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Criminal Liability of Corporate Shareholders in Environmental Crimes

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ABSTRACT: This research aims to analyze the criminal liability of shareholders and corporations under positive law in Indonesia, particularly in the context of environmental crimes. The focus of the study is on the legal responsibilities that can be imposed on individuals and entities—namely shareholders and corporations—for actions that violate the law or constitute crimes. This analysis is conducted based on the existing legal framework in Indonesia, including statutory provisions governing the criminal liability of corporate shareholders, especially Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH), Supreme Court Regulation No. 13 of 2016, and Law No. 1 of 2023 on the Criminal Code. Furthermore, this research examines the doctrine of piercing the corporate veil in the enforcement of laws against shareholders, particularly concerning environmental cases. The goal is to gain a deeper understanding of concepts that can protect justice and prevent abuses within corporate structures by ensuring that individuals behind corporations can be held accountable if they act beyond legal boundaries. The analysis highlights situations in which corporate actions impact the environment, and where shareholders may be liable for violations of environmental law. This study employs a normative approach by identifying criminal liability towards individuals/shareholders behind corporations in cases of environmental damage, as seen in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst and the forest and land fire case in the Pelalawan District Court Decision No. 349/Pid.B/LH/2019/PN Plw, which serves as examples of recurring land and forest fires in company concession areas. The findings indicate that the doctrine of piercing the corporate veil has been potentially applied in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst, suggesting that the potential for shareholders to be criminally charged for environmental crimes may be based on Supreme Court Regulation No. 13 of 2016 under the category of "every person." This research is expected to contribute to the development of environmental law in Indonesia and strengthen the principle of sustainable corporate responsibility.

KEYWORDS: criminal liability, shareholders, environment.

I. INTRODUCTION

The law applied in Indonesia based on the principle of concordation, in principle follows the continental legal system or civil law.[1] Provisions on the types of criminal offenses and their sanctions are contained in the Criminal Code (KUHP) / Law No. 1 of 1946. The legal subjects recognized by the Criminal Code are only humans/persons and corporations are not recognized, Article 59 of the Criminal Code reads:

"*In cases where by reason of a criminal offense being determined against the management board, members of the management board or commissioners, the management board, members of the management board or commissioners are found not to have participated in the commission of the criminal offense*".

The subject of criminal acts in the form of corporations needs to be organized in line with the rapid growth of corporations from simple communities that were initially run by individuals alone and then increased to business activities that require cooperation with other parties in order to gather more capital and better skills and expertise so that a group of people (business entity) is formed. A corporation according to Satjipto Rahardjo's view is an entity created by law in the form of a corpus, namely its physical structure and animus elements that make the body have a personality, so that the legal entity is a legal creation, except for its creation, its death is also determined by law.[2]

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[1] Bambang Waluyo, 2016, *Penegakan Hukum di Indonesia*, Jakarta : Sinar Grafika, hlm. 270

[2] Alvi Syahrin, Martono Anggusti dan Abdul Aziz Alsa, 2019, *Ketentuan Pidana Korporasi Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, Jakarta : Kencana, hlm. 9

Criminal Liability of Corporate Shareholders in Environmental Crimes

Corporations often cause environmental pollution, illegal mining, forest burning and other crimes. Unsustainable corporate activities cause environmental damage in the form of air, water, soil and ecosystem pollution. The emergence of corporate crime cannot be separated from the growth of the corporation itself.[3]

Corporate actions that cause environmental damage are found in Law No. 32 of 2009 concerning Environmental Protection and Management (UU PPLH), then the provisions of Article 116 of the UU PPLH show the liability of business entities (corporations) and who is responsible. Further provisions regarding business entities are listed in Article 118. The point of the provisions of Article 116 is that the criminal offense in Article 116 paragraph (1) letter a is sanctioned to business entities represented by authorized management, both inside and outside the court, while in Article 118 functional actors include business entities and legal entities. Criminal prosecution is directed at the leaders of business entities and legal entities because they are responsible for criminal acts committed by these entities. Sanctions are imposed on those who have authority over physical actors. This includes actions such as approving, allowing, or not exercising sufficient supervision, as well as policies that enable criminal acts to occur.

Criminal liability arrangements for corporations are also issued by law enforcers such as the Regulation of the Attorney General of the Republic of Indonesia (PERJA) No. Per-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects then there is also a Supreme Court Regulation (PERMA) Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations with the subject of the offense is the corporation or management, or Corporation and Management.[4] The presence of the PERJA and PERMA is an affirmation of legal certainty for corporate crimes.

There are corporations that commit acts of forest and land burning as data on the prosecution of criminal acts of forest and land burning by Riau Police in 71 cases of forest burning with a coverage area of 5906 hectares in 2015 and 18 cases were committed by corporations.[5] Wahana Lingkungan Hidup revealed that there are many companies that burn plantations with a total of 308 companies with details in Central Kalimantan with a total of 181 companies, with 21 companies in Jambi, 15 companies in Riau, 68 companies in South Sumatra, and 31 companies in West Kalimantan. Furthermore, there are 71 companies involved in burning in industrial forest plantation areas, with details of 12 companies located in Central Kalimantan, 14 companies in West Kalimantan, 14 companies in Riau, 25 companies in South Sumatra, and 6 companies in Jambi and 58 companies that burn natural forests in Central Kalimantan.[6]

From 2015 to 2019, forest and land fires (henceforth referred to as karhutla) cases are being prosecuted by criminal procedures against 58 companies for claims related to forest and land fires. Data from the National Disaster Management Agency (BNPB) shows that 99% of forest and land fires are caused by human activities, while the remaining 1% are caused by nature. It is believed that land displacement to increase business profits is the main driver of forest and land burning, as it lowers operating costs and then the profits are given to shareholders as dividends.[7]

Karhutla is caused by many corporate activities in the forestry and plantation sectors by deliberately setting forest fires for oil palm plantations, based on the analysis of Belinda Margono from the Directorate of Greenhouse Gas Inventory and Monitoring Reporting of KLHK, the worst fire area in 2015 reached 2,640,049 hectares where the burned area was dry peatlands in South Sumatra, Kalimantan, Riau, Jambi while for mineral soils the most burned areas were Papua, South Kalimantan and West Kalimantan.[8]

Satellite imagery and company concession maps can be used to identify which companies experienced persistent fires on concession land between 2015 and 2020. Based on August 2023 data, there are five companies with the most hotspots that experienced recurrent fires on concession land from 2015-2020, namely PT SUM with 7,237,309 fires, PT MKK with 7,032,622 fires, PT BABL with 2,083,613 fires, PT SIN with 3,115,342 fires, and PT PS which recorded 904,144 fires.[9]

The causes of the fires are cited by Walhi as oil palm plantations by way of land clearing, the development of the timber industry without simultaneously establishing plantation forests, and the provision of various opportunities to entrepreneurs to convert land into massive monoculture plantations (e.g. for oil palm and timber) as part of the land clearing process for these types

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[3] M. Arief Amrullah, *Kejahatan Korporasi The Hunt For Mega Profits and the Attack on Democracy*, Malang : Bayumedia Publishing, hlm. 49

[4] Bambang Waluyo, 2023, *Hukum Pidana dan Peradilan Pidana*., Jakarta : LPPM Press UPN Veteran Jakarta

[5] Ari Yusuf Amir, 2020, *Pidana Untuk Pemegang Saham Korporasi*, Yogyakarta : Arruz Media, hlm. 42

[6] *Ibid.*

[7] Bisakah Pemegang Saham Korporasi Dijatuhi Sanksi Pidana?, https://www.uii.ac.id/bisakah-pemegang-saham-korporasi-dijatuhi-sanksi-pidana, diakses pada 12 Maret 2024

[8] Bayu Haitia, Hartiwiningsih, 2019, *Penerapan Asas Strict Liability Dalam Tindak Pidana Kebakaran Hutan dan Lahan Yang Dilakukan oleh Korporasi (Studi Putusan Nomor 186/PID.SUS/2015/PT PBR)*. Jurnal Recidive Volume 8 No. 2, hlm. 112

[9] Wawancara Reporter Riyan Setiyawan Tirto.Id dengan Header Wansus Abil Salsabila, Campaigner Pantau Gambut tanggal 18 September 2023.

of projects. In addition, regulations relating to burning and land conversion are not enforced quickly enough.[10] Direct evidence of corporate practices aimed at committing illegal acts can be seen from the frequent forest fires that take place within a company concession. Forest burning is a more direct, quick and affordable method of land clearing than land clearing without burning (PLTB) which is more time-consuming and costly. This procedure falls under the category of corporate policy because corporate crimes usually involve corporate structures, so shareholders may participate and then influence the actions of management or leadership.[11]

The founder of a corporation establishes a company, which then issues shares to shareholders. Shareholders exercise power over the company by voting in accordance with their holdings at the General Meeting of Shareholders (hereinafter referred to as GMS).[12] Law No. 40 of 2007 on Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law) defines GMS as a corporate organ that has authority not granted to the board of directors or the board of commissioners within the limits specified in this Law and/or the articles of association.[13]

Since the birth of the Limited Liability Company Law, the principle of shareholder liability limited to the shares owned by him has become not absolute through the adoption of the Piercing Corporate Veil doctrine as recorded in Article 3 paragraph (2) of the Limited Liability Company Law. The liability of shareholders, which was previously limited to the shares owned by them, becomes unlimited if it can be proven that this has indeed occurred in the form of a mixture of the shareholder's personal assets with the company's assets, which indicates that the shareholder takes part in personal liability in connection with the company's losses is no longer limited to the shares owned in the company, in accordance with the applicable principle of liability that is used as a legal entity or corporation.[14]

Initially, personal liability of shareholders was not recognized. However, with the provisions in the Limited Liability Company Law, shareholders are not personally liable for the company's losses in excess of the number of shares owned. This becomes invalid if firstly, the requirements for the company as a legal entity have not been fulfilled, secondly, the shareholder concerned, either directly or indirectly, in bad faith utilizes the company for personal gain.

Shareholders have the right to elect directors to lead the company according to the Limited Liability Company Law. In addition, shareholders have the right to request commissioners and directors to provide advice and supervision. They also have the right to hold commissioners and directors responsible for the management of their company. However, shareholders often act as directors of the company, overseeing its operations on a daily basis.

Sutan Remi Sjahdeini explained the financial losses incurred by the actions of the bank's previous controlling shareholders. He pointed out that in the GMS, these shareholders elected people to serve as commissioners and board members, who essentially acted as pawns for other shareholders and carried out their directives.[15] An example is the case of the defendant SD, a shareholder who was held criminally responsible for his actions towards environmental damage through corruption and money laundering. SD is a shareholder and owner of D Group (DP Group) palm oil plantation companies in Jakarta, Bekasi, Riau, Jambi, and West Kalimantan. These companies conduct unlawful oil palm plantation activities, which cause environmental pollution, forest destruction, and community land tenure. Surya Darmadi applied to H. RTR, the Regent of Indragiri Hulu from 2004 to 2022, for approval to clear the proposed land in the Forest Estate in the Indragiri Hulu region of Riau, even though the land was included in the forest estate.

In Riau, precisely in Indragiri Hulu Regency, defendant SD ran a plantation business in the forest area through companies such as PT BBU, PT PAL, PT KAT, PT PS, and PT SS from 2004 to 2022. As a result, old forest areas have been turned into oil palm plantations, resulting in damage to mineral soil and the environment, and no more original natural forest trees.

The defendant SD with his shares has placed his family as directors and commissioners. As a result, the GMS was never held because 99% of SD's shares and 0.001% of his sister. The directors appointed by SD in several companies are only completeness of company organs to fulfill state regulatory requirements. This case has been tried at the Central Jakarta District Court, the panel of judges ruled that[16] SD was found guilty of joint corruption and money laundering and SD was sentenced to 15 (fifteen) years

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[10] Ari Yusuf Amir, Pidana Untuk Pemegang Saham Korporasi. *Op.Cit*, hlm. 43

[11] Afif Juniar, 2021, *Mencari Bentuk Pemidanaan Terhadap Pemegang Saham Korporasi Dalam Tindak Pidana Lingkungan Hidup*, Jurnal Pakuan Law Review, Volume 07 No. 02, hlm. 109

[12] Ari Yusuf Amir, *Pidana Untuk Pemegang Saham Korporasi*, *Op. Cit*, hlm. 46

[13] *Ibid*, hlm. 47

[14] Gideon Paskha Wardhana, 2021, *Pertanggungjawaban Pemegang Saham Perseroan Terbatas Melalui Indikator Alter Ego Dalam Penerapan Doktrin PCV di Indonesia*, Jurnal Refleksi Hukum Universitas Kristen Satya Wacana Volume 6 No. 1, hlm.20-21.

[15] Rio Fransiscus Girsang, *et al.*, 2024, *Pertanggungjawaban Pidana Pemegang Saham pada Tindak Pidana Korporasi dalam Undang Undang Nomor 1 Tahun 2023 tentang Kitab Undang Undang Hukum Pidana (KUHP)*, Jurnal Ilmu Hukum Humaniora dan Politik (JIHPP) Volume 4 No. 5, hlm. 1549

[16] Putusan Pengadilan Negeri Jakarta Pusat Nomor : 62/Pid.Sus-TPK/2022/PN.Jkt.Pst tanggal 23 Februari 2023, hlm. 1566

imprisonment, a fine of Rp1,000,000,000, - (one billion rupiah) if the fine is not paid the defendant SD will serve 6 (six) months imprisonment, and the defendant SD was also sentenced to pay compensation of Rp2,238,274,248. 234, - (two trillion two hundred thirty-eight billion two hundred seventy-four million two hundred forty-eight thousand two hundred thirty-four rupiah), the judge also calculated economic losses of Rp39,751,177,520,000, - (thirty-nine trillion seven hundred fifty-one billion one hundred seventy-seven five hundred twenty thousand rupiah), as decided in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst dated February 23, 2023. The Panel of Judges at the Central Jakarta District Court did find the defendant SD guilty of corruption and money laundering, but there was a discussion of the criminal liability of corporate shareholders for environmental damage in their consideration:[17]

"*Considering, that the enforcement of violations of environmental law, Article 88 of Law No. 32 of 2009, concerning Environmental Protection and Management Jo Article 49 of Law No. 41 of 1999 concerning Forestry, the punishment adheres to the Strict Liability system, if there is environmental damage due to the activities of the company in carrying out its business, the permit holder is absolutely responsible (Absolute Liability), for environmental damage, forest damage even though initially there was no malicious intent on his part (mens rea) in accordance with the opinion of Dr. Andri Wibisono, S.H. whose opinion was taken over into the opinion of the Panel.*"

The Panel of Judges also mentioned the Job Creation Law in its consideration as follows:[18]

"*The defendant's oil palm plantation business through DP Group (D Group) caused environmental damage and forest damage that is not covered by the Job Creation Law No. 11 of 2020, so that environmental damage and forest damage are resolved by Law No. 32 of 2009 Article 88, Law No. 41 of 1999 concerning Forestry Article 49, together with the application of the Law on Corruption charged by the Public Prosecutor which the Panel has considered and found proven.*"

Shareholders may be criminally liable in the case of the defendant SD, owner and shareholder of the palm oil company DP Group (D Group). The case involved acts of pollution and environmental destruction, such as forest fires that occurred on the premises of SD's company. The company did not have a principle forest management license and did not conduct an environmental impact assessment. SD worked with the Regent of Indragiri Hulu to obtain a faster forest management permit.

There is a statement from Roeslan Saleh specifically for the criminal liability of legal entities, the principle of fault does not apply absolutely. In some countries, for certain criminal offenses, such as environmental crimes, there are doctrines that exclude the general requirement of fault, namely strict liability and vicarious liability.[19]

The imposition of criminal liability of corporations and shareholders is later regulated in the Law of the Republic of Indonesia No. 1 of 2023 concerning the Criminal Code. There are three roles of shareholders who can be held criminally liable, namely as commanders, controllers, and beneficial owners of the corporation.[20]

The author wants to reveal the conditions under which corporate shareholders can be held criminally liable. The previous study by Afif Juniar discussed how the legal structure and enforcement of sanctions against corporate shareholders in environmental crimes. The results show that law enforcement against environmental crimes committed by corporations must be expanded, and the doctrine of alter ego and piercing the corporate veil must be applied more broadly in the PPLH Law or other sectoral laws relating to the environment to provide better enforcement.[21] The author agrees with the results of Afif Juniar's research, the research conducted by the author this time by analyzing cases involving Corporate Shareholders associated with the environment in order to provide a clear picture of the system in the corporation does not rule out the possibility of the owner of capital or shareholders having a central role when the corporation is involved in a criminal offense and in the example of this case the shareholder is subject to punishment.

Seeing the frequency of forest and land fire cases that often occur repeatedly and the case of the defendant SD, the author formulates the problem, namely how the potential criminal liability of corporate shareholders (Closed Limited Liability Company) in cases of environmental crimes committed by corporations (Closed Limited Liability Company) in Indonesia. With the aim of research to analyze the criminal liability of corporate shareholders, especially within the scope of a Closed Limited Liability Company.

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[17] Putusan Pengadilan Negeri Jakarta Pusat Nomor 62/Pid.Sus-TPK/2022/PN.Jkt.Pst tanggal 23 Februari 2023, hlm. 1553

[18] Putusan Pengadilan Negeri Jakarta Pusat Nomor 62/Pid.Sus-TPK/2022/PN.Jkt.Pst tanggal 23 Februari 2023, hlm. 1554

[19] Heffinur, 2014, *Pertanggungjawaban Pidana Pemegang Saham dan Direksi Terhadap Korporasi Yang Dipidanakan*, Jurnal Refleksi Hukum, Volume 8 No. 2, hlm. 139

[20] Rio Fransiscus Girsang, *et al.*, *Pertanggungjawaban Pidana Pemegang Saham pada Tindak Pidana Korporasi dalam Undang Undang Nomor 1 Tahun 2023 tentang Kitab Undang Undang Hukum Pidana*, Jurnal Ilmu Hukum, Humaniora dan Politik (JIHPP), Vo. 4 No. 5, hlm.1548

[21] Afif Juniar, *Op.Cit.*, hlm.128-129

II. RESEARCH METHODS

Normative legal research is most suitable for the author's research title. The method or method is by conducting research on existing library materials.[22] Literature sources or secondary data consist of primary legal sources, secondary legal materials, and tertiary legal materials. The statutory approach (statue approach) as a research approach. The study of legislation related to the problem to be studied is then systematically assembled, analyzed and conclusions are drawn related to the problem under study. In addition, there is also a case approach to make light of the events observed in the research. The normative juridical research type intends to study legal methods, namely by studying, examining, state regulations, concepts, and theories related to the writing of this thesis.[23]

III.RESULTS AND DISCUSSION

Criminal liability of corporate shareholders can be applied in cases of environmental crimes committed by corporations/Closed Limited Liability Companies in Indonesia.

Corporations can commit acts that damage the environment or ecosystem, one example of corporate activities that result in environmental damage includes forest and land fires (hereinafter referred to as forest and land fires), the presence of hotspots that cause forest and land fires often recurs in company concession areas.[24] An analysis by the Indonesian Forum for the Environment (WALHI) shows that a total of 7,857 hotspots were found throughout June 2023. Of these hotspots, 2,080 were located in corporate areas of natural forest-timber forest product utilization business licenses (IUPHHK-HA) and industrial plantation-timber forest product utilization business licenses (IUPHHK-HTI). In addition, WALHI stated that forest and land fires still occurred in several concession areas in Riau, Jambi, South Sumatra, West Kalimantan and Central Kalimantan. Of the five regions, 15 hotspots were found in Riau, 54 hotspots in Jambi, 7 hotspots in South Sumatra, 9 hotspots in West Kalimantan, and 8 hotspots in Central Kalimantan.[25]

WALHI also revealed that from January to September 2023, there were 184,223 hotspots in Indonesia with a total burned area of 642,099.73 hectares. Most of these hotspots were in the concessions of 194 companies and at least 38 of them were also involved in forest and land fires in the 2015 to 2020 period.[26] Uli Arta Siagian, Walhi National's Forest and Plantation Campaign Manager, stated that forest and land fires (karhutla) are a form of extraordinary crime. He emphasized that the actions of the President of the Republic of Indonesia and his ministers should not only be reactive like firefighters who only act when the fire is already burning. If the government does not have the courage to enforce the law by evaluating all licenses, revoking the licenses of harmful companies, imposing criminal sanctions, implementing court decisions, and blacklisting companies that repeatedly burn land, then in the next 10 years we will still face the problem of forest and land fires. He added that it would not be an exaggeration to say that the management of this country has committed extraordinary crimes against its people.[27]

Bayu Herinata, Director of Walhi Central Kalimantan, emphasized that law enforcement must be carried out firmly and maximally against the actors who most contribute and are responsible for the extent of forest and land fires (karhutla) in Central Kalimantan, especially corporations engaged in oil palm and forest plantations that operate in important ecosystem areas such as the Peat Hydrological Unit (KHG). This law enforcement is an important step that must be taken by the government, especially law enforcement officials, in preventing and handling forest and land fires. Field findings show that there are strong indications of recurrent forest and land fires in concession areas, so an evaluation of licensing and administrative sanctions as well as strict action in the form of license revocation is needed. Furthermore, strict law enforcement can also serve as a warning to corporations to be more serious in managing their concession areas, especially in efforts to prevent and handle forest and land fires in and around their license areas.[28]

Fandi, Regional Executive of Walhi Riau, said that despite fire suppression efforts including weather modification, fires continue to occur in company concessions that are poorly managed and have minimal prevention facilities and infrastructure. He emphasized that efforts to tackle fires have not been maximized and that there is a need to revise permits for problematic companies.[29]

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[22] Soerjono Soekanto dan Sri Mamudji, 2009, *Penelitian Hukum Normatif Suatu Tinjauan Singkat, cet XI*, Jakarta: PT Raja Grafindo Persada, hlm. 13-14.

[23] Zainuddin Ali, 2011, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, hlm.24

[24] Pemerintah Dituntut Lebih Progresif Menangani Korporasi Penyebab Karhutla - Kompas.id, diakses tanggal 18 Desember 2024 pukul 5.59 WIB

[25] *Ibid.*

[26] WALHI Laporkan 194 Perusahaan yang Terduga Terbakar, https://www.walhi.or.id/, diakses tanggal 02 April 2025 pukul 11.21 WIB

[27] *Ibid.*

[28] *Ibid.*

[29] *Ibid.*

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The data available from WALHI shows the lack of effective preventive measures to prevent forest and land fires, the lack of investment in monitoring technology, employee training, and the implementation of sustainable land management practices. Corporations should have a moral and legal responsibility to protect the environment around their concessions so that forest and land fires do not recur.

Companies that manage land concessions and are involved in forest fires have a huge legal liability. They can be charged under environmental laws and regulations on land burning. If it is proven that the fires were caused by negligence in land management, the company may face administrative sanctions.

Administrative Sanctions are a set of administrative law tools in the nature of imposing obligations / orders and / or withdrawing state administrative decisions imposed on the person in charge of business and / or activities on the basis of non-compliance with laws and regulations in the field of environmental protection and management and Business Licensing or Government Approval.[30]

Administrative sanctions in the form of written warnings, government coercion, freezing of environmental permits or revocation of environmental permits as written in Article 76 paragraph (2) of the Law of the Republic of Indonesia No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law) then the PPLH Law was updated by Law of the Republic of Indonesia No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law in Article 76 paragraph (2) which regulates the provisions on procedures for imposing administrative sanctions are regulated in Government Regulations. Government Regulation of the Republic of Indonesia No.22 of 2021 concerning the Implementation of Environmental Protection and Management also regulates administrative fines. In addition, there is the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 14 of 2024 concerning the Implementation of Supervision and Administrative Sanctions in the Environmental Sector which confirms Article 33 regarding administrative sanctions including written warnings, government coercion, administrative fines, suspension of business licenses and revocation of business licenses. Administrative sanctions do not exempt the person in charge of the business and/or activity from recovery and criminal responsibility.

On the other hand, if the fires occur due to intentional actions, for example to expand the concession area or due to company negligence, the company may be subject to criminal sanctions, which can include imprisonment for the individuals responsible and fines. Criminal provisions are stipulated in Articles 97 to 120 of the Environmental Law. In addition, the Environmental Law clearly stipulates that the heads of business entities can be held criminally liable if they are found to have caused environmental pollution or damage. Article 116 of the Environmental Law sets out the criteria for determining the responsibility of business entities as well as the parties who must be held accountable for their actions, namely a. the business entity, or the person who gave the order to commit the criminal offense or b. the person who acted as the leader of the activities in the criminal offense. Article 117 of the PPLH Law further explains that if criminal charges are filed against the order giver or leader of the criminal offense as referred to in Article 116 paragraph (1) letter b, the punishment imposed in the form of imprisonment and fines shall be increased by one third. Article 118 of the PPLH Law states that related to criminal acts in Article 116 paragraph (1) letter a, criminal sanctions are given to business entities represented by administrators who are authorized to represent inside and outside the court in accordance with statutory regulations as functional actors. Based on the provisions of Article 116 paragraph (1) letter b in relation to Article 118, the administrators of business entities automatically take criminal responsibility related to their duties. This facilitates the prosecution process, as there is no need to prove the specific role of each administrator in criminal events related to the environment.[31] Article 118 of the Environment Law in the explanation confirms that criminal charges are imposed on the leaders of business entities and legal entities because the criminal acts of business entities and legal entities are functional crimes, so the punishment and sanctions are given to those who have authority over the physical perpetrators and accept the actions of the physical perpetrators such as approving, allowing or not adequately supervising the physical actions or allowing the criminal acts to occur.

Article 119 of the Environmental Law regulates additional penalties that can be imposed on business entities including: "a. Forfeiture of profits obtained from the criminal offense; b. Closure of all or part of the place of business and or activities; c. Reparation of the consequences of the criminal offense; d. Obligation to do what is neglected without right; and or e. Placement of the company under guardianship for a maximum of 3 (three) years."

Additional punishment as explained in Article 119 of the PPLH Law can be used by law enforcement officials to deter corporations that commit environmental crimes because in addition to the main punishment, sanctions in additional punishment should be able to make corporations rethink in committing or occurring environmental crimes. Corporations are expected to be more careful and consider the environmental impact of their activities. The provisions in Article 119 of the PPLH Law ensure that

[30] Pasal 1 angka 99 Peraturan Pemerintah R.I. No. 22 Tahun 2021 tentang Penyelenggaran Perlindungan dan Pengelolaan Lingkungan Hidup

[31] Irwan Triadi, 2024, *Hukum Lingkungan Pertemuan Ke-13 Penegakan Hukum Lingkungan (Presentasi Power Point Slide 40),* Fakultas Hukum Universitas Pembangunan "Veteran" Jakarta.

corporations are responsible for their actions with the hope that the application of these sanctions will not only punish but also encourage positive behavioral changes among business actors.

On top of criminal sanctions, companies can also be sued civilly by parties who feel harmed by the fire. Environmental disputes can be resolved either through court or out of court, in accordance with voluntary agreements between the parties involved.

In this thesis, the author discusses the important role of corporations, especially shareholders who have great power in making strategic corporate decisions. This discussion is very relevant considering the amount of environmental damage that is often caused by corporate activities, negatively affecting communities and ecosystems as WALHI's data on forest and land fires in company concession areas. The author also narrows the discussion of corporations related to Limited Liability Companies (hereinafter referred to as PT) only as examples of forest and land fires that occur in several PTs from year to year.

In general, a PT is a legal entity established with capital accumulated from various shares, where each shareholder has a share in accordance with the number of shares owned by each investor.[32] In a PT, the GMS or General Meeting of Shareholders will determine the supreme power of the PT company, each shareholder has responsibility for the company as much as the invested share capital, shareholders will get share profits in the form of dividends and directors as the main leaders of the PT company. [33]

The discussion about PT is very complex because the types of PT consist of Open PT, Closed PT, Individual PT, Foreign PT.[34] Law No. 40 of 2007 on Limited Liability Companies (UUPT) classifies PT companies into 3 (three) types, namely Closed Limited Liability Companies (PT), Public Limited Liability Companies (PT) and Public Limited Liability Companies (PT) (Tbk).[35] The characteristic of a closed company is that the shareholders only come from certain circles or people who have known each other before, such as in a family company. Furthermore, a Public Company as stated in Article 1 paragraph 8 of the Company Law is a type of company that has met the criteria for the number of shareholders and paid-up capital in accordance with the provisions of its regulations. Meanwhile, Law Number 8 of 1995 concerning Capital Markets or UUPM Article 1 paragraph 22 states that a company is said to be a public company if the shares are owned by at least 300 (three hundred) people with a minimum paid-up capital of Rp3,000,000,- (three million rupiah). Public PT is mentioned in Article 1 paragraph 7 of the Company Law that Public PT conducts a public offering of shares. Not only that, this type of PT must also be able to fulfill all the requirements needed for a Public PT, by making an offer on the Stock Exchange, aka selling shares to the public.[36] In this study, researchers only focus on closed PTs in the discussion of this article.

As stated above, the General Meeting of Shareholders (GMS) will determine the highest power of the company, so the question arises to what extent the shareholders can be held criminally liable for corporate actions that damage or harm the environment. Before leading to corporate shareholders (PT), the author will first briefly review the history of corporations.

1. History of the Corporation

Initially, Indonesian positive criminal law did not regulate corporations as subjects of criminal law. Law No. 1 of 1946 (hereinafter referred to as the Criminal Code) only determines that the subject of criminal law is a private person. At that time, the formation of the Criminal Code was still influenced by doctrines or views that adhered to the adage that legal entities cannot be convicted (University of Delinguere Nonprotest) as the author has discussed in the previous chapter (Chapter II).

The adage that legal entities cannot be convicted (Universitas Delinguere Nonprotest) originated in 1602 with the Verenigde Oost Indiche Compagnie (VOC) Corporation, which was the first multinational corporation that came to trade and monopolize spice commodities. The VOC committed many criminal offenses in the Dutch East Indies (Indonesia) at that time, but with the existence of the University Delinguere Nonprotest or Societas Delinguere Non Potest adage, the VOC could not be convicted and the VOC's corporate liability was limited to civil liability later when the VOC went bankrupt and then the VOC's control over the colony was taken over by the Dutch East Indies.[37] The doctrine of universities delinguere nonpotest or societies delinguere nonpotest then colored the Dutch W.V.S 1886 and was adopted in Article 59 of the Indonesian Criminal Code regarding legal entities cannot commit criminal acts.

The subject of criminal law in the Criminal Code is only a person (natuurlijk persoon) as stipulated in Article 59 of the Criminal Code, corporations are not subjects of criminal law because corporations cannot themselves commit an act that

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[32] Ali Ummar Ritonga, 2022, *Hukum Perusahaan dan Bentuk-Bentuk Perusahaan di Indonesia*, Jakarta : Guepedia The First On-Publisher in Indonesia, hlm. 33, Diakses melalui https://play.google.com/books/reader?id=WYdlEAAAQBAJ&pg=GBS.PA1

[33] *Ibid* 38-39,

[34] *Ibid*., hlm. 39-61

[35] Abi Mulya, *Pengertian PT (Perseroan Terbatas), Jenis, dan Contohnya*, 2024, https://voffice.co.id/blog/pengertian-pt-perseroan-terbatas/#Jenis_Perusahaan_Perseroan_Terbatas, Diakses tanggal 2 April 2025 pukul 13.26 WIB

[36] *Ibid.*

[37] T. Mangaranap Sirait, 2020, *Pertanggungjawaban Korporasi Dari Masa ke Masa*, Yogyakarta : Deepublish Publisher, hlm. 6

constitutes a criminal offense, but those who commit criminal acts are corporate managers for and on behalf of the corporation and those responsible are the corporate managers themselves.

Corporations that have an increasing role in the traffic of financial and trade transactions in Indonesia then corporations are accepted as subjects of criminal law, included in the functioneel daderschap.[38] Corporations are accepted as subjects of criminal law through a long process, for example, the United States accepted corporations as subjects of criminal law since 1909 related to the case of New York Central and Hudson River R.R. vs United States.[39] In England, the recognition of corporate criminal liability began in 1842 with a case decided by an English Court judge in which a corporation was convicted of having to pay a fine for not fulfilling a statutory duty, namely in relation to the Birmingham & Gloucester Railway Co. (1842) 3 Q.B. 223.[40]

The French Criminal Code in Article 121 paragraph (2) (Act no. 2000-647 of July art 8 Official Journal) provides:[41]

"Juridical persons, with the exceptions of the State, are criminally liable for the offences commited on their account by their organs or representatives, according to distinctions set out in article 121-4 and 121-7 and in the cases provided for by statute or regulations. However, local public authorities and their associations incur criminal liability only for offences commited in the course of their activities which may be exercise through public service delegation conventions. The criminal liability of legal persons does not exclude that of the natural persons who are perpetrators of accomplices to the same act, subject to the provisions of the fourth paragraph of article 121-3."

The Dutch Legal System accepts corporations as legal subjects since the inclusion of corporate crime as an economic offense in Article 15 of the wet op de Economische Delicten on June 22, 1950.[42] In its development, Article 15 paragraph (1) Wet Economic Delicten 1950 has been amended by Law dated 23 of 1976 Stb.377 which was passed on September 1, 1976, the amendment law changed Article 51 W.v.S which originally corporations were not subjects of criminal acts to become subjects of general criminal acts.[43]

In 1951, Indonesia only explicitly declared corporations as subjects of criminal law through the Goods Hoarding Act continued in the Prosecution and Trial of Economic Crimes Act of 1955 (Law R.I. No. 17 of 1951 concerning Goods Hoarding in conjunction with Law R.I. No. 1 of 1953 concerning the Stipulation of Emergency Law on Goods Hoarding as an Act, L.N. R.I. No. 4). 1 Year 1953 on the Stipulation of the Emergency Law on Stockpiling of Goods as an Act, L.N. R.I. No. 4 has established corporations as subjects of criminal law and 4 years later followed up with Emergency Law No. 7 Year 1955 on the Investigation, Prosecution and Trial of Economic Crimes) in Article 11 paragraph (1):

"Where an act punishable under this law is committed by a legal entity, the prosecution shall be instituted and the sentence imposed either against the legal entity or against the persons referred to in paragraph (2) of this Article, or both.".

After that, a policy was developed to emphasize the regulation of criminal liability of corporations:

a. The Attorney General issued Regulation No. Per-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases with Corporate Legal Subjects, explained in the attachment of the Attorney General's Regulation regarding corporate actions that can be held accountable such as:
1) Any action based on a resolution of the board;
2) Acts or omissions of a person for the benefit of the corporation;
3) This action utilizes human resources, funds, and support or facilities owned by the corporation;
4) Acts committed by third parties at the request or order of the corporation or corporate management;
5) Actions in the course of carrying out the day-to-day activities of the corporation;
6) The corporation benefits from the acts committed;
7) Actions that are generally accepted by corporations; and
8) The corporation actually holds the proceeds of the criminal offense.[44]

b. The Supreme Court issued Regulation No. 13/2016 with the definition of criminal offenses by corporations as criminal offenses committed by persons based on employment relationships or based on other relationships, either individually or jointly acting for and on behalf of the corporation within or outside the corporate environment.[45] In imposing punishment on corporations, Perma No. 13/2016 in Article 4 determines that judges can assess the guilt of the corporation from:
1) The corporation may benefit from the criminal offense or the criminal offense is committed for the benefit of the corporation;
2) The corporation allows a criminal offense to occur; and

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[38] Widyo Pramono, *Loc.Cit.*,hlm. 145.

[39] Widyo Pramono, *Op.Cit*. hlm.146.

[40] Sutan Remy Sjahdeini, 2017, *Ajaran Pemidanaan : Tindak Pidana Korporasi & Seluk Beluknya*, Jakarta : Kencana, hlm.65

[41] *Ibid.* hlm. 65-66

[42] Widyo Pramono, *Loc.Cit*. hlm. 146

[43] Sutan Remy Sjahdeini, *Op.Cit*. hlm.66.

[44] Peraturan Jaksa Agung Republik Indonesia No. Per-028/A/JA/10/2014, Lampiran hlm. 3-4

[45] Peraturan Mahkamah Agung No. 13 Tahun 2016, Pasal 3

3) The corporation did not take the necessary steps to take precautions, prevent greater impact and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

In the development of Indonesian law, in addition to Drt Law No. 17 of 1951 there are 60 (sixty) laws that regulate corporate liability, one of which is Law No. 32 of 2009 on Environmental Protection and Management (hereinafter referred to as PPLH Law) which is the topic of this thesis. Corporations as subjects of criminal acts are grouped:

1. The corporation is the subject of a criminal offense but the criminal liability is imposed on the members or management of the corporation.
2. Corporations are the subject of criminal acts and are expressly subject to direct criminal liability.

In terms of ius constituendum, in Law Number 1 of 2023 concerning the Criminal Code which will take effect in 2026, there is a corporate regulation in the following Article:

1. Article 45 paragraph (1) regarding the affirmation of corporation as the subject of criminal offense;
2. Article 45 paragraph (2) and Article 146 on the definition or scope of corporations;
3. Article 46 and Article 47, the definition or limitation of corporate crime;
4. Article 48 on the definition or limits of corporate criminal liability;
5. Article 49 regarding the criminal liability model of corporate criminal offenses where the category of shareholders is included in the form of commanders, controllers, and / or beneficial owners of the Corporation; and
6. Article 50 is the reason for the abolition of the corporation.

Corporations as subjects of criminal law in the PPLH Law have been recognized, but what about corporate shareholders, who often participate in corporate crimes. That the PPLH Law confirms corporations as subjects of criminal acts but does not clearly mention the formulation of criminal liability of shareholders like the Law of the Republic of Indonesia Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) as clearly stated in Article 50A:

"*Shareholders who intentionally order the Board of Commissioners, Board of Directors, or bank employees to take or not take actions that result in the bank not taking the necessary steps to ensure the bank's compliance with the provisions of this Law and the provisions of other laws and regulations applicable to banks, shall be punished with imprisonment of at least 7 (seven) years and a maximum of 15 (fifteen) years and a fine of at least Rp10,000,000,000.00 (ten billion rupiah) and a maximum of Rp200,000,000,000.00 (two hundred billion rupiah).*"[46]

In addition to the Banking Law, there is one more law that emphasizes the criminal liability of shareholders, namely Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation (hereinafter referred to as the Deposit Insurance Corporation Law) recorded in Article 94 and Article 95:

(1) "*Directors, commissioners, and/or shareholders of banks who do not fulfill the provisions as referred to in Article 9 letter a, letter b, letter e, and letter f and/or cause banks not to fulfill the provisions as referred to in Article 9 letter a, letter b, letter e, and letter f and Article 92, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 10 (ten) years, and a fine of at least Rp2,000,000,000.00 (two billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).*

(2) *Directors, commissioners, and/or shareholders of banks who cause banks not to fulfill the provisions as referred to in Article 9 letter c within a period of 12 (twelve) months from the deadline as referred to in Article 12 paragraph (2), shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 10 (ten) years, and a fine of at least Rp2,000,000,000.00 (two billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).*"
[47]

Pasal 95 ayat (1) UU Lembaga Penjamin Simpanan :

"Pemegang saham, direksi, dewan komisaris, pegawai, dan/atau pihak lain yang terkait dengan bank yang dicabut izin usahanya atau bank dalam likuidasi yang melanggar ketentuan sebagaimana dimaksud dalam Pasal 16 ayat (5) dan/atau Pasal 47 ayat (2) atau ayat (3) dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 3 (tiga) tahun, serta denda paling sedikit Rp2.000.000.000,00 (dua miliar rupiah) dan paling banyak Rp3.000.000.000,00 (tiga miliar rupiah)."[48]

2. Examples of Environmental Crime Cases Committed by Corporations (Closed PT)

The author takes one case example of a forest and land fire case that occurred in Riau which was carried out by a corporation or Closed PT, in this case PT SSS.[49] The criminal verdict against PT SSS is contained in the Pelalawan District Court Decision Number 349/Pid.B/LH/2019/PN Plw dated May 19, 2020. PT SSS is in the business of cultivating and processing oil palm on Jl.

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[46] Pasal 50A UU Perbankan

[47] Pasal 94 ayat (1) dan (2) UU Lembaga Penjamin Simpanan

[48] Pasal 95 ayat (1) UU Lembaga Penjamin Simpanan

[49] Suryani Alawiyah dan Irwan Triadi, 2024, *Sanksi Pidana Untuk Korporasi dan Pemegang Saham Korporasi Atas Tindak Pidana Lingkungan Hidup*, Aliansi : Jurnal Hukum, Pendidikan dan Sosial Humaniora Volume. 1, No.3, hlm. 75

Lintas Bono Dusun Tampoi, Pangkalan Panduk Village, Kerumutan District, Pelalawan Regency and the FFB processing office located on Jl. Lintas Timur Km. 96 RT.002/RW.004 Terantang Manuk Village, Pangkalan Kuras Sub-district, Pelalawan Regency. When PT SSS became a defendant, it was represented by its manager EEDHL as the President Director of PT SSS because PT SSS is not a human being/person who can carry out physical activities and speak in front of the court so it needs to be represented by its director. PT SSS has obtained a permit for an area of approximately 7,300 Ha, which later underwent changes, extensions, and renewals in accordance with the Decree of the Head of the Pelalawan Regency One-Stop Investment and Integrated Services Office Number KPTS.503/DPMPTSP-P3NP/2018/06, dated January 8, 2018, which granted a location permit covering an area of approximately 5,287.45 Ha. In addition, PT SSS also obtained a Plantation Business License-Budidaya (IUP-B) through Pelalawan Regent Decree Number KPTS.525.3/DISBUN/2012/638, dated December 3, 2012, for an area of approximately 5,604 Ha. PT SSS has AMDAL documents, including ANDAL, Environmental Management Plan (RKL), and Environmental Monitoring Plan (RPL), which were approved by the Pelalawan Regent through Decree Number KPTS.660/BLH/2013/638, dated September 30, 2013. In the AMDAL document, it is emphasized that the location that must be protected through environmental management and monitoring related to PT SSS activities, based on the IUP-B permit, is around 5,604 hectares and its border area. The 5,604 hectares of land for which PT SSS has been granted an IUP-B license is peatland.

On February 23, 2019 at approximately 11.00 WIB there was a land fire in the PT SSS license area in Block I-43 and the fire incident was only known at approximately 12.00 WIB by Br. Al. witness AL informed the occurrence of the fire to witness A who was assigned the task of monitoring the fire from the Fire Observation Tower who at that time was on duty alone. Witness A went to the Fire Observation Tower located around Block K-32 then witness A saw from the direction of Kuala Panduk Plantation there was a fire and thick smoke but the position of the Block where the fire occurred could not be known because the distance was very far approximately 5 (five) Km from the position of witness A at the Fire Monitoring Tower and approximately 7 (seven) Km from the PT SSS plantation office where firefighting equipment was stored. It took approximately 6 hours to reach the burnt location from the Plantation Office due to difficult and poor road access and difficult to pass by motorized vehicles. Witness A via cellphone informed the fire to witness AOH as the Acting Estate Manager as well as the Head of the Forest and Land Fire Prevention and Control Task Force. Witness AOH then at 12.30 WIB contacted witness JI as security who doubles as a member of the Fire Fighting Core Squad and witness JI who was at the market at that time because he was off, then contacted other members of the Fire Fighting Support Squad, namely witness NE, witness AR, witness AB and witness AF and they left for Kuala Panduk Post without carrying any fire extinguishers and the Fire Monitoring Officer at PT SSS doubles as a member of the Fire Fighting Squad.

From Kuala Panduk Post, because the access road was difficult to pass by motorized vehicles, witness NE, witness AR, witness AB and witness AF continued their journey on foot until they reached Block I-43, where the fire had spread to Blocks I-42, I-41, and I-40. Because Witness NE, Witness AR, Witness AB and Witness AF did not bring any fire extinguishers, they did not make any effort to extinguish the fire, but Witness JI only took photographs documenting the fire.

The Fire Fighting Team of PT SSS, namely witness EH, witness S, witness M, witness K, witness U, witness Y, witness R, witness A and witness Z, witness A never received education and training on land fire fighting which should have been organized by PT SSS periodically as stipulated in Article 14 paragraph (2) of Government Regulation Number: 4 of 2001.

The Fire Fighting Team of the Defendant PT SSS, namely witness EH, witness S, witness M, witness K, witness U, witness Y, witness R, witness A and witness Z arrived at the burned area at approximately 17.00 WIB, carrying 4 (four) units of Mini Striker, 16 (sixteen) rolls of exhaust hose, 4 (four) pieces of suction hose, 4 (four) pieces of Nozzle, 1 (one) unit of shin saw, machete, hoe and several buckets. At the location of the fire, there was no water source, so to get a water source, PT SSS Firefighters then dug holes around the fire area using a hoe so that a water source was obtained and with a very limited water source, extinguishing was carried out using the water suction machines that were brought and some others by pouring water towards the enlarged fire using several buckets.

Due to the fire that had grown, while the weather was very hot, and the wind was very strong, plus the lack of facilities and infrastructure for fire extinguishers and the untrained PT SSS Fire Brigade, the fire was very difficult to control and extinguishing efforts were only carried out until around 23.00 WIB, because the PT SSS Fire Brigade that was deployed had experienced fatigue, so that the large fire that was still ongoing and spread to other blocks tended to be left until a change of firefighters arrived the next day, Sunday, February 24, 2019.

The next day on Sunday, February 24, 2019 and the following day, the Fire Fighting Team was replaced and additional fire extinguishers were brought to the scene of the fire but the fire extinguishers owned by PT SSS were still inadequate to be able to control and extinguish the rate of fire that occurred, so that the source of the fire which originally originated from Block I-43 after spreading to burn Block I-42, I-41, and I-40 on February 23, 2019 then in the following days, the fire has spread and burned and scorched Blocks J-40, I-39, I-38, I-37, I-36, I-35, I-34, I-33, and Blocks J-33 and J-32 on the first stretch of land in the PT SSS license area and then the fire spread to the second stretch, precisely in Blocks K-40, K-39 and in Blocks L-41, L-40, L-39, and L-38.

The fires that occurred in the PT SSS license area could only be extinguished on March 29, 2019, after heavy rain fell around 17.00 WIB in the burned locations. After the fire, only ash remained from the burning that was relatively evenly distributed over the affected area.

In early February 2019, the Team from the Plantation and Livestock Service Office of Pelalawan Regency, in carrying out its supervisory duties towards plantation companies located in Pelalawan Regency, checked the supporting facilities and infrastructure and land fire control at PT SSS Plantation where the Team found a lack of Land Fire Control Support equipment based on the Regulation of the Minister of Agriculture of the Republic of Indonesia Number: 05/PERMENTAN/KB.410/1/2018 and also found several disobedience of PT SSS in protecting its plantation. Facilities and Infrastructure related to Plantation Fire Control owned by the Defendant PT SSS are inadequate and not in accordance with the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 05/PERMENTAN/KB.410/1/2018.

The fires have caused the release of greenhouse gases. During the fire in the PT SSS area located in Kuala Panduk Village, Teluk Meranti Sub-district, Pelalawan Regency, Riau Province, the greenhouse gases released consisted of 675 tons of C, 236.25 tons of CO2, 2,475 tons of CH4, 1.09 tons of NOx, 3,024 tons of NH3, 2.50 tons of O3, and 43.71 tons of CO, as well as a total of 52.5 tons of particulate matter. Based on calculations using the Seiler and Crutzen (1980) equation, the greenhouse gas emissions produced during the fire exceeded the established tolerance limits. This is in accordance with Government Regulation No. 4 of 2001 concerning Control of Environmental Damage and Pollution Associated with Forest and Land Fires, as well as Decree of the Chief Justice of the Supreme Court No. 36/KMA/SK/II/2013 concerning Guidelines for Handling Environmental Cases and Decree of the Minister of Environment No. 13 of 1995 concerning Quality Standards for Emissions from Non-Moving Sources.

An Expert Statement on Soil and Environmental Damage Due to Land Fires from the Faculty of Forestry of IPB, signed by Dr. Ir. Basuki Wasis, M.Si. on June 10, 2019, stated that there had been soil and environmental damage due to land fires in the plantation of PT Sumber Sawit Sejahtera in Kuala Panduk Village, Teluk Meranti Sub-district, Pelalawan Regency, Riau Province, covering an area of around 150 hectares. The results of field observations and analysis show that the burned land location meets the standard criteria for damage in accordance with PP No. 4 of 2001, especially in the parameters of species diversity and flora population, as well as damage to the subsidence parameter. In addition, the environmental damage analysis also confirmed that soil and environmental damage occurred because it met the standard damage criteria for the parameters of species diversity and fauna populations. The results of soil analysis at the Environmental Biotechnology Laboratory (ICBB) showed soil damage that met the standard criteria for damage based on PP No. 4 of 2001 in the parameters of pH, organic C, Nitrogen, cation exchange capacity, bulk density, and soil porosity.

As a result of the review, the Panel of Judges found that the storage place for firefighting facilities and infrastructure was located far from the burned area, the road from the storage place for firefighting equipment to the burned location was difficult to reach by vehicle and the burned area had not been planted by PT SSS, some of the land was overgrown with weeds and some still had remnants of burning, there were no canals and reservoirs and there was only 1 (one) monitoring tower that was in accordance with the standard.

The land owned by PT SSS based on the Location Permit in accordance with Pelalawan Regent Decree Number KPTS.525/PEM/2010/01, dated February 18, 2010, covers an area of approximately 7,300 Ha. This land then underwent changes, extensions, and renewals through the Decree of the Head of the Pelalawan Regency Investment and One-Stop Integrated Service Office Number KPTS.503/DPMPTSP-P3NP/2018/06, dated January 8, 2018, which granted a location permit of approximately 5,287.45 Ha. In addition, PT SSS also obtained a Plantation Business License-Budidaya (IUP-B) based on Pelalawan Regent Decree Number KPTS.525.3/DISBUN/2012/638, dated December 3, 2012, for an area of approximately 5,604 Ha. Despite having a very large location, PT SSS is not supported by adequate facilities and infrastructure to handle large fires. This is evident from the fires that occurred in 2013, 2014 and 2015 in PT SSS's plantation area, where the company was unable to conduct early detection of hot spots in the area to prevent fires.

PT SSS's non-compliance in protecting its plantation is as follows:

a. The area of IUP-B granted to PT SSS, is + 5,604 Ha;
b. PT SSS only has 2 fire fighting squads, which should be based on the IUP-B area granted, PT SSS is required to have 3 fire fighting squads, with the number of personnel for 1 squad is 15 people;
c. PT SSS has 3 Fire Watch Towers, but only 1 of them complies with the specifications with a height of 15 meters while the other 2 Fire Watch Towers do not comply with the specifications, only with a height of 6 meters each;
d. According to the IUP-B area granted, PT SSS should have 11 (eleven) Fire Watch Towers with a height of 15 meters each;
e. PT SSS only has 4 units of embung (water reservoirs) while based on the IUP-B area, the embung that must be held by PT SSS is 10 units;
f. PT SSS does not have a Work Plan for Plantation Land Opening and/or Processing (RKPPLP) document authorized by the Head of Pelalawan Plantation Office;
g. PT SSS has not conducted plantation land clearing and plantation land processing according to the rules;

Criminal Liability of Corporate Shareholders in Environmental Crimes

PT SSS has not complied with the mandate as stated in the Regulation of the Minister of Environment and Forestry Number P.32 / MenLHK / General Secretariat / Cum.1/3 / 2016 concerning Forest and Land Fire Control stated in Article 64: "Every plantation business actor is obliged to prepare infrastructure for the implementation of the main tasks and functions of the plantation fire control organization and other land in accordance with statutory provisions". For business facilities and infrastructure, plantation activities have been regulated in the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 05 / PERMENTAN / KB.410 / 1 / 2018 concerning Opening and / or Processing of Plantation Land without Burning so that fires continue to occur on PT SSS's licensing land. PT SSS did not carry out an Environmental Impact Assessment, Environmental Management Efforts, and Environmental Monitoring Efforts, including risk analysis and environmental monitoring. PT SSS was found by the Panel of Judges to be legally and convincingly guilty of committing a criminal offense "due to its negligence resulting in the exceedance of ambient air quality standards, water quality standards, or environmental damage standard criteria and not implementing Environmental Impact Assessment or Environmental Management Efforts and Environmental Monitoring Efforts, environmental risk analysis and environmental monitoring" as in the second alternative charge and cumulative charges.[50] PT SSS was sentenced to a fine of Rp 3,500,000,000 (three billion five hundred million rupiah) and imposed an additional penalty in the form of repair costs due to criminal acts amounting to Rp 38,652,262,000 (thirty-eight billion six hundred fifty-two million two hundred sixty-two thousand rupiah).[51]

Based on the above decision, the company was criminally prosecuted and found guilty of negligence. When the company commits an environmental crime then can the shareholders of the company also be criminally liable?, it is necessary to conduct an in-depth analysis to answer these problems. From the legal facts presented in the verdict, PT SSS's land area caught fire because the company failed to properly manage risks, especially the lack of proper preventive measures and non-compliance with environmental regulations. When a company decides to establish an oil palm plantation on peatland, they have a huge responsibility in managing the risk of fire. In this case, when the company was established, it should have known and realized that it would be establishing a company for palm oil management on peatland, which is flammable land. Peatlands are formed from the accumulation of half-decayed plant residues, so they have a very high organic matter content, which can even reach a depth of 4 meters. This land has an important function in the ecosystem as a regulator of water, carbon storage, and environmental protection. Peatland fires can occur when all three elements of the fire triangle - oxygen, fuel and heat source - meet. With an abundant supply of organic matter and often overgrown, peatlands are highly susceptible to fire.[52] Once a fire breaks out on peatland, fighting it becomes very difficult. When the surface of the land burns, the fire can spread to the lower layers, making the fire difficult to detect and potentially spreading to other areas through the interior of the land. While the fire may be extinguished on the surface, hotspots can still remain within the peatland due to the abundance of organic matter.[53] But the fact is that PT SSS does not have a fire early detection system, the construction of fire towers that are not in accordance with the specified rules and PT SSS should have a fire management agency including fire prevention but this has not been done by PT SSS since the beginning of the company's establishment until the fire occurred. There is a fact that there is a repetition of fires in the PT SSS area with fires in 2013, 2014 and 2015 in the PT SSS plantation area and as was the case in 2019. These repeated fires are a pattern that the author considers to be an evil pattern of companies that are not deterred by their actions. The recurring pattern of forest and land fires in this company leads to land clearing by burning. When people want to open plantation land, first by making fertile land, such as oil palm or acacia commodities, the soil must be adjusted so that it must be drained because the soil is too acidic to plant monoculture plantations. Therefore, the water is dried in an easy way by burning because later the ashes can provide nutrients to the soil, while the use of fertilizers is very expensive so to be efficient, fast and economical is to burn.[54]

In light of the recurrence of fires at PT SSS and the discovery of PT SSS's non-compliance with the early detection system for land fires and the implementation of the organization's main tasks and functions in controlling fires in plantations and other lands, it is possible that there is shareholder involvement, not just the company's managing director and operational managers. Shareholders often have influence over company policy and managerial decisions. Shareholders have the right to influence company policy through general meetings of shareholders (GMS) and their vote in the election of the board of directors, shareholders have influential power in determining the direction of the company, major shareholders have great influence over decisions relating to operations and compliance with environmental regulations. Shareholders must consider the impact of the decisions they support, so shareholder decision-making should encourage companies to comply with safety and environmental standards.

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[50] Putusan PN Pelalawan Nomor 349/Pid.B/LH/2019/PN Plw hlm. 308

[51] *Ibid*

[52] Nur Rochim, Lahan Gambut dan Kebakaran, 2019, forestation.fkt|Published, Lahan Gambut dan Kebakaran – Forestation FKT UGM, diakses 20 Desember 2024 pukul 07.04 WIB.

[53] *Ibid*

[54] Wawancara Reporter Riyan Setiyawan Tirto.Id dengan Header Wansus Abil Salsabila, Campaigner Pantau Gambut tanggal 18 September 2023

Criminal Liability of Corporate Shareholders in Environmental Crimes

To determine who is responsible among the management of a legal entity that must bear the burden of criminal liability, it is necessary to trace the AMDAL documents, permits (licenses), and the division of duties in the corporation. These documents will also show the rights and obligations of the company's management in monitoring, preventing and controlling the negative impacts of the company's activities. Through this investigation, it will be revealed whether environmental pollution or destruction occurs as a result of intent or negligence.[55] A search of documents such as the AMDAL, business license, and division of duties will help prove whether the act of pollution or environmental damage was intentional, i.e., if the management was aware of the risk of pollution but continued the activity without precautionary measures. This shows bad intentions or indifference to environmental impacts. Negligence is where the board fails to carry out its duty to prevent environmental harm even though it should have been able to do so. In this case, there is no malicious intent, but there is a failure to fulfill responsibilities.

The provisions of Article 116 paragraph (1) of the Environmental Law state that criminal responsibility can be imposed on the commanders or holders of the highest control over the company's operational activities. In relation to whether shareholders can be held responsible, it can be seen whether their role is included in the category of commanders or holders of the highest control over the company's operational activities. If the fire at PT SSS was caused by decisions made without regard to environmental safety or legal compliance, then shareholders may be held liable. The author only conducts research based on court decisions so it cannot state with certainty that the shareholders of PT SSS here are criminally liable, but the author emphasizes the potential for shareholders if they act outside the limits of their authority to influence the directors in the company's operations. Although the Environmental Law emphasizes the responsibility of directors as those who give orders within the company structure, there is potential for shareholders to also be held liable if they act outside the scope of their authority. The underlying principle is that shareholders have the ability to influence the company's operational decisions through the influence they exert on the board of directors. Where there is evidence to suggest that shareholders actively controlled or encouraged directors to take actions that violate environmental laws, then such shareholders may be subject to criminal liability for such conduct.

In the case of the PT SSS fire, in reality it was not only the company that was charged, but also the manager or head of the plantation who was also charged. They are generally given the responsibility to control, supervise prevention efforts, and solve problems during emergencies, including fires. However, Government Regulation No. 4/2001 on Environmental Damage and Pollution Control stipulates the obligations of managers in dealing with fires. The author argues that farm managers do not have the authority in the areas of finance, procurement of equipment, or training, which of course costs money. Regarding the commanders or leaders of criminal acts listed in Article 116 paragraph (1) letter b and paragraph (2) of the PPLH Law, they are those who have the authority according to the company's organizational law and articles of association.

The author in this case only provides an overview of the pattern of repetition carried out by companies that have the potential to be deliberate. The land fire lasted for several days due to inadequate suppression efforts, and was only stopped on March 29, 2019 after heavy rains succeeded in extinguishing the fire. After the fire, only ash remained evenly distributed over the burnt land. The distance between the burnt blocks on the first and second stretches is about 1.5 km, measured from the outermost point of block J-40 on the first stretch and the closest point of block K-40 on the second stretch. Interestingly, between Blocks J-40 and K-40, which had been planted with oil palms before the fire, nothing was burnt. Block L-37, which was also planted with oil palms and adjacent to blocks L-38, 39 and 40 that experienced fires, also remained intact. Analysis shows that the fires only occurred in certain blocks that had been cleared but not yet planted with oil palm by PT SSS. The corporation did not appear to make any serious efforts to extinguish the fires, and only requested assistance from the fire brigade almost a month later. This situation can be indicated as a deliberate intention to let the land burn. According to the author, PT SSS can be categorized as deliberately allowing land fires with the aim of opening plantations without having to hire heavy equipment to clear land or cut down trees, supported by hot weather, so that the corporation can argue that they have never burned land.

In this context, the author tries to link the case of forest and land fires with the criminal liability of shareholders where shareholders are the owners of capital and who provide the budget for the sustainability of the company. Seeing the fact that the company is not supported by fire extinguishers and early fire prevention systems shows the omission of the company and shareholders where supposedly when the company was established, shareholders already understood and knew that fires would easily occur in their environment so that shareholders should also have determined the tools, systems to prevent such things. According to the provisions of Article 116 paragraph (1) letter b in relation to Article 118, the management due to their position immediately or automatically bears criminal responsibility, making it easier to prosecute because it does not require proof of the specific role of the management in an environmental criminal event. The elucidation of Article 118 of Law No. 32/2009 reinforces the interpretation that if a business entity commits an environmental criminal offense, charges and penalties are imposed on the head of the business entity on the basis that the head of the company has authority over the physical perpetrator and accepts the action. The definition of accepting the action is approving, allowing or insufficiently supervising the actions of the physical perpetrator, or having a policy that allows the criminal offense to occur.

[55] Novalina Romauli Sirait, *Op.Cit*, hlm. 231

Criminal Liability of Corporate Shareholders in Environmental Crimes

The author adheres to Ari Yusuf Amir's view that the determination of criminal liability of shareholders is carried out through three stages, namely formulation, application, and execution. The formulation stage, known as legislative policy, requires the formulation of corporate criminal liability that refers to Law No. 40 of 2007, specifically Article 154, which states that the provisions of this law apply to publicly listed companies, unless otherwise regulated in regulations in the field of capital markets. Therefore, all laws governing corporations will be subject to Law No. 40 of 2007, including the provisions of Article 3 paragraph (2). At this stage, Law No. 40 of 2007 has covered the criminal liability of shareholders and can permeate the entirety of corporation-related laws. Therefore, the legislature should update the laws governing corporations to implement the provisions of Article 3 paragraph (2) through the application of the piercing corporate veil doctrine and the alter ego doctrine, so that shareholders can be subject to criminal liability.[56] From Ari Yusuf Amir's opinion, Law No. 40/2007 on Limited Liability Companies is an important legal foundation in the regulation of corporations in Indonesia. One of the interesting aspects of this law is the regulation of the criminal liability of shareholders. Previously, criminal liability in the corporate realm was often only imposed on directors and commissioners, while shareholders were often exempt from such liability. However, with the UUPT, shareholders can also be charged with criminal liability under certain circumstances.

The application stage is the application of criminal law by law enforcement officials, from the police to the courts. In this stage, law enforcers must utilize existing legal means and rules to uphold justice, including ensnaring corporations involved in criminal acts. This second stage is known as judicial policy. Before the legislature passes a law that clearly and explicitly regulates corporations as subjects of criminal law, Perma No. 13/2016 can be used as a legal umbrella for law enforcement by the Police and the Attorney General's Office. It also includes shareholders as subjects who can be held criminally liable for acts committed by corporations.[57] In practice, the proof of environmental crimes committed by corporations focuses more on the actions of the corporation and its impact on the environment, while the involvement of individuals, including shareholders, has not been deepened by law enforcement officials, so it is very difficult to find environmental cases involving shareholders and impose crimes on the shareholders. Although Perma No. 13/2016 can be used as a legal umbrella, the formulation of criminal liability for shareholders in more detail will make it easier for law enforcement officials to prove the involvement of shareholders.

The execution phase is where the criminal law is actually implemented by the responsible authorities. This phase is known as executive policy and includes the entire system that regulates the application of criminal law, so that criminal offenders can receive appropriate sanctions. At this stage, it is very important that there are clear provisions regarding the types of crimes that can be imposed on corporations and their shareholders.[58] The execution stage is an integral part of the criminal law enforcement system because it ensures that sanctions are carried out in accordance with applicable laws. In the context of corporations and their shareholders, clear legal provisions are needed regarding what types of sanctions can be imposed on corporations as well as corporate shareholders and their implementation mechanisms. Shareholders can only be held accountable if it is proven that they are directly involved in a criminal offense or if there is an abuse of a legal entity.

In relation to the case of forest and land fires (karhutla) involving PT SSS, it is important to evaluate whether the corporation's actions that minimally apply risk management, such as not providing emergency equipment, are deliberate decisions. In this case, responsibility can be imposed not only on the directors, but also on the shareholders, as corporate policies are likely to be influenced by them.

To prove shareholder influence, it is necessary to trace whether the board of directors consists of individuals appointed by the controlling shareholder. Controlling shareholders have the ability to appoint certain individuals as members of the board of directors or commissioners. This shows that there is a direct relationship between controlling shareholders and those who run the company's operations. Such appointments are often made for the personal or group interests of shareholders, which can affect the independence of directors in making decisions. This creates a potential conflict of interest in the event that the decision is detrimental to other parties such as minority shareholders. In the context of criminal law,[59] if the directors appointed by the controlling shareholders commit unlawful acts such as corruption, fraud, or other offenses, then the liability is not only limited to the directors themselves. Shareholders can also be held criminally liable for the misconduct of the elected directors, as they were directly instrumental in appointing such individuals to strategic positions in the company. The active involvement of shareholders in a company's management structure can carry legal consequences in the event of misconduct.

Furthermore, to reveal the involvement of shareholders in forest and land fire cases, the General Meeting of Shareholders (GMS) document can be analyzed. The GMS document is an instrument that can be used to trace whether corporate policies are in accordance with laws and regulations, especially regarding land clearing without burning (PLTB). In the context of forest and land fires, this document can show the company's strategic plan such as whether the company has a commitment to comply with

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[56] *Ibid.*, hlm.139

[57] *Ibid.*, hlm.143

[58] *Ibid*., hlm.144

[59] Firdaus Baderi, *Karhutla dan Pidana Pemegang Saham Oleh Dr.Ari Yusuf Amir, S.H., M.H. Praktisi Hukum*, Karhutla dan Pidana Pemegang Saham | Neraca.co.id, diakses 20 Desember 2024 Pukul 10.55 WIB

environmental regulations, decisions including budget allocations for the procurement of fire prevention equipment or the implementation of the PLTB method and whether there are indications that controlling shareholders provide direct or indirect direction to the board of directors. If there is a discrepancy between the plan stated in the GMS document and the practice in the field, then this can be the initial evidence of negligence or even intent on the part of the corporation and whether there is a decision that shows that land clearing is carried out by illegal means such as burning, which this finding can be the basis for criminal charges against shareholders.

In theory, shareholders should not be able to influence policies taken by directors except through official corporate channels such as the General Meeting of Shareholders (GMS). However, in practice, controlling shareholders often overstep their authority to regulate directors and commissioners, thus losing their right to immunity. If shareholders are involved in ultra vires actions, their liability is not only limited to their paid-up capital, but also under Article 55 of the Criminal Code, which states that they can be considered as a party who ordered, participated or assisted in a criminal offense.[60] If a controlling shareholder gives instructions to the board of directors or commissioners to make certain decisions that violate the law or harm other parties, he can be considered as a party who "orders to do" or "participates" in the criminal act. Thus, the liability is not only civil in nature but can also extend to the criminal realm. Thus, a controlling shareholder who gives instructions to take unlawful decisions may not only be subject to civil liability, but may also be held criminally liable. This reinforces the principle that individuals, especially those with power in corporations, should be held accountable for their actions that harm others or violate the law.

The forest and land fire at PT SSS occurred in 2019, in addition there are also companies that have occurred forest and land fires as data from the Riau Forest Rescue Working Network in 2020, the Riau Natural Forest Rescue Working Network reported PT AA Sorek District to the Riau Police for alleged violations of environmental and forestry crimes in violation of Article 98 Paragraph (1) of Law R.I. No. 32 of 2019 concerning Environmental Protection and Management (PPLH Law). PT AA is suspected of taking actions that cause pollution exceeding air quality thresholds and environmental damage, in accordance with the provisions in PP No. 4 of 2001 concerning Environmental Control and Pollution related to forest and land fires. On July 3, 2020, the Riau Natural Forest Rescue Network team visited the fire site and found smoke still billowing with some burned land while the Manggala Agni team, BPBD, and PT AA's RPK team were handling cooling. The burnt area was land that had been processed for acacia planting. In some blocks, newly planted acacia was found that was not affected by the fire. Okto Yugo Setyo, Deputy Coordinator of Jikalahari revealed that PT AA deliberately burned land to plant acacia to reduce operational costs. In an effort to collect data, Jikalahari also conducted an analysis using Sentinel 2 Satellite Imagery to assess land cover in the PT AA area. The findings showed that in January 2020, the burned area was natural forest filled with shrubs, while in February 2020, land clearing began. Furthermore, from March to May 2020, there was additional land clearing and the creation of new canals, which continued until June 2020, when the fire broke out on June 28, 2020. The 83-hectare fire has damaged peat and the environment, exceeding the air quality threshold, with environmental losses estimated at Rp 20.6 billion. Jikalahari asked Riau Police to immediately name PT AA as a suspect for the act of burning forests and land that has polluted the air and damaged the environment. In the records of the Riau Province Regional Disaster Management Agency (BPBD), from January to mid-July 2020, the total area of land burned in Riau reached 1,371 hectares, with fires occurring in ten districts and cities, such as Rokan Hilir, Dumai, and Bengkalis, with significant losses to the local ecosystem.[61]

The PT AA case reported by Jikalahari on July 15, 2020 highlighted allegations of deliberate land burning to benefit the company, raising speculation regarding the potential criminal liability that could be imposed on shareholders based on their involvement in environmentally harmful decision-making. This analysis will explore the relationship between recurrent fires, corporate profits, and shareholder criminal liability. Companies often use forest fires as a method to clear land before planting. While this may be financially beneficial, the impacts, including air pollution and ecosystem damage, are substantial. In the case of PT AA, there are indications that shareholders have a role in supporting corporate decisions that lead to environmentally harmful practices. When strategic decisions are made with the aim of maximizing profits, shareholders who have a say in the board of directors can be seen as partly responsible.

Shareholders who are actively involved in corporate decision-making may be subject to criminal liability if it is found that they directly influenced an unlawful act, such as forest burning. This principle underscores that responsibility lies not only with directors, but also with shareholders who contribute to decisions that are illegal or destructive. This is in accordance with the legal principle that any individual involved in a criminal act can be held accountable.

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[60] *Ibid*.,

[61] Jikalahari, Jaringan Kerja Penyelamat Hutan Riau, Dugaan Tindak Pidana Lingkungan Hidup dan Kehutanan: PT Arara Abadi Sengaja Membakar Lahan Seluas 83 hektar Untuk Ditanami Akasia, https://jikalahari.or.id/kabar/rilis/dugaan-tindak-pidana-lingkungan-hidup-dan-kehutanan-pt-arara-abadi-sengaja-membakar-lahan-seluas-83-hektar-untuk-ditanami-akasia/, Diakses tanggal 2 April 2025 pukul 14.12 WIB.

In the context of existing laws, if shareholders are found to actively support or encourage policies that lead to environmental pollution, they may be subject to criminal charges under relevant laws, including the Environmental Law. This demonstrates the importance of effective internal controls and audits to prevent shareholder involvement in illegal acts.

When forest and land fires are used as a strategic pattern for corporate profits, it is important to emphasize that criminal responsibility lies not only with directors, but also with shareholders who are involved in decision-making that harms the environment. The PT AA case provides a lesson on the need for shareholders to be aware of their responsibilities, not only for financial gain, but also for environmental sustainability. Through stricter law enforcement and awareness of social responsibility, companies and shareholders can contribute to more sustainable and ethical business practices.

In addition to PT AA, the author obtained data on company land that has experienced repeated fires is PT PS. PT PS, one of the companies owned by SD, has been recorded to have experienced forest and land fires (karhutla) repeatedly, with data showing the area burned in the following years: 253.9 ha in 2015, 40.2 ha in 2016, 594.5 ha in 2018, 7.0 ha in 2019, and 8.6 ha in 2020.[62] The author has not found data on PT PS being sentenced for environmental crimes but PT PS was made a suspect in a corruption case of land licensing in Indragiri Hulu, Riau with its shareholder SD previously found guilty of corruption in palm oil land management. Whether the forest and land fires in PT PS concession areas were ordered by SD as a shareholder, the author did not get the data, but SD ordered to carry out oil palm plantation activities in forest areas that did not have permits, including in PT PS where there were repeated forest and land fires.

3. Case Example of Shareholders as Controllers of a Company/Corporation

In relation to ultra vires shareholders, the author found an example of a case where a majority shareholder was in control of the company and all company organs were only his puppets and the corporation was used as a tool to fulfill his personal gain. A case related to shareholders is listed in the Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst dated February 23, 2023 on behalf of the defendant SD. The defendant SD had several meetings with H. RTR, where the defendant requested approval to clear land in the forest area of Indragiri Hulu for an oil palm plantation business, even though the land was known to be in the forest area. As the owner of PT BBU, PT PS, PT SS, and PT PAL, defendant SD did not have a principle license, but was still granted a location permit for oil palm plantations by H. RTR, even though the land was in the forest zone. Despite being aware that he did not have an Environmental Impact Assessment (AMDAL), Environmental Management Efforts (UKL), and Environmental Monitoring Efforts (UPL), the defendant was still granted an oil palm Plantation Business License (IUP) by H. RTR. The defendant SD, as the owner of PT BBU, carried out oil palm plantation business activities covering an area of 1,551 hectares and established an oil palm processing factory covering an area of 9 hectares without being equipped with a Cultivation Plantation Business License (IUP-B) and a Processing Plantation Business License (IUP-P). The defendant also carried out plantation business without rights in forest areas, which resulted in damage to forest areas and changes in forest functions. As the majority shareholder, the defendant SD enriched himself with Rp7,593,068,204,327.00 (seven trillion five hundred ninety-three billion sixty-eight million two hundred four thousand three hundred twenty-seven rupiahs) and USD7,885,857. 36 (seven million eight hundred eighty-five thousand eight hundred fifty-seven American dollars and thirty-six cents), which is detrimental to the state finances amounting to Rp4,798,706,951,640.00 (four trillion seven hundred ninety-eight billion seven hundred six million nine hundred fifty-one thousand six hundred forty rupiah) and USD7,885,857.36. This loss is based on the State Financial Loss Calculation Audit Report on the alleged Corruption Crime in Palm Oil Plantation Business Activities carried out by Duta Palma Group in Indragiri Hulu Regency, as stated in the Financial and Development Supervisory Agency (BPKP) Report Number: PE.03/SR/657/D5/01/2022 dated August 25, 2022. In addition, the defendant also harmed the state economy in the amount of Rp73,920,690,300,000 (seventy-three trillion nine hundred twenty billion six hundred ninety million three hundred thousand rupiahs), based on the report of the Institute for Research and Training in Economics and Business, Faculty of Economics and Business, Gajah Mada University dated August 24, 2022.

Defendant SD, who is the owner of D Group which operates in Riau, Jambi, West Kalimantan, Jakarta, and Bekasi, is involved in Palm Oil Plantations, Palm Oil Processing and its derivatives, and Transportation, as well as in the Property sector. All of these company activities are fully controlled by Defendant SD. As the majority shareholder, the defendant has also placed his family members, namely SW and AF, as well as employees such as HH, TG, and PA, as directors and commissioners in PT BBU, PT KAT, PT PS, PT SB, and PT PAL. Thus, all of the company's operational and financial decision-making was in the hands of the defendant, including the decision to carry out oil palm plantation activities in Indragiri Hulu District.

The defendant SD ran an oil palm plantation business in a forest area using an IUP-B (Plantation Cultivation Business License), even though it was not equipped with an Environmental Impact Assessment (AMDAL), Environmental Feasibility Certificate (SKKL), and Environmental Permit. These documents were only made as formalities to obtain location permits and plantation business licenses from H. RTR.

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[62] Aryo Bhawono, Residivis Karhutla dalamKonsensi, https://betahita.id/news/lipsus/9222/residivis-karhutla-dalam-konsesi.html?v=1728451674, diakses tanggal 7 April 2025 pukul 07.54 WIB.

Between 2004 and 2007, Defendant SD requested H. RTR to issue a Plantation Business License (IUP), even though the requested land, based on the TGHK (Coordinated Forest Use) Map, was located within a forest area that would have required a forest area release permit. To avoid the need for such a permit, H. RTR referred to Regional Regulation Number 10 of 1994 concerning the Riau Province RTRW, which classified the land as APL (Other Use Areas).

During the period 2004 to 2022, the Defendant's companies have carried out oil palm planting and production activities and obtained the value of fresh fruit bunches (FFB). Despite having obtained location permits and Plantation Business Licenses (IUP) from H. RTR, these companies were not equipped with Recommendations of Conformity to the Provincial Plantation Development Macro Plan issued by the Governor.

The defendant conducted plantation business inside the forest area through PT BBU, PT PAL, PT KAT, PT PS, and PT SS in Indragiri Hulu Regency, Riau Province. This activity resulted in physical changes where the forest area has been converted into oil palm plantations, so that there are no more original natural forest trees left.

The proceeds of corruption obtained by the Defendant SD through PT BBU, PT KAT, PT PS, PT SS, and PT PAL were then placed and transferred to PT DP, which is a holding company for plantations owned by the Defendant in Riau. This action was carried out in the form of dividend distribution, payment of shareholder debt, and capital deposits to PT MM, PT AL, PT AP, and other companies owned by the Defendant. The total assets obtained reached Rp2,238,274,248,234.00 (two trillion two hundred thirty-eight billion two hundred seventy-four million two hundred forty-eight thousand two hundred thirty-four rupiah), which is an illegal gain from the expenditure of assets on behalf of Defendant SD and other parties.

Defendant SD was convicted of corruption and money laundering as stated in the Central Jakarta District Court Decision Number: 62/Pid.Sus-TPK/2022/PN.Jkt.Pst dated February 23, 2023:[63]

1. Stating that the Defendant SURYA DARMADI has not been proven legally and convincingly guilty of committing the crime of "Money Laundering" as in the Second Indictment of the Public Prosecutor;
2. Acquit the Defendant therefore from the second charge of the Public Prosecutor;
3. To declare that the Defendant SURYA DARMADI has been legally and convincingly proven guilty of committing the crime of "CORRUPTION TOGETHER and THEFT OF MONEY" as charged in the First and Third Primair Indictment of the Public Prosecutor;
4. Sentenced the Defendant to 15 (fifteen) years of imprisonment and a fine of Rp1,000,000,000.00, - (one billion rupiah) provided that if the fine is not paid, it will be replaced with 6 (six) months of imprisonment;
5. Impose additional punishment in the form of payment of restitution to the Defendant in the amount of Rp2,238,274,248,234.00; (two trillion two hundred thirty-eight billion two hundred seventy-four million two hundred forty-eight thousand two hundred thirty-four rupiah), and pay economic losses in the amount of Rp39,751,177,520. 000.00; (thirty nine trillion seven hundred fifty one billion one hundred seventy seven million five hundred twenty thousand rupiah), if the convicted person does not pay the restitution at the latest within 1 (one) month after the verdict obtains permanent legal force, then his property can be confiscated by the prosecutor and auctioned to cover the restitution, then in the event that the convicted person does not have sufficient assets to pay the restitution then he will be sentenced to imprisonment for 5 (five) years.

The Panel of Judges' consideration in finding the Defendant SD guilty of corruption and money laundering was based on the testimony of witnesses PA, TTG, and HH, who are employees of D Group. They explained that Defendant SD is the owner of D Group, a company engaged in Palm Oil Plantations, Palm Oil Processing and its derivatives, Transportation, and Property, with business locations in Riau Province, Jambi, West Kalimantan, DKI Jakarta, and West Java. All of these business activities are fully controlled by Defendant SD, both in making operational and financial decisions, all of which are carried out with the approval of the Defendant, including the decision to carry out oil palm plantation activities in Indragiri Hulu Regency through PT BBU, PT SS, PT PAL, PT KAT, and PT PS.

PT DP is a holding company that operates in the field of oil palm plantations and processing in Riau Province. The defendant is the majority shareholder with 99.9% ownership, while JR, the defendant's younger brother, owns 0.001% of the shares.

The Panel of Judges also considered the existence of Law Number 11 of 2020 concerning Job Creation regarding Article 110 A and Article 110 B. Article 110 A explains:

"*Any person who conducts business activities that have been established and has a Business License in the forest area before the enactment of this Law that has not fulfilled the requirements in accordance with the provisions of laws and regulations in the forestry sector, must complete the requirements no later than 3 (three) years after this Law comes into force. If after the lapse of 3 (three) years since the enactment of this Law does not complete the requirements as referred to in paragraph (1), the perpetrator is subject to administrative sanctions, in the form of: a. payment of administrative fines; and/or b. revocation of Business Licenses. Further provisions regarding the procedures for imposing administrative sanctions and the procedures for non-tax state revenue derived from administrative fines as referred to in paragraph (2) shall be regulated in a Government Regulation.*"

[63] Putusan Pengadilan Negeri Jakarta Pusat 62/Pid.Sus-TPK/2022/PN.Jkt.Pst tanggal 23 Februari 2023, hlm. 1556

Article 110 B

"*Any person who commits a violation as referred to in Article 77 paragraph (1) letter b, letter c, and letter f or letter e, and letter f or Article 17 paragraph (2) letter b, letter c, and letter f or letter e, or other activities in the forest area without having a Business License conducted prior to the enactment of this Law shall be subject to administrative sanctions, in the form of: a. temporary suspension of business activities; b. payment of administrative fines; and/or c. government compulsion.*"

In the event that the violation as referred to in paragraph (1) is committed by an individual residing in and/or around the forest area for at least 5 (five) years continuously with an area of at most 5 (five) hectares, it shall be exempted from administrative sanctions and resolved through forest area arrangement. Further provisions regarding the procedures for the imposition of administrative sanctions and the procedures for non-tax state revenue derived from administrative fines as referred to in paragraph (1) shall be regulated in a Government Regulation.

The Panel of Judges is of the opinion that with the enactment of the Job Creation Law of 2020, the actions of the Defendant SD in conducting plantation businesses in forest areas cannot be applied. According to expert Prof. Dr. Agus Surono, SH, MH, an act that begins with a violation of the law that has an impact on state losses is included in the crime of corruption. Lex Specialist Systematis explains that violations that involve administrative aspects and result in state losses can be subject to the Corruption Act, especially if the perpetrators are civil servants or state administrators, and commit unlawful acts or abuse of authority. Even though there are specific rules governing an act, if there is an element of state financial loss due to the violation, the act can be charged with the Corruption Crime Law.

The Panel of Judges concluded that "administrative sanctions" stipulated in Article 110 A and Article 110 B of Law Number 11 of 2020 concerning Job Creation, as well as Article 3 of Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Non-Tax State Revenue from Administrative Fines in the Forestry Sector, must be understood as errors related to procedural defects or administrative errors, which result in the imposition of administrative sanctions. However, these administrative sanctions do not eliminate or excuse criminal liability for perpetrators who commit unlawful acts that cause financial and economic losses to the state, as stipulated in the Corruption Crime Law.

Considering that the Panel of Judges is in line with the expert opinion of Prof. Dr. Agus Surono, SH, MH, which states that administrative defects arising from unlawful actions of the Defendant, which cause financial or economic losses to the state, must be resolved through the application of the Corruption Law.

The case of the SD Defendant reached the Supreme Court level until the submission of a Judicial Review and the Panel of Judges continued to uphold the District Court Decision. The Decision of the DKI Jakarta High Court Number 18/PID.SUS-TPK/2023/PT DKI dated June 13, 2023 upheld the Decision of the Corruption Court at the Central Jakarta District Court dated February 23, 2023 Number: 62/Pid.Sus-TPK/2022/PN Jkt Pst.[64] Putusan Mahkamah Agung R.I. Nomor 4950 K/Pid.Sus/2023 tanggal 14 September 2023 hanya memperbaiki mengenai The length of the sentence is imprisonment for 16 (sixteen) years and a fine in the amount of Rp1,000,000,000.00 (one billion rupiah), provided that if the fine is not paid, it will be replaced by imprisonment for 6 (six) months. The judge also imposed an additional penalty on the defendant to pay restitution in the amount of Rp2,238,274,248,234.00 (two trillion two hundred thirty-eight billion two hundred seventy-four million two hundred forty-eight thousand two hundred thirty-four rupiah).[65]

The author raises the case of Defendant SD to illustrate the influence of a shareholder who is able to control his company and use the company only as a tool for himself in committing a criminal offense. In this case, the perpetrator is a corporate shareholder who has served his sentence, while his corporation has also been named as a suspect.

The decision of the Central Jakarta District Court against Defendant SD has applied the doctrine of piercing the corporate veil, even though the Corruption and Money Laundering Law does not explicitly include shareholders as in the Banking Law and the Deposit Insurance Corporation Law. The criminal offense that occurred was a criminal act of commission, namely corruption committed jointly and money laundering. The actus reus of this criminal act was committed or ordered by the controlling personnel of the corporation, where SD as the majority shareholder ordered his corporation to run an oil palm plantation business on forest land without a principle permit. The mens rea of the criminal act lies with the controlling personnel of the corporation, in this case with SD as a shareholder. The management of the corporation does not have the authority and power to determine company policy. Based on the theory of identification in corporate liability, the Public Prosecutor identified the defendant SD as the majority shareholder as well as the brain of the corporation, so that after the defendant was sentenced, the corporation was also criminally processed.

4. Criminal Responsibility of Shareholders in Environmental Crimes

A legal entity known as a Limited Liability Company (hereinafter referred to as PT). Law No. 40 of 2007 on Limited Liability Companies in Article 1 paragraph (1) provides a definition: PT, hereinafter referred to as a company, is a legal entity that is a

[64] Putusan Pengadilan Tinggi DKI Jakarta Nomor 18/PID.SUS-TPK/2023/PT DKI tanggal 13 Juni 2023, hlm. 469

[65] Putusan Mahkamah Agung R.I. Nomor 4950 K/Pid.Sus/2023 tanggal 14 September 2023, hlm. 203.

capital alliance, established based on an agreement to conduct business activities with an authorized capital that is entirely divided into shares, and fulfills the requirements stipulated in the law and its implementing regulations.[66] Furthermore, when we talk about criminal responsibility, it is important to remember that criminal responsibility is not possible without someone previously committing a criminal offense.[67] The person is held accountable for the criminal offense he commits, strictly speaking the person is held accountable for the criminal offense he commits.[68] Criminal liability refers to the mechanism by which a person or corporation can be held accountable for unlawful acts. In essence, criminal liability is a legal response to a violation of norms that have been established in legislation.

In connection with the theme analyzed by this author regarding the liability of corporate shareholders, it is necessary to first understand what is included in the category of corporate crime. Hans Kelsen expressed his opinion on corporate crime, namely that a legal entity (a corporation) in certain cases is seen as the perpetrator of an offense that has been directly committed by an individual who is an organ of the corporation. Therefore, sanctions are not only aimed at the individual responsible but basically at all members of the corporation.[69] From Hans Kelsen's opinion, the actions taken by individuals who are organs of the corporation can be considered as the actions of the corporation itself. Kelsen underlines the importance of understanding that corporations do not have personal intentions or desires, but these intentions are represented by individuals acting on behalf of the corporation. In addition, based on Kelsen's framework, corporate criminal sanctions reflect collective responsibility, which means that all members of the corporation including shareholders can be held morally and legally responsible for actions that harm society or violate the law.

Corporate liability in criminal law according to Bambang Poernomo is divided into 4 (four) points of thought:[70]

1. Acts of individuals can be imputed to legal entities, if they are reflected in social traffic as acts of legal entities.
2. A legal entity may be treated as a perpetrator of a criminal offense if the prohibited act for which the legal entity is liable is committed in the course of performing the duties and/or achieving the objectives of the legal entity.
3. Liability also depends on the internal organization within the corporation and the way in which responsibility is shared.
4. The common knowledge of a majority of the members of the board of directors may be considered as intentionality of the legal entity even to the extent of probable intentionality.

Bambang Poernomo's opinion on corporate liability in criminal law can be linked to the liability of corporate shareholders. Although shareholders are generally protected by the principle of limited liability, there are situations where they can be held liable, especially if their involvement in decision-making, knowledge of violations, and the organizational structure of the corporation indicate intent or negligence:

1. Actions of Individuals Charged to Legal Entities, the actions of individuals in a corporation can be charged to a legal entity if the actions reflect the actions of the corporation in a social context. Shareholders who are involved in making decisions that encourage illegal behavior can be considered as a reflection of the corporation. Therefore, even if the shareholders do not commit the act directly, they can be held liable if their decisions contribute to the violation of the law.
2. Legal Entities as Criminal Offenders, legal entities can be considered as criminal offenders if prohibited acts are committed in order to achieve corporate goals. Shareholders, as part of the organizational structure, can be considered in this context in a situation where they support or ignore illegal acts committed to achieve corporate profits, then they can be considered to have moral or legal responsibility.
3. Internal Organization and Division of Responsibility, corporate liability also depends heavily on the internal organizational structure and the way responsibility is distributed. Shareholders have significant influence in the decision-making and internal organization of the corporation, they can be held liable in the event of a violation of the law. For example, if shareholders have a majority vote in the board of directors, they can be held responsible for decisions that carry legal risks.
4. Common Knowledge and Intentionality.

Mutual knowledge among directors of potential violations can be considered as willfulness of the legal entity. In the context of shareholders, if they have knowledge of illegal activities committed by directors and take no action to stop them, then they may be deemed to be engaged in willfulness. This suggests that shareholders cannot escape liability when they are aware of unlawful acts but choose to remain silent.

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[66] Pasal 1 angka (1) Undang Undang R.I. No. 40 Tahun 2007 tentang Perseroan Terbatas

[67] Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada pertanggungjawaban Pidana Tanpa Kesalahan Tinjauan kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*, 2021, Jakarta : Prenadamedia group, hlm. 40.

[68] Mahrus Ali, Dasar-dasar Hukum Pidana, Jakarta : Sinar Grafika, 2001, hlm. 156.

[69] Alvi Syahrin, Alvi Syahrin, Martono Anggusti dan Abdul Aziz Alsa, *Op.Cit.* hlm. 23.

[70] *Ibid.* hlm. 26

Criminal Liability of Corporate Shareholders in Environmental Crimes

According to Sutan Remy Sjahdeni[71], Criminal acts committed by members/personnel of a corporation cannot always be held accountable to the corporation itself but only apply when the act is committed or ordered by the directing mind of the corporation, so that a corporation can be held accountable for the actions of its management, there are several conditions that must be met.

1. The criminal acts, both commission and omission, are committed or ordered by corporate personnel who in the organizational structure of the corporation have a position as the directing mind of the corporation.
2. The criminal offense is committed in the context of the purpose and objectives of the corporation
3. The criminal offense is committed by the perpetrator or on the order of the commissioner within the framework of the corporation's duties.
4. The criminal offense is committed with the intention of providing benefits to the corporation.
5. The perpetrator or order giver has no justification or excuse to be released from criminal responsibility.

Sutan Remy Sjahdeni's thinking can be related to criminal liability of corporate shareholders and corporate liability with analysis:

1. Position as Directing Mind, criminal acts committed by corporate personnel must originate from individuals who have authority in the organizational structure. This shows that corporate liability is highly dependent on who makes the decisions. In the context of shareholders, they are not directly involved in day-to-day decision making, so they cannot be directly held accountable for criminal acts committed by management.
2. Corporate Intent and Purpose, the action must be taken in order to achieve the corporate purpose, if the illegal action is taken for the personal benefit of the individual, then the corporation cannot be held liable. Shareholders, as owners, are potentially affected by managerial decisions, but they are not liable for illegal actions that are not in line with corporate goals.
3. Criminal Acts in the Framework of Corporate Duties, a criminal act must be committed in the context of the duties assigned to the perpetrator and if the act is outside the scope of duties, then liability cannot be imposed on the corporation. Shareholders do not have legal responsibility for unlawful managerial actions, as long as these actions do not represent the interests of the company.
4. Providing Benefits to the Corporation, the condition of a criminal offense committed to provide benefits to the company can lead to corporate liability. Shareholders may only be affected financially and not legally if they are not involved in operational decisions.
5. No Justification, a perpetrator or order giver who has no justification to avoid criminal responsibility.

Based on the relationship between individual actors, organizational structure and corporate operational objectives, Sutan Remy Sjahdeni's opinion provides a framework for when a criminal act can be charged to a corporation but the basic principle of limited liability protects shareholders unless there is strong evidence that they are directly involved in acts that lead to criminal acts or abuse their status as investors for unlawful purposes.

The doctrine of respondeat superior, corporations cannot be at fault, that only agents acting on behalf of and in the name of the corporation can be at fault for on behalf of the corporation, this determines the criminal liability of the corporation.[72] Mens rea is an element that is difficult to prove when a company is deemed to have committed a criminal offense due to actions taken by people responsible for the management of the company. In criminal law, fault is one of the most important components because the subject of law must fulfill the element of fault. Fault is an absolute requirement in criminal liability. Without fault, a person cannot be held criminally responsible, known as the principle of no punishment without fault (keine strafeohne schuld or geen straf zonder schuld or nulla poena sine culpa), culpa here also includes intent.[73] However, in corporate criminal liability from Roeslan Saleh's thinking, the principle of geen straf zonder schuld or the element of guilt does not absolutely apply, Roeslan Saleh views that the maker's guilt does not always need to be considered but it is sufficient with the fact that the losses incurred by corporate criminal acts are very large in physical, economic and social costs at the expense of society and the state.[74]

Wrongdoing consists of acts committed intentionally or through negligence. To identify the existence of fault in a legal subject, the following elements must be met:[75]

a. The existence of culpability on the part of the maker
b. A mental connection between the maker and the act in the form of intent (dolus) or negligence (culpa)
c. Absence of exculpatory reasons or absence of exculpatory reasons.

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[71] *Ibid*

[72] Budi Suhariyanto, *Jurnal Urgensi Pemidanaan Terhadap Pengendali Korporasi Yang Tidak Tercantum Dalam Kepengurusan Kajian Putusan Nomor 1081 K/PID.SUS/2014*, Jurnal Yudisial Vo.10 No.3 Desember 2017, hlm. 240

[73] Alvi Syahrin, Alvi Syahrin, Martono Anggusti dan Abdul Aziz Alsa, *Op.Cit.* hlm. 47.

[74] Henny Yunita Fitriani dan Dona Budi Kharisma, *Jurnal Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Lingkungan Hidup Berdasarkan Asas Strict Liability (Studi Kasus Pencemaran Lingkungan Hidup Oleh PT Rayon Utama Makmur RUM) Kabupaten Sukoharjo*, Jurnal Pascasarjana Hukum UNS Volume VIII Nomor 2 Juli-Desember 2020, hlm. 68

[75] Alvi Syahrin, Alvi Syahrin, Martono Anggusti dan Abdul Aziz Alsa, *Loc.Cit.* hlm. 47.

Criminal Liability of Corporate Shareholders in Environmental Crimes

Muladi conveyed his idea that the principle of no punishment without fault still applies as long as it is committed by the management so that if a criminal offense is actually committed by a corporation (fictitious maker) then the principle of no punishment without fault does not apply. In line with Muladi, Suprapto argues that it is impossible for legal entities to be held accountable for the actions of other people committed intentionally because there is no element of intentionality in legal entities. Barda Nawawi Arief's thinking is that for the accountability of a legal entity, the principle of guilt is still maintained but in developments in the field of law, especially criminal law concerning corporate criminal liability, the principle of guilt or the principle of no punishment without fault does not absolutely apply.[76]

In criminal law, behavior that refers to the physical element of a crime in the form of unlawful acts or behavior in the form of either doing something prohibited or not doing something required by law is known as actus reus and the attitude of the guilty heart is called mens rea. In other words, actus reus is an external element which is a deviant act either regulated by state provisions or morals prevailing in society. Meanwhile, mens rea is the fault element or mental element.[77] Mens Rea is the basis for committing an act that has criminal elements, such as knowing (with awareness), having a specific purpose (with intention), and or being done gratuitously. If a word meets these two points, but it cannot be declared criminal until it is proven that there is no justification for committing the act.

Fault and negligence are types of fault in criminal liability, which are defined as the mental connection between the perpetrator and the act. Although the concepts of willfulness and negligence are not explained in the Criminal Code, doctrine explains willfulness as willen en weten, which means intending and knowing. This indicates that a person truly intends to commit an act and is aware of the consequences that will result from the act.[78] *The Memorie Van Toelichting (MvT) of the Criminal Code explains that willfulness is defined as willen en weten. In this* context, knowing means that the perpetrator not only wants to commit an act, but must also realize that his actions are unlawful. Thus, intentional means that a person intends and knows what he/she is doing. Furthermore, regarding negligence (culpa), MvT states that in the case of a crime, the law requires that the defendant's will be focused on the prohibited and punishable act. Unless the act may jeopardize the public interest relating to persons or goods, which may cause harm, then the law must act against those who act imprudently. In other words, the situation or event occurred due to the negligence of the perpetrator.[79]

The Environmental Law in Article 88 states:

"*Every person whose actions, business, and/or activities use hazardous waste, produce and/or manage hazardous waste, and/or pose a serious threat to the environment is absolutely responsible for the losses incurred without the need to prove the element of fault.*"[80]

When we read the article, it seems clear that the content is without proof of the element of fault as the principle of strict liability, but we need to examine the explanation of article 88, namely:

"*What is meant by "absolutely responsible" or strict liability is that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. The provision of this paragraph is a lex specialis in a lawsuit regarding unlawful acts in general. The amount of compensation that can be imposed on polluters or destroyers of the environment according to this Article can be set to a certain limit. What is meant by "up to a certain time limit" is if according to the stipulation of laws and regulations, insurance is required for the business and/or activity concerned or environmental funds are available.*"[81]

The elucidation of Article 88 of UUPLH emphasizes that the principle of strict liability can only be applied through civil settlement with the specification of compensation and not criminal liability. The existence of the principle of strict liability raised in the PPLH Law is very unfortunate for the civil route only, whereas if it can be applied criminally, Law Enforcement will have an easier time in the process of proving corporations that commit environmental crimes and even according to the author, shareholders can easily be drawn into being perpetrators if their companies commit environmental crimes where the nature of corporate environmental crimes with elements of intent or negligence is difficult to prove related to mental attitude. The defendant can be found guilty only with the existence of actus reus and does not need to see the motive for the crime. However, the author found an interesting thing in the case of the defendant SD as stated in the Introduction Chapter related to the consideration of the Central Jakarta District Court No. 62/Pid.Sus-TPK/2022/PN.Jkt. Pst dated February 23, 2023 related to Article 88 of the Environment Law Jo Article 49 of Law Number 41 of 1999 concerning Forestry, the punishment is with the Strict Liability system where environmental damage due to company activities in carrying out its business, the permit holder is absolutely responsible (Absolute Liability) for environmental damage, forest damage even though initially there was no malicious intent on his part (mens rea) in accordance with the opinion of Dr. Andri Wibisono, S.H.. Andri Wibisono, S.H. The consideration of the

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[76] *Ibid.*

[77] *Ibid.*

[78] *Ibid*. hlm. 51

[79] *Ibid*

[80] Pasal 88 UU PPLH

[81] Penjelasan Pasal 88 UU PPLH

Judges of the Central Jakarta District Court indicates that although the principle of strict liability in the explanation of Article 88 is for lawsuits in prosecuting polluters or environmental destroyers (civil), with the inclusion of this principle in criminal decisions, here the Judges consider the importance of enforcement against perpetrators of environmental damage so that it is expanded in the criminal realm.

The decision of the Central Jakarta District Court against the defendant SD was before the enactment of Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (hereinafter referred to as the Job Creation Law) which was enacted on March 31, 2023. Several provisions in the PPLH Law are amended to read:

"*Every person whose actions, business, and/or activities use B3, produce and/or manage B3 waste and or which pose a serious threat to the environment is absolutely responsible for the losses incurred from their business and/or activities*."[82]

The deleted part of Article 88 of the Job Creation Law is without the need to prove the element of fault but in the explanation there is no change with the explanation in the PPLH Law. The deletion of the sentence without the need to prove the element of fault but the explanation remains the same, namely the basis for payment of compensation, means reaffirmation that without proof of the element of fault is only to go through a lawsuit for the obligation to pay compensation so that it is clear here that it is not in the form of criminal liability.

Criminal liability in the Environmental Law is regulated in Article 97 to Article 120. In the provisions of Article 98 to Article 115, there are material crimes that focus on the consequences of actions and formal crimes that emphasize the actions themselves. Article 98 paragraphs (2) and (3), as well as Article 99 paragraphs (2) and (3) of the Environmental Law, show that in addition to being a formal offense, it is also a material offense. These articles regulate a person's responsibility for violating ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria that can cause injury or harm to human health, including serious injury or death. In this case, it must be proven that there is a causal relationship between the violation of the quality standard and the injury or health hazard. If it cannot be proven that the violation caused the injury or health hazard, the perpetrator will be acquitted of the material criminal offense, but remains liable for the violation of the formal criminal offense.

Article 98 of the PPLH Law stipulates that the criminal offense regulated therein is committed intentionally, while Article 99 states that the criminal offense is committed due to negligence. Sanctions in Article 100 paragraph (2) of the PPLH Law can only be imposed if administrative sanctions are not complied with or violations are committed more than once. In addition, the general explanation of the PPLH Law states that environmental law enforcement must pay attention to the ultimum remedium principle, which encourages the application of criminal law as the last step after administrative law enforcement efforts are deemed unsuccessful. This principle applies to certain formal criminal offenses, such as violations of wastewater and emission quality standards, as well as disturbances regulated in Article 100 of the PPLH Law. The provisions of the article that were eliminated from the 2023 Job Creation Law are Article 110 which reads:

"*Every person who prepares an EIA without having a certificate of competence for EIA compilers as referred to in Article 69 paragraph (1) letter i, shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah)*".[83]

Corporate Criminal Liability in the PPLH Law has been stated in Article 1 number 32 of the PPLH Law, namely every person is not only an individual but can also be a business entity where a business entity can be a legal entity or not. Furthermore, corporations as legal subjects can be seen in Article 116:

1. If an environmental criminal offense is committed by, for or on behalf of a business entity, criminal prosecution and criminal sanctions shall be imposed:
   a. Business entity or
   b. The person who gives the order to commit the criminal offense or the person who acts as the leader of the activities in the criminal offense.
2. If an environmental criminal offense is committed by a person who by virtue of employment relationship or by virtue of other relationship acts within the scope of work of a business entity, criminal sanction shall be imposed on the person who gives the order or is the leader in the criminal offense regardless of whether the criminal offense is committed individually or jointly.

The formulation of Article 116 above, regulates who is responsible in the event of a corporate crime, this shows that the PPLH Law does not strictly guide certain theories such as direct liability or identification theory or corporate organ theory or vicarious liability alone and does not strictly adhere to strict liability.[84] By looking at Article 116 of the Environmental Law, it can be seen that the Environmental Law combines elements of these various theories such as the liability of a business entity arises if the

[82] Pasal 88 Undang Undang No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No. 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang Undang

[83] Pasal 110 UU PPLH

[84] Novalina Romauli Sirait, *Jurnal Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Lingkungan Hidup Menurut Undang Undang Nomor 32 Tahun 2009*, Melayunesia Law, Vol. 2 No. 2, Desember 2018, hlm. 236

criminal offense is committed by the business entity itself or on behalf of the business entity, as well as by individuals acting in their work capacity. The provisions of Article 116 of the Environmental Law reflect the application of the identification theory and the vicarious liability theory. The identification theory in which responsibility is directed to the organizational structure of the company, such as the board of directors or the main controller. Furthermore, the application of vicarious liability theory in this article is because corporations can be held accountable for the actions of their subordinates if it is proven that the actions were carried out for the benefit of the company. The PPLH Law also reflects the theory of strict liability in Article 88 which stipulates that every person whose business has a major impact on the environment must be held absolutely responsible for environmental losses without the need to prove the element of fault (strict liability).

The problem that often occurs in practice is when asking for criminal liability to the corporation or to the management of the corporation, because in environmental cases there are difficulties in proving the causal relationship between errors in the business structure and the actions that have been concretely carried out. To avoid the above evidentiary difficulties by classifying violations of the corporation's obligations to supervise and the non-fulfillment of the societal functions of legal entities.[85] PERMA No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations provides important guidelines in handling corporate criminal cases, namely that the judge can impose punishment on the corporation alone, the management alone, or both alternatively or cumulatively. Then in the context of evidence, this PERMA emphasizes that the judge must consider the extent to which the management has made efforts to prevent violations. Previously there was also a Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases where in handling environmental cases judges are expected to be progressive because environmental cases are complicated and there is a lot of scientific evidence, therefore environmental judges must have the courage to apply the principles of environmental protection and management such as the precautionary principle and conduct judicial activism.

In addition to Article 116 of the PPLH Law, it is necessary to pay attention to Article 118 of the PPLH Law which explains "For criminal acts in Article 116 paragraph (1) letter a, criminal sanctions are imposed on business entities represented by management authorized to represent inside and outside the court in accordance with statutory regulations as functional actors".[86]

From Articles 116 and 118 of the PPLH Law, there are 3 (three) parties that can be subject to prosecution and punishment, namely the first business entity, the second person who gives orders or who acts as a leader in a criminal offense and the third management.

Corporations in practice that often commit environmental crimes are Limited Liability Companies (hereinafter referred to as PT). Limited Liability Company is a legal entity which is a capital alliance established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the law and its implementing regulations.[87] Article 1 point 2 further explains about the company which consists of organs such as the General Meeting of Shareholders, Board of Directors, and Board of Commissioners.[88] The General Meeting of Shareholders (GMS) is an organ of the Company that has authority not granted to the Board of Directors or the Board of Commissioners within the limits set forth in this Law and/or the articles of association.[89] According to Sutantyo R. Hadikusuma and Sumantoro, there is a persero or shareholder whose responsibility is limited to the nominal amount of shares he owns. Meanwhile, all of them in the GMS are the highest power in the company's organization which has the authority to appoint and dismiss directors and commissioners, has the right to determine the broad lines of policy for running the company, determine matters that have not been stipulated in the articles of association and others while the management (directors) and supervisors (commissioners) are a unity of management and supervision of the company and their responsibilities are limited to their duties, which must be in accordance with the articles of association or GMS decisions.[90]

Shareholders, as the founders of the company, have a very important role in determining the direction and strategy of the company. Law No. 40/2007 on Limited Liability Companies defines shareholders as individuals or entities that own shares in the company and have the right to participate in strategic decision-making. Shareholders are not only investors but also the main controllers of the company. Control of members of the board of directors and the board of commissioners by shareholders is formally carried out through a well-documented GMS through shareholder decisions in the GMS or minutes of the session that can be legally accounted for. There is a condition where shareholders sometimes exercise control over the company but the fact is difficult to prove because the instructions occur at non-formal meetings that are not documented. Avoidance of documentation on the control of shareholders through non-formal channels is often done because the control violates the provisions in Law No. 40 of 2007 and or violates corporate doctrine.

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[85] Alvi Syahrin, Alvi Syahrin, Martono Anggusti dan Abdul Aziz Alsa, *Ops.Cit.* hlm. 97.

[86] Pasal 118 UU PPLH

[87] Pasal 1 angka 1 Undang Undang R.I. No.40 Tahun 2007 tentang Perseroan Terbatas

[88] Pasal 1 angka 2 Undang Undang R.I. No.40 Tahun 2007 tentang Perseroan Terbatas

[89] Pasal 1 angka 4 Undang Undang R.I. No.40 Tahun 2007 tentang Perseroan Terbatas

[90] Ari Yusuf Amir, 2020. *Doktrin-Doktrin Pidana Korporasi*. Jogyakarta : Arruz Media, hlm. 36

If the control or influence of shareholders on directors or commissioners is documented, it can be easily proven that there is a violation by shareholders with the threat of punishment for shareholders as stipulated in Article 3 paragraph 2 of Law No.40 of 2007, namely loss of immunity or limited liability for them. For such violations committed by shareholders, the limited liability of shareholders does not apply.

Articles 63, 64 and 65 of Law No.40 of 2007 limit the authority of shareholders. Shareholders can only act to approve the annual work plan proposed by the board of directors through the GMS forum, as the organ of the company as mentioned in Article 1 point 2 of the Company Law. Shareholders are not allowed to act individually. Juridically and in practice, the authority of shareholders is limited by the provisions regarding the General Meeting of Shareholders. In addition, Law No. 40 of 2007 does not contain any provisions regulating the rights of shareholders in preparing the company's work plan. Shareholders are limited in their authority to prepare the company's annual work plan. Even if the board of directors does not prepare an annual work plan, shareholders are still not allowed to make their own annual work plan, they are only allowed to approve the use of last year's work plan to be carried out again. A further restriction is that shareholders cannot receive the company's annual work plan directly from the board of directors, but must go through the commissioners.

The limitation of shareholders' authority is also regulated in Article 75 paragraph (3) of Law No. 40 of 2007. This provision emphasizes that the GMS is not authorized to make decisions other than the meeting agenda prepared and determined by the board of directors or commissioners. If the shareholders want another meeting agenda, they must obtain approval from all shareholders present at the GMS and must receive unanimous approval.

Based on this explanation, although a limited liability company as a legal subject is essentially the personification of a legal subject in the form of a person, but basically the controllers in a limited liability company are the individuals (people) behind it. The word limited in a limited liability company has provided an illustration of one of the characteristics of a limited liability company, namely the limited liability of the shareholders to the extent of the shares issued unless the shareholders commit negligence as specified in Article 3 paragraph (2) of Law No. 40 of 2007.

Shareholders who have the capital and ideas to establish the company, including in appointing and dismissing the board of directors and/or the board of commissioners. The company is a capital association that is given the status of a legal entity. To protect the interests of stakeholders, especially related to the opportunity of shareholders to take legal actions, among others, to influence the company in such a way that is contrary to the principles of decency and justice and to provide legal support for the existence of the board of directors and the board of commissioners of the company in carrying out their duties, a legal doctrine has developed in corporate law called the doctrine of piercing the corporate veil.

Shareholders can use their capital to influence members of the board of directors and the board of commissioners to make policies that benefit shareholders. Therefore, directors and commissioners are referred to as parties who do something for the benefit of other parties by putting aside their own personal interests. The real threat received by members of the board of directors and the board of commissioners is their dismissal as members of the board of directors and members of the board of commissioners.

Such reality puts the position of directors and commissioners in a position that is far from the attitude of professionalism that is treated in managing the company. The integrity of a member of the company's board of directors and board of commissioners to maintain their loyalty (as a party given the mandate to manage the company properly and correctly) as accountability to stakeholders (all parties related to the company) is the main demand for directors and board of commissioners. Control of members of the board of directors and the board of commissioners by shareholders is formally carried out through the General Meeting of Shareholders (which is well documented) through decisions of the General Meeting of Shareholders that can be legally accounted for.

However, shareholders often exercise control over the company through facts that are difficult to prove (it may be that instructions are given in informal meetings that are not documented). Avoiding documentation in the control of shareholders through non-formal channels is often done because the control violates the provisions in Law No. 40 of 2007 and or violates the doctrine of corporate law so documentation is avoided.

If the control is documented, it can easily be proven that there is a violation by the shareholders. The penalties for shareholders as stipulated in Article 3 of Law No. 40 of 2007 are loss of immunity and limited liability for shareholders.

If the control or influence of shareholders on directors or commissioners is documented, it can be easily proven that there is a violation by shareholders with the threat of punishment for shareholders as stipulated in Article 3 paragraph (2) of Law No. 40 of 2007, namely loss of immunity or limited liability for shareholders. The limitation of the limited liability of shareholders, also known as the doctrine of piercing the corporate veil, is regulated in Article 3 paragraph (2) of Law No. 40 of 2007.

UUPPLH does not explicitly state the formulation of shareholder criminal liability like the Banking Law and the Deposit Insurance Corporation Law. The PPLH Law focuses more on corporations as legal subjects. However, by interpreting the provisions of Articles 116, 118 of the Environmental Law and Perma No.13/2016, law enforcement officials should be able to trace corporate criminal liability to shareholders. Shareholders who actively provide direction or strategic decisions that cause environmental crimes to occur can be considered as part of the company's management so that they can also be charged as participation as Article 55 of the Criminal Code as an example of the case in point 3 against the defendant SD who was charged with Article 55 of the Criminal Code.

The application of criminal sanctions for shareholders will make them more cautious to do evil and fraud and can make the corporation run healthier.

CONCLUSIONS

Corporations are held criminally liable for environmental crimes through Article 116 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). Based on the provisions of Perma No.13 of 2016, Article 116 of the Environmental Protection Law and Law No. 40 of 2009 (UU PT) as well as general principles of criminal law such as criminal participation / Article 55 of the Criminal Code and the doctrine of piercing the corporate veil, corporate shareholders are held criminally liable as for example the case of Central Jakarta District Court Decision No. 62/Pid.Sus-TPK/2022/PN.Jkt.Pst dated February 23, 2023. There are also fundamental suggestions from the research, namely the need for a more consistent application of the piercing the corporate veil doctrine in environmental cases with the inclusion of the formulation of shareholder criminal liability in the PPLH Law. Increasing sanctions for corporations and shareholders involved in environmental crimes aims to encourage better compliance with environmental regulations. More severe sanctions are expected to increase corporate awareness and responsibility in protecting the environment.

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