

***Strict Liability of the Corporation Cause the Fires of Plantation Land Pose
A Serious Threat***

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Abstract

A corporation is a legal entity that bears legal rights and obligations. In carrying out oil palm plantation business activities, corporations are obliged by law to implement Good Corporate Governance (GCG) and Corporate Social Responsibility (CSR) which includes the Triple P Bottom Line in order to realize sustainable development. In relation to the legal obligation to implement GCG and CSR, in carrying out it's business activities the corporation is prohibited from clearing or cultivating plantation land by burning. Plantation land fires can cause serious threats that cause enviromentall losses, especially if they occur during the Corona Virus Disease 2019 (Covid 19) as it's today. This paper will discuss on the concept strict liability of corporate because plantation fires cause serious threats. This research is a normative legal research which used juridical normative approach method used to analyze various laws and regulations related to the concept strict liability of the corporation cause the fires of plantation land pose a serious threats. As conclusion, the concept strict liability of the corporation cause the fires of plantation land pose a serious threats include 13 legal provisions, which still have 4 weaknesses. With the existence of these 4 weaknesses, coupled with the existence of the principle of freedom of judges, it's emphasized that the government hasn't seriously implemented strict liability for corporation because plantation fires pose a serious threat.

Keywords: *Liability, Corporation, Fire*

INTRODUCTION

According to W.J. Brown, a corporation is a legal entity with a legal existence separate from the people who organize and run it, and it has perpetual succession, regardless of changes of people who own or hold the title of the corporation. As a legal entity, the corporation bears legal rights and obligations.

Until now, many corporations carry out oil palm plantation business activities in Indonesia. In carrying out it's business activities, corporations are legally obliged to implement GCG and CSR which includes the Triple P Bottom Line (*Profit, People, Planet*), in order to realize sustainable development.

GCG is a principle that underlies a corporate management process and mechanism based on regulations and business ethics. GCG implementation will be able to improve corporate performance and long-term economic value for investors and stakeholders.

CSR is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basic. CSR is at the core of business ethics.

In relation to the legal obligation to implement GCG and CSR, in carrying out it's business activities the corporation is obliged to maintain the preservation of environmental functions and control environmental pollution/damage.

In connection with that, the corporation bears 3 legal obligations:

1. Provide information related to environmental protection and management in a true, accurate, open, and timely manner;
2. Maintaining the sustainability of environmental functions;

3. Comply with the provisions on environmental quality standards/environmental damage standard criteria.

In carrying out its business activities, the corporation also bears various other legal obligations which have been determined in various related regulations. In addition, in carrying out their business activities, corporations are also prohibited from committing actions that cause environmental pollution/damage.

Corporate plantation land fires can cause pollution beyond regional and national environmental quality standards (ambient air quality standards), which have been determined in Regulation the Minister of Environment Number 12 Year 2010 Concerning The Implementation of Air Pollution Control in the Regions (Regulation the Minister of Environment Number 12 Year 2010), and Government Regulation Number 41 Year 1999 Concerning Air Pollution Control (Government Regulation Number 41 Year 1999). Other than that it can also cause damage beyond the standard criteria for environmental damage that have been determined in Government Regulation Number 4 Year 2001 Concerning Control of Environmental Damage and/or Pollution Associated with Forest and/or Land Fires (Government Regulation Number 4 Year 2001).

Pollution exceeds ambient air quality standards/damage exceeds the standard criteria for environmental damage due to corporate plantation land fires, of course, resulting in serious threats that cause environmental losses, especially if it occurs during the Covid 19 period as it's today.

With the occurrence of pollution beyond ambient air quality standards/damage beyond the standard criteria for environmental damage resulting in serious threats, in order to implement GCG and CSR, based on the provisions of Article 69 subsection (1) point h of Law Number 32 Year 2009, Article 56 subsection (1) of Law Number 39 Year 2014, and Article 11 of Government Regulations Number 4 Year 2001, in carrying out its business activities corporations are prohibited from clearing/cultivating land by burning.

In the event of a fire on corporate plantation land that cause a serious threat, it's emphasized that in carrying out its business activities the corporation doesn't carry out its legal obligations to implement GCG and CSR.

Based on the provisions of Article 88 of Law Number 32 Year 2009, fire on corporate plantation land which causes serious threats is a tort which creates strict liability for the corporation to pay compensation for environmental losses without the need for proof of fault. Compensation is paid by the corporation after a judicial institution decision has final and binding on the lawsuit filed.

A lawsuit tort is filed to enforce the Civil Law in order to realize the principles stipulated in Article 2 point a Law Number 32 Year 2009 (state responsibility principle) and the provisions of Article 28 I subsection (4) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), as a result of carrying out its business activities the corporation doesn't carry out its legal obligations to implement GCG and CSR, so that its business activities against the principles stipulated in Article 3 subsection (1) point a, g, h of Law Number 25 Year 2007 (legal certainty principle, sustainability principle, environmental principle), Article 2 point b, c, e, f of Law Number 32 Year 2009 (preservation and sustainability principle, harmony and equilibrium principle, utility principle, precautionary principle), Article 2 point d, j Law Number 39 Year 2014 (sustainability principle, preservation of environmental functions principle), against the provisions of articles in various relevant regulation, and contrary to decency.

Through a lawsuit tort it's hoped that strict liability can be applied to the corporation, as stipulated in Article 88 of Law Number 32 Year 2009. Implementation of strict liability

through court decisions that are punishing corporations based on the Article 88 of Law Number 32 Year 2009, realizing the principles stipulated in Article 2 point g, j, Law Number 32 Year 2009 (justice principle, polluters pay principle), fairness, and guarantee of legal protection for a good and healthy environment, which is the constitutional right and human right of all Indonesian citizen.

RESEARCH METHODS

This study used a type of normative legal research. The method used is the normative juridical method. This research is analytical descriptive. This research of data is like a normative law research, that is using the data secondary either in the form of primary, secondary, and tertiary legal material as the main data/research subject.

Data collection is performed through library research study, i.e., the collection of data document, literature and studying the provisions of legislation related to the issues to be answered the in this study.

All the information that has been obtained and collected will then be reviewed restaurants and analyzed qualitatively. Described then again to be presented systematically, the resulting in a discussion that can be used to answer the problems in this study.

RESULT AND DISCUSSION

According to Bismar Nasution, in order to create better value for the corporation, corporate management has developed which leads to the interests of the parties with an interest in the existence of the corporation. Development is characterized by management that is no longer dominant for shareholders, but also for stakeholders, so that a balance appears in line with GCG. One of the things that has emerged in the development of corporate management is the emergence of CSR which is associated with sustainable development. John Elkington has warned that there are 3 important components in sustainable development:

1. Economic growth;
2. Environmental preservation;
3. Society welfare.

Based on the provisions of Article 2 of Law Number 40 Year 2007, business activities carried out by corporations may not violate the provisions of regulations and/or decency. Therefore, in carrying out business activities, corporations have legal obligations to implement GCG and CSR.

One of the business activities carried out by the corporation related to the environment is the oil palm plantation business activity. Plantation land fires can cause serious threats, especially if they occur during the Covid 19 period as it's today.

Plantation land fires which pose a serious threat, can have an impact on humans in the form of acute respiratory infections, which endanger health. Covid 19 is a disease caused by the severe acute respiratory syndrome virus, which can have an impact on humans in the form of respiratory system disorders, ranging from mild symptoms such as colds to lung infections such as pneumonia. Thus, if a fire in plantation land causes a serious threat during the Covid 19 period as it's today, it's very dangerous to health, especially for sufferers of Covid 19.

By causing serious threats, related to legal obligations to implement GCG and CSR, based on the provisions of Article 69 subsection (1) point h of Law Number 32 Year 2009, Article 56 subsection (1) of Law Number 39 Year 2014, and Article 11 of Government Regulations Number 4 Year 2001, in carrying out its business activities corporations are prohibited from clearing/cultivating land by burning.

In the event of a corporate plantation land fire that causes a serious threat, it's emphasized that in carrying out its business activities the corporation doesn't carry out its legal obligations to implement GCG and CSR. Corporate plantation land fires that pose a serious threat, are tort, which lead to legal liability.

According to Hans Kelsen, in the Theory of Legal Responsibility, that a person is legally responsible for certain behavior or that he bears the legal responsibility therefor means that he is liable to a sanction in case of contrary behavior. Normally, that is, in case the sanctions is directed against the immediate delinquent, it's his own behavior for which an individual is responsible. In this case the subject of the legal responsibility and the subject of the legal duty coincide.

In accordance with Hans Kelsen's opinion, the concept of legal liability is basically related, but not identical to the concept of legal obligation. According Immanuel Kant, based on the Theory of Obligations, people may or should be presented based on their freedom, which can then be called suprasensible. That person is presented purely according to humanity as a person who is physically independent and different from the person who has been modified. This is what is commonly called a right, and then it will lead to the arising of the obligation of that right.

Corporations (through Directors) are legally required to act by implementing GCG and CSR which are the core of business ethics, in order to realize the sustainable development specified in Article 3 point i of Law Number 32 Year 2009. If based on statutory regulations the act to the contrary, is a condition for enforcing the act of force. Forced action doesn't have to be directed against the obligatory corporation, but can be directed at other people related to the corporation, in a manner determined by law, namely through imposing sanctions, as a form of corporate legal liability.

Based on the provisions of Article 88 of Law Number 32 Year 2009, corporate plantation land fires are a tort that creates strict liability for corporations to pay compensation for environmental losses without the need to proof of fault.

Compiled based on statutory regulations in Indonesia, there are 13 concepts of corporate strict liability because plantation land fires pose a serious threat:

1. Disputes are resolved by non-litigation or litigation, which are voluntarily selected by the parties. A lawsuit can only be filed if the non-litigation dispute resolution is declared unsuccessful by one of the disputing parties (Article 84 of Law Number 32 Year 2009). In the event that the dispute is resolved by litigation, based on the provisions of Article 1 of Supreme Court Regulation Number 1 Year 1956, the case examination can be deferred pending the court's decision in the tort suit examination is final and binding;
2. Non-litigation dispute resolution is carried out to reach an agreement on the form and amount of compensation, remedial action due to serious threats, certain actions to ensure that serious threats will not recur, and actions to prevent negative impacts on the environment.

Mediator and/or Arbitrator services can be used to help resolve disputes (Article 85 subsection {1} and {3} Law Number 32 Year 2009);

3. The corporation is obliged to pay compensation for environmental losses as a realization of the principle stipulated in Article 2 point j of Law Number 32 Year 2009 (polluters pay principle) and/or take certain legal actions, restructuring doesn't eliminate liability, and the court can determine payment of forced money which is decided based on statutory regulations for every day the delay in implementing court orders to take certain legal actions for the sake of preserving environmental functions (Article 87 of Law Number 32 Year 2009);

4. Corporations, strict liability for environmental losses that occur without the need to prove the fault by the plaintiff as a basis for compensation payments. This is the specialty of tort lawsuits in general. The amount of compensation value can be determined up to a certain time limit, in the sense that if according to the stipulation of regulations, insurance requirements for corporate business activities are determined, or environmental funds are available (Article 88 of Law Number 32 Year 2009);

5. In litigation dispute resolution, in accordance with the provisions of Article 1967 of the Civil Code, the tort lawsuit has been filed for 30 years, since it was discovered that the tort of corporate land fires had caused serious threats (Article 89 subsection {1} of Law Number 32 Year 2009);

6. Tort lawsuits can be filed by the government through the Minister of Environment and Forestry and/or the regional government agencies responsible for the environmental sector, individuals and/or communities, as well as environmental organizations (Article 90 subsection {1}, Article 91 subsection {1}, and Article 92 subsection {1} of Law Number 32 Year 2009);

7. There are no strict liability restrictions regarding reasons of excuses;

8. Losses, in the form of environmental losses, namely losses arising from serious threats, which don't constitute private property (Elucidation of Article 90 subsection {1} of Law Number 32 Year 2009 and Article 1 subsection {2} of Regulation the Minister of Environment Number 7 Year 2014 Concerning Environmental Losses Due to Pollution and/or Environmental Damage {Regulation the Minister of Environment Number 7 Year 2014});

9. Environmental losses include losses due to exceeding environmental quality standards, reimbursement of costs for implementing dispute resolution, reimbursement of costs for handling serious threats and restoring environmental functions, as well as ecosystem losses (Article 3 of Regulation the Minister of Environment Number 7 Year 2014);

10. The calculation of environmental losses is carried out by experts in the scope of pollution/damage and/or environmental economic valuation, which Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013 Concerning Enforcement of Guidelines for the Management of Environmental Cases (Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013) which can be used as a reference for calculating the amount environmental loss (Article 4 subsection {1} of Regulation the Minister of Environment Number 7 Year 2014);

11. The calculation of environmental losses by the expert is used as a preliminary assessment in non-litigation and litigation dispute resolution, which may experience changes due to the influence on non-technical and technical factors (Article 6 of Regulation the Minister of Environment Number 7 Year 2014);

12. In non-litigation dispute resolution, the amount of environmental loss is determined based on deal of the disputing parties, while in litigation dispute resolution, the amount of environmental loss is determined based on a final and binding court decision (Article 7 of Regulation the Minister of Environment Number 7 Year 2014);

13. Payment for environmental losses is non-tax state revenue, which must be deposited in the state treasury (Article 8 of Regulation the Minister of Environment Number 7 Year 2014).

Strict liability was adopted by Indonesia from the development of tort in the Common Law, which occurred after the development of an agrarian society to an industrial society. Adoption is known as “legal adoption/legal reception/legal transplantation/legal transplants”.

Legal transplantation is a legal transplant from one state to another, which differs from social facts and legal systems. According to Alan Watson, legal transplants are the borrowing and transmissibility of rules from one society or system to another.

Legal transplantation is often done in law making. The government and parliament have 2 options in making laws:

1. Adopt existing legal rules and apply in other countries that adhere to different legal systems;
2. To carry out the process of searching for legal rules in accordance with the identity of the nation and state, which are in harmony with tradition, culture, and history.

There are 4 factors that influence the entry of legal rules transplanted from one state to another:

1. Transplants can be done easily and quickly;
2. Legal experts tend to imitate legal rules that are considered good and right;
3. Colonialism;
4. Globalization.

The factor that influences the strict liability transplantation in Indonesia is globalization. According to Ningrum Natasya Sirait, globalization isn't an inevitable destiny, but a human design to integrate the economies of various state in a mechanism.

The affirmation that globalization factors affect the transplantation of the concept strict liability is based on 2 reasons:

1. Indonesia supports global environmental agreements, starting with the Stockholm Declaration 1972. As a follow-up, the government and parliament issued Law Number 4 Year 1982 Concerning Basic Provisions for Environmental Management;
2. Part considering the point e Law Number 32 Year 2009, which considers: “That the global warming is increasing to result a climate change that is exacerbating the environmental degradation therefore it's necessary to conduct the protection and management of environment.

In Common Law, in the opinion of Morton J. Horwitz, the original standard of tort liability wasn't fault, but strict liability. In the Common Law tort, strict liability is imposed on the person causing the loss. Mens rea isn't important, the main element is the cause. Thus people are liability for losses that arise without the need to prove a fault element. For that, it's not necessary to discuss the person's action as intention or negligence.

According to L.B. Curson, strict liability is based on 3 reasons:

1. It's essential to ensure that certain regulations are needed for social welfare;
2. Proving mens rea is very difficult for offenses related to social welfare;
3. The high level of social danger caused by the action.

Strict liability develops in practice to overcome the limitations of liability based on fault. Liability based on fault provides evidence to the plaintiff, so that it's often difficult for the plaintiff to prove the existence of tort.

Strict liability originates from the Rylands vs. Fletcher case in England in 1868, which was then transplanted into regulations of various states, and in various international conventions. In the United States of America (USA), it has progressed in 2 directions:

1. Adoption by court;
2. Adoption by regulations.

Adoption by regulations has 3 characteristics:

1. Channelling of liability;
2. Financial caps/ceiling;
3. Financial responsibility and environmental fund.

The strict liability transplantation to Indonesia, needs to be adjusted and applied according to it's origin, so as not to cause legal confusion. For this reason, legal reform is needed regarding strict liability under Civil Law, which must also include renewal of thinking, behavior, and lifestyle in accordance with the development of law and society globally.

These differences can only be overcome through legal reform. This is confirmed based on the opinion of Nathan Roscoe Pound, and Mochtar Kusumaatmadja, that law as a tool of social engineering.

The 13 concepts of corporate strict liability due to plantation land fires which pose a serious threat, are reviewed based on the concept of strict liability in Common Law (England and USA), it's confirmed that the concept hasn't been implemented according to it's origin. This is emphasized because the concept isn't followed by a restriction regarding the reason for excuses and compensation.

In England, based on Rylands vs. Fletcher case, the concept of strict liability has 3 restriction regarding the reasons for excuses:

1. The plaintiff's own fault;
2. Overmach;
3. Natural disasters.

In Law Number 32 Year 2009, there is no provision regarding restrictions on strict liability limits regarding excuses, so it's different from the previous law. In Law Number 23 Year 1997 Concerning Environmental Management (Law Number 23 Year 1997), based on the provisions of Article 35 subsection (2), there are 3 strict liability restrictions regarding excuses:

1. Natural disasters or war;
2. Third party fault;
3. Overmach.

In accordance with Michael Faure's opinion, restrictions will interfere with the effectiveness of strict liability to encourage corporate precautionary activities to carry out business activities (realizing the precautionary principle) as stipulated in Article 2 point f of Law Number 32 Year 2009. However, it's reviewed from it's origin (England), strict liability is followed by a limitation regarding the reasons for excuses.

Therefore, it's hoped that in terms of legal reform, the government and parliament will renew Law Number 32 Year 2009, by adding a legal provision regarding excuse as a restriction of strict liability, namely because force majeure is in the form of natural disasters or war, which cause circumstances.

In the USA, strict liability is accompanied by restrictions regarding compensation. This is of course different from the concept of strict liability in Indonesia, which isn't followed by restrictions on compensation.

In Indonesia, based on the provisions of Article 4 subsection (1) of Regulation the Minister of Environment Number 7 Year 2014, compensation based on the results of calculations carried out by expert in the scope of pollution/damage and/or environmental economic assessment, which is based on the Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013, can be used as a reference for judges to calculate the amount environmental loss.

Without restrictions regarding compensation, the determination shall be based on the judge's discretion. This can create a judge's subjectivity in deciding the amount of compensation for environmental losses that must be paid by the corporation.

Therefore, it's hoped that in terms of legal reform, the government and parliament will renew Law Number 32 Year 2009, by adding a legal provision regarding restrictions compensation. Through the renewal of Law Number 32 Year 2009 with the addition of legal provisions regarding the reasons for excuses and compensation, it will be able to accommodate fair equality, which John Borden Rawls namely "justice as fairness".

Apart from transplanting strict liability which isn't in accordance with it's origin, it's also necessary to carry out legal reform regarding 2 issues:

1. Legal provisions against corporation that are unable paying compensation;
2. Legal provisions against corporation that not obey with court decisions.

Regarding legal provisions against corporation that are unable paying compensation, Law Number 32 Year 2009 hasn't been determined yet. Therefore, it's hoped that in terms of legal reform, the government and parliament will renew Law Number 32 Year 2009, by adding a legal provision against corporation that are unable paying compensation. Example, by making payments in instalments to the state treasury, for the remaining unpaid compensation, which based on a contract.

Regarding legal provisions against corporation that not obey with court decisions, in the Penal Code, Law Number 32 Year 2009, and Law Number 48 Year 2009 Concerning Judicial Power (Law Number 48 Year 2009), hasn't been determined. Therefore, it's hoped that in terms of legal reform, the government and parliament will renew Penal Code, Law Number 32 Year 2009, and Law Number 48 Year 2009, by adding legal provisions in the form of penal sanctions against corporations that don't obey with court decisions, without eliminating civil liability. Thus, legal reform can foster corporate legal compliance with court decisions.

Based on the explanation, it's emphasized that there are 4 weaknesses in the concept of corporate strict liability because plantation land fires cause serious threats:

1. Strict liability isn't followed by restrictions on reasons of excuses;
2. Strict liability isn't followed by restrictions on regarding compensation;
3. There is no legal provisions against corporation that are unable paying compensation;

There is no legal provisions in the form of penal sanctions (without eliminating civil liability) for corporations that not obey with court decisions.

CONCLUSION

The concept of corporate strict liability because plantation land fires that cause serious threats include 13 legal provisions, of which 4 still have weaknesses.

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