

CORPORATE CRIMINAL SANCTION IN OMNIBUS LAW FOR FOREST DESTRUCTION IN INDONESIA: Review of Law Number 11 of 2020 on Job Creation

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Abstract: Green economy has turned into a growing trend in the fourth industrial revolution (industry 4.0), particularly after the Covid-19 pandemic hit the world. The efforts to increase the investment (investor domination) in Law Number 11 of 2020 on Job Creation are apparently not reinforced by other instruments and overlook the principle of sustainable development. This study aims to analyze the legislative policy regarding the criminal sanction of corporation which commits criminal acts related to prevention and eradication of forest destruction after the enactment of Law No. 11 of 2020 on Job Creation. The main observed issue is in the incompatible formulation of administrative sanctions and criminal sanctions. Hence, to analyze such matters, this qualitative research employs normative legal perspective. This study finds the incompatible formulation of 'Criminal Sanctions' on Corporations, as it is stated in Article 82 Paragraph (3), Article 84 Paragraph (3), Article 85 Paragraph (2), and Article 96 Paragraph (2). Moreover, there is also unfitting interpretation of 'Administrative Sanctions' in the "forms of administrative fines".

Keywords: Corporation, Criminal Sanction System, Job Creation Law, Legislative Policy, Forest Protection

Abstrak: Ekonomi hijau menjadi tren yang berkembang pada revolusi industri keempat (industri 4.0) terutama setelah pandemi Covid-19 melanda dunia. Upaya peningkatan investasi (dominasi investor) dalam Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja rupanya tidak diperkuat dengan instrumen lain dan mengabaikan prinsip pembangunan berkelanjutan. Penelitian ini bertujuan untuk menganalisis kebijakan legislatif mengenai sanksi pidana korporasi yang melakukan tindak pidana terkait pencegahan dan pemberantasan kerusakan hutan pasca berlakunya Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja. Masalah utama yang harus dicermati adalah tidak sesuainya perumusan sanksi administrasi dan sanksi pidana. Oleh karena itu, untuk menganalisis hal-hal tersebut, penelitian

kualitatif ini menggunakan perspektif hukum normatif. Penelitian ini menemukan bahwa rumusan 'Sanksi Pidana' terhadap Korporasi dalam Pasal 82 Ayat (3), Pasal 84 Ayat (3), Pasal 85 Ayat (2), dan Pasal 96 Ayat (2) tidak sesuai. Selain itu, terdapat pula penafsiran yang kurang tepat mengenai 'Sanksi Administratif' dalam "bentuk denda administratif".

Kata Kunci: Kebijakan Legislatif, Korporasi, Pencegahan dan Pemberantasan Perusakan Hutan, Sistem Sanksi Pidana, UU Cipta Kerja

Introduction

The era of globalization and the fourth industrial revolution cause the changes in almost all aspects of human life, including the economic and legal spheres. The more advanced the science and technology, the tougher the business competition of corporations.¹ The popular definition of the industrial revolution as presented by Klaus Schwab in the Annual Meeting of The World Economic Forum in 2016, was; "The fourth industrial revolution is technological revolution, that is blurring the lines between the physical, digital, and biological spheres."²

However, the legal world would also be disrupted by the presence of the industrial revolution. The law must be able to keep the pace with technological developments. Likewise, in the law enforcement, it is proven by ECourt and E-litigation issues policy by Supreme Court. In the midst of the Covid-19 pandemic, criminal justice stakeholders recognize the need for the transformational role of the judiciary.³ The strong regulations are necessary. Therefore, the industrial revolution

requires the support of the legal revolution. The law must be able to strengthen the national inventions and innovations in the era of the fourth industrial revolution.⁴

Crimes, whether committed by individuals, domestic corporation or across the national borders, are increasing. These crimes sometimes involve very large assets. Corporation is often used by the criminals to hide and disguise the result of such crimes as well as their identity. Such kind of corporation is called "corporate vehicles" or corporation that is used by criminals as "vehicles or media" for money laundering.⁵

Assessing from its method, corporation is defined differently by criminal law and civil law.⁶ Corporation in civil law is regarded as legal entities, Rechtspersoon. In criminal law, corporation is "an organized collection of people or assets, whether they are legal or not legal entities".⁷ Corporation, a term commonly used by criminal law and criminology experts, refers to a legal entity (rechtspersoon), legal body or legal person. The concept of a legal entity actually comes from the concept of civil law, which is rooted in the development of so-

¹ Jaja Ahmad Jayus, "Pembangunan Hukum Dan Keadilan Harus Sesuai Di Era Revolusi Industri 4.0," in *The 2nd International Conference on Law, Governance and Social Justice (ICoLGaS)* (Banyumas: Fakultas Hukum Universitas Jenderal Soedirman, 2020).

² *Technical Education and Skills Development Authority, Technological Change Is Coming: The Fourth Industrial Revolution* (Taguig City: Deputy Director General for Policies and Planning Technical Education and Skills Development Authority, 2016). p.2.

³ Jayus, "Pembangunan Hukum Dan Keadilan Harus Sesuai Di Era Revolusi Industri 4.0."

⁴ Musleh Herry, "Penataan Kewenangan Pemerintah Daerah Bidang Pertanahan Di Masa Mendatang," *De Jure: Jurnal Hukum Dan Syar'iah* 6, no. 1 (2014): 79-94.

⁵ Asmawi, "Relevansi Teori Masalah Dengan UU Pemberantasan Korupsi," *De Jure: Jurnal Hukum Dan Syar'iah* 1, no. 2 (2010): 91-109.

⁶ Muladi and Dwidja Priyatno, *Pertanggungjawaban Korporasi Dalam Hukum Pidana* (Bandung: Sekolah Tinggi Hukum Bandung, 1991).

⁷ Muladi and Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenada Media, 2015).

ciety. The definition of a corporation in Indonesian criminal law is broader than the notion of a legal entity as in the concept of civil law. In various Indonesian criminal laws and regulations, the definition of a corporation is an organized collection of people and/or assets, whether they are legal entities or not.⁸

The evidentiary process in requiring corporate liability encounters several obstacles. First, the determination of corporate criminal performances cannot be seen from general crime perspective, because corporate crime is often regarded as part of a white-collar crime. Second, the determination of legal subjects might be criminally responsible with corporate misconducts. Third, the determination of the fault (*schuld*, *mens rea*) of a corporation is not easy, because of a complex organized crime connection entangled the board of directors, executives and managers in one side and the parent company, company divisions, and company branches in another side.⁹

In order to provide legal regulations and diminish corporate criminal offenses, some countries implement omnibus law. Omnibus law is a law that regulates various kinds of substantive matters, directly or indirectly related, in order to achieve a certain goal.¹⁰ To achieve this goal, omnibus law materials generally clarify the authority and coordination among agencies, correct some previously unclear or inconsistent regulations, and amend controversial and complex regulations.¹¹

In Indonesia, Omnibus law is embodied in Law no. 11 of 2020 on Job Creation. The Indonesian government defines omnibus law as a statutory regulation containing more than one

regulatory content which aim in creating an independent regulation without being bound (or at least negating) other regulations.¹² This description raises problems, considering that omnibus law should reflect the integration of regulations and be oriented to the effective application of regulations.¹³

Article 28H paragraph (1) of the 1945 Constitution¹⁴ states that every person is entitled to acquire a good and healthy living environment. The General Comment of the UN Human Rights Committee paragraph 19 also emphasizes that the country must be proactive in placing public information in a domain that is easily accessible to the public. Article 33 paragraph (4) of the 1945 Constitution¹⁵ states that the national economy intends to be conducted by virtue of economic democracy under the principles of togetherness, efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity.

In 2020, World Environment Day chose the theme "Time for Nature" to invite the whole world to realize that the food we eat, the water we drink, and the living space on the planet we live in are the best benefits from nature, thus we must preserve them. This is to ensure that the earth will renew itself, so that it will remain a comfortable and healthy planet in the future.

Nowadays forest destruction is more open and transparent along with the development in all scopes and the advance of communica-

⁸ H Setiyono, *Kejahatan Korporasi Analisis Viktimologi Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana* (Malang: Banyumedia Publishing, 2003). P.17.

⁹ Edward Omar Sharif Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014).

¹⁰ Glen S. Krutz, "Tactical Manuevering on Omnibus Bills in Congress," *American Journal of Political Science* 45, no. 1 (2001): 210, <https://doi.org/10.2307/2669368>.

¹¹ Krutz.

¹² Kementerian Koordinator Bidang Perekonomian Republik Indonesia, "*Penyiapan Omnibus Law Ekosistem Investasi (Kemudahan Investasi)*" (Kementerian Koordinator Bidang Perekonomian Republik Indonesia, 2019).

¹³ Maria Farida Indrati, "*Dapatkah Undang-Undang Omnibus Menyelesaikan Masalah Tumpang Tindihnya Peraturan Perundang-Undangan?*" (Badan Legislasi DPR RI, 2019).

¹⁴ Article 28 of The 1945 Constitution of the Republic of Indonesia

¹⁵ Article 33 of The 1945 Constitution of the Republic of Indonesia

tion and information technology. Many parties are involved and obtain advantages from the activities of illegal logging, forest encroachment, non-procedural use of forest areas, illegal mining, and plantations in forest areas without permits. Various types of activities involving many parties are executed in a systematic and organized manner. In general, those involved in these activities are people living around the forest, loggers, brokers, transportation providers, investors, and corporations. In addition, political executives, law enforcement officers, government officials are sometimes involved to grant business security.¹⁶

Law Number 11 of 2020 on Job Creation (Omnibus Law) adds provisions to Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction¹⁷ which regulates the completion of activities in forest areas without forest activity permit and/or business license. The above provisions are also stated in Article 51 of Government Regulation Number 104 of 2015 on Procedure to Change the Designation and Function of Forest Area¹⁸ with a deadline for completion of 1 year after the enactment of the regulation. The requirements in this regulation contain stricter limitations. The activity that does not meet the provisions of PP no. 104 of 2015 should already be subject to criminal sanctions.¹⁹

The policy in Articles 110A and 110B of Job Creation Law in Prevention and Eradication of Forest Destruction refers to the idea that amnesty becomes a solution to the con-

stant usage and utilization of forest areas, and it is known as forest amnesty. Inspired by the tax amnesty policy, forest amnesty aims to increase state revenues and economic growth as well as develop public awareness and compliance in implementing tax obligations and other obligations including forest rehabilitation.²⁰

In Indonesia, the implementation of this regulation is ambiguous because the government, on the one hand, agrees on a global settlement to prevent deforestation in order to address the problem of global warming, on the other hand, the government issues permits to convert land into large-scale plantations (especially oil palm plantation). The extent of oil palm plantations in forest areas and the importance of positive contribution of oil palm plantations in economic growth and people's lives become the emergence reasons for this discourse.²¹

There are several contradictions to this policy. First, the discourse on forest amnesty or similar policy fails to recall that forests should not only be perceived as a resource to be exploited, but the externalities of the forest environment must also be measured carefully. Second, sustainability of forest occupancy or community gardens in forest areas has different typologies. In addition to the differences of landscape context, other causes, such as policy conflicts of intentionally robbing the forests should be processed differently. Third, there is a possible issue in identifying the forest management rights of the forest-dependent communities with the management of corporations. The policy focus should be directed at strengthening community management rights and resolving tenure conflicts. Fourth, the reason for legal certainty should be the basis for the Government not to issue administrative

¹⁶ Suryanto, Catur Budi Wiati, and Sulistyono A Siran, *Illegal Logging: Sebuah Misteri Dalam Sistem Pengrusakan Hutan Indonesia* (Samarinda: Balai Penelitian dan Pengembangan Kehutanan Kalimantan, 2006). Pp. 94-99.

¹⁷ (UU PPPH/P3H)

¹⁸ PP 104/2015)

¹⁹ Aliful Umam Ahmad, "Analisis Masalah Mursalah Terhadap Pemanfaatan Tanah 'Kontrak' Berdasarkan PP No. 104 Tahun 2015 Tentang Tata Cara Peruntukan Dan Fungsi Hutan: Studi Kasus Di Desa Dagan Solokuro Lamongan" (Universitas Islam Negeri Sunan Ampel Surabaya, 2018).

²⁰ Pungky Widiaryanto, "Pungky Widiaryanto," *Forest Digest*, 2019, <https://www.forestdigest.com/detail/245/mungkinkah-menerapkan-forest-amnesty>.

²¹ Widiaryanto.

actions in areas with overlapping policies before harmonization among the regulations occur.²²

The main problem of Chapter III of Job Creation Law on Prevention and Eradication of Forest Destruction lies in the inappropriate formulation of criminal and administrative sanctions. Article 82 Paragraph (3), Article 84 Paragraph (3), Article 85 Paragraph (2), and Article 96 Paragraph (2) in Job Creation Law regarding corporate criminal liability have inaccurate formulation. The "forms of administrative fines", related to the policy of "administrative fines", are interpreted incorrectly. There is a functionalization of criminal law on administrative law.

Hence, for the Legal Certainty, it is essential to conduct re-evaluation of criminal sanction system on committed corporations' crimes in the prevention and eradication of forest destruction, as it is applied after the enactment of Law Number 11 of 2020 on Job Creation, especially in Chapter III improvement of the investment ecosystem and business activities, Paragraph 4: Amendment to Law Number 18 of 2013 on prevention and eradication of forest destruction. Based on the explanation above, this research is designed to investigate the Legislative Policy, specifically criminal sanction System on corporations which conduct criminal acts in prevention and eradication of forest destruction after the enactment of Law Number 11 of 2020 on Job Creation. Therefore, this normative legal research conducts the close observation of the regulation by employing statute approach and conceptual approach.

Criminal Sanction Policy on Corporation

Indonesia is one of the countries in the world that has tropical forests with extremely high biological diversity, which plays an important role in maintaining global ecosystem stability. In this regard, Indonesia's Government im-

plements forest management not only oriented to the economic value of woods, but also with a respect to the entire forest ecosystem with its various functions.²³ The purpose of forest management is to provide optimal benefits, for environmental, social and economic aspects, in order to obtain the prosperity of the Indonesian people, as well as actively participate in reducing the impact of climate change as global responsibility.²⁴

The Government of Indonesia has conducted a re-evaluation policy by taking corrective actions to improve sustainable management of forests and the ecosystems. The policy reassessment is intended, 1) to ensure a significant reduction deforestation as well as forest and land degradation rates, 2) to prevent forest and land fires and overcome the negative effects on the environment, health, transportation, and economic growth, 3) to apply the principles of environmental transmitting capacity in the utilization of forest areas, 4) to align the policy direction of the Ministry of Environment and Forestry in the future in accordance with the Sustainable Development Goals, SDGs, 5) to be involved in the global cooperation to deal with climate change with a commitment to a Nationally Determined Contribution-NDC by reducing greenhouse gas emissions through a country efforts or with international assistance, 6) to involve the participation of the community, either man or woman, in access to forest management and to give responsibility to all parties involved in it, so that forest areas and their ecosystems are guaranteed to exist.

The corrective steps which have been taken are, 1) implementation of low-carbon de-

²² Henri Subagiyo, "Jebakan-Jebakan Forest Amnesty," *Forest Digest*, 2019, <https://www.forestdigest.com/detail/256/jebakan-jebakan-forest-amnesty>.

²³ Yunizar Prajumufti Jundiani, "Konsep Konstitusi Hijau (Green Constitution) Dalam Kegiatan Ekonomi Berkelanjutan," *De Jure: Jurnal Hukum Dan Syar'iah* 3, no. 2 (2011): 197-208.

²⁴ Hermudananto, "Kerusakan Hutan Belum Berhenti Selama Pandemi," *Kompas.Com*, 2020, <https://www.kompas.com/sains/read/2020/07/20/1721-23823/kerusakan-hutan-belum-berhenti-selama-pandemi?page=all>.

velopment, enhancement of resilience to climate change by restoration, control and renewal of peat lands, rehabilitation of forest and land, and reduction of deforestation rates, 2) the change of forest management which previously focused on woods management becomes management based on forest resource ecosystems and community 3) implementation of community-based forest management by providing equitable and sustainable access to forest management through social forestry and conservation partnerships, 4) conflicts resolve on forest tenure cases and provision of legal land assets for the community through the Land for Agrarian Reform Objects (TORA) program, 5) internalization of the principles of carrying capacity and environmental capacity into the preparation of the Revised National Forestry Plan (RKTN) as a macro spatial direction for forestry development in 2011-2030, 6) prevention of biodiversity loss and ecosystems damage through conservation of area and protection of endangered biodiversity, and 7) prevention, mitigation and restoration of natural resources and the environmental damage. The implementation of Law No. 11 of 2020 on Job aims to provide an easy access to investors, which also encourage investment (investor domination), but this policy is apparently not correlated with other instruments such as improvement of the quality and expectancy of life and environment.

The interpretation of the procedure of monetary sanctions is not suitable; the mistakes occur in interpreting the form of administrative fines. Administrative fines (*Bestuurlijke Boete*) are one of the punitive sanctions which aim at giving punishment to someone. The administrative fine is nothing more than a reaction to the violation of norms, which is intended to increase the exact amount of punishment.²⁵ Looking at this concept in the Netherlands, administrative fines are the imposition of an unconditional obligation to

make payments of a certain amount of money. When the concept is contextualized in Indonesia, the application of this administrative fine is found in Government Regulation No. 8/1999 on the Utilization of Wild Plants and Animals Species, which states that: Whoever confines wild plants and animal species without a permit as referred to in Article 9 paragraph (1) should immediately be sentenced to an administrative fine of up to Rp. 25,000, 000 (twenty-five million rupiah) and / or revocation of the captive permit.

Reflecting to this, whether the perpetrator has corrected his behavior or not, administrative fines are still implemented. Unfortunately, there is unsuitable implementation of the formulation of this concept in Indonesia. Based on the Minister of Environment Regulation No. 2 of 2013, it is explained that fines for lateness are a form of the administrative fines.²⁶

Article 18 of Job Creation Law regulates additional types of administrative sanctions such as warning letters, administrative fines and revocation of Business licenses for business actors in the forestry sector. Article 18 of Job Creation Law states that in addition to being subject to criminal sanctions, violations of the provisions as referred to in Article 12 letter a, letter b, letter c, Article 17 paragraph (1) letter b, letter c, letter e, or Article 17 paragraph (2) letter b, letter c, or letter e as well as other activities in forest areas, without a Business License carried out by legal entities or corporations, are subject to administrative sanctions. The administrative sanctions include, among others, warning letter, coercive government action, administrative fines, suspension of business license; and/or revocation of Permit. There are also further provisions on the criteria, types, number of fines, and procedures for imposing administrative sanctions as referred

²⁵ HR Ridwan, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2018). Pp. 300-301.

²⁶ Amelia MK Panambunan, "Penerapan Sanksi Administratif Dalam Penegakan Hukum Lingkungan Di Indonesia," *Lex Administratum* 4, no. 2 (2016): 93-101.

to paragraph (1) which are regulated in a Government Regulation.

Additional type of administrative sanctions is administrative fines. This administrative fine was previously known as fines for late implementation of coercive government action. Job Creation Law requires to prioritize the imposition of administrative sanctions, then certain actions will be subject to criminal sanctions. However, it is not clearly seen in the Job Creation Law on how to utilize or optimize sanctions for the Prevention and Eradication of Forest Destruction. In administrative sanctions, there are 5 (five) kinds of sanctions, including warning letters, coercive government action, suspension of business licenses, revocation of permits, and fines for late implementation of coercive government action.

In Job Creation Law, these types of sanction are added with an administrative fine. Amendment to Law no. 18 of 2013 in Job Creation Law also recognizes another type of administrative sanction called the temporary suspension of business activities, as a form of sanction that is different from coercive government action. Generally, administrative sanctions have different functions. The categorizations of these functions are; first, sanctions serve to restore. These are sanctions that partly or entirely aim to reestablish or correct violations, prevent violations, and eradicate or diminish the consequences of violations. Coercive government action and orders are the examples of these sanctions that are followed up by paying the penalty. Second, sanctions serve to be regressive or return to the previous condition as the existence of favorable legal conditions. An example is license revocation. Third, sanctions serve to punish, which mean that sanctions have aim to intensify the suffering of the offender. An example of this sanction is administrative fine. Fourth, sanctions serve to prevent more serious destructions. These sanctions are typically for activities that have not

caused contamination and/or damage. An example of this sanction is a Warning Letter.²⁷

In observing the implementation of administrative sanctions in Job Creation Law, this study finds that the government's coercive sanction is ineffective, because this type of sanction should be applied to stop violations quickly and provide fast recovery. Amendment Law no. 18 of 2013 in Job Creation Law distinguishes the types of coercive government action sanctions from temporary suspension of activities/businesses. In fact, it should be noted that the temporary suspension is a form of the coercive government action.

The explanation of "administrative sanctions" in Law no. 18 paragraph (1) of 2013 on Prevention and Eradication of Forests Destruction are sanctions imposed on violations without a permit and sanctions imposed to permit holders. For violations without a permit, administrative sanctions are imposed in the form of compensation in accordance with the level of damage impact to the state in rehabilitation costs, forest condition restoration, or other necessary actions. While, for permit holders, administrative sanctions are imposed in the form of fines, termination of activities, reduction of area, or revocation of permits.

Furthermore, sanctions of "coercive government action" are legal actions taken by the government so that companies/ legal entities carry out forest restoration due to their law violation as well as their actions in causing damage to forests. "Penalty payment" means a certain amount of money that must be paid by a legal entity or corporation that violates the provisions of laws and regulations as a substitute for the implementation of government coercive sanctions.

²⁷ Andri Gunawan Wibisana, "Tentang Ekor Yang Tak Lagi Beracun: Kritik Konseptual Atas Sanksi Administratif Dalam Hukum Lingkungan Di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 41-71.

Moreover, referring to the Minister of Environment Regulation No. 2 of 2013, coercive government action consists of several sanctions; the temporary termination of production activities, the relocation of production facilities, the closure of sewerage or emission channels, demolition, confiscation of goods or equipment which have the potential to cause violations, temporary termination of all activities, and/or other actions aim at stopping violations and restoring environmental functions.

The law no. 18 of 2013 and Law no. 11 of 2020 about Job Creation on Prevention and Eradication of Forest Destruction have several differences. In Law no. 18 of 2013 on Prevention and Eradication of Forest Destruction, the scope of corporation is an organized group of people and/or wealth, in the form of legal and non-legal entities. The corporation and/or its managements could be punished. Basic sanctions are in the form of imprisonment and fines.

Administrative sanctions are coercive government action, penalty payment, and revocation of permits (partial or complete closure of the company). In Law no. 11 of 2020 on Job Creation, Chapter III Improving the Investment Ecosystem and Business Activities, Paragraph 4: Amendments to Law no. 18 of 2013 on Prevention and Eradication of Forest Destruction, the corporation is an organized group of people and/or wealth, in the form of legal entities and non-legal entities. Basic sanctions are also in the form of imprisonment and fines. Meanwhile, administrative sanctions are warning letters, coercive government action, suspension of business licenses, and revocation of permits.

Job Creation Law in the section of Prevention and Eradication of Forest Destruction states that when the corporation is unable to pay the fine, the managements could be charged with corporal punishment. This may pose a danger because the automatic change of legal subject; this regulation mixtures and

equates two legal subjects that are actually different, corporations and person (corporate managements).²⁸

In theory, it is possible for the managements to be charged with a separate crime (with person as the legal subject), if the person has a significant role in the crime committed by the corporation. In this case, the term "managements" should not be used or it should be sufficient to divide the subject into "person" and "corporation". Hence, the punishment must be in accordance with the respective subject to be charged. In addition, to fines the corporations, there are also other alternatives, for example additional penalties when assets owned by corporations are used to finance environmental restoration or environmental repairs that have been polluted/damaged due to corporate criminal acts.²⁹

The following are the analysis results of sanction system policy on corporate criminal acts in prevention and eradication of Forest Destruction.³⁰ Law No. 11 of 2020 on Job Creation, Chapter III Improvement of the Investment Ecosystem and Business Activities, Paragraph 4: Amendment to Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction, Article 12, anybody is prohibited from:

- a. Cutting the trees in forest land without business licenses of forest utilization;

²⁸ Andri Gunawan Wibisana, "Kejahatan Lingkungan Oleh Korporasi: Mencari Bentuk Pertanggungjawaban Korporasi Dan Pemimpin/Pengurus Korporasi Untuk kejahatan Lingkungan Di Indonesia," *Jurnal Hukum Dan Pembangunan* 46, no. 2 (2016): 149-95.

²⁹ Arif Rusmana and Hana Krisnamurti, "Analisis Yuridis Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Perusakan Hutan Lindung Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Wacana Paramarta: Jurnal Ilmu Hukum* 17, no. 1 (2018): 15-26.

³⁰ Indonesian Center For Environmental Law, *Berbagai Problematika Dalam UU Cipta Kerja Sektor Lingkungan Dan Sumber Daya Alam* (Jakarta: Indonesian Center For Environmental Law, 2020). p. 57.

- b. Cutting the trees in forest land without Business Permit from the authorized officials;
- c. Carrying out illegal logging in forest land;
- d. Loading, unloading, releasing, transporting, controlling, and/or possessing the result of cutting in forest land without a Business Permit from the Central Government;
- e. Transporting, controlling, or possessing wood forest products without being equipped with a; letter of legality of forest products;
- f. Carrying tools commonly used to drop, cut or divide trees in forest land without a permit from the authorized officials;
- g. Bringing heavy duty equipment and /or other equipment commonly used or believed to be used to transport forest products in forest land without a permit from the authorized official;
- h. Using wood forest products which are considered from illegal logging;
- i. Circulating wood from illegal logging by land, water, or air;
- j. Smuggling wood from or to the territory of the Republic of Indonesia through rivers, land, sea or air;
- k. Receiving, buying, selling, accepting exchange, accepting deposit, and/or possessing forest products which are known from illegal logging;
- l. Buying, marketing, and/or processing wood forest products originating from forest land which are taken illegally; and/or
- m. Receiving, selling, accepting exchange, accepting deposit, storing, and/or possessing wood forest products originating from forest land which are taken or collected illegally.

Related to the previous important points, Article 82 Paragraph (3) states that any corporation which : a. cuts trees in forest land by violating a forest utilization permit as referred to Article 12 letter a; b. cuts trees in forest land without holding a permit issued by the autho-

rized official as referred to Article 12 letter b; and/or c. cuts trees in forest land illegally as referred to Article 12 letter c, shall be sentenced: (a) The managements should be sentenced to a minimum of 5 (five) years and a maximum of 15 (fifteen) years and be fined a minimum of Rp 5,000,000,000.00 (five billion rupiah) and a maximum of Rp15.000.000.000,-00 (fifteen billion rupiah); and / or (b) Corporations are subject to 1/3 of the imposed criminal fine.

Based on the analysis in this research, Article 82 Paragraph (3), Article 84 Paragraph (3), Article 85 Paragraph (2), and Article 96 Paragraph (2), on Corporate Criminal Provisions, have inaccuracies in the formulation as follows; first, the repetition of the phrase "Corporations" and the broadening of the term "Corporations" to "managements". Also, the term "Corporations" may lead to multiple interpretations and ambiguity. Second, letter b states "Corporations are subject to 1/3 of the imposed criminal fine", this formulation has incorrectness.

The phrase "1/3 of the imposed criminal fine" becomes unclear, ambiguous and raises questions such as; imposed by whom? Is it 1/3 of the criminal fine? How much is it? Third, this study believes that it should be like other articles in the preparation and formulation of the Sanctions System on Corporations in Prevention and Eradication of Forest Destruction, with the following sentences; "...the managements shall be punished with imprisonment for a minimum of ... years and a maximum of ... years and a fine of at least Rp. ... and a maximum of Rp. ... and/or corporations are subject to an increment of 1/3 of the principal fine".

Fourth, the legislative policy in the formulation of Sanctions on Corporations committing criminal acts in Prevention and Eradication of Forest Destruction after the enactment of Law no. 11 of 2020 on Job Creation, especially in Article 82 Paragraph (3), Article 84 Paragraph (3), Article 85 Paragraph (2), and Article

96 Paragraph (2)³¹, must be corrected immediately (re-evaluated). This is very important because these regulations become the legal basis that is indispensable in the case of the application and implementation of criminal acts. In addition, the effectiveness and usefulness of these regulations must be clearly visible.

Meanwhile, based on the points of Article 12 above, it is stated in Article 84 Paragraph (3); Any corporation which carries tools commonly used to drop, cut or divide trees in forest land without a permit from the authorized administrators as referred to Article 12 letter f (a) The managements should be sentenced to a minimum of 2 (two) years and a maximum of 15 (fifteen) years and be fined a minimum of Rp 2,000,000,000.00 (two billion rupiah) and a maximum of Rp 15.000.000.000,00 (fifteen billion rupiah); and / or (b) Corporations are subject to 1/3 of the imposed criminal fine.

After analyzing Article 84 Paragraph (3), it is theoretically possible for the managements to be charged with a separate crime (with person as the legal subject) if he/she has a significant role in committing a corporate criminal act. The terms "managements" and "corporation" should not be used in the law; the subject should just divide into "person" and "corporation" and the punishment should be delivered to the respective charged subject. The basic criminal sanctions of imprisonment for (managements and corporations) lead to improper implementation because the two legal subjects are treated similar while in fact, they are different. Indeed, there are other alternatives besides fines for corporations. For example, the additional punishment for the corporations is they should perform environmental restoration as the replacement of the committed crime, or the usage of the assets possessed by the corporation to finance the repair or restoration of a polluted/damaged environment due to the corporate committed criminal acts.

³¹ Articles in Job creation law related to criminal sanction

The Legal Subjects of Forest Destruction Crime in Article 1 number 21 of Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction are explained as: "Everybody is an individual and/or corporation that commits forest destruction in an organized way in the jurisdiction of Indonesia and /or having a legal consequence in the jurisdiction of Indonesia."

The imposition of "penalty payment" on corporations needs to be implemented very carefully with considering the principle of rationality (consideration of costs and benefits) of corporations. Criminal penalties are directly related to the financial market which tends to fluctuate (the value of money is fluctuated). The imposition of fines on corporations is appropriate, but there is a decrease in the value of fines. It can be concluded that Law No. 11 of 2020 on Job Creation has reduced the purpose of Law no. 18 of 2013 on Prevention and Eradication of Forest Destruction, and "a deterrent effect" for corporations.

Ambiguity of Administrative Sanction and Corporation Obligation

To implement Article 37 and Article 185 letter b of Law no. 11 of 2020, the Government Regulation, regarding on the procedures for imposing administrative sanctions and procedures for non-tax state revenues originating from administrative fines in the forestry sector, should be established. Government Regulation No. 24 of 2021³² is the implementation of the law.

Payment of forest resource provision (PSDH) and Reforestation Fund (DR) is not an administrative sanction.³³ Government Regu-

³² Government Regulation No. 24 of 2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Deriving from Administrative Fines in the Forestry Sector

³³ Alasman Mpesau, "Studi Terhadap Tindak Pidana Kehutanan Dalam Penebangan Hutan Diluar Ren-

lation No. 24 of 2021 on procedures for imposing administrative sanctions and procedures for non-tax state revenues originating from administrative fines for business activities, which have been established in forest land, it is explained that the payment of forest resource provision and the Reforestation Fund (DR) is one method of administrative sanctions.

In Government Regulation Number 24 of 2021, sanctions for the obligation to pay forest resource provision (PSDH) and Reforestation Fund (DR) will be imposed on business actors who have carried out their activities in developed forest land, or if they have business permits but it is not in the forestry sector. If forest resource provision (PSDH) and Reforestation Fund (DR) have been paid, the Minister revokes the administrative sanctions and issues approval applications for releasing areas in production forest or applications approval to continue business activities in protected forest areas and/or conservation forests.

Assessing from the basic concept of the Reforestation Fund, it should be noted that this Fund is a form of obligation that must be paid by the holder of a Business Permit in order to perform Utilization of Timber Forest Product (IUPHHK) that carries out activities in natural forests. Payment of this fund is an obligation because every wood forest product, that is cut from several forest areas, will be subject to a state levy as the Reforestation Fund implementation. That is the important point why the Reforestation Fund is not a response to disobedience. Therefore, it is not appropriate to categorize this as a form of administrative sanctions.

The same thing happens in the payment of forest resource provision (PSDH), as it is a levy used to substitute the intrinsic value of forest products, collected from state forests and/or forest products located in forest areas whose

status has been released to become non-forest and/or forest areas reserved for development outside the forestry sector. From this explanation, it can be seen that PSDH is an obligation levy, especially for IUPHHK or IUPHHBK holders in Natural Forests, Plantation Forests, Village Forests, Community Plantation Forests, as well as IPPKH holders.

Similar to the Reforestation Fund, PSDH is not a response to disobedience. Therefore, it is not appropriate to categorize this as a form of administrative sanctions. With the meaning of the Reforestation Fund and PSDH as a form of administrative sanctions in government regulations derived from the Job Creation Law, there will be probability that the imposition of DR and PSDH is potential to delay violations or disobedience. In fact, the collection from this fund has an important role because the proceeds will go to PNPB and will be distributed through the Revenue Sharing Fund scheme to the regions, which can be used to prevent deforestation and forest degradation.

As a response to disobedience, Permen LHK (regulation of the minister of environment and forestry) No. 71/2016, has basically set sanctions regarding the compensation for tree stands and fines for forest exploitation as the practical instrument. These sanctions are disciplinary sanctions, which can be used to create a deterrent effect.

The regulation of DR and PSDH as administrative sanctions should be re-evaluated. Administrative sanctions must be placed as an instrument of compliance in the context of command and control, while the DR and PSDH must be placed as the implementation of obligations before there is a violation.

Administrative sanctions have the aim of punishing, recovering, and returning to their original state. The punishment effect is noticed when a person has desire to conduct any misdeed, that a person will think again and again, because he/she would consider the consequences and the supervision of related regulations makes that person unable to escape from

cana Kerja Tahunan Pada Pemilik Izin Usaha Pemanfaatan Hasil Hutan Kayu," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 19–28.

the entanglement of existing norms. Moreover, it is very important to optimize sanctions related to remediation.³⁴

One of the advantages of administrative sanctions is they can be used to stop violations quickly. Hence, it is necessary to pay attention on how to utilize administrative sanctions, because these sanctions are not only able to encourage obedience but also to restore/ correct violations, prevent violations, and eliminate or minimize the consequences of violations.³⁵

Theoretically, this administrative settlement is not profitable, because in serious cases, the consideration of punishment is actually important for moral purposes and deterrent effects, serious cases which make victims cannot be resolved only administratively. Thus, the utilization of criminal law is also very much needed in economic law enforcement context. The same thing is also stated by Suzuki quoted by Muladi that: "It must be recognized, however, that administrative regulation may not work properly unless it is added by penal measures. The administrative agencies that are responsible for the regulation of industrial and commercial activity, may give the priority to the interest of business enterprises over the society in general. Therefore, penal intervention becomes essential in many sectors and diversified fields of business practices to maintain life, health, property and happiness of the general public".

The implementation of cumulative sanctions has been regulated in the Minister of Environment Regulation No. 2 of 2013.³⁶ Unfor-

tunately, the indicators for the implementation of these cumulative sanctions have not been described. This regulation only shows that the application of administrative sanctions can be accomplished internally and externally. Internal cumulative is the implementation of sanctions performed by combining several types of administrative sanctions for one violation.

Moreover, the external cumulative is the implementation of sanctions carried out by combining the application of one administrative sanction type with the application of other sanctions, for example punishment. The implementation of the cumulative sanctions must be comprehended to attain the final goal of administrative sanctions; punitive, reparatory and regressive. Consequently, in the manifestation of this accumulation, especially internal accumulation, it is necessary to look at the application of the *Ne bis vixari* principle. Those similar sanctions with the same objectives may not be applied together. The same instruction is also found in the Dutch Awb which states that administrative officials may not execute several restorative sanctions for the same violation.³⁷

In the implementation of the cumulative sanctions, coercive government action cannot be implemented with a penalty payment at the same time. However, the imposition of government coercive sanctions can overlap the administrative fines. When these two sanctions are imposed, the offender will find a deterrent effect and the violation can be controlled and recovered rapidly. The violations which are in the process of being legally investigated can also be a subject to government coercive sanctions in order to stop and fix the violation quickly. This arrangement is expected to deliver a deterrent effect, support obedience, and discontinue environmental pollution and / or damage.

³⁴ John Braithwaite, Valerie Braithwaite, and Gale Burford, "Broadening the Applications of Responsive Regulation," in *Restorative and Responsive Human Services* (New York: Routledge, 2019). p. 20.

³⁵ Indonesian Center For Environmental Law, *Setelah UU Cipta Kerja: Menelaah Efektivitas* (Jakarta: Indonesian Center For Environmental Law, 2020). p.1.

³⁶ The Minister of Environment Regulation No. 2 of 2013 on Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management

³⁷ Philipus M Hadjon, "Penegakan Hukum Administrasi Dalam Pengelolaan Lingkungan Hidup," *Jurnal Hukum, Ius Quia Iustum* 2, no. 4 (1995): 45-53.

Administrative sanctions are divided into two parts, remedial sanctions/ *herstelsancties* and punitive sanctions.³⁸ Remedial sanctions are aimed at stopping violations or remediating violations. An example of this sanction is coercive government action or enforcement action. Coercive government action, which is called *last onder bestuursdwang* in Dutch, is a type of sanction that contains orders from government officials to violators to stop the violation or make reparation for the violation within a certain time. If within that time, the violator does not complete what is ordered, then the government will be involved in controlling it. Penalty payment, which is called *last onder dwangsom* in Dutch, contains an order to do/ not to do something to the violator. The difference with coercive government action is in the application of Penalty payment sanctions, if the violator does not carry out the order within a certain time, the government will impose a penalty payment (per day) for delays in implementing the order.

Meanwhile, punitive sanctions, or administrative penal law, are sanctions that place a burden on the violator because he or she commits a violation.³⁹ This punishing sanction can be found in administrative fine, or in Dutch it is *bestuurlijke boete*. Such fines are imposed when a violation occurs, regardless of whether the violator has recovered or stopped the violation. In this case, a fine is imposed on the violator as a burden because he committed the offence. Criminal law with its retributive approach, which is more focused on the perpetrators of criminal acts, is not effective in tackling corporate crime, because it only handles symptoms, not the cause of crime and has a tendency to ignore victims as parties affected by corporate crimes.

³⁸ Oswald Jansen, "Country Analysis – The Netherlands," in *Administrative Sanctions in the European Union*, ed. Oswald Jansen (Cambridge: Intersentia, 2013), 318–24.

³⁹ Michiel A Heldeweg and René J.H.G. Seerden, *Environmental Law in the Netherlands* (Alphen aan den Rijn: Wolters Kluwer, 2012).p. 195.

With the simplification of Law No. 11 of 2020 on Job Creation, the legal transplantation approach through harmonization and alignment with the national legal system using the omnibus law method has become limited and broad-based. The legal principles contained in Law no. 11 of 2020 on Job Creation which was formed through omnibus law method contains legal teachings (doctrine) in each field of legal material. The approach to the development of national law is through the Pancasila law system. The placement of law no. 11 of 2020 on Job Creation is through harmonization of law and national law, with the approach of common law to the Civil Law system, then harmonizing it with the concept of Pancasila into the national legal system.⁴⁰

Conclusion

A re-evaluation of legislative policies (regarding the criminal sanction system on corporations committing crimes in Prevention and Eradication of Forest Destruction after the enactment of Law Number 11 of 2020 on Job Creation) is required. Criminal sanctions on corporations are important because those regulations are used as the basis for legality in the application and the implementation of punishing the crimes. In addition, the effectiveness and usefulness of this regulation has potentials to support the realization of a dignified country and fairness in Indonesia. Problems in this regulation are inappropriate formulation of administrative and criminal sanctions. The provisions on Corporate Crime in Article 82 paragraph (3), Article 84 paragraph (3), Article 85 paragraph (2), and Article 96 paragraph (2) are not properly formulated. Furthermore, the main criminal sanctions in article 84 paragraph (3), imprisonment for managements and corporations, are certainly improper and have

⁴⁰ Ahmad Ulil Aedi, Sakti Lazuardi, and Ditta Chandra Putri, "Arsitektur Penerapan Omnibus Law Melalui Transplantasi Hukum Nasional Pembentukan Undang-Undang," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 1 (2020): 1–18.

multiple interpretations, because it is impossible for a corporation to be sentenced to imprisonment. Moreover, external special criminal law can be said to be administrative penal law. It means that a number of laws is essentially administrative laws which is a subject to criminal sanctions, so there is a tendency to use the principle of subsidiarity. There is a functionalization of criminal law in administrative law. Hence, after analyzing the object study, it is concluded that a review of this provision is necessary in order to restore the function of administrative fines as a punitive sanction.

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