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The Antinomy Of Corporate Criminal Law Enforcement In The Environment

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Abstract**:** *A corporation whose business activities are suspected of polluting and damaging the environment and having a major and important impact on the environment. Corporations in carrying out their business activities can cause environmental crimes, one of which is the Lapindo mud case. Article 116 of UUPPLH has regulated law enforcement on environmental criminal cases committed by corporations where criminal charges and criminal sanctions are imposed on business entities and/or people who give orders to commit such criminal acts or people who act as leaders of activities in such criminal acts. This research is a doctrinal legal research, in which this research examines the enforcement of criminal law for corporations that commit environmental crimes with a focus on the Lapindo mud case. The results of this study found that there are several obstacles in law enforcement of the Lapindo mud case, namely in terms of legal factors / laws, law enforcement factors, facilities or facilities, and cultural factors.*

Keywords : Corporations, Environmental Crimes, Law Enforcement

INTRODUCTION

Environmental law is understood based on legal teachings in general, but must also pay attention to the method of approach in environmental management, using a comprehensive-integral method by always prioritizing harmony and sustainability. Laws in the form of laws and regulations are binding on the community and are obeyed because the laws (laws and regulations) are made by authorized officials or indeed the community recognizes them because the law is considered a living law in the community.[1] The State's responsibility for the protection and management of the environment, both human resources, natural resources and artificial resources, must be supported by various regulations and the participation of various interested parties, including the government, local governments, corporations and communities with the viewpoint that everyone has the right to a good and healthy environment.[2]

The decline in environmental quality will in principle continue to occur naturally, environmental law regulates human activities that accelerate the decline in environmental quality through a business activity which is only possible if the business activity is carried out by a corporation that is a legal entity and its business activities are suspected of polluting and damaging the environment and having a major and important impact on the environment.[3] In principle, every business activity will have an impact on the surrounding environment, but the size of the impact depends on the type of business activity, and most business activities in the field of environmental management that utilize and or exploit elements in the environment have a large and important impact on the environment. Pollution or environmental damage

[1] Mochtar Kusumaatmadja dan Sidharta, B. Arief, Pengantar Ilmu Hukum: Suatu Pengenalan Pertama Ruang Lingkup berlakunya Ilmu Hukum, Bandung, PT Alumni, 2000, hlm. 23.

[2] Tonny Samuel, Penerapan Tindak Pidana Lingkungan Bagi Korporasi Dalam Penegakan Hukum Lingkungan, Jurnal Ilmu-Ilmu Sosial, Volume 8, Nomor 1, 2016, hlm. 178.

[3] Ibid., hlm. 176.

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carried out by corporations is one of the elements for the enforcement of environmental law enforcement processes which means repressive action.

A corporation that will conduct or propose a business activity in environmental management is required to fulfill various kinds of rules in supporting environmental law compliance, both environmental impact assessment (EIA) documents as a condition for obtaining permits and various kinds of licenses, especially environmental permits as permits given to everyone who conducts businesses and / or activities that are subject to EIA. Although administratively and substantively a corporation has fulfilled various requirements to obtain a permit in environmental management, in reality there are still many corporations that pollute or destroy the environment. This becomes important when the impact of a corporation's activities has an impact in the form of direct harm to humans in particular and the environment in general, resulting in an environmental crime committed by the corporation.[4]

Environmental crimes such as acts that can result in the transfer of benefits from the environment and harm the surrounding community. As stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), it is basically committed by a business entity which is currently experiencing rapid development in industrialization, including in Indonesia. Corporate crime is an act committed by a person based on an employment relationship or other relationship carried out by himself or jointly acting on behalf of the corporation inside or outside the corporate environment.[5]

The company's activities have significant impacts on the environment and Natural Resource Management (NRM) including dissolved metal concentrations, heavy metal concentrations in rivers, and heavy metal concentrations in all fish species such as tailings.[6] The rapid tailing activities carried out by the company have resulted in the quality and quantity of groundwater supplies decreasing dramatically, causing marine pollution and damage to coastal areas, the decline of biodiversity and the widespread disposal of toxic and hazardous waste. For this reason, various environmental problems require fast, planned, measured and directed handling so that they can keep up with the rapid development and industrialization activities that often ignore the paradigm of preserving environmental functions. One of the efforts made is through the law enforcement process to hold accountable for the wrongdoing of the perpetrators.[7]

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[4] Mochtar Kusumaatmadja, Hukum, Masyarakat dan Pembinaan Hukum Nasional, Jakarta, Bina Cipta, 1976, hlm 43.

[5] Ni Nyoman Arif Tri Noviyanti dkk, Tanggung Jawab Korporasi dalam Tindak Pidana Lingkungan Hidup, Jurnal Kertha Wicaksana, Volume 13, Nomor 2, 2019, hlm. 111.

[6] *Environmental Update*, Masa Depan Pertambangan VS Lingkungan Hidup, tanggal 28 Mei 2008 bahwa Persoalan tailing di Indonesia bisa dilihat pada dua perusahaan besar PT. Freeport Indonesia dan PT Newmont Nusa Tenggara. Untuk kasus PT. Freeport Indonesia, sebagai perusahan tambang emas terbesar di dunia berdasarkan dokumen AMDAL 300 K, diperlukan daratan seluas 230 km yang akan digunakan untuk menampung tailing sebanyak kurang lebih 3 milyar ton. Bentang alam yang dianggap layak adalah bagian tengah sungai Akjwa yang akan dibelah bagian hulu dan hilir melalui pengendapan. Sedangkan untuk kasus PT.Newmont Nusa Tenggara yang merupakan perusahaan tambang emas global terbesar kedua di dunia, maka Tailing dibuang ke dasar laut pada kedalaman 100 hingga 150 m di bawah permukaan air laut dengan jarak 1500 m dari pantai. Pada dasarnya kebijakan kedua perusahaan ini telah mengikuti hasil analisis mengenai dampak lingkungan yang terus menerus diperbaharui. Namun, Tailing sebagai limbah tentu membawa kandungan bahan beracun dan berbahaya bagi ekosistem di darat maupun di laut. Gagasan yang dapat disampaikan adalah tingkat cemaran dan bahaya pada tailing sangat tergantung pada proses eksplorasi dan pengolahan dan pemisahan. Dengan kata lain sangat tergantung pada kecanggihan teknologi yang digunakan dan transparansi hasil audit lingkungan terhadap seluruh kegiatan perusahaan.

[7] *Sudarto,* Hukum Pidana I, *Badan Penyediaan Bahan-bahan Kuliah FH UNDIP, Semarang, 1987/1988,*

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An example of a concrete case of environmental destruction from corporate activities is the Lapindo mud case in Sidoarjo. The Lapindo Mud case is an incident of hot mudflow at the Lapindo drilling site in Balongnongo Hamlet, Renokenongo Village, Porong District, Sidoarjo Regency, East Java, since May 29, 2006. The mudflow has inundated residential, agricultural and industrial areas in three surrounding sub-districts and affected economic activity in East Java. The mudflow is located in Porong, a sub-district in the southern part of Sidoarjo district, about 12 km south of the town. It borders Gempol sub-district (Pasuruan district) to the south.

A damage and loss assessment of the Lapindo mudflow in Sidoarjo conducted by Bappenas with the involvement of Brawijaya University in Malang, East Java, estimated total losses at Rp 27.4 trillion over the past nine months, comprising direct losses of Rp 11.0 trillion and indirect losses of Rp 16.4 trillion. The preliminary report on the assessment of damage and losses caused by the hot mudflow disaster in Sidoarjo, obtained by ANTARA News on Wednesday (10/4), states that the loss figure has the potential to increase to Rp. 44.7 trillion, while due to the potential increase in indirect impact losses to Rp. 33.7 trillion, while the social impact, the government has, among others, asked to complete the 20 percent cash and carry advance payment to victims in four villages (Siring, Jatirejo, Kedungbendo, and Renokenongo) included in the December 4, 2006 mud impact map. After that, it completed payments to all residents included in the mud impact map on March 22, 2007 (residents of Perum TAS I, Gempolsari Village, Kalitengah, parts of Kedungbendo).

On November 27, 2007, the South Jakarta Court rejected Wahana Lingkungan Hidup's (WALHI) legal standing lawsuit against the parties deemed responsible for the hot mudflow. The judge stated that the mudflow was a natural phenomenon. The Central Jakarta Court rejected the victims' lawsuit filed by the Indonesian Legal Aid Foundation (YLBHI). The judge reasoned that Lapindo had spent a lot of money to overcome the mudflow and build an embankment. Finally, the Supreme Court also rejected the petition for judicial review of Presidential Regulation No. 14/2007.

In March 2014, the Constitutional Court (MK) granted the petition of six Lapindo mudflow victims in the affected area. In essence, the Court asked the state with its power to guarantee and ensure the payment of compensation for victims in the affected area map. PT Minarak Lapindo Jaya has already paid off most of its Rp. 3.8 trillion compensation obligation. However, there is still a shortfall of Rp. 781 billion that has not been paid. Lapindo argues that it is facing financial difficulties. Meanwhile, the government from 2007 to 2014 has spent up to Rp. 9.53 trillion to finance the Lapindo Mudflow Management Agency. Based on the Constitutional Court's decision, the government then plans to buy the assets of PT Minarak Lapindo Jaya for Rp 781 billion. This is done so that Lapindo, which is in the midst of a financial crisis, can pay off arrears to people who are included in the affected area map.[8] Although there is hope for a government

*hlm. 85, bahwa dipidananya seseorang tidaklah cukup apabila orang itu telah melakukan perbuatan yang bertentangan dengan hukum atau bersifat melawan hukum. Jadi meskipun perbuatan tersebut memenuhi rumusan delik dalam undang-undang dan tidak dibenarkan (*an objective reach of a penal provision*), namun hal tersebut belum memenuhi syarat untuk penjatuhan pidana.* Untuk pemidanaan perlu adanya syarat untuk penjatuhan pidana. Untuk pemidanaan masih perlu adanya syarat, bahwa orang yang melakukan perbuatan itu mempunyai kesalahan atau bersalah (subjective guilt).

[8] "5 Aksi Pemerintah Jokowi Beli Aset Lapindo & Menyerahnya Bakrie" http://www.merdeka.com/peristiwa/5-aksi-pemerintah-jokowi-beli-aset-lapindo-menyerahnya-bakrie.html, diakses tanggal 1 Maret 2023.

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guarantee to compensate residents in the Lapindo Mudflow Affected Area, those who caused the incident must be held accountable.

Previously, the investigation of alleged criminal acts by the East Java Regional Police led to the issuance of a Letter of Termination of Investigation (SP3) issued by the East Java Regional Police (Polda Jatim) on the Lapindo Mud case on Friday, August 7, 2009 on the grounds that: (1) due to the rejection of two civil lawsuit verdicts of YLBHI and Walhi in the Central District Court and the South East District Court which stated that there was no illegal act in the Lapindo case,; (2) the absence of strong evidence, factual proving, the inability of the Investigator to fulfill the instructions of the Public Prosecutor (JPU) to prove the correlation of the mudflow with the exploration activities of the Banjarpanji I Well.

The Lapindo mud case shows that environmental crimes committed by corporations cause extensive negative impacts that are not only detrimental to society and the environment but can also disrupt the financial and economic stability of the state. Criminal responsibility imposed on corporations for environmental crimes committed causes the corporation to be sentenced for its actions. Arrangements related to corporate responsibility in environmental crimes are regulated in Article 116 paragraph (1) UUPPLH which states that:

If an environmental criminal offense is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed to:

a. the business entity; and/or
b. the person who gives the order to commit the criminal offense or the person who acts as the leader of the activity in the criminal offense.

The regulation is intended that if a business entity commits a fraudulent act in conducting its business, the party that can be held accountable is the business entity itself as well as someone who has the thought in carrying out the fraudulent act. If the environmental crime in this Article is committed by an individual who has cooperation with the business entity, the individual can be prosecuted personally. Based on the description of the background, research is conducted related to criminal law enforcement for corporations that commit environmental crimes with a focus on the Lapindo mud case.

METHODOLOGY

This research is a doctrinal legal research. The source of legal information uses primary legal materials (regulations and relevant documents) for further qualitative analysis. The approach used in addition to legislation, conceptual approach, there is also a case approach of PT Minarak Lapindo Jaya Hot Mudflow. In this approach, legal concepts can also be found in legislation. However, researchers must first understand the concept through existing views and doctrines.

RESULTS AND DISCUSSION

The environment in Indonesia must be protected and managed properly based on the principle of state responsibility, the principle of sustainability, and the principle of justice. In addition, environmental management must be able to provide economic, social, and cultural benefits based on the principles of prudence, environmental democracy, decentralization, and recognition and respect for local wisdom and environmental wisdom. The protection and management of the environment requires the development of an integrated system in the form of a national policy for environmental protection and management that

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must be implemented faithfully and consequently from the center to the regions. The use of natural resources must be in harmony, harmonious, and balanced with environmental functions. As a consequence, development policies, plans and/or programs must be imbued with the obligation to conserve the environment and realize the goals of sustainable development.

Environmentally sound sustainable development is closely related to the utilization of natural resources as an asset to realize people's welfare. Law No. 32/2009 introduces a formulation of environmentally sound sustainable development. Mentioned in the provisions of environmentally sound is a conscious and planned effort, which integrates the environment, including resources into the development process to ensure the ability, welfare and quality of life of present and future generations. Furthermore, this law distinguishes between the "principle of sustainability" as the principle of environmental management and "environmentally sound development" as a development system. This can be seen in the formulation of Law Number 32 Year 2009 which states: "environmental management is carried out with the principle of state responsibility, the principle of sustainability, and the principle of benefits aimed at realizing environmentally sound sustainable development in the context of the development of all Indonesian human beings. Regarding the "principle of sustainability", the elucidation of the Environmental Protection and Management Act states "the principle of sustainability implies that every person bears obligations and responsibilities towards future generations, and towards each other within one generation, for the implementation of these obligations and responsibilities. Prior to the enactment of Law No. 32 of 2009, Law No. 23 of 1997 regulating the management of natural resources was regulated in Chapter IV on the authority of environmental management. In general, Article 1 point (10) states that resources are elements of the environment consisting of human resources, natural resources both biological and non-biological and artificial resources. Article 8 of this Law stipulates:

1) Natural resources are controlled by the state and used for the greatest prosperity of the people, and their regulation is determined by the government.
2) To implement the provisions referred to in paragraph (1) the government:
    a. Regulate environmental management.
    b. Regulate the environment and the reutilization of natural resources, including genetic resources and develop policies of provision, allocation.
    c. Regulate legal acts and legal relations between persons and or other legal subjects as well as legal acts against natural resources and artificial resources, including genetic resources.
    d. Controlling activities that have a social impact.
    e. Develop funding for efforts to preserve environmental functions in accordance with applicable laws and regulations.

Further emphasized in Law Number 32 of 2009 concerning Environmental Protection and Management, taking into account the problems with the condition of natural resources and the environment today, policies in the field of natural resources and the environment are aimed at efforts:

1) Managing natural resources, both renewable and non-renewable through the application of environmentally friendly technology by taking into account its carrying capacity and capacity.
2) Enforcing the law fairly and consistently to avoid damage to natural resources and environmental pollution.
3) Delegate authority and responsibility to local governments in the management of natural resources and the environment in stages.
4) Empowering communities and economic forces in the management of natural resources and the environment for the improvement of the welfare of the global community.
5) Implementing knowing the success of natural resource and environmental management.

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6) Maintain existing conservation areas and establish new conservation areas in certain areas, and effectively use them.
7) Include global environmental issues.

The term "criminal justice system" denotes a working mechanism in crime prevention using a basic systems approach.[9] Remington dan Ohlin mengemukakan:

> *"Criminal justice system can be defined as the use of a systems approach to the administration of criminal justice. As a system, criminal justice is an interaction between legislation, administrative practices and social attitudes or behaviors. The notion of system itself implies a process of interaction that is prepared rationally and in an efficient manner to provide certain results with all limitations.*".[10]

The term system from Greek "systema" which has the meaning of a whole composed of many parts whole compounded of several parts.[11] In simple terms, this system is a set of interrelated elements to achieve a common goal, which are arranged in an orderly and interconnected manner from low to high. Stanford Optner states that the system is composed of a set of components that move together to achieve an overall goal.[12] Hagan distinguishes between "Criminal Justice Process" and "Criminal Justice system", the former being each stage of a decision that exposes a suspect to the process that leads to the determination of punishment. The second is the interconnection between the decisions of each agency involved in the justice process.[13] Thecriminal justice system is essentially a system that seeks to maintain a balance of interest protection, both the interests of the state, society and individuals, including the interests of criminal offenders and victims of crime. Sub-systems that must work together in the criminal justice sys.

Corporation is a term used by experts in criminal law and criminology to refer to what in other fields of law, especially in the field of civil law, is called a legal entity. Corporation is a terminology closely related to legal entity (rechtspersoon) and legal entity itself is a terminology closely related to the field of civil law. Satjipto Rahardjo defines that:[14]

A corporation is an entity created by law consisting of a corpus, which is its physical structure and into which the law includes an animus element that makes the body have a personality. Because the legal entity is a legal creation, except for its creation, its death is also determined by law.

The placement of corporations as subjects in criminal law cannot be separated from social modernization, according to Satjipto Rahardjo, social modernization has the first impact of recognizing that:[15]

[9] Romli Atmasasmita, Sistem Peradilan Pidana, Presfektif Eksistensialisme dan Abolisianisme, Bandung, Binacipta, 1996, hlm. 14.

[10] Ibid, hlm. 4.

[11] Stanford Optner, *System Analysis for Business Management*, *Prentice Hall*, Inc., New York, 1968, hlm. 3, dalam Tatang M. Amirin, Pokok-Pokok Teori Sistem, Jakarta, Rajawali, 1986, hlm. 5.

[12] Ibid.,

[13] Romli Atmasasmita, op.cit, hlm. 14.

[14] Satjipto Rahardjo, Ilmu Hukum, Bandung, Alumni, 1986, hlm. 110. Dapat juga dilihat pada Tim Kelompok Kerja (Tim Pokja) Penyusunan Perma Pidana Korporasi, Tata Cara Penanganan Perkara Pidana Korporasi, Jakarta, Perpustakaan Nasional RI, 2017, hlm. 16-17.

[15] Satjipto Rahardjo, Hukum Masyarakat dan Pembangunan, Bandung, Alumni, 1980, hlm. 3-4.

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The more modern a society becomes, the more complex its social, economic and political systems, and the greater the need for a formalized system of life control. Social life can no longer be left to a casual pattern of rules, but rather an increasingly well-organized, clear and detailed arrangement is desired. Although these methods may meet the needs of a growing society, the problems caused are no less numerous.

Basically, the purpose of corporate law enforcement to be achieved is to make corporations a deterrent to committing crimes and to make criminals committed by corporations become unable to commit other crimes, namely criminals who in other ways can no longer be corrected.[16] Then, Soerjono Soekanto said that the main problem of law enforcement actually lies in the factors that may affect it so that the positive or negative impact lies in the content of the factors themselves, namely:[17]

1. The legal factor, which is the law.
2. Law enforcement factors, namely the parties who form and apply the law.
3. Facilities and facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creation, and taste based on human nature in the association of life.

UUPPLH is prepared as one of the instruments of law enforcement of corporate crime in the field of environment. The PPLH Law regulates that a corporation or business entity that commits an environmental criminal offense has 3 (three) models of criminal liability which are stated in Article 116 paragraph (1) letters a and b, as follows:

(1) If an environmental criminal offense is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed on:
   a. the business entity; and/or
   b. The person who gave the order to commit the criminal offense or the person who acted as the leader of the activity in the criminal offense.

(2) If the environmental criminal offense as referred to in paragraph (1) is committed by a person, who by virtue of employment relationship or by virtue of other relationship acts within the scope of work of the business entity, the criminal sanction shall be imposed on the person who gives the order or the leader in the criminal offense regardless of whether the criminal offense is committed individually or jointly.

Criminal penalties as stated in the articles of Law Number 32 of 2009 concerning Environmental Protection and Management are imprisonment and fines. In addition, there are additional penalties or disciplinary actions against business entities in Article 119 in the form of: a) Forfeiture of profits obtained from criminal acts; b) Closure of all or part of the place of business and / or activities; c) Repairs due to criminal acts; c) Obligation to do what is neglected without rights; d) Placement of the Company under guardianship for a maximum of 3 (three) years.[18]

[16] P.A.F. Lamintang, Hukum Penitensier Indonesia, Bandung: Armico, 1984, hlm. 11.

[17] Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum, Jakarta, Raja Grafindo Persada, 2005, hlm. 8.

[18] R. Dwi Kennardi Dewanto P, Penegakan Hukum Terhadap Korporasi Sebagai Pelaku Tindak Pidana Lingkungan Hidup di Wilayah Hukum Sidoarjo, Program Studi Magister Kajian Ilmu Kepolisian, Sekolah Pascasarjana Universitas Airlangga, hlm. 189.

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With the establishment of corporations as legal subjects in UUPPLH, a corporation has criminal responsibility as a criminal subject of environmental crimes regulated in Article 116 paragraph (1) and paragraph (2) of UUPPLH besides that, it is also regulated in Article 119 of UUPPLH regarding criminal sanctions and additional criminal sanctions in the form of disciplinary actions. In the event that a corporation is a legal subject and commits an environmental crime, it can be subject to additional criminal sanctions as a disciplinary sanction by making the reputation of the corporation sound bad in the wider community in accordance with the court's decision when trying the case, then it can also be in the form of dissolving the corporation which is the same in essence as imposing the death penalty on the corporation, In addition, it can also impose punishment in the form of terminating the business license of the corporation and freezing its business activities and the state can take over the corporation so that the corporation concerned is under state supervision and confiscation of the corporation by issuing a stipulation to appoint other state-owned enterprises to temporarily manage the corporation until the confiscation period is completed and revoked.[19]

Obstacles to Criminal Law Enforcement in the Lapindo Mudflow Case

According to Soerjono Soekanto, the problem of law enforcement actually lies in the factors that may affect it. These factors are as follows:[20]

1. Legal Factors/Laws

Laws are written regulations that apply generally and are made by legitimate central and regional authorities. Laws are the embodiment of values agreed upon by the government. The problem that often occurs is that the law has no implementing regulations even though the law is mandated to do so, then there are also laws that are not followed by the principles of the enactment of laws and the unclear meaning of words in the law which results in confusion in interpretation and application.

At the time of the Lapindo mud disaster, the Government did not have clear rules regarding human-caused disasters that were also natural disasters, so the President issued Presidential Regulation No. 14/2007 on BPLS. The presidential regulation was then petitioned for judicial review by mudflow victims and the judicial review was rejected by the Supreme Court.[21]

Here there is actually a legal ambiguity where the Supreme Court Decision No 14/P-HUM/2007 which rejected the petition for judicial review of Presidential Regulation No 14 of 2007 which confirms: Lapindo's obligation to buy the land of mud victims in the March 22, 2007 affected map is a form of compensation, however, the contents of the Supreme Court Decision No 2710 K/Pdt/2008 (strengthening the decision of PT DKI No 136/Pdt/2008/PT.DKI) found Lapindo et al not guilty.

The case is clearly one of legal ambiguity. The Supreme Court validated Perpres No 14/2007 by interpreting the “sale and purchase” of Lapindo victims' land as a form of “compensation”. However, on the other hand, the Supreme Court's verdict No 2710 K/Pdt/2008 found Lapindo and the government not guilty.

[19] Ni Nyoman Arif Tri Noviyanti dkk, Ibid., hlm. 112.
[20] Soerjono Soekanto, op.cit., hlm. 5.
[21] “MA Tolak Uji Materiil Perpres Lumpur Lapindo” http://www.antaranews.com/berita/94087/ma-tolak-uji-materiil-perpres-lumpur-lapindo, diakses tanggal 1 Maret 2023.

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But what is clear here is that Lapindo's legal obligations based on Perpres No 14/2007, which were strengthened by the Supreme Court's decision, have never been annulled by any judge's decision. Lapindo must comply. However, so far Lapindo has not complied.

In law enforcement, the president should impose administrative sanctions on Lapindo, using licensing instruments. There must be governmental coercion. Even if there is no definite authority under the law, the president can make a legal breakthrough (discretion) to order the confiscation of Bakrie Group assets, with the permission of the court, to pay Lapindo's obligations to the victims.

Another verdict declaring Lapindo not guilty could be interpreted that the "legal truth" in the Lapindo case is not yet complete. This is because it still contradicts other legal decisions. In addition to legal factors, the limited capacity of law enforcers also dominantly hampers the law enforcement of the Lapindo mud case.

a. Law Enforcement Factors

The scope of law enforcement is very broad, because it includes those who are directly or indirectly involved in law enforcement. To limit this broad thing, it means that the subjective scale of law enforcement must be certain, namely the police, prosecutors, judges, and lawyers. Law enforcement factors play a dominant role. Some of the problems faced by law enforcement include:[22]

1) Not a high level of aspiration
2) Very limited enthusiasm for thinking about the future, making it very difficult to make a projection.
3) There is no ability to delay the satisfaction of certain needs, especially material needs.
4) Lack of innovative power, which is actually a partner of conservatism.
5) Limited ability to put themselves in the role of the other party with whom they interact.

The police as investigators in this corporate offense case certainly do not have the capacity or ability related to drilling techniques and mechanisms. Based on this, it appears that there is a lack or weakness in the structural field, namely the mastery of proof of criminal acts that require high technology. This can be seen from the issuance of SP3 to ensnare the parties responsible for this case. Previously, the East Java Police had named 13 suspects, namely 5 people from PT Medici Citra Nusantara, 3 people from PT Lapindo Brantas, 2 people from PT Energi Mega Persada and 3 people from PT Tiga Musim Jaya. The suspects are charged with Article 187 and Article 188 of the Criminal Code and Law No. 23/1997 Article 41 paragraph 1 and Article 42 on environmental pollution, with a legal threat of 12 years in prison. The names of the suspects are as follows: (1) Ir. EDI SUTRIONO as Drilling Manager of PT Energy Mega Persada, Tbk; (2) Ir. NUR ROCHMAT SAWOLO, MESc as Vice President Drilling Share Services of PT Energy Mega Persada, Tbk; (3) Ir. RAHENOD as Drilling Supervisor of PT. Medici Citra Nusa; (4) SLAMET BK as Drilling Supervisor of PT. Medici Citra Nusa; (5) SUBIE as Drilling Supervisor of PT. Medici Citra Nusa; (6) SLAMET RIYANTO as Project Manager of PT. Medici Citra Nusa; (7) YENNY NAWAWI, SE as President Director of PT. Medici Citra Nusa; (8) SULAIMAN Bin H.M. ALI as Rig Superintendent of PT Tiga Musim Mas Jaya; (9) SARDIANTO as Tool Pusher of PT Tiga Musim Mas Jaya; (10) LILIK MARSUDI as Driller of PT. Tiga Musim Mas Jaya; (11) WILLEM HUNILA as Company Man of Lapindo Brantas, Inc; (12) Ir. H. IMAM PRIA AGUSTINO as General Manager of Lapindo Brantas, Inc: and (13) Ir. ASWAN PINAYUNGAN SIREGAR as former General Manager of Lapindo Brantas, Inc.

The investigation process on the alleged criminal offense by the East Java Regional Police led to the issuance of a Letter of Termination of Investigation (SP3) issued by the East Java Regional Police (Polda

[22] M. Daud Silalahi, Hukum Lingkungan dalam Sistem Penegakan Hukum Lingkungan Indonesia, Bandung, Alumni, 2001, hlm. 14.

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Jatim) on the Lapindo Mud case on Friday, August 7, 2009 on the grounds that: (1) due to the rejection of two civil lawsuit verdicts of YLBHI and Walhi in the Central District Court and the South East District Court which stated that there was no illegal act in the Lapindo case; (2) the absence of strong evidence, factual proving, and the inability of the Investigator to fulfill the instructions of the Public Prosecutor (JPU) to prove the correlation of the mudflow with the exploration activities of the Banjarpanji I Well. The various irregularities in the civil and criminal proceedings have led to speculation that there is a fabrication behind the rejection of the civil lawsuit and the SP3 of the criminal case.

The two main reasons put forward by the East Java Police behind the issuance of SP3 are, first, the inability to fulfill the prosecutor's instructions in order to continue the legal process. Second, the decision of the Central Jakarta District Court and South Jakarta District Court to reject Lapindo's tort lawsuit filed by YLBHI, a human rights organization, and WALHI, an environmental organization. These reasons are clearly inappropriate. Indeed, KUHAP authorizes investigators to suspend an investigation. However, KUHAP clearly stipulates that the termination of investigation can only be based on two main grounds: for the sake of law and justice. Clear and Bright Clues In the Criminal Procedure Code, clues mean actions, events or circumstances, which because of their compatibility, both with each other, and with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is.

Everyone agrees that drilling was conducted in Banjar Panji 1 (BJP-1), a gas exploration well area owned by PT Lapindo Brantas, which is only 200 meters from the center of the hot mudflow. Furthermore, almost all parties agree on a fact: no casing was used during the drilling of the earth layer, going to a depth of 3580 feet to 9297 feet. In the verdict of the Central Jakarta District Court, it was stated that the non-use of casing caused the kick that led to the Lapindo hot mud.

In the verdict of case 384/PDT.G/2006/PN.JKT. PST dated November 27, 2007, the panel of judges agreed with YLBHI that the mudflow was caused by Lapindo's (co-defendant) carelessness in drilling because the casing/protector had not been installed in its entirety. A number of facts are also strong indications that drilling was the cause of the hot mud. Whether we like it or not, there are many domestic and foreign experts who argue and believe that the cause of the hot mudflow is drilling, not a natural disaster.

At the Association of Petroleum Geologists (AAPG) meeting in Cape Town, South Africa on October 26-29, 2008, from the facts presented at this meeting, the majority of geologists (74 percent) who participated thought it was very clear that drilling activities were the trigger for the Lapindo mudflow.

A total of 42 experts agreed that drilling was the trigger. While 13 experts said the trigger was a combination of the earthquake centered in Yogyakarta and 16 experts did not give an opinion. Only three experts who participated in the meeting believed that the earthquake was the trigger for the hot mudflow in Sidoarjo.

Another clue is the analysis of the Pri Tech Company and the Neil Adam Service, which also corroborates Lapindo's allegations of wrongdoing. The police and prosecutors can read the opinions of Professor Richard Davies from Durham University (UK) and Michael Manga, University of California (USA) in the academic journal Earth and Planetary Science Letters. Professor Davies believes that the Sidoarjo mudflow was not a natural disaster, but was triggered by drilling at the Banjarpanji-1 well. Here is an excerpt of his opinion:

> *"We pointed out that the day before, there was a big kick in the well that flowed liquid and gas into the well. After that, the pressure increased to a critical level. This caused a leak so that fluids from the well and formation came to the surface, called an underground blow out. These fluids carry*

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mud on that path, so the mud comes out. If casing is installed in the drilling hole at that time, there will be an opportunity for the driller to control the pressure."[23]

According to Tufig Basari of LBH Masyarakat, the East Java Police's reasoning that Lapindo's case lacked evidence to be prosecuted was because the police chose expert witnesses who corroborated Lapindo's position, rather than using expert witnesses who favored the prosecution process. The police also examined a witness, but he was not included in the case file. The prosecution also put Lapindo's expert as the main expert witness. No one saw the track record of the witness. The 3 people who were declared experts were Lapindo's own employees. Actually, the key witness in the Lapindo case is the former Head of the Investigation Team of the Ministry of Energy and Mineral Resources, Rudy Rubiandidi. In his report, Rudy emphasized that the mudflow was caused by Lapindo's drilling.

From here, it is known that the law enforcement factor is the main factor that hinders the enforcement of the Lapindo mud case.

b. Facilities

Without certain facilities, it is impossible for law enforcement to run smoothly. These facilities include educated and skilled human resources, good organization, adequate equipment, sufficient finance and others.[24]

Environmental law enforcement against environmental cases is also influenced by unsupportive technology. Enforcement of environmental law against environmental cases encounters obstacles when it comes to the process of proving whether Lapindo mud is influenced by human error or natural will. This of course requires sophisticated tools or technology.

c. cultural factors

Culture essentially includes the values that underlie the laws that apply, values that are abstract conceptions of what is considered good (hence adopted) and what is considered bad (hence avoided). These values are usually pairs of values that reflect two extremes that must be harmonized.[25]

In some cases, environmental crimes occur because of the strong culture of corruption, collusion and nepotism between companies, the government and the DPR. Corruption in the sale of soccer field land by the village to the Sidoarjo Mudflow Management Agency (BPLS) should be prosecuted immediately. It is this corrupt culture that is tormenting the people in addition to the disastrous mudflow. This culture of corruption hampers environmental law enforcement, because the implementation of compensation in the form of buying and selling affected land is not running properly.

CONCLUSIONS

Actions taken by directors must have the basis of good faith and the principle of business judgment rules. On the other hand, there is a principle of exemption of directors in responsibility legitimized by the GMS, namely the principle of acquit et de charge. The application of the principle of acquit et de charge has limitations on actions based on the principle of fiduciary duty. Law Number 40 of 2007 concerning Limited

[23] *"President Calls for Global Commitment to Eradicate Corruption"* http://beritadotcom.blogspot.com/2008_06_12_archive.html, diakses tanggal 28 Januari 2023.

[24] Soerjono Soekanto, op.cit., hlm. 44.

[25] Ibid.,

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Liability Companies does not explicitly regulate the conditions for granting acquit et de charge to the Board of Directors, causing legal confusion. Directors assume that if they obtain acquit et de charge, they will be completely free from all liability, but what needs to be clarified is that acquit et de charge is only given for actions that meet the principle of business judgment rules.

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