

Corporate Criminal Liability on Environmental Law: Indonesia and Australia.

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ABSTRACT

Environmental damage is one of the major problems faced by Indonesia. It is a well-accepted fact that most cases of environmental damage in Indonesia are caused by the activities of large corporations. One of the measures adopted in overcoming environmental damage and ensuring accountability for violations of environmental law is through corporate criminal liability, in which companies can be held liable and be brought to criminal proceedings for violating environmental law. This paper seeks to discuss and analyse the legal regulation system of corporate criminal liability applied in Indonesia. The paper will delve into the nature of corporate criminal responsibility in accordance with the doctrines that underlie it, as well as actions that, in accordance with the law, would trigger the implementation of corporate criminal responsibility, the manners in which criminal responsibility would be attributable to a corporation, and the trial procedure for corporate criminal responsibility under the Indonesian judicial system. This paper seeks to bring light to the mechanism of the Indonesian environmental law in administering justice in cases of environmental law violations committed by corporations.

Keywords: environmental damage; corporation; criminal

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INTRODUCTION

Economic development and environmental protection can be likened to two sides of a coin. Both areas are closely related and equally crucial to the welfare of a country.¹ Article 33, paragraph (3) of the 1945 Constitution is the basis of Indonesia's legal framework for managing natural resources.² However, reality shows that progress in one area often comes at the expense of the other. It is often the case in countries that place great emphasis on environmental protection to have a rather stagnant or underperformed level of economic growth and development and experience more difficulties in attaining economic prosperity. On the other hand, when a country gives priority to economic development, the environment, in many cases, would be adversely

¹ Suhartono Slamet, "Corporate Responsibility for Environmental Crime in Indonesia," *Journal of Law and Conflict Resolution* 9, no. 1 (2017): 1–8, <https://doi.org/10.5897/jlcr2014.0196>.

² Mohamad Nasir, "Implication of Coal Mining Permit Governance to Environmental Degradation in East Kalimantan," *Mulawarman Law Review* 7, no. 2 (2022): 128–42, <https://doi.org/https://doi.org/10.30872/mulrev.v7i2.922>.

affected. This is particularly when economic development was not conducted in the proper and cautious manner, and when development is highly oriented to infrastructure-building, which often led to environmental damage. These circumstances, particularly in this era of globalization where the issues of economy and environment have become main global matters, create a need for a balance between economic growth and environmental protection to ensure sustainable development in respect to both areas with little adverse effect.³

One of the major economic actors in the globalization era is the national and multinational corporations (the “Corporation(s)” or “Corporate(s)”). Corporations play an important role in the process of change and global economic growth. Corporations have extensive reach in almost all aspects of life and the basic needs of humankind, where they take roles in either solving problems or assisting humankind in their task through their products or services. The presence of corporations is highly apparent in various sectors such as agriculture, plantation, forestry, housing, telecommunications, automotive, banking, food and beverages, education, and entertainment.⁴ In fulfilling the market’s demand for their products, corporations established factories or centres of production to process their products until they could be distributed and sold. However, during such process, Corporations also produce waste and damage the environment by absorbing natural resources, and such effects cannot be avoided. Nevertheless, creating sustainability between the development of the economy and the environment is crucial, and this goal may only be achieved if environmental law can be upheld strictly. As a result, there are facts and data that the land has experienced damage which has caused this land to become suffer (*lahan kritis*), damaging land is an indicator of environmental degradation caused by land resource utilization activities that are poorly managed. Damaging land will have an impact on damage to the function of land as a regulator of water management, hydrological disasters (floods, landslides, and drought) and other potential disasters⁵. In addition, the following is data held by the Ministry of Environment and Forestry of the Republic of Indonesia regarding information of damaging land (*lahan kritis*) in the Kalimantan province, as follows:

Table 1. The total area of damaging land (*lahan kritis*) in Kalimantan

Province	Total area of damaging land (Ha)		Total area of heavily damaging land (Ha)	
	2018	2021	2018	2020
Kalimantan Barat	752.711	996.541	106.864	19.090
Kalimantan Tengah	4.785.299	786.756	359.405	92.484
Kalimantan Selatan	508.941	286.459	132.645	225.135
Kalimantan Timur	847.590	156.839	63.230	118.433
Kalimantan Utara	245.215	163.520	29.125	36.214

Source: KLHK, RI 2023

³ Vilayat Valiyev, “Economic Growth and Environmental Pollution in Small-Scale E-DSGE Model . The Case of Azerbaijan,” 2023.

⁴ Maradona, “Corporate Criminal Liability in Indonesia : Regulation , Implementation and Comparison with The Netherlands,” *Erasmus University Rotterdam* (2018).

⁵ Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia, “Status Lingkungan Hidup Indonesia 2022,” 2023, 1–207.

This paper seeks to discuss about the criminal liability of corporations for environmental-related violations under Indonesian environmental law, which, at presently, has become a topical issue. The paper will analyse existing regulations on the Corporate Liability on Environment, such as the Law of Republic of Indonesia No. 32 Year 2009 on Protection and Management of Environment (as amended by Regulation of the Government In Lieu of Law of Republic Indonesia No. 2 of 2022 on Job Creation) (“Indonesian Law on Environment”), which discussed about systematic and integrated efforts undertaken to conserve environment functions and prevent environment damage including planning, controlling, supervising, monitoring, and law enforcement, as well as the Regulation of Indonesia Supreme Court No. 13 Year 2016 on Case Handling Procedures for Corporate Crimes (“SCR No. 13/2016”), and the Regulation of Indonesia Supreme Court No. 1 year 2023 on Guidelines In Judging Environmental Cases (“SCR No. 1/2023”), which is focused on the guidance for law enforcement⁶ and judges handling criminal acts committed by Corporations.

METHOD

This research uses the library research method in the form of normative legal research.⁷ Normative legal research focuses on secondary data processing including laws and regulations, doctrines, legal principles, court decisions, legal theories, books, and research reports.⁸ The approaches used in this study are the statute approach, analytical approach, and conceptual approach.⁹ The provisions that will be analyzed such as: (i) Indonesian Law on Environment, (ii) SCR No. 13/2016, (iii) SCR No. 1/2023, (iv) Australian Law (as necessary for comparison).

DISCUSSION

The Legal Status of Corporate Crime: Indonesia and Australia

In this section, the discussion will delve into the comparison of the regulation of corporate criminal responsibility in Australia with the existing regulations in Indonesia by mainly focusing on the statutory provisions and legal principles that apply in the two countries, as well as the relevant opinions of legal experts in the matter, particularly in relation to the character of corporate crime as a type of white-collar crime, a concept introduced by Edwin Sutherland to describe criminal activity by persons of high social status and respectability who use their occupational position as a means to violate the law.¹⁰ Corporate crime has a variety of definitions. Braithwaite said that corporate crime is the “conduct of corporation, or of employees acting on behalf of a corporation, which is prescribed and punishable by law”.¹¹ Meanwhile, Roman Tomasic said that corporate

⁶ Orin Gusta Andini, Lisa Aprilia Gusreyna, and Surya Eriansyah, “BAKAMLA : HARAPAN PENEGAKAN HUKUM DI WILAYAH LAUT INDONESIA,” in *Hukum Dan Pembangunan Yang Berkelanjutan* (Tarakan: Fakultas Hukum Universitas Borneo Tarakan, 2023), 405–13, <https://prosiding.ubt.ac.id/index.php/snhpb/article/viewFile/251/237>.

⁷ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, 1st ed., vol. 1 (Yogyakarta: Mitra Buana Media, 2020).

⁸ and Prasetijo Rijadi Efendi, Jonaedi, Jhonny Ibrahim, *Legal Research Methods: Normative and Empirical*, n.d.

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media, n.d.).

¹⁰ Sally S Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002).

¹¹ John Braithwaite, *Corporate Crime in the Pharmaceutical Industry* (Routledge and Kegan Paul, 1984).

crime refers to the breach of corporate criminal law by a corporation or its agent or a breach of corporate criminal law involving the manipulation of the corporate form itself.¹² The concept of corporate criminal responsibility is relatively new in both common and civil law systems, which are used by Australia and Indonesia, respectively. In the common law, the culpability of the corporation in criminal offence was not recognised until the 19th century,¹³ and in the Australian domestic legal system, corporate criminal responsibility has not been universally adopted in the existing laws.¹⁴ Similarly, in the Indonesian legal system, which is inherited from the continental civil law system used by the Netherlands, the creator of the Indonesian criminal code (KUHP), following the principle of *universitas delinquere non potest* (that a collective of persons or funds cannot commit a crime) exclude corporation as a subject of criminal law,¹⁵ and it is only in 1997 that the incorporation of corporate criminal responsibility in the environmental-related laws.¹⁶

Under the Australian legal system, corporate criminal responsibility is regulated in the Criminal Code Act 1995 (Cth). The law established that a corporate body “may be found guilty of any offence, including one punishable by imprisonment”, as established in the Criminal Code.¹⁷ According to the law, the responsibility for a criminal offence would be attributable to a corporate body when two elements are satisfied. First, in regard to the physical element, an offence committed by an employee, agent or officer of a corporation within the capacity of their authority in accordance with their respective position would be attributable not only to the person who committed the crime but also to the corporation in which they belonged.¹⁸ Second, in regard to the fault element, a corporation is liable to be held responsible for an offense when there is undeniable link found between the corporation – particularly the board of director and the high managerial agent of the company¹⁹ – and the fault elements of intention, cause and knowledge of the offense,²⁰ as well as negligence on the part of the corporation, which caused by either the inadequacy of the corporate management, control or supervision to its employee or failure in providing adequate complain system in the corporation.²¹ It is important to note, however, that the culpability of corporation under Australian criminal law extends insofar as the defense can prove that the relevant corporation has failed to take due diligence in preventing the potential occurrence of the offence.²² In summary, it is widely acknowledged that in Australian corporate law, corporate crime is classified as a white-collar crime and could be conducted through the management,

¹² Roman Tomasic, “Corporate Crime and Corporations Law Enforcement Strategies in Australia,” 1993.

¹³ Neil Gunningham et al., “Against Environmental Offenders” (Canberra, 1993).

¹⁴ Australian Law Reform Commission, “Final Report Corporate Criminal Responsibility,” Final Report: Corporate Criminal Responsibility (Report 136), 2020.

¹⁵ Supriyadi, “Legislative Policy on the Regulation of Corporations as the Subject of Crimes,” *Journal of Financial Crime* 23, no. 4 (2016): 1092–1111, <https://doi.org/10.1108/JFC-12-2015-0071>.

¹⁶ Andri G. Wibisana, Michael G. Faure, and Raisya Majory, Error in Personam: Confusion in Indonesia’s Environmental Corporate Criminal Liability, *Criminal Law Forum*, vol. 32 (Springer Netherlands, 2021), <https://doi.org/10.1007/s10609-021-09412-6>.

¹⁷ Criminal Code Act 1995 (Cth) S 12.1 (2). <https://www.legislation.gov.au/Details/C2019C00043>

¹⁸ Ibid S 12.2

¹⁹ See Final Report, 60

²⁰ Criminal Code Act 1995, S 12.3

²¹ Ibid S 12.4

²² See Ibid S 12.5; Final Report, 61

agent and/or controller of the corporation. Thus, law enforcement may impose sanctions on the individual or the corporation subject to their accountability.²³

Under the Indonesian law, a corporation, or known in Indonesian as “*perseoran terbatas*” is defined as “an entity which take the form of capital partnership, is established based upon an agreement, and conducting business activities using authorized capitals that are entirely divided into shares and has meet the requirements set out under this law and its implementing regulations”. Another legal definition of a corporation is provided by the Indonesian Supreme Court, which stipulated that a corporation is “a group of organized people and/or wealth, whether in form of a legal entity or not”.²⁴ Indonesian Law on Environment categorized the corporation as a legal personality, which can be held responsible for any of its actions.²⁵ Also. Pursuant to the SC No.13/2016, Corporations can be subjected to criminal proceedings through a letter of indictment (*Surat Dakwaan*).

Corporation is controlled and administered by three organs, that is: the general meeting of shareholders, the board of directors and the board of commissioners.²⁶ Each of these three organs have their respective, but interrelated functions. For instance, the board of directors is responsible for carrying out the day-to-day administration of the corporation and the board of commissioners is responsible for supervising and seeing the board director carrying out the Corporation; further shareholders as the owner of the Corporation can order and direct the Corporation through a general meeting of shareholders. However, all rights of those organs are subject to Indonesian prevailing laws. Further, as referred to Law No. 40 of 2007 on Limited-Liability Companies (“Indonesian Company Law”) in certain circumstances the board of director requires written approval from the board of commissioner and shareholders for certain acts such as selling corporate assets, borrowing money, encumbrance asset, pledge company as guarantor. These activities are usually referred to as “commissioners-reserved matters” and “shareholders-reserved matters”. Therefore, these three organs are connected to the activity of the Corporates.

In Corporate Criminal Liability, there are three doctrines that are commonly adopted by nations as the basis in enacting regulation towards corporate criminal liability, amongst other: (i) the doctrine of identification theory; (ii) the doctrine of strict liability; and (iii) the doctrine of vicarious liability.²⁷ Under the doctrine of strict liability, corporations are considered responsible for actions physically carried out by shareholders, management, agents, representatives or employees. In the field of criminal law, “strict liability” means malicious intent or “*mens rea*” no need to be proven in relation to one or more elements

²³ Simpson, Corporate Crime, Law, and Social Control.

²⁴ Supreme Court of Indonesia, Regulation of Supreme Court No. 13 of 2016 on Procedures to Settle Criminal Acts Committed by Corporations (SCR No. 13/2006), Art. 1 para (1); Supreme Court of Indonesia, Regulation of Supreme Court No. 1 of 2023 on Guidelines in Judging Environmental Cases (SCR No. 1/2023), Art. 1 para (18)

²⁵ See SCR No. 13/2006, Art. 12

²⁶ Yusman Yusman, Annissa Rezki, and Nur Rohim Yunus, “Legal Politics on the Regulation of Obligations to Hold General Meeting of Shareholders in Law Number 40 of 2007 Concerning Limited Liability Companies,” *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 1 (2021): 333–44, <https://doi.org/10.15408/sjsbs.v8i1.19940>.

²⁷ Rodliyah Rodliyah, Any Suryani, and Lalu Husni, “Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia,” *Journal Kompilasi Hukum* 5, no. 1 (2021): 191–206, <https://doi.org/10.29303/jkh.v5i1.43>.

that reflect the nature against the law or “actus reus”, despite intent, negligence or knowledge may be required in connection with elements of other criminal acts.²⁸ According to Barda Nawawi, this doctrine can also be called as strict criminal liability doctrine, in which corporation’s status as a legal subject entail consequences, in the sense that in the event that a corporation violates or does not fulfil certain obligations required by law, then as a legal subject it is liable to be held criminally responsible.²⁹

The important thing about this theory is that the subject of law must be responsible for the consequences that arise, without having to prove their existence error or negligence. Violation of certain obligations or conditions by a corporation is known as the term “strict liability offences”. The example of the formulation of a law that stipulates as an offense for the Corporates is in the case of corporations running their businesses without permit; the Permit-holding corporation violates the terms (conditions/situations) specified in the permit; and corporations operating uninsured vehicles on public roads. The doctrine of Vicarious Liability can be said that superiors must be responsible for any circumstances that are carried out by their subordinates. As defined in the legal principle of “vicarious liability” it is that a person is responsible for actions carried out by another person when both are involved in a form of joint activity. This doctrine is traditionally a conception that emerged from the “common law” legal system, which is referred to as “*respondet superior*”, namely secondary responsibility that arises from the “doctrine of agency”, where superiors are responsible for the actions carried out by their subordinates.³⁰ Peter Gillies, a legal expert, has several thoughts towards vicarious liability, as follows *a company (as with humans as actors/entrepreneurs) may be vicariously liable for acts committed by employees/agents. Such liability only arises for the offense capable of being carried out vicariously. In relation to the “employment principle”, these offenses are mostly or all of them are “summary offenses” related to regulations trading.* The position of the employer or agent within the scope of employment is not relevant according to this doctrine. It is not important that the employer, either as a corporation nor naturally has directed or given instructions/commands on employees for committing violations of criminal law. (Even, in some cases, vicarious liability is imposed against the employer though employees perform actions contrary to instructions, based on reasons that the employee's actions are seen as having committed that act within the scope of his work). Therefore, if the company is involved, responsibility arises even if the act is carried out without pointing it out to senior people within the company. It should be stated that this doctrine can apply based on the principle of delegation of authority or “the delegation principles”. So, guilty mind or “*mens rea*” from employees can be connected to superiors if there is a delegation of authority and obligations relevant according to the law.³¹

²⁸ Rodliyah, “International Journal of Multicultural and Multireligious Understanding The Concept of Corporate Crime in the Indonesian Criminal Law System,” International Journal of Multicultural and Multireligious Understanding 7, no. 1 (2020): 711–19.

²⁹ Barda Nawawi Arief, “Kapita Selekta Hukum Pidana” PT Citra Aditya Bakti. Bandung

³⁰ Ibid, p 716

³¹ Ibid.

Direct criminal liability or "direct liability" (which also means *non-vicarious*), states that the corporation's senior employees, or people within the company who were delegated authority by the company, are deemed, in certain purposes and manners, as a personification of the company itself, with the consequences of that action and their inner attitudes are seen as reflecting those of the Corporates. The scope of the criminal act may be done by the corporations in accordance with this principle is broader, in comparison if it is based on the "vicarious" doctrine. The theory states that the actions or fault of "senior officers" are identified as corporate actions or mistakes. This conception is also called the "alter ego" or doctrine "organ theory".³² Barda Nawawi said that the meaning of "senior official" of Corporates can vary. Although in general, senior officials are people who controlling the company, either individually or jointly, which is usually called "directors and managers". Meanwhile, in the United States, this theory is interpreted more broadly that is, not only senior officials/directors, but also agents under them.³³

Substantive on Environmental Law and Its Approach with Doctrine of Strict Liability, Vicarious Liability, and Identification Theory

Environmental Law provides that any aspect of environmental law including civil, crime and administrative, as ruled on the Article 88 and 116 to 120 of the Indonesian Law on Environment, this section will seek to elaborate on those articles that applies the previously discussed doctrines in the legal approach against environmental polluter. Article 88 of Indonesian Law on Environment uses the doctrine of strict liability as a basis. Article 88 of the Indonesian Law on Environment stipulated that *Every person whose action, business and/or activity using B3, producing and/or managing B3 waste and/or causing serious threat to the environment shall be absolutely responsible for the incurred without the need to prove the said mistake*. Emphasizing wording used such as "absolutely responsible", it can be interpreted that it is not necessary for the plaintiff to prove a substance of mistake as a basis for paying compensation. The provision in this paragraph constitutes a *lex specialist* in a lawsuit against legal violation in general. Pursuant to this Article, the amount of compensation which may be charged with environmental pointers or destroyers may be stipulated up to a certain limit up to certain limit means there is an obligation according to stipulation of laws and regulations to provide insurance for the said business and/or activity or the environmental funds have been available.³⁴ Therefore, Article 88 of Environmental Laws applies doctrine strictly liability on its implementation.³⁵ Article 116 of the Indonesian Law on Environment uses identification theory and doctrine of vicarious Liability as a basis. Moreover, Article 116 of the Environmental Law uses a doctrine of identification theory and doctrine of vicarious Liability, which allows a doctrine of vicarious liability or a combination of guilt from several people, to be attributed to the corporations so that corporations can hold liability. In essence, this doctrine emphasizes that all activities and

³² Ibid.

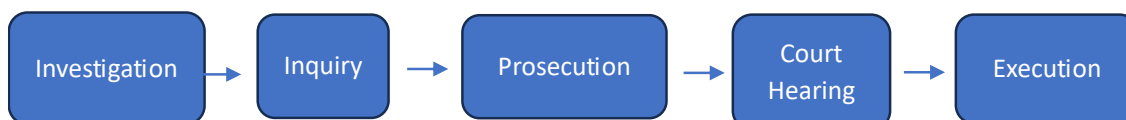
³³ Ibid.

³⁴ Purnomo Wulandari and Sri Endah Wahyuningsih, "The Strict Liability by Corporate in Enforcement of Environmental Law," *Law Development Journal* 2, no. 4 (2021): 477, <https://doi.org/10.30659/ldj.2.4.477-488>.

³⁵ Orin Gusta Andini et al., "Stagnation Criminal Law Enforcement Determination Change Omnibus Law Act Post" 21, no. 1 (2023), <https://doi.org/https://doi.org/10.35905/diktum.v21i1.5067>.

all guilty mind (*mens rea*) of related people in the Corporates are done by only one person. Meanwhile, the theory of identification is more highlighted to direct corporate criminal liability. According to this theory, Corporates may commit a number of direct offenses through administrator closely associated to the corporation, acting for and on behalf of it. So, it can be defined as the corporate's interest.³⁶

The Supreme Court of Indonesia has enacted guidelines for judges to examine environmental cases in the civil, criminal and administrative law of environment cases, namely SC No. 1/2023, and SC No. 1/2023 contemplates that corporate criminal acts occurred when such criminal acts carried out by for, by and/or on behalf of the corporation.³⁷ In addition, the corporate criminal acts may occur if:³⁸ The Corporates obtains profit or beneficial from such criminal acts; such criminal acts are carried out for the Corporates' interest; Such criminal acts are carried out in implementing the Corporates' ordinary course; Such criminal acts are carrying out with the Corporates' resource, fund and/or any form of support or other facility; or Such criminal is grounded by the resolution of authorized management of the Corporates, the above conditions are classified as Criminal Acts by the Corporates and the application of those provisions is used an optional, in which one action as above is sufficient to impose the Corporates. The passage of law number 1 of 2023, Indonesia currently has a new criminal law code book, which is a material criminal law in Indonesian law. What constitutes "material criminal law" includes not only he specific acts that can be punished, but also the rules for carrying out the law and the basic principles upon which it is based. The Criminal Procedure Code (KUHAP), also recognized as Law Number 8 of 1981, serves as the legal foundation for the administration of criminal justice.³⁹ Further, the procedure of law in which the corporation act as the defendant as referred to in the Environmental Law, having several stages to uphold a corporate criminal liability, consist of:



All stages as above in upholding the process of corporate criminal liability that are derived from the Indonesian law of criminal procedure (KUHAP). Besides, there is a specific law that regulates corporate crime liability on SC No. 13/2016 which is quite similar to the law of criminal procedure (KUHAP), but the difference is that corporation can be a subject on the proceedings. In addition, this proceeding also has several types of evidence that could be served as the underlying of indictment, in which the most

³⁶ Orin Gusta Andini, Simanjuntak. Vijae Yehezkiel, and Marsha Odelia, "Telaah RKUHP: Pidanaan Terhadap Korporasi Yang Melakukan Tindak Pidana Lingkungan," in *Pembangunan Hukum Lingkungan Berbasis Kearifan Lokal d Era Globalisasi*, ed. Supriyadi; Hamzani, Ahmad; Supriyadi (Kudus: Badan Penerbit Muria Kudus, 2023), 217, <https://eprints.umk.ac.id/18522/>.

³⁷ Supreme Court of Indonesia, "Article 68 Paragraph (1) of the Guideline to Handle Environmental Cases" (2023), <https://www.hukumonline.com/pusatdata/detail/lt6427eaaee8a1f>.

³⁸ Supreme Court of Indonesia, "Article 68 Paragraph (2) of the Guideline to Handle Environmental Cases" (2023), <https://www.hukumonline.com/pusatdata/detail/lt6427eaaee8a1f>

³⁹ Orin Gusta et al., "The Impact of Covid-19 Pandemic on Effective Electronic Criminal Trials : A Comparative Study," *Journal of Human Rights and Legal System* 3, no. 2 (2023): 185–209, <http://www.jhcls.org/index.php/JHCLS/article/view/57>.

significant are scientific evidence and expert testimony. Such evidence plays an important role in environmental cases, on the basis that the environmental damage can be appraised with the scientific. Therefore, the judges have authority to examine scientific evidence by taking into account the suitable method and validity procedure of taking samples, also observe the accreditation of laboratory and the expert testimony. Moreover, the judges may examine the expert testimony with respect to (i) suitability of his expertise and could be accepted by the organisation of this field, (ii) publication that is used as a reference, and/or (iii) obtaining review from its peer in relation to the theory and methodology that will be used.⁴⁰ As a result, the relevance between the scientific evidence and expert testimony with the fact arising during the court proceedings shall be grounds for the court in making its verdict.⁴¹

The judges will search the underlying between the damage, violence, and the intention of Corporates towards such action. The rules of the Supreme Court embraced such line, such as the Article 2 of SC No. 13/2016 which contemplates that Criminal Acts by Corporates is considered as a criminal act if the crime is committed by the people, who have an employment relationship (contract), are acting for and on behalf of the Corporates. In addition, the SC No. 13/2016 further provides measurement for courts to assess the liability of a company in criminal act, as referred to in Article 4 paragraph (2) of the SC No. 13/2016 states that in imposing sanctions to a Corporates, judges will seek for the following facts: whether the company gained profit or benefit from the committed crime or committed crime is conducted for the corporation's interest; the Corporates tolerates the occurrence of committed crime; and the Corporates do not conduct necessary prevention, prevent greater impact and ensure compliance to applicable legal provisions in order to avoid criminal acts, as we can see the above measurements are fully requiring intention whether for the Corporate's interest or the Corporate fully negligence the potential criminal acts, which can be damaged the environment. Additionally, SC No. 1/2023 also try to envisage the criminal acts by the Corporates whether by it is caused by fully intention or fault.

As referred to in Article 68 Paragraph (3) SC No. 1/2023 provides that the Corporates could be imposed the sanction if: The criminal acts are classified as the corporation deeds if grounded as follows: The criminal acts are carried out by the person under control of the corporation or third party works for the Corporates in accordance with the employment contract or other relation upon request or order from the Corporates or the controller of the Corporates; and/or The criminal acts are carried out by the management of Corporates. The criminal acts are classified as the Corporation faults if grounded as follows: The Corporation has ability to prevent the criminal act, but does not act on it; The Corporates has no policy and/or take necessary step to ensure that adherence of law, prevent criminal act, or to prevent further damage; Corporations have a culture or habits that encourage or accept criminal acts; or The Corporation has a tendency of ignoring the criminal act or has not taken any necessary steps upon such criminal act. The above measurement emphasizes two elements, such as: (i) intention,

⁴⁰ Supreme Court of Indonesia, "Article 72 Paragraph (2) of the Guideline to Handle Environmental Cases" (2023), <https://www.hukumonline.com/pusatdata/detail/lt6427eaaee8a1f>

⁴¹ Supreme Court of Indonesia, "Article 72 Paragraph (3) of the Guideline to Handle Environmental Cases" (2023), <https://www.hukumonline.com/pusatdata/detail/lt6427eaaee8a1f>

or (ii) fault. Intention can be envisaged by way if there is an order from the Corporate and there is an underlying document between the Corporation and executor/management reflecting their relationship to accommodate such criminal acts. Further, the fault can be assessed by way the Corporate deliberately ignoring the damage of environment which the Corporate has full power to prevent such damage but choosing to do not conduct it.

In Indonesia, corporate law acknowledges concept of separate legal entity⁴², where the loses and any engagements carried out by the corporation is distinguished from its shareholders. In essence, the shareholders would not bear any losses to the corporation exceeding the value of their respective shares. This provision as set out in Article 3 of Indonesian Company Law, as a result, the shareholders have no interest on the corporation's assets, so as the shareholders is not personally liable to the any corporate action on behalf of the Corporates.

The Corporation has a personality or "legal personality" that is different from the person who created it, even though the person who runs the Corporates or has its own identity regardless of changes in management members or shareholders. The corporation is a legal entity, and the amount of the company's capital is stated in its articles of association. The corporation's assets are separate from the personal assets of the company owner so that they have their own assets.⁴³ However, Indonesia Corporate Law recognize the concept of "*piercing corporate veil*" which means this doctrine explain that there is a possibility the burden of liability imposed to the third party which is not the corporation, despite this act is validly carried out on behalf of the corporation as a legal entity. Nevertheless, this doctrine cannot only be applied if the requirement for Corporates to become a legal entity are not yet fulfilled. As a result, if the founding shareholders perform on behalf of the corporation during such conditions, then the founding shareholders become liable and shall not bind the Corporation. Moreover, such an action only binds and becomes a liability to the corporation after such action has been approved by all shareholders in a general meeting of shareholders of the corporation.

Article 68 Paragraph (4) of SCR No. 1/2023 provides that the organs that could be imposed criminal acts is management, in which such management classified as follows a person who commits or participates in committing a criminal act; having control and authority to prevent criminal acts from occurring but is not carried out; accepting the actions of the physical perpetrator by agreeing, condoning, and/or not adequately monitoring the physical perpetrator's actions; or does not have policies that can prevent the possibility of criminal acts occurring. Furthermore, SCR No. 13/2016 classified management as a corporate organ that carries out management of Corporates in accordance with the article of association or laws and is authorized to represent Corporates, including those who do not have authority to make a decision, but in fact may control or contribute to influencing corporate policies or participate in

⁴² M. Yahya Harahap, *Hukum Perseroan Terbatas*, Sinar Grafika, Jakarta, 2019, page 71.

⁴³ Kurniawan, "Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif" 26 (2014): 1–

determining policies within Corporates which may be qualified as criminal acts.⁴⁴ In line with this, pursuant to Indonesian Company Law provides that board of director has fully authority and responsibility to administer the Corporates for its interest, in accordance with its the objective and purposes and representing the Company either inside or outside the court as referred to in an article of association.⁴⁵ Therefore, we can envisage that the board of director is classified as management on SC No. 13/2016. Also, the board of director can be held as conducting criminal act as referred to in Article 116 Paragraph (1) letter (b) Indonesian Law on Environment, which stipulated that the criminal acts can be charged to entity and/or personal that give an order to such conduct criminal act or personnel as leader of such criminal acts.

The sanctions on Corporates Liability on Environment are regulated on the Articles 117, 118, and 119 of the Law on Environment. The Article 117 stipulated that if the criminal acts are charged to the person who instructs (instructor) or the leader of the criminal violation as cited on article 116 paragraph (1) letter b, the criminal sanction in form of imprisonment and a fine shall be made one-third greater. Moreover, Article 118 of the Law provides that the violation of article 116 paragraph (1) letter a shall be imposed on the entity of undertakings as represented by the people in management who are functionally authorized to represent the entity of undertakings inside and outside the court as in compliance with the prevailing law and regulations. In addition, the Article 119 of the Law on Environmental provides that person who demonstrate that criminal act mentioned in this regulation can be imposed with a sanction listed in this Environmental Law, which is by additional criminal sanctions or disciplinary expropriating of the profits from the crimes; discouraging all or part of location business and/or activities; repairing of the damage caused by the crime; obliging to do what has been neglected without any right; and/or placing the entity under guardianship for no longer than three years.

CONCLUSION

There are three regulations that usually to be used as a basis for law enforcement to investigate, and put the Corporates on proceedings, among other: the Environmental Law is discussed about systematic and integrated efforts undertaken to conserve environment functions and prevent environment damage including planning, controlling, supervising, monitoring and law enforcement, SCR Number 13 year 2016 focusing on the guidance for law enforcement for corporations alleged of committing criminal acts, and SCR Number 1 year 2023 as guidance for judges in making their judgement on environmental criminal cases in which corporation act as a defendant.

⁴⁴ Gusta Orin Andini, Fitrah Marinda, and Khulaifi Hamdani, "Pertanggungjawaban Tindak Pidana Korupsi Yang Dilakukan Oleh Aparatur Sipil Negara," *Jurnal Al-Qadau Peradilan Dan Hukum Keluarga Islam* 9, no. 1 (2022): 65, <https://doi.org/https://doi.org/10.24252/al-qadau.v9i1.29188>.

⁴⁵ Republic of Indonesia, "Law of the Republic of Indonesia Number 40 of 2007 on Limited-Liability Companies," Pub. L. No. 40, 1 (2007).

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