CORPORATE ERROR ASSESSMENT IN CRIMINAL ACTIONS OF FOREST AND LAND FIRE

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ABSTRACT

The assessment of corporate errors is very important as a basis for imposing criminal liability on the corporation. Banjarmasin District Court Decision Number: 251 / Pid.B / LH / 2020 / PN Bjm and Decision Palangkaraya District Court number: 109 / Pid.B / LH. / 2020 / PN Plk, reviews the causal error assessment (mens rea) which is dominated in the time frame before the occurrence of forest and / or land / karhutla fires. As a result, the judge handed down a crime under the negligence article, even though evidence of an obligation mandated by law and not committing an act that could cause consequences prohibited by law actually occurred, so that the punishment was minimal.

This contribution attempts to answer the question of why the two decisions in qasu a qua reviewing causal error assessments should focus on the time frame before the occurrence of karhutla / actus reus. It is observed that the assessment of causal errors in determining the intentionality of the corporation can actually be done before, during and after the forest and land fires occur. This paper recommends a reorientation of corporate error assessment through a time frame scheme before, during and after forest and land fires occur. In particular, this paper criticizes the limitations of forest and land fire control regulations, as a company reactive obligation that can actually describe the intentions, policies, structures and corporate culture in the handling of forest and land fires.

Keywords: Corporate Error Assessment, Crime, Forest and Land Fires, Environmental System.

INTRODUCTION

Saharjo said that 60 to 80% of forest and land fires originate from land preparation activities by burning illegally by corporations (Saharjo, 2014). On the other hand, the identification of solutions resulting from the joint roundtable discussion of Indonesian and Malaysian scientists for haze control is based on the results of discussions, one of which is that the legal sanctions imposed on forest and land fires have not provided a deterrent effect, especially for corporations (Joint, 2015). Talking about corporate criminal liability will always be connected with the actions of people who commit criminal acts for and on behalf of the corporation and within the scope of the corporation's work. Mistakes as the principle of "no crime without error" are still often used in assessing and formulating mistakes in the practice of forest and land fire crime trials in Indonesia.

There are two district court decisions, namely: first, the Decision of the District Court Number 251 / Pid.B / LH / 2020 / PN Bjm, dated July 21, 2020, was the decision against the defendant PT. Monrad Intan Barakat (MIB) as a subject of corporate criminal law proven legally and convincingly guilty of committing a criminal act "because his negligence resulted in exceeding the standard criteria for environmental damage. Second, pdelegation of Palangkaraya District Court Number 109 / Pid.B / LH. / 2020 / PN PL, dated January 28, 2020, is the verdict against the defendant Agus Prayoga Bin Satimin, the occupation of the

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Plantation Manager of PT Palmindo Gemilang Kencana (PGK) as an individual legal subject. The two decisions which have permanent legal force (inkracht van gewijsde) discuss the assessment of corporate errors which are then used by judges in formulating corporate errors to impose criminal responsibility.

RESEARCH METHODS

Peter Mahmud Marzuki said that legal research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is carried out to solve legal issues at hand. This is where the ability to identify legal problems is needed, carry out legal reasoning, analyze the problems faced and then provide solutions to these problems (Marzuki, 2011). The result achieved is to provide a prescription of what the issue should be (Marzuki, 2011). Departing from Peter Mahmud Marzuki's thoughts, this research is a normative law research. To answer the problems in this study, the authors used two approaches. First, the case approach, based on the ratio decidendi, namely the legal reasons used by the judge to the decision (Mcleod, 1999). Second, the conceptual approach departs from the views and doctrines that have developed in legal science. An understanding of these views and doctrines can be used as a basis for building and solving research problems (Marzuki, 2014).

LITERATURE REVIEW

The Concept of Errors in Criminal Law

When talking about mistakes, it will always be associated with the principle of geen straft zonder schuld / no action can be punished without error. Regarding this principle, E.Ph Sutorius states that first of all it must be noted that mistakes are always only about inappropriate actions, namely doing something that should not be done and not doing something that should be done. Another view comes from Remmelink which says that mistakes as the basis for condemnation aimed at the community, using ethical standards that apply at certain times to people who commit deviant behavior can actually be avoided (Remmelink, 2013). What E.Ph. Sutorius and Remmelink actually have the same substance, namely mistakes related to the perpetrator's inappropriate actions. However, neither Remmelink nor Sutorius' explanations of error do not provide any further meaning about the error itself. Criminal law experts provide various meanings of error, but in fact they can be grouped into psychological errors and normative errors.

Psychological errors are certain mental states (psychics) of the maker and the relationship between these mental states and their actions is such that the maker can be held accountable for his actions (Tongat, 2008). The concept of psychological error raises problems in legal practice which are triggered by the absence of an element of "intentionally" or "due to negligence" in the formulation of a criminal act. This invites legal reform which becomes the basis for normative errors. Normative error is defined as condemning the perpetrator of a criminal act because from the perspective of society he can actually do something else if he does not want to commit the act. Through normative errors, a corporation is declared to have a fault either on purpose (dolus) or negligence (culpa) in the forest and land fire crime if at the time of committing the act, both actively and passively, from the perspective of society it can be criticized for it, namely why it is committing a detrimental act. community even though they are able to detect, supervise / control (Mahrus Ali 2015). In the normative error that is assessed is the person's inner state and the existing facts of a criminal act (Mahruz Ali, 2015). The choice to be able to do something else, if you don't want to commit a despicable act, shows the intentionality of the maker. Herein lies the

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point of contact between psychological error and normative error. The exploration of this point of contact according to the author can be linked to the viewpoint of the daad-daderstrafrecht theory, through an analysis of the relationship between forms of error (deliberate and negligence) and criminal liability (Rusianto, 2016).

Next m According to Vos, error has three meanings. First, the ability to be responsible for the person who does the action. Second, a certain inner relationship of the person who does the act, whose action can be deliberate or negligent. Third, there is no reason that eliminates the responsibility of the maker for his actions (Purnomo, 1993).

Environmental Crime Concept

The term strafbaar feit in criminal law has a difference in what it says in Indonesian. Strafbaarfeit by Moeljatno equates the meaning of "criminal act (Moeljatno, 1985). Some criminal law experts in Indonesia equate the notion of strafbaarfeit with "criminal offense" (Kanter & Sianturi, 2002). The term strafbaar feit is equated with the meaning of "criminal act" is to facilitate the meaning because the term "criminal act" has been widely known in several laws and regulations as well as mentioned by several criminal law experts in various literatures.

Moeljatno defines a criminal act as "an act prohibited by law and punishable by anyone who violates the prohibition". Enschede defines a criminal act as investigating gedraging die valt binnen de grenzen van delictsonschrijving, wederechtelijk is e naan schul te wijten (human behavior that fulfills the formulation of offenses, is against the law and can be reproached). Simons gives the meaning of a criminal act as an act that is punishable by law, contrary to the law, committed by a guilty person and the person is considered responsible for his actions (straafbaar feit omschrijving als eene strafbaar gestelde, onrechmatige, met schuld in verband staande handeling van een toerekeningsvat baar person) (Simons, 2016).

Based on the various views of criminal acts above, Rahmadi emphasized that environmental offenses are orders or prohibitions of laws against legal subjects who, if violated, are threatened with criminal sanctions, including imprisonment and fines, with the aim of protecting the environment as a whole and its elements. In the living environment such as animal forests, land, air and water as well as humans (Rahmadi, 2018). Therefore, based on this definition, environmental offenses are not only in the form of criminal provisions formulated in the PPLH Law, but also criminal provisions formulated in other statutory regulations as long as the formulation of those provisions is aimed at protecting the environment as a whole or the parts.

Observing this definition and related to the definition of a criminal act from several legal experts above, according to the author, the definition can still be complemented that an environmental crime is an act that is prohibited and required by laws and other laws and regulations related to it. where violations of the said prohibitions and obligations are punishable with the aim of protecting the environment as a whole.

Forest and forest fires as part of environmental crime, in the Big Indonesian Dictionary (KBBI) the meaning of the word fire (noun) refers to the burning of something (house, forest, etc.), which comes from the root word "burn". (verb) which means to scorch (ignite, destroy) with fire. The term karhutla (wildfires, forest fires) is used for uncontrolled fires that destroy forests and various types of vegetation, as well as animal species.According to the classification of disasters in the CRED general agreement (Center for Research on the Epideminology of Disasters 2009), Karhutla is a climatological disaster because it is closely associated with the drought. These events are usually triggered by deliberate action, negligence, accident or nature (lightning, heat) and often go unnoticed at first. Their spread can be very rapid and especially destructive if they occur near forests, rural areas, remote

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areas, and around forests where there are human settlements (Yulianti, 2018). Definition of forest and land fires, hereinafter referred to as Karhutla according to Permen LHK No. 32 of 2016 is an event of burning forests and / or land, either naturally or by human action, resulting in environmental damage that causes ecological, economic, socio-cultural and political losses.

Based on the description above and associated with a criminal act (strafbaar feit), the crime of forest and land fires is an act that is prohibited and required by laws and other regulations related to it, in which violations of the prohibitions and obligations are punishable with the aim of protecting. environment of forest and land fires as a whole.

Concept of Corporate Criminal Liability

Mistakes as elements of criminal responsibility related to mens rea can actually be interpreted as choices, namely the choice to carry out certain behaviors or actions. There are 5 (five) theories of pThe corporate criminal liability is as follows:

First, the theory of Vicarious Liability, this responsibility is known as substitute criminal liability. A doctrine found in US and South African federal criminal law (Robinson, 2008), is one of the most widely applied forms of corporate criminal liability in various countries. This doctrine is a doctrine that is adopted from civil law regarding acts against the law (the law of tort) which is known as the superior doctrine of response. In essence, according to this doctrine, a person can be held accountable for the actions and mistakes of others.Second, The Theory of Identification or Doctrine of Identification, a theory found in England and other British Commonwealth countries (Arthur, 2008). Based on this theory, the corporation is responsible for criminal acts committed by the management and leaders of the corporation (Wibisana, 2016). According to Gobert, identification theory is a variant of substitute liability. Meanwhile, the requirements for substitute liability, namely a criminal act that falls within the scope of work and benefits the corporation must be fulfilled. Third, Aggregation Theory is an alternative construction of criminal responsibility, in the United States it is called the Collective Knowledge Doctrine. This teaching allows the aggregation or combination of mistakes from a number of people, to be attributed to the corporation so that the corporation can be held accountable (Clarkson et al., 2003). Fourth, the Corporate Cultural Model or Organization Model theory, De Maglie, as quoted by Andri Wibisana, explained that based on the organizational model, corporations can be held accountable because of the corporate credibility. According to De Maglie, there are four possibilities to ensnare corporations based on this theory, namely: the existence of a corporate policy, the existence of a corporate culture, the existence of corporate errors in prevention (preventative faults), and the existence of corporate errors in responding to criminal acts. (reactive corporate fault) (Maglie in Wibisana, 2016).Fifth, the theory of Strict Liability, criminal responsibility that does not require proof of wrongdoing either deliberately or negligently. The term used by Sjahdeini is absolute accountability.

RESULTS AND DISCUSSION

District Court Decision Number 251 / Pid.B / LH / 2020 / PN Bjm

The verdict against the defendant PT. Monrad Intan Barakat (MIB) is a decision of the Banjarmasin District Court which has permanent legal force. In his decision, the judge convicted only PT MIB as a subject of corporate criminal law, which was legally and convincingly proven guilty of committing a criminal act "because its negligence resulted in exceeding the standard criteria for environmental damage. Due to this action, PT MIB has caused damage to the land so that it requires a recovery fee of Rp. 3,220,020,000.00 (three

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billion two hundred and twenty million rupiah) in an area of 1,192.6 ha, and loss of biodiversity that has not been calculated the resulting losses. In addition, according to the expert, the time required for the land to potentially function again is around 30 to 50 years. Therefore, PT MIB was charged with a fine of Rp. 1,500,000,000.00 (one billion and five hundred million rupiah) and if the fine is not paid, the assets / assets of the corporation will be confiscated in accordance with the prevailing laws and regulations. The Panel of Judges imposed a fine of Rp. 1,000,000,000.00 (one billion rupiah) and if the fine is not paid, the defendant's property is confiscated by the prosecutor and auctioned off to pay the fine. In addition, the panel of judges issued additional penalties or disciplinary measures, namely the obligation to do what was neglected without rights in the form of completing adequate forest and / or land fire prevention facilities and infrastructure as well as improving human resource management related to forest and land fire prevention.
Judges under consideration to arrive at their verdict are as follows:

1) That the defendant tried to extinguish the fire before it spread to the HGU area, but because the tractor could not pass to the location of the fire, the fire continued to spread;
2) The defendant admitted that the early warning system and early detection system did not yet exist, while to find out the early warning the defendant used the BMKG application via his cell phone.
3) The results of laboratory analysis and supported by observations at the fire location and expert observations during the examination show that extinguishing efforts to contain the fire are minimal, even seemingly ignored. Fires spread without obstacles, because the surface of the land is filled with potential fuel and tends to make the fire bigger and unbearable. This was admitted by the defendant and the witnesses who were presented from the defendant's employees by stating that the fire was difficult to control as well because at that time the hot weather and strong winds caused the fire to spread very quickly.
4) Based on detected hotspot data, it is known that an increase in surface temperature has been detected since August 8, 2019 and is getting more intense in September and October, but this was not anticipated by the defendant because there was no tool for that (Palangkaraya District Court decision number, 2020).

Palangkaraya District Court Decision Number 109 / Pid.B / LH. / 2020 / PN Plk

The verdict against the defendant Agus Prayoga Bin Satimin as the plantation manager of PT. Palmindo Gemilang Kencana (PGK), is a verdict of the Palangkaraya District Court which has permanent legal force. In his decision, the judge convicted only Agus Prayoga as the person who gave the order and the leader of the activity was legally and convincingly proven guilty of committing a criminal act "because his negligence resulted in exceeding the standard criteria for environmental damage. On the basis of this action, Agus Prayoga as the plantation manager of PT. PGK has caused land damage due to land fires, so it requires a recovery cost of Rp. 40,820,688,750.00 (forty billion eight hundred twenty million six hundred eight thousand seven hundred and fifty rupiah) in an area of 202 ha, and loss of biodiversity the resulting losses have not been calculated. In addition, according to the expert, the time required for the land to potentially function again is around 30 to 50 years. Therefore, Agus Prayoga as the plantation manager of PT. PGK was sentenced to imprisonment for 1 (one) year and 2 (two) months, and sentenced to a fine of Rp. 2000,000,000.00 (two billion rupiah) provided that if the fine is not paid then it is replaced by imprisonment for 1 (one) month. and impose a fine of Rp. 2000,000,000.00 (two billion rupiah) provided that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month. and impose a fine of Rp. 2000,000,000.00 (two billion rupiah) provided that if the fine is not paid then it is replaced by imprisonment for 1 (one) month.
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a) Based on data from the VIIRS and MODIS hotspots that were detected on August 9-17, September 13-18, which were detected in the PT PGK area. Indications of fire also occurred in 2018 in August, September, October;
b) The movement of the hotspot continues to move from day to day so that fire control efforts are almost not carried out, even if it is done, it is suspected that when the fire will finish its job, namely after burning the contents of the plot.
c) Whereas the defendant together with Danru Security and other employees at the location tried to extinguish the fire so that it did not spread by isolating it using 2 (two) Alkon units (6.5 HP each), but were still unable to extinguish the fire. until finally the fire also spreads and burns the land.
d) That prior to the land fire in the area of PT. PGK, the President Director has reminded the defendant as the plantation manager to take anticipatory steps and maximally use the existing infrastructure through a warning letter Number: 003 / PGK DR / V / 2019 dated May 8, 2019.
e) Bambang Hero Saharjo as a fire expert said that the fires that occurred in PT PGL were surface fires on peatlands, because the burning fuel was quite high and lasted for some time because most of it came from logs / felling of natural forest trees that were rotting and found on the surface of which visually it looks difficult to put out.

Assessment of Errors in the Time Frame before, during and after the Crime of Forest and Land Fires

Observing the judges' considerations in the two decisions mentioned above, it appears that law enforcement officers for the crime of forest and land fires in qasu aqua in the criminal justice system in Indonesia still depend on evidence of responsibility for the relationship between action (cause) and effect. adeliberate or negligent bag, which is relevant in the time frame before the arson / criminal act / actus reus is manifested. According to Fisse and Braithwaite (Howard, 1982) this thing will sIt is difficult to see why the law should focus exclusively on that time frame. Verily Fisse and Braithwaite said that corporate liability for wrongdoing has traditionally relied on evidence of liability for the relevant acts or omissions on or before the time the error was manifested. Even though Fisse and Baraithwaite in their view speak in the context of the company's reactive error, the investigation is directed at a time frame after the criminal act / actus reus materializes and is declared by the court. In fact, this argument according to the author can be applied to tracing the crime of forest and land fires. But the juridical constructs that are built to be implemented for forest and land fire crimes are different. in karhutla crime easier, and can be used to strengthen the assessment of wrongdoing at / or before the time the crime / actus reus occurs. The time frame also provides an overview of causal errors in order to prove who will be causally responsible. The juridical construction can be described in the following scheme:

Time frame Scheme for the Assessment of the Causality of the Crime of Forest and Land Fire Before Moment After Corporate fraud can also be assessed in terms of reactive time allocations, a timeframe that results in the concept of corporate reactive error. Corporate reactive errors can be broadly defined as the company's unreasonable or unreasonable failure to design and implement satisfactory countermeasures or countermeasures in response to actus reus karhutla commissions by personnel acting for and on behalf of the corporation. This was revealed, among others, in the consideration of the judge in the District Court Decision Number 251 / Pid.B / LH / 2020 / PN Bjm: That the defendant had tried to extinguish the fire before it spread to the HGU area. Likewise, it was observed by the experts during the examination that the extinguishing attempts to contain the fire were so minimal that they even appeared to be ignored (Saharjo, 2001). Based on detected hotspot data, it is known that an increase in surface temperature has been detected since August 8, 2019 and is getting more intense in September and October, but this was not anticipated by the defendant because there was no tool for that. The judge considers the same thing in the verdictPalangkaraya District Court Number 109 / Pid.B / LH. / 2020 / PN Plk: based on

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VIIRS and MODIS hotspot data detected on August 9-17, September 13-18, which were detected in the PT PGK area. Indications of fire also occurred in 2018 in August, September, October. Whereas the defendant together with Danru Security and other employees at the location tried to extinguish the fire so that it did not spread by isolating it using 2 (two) Alkon units (6.5 HP each), but were still unable to extinguish the fire. until finally the fire also spreads and burns the land.

Based on the description above, according to the author, additional is neededconcept of measure / criterion for error assessment at the "blackout" stage. These measures / criteria can be formulated either in the form of Ministerial Regulations / Governor Regulations or SOPs so that fire control obligations as a form of reactive obligations in the emergency response time can be gradually measured. This is where the omission offense arises where if a reactive obligation to take the necessary steps to prevent, prevent a bigger impact and ensure compliance with applicable legal provisions in order to avoid the occurrence of a criminal act is not committed, then the corporation can be liable for criminal responsibility. Thus causality and / or evidence of responsibility for the relevant corporate intentions or negligence before, during and after a fire / criminal act / actus reus is easier to identify. The assessment of errors / mens rea through this reactive obligation offers a way of attributing corporate intentionality to a good way of working and company orientation when the company has indeed adopted a fire safety management & equipment policy. Companies can and do act intentionally or negligently insofar as they enforce and implement company policies and / or reactive obligations to combat forest and land fires that occur. The assessment of errors / mens rea through this reactive obligation offers a way of attributing corporate intentionality to a good way of working and company orientation when the company has indeed adopted a fire safety management & equipment policy. Companies can and do act intentionally or negligently insofar as they enforce and implement company policies and / or reactive obligations to combat forest and land fires that occur. The assessment of errors / mens rea through this reactive obligation offers a way of attributing corporate intentionality to a good way of working and company orientation when the company has indeed adopted a fire safety management & equipment policy. Companies can and do act intentionally or negligently insofar as they enforce and implement company policies and / or reactive obligations to combat forest and land fires that occur.

As far as the authors have explored, the rules that can be used as a measure / criterion of current reactive liability are as wellArticle 28 PP No. 71 of 2014 concerning the Protection and Management of Peatland Ecosystems reads:

In the event the person in charge of a business and / or activity does not take care of the damage as referred to in Article 27 within a maximum period of 24 (twenty four) hours after the discovery of the damage, the Minister, Governor, or Regent / Mayor in accordance with their authority shall determine a third party. to mitigate damage to the Peatland Ecosystem at the expense of the person in charge of the business and / or activity.

This measure / criterion in terms of time, at least can be used to answer the legal facts in qasu a qua above that when the land fires are reported to the government authorities. Meanwhile, criteria / measures to assess / test corporate efforts or measures in fire insulation and extinguishing are not yet available. Trulyit would also reveal intentional mens rea or negligence within a reasonable duration of time through the blackout measures. In addition, judging the wrongdoing of corporate culture through company policies, procedures, practices and attitudes, a lack of chain of command and control systems and a corporate culture that tolerates or encourages criminal acts will also be easier to describe.

Assessment of Errors in Continuing Criminal Acts (voorgezette handeling) in the Crime of Forest and Land Fires

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In the context of continuing criminal offenses (voorgezette handeling), the juridical reconstruction of causality above can also be used as in the Palangkaraya District Court ruling Number 109 / Pid.B / LH. / 2020 / PN Plk, based on VIIRS and MODIS hotspot data detected on September 9- 17 August, 13-18 September were detected in the PT PGK area. Indications of fire also occurred in 2018 in August, September, October. This also requires a juridical construction of the unity of action from a decision of the will to further explore the intentionality of the corporation. Affirmation of action continues (voorgezette handeling) (Hiariej, 2016), according to Remmelink that here will be applied a criminal provision, but the unity of the act that underlies this choice is in fact a "juridical construction". So what is meant by "such linkage" (het zodanige verband), Hoge Raad in this regard requires that the act must be a manifestation of a forbidden will decision. It is important here that: 1. the unity of action that underlies this choice is actually a "juridical construction"; 2. "linkage in such a way" (het zodanige verband); 3. is the embodiment of a forbidden will decision.

The legal facts of the continuing action can also be said that the actions of the corporate management have been proven (Hiariej, 2016) burning according to the expert's opinion from the results of the investigation into the PT PGK decision. Actions continue to identify that managers who have functional positions and control personnel know and know from previous fire experiences, but why managers who have functional positions and control personnel do not have the will to take prevention by proposing and building early detection systems and fire management policies in their corporations. In fact, managers who have functional positions and their controlling personnel have the authority to do so, as well as to monitor, detect the origin of hotspots and their spread. This means that managers who have functional positions and their controlling personnel are aware of the direction of their will which is aimed at the spread of fire, so that it can be said that the corporation and its controlling personnel are intentionally (Syahrin, 2017) does not carry out surveillance so that it loses detection and consequently the fire is out of control. The existence of "continuing action" can also be said that the corporation has approved / allowed the behavior of its agents / employees who violate the law by clearing land by burning "continuously" (voorgezette handeling). This is what is said to be "adopting a policy" that the policy can then be treated as a standard operating procedure for the purpose of including criminal intent in clearing land by burning (Foerschler, 1990).

This contradicts the letter from the President Director of PT PGK, which reminded the defendant, Agus Prayoga, as the plantation manager, to take anticipatory steps and make maximum use of existing infrastructure through a warning letter Number: 003 / PGK DR / V / 2019 dated May 8. 2019. What this is allocation of responsibility to individuals who are sacrificed in the corporation as scapegoats ?. The question is, why does the main director not supervise his orders to the farm manager? Is this allowed only the responsibility of the farm manager? In fact, is there a possibility that the President Director will also know about forest and land fires in 2018? Actually, with the power (authority) of the president director, he could have ordered the immediate development of a policy to tackle forest and land fires in his corporation. But it does not do anything to prevent impacts when the dry season arrives and does not avoid potential fuels such as fuel from decaying logs / felling of natural forest trees on surfaces that appear visually difficult to extinguish. This means that the President Director is not careful in dangerous situations. This is what Roling said as quoted by Guy Stessen above, through the functional behavior theory (daderschap) that in addition to the corporation has the authority (power), the corporation has accepted the forest and land fires. Thus, the indication of the allocation of responsibility as a scapegoat for Agus Prayoga is getting clearer.

Formulation of the Elements of Corporate Error

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We can see the assessment of other corporate errors in the legal facts in the decision of the District Court Number 251 / Pid.B / LH / 2020 / PN Bjm. Whereas since August the Hotspot in the HGU of PT. Monrad Intan Barakat (MIB) is already visible, the system should have worked in preparation for prevention, so that the occurrence of fires can be anticipated, this can be seen by experts from satellite photos. In addition, “the efforts to suppress the fire were minimal, they even seemed to be ignored. Fires spread without obstacles, because the surface of the land is filled with potential fuel and tends to make the fire bigger and unbearable. The same thing is seen in the judges' considerations on pdelegates from Palangkaraya District Court Number 109 / Pid.B / LH. / 2020 / PN Plk which happened to PT PGK that the hotspot movement continues to move from day to day, efforts to control fire are almost not carried out, even if it is done it is suspected when the fire will finish its job, namely after scorching the contents of the plot. Fires caused by burning fuel mostly come from logs / felling of decaying natural forest trees on the surface that visually appear difficult to extinguish

This legal fact proves that the views of Scaffmeister, Keijzer, Sutorius and Suringa about the fault that lies in shirking one's obligations or on an offense of omission, on purpose there is no want to carry out the actions ordered have happened. The question is, why does the judge keep making decisions using the offense of negligence in Article 99 of Law no. 32 of 2009 ?. There are two possibilities: first, it seems that the judge has directly adopted the definition or definition of omission as an act of negligent obligation. Even though the meaning of negligence in this sense is not the same as the forms of negligence that are meantScaffmeister, Keijzer, Sutorius and Suringa who view negligence as a form of error because there is no caution and assumption. Second, in the theory of organizational culture (corporate culture) as in article 12.4 (3) of the Australian Criminal Code it is stated that "negligence" (Maglie, 2005) evidenced by the fact that the commission violations were substantially caused by “inadequate company management, control or supervision of the behavior of one or more employees, agents or officers, or failure to provide adequate systems for conveying relevant information to those who are connected to it. within the company ”. The word "negligence" above, according to the author, is also not the same as negligence in psychological errors as stated in Article 99 of Law no. 32 of 2009 concerning PPLH. Then the question is, how to determine wrongdoing in the form of deliberate action or corporate negligence in forest and land fire crimes?

In principle, deliberate intent and negligence fall within the scope of psychological error, in the sense that it is measured by one's inner state. The problem is different if the article used in the indictment is article 108 of Law no. 32 of 2009 concerning PPLH. The article does not explicitly state intentionality. Herein lies the emergence of normative errors as a basis for determining errors. In normative error, there are three main components: 1) can be reproached; 2) in terms of society; 3) can do something else. The point of emphasis on the assessment of normative error lies in the mental state of the maker and the relationship between this mental state and the criminal act, so that the person is criticized for his action. In short, what is judged is not the inner state of the person,

Back on views of Scaffmeister, Keijzer, Sutorius and Suringa aboutthe fault that lies in shirking one's obligations or on an offense of omission, on purpose there is not wanting to carry out an act. According to Hieriej, in the distribution of offenses, there are delicta omissionis and delicta commissionis per commissionem commissa or remmelink version of impure omission delicts. The point is not to do an act that is ordered by law and not to do an act that causes consequences that are prohibited by law. Remmelink in delicta commissionis per commissionem commissa said that the perpetrator did not carry out the obligations imposed on him and thereby created an effect that he was not allowed to create. He at the same time violates a prohibition and an order: he actually has to guarantee that a certain result does not arise. This means that Remmelink's view in in qasu aqua can be seen in the legal

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facts of both PT MIB and PT PGK which have been described above that in fact the management and / or controlling personnel neglected to prevent the occurrence of forest and land fires. Likewise, an intentional mistake can also be proven from the judge's consideration in the decisions of PT MIB and PT PGK as stated above. According to Mardjono Reksodiputro.

Thus, when linked views Scaffmeister, Keijzer, Sutorius and Suringa, Remmelink, Hieriej with Marjono's views on an error that lies in negligence of duty or in an offense of omission, deliberate action there is "do not want to carry out the actions ordered, including delicta commissionis per commisionem commissa not to do an act that can cause consequences / forest and land fires which are prohibited by law". The legal facts of the two decisions in qasu aqua above, actually have clearly shown the intentional will of the management of PT MIB and also PT PGK. This means that the article used to impose the sentence in qasu aqua is article 98 of Law no. 32 of 2009 concerning PPLH.

Restoration of the Calculation of Pollution and Environmental Damage as a Result of the Crime of Forest and Land Fires

Different from the description above, another thing that should be paid attention to is the imposition of PT MIB which only convicted corporations and PT PGK which only convicted the Management, which is something that should be questioned? Considering the corporate criminal liability system known in Law No. 32 of 2009, article 116 which reads: "if an environmental crime is committed by, for, or on behalf of a business entity, the criminal charges and criminal sanctions are imposed on: the business entity and / or the person giving the order to commit the crime and / or the person acting as a leader. the criminal act ". Through the functional behavior theory (functional daderschap) the actions of corporate management can be attributed to the corporation, because corporate behavior will always be a functional action. Actually, the explanation of the functional behavior theory is not much different from the identification theory (direct corporate criminal liability) where the directing mind and directing will that act for and on behalf of the corporation can be directly attributed to the corporation. Directing mind and directing will actions / mistakes are identified as corporate actions / mistakes. In the case of PT PGK, the corporation could actually be directly liable for criminal responsibility. Strangely, why is the corporation / PT PGK not charged with criminal responsibility.

Another strange thing in the PT MIB case which only penalizes corporations, the question is how the judge assesses and formulates the errors that occur, even though the people who work for and on behalf of the PT MIB corporation have stated in the judge's consideration. , so that the parties in the corporation must be deemed to know whether or not there is an act or omission of a situation so as to materialize a corporate policy, then if this is related to negligence as considered above, the defendant can be held accountable ". This means that according to the theory of identification, directing mind (thoughts that direct actions) and directing will (will that direct actions) can be identified which of course are adjusted to the articles of association, the structure applicable to PT MIB.

If the judges' considerations are based on organizational model theory, such as elements of corporate policy, corporate culture, prevention by corporations and corporate reactive obligations according to the view of the author above, including the considerations of judges 1 (one) to 4 (four) above, then actually the corporation can be liable to criminal responsibility. Thus it can be said that the two decisions have actually not been completed. Therefore, you should continue to complete allocation of responsibility to each party that must be responsible, be it individuals, sub-units of corporations, corporations, companies, other business entities or those who have to supervise corporations such as accountants or even regulators who are considered relevant can be accounted for.

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In terms of environmental damage and pollution, PT MIB's actions have caused land damage, so it requires a recovery fee of Rp. 3,220,020,000.00 (three billion two hundred and twenty million rupiah) in an area of 1,192.6 ha, and loss of biodiversity that has not been calculated the resulting losses. On the basis of these actions. The Panel of Judges imposed a fine of Rp. 1,000,000,000.00 (one billion rupiah). In addition, the panel of judges issued additional penalties or disciplinary measures, namely the obligation to do what was neglected without rights in the form of completing adequate forest and / or land fire prevention facilities and infrastructure as well as improving human resource management related to forest and land fire prevention.

Meanwhile, Agus Prayoga as the plantation manager of PT. PGK has caused land damage due to land fires, so it requires a recovery cost of Rp. 40,820,688,750.00 (Forty billion eight hundred twenty million six hundred eight thousand seven hundred and fifty rupiah) in an area of 202 ha, and loss of biodiversity that has not been calculated the resulting losses. Agus Prayoga as the plantation manager of PT. PGK was sentenced to imprisonment for 1 (one) year and 2 (two) months, and sentenced to a fine of Rp. 2000,000,000.00 (two billion rupiah) provided that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month.

Observing the two fine criminal decisions, in fact the expert's statement can be used as an initial assessment in the completion of environmental restoration through the court, as mandated by Article 6 of the Minister of Environment Regulation Number 7 of 2014 concerning Environmental Losses Due to Pollution and / or Environmental Damage. However, this raises the question again, why did the Judge decide with a minimum fine? Besides that, why was PT MIB only sentenced to a fine of Rp. 3,220,020,000.00 (three billion two hundred and twenty million rupiah), even though the burned land was 1,192.6 ha? In contrast to PT PGK, which was sentenced to a fine of Rp. 40,820,688,750.00 (Forty billion eight hundred twenty million six hundred eight thousand seven hundred and fifty rupiah) in an area of 202 ha.

In comparison, The Ninth Circuit further expanded the potential cost recovery from wildfires in the 2012 United States v. CB & I Constructors, Inc. In 2002, defendants CB&I negligently ignited fires that burned approximately 18,000 (eighteen thousand hectares) of the Angeles / Angeles National Forest. The fires destroyed much of the land that serves as habitat for the critically endangered California Red-Legged Frog. It also caused severe damage to the historic mining camp, which then had to be removed from the national historic sites list. The jury awarded the United States substantial fees for environmental, "non-economic" damage in addition to resource, restoration, and fire fighting costs (Riordan, 2014). The District Court upheld the ruling despite many challenges, and the case was submitted to the Ninth Circuit. The Ninth Circuit then upholds the respect for environmental costs, even though they are "intangible", "non-economic".

Non-economic environmental damage has been seen in contexts outside of forest fire litigation, particularly under the cause of legal action. In the pivotal case of Ohio v. The US Department of State, which decided in 1989, the DC Circuit states that restoration of natural resource losses under federal law includes non-market losses. The Court also supports contingent assessments of public survey practice to produce estimates of the monetary value of resources as a reasonable way of assessing non-use damage. State laws can also provide a basis for restoration of environmental damage, but are inconsistent across jurisdictions, and often only apply to certain categories of damage or pollution, such as oil spills.

The legal preference for restoration in several court decisions in the United States if we connect it with Government Regulation Number 71 of 2014 concerning the Protection and Management of Peat Ecosystems, Article 26 reads: In the event that the person in charge of a business and / or activity does not take care of the damage as referred to in Article 27 Within a maximum period of 24 (twenty four) hours after the discovery of damage, the Minister,

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Governor, or Regent / Mayor in accordance with their respective authority assigns a third party to mitigate damage to the peat ecosystem at the expense of the person in charge of the business and / or activity. At the very least, this rule can be applied to additionally calculate the amount of the cost of overcoming and suppressing fires that occur in peatlands in qasu a qua.

CONCLUSION

This paper has described several things related to the assessment of corporate errors in forest and land fires crime. The important point is, firstly, the assessment and formulation of errors in the two decisions in qasu aqua were still dominated in the time frame before the forest and land fires occurred. As a result, the judges failed to assess and formulate the intentionality of the corporation that should be blamed in the handling of forest and land fires, this is the case with the PT MIB decision and the PT PGK decision. Second, the assessment of corporate error in the form of deliberate action or negligence has not been based on an error assessment of legal facts on an obligation not to carry out a statutory order.and do not commit an act which may result in consequences prohibited by lawIn fact, the two decisions in qasu aqua have actually happened. Surprisingly, the judge still sentenced the criminal to corporate negligence as stipulated in article 99 of Law No. 32 of 2009 on PPLH. Third, the failure to assess the error in qasu aqua has an impact on criminal liability and punishment so that the punishment imposed in the two in qasu aqua decisions is minimal.

RECOMMENDATIONS

First,reorientation of corporate error assessment in exploring causal relationships should focus on the time frame before, during and after the occurrence of forest and land fires / actus reus. Second, law enforcement officials need not hesitate in determining the intentionality of the corporation in the form of deliberate proof of wrongdoing (mens rea) on the obligations mandated by law.and do not commit an act which may result in consequences prohibited by lawactually happened. This is the basis for determining punishment for corporations. Third,It is necessary to formulate a Ministerial Regulation / Governor Regulation or SOP in the internal corporation regarding the obligations to handle forest and land fires as a form of reactive obligation in the corporate emergency response time. These laws and regulations serve as the criteria for assessing corporate errors during and after the forest and land fires occur.

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