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Principle of strict liability against corporations in environmental crimes

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Abstract
The existence of corporations as the subject of criminal acts in criminal law reform policies has consequences on the principle of criminal law, namely that corporations can be accounted for the same as natural persons. It is not easy to determine when criminal liability can be requested from the management of a legal entity or to the management and legal entities, so that this becomes a problem in itself in practice. In addition, with the enactment of Law No on Job Creation, new problems arise because it eliminates the use of the Strick Liability Principle. The writing of this article is to use the library research method, which is carried out through data collection or library data collection or a study carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. It is feared that the omission of this phrase in judicial practice complicates the operation of the corporate responsibility system, where the proof is back to conventional by requiring the plaintiff to prove the element of guilt, whether intentionally or negligently against business actors destroying the environment. These further risks liberating environmental destroying corporations from liability. Automatically eliminates protection for people who are victims of environmental damage. In addition, it has the opportunity to extend the list of human rights violations because it has the potential to eliminate local people's sources of income, threaten clean water sources, pollute clean air and criminalize environmental fighters.

Keywords: Strict liability, corporation, environment

Introduction
Environmental damage in Indonesia is getting worse day by day. This damage is generally caused by human activities that are not environmentally friendly. Disgraceful acts and crimes against the environment, not only humans as private entities can do them, but corporations as legal entities can also do them (M.A. Santoso, 2016) [20].

Environmental damage carried out by corporations results in physical changes in an environment (Efendi, 2014) [2]. The sustainability of a clean and healthy living environment is decreasing, this is caused by several factors. The first factor is due to the fact that the earth is currently getting older and the other factor is caused by human activities. To be able to fulfill life satisfaction, humans often ignore environmental sustainability by triggering environmental damage to fulfill personal satisfaction and business activities.

Environmental crimes are categorized as crimes in the economic field in a broad sense, because the scope of crimes and environmental violations is wider than other conventional crimes, the impact of which results in economic losses to the state, as well as environmental damage (Siregar, 2015) [22]. The consequences of pollution and/or environmental destruction are the victims. Victims are also the ones who suffer the most losses, both material and immaterial losses and even result in the victim being disabled for life.

Some examples of environmental crime cases involving corporations are the environmental pollution case in Rancaekek and the Lapindo Mud case. The environmental pollution case in Rancaekek stems from the disposal of industrial toxic and hazardous liquid waste (B3) which was allegedly carried out by three textile factories located around the Cikijing River, Rancaekek District. The Regional Environmental Control Agency of West Java Province stated that 24,000 meters3 of wastewater from one factory is discharged into the river every day. Another example of a case that has caught the public's attention is the Lapindo Mud case. In addition to inundating agricultural land, the mudflow also affects the irrigation canal which functions to irrigate the residents' rice fields and plantations as well as the carrier channel during the rainy season for the Porong community.

To prevent the spread of corporate crime, the legal system in Indonesia since 1951 has introduced corporations as the subject of offenses. It did not stop there, in 1955 it was reaffirmed the position of the corporation as the subject of offenses in criminal acts so that they could be held criminally responsible (Satria, 2016) [21]. With the existence of a wet economische delicten in the Netherlands, since 1950 it has been possible for corporations to be held criminally responsible.

Criminal liability are expressions that are heard and used in everyday conversations in morals, religion and law (Mandiana, 2016) [9]. The three elements are related to one another and rooted in the same condition, namely a violation of a system of rules (Amrani, 2015) [1]. Errors are the central point of the concept of criminal responsibility or in other words, mistakes are one of the characteristics of criminal law that cannot be erased.

A corporation in the Netherlands which is considered capable of committing a criminal act has been regulated in the Dutch Criminal Code, so it is no longer an exception but there has been a development in criminal law in the Netherlands. Corporations in Indonesia which are considered to be able to commit a criminal act are still an exception, because in principle in Indonesian criminal law only humans can commit criminal acts, whereas if in an association a criminal act occurs, accountability can be asked for the person who made a mistake or the association is represented by its management to account for criminal acts that occur in the association.

The existence of corporations as the subject of criminal acts in criminal law reform policies has consequences on the principle of criminal law, namely that corporations can be accounted for the same as natural persons. It is not easy to determine when criminal liability can be requested from the management of a legal entity or to the management and legal entities, so that this becomes a problem in itself in practice (Widowaty, 2012) [24].

The increasing number of corporations as a global impact creates a special attention to environmental impacts (Noviyanti, 2019) [14]. Corporations are one of the legal subjects regulated in the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management. This means that corporations are recognized as the subject of environmental crimes, considering that the law regulates criminal provisions related to the environment. The number of environmental cases involving corporations certainly needs specific and firm regulations to deal with these problems. Considering that Indonesia is a legal country that is contained in (Kristian, 2016) [6].

The number of environmental cases involving corporations certainly needs specific and firm regulations to deal with these problems. Considering that Indonesia is a legal state as stipulated in the provisions of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state of law in question is a state in which all its operations must be based on law (Rifai, 2011) [16]. Legal practitioners are still fixated on the principle of no crime without guilt adopted by Indonesian general criminal law, it is suspected to be one of the causes that make it difficult for investigators and prosecutors to include corporations as suspects, defendants, and even convicts (Kurniawan, 2014) [7].

The protection and management of the environment, if observed in the Law of the Republic of Indonesia Number 32 of 2009 related to pollution of the environment, whether carried out by individuals or business entities or corporations, has given quite strict sanctions in the form of administrative sanctions and criminal sanctions. In the Law of the Republic of Indonesia Number 32 of 2009, it is stated that any person whose actions, business, or activities either use, produce or manage B3 waste so as to pose a serious threat to the environment are absolutely responsible for the losses that occur without the need to prove the element of guilt. However, in the Job Creation Act the word "without the need to prove the element of error" is omitted.

The problem that is the focus of this paper is how the development of the regulation of the strict liability principle in Indonesian positive law. To complete this paper, the author tries to look at the application of the principle of strict liability to corporations in environmental crimes in the Netherlands.

Methodology

Type research

This type of research is library research. Library research is research that is carried out through data collection or library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials (Yusuf, 2014) [25]. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature.

Data collection

Sources of data used in this study in the form of secondary data. Secondary data is data obtained from official documents, books related to the object of research, research results in the form of reports, theses, theses, dissertations, and laws and regulations. This study uses secondary data as the main reference because it is already available in the form of writing in books, scientific journals, and other written sources.

In qualitative research there are four methods to collect research data, namely literature study, interviews, questionnaires and observation. This research data collection technique was carried out through conventional and online literature searches. Conventional literature searches are carried out by searching for library materials, purchasing books, journals and attending scientific activities (seminars). Searching online is done by searching on the internet.

Data analysis

The data analysis method used in this research is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found that are presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

Result

Development of Strict Liability Principle Arrangements in Indonesian Positive Law

Strict liability was originally developed in the practice of justice in the UK. Some judges are of the opinion that the principle of mens rea can no longer be maintained for every criminal case. It is impossible to stick to the principle of mens rea for every criminal case in the provisions of today's modern law. Therefore, it is necessary to consider applying strict liability to certain cases. The judicial practice that applies strict liability has apparently influenced the legislature in making laws.

It is often questioned whether strict liability is the same as absolute liability. There are two opinions regarding this. The first opinion states that strict liability is an absolute liability. The reason or rationale is that someone who has committed a prohibited act (actus reus) as formulated in the law can already be convicted without questioning whether the perpetrator has a mistake (mens rea) or not. So someone who has committed a criminal act according to the formulation of the law must or absolutely can be punished. The second opinion states that strict liability is not absolute liability. This means that people who have committed acts prohibited by law do not have to or are not necessarily punished.

Since Indonesia does not recognize the strict liability teaching originating from the Anglo-American legal system, then as a justification, the feit materiel teaching originating from the Continental European legal system can be used as a justification. In these two teachings there is no important element of error. The strict liability teaching is only used for minor criminal offenses (regulatory offences) which only threatens a fine, as in most public welfare offenses. However, because Indonesia has taken over concepts originating from legal systems with different roots into the legal system in Indonesia, it requires the perseverance of Indonesian criminal law experts to explain this concept by linking it to the principles that have been institutionalized in Indonesian criminal law.

Strict liability is very far from the principle of error, so criminal law experts limit its application to certain offenses. Most of the strict liability is found in offenses regulated in law (statutory offenses; regulatory offenses; mala prohibita) which are generally offenses against public welfare (public welfare offences). This includes regulatory offenses such as the sale of harmful food and drink or drugs, prevention of pollution, use of misleading trade images and traffic violations.

From this description, it can be concluded that the consideration of applying the principle of strict liability in addition to its actions endangering the community is also very difficult to prove. The criteria for endangering the community does not have to be a serious crime (real crime), but also include regulatory offenses such as traffic violations, environmental pollution, food, beverages and drugs that do not meet health requirements.

The application of the principle of strict liability is very important in certain cases involving social or anti-social harm, endangering health and safety, as well as public morals. Cases such as environmental pollution, consumer protection, as well as those related to liquor, possession of weapons, and possession of illegal drugs, are cases where strict liability is possible.

In the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, the concept of responsibility is known, namely liability based on fault and strict liability, especially Article 87 and Article 88. Article 87 regulates regarding liability for environmental pollution in general which is based on unlawful acts, while Article 88 regulates liability for environmental pollution which is specific, namely absolute responsibility (Rangkuti, 2000) [15]. Based on the explanation of Article 88, what is meant by absolute responsibility or strict liability is that the element of fault does not need to be proven by the plaintiff as the basis for payment of compensation.

In dealing with environmental cases, judges are expected to be progressive considering that environmental cases are complex and there is a lot of scientific evidence. Environmental cases have different characteristics from other cases. In addition, environmental cases can also be categorized as structural cases that confront vertically between parties with greater access to resources and those with limited access.

In the second period of President Joko Widodo's leadership, one of the ideals that are trying to be realized in the field of law is simplification and harmony sasi statutory regulations. It aims to bypass complex bureaucracies that are vulnerable to various corrupt actions. The embodiment of these noble ideals was the emergence of the omnibus law on the Job Creation Act (which was later changed to the Job Creation Act).

In Indonesia, the system for making laws with this mechanism is a strange thing because it has never been done before. Even so, in the legal world this mechanism is also not a new thing because it has been carried out several times in other countries such as Canada and the United States. However, the mechanism for the formation of legislation that seeks to combine some of the norms that are scattered in several of these laws is not yet known in Indonesia.

The Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation has been officially signed by President Joko Widodo. The presence of the Job Creation Law which simplifies more than 70 regulations in this country to facilitate investment with the reason to encourage job creation.

One of the points that got the spotlight was the issue of the environmental impact of the existence of the Job Creation Act. There is a high risk to the environment behind the investment efficiency and ease of doing business offered by the Job Creation Act. When a permit is granted easily, there is a high risk involved.

The Job Creation Law contains changes and deletions related to articles that regulate environmental management as a matter of responsibility in carrying out business activities (Muamar, 2020) [11]. The job creation law tries to simplify all existing permits in carrying out activities or businesses that have an impact on the environment. In running a business, of course it will produce waste from the remnants of production. The waste has the potential to disrupt the community in facing a decent life in terms of the environment.

There are many articles in the Job Creation Act that can accelerate environmental damage. The most visible thing in environmental protection in the Job Creation Act is the weakening of law enforcement. This can be seen from the amendments to Article 88 of the Law on Environmental Protection and Management. The existence of the abolition of the provision of absolute responsibility or strict liability for environmental destroying corporations previously contained in Article 88 of the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management.

Absolute responsibility (no fault liability or liability without fault) itself in the literature is usually known as the phrase strict liability. Absolute responsibility is defined as responsibility without having to prove a fault (Riswanti, 2013) [17]. Strict liability focuses on the impact of an action regardless of whether it is intentional or not or consciously or negligently by the maker who causes an effect. This means that the maker can already be punished if he has committed the act as formulated in the law regardless of his inner attitude (Haritia, 2019) [3].

It should be noted that both intentional and negligence are

things that can only be proven to be attached to the individual. These things are related to psychological conditions, either intentionally or by negligence. Then the question arises what if the perpetrator is not an individual but a legal entity or corporation and that question is answered with the concept of strict liability.

In the Law on Environmental Protection and Management, it is stated that any person whose actions, business, or activities either use, produce or manage B3 waste so as to pose a serious threat to the environment are absolutely responsible for the losses that occur without the need to prove the element of guilt. Different things are seen in the Job Creation Act, the word "without the need for proof of an element of error" is omitted.

With the phrase "without the need to prove an element of guilt", this norm aims to ensnare non-individual environmental crime perpetrators, be it corporations or other legal entities. This norm has led to many lawsuits being won by the state or government against corporations. By omitting this word, it means to confuse the meaning of the normalization of the concept of strict liability in Article 88. Thus, the explanation of the article needs to include the characteristics of this concept of absolute responsibility. There is a potential that it cannot be used if the judge or the defendants are very rigid in interpreting Article 88.

The omission of the word is not just eliminating diction, but environmental crimes cannot be approached with ordinary criminal and civil approaches. When referring to the articles that are amended or omitted from the Environmental Protection and Management Act in the Job Creation Act, the law enforcement approach prioritizes administrative sanctions first.

Corporations are hard to live in take responsibility if there is a need to prove an element of guilt (Santosa, 2021) [19]. Corporations that are non-human legal subjects are not bound by psychological conditions in the form of intentional or negligent behavior, so it is impossible to prove it. So the strict liability provisions are presented in the Law on Environmental Protection and Management.

In the Job Creation Act, legal sanctions do not go hand in hand as the previous Environmental Law. This can be seen from the addition of Articles 82A, 82B and 82C which regulate administrative sanctions. The strengthening of administrative sanctions will not be comparable to the weakening of affirmative law enforcement articles such as this Article 88. The problem lies in the implementation of law enforcement, not on paper. With the Job Creation Act, it is increasingly clear that corporations are allowed to stagnate, while society continues to be restrained.

Laws in Indonesia have not fully protected victims of environmental crimes by corporations. The law on victim protection currently only focuses on cases of serious crimes, such as serious human rights violations, terrorism, narcotics, corruption, and human trafficking, but does not yet cover victims of corporate actions that pollute the environment. The job creation law, with articles that are quite controversial, exacerbates this. The Employment Copyright Act removes articles that can ensnare companies as perpetrators of environmental crimes or what is known as strict liability.

With the existence of Article 88 of the Law on Environmental Management and Protection, a factory that dumps waste exceeding the specified limit into the river, even if unintentionally, will still be subject to criminal articles. The loss of a few words in Article 88 of the Job Creation Law will increase the chances of corporations getting away with legal proceedings for environmental crimes they have committed and adding to the burden on the victims.

Strict liability is a powerful weapon in punishing corporate crimes, especially in the environmental sector. Indonesia has adapted the strict liability concept of the convention for the disposal of B3 waste (Hazardous and Toxic Materials) into the 1982 and 1997 Environmental Management Laws. this is more and more firmly listed. The 2009 Environmental Management and Protection Act stipulates that as long as there is an action that causes damage, the perpetrator must be responsible for restitution or compensation for damage to the victim without the need for supporting evidence.

This principle has proven to be effective in instructing corporations to provide material compensation (ecosystem rehabilitation and compensation to victims) as well as immaterial (eg, counseling assistance to victims who have lost their livelihoods due to environmental damage) (Imamulhadi, 2013) [5]. The effectiveness of the Law on Environmental Management and Protection was proven in a class action case (class action) in Mandalawangi Village, Bandung Regency, West Java, to Perum Perhutani and the government in 2003 which was proven responsible for a landslide that killed at least 21 people and the lawsuit of the Ministry of Environment and Forestry over land fires by PT. Waringin Agro Jaya in 2016.

In both cases, the defendants objected and filed a cassation and judicial review at the Supreme Court which in the end still won the plaintiffs on the basis of the principle of absolute responsibility for the perpetrators. However, the 2020 Job Creation Law has removed the phrase “without the need to prove an element of guilt” in favor of the victim by implying that every environmental crime case must be accompanied by strong evidence.

It is feared that the omission of this phrase in judicial practice complicates the operation of the corporate responsibility system, where the proof is back to conventional by requiring the plaintiff to prove the element of guilt, whether intentionally or negligently against business actors destroying the environment. These further risks liberating environmental destroying corporations from liability. Automatically eliminates protection for people who are victims of environmental damage. In addition, it has the opportunity to extend the list of human rights violations because it has the potential to eliminate local people's sources of income, threaten clean water sources, pollute clean air and criminalize environmental fighters.

Not only will they have to deal with the damaging effects of corporate activities, the public will also have to deal with the complexity of the mass proof process as a result of the job creation law. This will increase the burden on victims of environmental crimes in fighting for their rights that have been violated. This condition clearly benefits fraudulent corporations and it is increasingly difficult to detecting companies as perpetrators of environmental crimes.

Environmental damage due to the Job Creation Act has not been seen or is difficult to prove in the near future. However, this ratification emphasizes that the political process of environmental law in Indonesia lacks public participation, is not aspirational, and has multiple interpretations that lead to legal uncertainty. The Job Creation Act emphasizes the orthodox and centralistic character of legal products that characterize authoritarian political regimes.

Worse, after being traced, the makers of the Job Creation Act

also erred in proposing the reasons for the abolition of the strict liability provision which used the reason as if this provision in the Law of the Republic of Indonesia Number 32 of 2009 applies to the imposition of criminal sanctions. This shows the immaturity of the discussion and preparation of revising this law. This error can be seen in the academic text, where the reason for the abolition of the phrase "without the need for proof of an element of guilt" is "because every crime must be imposed because of evidence."

This is a form of misguided thought, because in the explanation of the Law of the Republic of Indonesia Number 32 of 2009 it is also practiced, strict liability is only applied to civil sanctions, not criminal sanctions. Legislators err in interpreting strict liability itself and changing it with such reasons is reckless and risky for the enforcement of environmental protection and management as well as for the community as victims of such damage.

Application of the Strict Liability Principle to Corporations in Environmental Crimes in the Netherlands

The Netherlands as a country with a European Civil Law tradition views the criminal justice process as a process that must be carried out legally to find the truth rationally and impartially (Luna, 2010) [8]. Therefore, the legal system is seen as a rational instrument that applies the scientific method to find truth and justice, so that law is a science because it is a product of rational decisions that can present truth and provide justice through balanced logic and analysis.

The Netherlands as a country that adheres to a civil law system, the formation of laws (formal wet) is carried out by the royal government (regering) and the general staten, but not all regulations, especially in the material sense (wet materiele zin) which are equated with laws, are not always made or formed by the royal government (regering) and staten general, but can be made by ministers, governors and mayors (M.F. Indrati, 2007) [18]. The Netherlands has a constitution or constitution called the Regeringsreglement (R.R.) then the constitution was changed to Wet op de Staatsinrichting van Nederlands Indie, abbreviated Indische Staatsregerling (I.S.).

The civil law system emphasizes the principle of binding force and legal certainty for a norm, this principle must be realized in regulations in the form of laws that are systematically arranged in the form of codification or written compilation (Muslih, 2015) [13]. The basic principle and main value of the law adopted by the Continental European legal system is that legal certainty and legal certainty will be realized if the regulations are in written form. The principle that emphasizes that a norm must be in written form is a principle that is influenced or follows the codification school of thought (Wila, 2006) [23], this is different from the principles adopted in the Anglo Saxon legal system or the common law system.

In the Dutch legal system, the Prosecutor's Office has authority over the police, other criminal investigators as well as criminal investigators serving in government agencies such as city, province and ministry inspectorates. This allows the Prosecutor's Office to initiate criminal investigations into environmental crimes. During the eighties several serious criminal cases related to illegal waste disposal in the Netherlands received a lot of media attention and illustrated the need for a more systematic reduction of environmental crimes by the police and public prosecutors.

The Dutch Minister of Justice has concluded that all elements of the Instruction on environmental protection through criminal law are covered by a combination of the Criminal Code, the Criminal Procedure Code, and the Economic Crime Law. Environmental crimes can be seen as lex specialis in relation to the Dutch Criminal Code and the Dutch Criminal Procedure Code.

Enforcement of environmental criminal law in the Netherlands began around 1980 thanks to several young public prosecutors operating as pioneers in the new field of criminal law. For the most serious environmental crimes, if committed intentionally, the punishment consists of a maximum of six years in prison and a maximum fine of €76,000 for individuals and €760,000 for legal entities. Until now only one person has been sentenced to six years in prison, namely in the case of dumping waste at the Port of Rotterdam. In the case of Probo Koala, a fine of €1 million was recently imposed on Dutch company Trafigura by a district court in Amsterdam.

The legal system in the Netherlands accepts corporate criminal liability more quickly and in a more pragmatic way, without academic and theoretical debate. In practice, prosecution of legal entities does not appear to be a problem. Corporate criminal liability is not limited to specific categories of actions and corporations are considered to be able to commit acts or have the intention of committing crimes (Mark, 2007) [4].

The criminal responsibility of a legal entity (rechtpersoon/legal person) is regulated in Article 51 Paragraph (1) of the Dutch Criminal Code (wetboek van strafrecht) (Muladi, 2012) [12]. This article stipulates that a criminal act can be committed by natural persons (naturlijkepersoon) and corporations. If a crime is committed by a corporation, criminal prosecution is very likely and criminal penalties are very likely to be imposed against (a) the legal entity or (b) the person who ordered or directed the commission of the crime or (c) the person referred to in (a) and (b) jointly (Article 51 Paragraph (2) of the Dutch Criminal Code), where the public prosecutor has full authority to choose who will be charged depending on each case.

In the Dutch Criminal Code, individuals (humans) and legal entities (corporations) are equal in position. This equality is accepted for practical reasons, namely that it is possible to hold corporations accountable for the behavior they may be associated with, as if they were human beings. Unincorporated corporations, partnerships, shipping companies and and a special purpose is considered the same as a legal entity for the above purposes.

In 2003, the Dutch Supreme Court (Hoge Raad) in its decision stated that whether a corporation is responsible or not for a crime must be judged from the special circumstances contained in a case. Whether or not criminal liability can be imposed on the corporation in the circumstances of whether a criminal act can be properly imposed on the corporation. A corporation in the Netherlands is liable if (Pieth, 2011) [10]:

1. Negligence or a criminal act is suspected to have been committed by a person who works for a corporation, either on the basis of a formal employment relationship or on other grounds.
2. The crime committed is part of the normal day-to-day activities of the corporation.
3. The corporation gains from the crime committed.
4. The corporation has the power over criminal acts, and at the same time accepts the crime.

The criteria as mentioned above cannot be considered

cumulative or exclusive, but are tools or factors to determine the criminal responsibility of the corporation.

In general, all individuals and companies on the territory of the Netherlands are required to comply with Dutch criminal law. All Dutch individuals and companies incorporated in the Netherlands are legally bound to comply with the Dutch Criminal Code, even if they are located and operate outside the Netherlands.

If a corporation is changed to or is continued by another corporation, the corporation that continues the criminal act can be prosecuted. The association of criminal liability to a corporation is not only based on the legal structure of the corporation, but rather on "social reality" with regard to the real involvement of the corporation in criminal acts. For example, if the acquiring company continues the environmental crimes of the acquired company as before, it can be prosecuted for actions taken as the previous corporation. If for some reason the company can no longer be prosecuted (for example, if the public prosecutor decides not to sue the company or the company agrees to a settlement), it does not mean that the representative or subsidiary cannot be held accountable and prosecuted either.

The provisions of Article 51 of the Dutch Criminal Code do not distinguish between serious and minor crimes. Based on the Dutch criminal law doctrine, every serious crime contains, either explicitly or implicitly, an element of guilt. For criminal acts that contain an element of error, the guilt of the suspect must be proven based on the standard level of error (negligence), gross negligence or intent.

Article 9 of the Dutch Criminal Code stipulates possible sanctions in the form of the main punishment, namely imprisonment, detention, community punishment orders and additional penalties in the form of deprivation of certain rights and announcement of court decisions. Imprisonment, detention, or community service do not apply to corporations, fines are the only major punishments that can be imposed on corporations. The absolute minimum fine is EUR 3. For corporations, Article 23 Paragraph (7) of the Dutch Criminal Code provides that a higher category of fine can be imposed if the maximum fine is not sufficient for the crime committed. If a category six penalty may be imposed, but this is not sufficient, a fine of up to 10% of the corporation's annual turnover in the previous financial year may be imposed.

The same sanctions that can be imposed on individuals can also be imposed on corporations, except of course sanctions which by their nature cannot be imposed on corporations (for example, imprisonment). In addition, specifically with respect to economic crimes in the environment, other sanctions may be imposed on corporations. These sanctions include, for example, the suspension of business for a period of up to one year (Article 7(c) EOA) or restraint of the company as provided for in Article 8(b) of the EOA.

The bankruptcy of a corporation does not preclude prosecution of that corporation. The rule that applies to natural persons (ie that the right to sue is automatically terminated upon the death of the natural person) does not apply to corporations. If a corporation is liquidated to avoid punishment and the business is continued under another name, "social reality" will prevail.

If the successor turns out to be the same entity as the liquidated corporation, then the successor can be punished for the actions of the liquidated corporation. Even if prosecution of a corporation for its actions is no longer possible, natural persons can still be prosecuted for directing the action.

Conclusion

Absolute responsibility (no fault liability or liability without fault) or known as the phrase strict liability, is defined as responsibility without having to prove a fault. Strict liability focuses on the impact of an action regardless of whether it is intentional or not or consciously or negligently by the maker who causes an effect. This means that the maker can already be punished if he has committed the act as formulated in the law regardless of his inner attitude.

The Law on Environmental Protection and Management stipulates that any person whose actions, business, or activities either use, produce or manage B3 waste so as to pose a serious threat to the environment are absolutely responsible for the losses that occur without the need to prove the element of fault. Different things are seen in the Job Creation Act, the word "without the need for proof of an element of error" is omitted. With the phrase "without the need to prove an element of guilt", this norm aims to ensnare non-individual environmental crime perpetrators, be it corporations or other legal entities. The omission of the word is not just eliminating diction, but environmental crimes cannot be approached with ordinary criminal and civil approaches. When referring to the articles that are amended or omitted from the Environmental Protection and Management Act in the Job Creation Act, the law enforcement approach prioritizes administrative sanctions first. This causes the Corporation to be increasingly difficult to hold accountable if there is a need to prove an element of guilt.

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