus it can be said that sentencing model is guidance for the maker or arranger of penal, while guidance of sentencing is the guidance of imposition of penal implementation (Arief, 1996).

In the Act number 32 of 2009 on Environmental Protection and Management, it is relation with corporate liability, that for basic punishment it is only fine pubishment. Also it has no special regulation as penal policy concerning the execution of fine punishment if it is not paid by corporation. It can be appeared problem, because the regulation of fine execution in Article 30 of Indonesian Criminal Code (namely, if fine punishment is not paid it can be converted to light imprisonment for 6 months), it is can not be imposed to corporation (Muladi & Arief, 1992).

The basic criminal sanction for fine is imperative characteristic, meant if in the criminal trial, corporation as the accused, thus the judge is obligated to imposed the basic punishment “*fine*” and also can be added one of additional punishments or treatment. Additional punishment and treatment in sentencing imposition is facultative characteristic, it means the judge is not obligation to impose additional punishment and treatment to corporation.

The problem appears, how if the corporation imposed fine punishment and not able to pay. according to the thought of writter the basic punishment may be imposed as mentioned by Mulyadi & Barda Nawawi Arief, if the criminal sanction is to be used, thus fine punishment must be priority. Besides it need research concerning priority of criminal offence development, what need punishment or treatment, according to the society development that is growing up (Arief, 2002).

For more explanation what has been said by Barda Nawawi Arief, the regulation concerning fine punishment is proper enough, because two kinds of basic punishment that may be sentenced in the criminal offence is imprisonment and fine, it is only fine that is proper for corporation. Actually besides fine punishment, some additional punishment in Article 18 clause (1) Number 31, of 1999 regarding Eradication of criminal acts of corruption can be basic punishment for corporation or at least as additional punishment that imposed independently. If imprisonment punishment (freedom forfeiture) is basic punishment for person, thus basic

punishment for corporation that can be similar to freedom forfeiture is sanction company closing/corporation for the certain time or deprivation of rights/license of business (Arief, 2002).

Such thought corporation is identification equal to person, automatically Article 30 and 31 of Indonesian Penal Code (Penal Code) can be used by interpretation light imprisonment in Article 30 and 31 of Penal Code, it is equal with criminal sanction of closing company for while (imprisonment), calculated based on the fine amount through the exact verdict of judge.

Such opinion if fine criminal sanction imposed and corporation does not want to pay, then substituted with substitution punishment it is for temporary or permanently/ revoke license will appear great social problem, it is as Suzuki said, in other to impose sentencing to corporation as in the wholly closing or part of business done carefully. It is because the implication of verdict is very large. The suffering is not only the guilty, but also innocent people as labour, stock holder and consumers of company. To prevent negative implication of corporation sentencing, it must be thought to insurance labours/workers, stock holders. Thus the sentencing effect to corporation that has negative effect can be avoided (Hadjon, 1994). Besides administrative sanction problem of revoke license or corporation activity closing part or whole is purpose to stop the action done by corporation. If such sanction adopted to be basic punishment to corporation that the beginning was to anticipate fine punishment to be imposed by judge while corporation has no ability to pay. In turn it will appear big problem, because settlement process of criminal act need long time, it is begun from investigation, prosecution and at the end court verdict that has power of fixed law. While the activity of corporation that breaks criminal law is on going.

The core of criminal sanction is the way of law force through implementation criminal sanction to offender party, concerning criminal sanction has law impact that touches individual freedom (imprisonment, light imprisonment, and fine of offender himself). It is therefore, almost some regulated norms of act regulation (including the priority in government side and state development (Muladi & Arief, 1998).

Problem of criminal sanction Packer has explained if talk about imposition sanction, thus will face large issue of sanction that the rule of law order that determine the implication of breaking important norm as equiment regulated behavior. In this point Packer proposes 4 (four) classification of sanctions and differs based on prominent purpose or implication. Packer then explains, it is important to differ carefully among 2 (two) kinds of sanction, they are punishment and treatment, also to differ compensation and regulation. Compensation shall define as making another person whole following the infliction upon him of an actual or threatened injury. Regulation may be defined as the control of future conduct for general purposes, excluding the interests of identifiable beneficiaries (Packer, 1968).

The next problem if the criminal sanction to corporation is fixed can tackle criminal corporation, considering criminal sanction in the core having the purpose. The aim of the criminal, it means as equiment to tackle social problems in the conjunction with reaching social prosperity goal (Muladi & Arief, 1992).

In the context of the sentencing goal that gives the protection to individual (perpetrator) and social, Nigel Walker explains, the goal of the penal system as follows (Princ & Herschel 1982):

1. To protect offenders and suspected offenders against un-official retaliation;
2. To reduce the frequency of the types of behavior prohibited by the criminal law;

3. That the penal system should be such as to cause the minimum of suffering (whether of offenders or to others) by its attempt to achieve its aims;
4. That the penal system should be designed to ensure that offenders atone by suffering for their offenders; and
5. To show society's abhorrence of crime.

By the goal of sentencing above it is basically to protect individual (perpetrator) and to protect society from crime. The goals of sentencing as explained above, it is clear to give limitation to law problem to person/perpetrator not committed arbitrarily, by intention in other in every the act of criminal law must clear criminal sanction what can give to perpetrator.

In the context of the giving criminal sanction and the sentencing goal above, it is clear that every penal policy that put into effect, surely having criminal sanction and the goal that implies about sentencing, it is also to the act regulated corporate liability as explained before, so many regulation about criminal sanction. While to know the goal of giving criminal sanction, it can be noticed in consideration of the act making. Eg: In the act number 32 year 2009 on Environmental Protection and Management, it is written in d and e points considering, point d that *“the decreasing environmental quality has threatened the continuation of life of human and other creatures so that all stake holders need to protect and manage the environment seriously and consistently”*. Point e *“that since the rising global warming has caused climate change thus worsening the environmental quality, environmental protection and management are needed”*.

By seeing the considering in the act number 32 year 2009 on Environmental Protection and Management, it is seen clearly there is effort from government to protect society through criminal policy to all forms of criminal as it is put into effect law regulation to anticipate the problems through containing criminal sanction in the act.

Based on the explanation above criminal sanction for corporation at the absence can be implemented, it need only sanction placement based on serious-light criminal threatening to corporation. Eg. To revoke the license and closing company the activity temporally or permanently as it is fix basic criminal independently, besides basic punishment a like fine. Meaning court can not impose such sanction and this sanction only can be used to anticipate to corporation that does not want to pay fine and it does not mean unable to pay fine. It is intended to place criminal law as ultimum remedium. If such concept can appear problem and difficult to be implemented, thus it can occur shifting the placement of criminal sanction (criminal law) from ultimum remedium to primum remedium position. Because the basic punishment sanction it may be implemented to crime which committed by corporation in generally is fine.

In the context of fine punishment Harry V. Ball dan Lawrence Friedman said that in general agrees using fine as sanction for breaking criminal law, because by fine, the beneficiary that has been got by perpetrator (corporation), will be lost (because of fine). Fine punishment will be able to prevent beneficiary finding through criminal act (Geist and Meier 1997).

Though basic criminal as fine that can be imposed to corporation, based on the above explanation and the expert's thought can be received and proper. But it can not yet to settle the exact problem, it is said by Mardjono Reksodiputro, threatening high fine punishment, with the purpose in other that corporation gets loss, because the corporation beneficiary (because of that dividend can be paid) will decrease. Because high fine it is not guarantee to prevent criminal corporation, because stock holders interpret it as the risk to be taken to have big beneficiary, and also the fine does not impact the wages (it has been measured with contract) professional

managers of corporation. Must with this condition sentence the person (the management responsibility) then can prevent criminal corporation (Reksodiputro, 1997).

By this problem Reksodiputro (1997) tries to give way out, may be for small corporation relatively easy to ask responsibility to management, while to big corporation that has economy power and near with them whom have politic power, it must be difficult. That's why it need pro-active action better than reactive as follows:

Therefore there needs to be pro-active action better than re-active namely (Reksodiputro, 1997):

1. To the company given full freedom to plan and excute activity, by treathening that if company makes wrong doing (it against the law) then criminal sanction will be imposed);
2. To assist company planning activity step, thus government fixes guidance or certain standard that must be followed by the company itself, if the guidance is not obeyed, thus it occures the activity againsts the law and criminal sanction imposed to them.

Then, Mardjono Reksodiputro eexplains more that both ways done in the same time and way of handling corporation with reactive approach. Meant criminal law will be imposed after occuring offence by company itself. While proactive approach purposes to handle company potention to committ unlawful acting, by ways:

Through the regulation act that is fixed catagory from person who has been licensed to hold prime function decission maker in kinds of certain company and other people forbidden holding the function. They who has the position is the man whom must responsibility according to criminal act if there is unlawful acting in the work sector. Eg. In the finance company (banks). The category of management position is very though. Management is fully responsibility to monitor information in the company that used to make decission, it is in up level or low level. The procedure of making decission regulated in detail. In the event of unlawful occured, thus this regulation determines whom among management members must responsibility (Jaya 2018). The category of this post it is difference from, it is certainly according business sector, as between drug manufactures with transfortaion sector. If it occures collusion between company and government bureaucracy, thus it will be easy to fix who is among the top management of company must be resiponsibility (Reksodiputro, 1997).

CONCLUSIONS

That the norm formulation concerning corporate liability in the criminal act of environmental as regulated in Article 116 of In the Act number 32 year 2009 on Environmental Protection and Management, basiccally corporation can be liable accoding penal law by using identification theory and vicarious liability. Both theory are the action committed by corporation management, it is corporation action, considering the existence of management is because of the corporation existence. Thus if it is seen from theory, doctrines and principle of corporate criminal liability, the act of Environmental Protection and Management has made clear and thogh regulation concerning liability of legal body in polution and damage of environmental. That in the Act of 32 year 2009 on Environmental Protection and Management in conjunction with corporate liability, that for basic punishment is only fine punishment. It is not any special regulation as penal policy concerning the execution of fine punishment that it is not paid by corporation. It can appear problem, because the regulation of the implementation to fine

punishment in Article 30 of penal code (namely, if fine punishment is not paid it can be converted to light imprisonment for 6 months), it can not be imposed to corporation. The sanction of basic punishment as fine is imperatif characteristic, this means if in the criminal trial, corporation as the accused, thus the court obligates to impose basic punishment “fine” and it can be added administratif treatment. To administratif treatment in sentencing imposition it is facultatif characteristic, it means the court does not obligate to impose administratif treatment to corporation without asking by the public prosecutor.

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