CORPORATE CRIMINAL LIABILITY ON THE ENVIRONMENTAL CRIME

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Abstract

The complexity of environmental crimes today provokes a hot debate among scholars; especially, a question concerning corporate criminal liability on the environmental crime. This question aims to know whether article 116 of the Act number 32 on Environmental Protection and Management (1999) can be applied against a corporate entity who committed environmental crime or not. In some cases, it is not always easy to prove guilty elements; when it claimed that there is no intention to commit crime. Such argument is simply based on legal nature of corporate entity itself because in principle corporate entity is not natural person but juristic person. Thus, it might be difficult to prove the intention of the corporate entity in the sense of criminal law. First of all, it must be clear that the said corporate entity has an attribution to an act of environmental crime. In other word, it must have a guilty element (schuld) together with an intention (dolus) or negligence (culpa) in order to commit an environmental crime. Secondly, it must be proved that the said entity is an author of an act and it has no excuse reason to claim that it has no criminal liability due to its own legal nature as juristic person. Finally, it should be noted also that article 116 of the said Act does not limit the scope of application. Once, it is a case of environmental crime committed by a corporate entity; it is not correct to argue, on the basis of corporate entity as juristic person, that there is no intention to commit environmental crime.

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Introduction

By reading article 116 of Act number 32 on Environmental Protection and Management (1999), a corporation in Indonesia may be charged for criminal liability on environmental crime as follows:

(1) In case of environmental crime occurred and 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. A person who causes another person to commit crime or acting as an active instigator of the said criminal act.

(2) In case of the environmental crime as referred to paragraph (1), being committed by a person acting on behalf or working under the conditions set forth by the said business entity, the penalty sanction shall be imposed on the instigator or leader of the criminal act without regarding whether the crime is committed individually or collectively.

It should be noted also that corporate criminal liability is usually related to the white collar crime because, in general, all corporations must be established as a legal entity and therefore must have its own legal personality.

In this regard, the white collar crime may be defined as it has been described by Marshall B. Clinard and Peter C. Yeager as the following definition: "Corporate crime is white collar crime; but is of particular type. Corporate actually can be an organized crime entity due to its own functions and complex relationships and expectations among board of directors, on one hand, and among parent corporations, corporate divisions, and subsidiaries, on the other[1]"

Furthermore, Donald J. Newman, based on an idea of Sutherland, did explained the meaning of white collar crime as a crime committed by a person of respectability and high social status in the course of this occupation.[2]

For these reasons, white collar crime can be categorized into two forms of

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[1] Marshall B. Clinard and Peter C. Yeager, **Corporate Crime,** (New York: The Free Press: A Division of Macmillan Publishing, Co., Inc.) Collier Macmillan Publishers, London, 1990, p.16.

[2] Donald j Newman, **White Collar Crime: an Overview and Analysis,** in Geist, Gilbert Geist and Robert F. Meier, (ed), **White Collar Crime, Offences in Business, Politics and the Professions,** The Free Press, New York, 1997, p.53.

business operation namely; occupational crime and corporate crime[3] which means that occupational crime is a criminal offense committed by business men, chairman of labour unity, politicians, lawyers, doctors, pharmacy experts or employees who proceed with his plan or their plan to embezzle the money of the company etc., while corporate crime is a manipulation of corporate income derived from product selling or an act of deceit in the expense of vehicle reparation of the company or other company expenses.[4]

Last but not least, the definition of white collar crime may be defined by Marshall B. Clinard and Peter C. Yeager as an act committed by a corporation which was punished by the state, regardless of whether it punished under administrative, civil, or criminal law,[5] while Shapiro explained corporate crime as an act committed by collective or individual association with different occupation. Hence, to be a corporate crime, it must be an act of an employee or of any person of the company who commits crime by violating corporate law or other laws which aims to protect the interest of corporation.

Finally, once a corporate crime was committed, it should be noted that the type of corporation may be another key factor for the determination of such act. In this regard, David J. Rachman et all, as quoted by I.S. Susanto, explained that most of corporation always have 5 important characteristics as follows;

1. They are juristic person which have their own legal personality under the specific law provision.
2. They may be continued to exist for a long length of time or even for an unlimited period of time.
3. They have a right to do their business from the state.
4. They must be owned by the shareholder; and
5. Shareholder responsibility will be limited not beyond the value of their own shares.

By examining the characteristics of corporation as mentioned above, it is quite clear that the liability of each corporation will be based on the form of business organization. These may include the limited

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[3] Marshall B. Clinard and Peter C. Yeager, *op.cit*,

[4] *Ibid.*

[5] *Ibid.*

liability companies as well as other various legal entities namely union, foundation, firm and also non-corporate entities that may be subject to the liquidation requirements according to Indonesian corporate law.

As the corporate role in the era of globalization is quite imminent and has a lot of influences to the economy and politics of the nation, such as a case of Campbell 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"[6]

Due to the vast and expanding role of corporation today, it is quite necessary to regulate and control the activities of corporation under criminal law especially a criminal sanction against environmental crimes. Even though some Acts of Indonesia consider company or corporate entity as a juristic person but not natural person and therefore we may need to verify the activities of each corporation in order to know whether they are illegal or not. If it is a case of business crime, that corporation may be guilty and may be charged as an organized crime that is to say "a crime happening in the context complex relations and hopes among directors, executive and manager council in the other side"[7]

Moreover, it is possible to claim that some acts of the company may cause direct and indirect effect against the environment and therefore the Act number 32 on Environmental Protection and Management of 1999 or so-called in Indonesia as "UUPPLH" will be an applicable law in order to determine the criminal liability of each corporate entity and find out an appropriate sanction for each offence of environmental crime committed by the said company.

Nowadays, most of the cases concerning environmental damages did not occurred only in Jakarta but also happen in other big industrial cities and other new emerging industrial areas in the whole regions of Indonesia, for instance; Ruber Waste Company Padang Sumatera (P.T. Limbah Karet Padang Sumatera Barat) case or various cases concerning mine companies (Ltd.) in East Bintan Riau archipelago province (PT Aneka Tambang

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[6] I.S. Susanto, **Corporate Crime,** Diponegoro University Press, Samarang, 1995, P.15.

[7] *Ibid.*

(Tbk) di Bintan Timur Prop. Kepulauan Riau) including High Electric Air Channel (Saluran udara tegangan tinggi/SUTET) case in West Cirebon of Java, gold mine case in Mindano North Sulawesi where pollution damages occurred in Buyat Bay of the said area and petroleum-Kesolene exploitation case committed by Lapindo Brantas in Sidoarjo of East Java.[8]

Besides, the same environmental cases had occurred in Jambi Province as well. Jambi exploration business unit or so-called "Pertamina Limited Company" should be responsible for the environmental problems in Jambi because this company is not a small private company but a big multinational corporation operating at a big scale of exploration and exploitation of natural resources of the province. Once pollution damages had occurred on June 17 of 2000 due to the leaking pipe problem of the company caused a lot of dirty water problem in the surrounding areas, it must be presumed that the company must be liable according to the "polluter pay principle".(See verdict of the Supreme Court of Indonesia, Number: 3273K/Pdt/2001)

However, a hot debate on this issue became more and more intensified due to the complexity of the environmental crimes today. Article 116 of the Act number 32 on Environmental Protection and Management of 1999 can be applied against the said corporate entity or not especially when it claims that there is no intention to commit crime. This argument is simply based on the legal nature of corporate entity itself because in principle corporate entity is not a natural person but a juristic person. Thus it may be difficult to prove the intention of the said entity in the sense of criminal law.

First of all, it must be clear that the said corporate entity has an attribution to an act of environmental crime. In other word, it must have a guilty element (schuld) together with an intention (dolus) or negligence (culpa) to commit environmental crime. Secondly, it must be proved that that entity is an author of an act[9] and it has no excuse reason to claim that it has no criminal liability due to its own legal nature as a juristic person. It should be noted also that article 116 of the said Act does not limit the scope of application when it is a case of environmental crime committed by a corporate entity. Therefore it is not correct

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[8] Husin Sukanda, **Indonesian Environmental Law Enforcement**, Sinar Grafika Press, Jakarta, 2009, pp 130-133.

[9] Roeslan Saleh, **A Reorientation in Criminal Law**, Aksara Baru Press, Jakarta, 1983, p.83.

to argue, on the basis of corporate entity as a juristic person, that there is no intention to commit environmental crime.

In this regard, that company must have a criminal liability if it is an author of an act and there are enough evidences to prove the intention or negligence of the company based on the elements of crime in each offence. However, a new question may be raised by stake holders in order to know what kind of criminal sanction shall be imposed in this case.

In 1985, Indonesia did establish an expert team for the revision of Indonesian penal law. A report of expert team was done in the same year by confirming that a corporate entity may be guilty and has a criminal liability when it commits an environmental crime. However, it must be clear that there are enough evidences to prove that the board of directors or executive board is responsible as an author of an act.

Referring to the said report, it is clear that fine sanction against the executive board may not be a good guarantee that the corporate concerned will not break the laws.[10] In this regard, it may be possible to apply article 117 of the Act number 32 as mentioned above to this matter. This means that if the executive board was charged for criminal offence as referred to article 116 (1) (b), the penalty sanction shall be imposed by imprisonment and fine weighted by one third. Besides, article 119 of the same Act shall be applied as an additional sanction in order to have a better enforcement against the offender. Article 119 stipulates as follows:

"Regarding to the penalty as referred to this law, the business entities shall be liable to an additional penalty sanction or other disciplinary measures in the form of:

a. Seizure of profits earned from the committed crimes.
b. Closure of business and/or related activity in whole or in part.
c. Remedies paid for restore a situation or compensate damages in order to improve all kind of negative impacts arising from the said criminal act.
d. Improve working conditions which may be abused labour rights by negligence.

[10]National Legal development Board, **The Set of Reports on the Results of Research for the Assessment: the Field of Criminal Law,** BPHN: 1980-1981, Jakarta, 1985, pp.34-37.

e. Emplacement of company under custody for 3 years at the maximum.

However, a new problem may be arising especially if the said company refuses to pay that fine. Hence, article 30 (2) of the Indonesian Penal Code will be applied and the offender shall be punished by imprisonment although it is not severe penalty sanction.

In addition, this article aims to find out an appropriate answer to the following questions:

1. Can the formulation of norms concerning the corporate criminal liability on the environmental crime be taken into effect against the offender?
2. Can the criminal sanctions under the Act of Environmental Protection and Management be applied to the cases of environmental crime committed by corporation?

STUDY AND ANALYSIS

1. Formulation of norms concerning the corporate criminal liability on the environmental crime.

As it has been mentioned above about the formulation of norms concerning criminal sanction against a corporate who commits an environmental crime, there are 5 relevant articles of the Act number 32 shall be considered as an applicable law as hereby stipulated:

Article 116

(1) In 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. Instigator or Principal of the crime

(2) In case of the environmental crime as referred to in paragraph (1) being committed by a person acting on behalf of the said business entity in working relations including other relations, the penalty sanction shall be imposed on the instigator or leader of such environmental crime without regarding to the nature of an act whether they commit individually or collectively.

Article 117

If criminal offence was charged against the instigator or principal of such environmental crime as referred to Article 116 paragraph (1) (b), the penalty sanction shall be imposed by imprisonment and fine weighted by one third of the total sum of fine.

In principle, as described and analyzed already in Chapter II concerning corporate criminal liability, the corporate entity concerned can't act alone by itself because it is a juristic person. An act of such corporate entity must be performed by a person who can act or manage on behalf of the said corporation.

Referring to the elements of crime on corporate criminal liability, Mardjono Reksodiputro, as quoted by Tabrani, explained that there are two elements of crime that need to be examined together; firstly, an author of an act must be a person who can act or manage on behalf of the corporation and secondly, his act can be considered as a criminal act committed by the said corporation.[11]

Moreover, Sutan Remy Sjahdeini has a good reason to argue on the basis of his theory as mentioned in the preceding paragraphs that a corporate criminal liability will be occurred when all following elements are fulfilled;

1. The criminal act (in the form of commission or omission) must be done or instructed by a person who can act or make decision on behalf of the corporation.
2. Such criminal act was committed in connection of the intention and purpose of the said corporation which means that if an *ultra vires* act was done, it must be clear that such act must be committed in connection with the activities of the corporation.
3. Such criminal act must be committed within the framework of business activities of that corporation. If not, it can't be considered as a corporate criminal act.
4. Such criminal act must be directly or indirectly beneficial to the corporation.

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[11]Tabrani, **Corporate Criminal Liability According to Indonesian Criminal Law,** Unpublish Thesis, Faculty of Law, University of Indonesia, Jakarta, 2000, p.76.

5. Perpetrator or instigator does not have an excused or justified reason to be released from the said criminal liability.
6. For criminal act which requires *actus reus and mens rea*, both requirements must not be obtained in only person.[12]

According to the constitutive elements of corporate criminal act as described by Sutan Remy Sjahdeini in the preceding paragraphs, it seem to be logic that the remedy can be done only if the Court decided that there are enough evidences to prove all elements of an environmental crime.

However, it might be not logic to endorse automatically any legal consequence from a court's decision in civil case to a pending criminal case. In this regard, all elements of crime must be examined carefully based on the fact and discretion of the judges in each criminal case.

It should be noted also that Article 116 (2) of Act number 32 on Environmental Protection and Management (1999) requires 4 key elements of criminal environmental crime namely;

1. It must be committed by a person and not necessary to have a status as worker or employee of the corporation.
2. Such person has given an order to commit crime or acting as a principal, leader or instigator of environmental crime.
3. Such criminal act must be involved in the scope of business activity of the corporation.
4. It is possible that such criminal act may be committed individually or collectively by the offender.

In this regard, Act number 32 of 1999 is not only based on legal theory concerning formulation of crime but also based on functional concept of corporate entity in which it may be a key point to determine whether environmental crime was committed by such corporate entity or not.

By examining the first and second criteria of article 116 (2) as mentioned above, it is clear that the first criteria of this article is based on legal theory concerning formulation of crime while the

[12]Sutan Remy Sjahdeini, **Criminal Corporate Liability,** Grafiti Press, Jakarta, 2006, pp.118-122.

second criteria is based on functional concept of corporate entity. Thus, it is not correct to argue that such corporate entity shall be guilty if such criminal act was committed by an *ultra vires* act because such act was committed outside and beyond the scope and function of the said corporation.

Referring to a famous pollution case in Jambi province of Indonesia (case concerning crude oil leakage from pipeline of Patamia UBEP corporation, dated June 17, 2000), The Supreme Court of Indonesia decided that the exploitation of crude oil in this area, by Patamia Corp., caused a problem of oil leakage pollution to the victims who are people in the said area. Therefore Mrs. Herdi Simanjuntak and other victims shall have a legitimate right to sue Patamia Corp or not is a primary question in this case. The Court did examine all evidences according to the criteria of article 116 (2) and emphasizing on 3 issues as follows;

1. Does the Court have enough evidences to prove the elements of environmental crime? In this regard, the Court need to verify at the beginning whether such act was done by an order of a personnel of Pertamia Corp who can make decision on behalf of the corporation or not.
2. Is the exploration of crude oil turn benefits to Pertamia Corp?
3. Is there any evidence to prove that crude oil leakage from the pipeline is a negligence act of Pertamia Corp?

The Court, finally, decided that the Court has enough evidences to prove the elements of environmental crime in this case and therefore Pertamia Corp is guilty according to the Penal law of Indonesia. Certainly, if the Court has no reliable evidence to support in this case it might be difficult to punish the said corporation.

CRIMINAL SANCTION SYSTEM UNDER ACT NUMBER 32 (1999)

With reference to Article 116 (1) (a) of Act number 32 (1999), penalty sanction can be imposed directly to business entities and/or instigator or principal of the relevant crime based on the functional concept of corporate entity.

In addition, other enforcement measures can be imposed as well to the offender who committed an environmental crime under article 119 of the same Act. These may include the following

enforcement measures or so-called "administrative sanction";

a. Seizure of profits earned from the crime.
b. Closure of business site and/or activity place of such corporate entity.
c. Improvement of all kind of impacts arising from the crime.
d. Setup appropriate requirements for business management of such corporate entity.
e. Apply custody sanction against such corporate entity not more than 3 years.

Once administrative sanction were enforced by the court verdict especially in this particular case against the corporate entity, then Article 120 of the same Act shall be applied as an applicable law and all kind of enforcement measures shall be implemented according to the terms and conditions of this Article as set out below;

(1) In executing the provision of Article 119 (a), (b), (c) and (d), Prosecutors shall coordinate with the relevant environmental protection institutions in order to implement enforcement measures.

(2) In executing the provision of Article 119 (e), the government of Indonesia shall be authorized to manage the corporate entity according to the nature and conditions of custody sanction as decided by Court's verdict.

Indonesian administrative law today recognizes administrative sanctions and classifies them into 4 categories as follows;

a. *bestuurdwang* (governmental coercion)
b. review administrative decision such as review license, payment or subsidy etc.,
c. impose administrative fine and
d. administrative confiscation or appropriation

It should be noted also that the difference between administrative sanction and criminal sanction derived from the different purposes of sanction of both laws. In general, administrative sanction of Indonesian administrative law aims to impose misdemeanor sanction against the offender while criminal sanction of Indonesian criminal law aims to impose criminal sentence to the offender who commits more serious crime than misdemeanor. Furthermore, administrative sanction may be considered as an

obligation of reparation and must be enforced by state officer but not by court procedure because, in a case of criminal procedural law, the procedure always take time with long process starting from investigation, prosecution and court trial to court verdict and implementation or enforcement process. For this reason, Article 10 of Indonesian Criminal Code does provide two types of criminal sanction namely basic punishment and additional punishment.

In this regard, basic punishment is a criminal punishment for those who committed a crime and the court may impose a capital punishment, imprisonment, light imprisonment or fine depending on the severity of crime that they committed and in some particular cases it may be possible to have a replacement of punishment according to the Act number 20 of 1946.

In addition, it may be possible that Indonesian criminal court may impose an additional punishment to the perpetrator by deprivation of certain rights, forfeiture of specific property and publication of court verdict.

It should be noted also that Act number 32 of 2009 on Environmental Protection and Management doesn't provide any kind of difference between basic punishment and additional punishment because the main purpose of this law aims to solve a problem of corporate environmental crime rather than to classify a category of crime and punishment.

For these reasons, it may be necessary to classify difference categories of environmental crime and punishment especially in case of corporate environmental crime in order to have an appropriate model of criminal sanction under Indonesian laws.[13] For example, fine punishment may be not so efficient when it was imposed by the court to a corporate entity who violates environmental crime because it might be impossible to convert fine punishment to light imprisonment due to the impossibility of imprisonment nature against corporate entity.[14] In this regard, the judge may impose not just only a fine as a basic punishment but it might be possible also to adjudge and declare another type of an additional punishment or treatment as a facultative method of the

[13]Barda Nawawi Arief, **Anthology of Criminal Law Policy,** Citara Aditya Bakti Press, Bandung, 1996, pp.167-168.

[14]Muladi and Barda Nawawi Arief, **The Theories and Criminal Law Policy,** Alumnus Press, Bandung, 1992, p.133.

judge in order to find out an appropriate criminal sanction and measure in each case.

Therefore, fine may be imposed first as a priority of criminal sanction against a corporate entity who violate environmental crime as suggested by Mulyadi dan Barda Nawadi Arief and if the said corporate entity did not pay or cannot pay fine then the court may impose an additional punishment according to the outcome of research concerning priority of punishment or treatment to the said corporate entity.[15]

In brief, it seem that an appropriate criminal sanction against corporate entity who violates environmental crime should be a fine rather than an imprisonment. However, an additional sanction may be applied as an additional method in order to solve a problem of unpaid fine by corporate entity. At present, Article 18 of Act number 31 of 1999 concerning Eradication of Criminal Acts of Corporation provided already a basic punishment and additional punishment for the case of environmental crime committed by corporation. In this particular case, the best type of criminal sanction that can be enforced against the said corporation shall be a forfeiture of corporate property or a closure of the company for a certain period of time or deprivation of certain rights of the company such as a sanction in the form of withdrawal of license of business.[16]

In this regard, criminal sanctions against corporation are quite similar to imprisonment sentence in a common crime case against a criminal who is natural person because it does deprive freedom of corporation as well and therefore it is quite logic to compare a light penalty sanction under Article 30 and 31 of Indonesian Criminal Code to an order of closing company in a certain period of time (provisional closure of the company) especially when the said company refused to pay fine or unable to pay fine according to the court's verdict. The Court shall determine an appropriate additional sanction and convert fine into a closing period of time against the said company according to the discretion of the Court in each particular case which may be differed from case by case basis or it might be possible to withdraw a license of the said

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[15]Barda Nawawi Arief, **The Problems of Law Enforcement and Criminal Policy Solving,** Citra Aditya Bakti Press, Bandung, 2002, p.19.

[16]*Ibid.*

company if that company resists or rejects the verdict.

However, it is a duty of the Court to keep awareness on negative impacts and must look at side effects of each applicable sanction against the company because not only the offender company shall be punished but also workers, shareholders and consumers of the company shall be punished more or less as well by enforcing such sanction. Thus the sentencing negative impacts must be avoided[17]. Furthermore, the Court must compare the negative impacts with the purposes of criminal sanction and determine which one will be the best solution in each particular case.

In order to find out the best solution, Herbert L. Parker suggested that it is important that the Court need to compare two kinds of sanction namely criminal punishment and safety treatment measure[18]. Thus it may be possible that the Court may impose a sufficient compensation for the victims of a corporate criminal act and/or make an order to control the conduct of the corporation in order to ensure that the said offender corporation will never commit an environmental crime again[19]. In consequence, all safety measure treatments as hereby fixed by the Court will be the best guarantee for the benefits and prosperity of the nation. Furthermore, it is quite clear that the objectives of corporate criminal sanction are so different from the objectives of general punishments in common crimes. Nickel Walker explained that the objectives of criminal sanctions in general may be classified into 5 categories as follows[20];

1. To protect offenders and suspected person against all kind of unofficial retaliation.
2. To reduce a mal conduct or prohibited conduct under criminal law.
3. To reduce all kind of suffering and damages arising from criminal acts.

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[17]Philipus Mandiri Hadjon, (ed), **Introduction to Indonesian Administrative Law,** Gajah Mada University Press, Yogyakarta, 1994, p.247. See also Muladi and Barda Nawawi Arief, The Theories and Criminal Law Policy, Alumnus Press, Bandung, 1992, p.133.

[18]Herbert L. Parker, **The Limits of the Criminal Sanction,** Stanford University Press, Stanford, 1968, pp.23-26.

[19]Muladi and Barda Nawawi Arief, *op.cit.*

[20]Nigel Walker, **Sentencing in a Rational Society,** Pelican Book, 1972 in Herschel Princ, Herschel, **Criminal Behaviour,** Tavistock Publication, London, 1982, pp.17-36.

4. To ensure that the offender alone will be punished appropriately by the court's verdict.
5. To show society's abhorrence of crime.

In order to impose an appropriate sanction to the offender in response to his own act, the Court needs to consider the objective of sanction in various aspects for instance; based on consideration point (d) of Act number 32 of 2009 on Environmental Protection and Management stipulates in term of environmental protection as follows; "the decreasing environmental quality has threaten the continuation of human life and other creatures so that all stakeholders need seriously and consistently to protect and manage environment". In addition, consideration point (e) of the same Act does emphasize the objective to reduce global warming effects from various kinds of business activities by stating the following term

"...that since the global warming has caused climate changes which worsen more and more an environment quality, therefore, it is quite necessary to have all kind of appropriate measures in order to protect and manage environment".

For these reasons, the Court may impose an order to revoke business license of the company or close temporally or permanently the company together with other basic criminal sanction such as fine punishment as it deem to be necessary and appropriate for such violation of the said Act.

Referring to Henry v. Bali dan Lawrence Friedman case, the Court decided that fine punishment is an appropriate sanction because it can discourage and reduce motives to commit a corporate environmental crime.[21] However, Mardjono Reksodiputro suggested that the Court should impose an expensive fine to the corporate offender. If not it might be inefficient to prevent a repetition of such criminal act. It should be noted also that fine punishment will have no impact under Indonesian Labour Law to the workers' salary but it may have a negative impact to the dividend and may cause some negative aspects in term of business activities of the company. Some shareholders may dissatisfy with the negative image of the company and may force the executive board to

[21] Mardjono Reksodiputro, **The Progress of Economic Development and Crime,** Justice Service Center for Law and Devotion, Indonesia University Press, Jakarta, 1997, pp.120-121.

change business policy or management policy into a friendly manner of environmental protection.

In this regard, fine punishment may be considered as an appropriate sanction especially for the case of violation of environmental laws by small company or small corporate entity. In contrary, it might be inefficient to tackle with the problem of corporate criminal act done by big corporation or big company because the said corporation has a lot of money and assets so that fine punishment is not a big problem for the corporation. Hence, Mardjono suggested imposing other criminal sanction against the corporate offender if an expensive fine punishment is not an appropriate sanction. In this situation, the Court may need to impose some supplement measures such as guidance or standard which requires that such corporation needs to follow if not penalty sanction will be enforced against the chief executive officer (CEO) or executive board of such corporation.

CONCLUSION

In general, corporate liability for the violation of environmental law in Indonesia became more and more important issue and it is quite necessary to impose an appropriate criminal sanction and/or other appropriate measures in order to prevent and punish the offender. In this regard, corporate offender cannot deny its own responsibility on the basis of ultra vires act or unintentional act because such act was done on behalf of the company even though corporation is not natural person but juristic person. The doctrine of corporate criminal liability under Article 116 of Act number 32 of 2009 on Environmental Protection and Management became right now a well-known legal doctrine in Indonesia.

Fine punishment or expensive fine punishment can be enforced by Court's verdict as a basic punishment under Article 30 of Indonesian Penal Code. If the said corporation refused to pay fine, then it can be changed into 6 imprisonments for 6 months against the Chief Executive Officer (CEO) or executive board of such corporation. In addition, the Court may impose other administrative sanctions against corporate offender as well even though it is not obliged to do so. Therefore, the Court needs to find out an appropriate sanction in each particular case of corporate environmental crime and to examine the objective of criminal sanction in each case which shall be the best solution for environmental protection and preservation.

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