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CORPORATE LIABILITY FOR CONDUCTING MINING ACTIVITIES IN FOREST AREAS WITHOUT MINISTERIAL PERMISSION UNDER THE ENVIRONMENTAL PROTECTION AND MANAGEMENT LAW

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Abstract: *The responsibility of corporations engaged in mining activities within forest areas without the Minister's permit is an important issue in the context of environmental protection and management in Indonesia. Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) regulates the obligation of all parties, including corporations, to conduct business activities while considering environmental sustainability. In this case, corporations that engage in mining activities without the Minister's permit are considered to violate existing regulations, which may lead to both criminal and administrative sanctions. This study aims to examine the extent of corporate responsibility for environmental damage caused, as well as the implications for law enforcement and environmental protection. The research uses a normative legal method with a legislative, conceptual, and comparative approach, focusing on the analysis of Article 89 Paragraph (2) letter (a) of the P3H Law and its implementation in the enforcement of law related to corporate crimes in the mining sector. Furthermore, the study will discuss how existing policies and regulations can improve corporate accountability in carrying out environmentally friendly mining activities. Through this analysis, it can be concluded that Article 89 Paragraph (2) letter (a) of the P3H Law does not clearly specify who is responsible, preventing the corporate management from being held criminally accountable. This undermines the purpose of the law to provide certainty, justice, and benefits. As a result, the law fails to achieve its goals of criminal punishment and legal protection for the welfare of society and environmental preservation.*

Keywords: *Corporate liability; Mining activities; Forest areas*.

1. INTRODUCTION

Mining activities in Indonesia have significant potential to support the national economy; however, they also pose negative environmental impacts, particularly when conducted without proper authorisation. One of the major recurring issues is mining

operations carried out in forest areas without permission from the Minister of Forestry. Such activities not only violate legal provisions but also threaten forest ecosystems that are crucial for environmental sustainability (Ifrani et al., 2019).

Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) and Law No. 41 of 1999 on Forestry regulate the obligation to obtain permits for activities within forest areas. However, despite the existence of these regulations, illegal mining practices continue to occur, often involving corporations with substantial resources. This raises concerns about corporate legal liability in conducting unlawful mining activities, particularly about the application of the Vicarious Liability Principle, which holds corporations accountable for the actions of their employees or executives.

The Law on Natural Resource Management, including the P3H Law (Natural Resource and Forestry Management Law), imposes strict sanctions on activities that cause environmental damage, including mining in forest areas without authorisation. However, gaps remain in the enforcement of corporate liability, particularly concerning the application of the vicarious liability principle. A crucial question arises: how should corporations involved in illegal mining within forest areas be held accountable, both criminally and civilly, under the provisions of the P3H Law?

This issue is further complicated by ineffective legal implementation, limited monitoring mechanisms, and lenient sanctions imposed on corporations proven to have committed environmental crimes. Therefore, this study is essential in exploring the extent of corporate liability for conducting mining activities in forest areas without ministerial permission and how legal frameworks can enhance environmental protection by ensuring the enforcement of strict penalties by existing regulations.

By examining relevant laws and analysing current law enforcement practices, this study aims to contribute to improved legal enforcement and provide recommendations for strengthening the accountability system for corporations engaged in illegal mining activities.

2. METHODS

This legal research adopts a normative legal research approach, aiming to analyse written legal provisions, including legal principles and doctrines, as well as empirical data to address legal gaps—particularly in the context of the Vicarious Liability Principle in unauthorised mining crimes within forest areas. This study follows a doctrinal research type, where the author systematically examines existing legal regulations and analyses the relationships between these legal rules.

The research approach includes statutory, conceptual, and comparative methods, focusing on the analysis of Article 89, Paragraph (2), Letter (a) of the P3H Law and its implementation in the enforcement of corporate crimes in the mining sector. This study

is prescriptive, examining the coherence between legal norms and principles with individual and corporate behaviour.

The technique for collecting legal materials is carried out through literature study, by gathering relevant primary, secondary, and tertiary legal materials. The analysis of legal materials is conducted using a statutory approach to harmonise various existing regulations. Primary legal materials include various laws, implementing regulations, and other legal documents. Secondary legal materials consist of academic writings and journals related to the topics of vicarious liability and mining crimes, while tertiary legal materials include legal dictionaries and other supporting sources for the analysis.

3. RESULTS AND DISCUSSION

Vicarious Liability Criminal Liability with Corporate Legal Subjects in Review of Indonesian Legislation Norms

According to Article 1, point (5) of Law No. 40 of 2007 on Limited Liability Companies (UUPT), the Board of Directors in a Limited Liability Company (Company) is defined as the Company's organ that has the authority and full responsibility for managing the Company in the interest of the Company, by its purpose and objectives. Additionally, the Board of Directors represents the Company both in and outside the court by the articles of association.

The authority of the Board of Directors is:

a. One of the Company's organs that has full authority over the management and matters related to the Company's interests, by the Company's purpose and objectives.
b. Represents the Company in carrying out legal actions, both inside and outside the court, by the provisions of the UUPT and the articles of association. The Board of Directors' authority to represent the Company is unlimited and unconditional, except as otherwise stipulated in the UUPT, the articles of association, or resolutions of the General Meeting of Shareholders (GMS).

If the Board of Directors consists of more than one member, each director has the authority to represent the Company, unless otherwise specified in the articles of association. The purpose of this exception is to allow the articles of association to determine that the Company may be represented by specific directors, as regulated in Article 98 of the UUPT.

According to Article 99 of the UUPT, the authority of the Board of Directors to represent the Company is not without limitations. However, in certain circumstances, the Board of Directors is not authorised to represent the Company if:

1. In the event of a legal dispute between the Company and the relevant director in court; or
2. The relevant director has a conflict of interest with the Company.

If such conditions occur, the Company may be represented by:

1. Another director who does not have a conflict of interest with the Company;
2. The Board of Commissioners, if all members of the Board of Directors have a conflict of interest with the Company; or
3. Another party appointed by the General Meeting of Shareholders (GMS), if all members of the Board of Directors and the Board of Commissioners have a conflict of interest with the Company.

The Board of Directors is responsible for managing the Company in good faith. The Board of Directors bears full personal liability for any losses incurred by the Company if the relevant director is found guilty or negligent in carrying out their duties. If the Board of Directors consists of two or more members, their liability is joint and several. However, a director may be exempt from joint liability if they can prove that (Kamil, 2017):

a. The loss was not caused by their fault or negligence;
b. They have managed the Company in good faith and with due diligence, in the interest of and by the Company's objectives;
c. They have no direct or indirect conflict of interest in the management actions that resulted in the loss; and
d. They have taken measures to prevent or mitigate the loss.

Based on Article 100 of the UUPT, the Board of Directors is obligated to perform several duties during their tenure by the UUPT, including:

a. Preparing the shareholders register, special register, minutes of the General Meeting of Shareholders (GMS), and minutes of Board of Directors meetings;
b. Preparing the annual report and the Company's financial documents;
c. Maintaining all registers, minutes, and financial documents of the Company

All registers, minutes, financial documents, and other Company documents must be kept at the Company's registered office. Upon a written request from shareholders, the Board of Directors may grant permission for shareholders to examine the shareholders register, special register, and minutes of the General Meeting of Shareholders (GMS), as well as obtain copies of the GMS minutes and the annual

report. Members of the Board of Directors are also required to report to the Company regarding any shares they or their family members own in the Company or other companies, which must be recorded in a special register. A director who fails to fulfil this obligation and causes losses to the Company shall be personally liable for such losses, as stipulated in Article 101 of the UUPT. Furthermore, Article 102 of the UUPT regulates the Board of Directors' duties concerning the management of the Company's assets, requiring them to obtain GMS approval for (Hendar, 2013):

1) Transferring the Company's assets; or
2) Placing the Company's assets as collateral for debt.

The assets of the Company referred to are assets which amount to more than 50% (fifty per cent) of the Company's net assets in 1 (one) or more transactions, whether related to each other or not. In addition to the above duties, the obligations or duties of the board of directors may also be further specified in the articles of association of the Company.

The Commissioner is responsible for supervising the Company, as stipulated in Article 108(1) of the Limited Liability Company Law (UUPT), which includes overseeing management policies, the general course of management, both concerning the Company and its business activities, and providing advice to the Board of Directors.Each Commissioner must carry out their supervisory duties and provide advice to the Board of Directors in good faith, with prudence, and with responsibility, ensuring that their actions serve the Company's interests and align with its objectives and purpose. Furthermore, each Commissioner bears personal liability for any losses incurred by the Company if they are found guilty of or negligent in performing their duties (Jahja, 2014).

If the Commissioner consists of 2 (two) or more members, the liability as referred to above shall apply jointly and severally to each member of the Commissioner (Article 114 Paragraph (3) UUPT). However, the Commissioner shall not be liable for the loss as referred to in Paragraph Article 114 Paragraph (3) of the Company Law if it can be proven that (Situmorang, 2019):

1) Has conducted supervision in good faith and prudence for the interests of the Company and by the purposes and objectives of the Company;
2) Has no personal interest, either directly or indirectly, in the management actions of the Board of Directors that result in losses; and
3) Has provided advice to the Board of Directors to prevent the incurrence or continuation of the loss.

In the event of bankruptcy due to the fault or negligence of the Board of Commissioners in supervising the management carried out by the Board of Directors, and if the company's assets are insufficient to pay all its obligations resulting from the bankruptcy, Article 114(4) of the Limited Liability Company Law (UUPT) stipulates that each Commissioner shall be jointly and severally liable with the Board of Directors for the outstanding obligations. This liability also applies to former Commissioners who ceased their position up to five (5) years before the bankruptcy declaration was issued. However, a Commissioner cannot be held liable for the company's bankruptcy as referred to above if they can prove that: The bankruptcy was not due to their fault or negligence. They performed their supervisory duties with good faith and due diligence in the interest of the company and by its purpose and objectives. They had no direct or indirect personal interest in the management actions taken by the Board of Directors that led to the bankruptcy. They had advised the Board of Directors to prevent the bankruptcy from occurring (Hendar, 2013).

An accountability or responsibility for an action of a Board of Directors / commissioner can be seen from whether an action or action taken (responbility) is based on authority (Au-thority), including that it must also be based on the principle of fiduciary duty, and the action or action (responbility) is supported by a balanced situation between duty or responbility and the ability to carry out duties (capability). A legal action taken by a Board of Directors to be accountable (capability) (Subekti, 2008).

The responsibility of the Board of Directors in performing legal actions or deeds for and on behalf of the company, can be explained through the position of a Board of Directors towards the company he leads (PT organ) and must also comply with the Company's Articles of Association, and must pay attention to the principle of fiduciary duty (Mentari, 2020).

The duties of a Board of Directors have been formulated in detail in the Articles of Association, so that in acting or acting in law a Board of Directors must always test its actions on the Articles of Association. In representation regarding who according to the law is the one who performs the action, in the sense that it is performed by the representative or by the person represented, there are 3 (three) theories as follows (Harefa et al., 2021):

1. Representation or fiction theory, that it is the endorser who performs the act. Not only does he act in reality, but he is also the one who juridically expresses his will. Based on a fiction, the legal consequences of his actions are transferred to his principal;
2. Organ theory (nuntius-theorie) which sees the representative, person (personal) who acts according to the law. The representative is only an organ available to

the person represented, whose will for the occurrence of legal relations is decisive;

3. The co-operative theory, which is a combination of the representation theory and the organ theory the actions performed by the representative on behalf of the principal occur because there is actually juridical co-operation between the representative and the person represented (Dyawati, 2024).

In general, every person must be responsible for his or her actions. This definition of person also includes a rechtspersoon. Person in the juridical sense is every person who has legal authority, which means the ability to become a legal subject, or as a supporter of rights and obligations, so for this reason, first a person's status in a legal relationship must be determined (Subekti, 2008).

Legal relationships reflect the interests of the parties to the legal relationship, the presence of law will serve to integrate and coordinate these interests so that they do not conflict with each other (conflict of interest). The law protects a person's interests by allocating a power to them to act in the context of their interests (Subekti, 2008). The power given by the law is referred to as the responsibility for fault as regulated in Article 1365 of the Civil Code and Article 1367 of the Civil Code, which is a classic form of civil liability.

Article 1365 of the Civil Code contains the doctrine of responsibility, as in the following formulation: 'Everyone is responsible not only for losses caused by his actions, but also for losses caused by his negligence or lack of caution'.

In Article 1367 of the Civil Code, the doctrine of responsibility is further concretised with the following formulation (Devi, 2020):

(1) A person shall not only be liable for damages caused by his acts, but also for damages caused by the acts of his dependents or by goods under his supervision;

(2) Parents and guardians shall be liable for damages caused by minor children who reside with them and over whom they exercise parental or guardianship;

(3) Employers and those who appoint other persons to represent them in their affairs, are liable for damages caused by their servants or subordinates in the performance of the work for which these persons are employed;

(4) Schoolmasters and master craftsmen are liable for damages incurred by their pupils and craftsmen during the time these persons are under their supervision;

(5) The aforementioned liability ceases, if the parents, guardians, school teachers and master craftsmen prove that they could not prevent the act for which they are liable (Putera, 2021).

The formulation of Article 1367 of the Civil Code above, shows that in the Civil Code there are 2 (two) types of responsibility, namely:

1) Liability based on fault, meaning that a person can be held responsible for the mistakes he has made and as a result of his mistake has caused harm to others;

2) Liability based on risk, meaning that a person can be held liable for losses suffered by others not because of the fault of the person concerned, but as a risk borne by him because of the fault of another person and the person is subordinate to him or under his responsibility, or under his supervision.

Basically, whether a company should be bound by the acts or deeds of the Board of Directors or a Board of Directors should be personally liable or not for the acts or deeds committed by its subordinates or supervisors, which are likely to cause losses to other parties (Harefa et al., 2021).

Based on the theory or doctrine of Vicarious Liability, it generally applies in civil law concerning torts, following the doctrine of respondeat superior. According to the principle of respondeat superior, where there is a relationship between master and servant or between principal and agent, the maxim "qui facit per alium facit per se" applies (Nurhidayat & Sutiana, 2018). Under this maxim, a person who acts through another is deemed to have acted personally. For instance, a Principal (grantor of authority) is liable for the actions of the Agent (recipient of authority) as long as those actions are performed within the scope of authority (not exceeding the limits of that authority). Therefore, the doctrine of Vicarious Liability is also referred to as the doctrine of respondeat superior. In civil matters, an employer is liable for the wrongful acts committed by their employees, provided those acts occur within the course of employment. This allows the aggrieved party, who has suffered due to wrongful acts, to file a claim against the employer for compensation, as long as their liability can be established (Susetia, 2007).

Article 1972 of the Indonesian Civil Code (KUHPer) states:"Power of attorney is an agreement that grants authority to another person who accepts it, to carry out certain actions on behalf of the grantor." Based on this provision, the essential elements of granting power of attorney are (Yasmin et al., 2024):

1. The existence of an agreement
2. The granting of authority to another person

3. The execution of acts on behalf of the grantor

By adhering to these elements, it can be concluded that the relationship between the grantor and the recipient of power of attorney resembles that of a superior and subordinate, as the recipient must act according to the grantor's instructions. Furthermore, the authority delegated by the grantor must originate from the grantor themselves. A grantor can't transfer authority that belongs to someone else

The provisions of Article 103 of Law Number 40 of 2007 on Limited Liability Companies (UUPT) state that the Board of Directors may grant written power of attorney to one or more company employees or other individuals to perform certain legal acts on behalf of the company, as specified in the power of attorney document.The term "power of attorney" in this context refers to a special power of attorney granted for specific actions as mentioned in the power of attorney document (see Explanation of Article 103 of the UUPT). Meanwhile, the legal basis governing the power of attorney can be found in Article 1792 of the Indonesian Civil Code (KUHPerdata). Essentially, the recipient of the power of attorney is not allowed to take actions that exceed the authority granted to them (see Article 1797 of the Civil Code). Therefore, it is necessary to carefully examine the power of attorney issued by the Board of Directors of PT A to a subordinate or another person. A special power of attorney granted by the Board of Directors should explicitly outline the specific actions that the recipient is permitted to undertake. Generally, a power of attorney from the Board of Directors to another party is only given for the purpose of representing the Board of Directors in carrying out certain legal acts when the Board of Directors is unable to do so. Given that the essence of the power of attorney in this context is to act on behalf of PT A, if the attorney (recipient of the power) has performed their duties in good faith and without negligence, they should not be held personally liable. Instead, PT A should bear the responsibility.However, the recipient of the power of attorney may be held liable if they fail to execute the authorized duties or act negligently in carrying them out (see Articles 1800 and 1801 of the Civil Code). Therefore, if any claims or lawsuits arise, PT A should be the responsible party for settling them.

Then, regarding the transfer of responsibility, it is permitted as long as it is agreed upon by the recipient of the responsibility. This transfer falls under the scheme of suretyship or guarantee, specifically through personal guarantee rather than the granting of power of attorney. Since the authority of the principal (grantor of power) is absolute, they also have full freedom to revoke such authority from the attorney (recipient of power) (Pamungkas Wicaksono & Dossy Iskandar Prasetyo, 2023). While the principal can agree not to revoke the power of attorney granted, such an arrangement remains highly unusual. This is because it implies that the principal has

granted power but is not allowed to withdraw it, which contradicts the fundamental nature of authority delegation.

Thus, even though the principal retains full authority to unilaterally revoke the power of attorney at any time, the attorney (recipient of power) who holds an agreement with the principal prohibiting such unilateral revocation may file a lawsuit for breach of contract against the principal. However, it should be noted that such a lawsuit cannot invalidate the revocation of the power of attorney.

The Board of Commissioners must oversee management policies, the general course of management, both concerning the company and its business operations, and to provide advice to the Board of Directors, as stipulated in Article 108(1) of Law No. 40 of 2007 on Limited Liability Companies (Naim, 2024). Meanwhile, the authority to carry out the daily operational management of the company lies with the Board of Directors (Article 92(1) and (2) of the same law). The obligation to carry out supervisory duties is further regulated in Article 114(2) of the Law, which states:

"Each member of the Board of Commissioners must, in good faith, with due diligence, and with responsibility, carry out the supervisory duties and provide advice to the Board of Directors, as referred to in Article 108(1), in the interest of the company and accordance with its objectives and purposes."

About the principles of good faith and due diligence (duty of care), the juridical scope of good faith in the context of the supervisory duties of the board of commissioners implies that if supervisory and advisory duties deviate toward an unreasonable objective, the actions taken by the commissioners may be classified as "bad faith." The commissioners, in carrying out their supervisory duties, are obligated to comply with the applicable laws and regulations. Supervisory actions and advisory decisions that contradict or violate legal provisions are classified as "unlawful acts" and may also be considered ultra vires actions (Abdullah, 2022). If a commissioner directly interferes in the company's operations, they must bear personal liability for any losses incurred by the company (Article 114, Paragraph 3 of the Indonesian Company Law) and may also be held criminally liable. The scope of a commissioner's liability is limited to their misconduct or negligence.

The system of corporate criminal liability is divided into three categories: liability imposed on management, liability imposed on the corporation, and joint liability of both management and the corporation. In the context of business licensing, this structure of liability can be observed in the environmental sector:

NO	PROVISIONS OF THE LAW	BURDEN OF ACCOUNTABILITY

1.	P3H Law Article 89 Paragraph 2 mining in forest area without Ministerial permit	Corporations
2.	Law P3H Article 92 Paragraph 2 plantations in forest areas without ministerial permission and amended in Perpu cipta kerja	Corporations and administrators
3.	PPLH Law Article 40 Paragraph 1 Environmental permits are a requirement for obtaining a business and/or activity licence.	Everyone (Corporations and individuals)
4.	Forestry Law Article 38 Paragraph 3 The use of forest areas for mining purposes is carried out through the granting of borrow-to-use licences by the Minister by taking into account certain area and time limits as well as environmental sustainability.	Everyone (Corporations and individuals)
5.	Forestry Law Article 50 (3) Every person is prohibited from: a. unlawfully working on and/or using and/or occupying forest areas;	Everyone (Corporations and individuals)
6.	Mining Law No. 4 of 2009 Article 74 (1) IUPK is granted by the Minister with due regard to regional interests.	Everyone (Corporations and individuals)
7.	Mineral and Coal Law No. 4 of 2009 Article 35 (1) Mining Business is carried out based on Business Licences from the Central Government.	Everyone (Corporations and individuals)

8.	Criminal Code Article 46 Criminal Offences by Corporations are Criminal Offences committed by officers who have a functional position in the organisational structure of the Corporation or persons who by employment or other relationships act for and on behalf of the Corporation or act in the interests of the Corporation, within the scope of the business or activities of the Corporation, either individually or jointly.	Corporations, administrators who have functional positions, commanders, controllers, and/or beneficial owners of Corporations

It can be seen that the burden of responsibility for almost all of these provisions has emphasised the management and also with the Corporation together, but only specifically in the provisions of Article 89 Paragraph (2) letter (a) of the P3H Law, there is no fair burden of responsibility that only focuses on the Corporation without any management diction so that this can cause practice in the field to experience obstacles in the law enforcement sector.

a. Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Offences by Corporations.

   Based on the definition of corporate crime in Article 1, paragraph 8 of Supreme Court Regulation (Perma) 2016, a corporate crime is a criminal act for which criminal liability may be imposed on a corporation in accordance with the laws governing corporations. Meanwhile, "Management" refers to the corporate body responsible for managing the corporation in accordance with its articles of association or the applicable laws, with the authority to represent the corporation. This also includes individuals who, despite lacking formal decision-making authority, in practice have the ability to control, influence corporate policies, or participate in decision-making within the corporation, which may be classified as a criminal act.

   Article 3 states:

   "Criminal offences by Corporations are criminal offences committed by persons based on employment relationships, or based on other relationships, either

individually or jointly acting for and on behalf of the Corporation within or outside the Corporate Environment."

Then in Article 4 Paragraph 1 (1) states:

"Corporations may be held criminally liable in accordance with the criminal provisions of Corporations in the laws governing Corporations".

Article 11 Article 11 (1) states:

"Examination of the Corporation as a suspect at the investigation level is represented by a manager"

And then in Article 23 Paragraphs 1 and 2 which states:

(1) The judge may impose a sentence on the Corporation or its Management, or both the Corporation and its Management.

(2) The judge shall impose the sentence as referred to in Paragraph (1) based on the respective laws that regulate criminal sanctions against the Corporation and/or its Management.

Based on the above explanation, the provisions of Perma No. 13 of 2016 in addressing the ambiguity of Article 89 Paragraph (2) Letter (a) have yet to provide certainty in its implementation. This is because criminal liability must be based on the provisions of the respective laws that govern it. If corporate management is used as the basis for imposing liability due to the absence of the term "management" in Article 89 Paragraph (2) Letter (a), then the legal standing of Perma 2016 is weak and cannot serve as an absolute guideline in legal practice. Consequently, corporate management is only obligated to represent the wrongdoing of the corporation, even if they are responsible for administrative criminal violations.

Thus, the position of Supreme Court Regulations within Indonesia's legislative hierarchy is below the law and on par with Government Regulations. Perma is a form of legal regulation with several distinctive characteristics, including: Formed through delegated legislative authority. Developed within the context of "rule-making" rather than "law-making." Supplementary in nature. Created to fill legal or statutory gaps. Does not regulate the rights and obligations of citizens. Governs legal procedures in judicial implementation.

In the context of hierarchical principles, each regulation has a specific position within the legal framework to maintain legal order, and in the event of a conflict,

judicial review may be conducted. However, the position of Perma is not explicitly stated in Law No. 12 of 2011. Consequently, if inconsistencies arise between Perma and higher regulations, challenges may emerge when subjected to judicial review.

Within the framework of Indonesia's constitutional system, two state institutions are granted legislative authority to fill "legal vacuums." These institutions are the President and the Supreme Court. Both receive delegated authority to formulate regulations, but with different objectives in addressing legal gaps. The delegation of authority to the President aims to create Government Regulations (PP) to fill legal vacuums in the sense of "implementing the law in accordance with its provisions." On the other hand, the delegation of authority to the Supreme Court is intended to formulate Supreme Court Regulations (Perma) to fill legal vacuums in the sense of "regulating aspects not yet covered by the law."

The functional distinction between these two types of regulations influences their substance and scope. According to the author, the phrases "implementing the law in accordance with its provisions" and "regulating aspects not yet covered by the law" reflect different perspectives, contexts, and objectives.

In the context of Indonesia's constitutional system, there are two state institutions granted legislative authority to address "legal vacuums." These institutions are the President and the Supreme Court. Both institutions receive delegated authority to formulate regulations with different objectives in filling legal vacuums. The delegation of authority to the President is intended to create Government Regulations (PP) to fill legal vacuums in the sense of "implementing the law in accordance with its provisions." Conversely, the delegation of authority to the Supreme Court is aimed at formulating Supreme Court Regulations (Perma) to fill legal vacuums in the sense of "regulating aspects not yet covered by the law." The difference in function between these two types of regulations impacts the subject matter they govern. According to the author, the phrases "implementing the law in accordance with its provisions" and "regulating aspects not yet covered by the law" have different perspectives, contexts, and objectives.

b. Presidential Regulation of the Republic of Indonesia Number 13 of 2018 on the Implementation of the Principle of Identifying Beneficial Owners of Corporations in the Context of Preventing and Eradicating Money Laundering and Terrorism Financing Crimes

A Beneficial Owner is an individual who has the authority to appoint or dismiss the board of directors, board of commissioners, management, trustees, or supervisors within a corporation, possesses the ability to control the corporation, is entitled to

and/or receives benefits from the corporation either directly or indirectly, is the actual owner of the corporation's funds or shares, and/or meets the criteria stipulated in this Presidential Regulation.

Article 12(3) states that the categories for determining a corporation's Beneficial Owner are as follows:

a. The Beneficial Owner has been identified;

b. The Beneficial Owner has not yet been identified; or

c. The Beneficial Owner has not yet been verified.

Furthermore, Article 13(1) stipulates that, in addition to the Beneficial Owner designated by the corporation as referred to in Article 3, the Competent Authority may designate another Beneficial Owner.

From these provisions, a beneficial owner can indeed be held criminally liable for offences committed by a corporation and may serve as a basis for imposing liability under Article 89(2)(a) of the P3H Law. However, upon analysis, these provisions are not sufficiently coherent to be used as a legal basis for prosecuting corporate executives for their actions in administrative offences. This is because the Presidential Regulation has a different object from the P3H Law. The P3H Law governs environmental matters, particularly in relation to the ambiguous provisions of Article 89(2)(a), which classifies administrative offences as crimes. Meanwhile, the Presidential Regulation focuses on the prevention and eradication of money laundering and terrorism financing offences.

As a result, the legal context differs. This study emphasises that the burden of liability should be placed on the board of directors, whereas the definition of a beneficial owner refers to an individual who has the authority to appoint or dismiss the board of directors. Furthermore, the legal standing of a Presidential Regulation is not equivalent to that of a law.

c. Analysis of the Burden of Criminal Liability Under Article 37 of Law No. 1 of 2023 on the Criminal Code

Article 37 states:

"a. In cases determined by law, any person may:

1. Be punished solely for the fulfilment of the elements of a criminal offence, regardless of fault; or

2. Be held accountable for a criminal offence committed by another person.".

The provision does not explicitly include whether it can serve as a legal basis for corporate liability in the sector of administrative offences. Furthermore, the new Criminal Code (KUHP) has not yet come into effect within the Indonesian legal system.

Then, Article 46 states:

"A criminal offence committed by a corporation is a criminal offence carried out by executives who hold a functional position within the organisational structure of the corporation or by individuals based on an employment relationship or any other relationship who act for and on behalf of the corporation or in the interest of the corporation, within the scope of its business or activities, either individually or collectively."

Article 47 states:

"In addition to the provisions referred to in Article 46, a criminal offence committed by a corporation may also be carried out by the person giving orders, the controlling party, or the beneficial owner of the corporation who is outside the organisational structure but has control over the corporation." Furthermore, Article 49 states: "Liability for criminal offences committed by a corporation, as referred to in Article 48, shall be imposed on the corporation, executives holding functional positions, the person giving orders, the controlling party, and/or the beneficial owner of the corporation."

The provision is quite effective in addressing corporate crimes committed during operational activities. However, when it comes to criminal administrative liability, particularly regarding permits issued by the ministry, criminal liability should be directed towards the board of directors. This is because such liability pertains to a significant business permit, making it highly unlikely that the board would be unaware that the company is operating without ministerial approval. Therefore, the most appropriate legal theory to apply is the theory of Vicarious Liability.

Furthermore, since the Indonesian Criminal Code (KUHP) is a general provision, it adheres to the principle of lex specialis derogat legi generali—meaning that it cannot override specific regulations. In this research, the relevant specific regulation is Article 89(2)(a) of the UU P3H. Consequently, the KUHP alone remains insufficient to fill this legal gap, which in practice leads to ongoing weaknesses in

law enforcement. Additionally, vicarious liability has yet to be effectively applied within the KUHP, further limiting its legal enforceability.

4. CONCLUSIONS

Based on the discussion above, there are three possible ways to hold a corporation accountable: (1) the corporation itself, (2) its management, or (3) both the corporation and its management. Article 89(2)(a) of the UU P3H does not clearly define who should be held responsible. If corporate management cannot be held criminally liable, the law will fail to achieve its fundamental objectives: legal certainty, justice, and utility. Furthermore, it will also fail to meet the goals of criminal punishment and legal protection, particularly in safeguarding public welfare and preventing deforestation and environmental damage as intended.

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