

Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible?

by Hafrida Hafrida

Submission date: 25-Jan-2023 03:11PM (UTC+0700)

Submission ID: 1999041564

File name: Halrev_Article.pdf (268.36K)

Word count: 5275

Character count: 30885

Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible?

Hafrida¹, Retno Kusniati², Yulia Monita³

¹ Faculty of Law, Universitas Jambi, Indonesia. E-mail: hafrida_hukum@unja.ac.id

² Faculty of Law, Universitas Jambi, Indonesia. E-mail: retnokusniati@unja.ac.id

³ Faculty of Law, Universitas Jambi, Indonesia. E-mail: yuliamonita@unja.ac.id

Abstract: Environmental harms are frequently part and parcel of ordinary commercial practice. This study aimed to highlight the importance of applying imprisonment as a corporate criminal sanction in forestry crimes to observe and consider individual and far-reaching victims. Forest crimes impact the community's socio-cultural life and cause environmental damage by increasing global warming. Based on the laws and regulations, fines as criminal sanctions do not effectively deter corporations. Subsequently, imprisonment could be an alternative criminal sanction against corporations through identification where corporate liability could be identified through its management. Actions taken by the management are not based on their rights and authorities but those of the corporations. Therefore, imprisonment and other sanctions such as restitution are expected to effectively and viably address forestry crimes.

Keywords: Corporation; Criminal Sanction; Forest; Forestry Crimes; Imprisonment

1. Introduction

Imprisonment is a criminal sanction that deprives freedom and restricts a person's movement through confinement in a correctional institution. This implies that individuals are sentenced to prison. Though often applied to natural legal persons, the question of consideration is whether imprisonment could be used as a sanction when corporations commit a crime.¹ Another question is whether it could be restricted to natural persons since corporations are legal subjects that significantly contribute to economic growth.

Corporations could perpetrate criminal acts that result in great losses for the state and society. The growth of corruption, money laundering, smuggling, and forestry crimes are replete with criminal acts committed by many corporations. Criminal liability is based on the fulfillment of a criminal act as regulated in the law and the presence or absence of errors. Mistakes or omissions also determine criminal liability, though this may not apply to a corporation, even when it may be possible to measure the guilt of a natural person.

Corporations play a vital role in developing an increasingly complex social life. England and other common law countries have recognized corporations as a legal subject that could be punished. In contrast, Continental European countries lag in regulating

¹ White, Rob. "Reparative justice, environmental crime and penalties for the powerful." *Crime, Law and Social Change* 67, no. 2 (2017): 117-132.

corporations as subjects of criminal law². They fail to recognize the corporations' ability to commit criminal acts and the possibility to be punished³. Additionally, the imposition of criminal liability on corporations is still limited. This indicates the punishment limited to fines and imprisonment has not been applied, especially the separation of the corporate from its management's liability. Therefore, only a few corporations have been convicted, where corporate criminal liability is considered the act of its management, including in forestry crimes.

The Indonesian Law No. 18 /2013 on the *Prevention and Eradication of Forest Destruction* dated August 6, 2013, referred to as the "Law No. 18/2013" aims to maintain and protect forest sustainability. The country is the home of the largest tropical forest worldwide⁴. Therefore, it is desirable and necessary for Indonesia to protect its forest resources. Law No. 18/2013 stipulates that forest resources should be utilized in a planned, rational, optimal, and responsible manner. The utilization should pay attention to sustainability based on function and environmental balance to develop the forestry sector for people's welfare. Furthermore, the Law highlight types of forestry crimes, including those committed by corporations, and their attendant sanction.⁵

The Law also recognizes the deleterious effects of forest destruction arising from their unlawful use and conversion. These destructions frequently occur from illegal tree logging and converting forest functions into plantations without a permit.⁶ Forest destruction impacts the community's socio-cultural life and causes environmental damage through increasing global warming.⁷ It is an organized crime with extraordinary impact perpetrated across countries using sophisticated methods and modes to threaten the life of the national and international community.⁸

Sustainable Forest destruction impacts global warming and causes extreme climate and hemispheric weather changes. Forests are an important component in preventing extreme weather changes. Deforestation accelerates extreme climate change which is mitigated by large forest areas. Studies show that individuals destroy forests significantly but are not the only perpetrators. Forest destruction could also be carried out by corporations in an organized manner. Article 1 number 21 of the Law No. 18/2013 defines the term everybody as an individual or a corporation committing forest destruction in an organized manner within Indonesia with legal consequences. The Law also defines a

² R v Birmingham & Gloucester Railway Co. (1842) 3 QB 223

³ Ratomi, Achmad. "Korporasi Sebagai Pelaku Tindak Pidana (Suatu Pembaharuan Hukum Pidana Dalam Menghadapi Arus Globalisasi Dan Industri)." *Al-Adl: Jurnal Hukum* 10, no. 1 (2018): 1-22.

⁴ UNODC Regional Office for Southeast Asia and the Pacific. Available online at: <https://www.unodc.org/roseap/en/indonesia/forest-crime.html>

⁵ Tegnán, Hilaire, Lego Karjoko, Jaco Barkhuizen, and Anis H. Bajrektarevic. "Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues." *BESTUUR* 9, no. 2: 90-100. <https://doi.org/10.20961/bestuur.v9i2.55219>

⁶ Vickers, Ros. "The Regulation of Natural Resources Law in Australia for Indigenous People." *Jambe Law Journal* 2, no. 2 (2019): 99-117.

⁷ Karim, Ridoan, Farahdilah Ghazali, and Abdul Haseeb Ansari. "Renewable Energy Regulations in Indonesia and India: A Comparative Study on Legal Framework." *JILS (Journal of Indonesian Legal Studies)*, 5 no. 2: 361-90. <https://doi.org/10.15294/jils.v5i2.41986>.

⁸ Rhett A. Butler. "Consequences of Deforestation". Available online: <https://rainforests.mongabay.com/09-consequences-of-deforestation.html> Accessed April 1, 2019

corporation as organized people and legal or non-legal entities.⁹ Therefore, corporations committing forestry crimes could be held criminally accountable, though it does not mean they could be imprisoned.

The statutory provisions explained imply that ⁴corporations could be held liable for crimes committed relating to forest destructions. Studies show that most corporations have rarely been imprisoned for their criminal actions, necessitating a more severe punishment with a deterrent effect. Consequently, this study aimed to examine the effectiveness of imprisonment for corporations as a potential deterrent measure for forest destruction in Indonesia.

⁴2. *Mens rea* in Corporate Criminal Liability

Criminal liability in Indonesian criminal law is based on the principle of *geen straf zonder schuld*, meaning no crime without fault. This implies that being criminally responsible for someone's action should be based on "*Schuld/Mens rea*" besides ¹⁷the ability to be liable and the absence of forgiving reasons. The Rome Statute is the legal basis for establishing the International Criminal Court. Article 30 highlights the principle as follows:

Mental element – 1) Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only when the material elements are committed with intent and knowledge. 2) For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it would occur in the ordinary course of events. 3) For the purposes of this article, "knowledge" denotes awareness that a circumstance exists or a consequence would occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly" This article shows awareness of the consequences of actions as a condition for criminal liability, while intent and knowledge are a condition for punishment.¹⁰

A person is held accountable for a criminal act and could be sentenced when the mental element is intentional. Also, a person is said to have intentionally committed a crime when the act is intended and the perpetrator is aware of its consequences. The principle of error in criminal liability could be qualified through the principle of strict or absolute liability.¹¹ The error element as a principle in criminal liability is relevant for analysis, especially in applying imprisonment. When the crime perpetrator is an individual, it is needless to discuss the wrongdoing because it is clear and settled. It becomes interesting when discussing the wrongdoing of corporate liability.

⁹ Article 1 No. 22 Law No. 18/2013, *The Prevention and Eradication of Forest Destruction* (dated August 7 2013)

¹⁰ Badar, Mohamed Elewa. "The mental element in the Rome Statute of the International Criminal Court: A commentary from a comparative criminal law perspective." *In Criminal Law Forum*, vol. 19, no. 3, pp. 47-3 18. Springer Netherlands, 2008.

¹¹ Hafrida, Helmi, and Bunga Permatasari. "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 7, no. 3 (2020): 314-333.

Indonesia has a special regulation regarding examining corporations as crime perpetrators. This is regulated by Considering the specificity in examining criminal cases committed by corporations. In 2016, the Supreme Court of the Republic of Indonesia stipulated Supreme Court Regulation Number 13 of 2016 concerning Procedures for handling Criminal Cases by Corporations, referred to as SEMA No. 13 of 2016. Corporate criminal liability could be applied to the management, but sanctions are only applicable to fines, not imprisonment.

The management is a corporation's organ that runs corporate activities in line with the articles of association, laws, and regulations. It represents a corporation and includes those unauthorized to make decisions but influence corporate policies, where such actions could qualify as criminal acts. Article 3 SEMA Number 13 of 2016 defines 'Corporate Crime' as a crime committed based on an employment or another relationship. The crime could be carried out individually or jointly, provided it is perpetrated for and on behalf of the Corporation inside and outside the corporate scope. Based on this article, the act is corporate but carried out by a person with a working relationship with the corporation. The error in the guilt of a person committing a criminal act individually or jointly on behalf of and for the benefit of the corporation is determined in various ways. These include seeing whether the corporation benefits from this act, whether it does not prevent a bigger impact, or ascertaining whether it has complied with legal provisions.

These provisions imply the possibility for perpetrators of corporate crimes to apply imprisonment through their management individually and collectively. Therefore, a new legal instrument is needed to replace the old one where the main punishment for corporations is only a fine. As stated in SEMA Number 13 of 2016 in Article 25 paragraph (2), the main punishment to be imposed by a judge against a corporation is the principal penalty or a fine.

3. Forestry Crimes in Regulation

This subsection discusses the laws and regulations related to forestry crimes. It helps to know what is regulated in the laws and regulations regarding the forestry crimes committed by corporations. One of the latest laws and regulations is Government Regulation Number 23 of 2021 concerning Forestry Implementation. It describes forestry as a system in implementing management related to forests, as well as their areas and products. In this case, the management system is carried out in an integrated manner. Furthermore, preventing and limiting forest damage caused by humans, livestock, fire, natural resources, pests, and diseases is called Forest Protection.¹² It also encompasses maintaining and safeguarding state, community, and individual rights to forests and their areas, as well as investments and instruments in forest management (Article 1 point 72). The government regulation was formed in line with the investment climate and the community's interests to encourage investment growth.

¹¹

¹² Affandi, Oding, Hariadi Kartodihardjo, Bramasto Nugroho, and Sulistya Ekawati. "Institutional analysis of forest governance after the implementation of Law Number 23/2014 in North Sumatra Province, Indonesia." *Forest and Society* 5, no. 2 (2021): 304-325. <https://doi.org/10.24259/fs.v5i2.8755>

Several laws regulate criminal acts in the forestry sector through forest protection. Law Number 41 of 1999 states that the implementation of forestry is intended to achieve people's prosperity that favors justice and guarantees forest sustainability.¹³ It aims to ensure the existence of forests with a sufficient distribution area and increase protection, conservation, and production of forest functions. Community participation is one cardinal aspect in ensuring forestry protection and it is developed to create socio-economic resilience. However, court decisions are often not in the community's interests, as Afriansyah¹⁴ stated that the judgment limits people's access to environmental justice, such as lack of legal background in law and technical expertise, high litigation costs, delay, and lack of public information, participation, and trust. Nevertheless, the power imbalance between the perpetrator and the victims might also affect the quality of the court decision. In response to non-pro-environment judges, the government should collaborate with the Supreme Court to strengthen judges' understanding of environmental and forestry cases. Additionally, the leading ministry should conduct joint training with the police and prosecutors regarding environmental understanding.

A critical examination of proscribed forestry crimes regarding corporate entities is contained in Articles 102-103 of the Law number 18/2013 concerning Prevention and Eradication of Forest Destruction. This indicates that the crimes committed by corporate actors constitute a more criminal burden than those committed by individuals. Moreover, forestry crimes committed by corporations attract severe sanctions, such as imprisonment or fines. When the replacement money cannot be paid, the defendant is subject to imprisonment for a period not exceeding the maximum threat of the principal sentence for which the substitute imprisonment has been determined in a court decision. Claims against the corporation as perpetrators of illegal logging, harvesting, collecting, controlling, transporting, and distributing timber would result in criminal prosecution or imposition of charges against the corporation or its management. When a crime is committed individually or jointly based on a work or other relationship and within the corporate environment, it is considered an act of the corporation.

The formulation of these Articles is a penal policy effort through the stages formulated with the hope that this Law could become effective in overcoming forestry crimes committed by corporations. At the formulation stage, criminal law policy is a strategic policy whose system lines are the legal basis for implementing the crime by the judiciary and the criminal implementing apparatus.¹⁵ The legislation empowers the implementers of the Act or law enforcement officers in their application. Therefore, a statutory regulation that formulates penal means needs rational planning. This ensures that the statutory facilities are used as an effective tool in preventing forestry crimes.

¹³ Muchtar, Syamsuddin, and Ahsan Yunus. "Environmental law enforcement in forestry crime: A disjunction between ideality and reality." In IOP Conference Series: Earth and Environmental Science, vol. 343, no. 1, p. 012066. IOP Publishing, 2019.

¹⁴ Afriansyah, Arie, Anbar Jayadi, and Angela Vania. "Fighting the Giants: Efforts in Holding Corporation Responsible for Environmental Damages in Indonesia." *Hasanuddin Law Review* 4, no. 3 (2019): 325-338. <http://dx.doi.org/10.20956/halrev.v4i3.1626>

¹⁵ Elvany, Ayu Izza. "Kebijakan Formulatif Penanggulangan Tindak Pidana Destructive Fishing di Indonesia." *Justitia Jurnal Hukum* 3, no. 2 (2019).

The effectiveness of the formulated laws and regulations depends on their implementation. Through this formulation stage, the criminal policy should be used carefully, selectively, and with limits, implying it should be applied with seriousness and care. The following sub-chapter examines implementing criminal sanctions in prison as formulated in laws and regulations against perpetrators of forestry crimes committed by corporations. In this case, corporate criminal liability needs an in-depth study on the principle of "fault." One of the latest laws and regulations is Government Regulation Number 23 of 2021 concerning forestry implementation.

Have to recognise that the law enforcement on forest fires in Jambi has not provided a deterrent effect. There are forty-six companies acquiring fires in their concession land areas. Unfortunately, only four companies reached court proceedings, two were declared guilty, and forty people were declared suspects. Criminal law enforcement in land fire cases mainly covers the liability applicable to perpetrators of forest and land fires. The law is enforced through court and other alternatives, such as land sealing by seven companies associated with forest fires.¹⁶ This study found that law enforcement against corporations causing forest fires lacks a deterrent effect.

4. Implementation of Imprisonment on Corporations in Forestry Crimes

Criminal liability against corporations as perpetrators of forestry crimes is not a new issue. Policies have formulated laws and regulations that place corporations as subjects in criminal acts, such as Legislation Number 13 of 2018 concerning Prevention and Eradication of Forest Destruction. Article 82-103 formulate imprisonment sanctions against corporations as perpetrators of forestry crimes with a minimum penalty of five years and a maximum of fifteen years. It also threatens a minimum fine of five hundred million rupiahs and a maximum of fifteen billion rupiahs.

The imprisonment and fines also apply to perpetrators of tree felling in forest areas without a permit (Article 82) and bringing heavy equipment used to cut trees in the forest (Article 84), ordering to do, organizing, or encouraging illegal logging (Article 94). Other crimes are falsifying permits for utilizing timber forest products or using forest areas and transferring or selling permits issued by authorized officials except with the approval of the Minister (Article 96). The imprisonment and fines also apply to damaging forest protection facilities and infrastructure (Article 97(a)), falsifying permits for utilizing timber forest products or using forest areas referred to in Article 24 (a) and (b), or selling permits issued by authorized officials except with the approval of the Minister (Article 97 (b)). Individuals and corporations are given additional penalties involving paying replacement money. When they cannot pay the replacement money, individuals and corporations are subject to imprisonment for a period not exceeding the length of the main criminal penalty.

¹⁶ Hafrida, Helmi, and Bunga Permatasari. "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning." *Padjajaran Jurnal Ilmu Hukum (Journal of Law)* 7, no. 3 (2020): 314-333.

Prosecution against forestry crimes is applied to corporations or their management. This involves considering the corporation's position in criminal law as a company, the corporate management, as well as the manager, and the corporation responsible. At the formulation stage, criminal law policy through legislation is a strategic step in overcoming a crime. This is the case with criminal law policy formulation in forestry crime through Law number 18 of 2013. The law determines the direction and guidelines for criminal law policies at the application and execution stages. At the formulation stage, criminal law policy is a rational effort in crime prevention. The policy at the application and execution stages depends on the formulation. Policy weaknesses at the formulation stage cause strategic and decisive errors in overall crime prevention, including in the forestry sector.

Criminal law policies at the formulation stage through penalization of corporations are strategic in implementation and execution. Success at the application stage is inseparable from the corporation's theoretical view. Furthermore, criminal liability against corporations in applying imprisonment should be based on "mistakes" as a determinant. The corporation does not need to always act physically in the socio-economic environment. The act could be performed by the employee, provided it is within the scope of the corporation's functions and authorities.¹⁷ Moreover, the corporation could be a functional actor in criminal liability through the management. It is because the criminal act could be individual or joint, meaning that the criminal act is within the scope of the corporation's function and authority. This is in line with Article 109, Law no. 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

Logging, harvesting, collecting, controlling, transporting, and distributing timber from illegal logging is performed by a corporation when the crime is committed by an individual based on a work or other relationship and within the corporate environment individually or jointly.

Referring to Article 109 paragraph (2), forestry crimes could be committed by individuals provided they are committed individually or jointly based on a working relationship and within a corporate environment. Statutory provisions number 18 of 2013 concerning Prevention and Eradication of Forest Destruction place corporations as crime perpetrators and apply imprisonment, fines, and additional penalties for refunding replacement money. They could also be subject to additional penalties in the form of closing all or part of the company. The penal approach to corporations as crime perpetrators and subject to imprisonment is important in forestry crime prevention policies. However, the objectives of the criminal law policy to combat crime may not be realized when not implemented properly, no matter how good the legal policy is at the formulation stage.

In terms of applying criminal acts against corporations in 2016, the Supreme Court issued Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Acts committed by Corporations. This regulation states that a corporation is an entity or legal subject that significantly contributes to increasing economic growth and national development. Corporations sometimes commit criminal or corporate crimes

¹⁷ Reksodiputro, Mardjono. *Kemajuan Pembangunan Ekonomi dan Kejahatan*. Pusat Pelayanan Keadilan dan Pengabdian Hukum (Lembaga Kriminologi), Universitas Indonesia, 1994.

that impact the state and society. They could be a place to hide assets resulting from criminal acts not touched by the legal process in criminal liability.¹⁸ In Article 25 (2), the principal penalty that could be imposed on a corporation as referred to in paragraph (1) is a fine. In the Supreme Court Regulation and Article 108 paragraph (5), the main criminal sanctions applied to corporations are fines. However, Law Number 18 of 2013 formulates policies that corporations committing forestry crimes are punishable by cumulative imprisonment, fines, payment of compensation, and partial or complete closure of the company.

Theoretical analysis of imprisonment to corporations is still possible. This could involve the theories of identification and the functionalization of corporations that meet the requirements to be determined as criminals and applicable to imprisonment. The identification theory sees corporations as the identification theory should show that the acts of the people or the corporation's directing minds are included in the activities assigned to them. The theory should also show that the crime is not a fraud against the corporation, and it is intended to benefit the corporation.¹⁹

Regulation number 13 of 2016 contradicts the direction and objectives of criminal law policies through the penalization and application of imprisonment for corporations. Similarly, regulation number 13 of 2016 contradicts the larger interest in forestry crimes and favors environmental sustainability. Determination of guilt is fundamental in criminal liability (*geen straf zonder schuld*), which is solely based on the perpetrator's fault. Against individual criminals, the determination of this error could be "opzet/intentional" or "culpa/omission" assessed through the crime perpetrator's evil inner attitude. For corporations, it could be seen through the criteria stated in regulation number 13 of 2016.

Forestry crimes have a negative impact, where the victims are individuals as in conventional blue-collar crime and the wider community. The negative impact includes the disruption of the community's material welfare and depriving future generations of rights. Therefore, applying imprisonment sanctions against corporations would prevent and deter criminals. Implementing imprisonment through direct corporate criminal liability considers that corporations could commit several offenses directly through closely related agents. The actions of agents are seen as "directing minds." The *mens rea* of these individual agents is the *mens rea* of the corporation.

The liability of imprisonment for corporations is in line with the general principle of criminal liability "*geen straf zonder schuld*," meaning no crime without fault. Imprisonment could be applied against corporations based on their "fault." Based on the determination of corporate error as per the Regulation of the Minister of Finance number 13 of 2016, the corporation could benefit from the crime. Moreover, the corporation could ignore and fail to prevent the crime. The management could be held criminally responsible and imprisonment imposed when the fault is broken.

¹⁸ Helmi, Fauzi Syam, Nopyandri, and Akbar Kurnia Putra. "Evaluation of the Regulation Changes on Environment and Forestry in Indonesia." *Hasanuddin Law Review* 6, no. 1 (2020): 100-108. <http://dx.doi.org/10.20956/halrev.v6i1.2290>

¹⁹ Cressey, Donald R. "The poverty of theory in corporate crime research." In *Advances in criminological theory*, pp. 31-56. Routledge, 2017.

Imprisonment is a sanction imposed on the body. The urgency to apply imprisonment to corporations through their management carrying out their actions individually or collectively is more effective in overcoming forestry crimes than only fines. This is seen in the following aspects: *Firstly*, victim. Victims of forestry crimes committed by corporations are individuals like other conventional crimes. However, they have a broad dimension, including the destruction of flora and fauna, as well as environmental damage, with a negative impact on the future sustainability of human well-being; *Secondly*, offenders. Corporations that commit forestry crimes have an economic dimension in their actions. They make maximum profits without considering extensive damage and losses to the wider community. Corporations commit crimes based on greed to make big profits for the company.

Criminal law through the application of imprisonment for corporations committing forest crimes protects multi-dimensional interests.²⁰ Applying criminal fines has no deterrent effect because the profits obtained exceed the fines imposed. Therefore, imprisonment sanctions should be implemented against corporations by integrating the formulation and application policies. This is because forest destruction is a crime with an extraordinary impact. It is organized and transnationally perpetrated with a sophisticated modus operandi, threatening the community's survival. Therefore, a strong legal basis is needed in preventing and eradicating forest destruction and providing a deterrent effect to guarantee effective law enforcement. Legal science is "The power of solving problems" and has the ability to solve concrete legal problems.

Criminal law policies at the future formulation stage regarding corporate liability are regulated in a separate paragraph in the Revision of the Criminal Code in Indonesia, RKUHP. In Article 46 of the RKUHP, corporate crime could be committed by a management with a functional position in the corporate organizational structure. It could also be perpetrated by a person based on work or other relationships acting for and on behalf of the corporation individually or collectively. In Article 47 of the RKUHP, corporate criminal acts could also be committed by the giver of orders, controllers, or the corporation's beneficial owners outside the organizational structure but with control over the company. This means that corporate crime perpetrators include the management within and outside the structure. In this case, the person concerned has control to govern and benefit from the corporation. Jerome Frank in Philippe Nonet and Philippe Selznick found that the main goal of legal realism is to make the law more responsive to social needs. Therefore, the concrete conditions of social problems resulting from forestry crimes require a responsive legal formulation.

This formulation stage indicates policies to be criminally responsible, including applying imprisonment to corporations through the management using the principle of direct criminal liability. In law enforcement against corporations as perpetrators of forestry crimes, the principle of *ultimum remedium* is not appropriate. It would be effective in overcoming forest crimes by placing criminal law at a *premium remedium* with administrative law enforcement. Therefore, the application of criminal law as a *premium remedium* could achieve substantive justice and recognize public desires.

²⁰ Sollund, Ragnhild. Eco-global crimes: Contemporary problems and future challenges. Routledge, 2016.

5. Conclusion

Imprisonment for corporations as perpetrators of criminal acts in the forestry sector has not been implemented. The application of criminal law is a policy at the applicative and law enforcement levels. Applicative policies would be implemented when criminal law policies have been formulated properly. There are contradictions over the articles contained in the law regarding formulating policies through the prevention and eradication of forest destruction law. The inconsistency in these laws and regulations has resulted in imprisonment that cannot be implemented for corporations as perpetrators of forestry crimes. In contrast, corporate criminal liability through imprisonment could be implemented with the principle of direct criminal liability through corporate management. Criminal law policies are formulated by placing law enforcement as a *premium remedium* applied integrally to administrative law enforcement. Therefore, it is necessary to evaluate the regulation regarding fines as the main criminal sanctions applied to corporations.

References

- Affandi, Oding, Hariadi Kartodihardjo, Bramasto Nugroho, and Sulistya Ekawati. "Institutional analysis of forest governance after the implementation of Law Number 23/2014 in North Sumatra Province, Indonesia." *Forest and Society* 5, no. 2 (2021): 304-325. <https://doi.org/10.24259/fs.v5i2.8755>
- Afriansyah, Arie, Anbar Jayadi, and Angela Vania. "Fighting the Giants: Efforts in Holding Corporation Responsible for Environmental Damages in Indonesia." *Hasanuddin Law Review* 4, no. 3 (2019): 325-338. <http://dx.doi.org/10.20956/halrev.v4i3.1626>
- Badar, Mohamed Elewa. "The mental element in the Rome Statute of the International Criminal Court: A commentary from a comparative criminal law perspective." *In Criminal Law Forum*, vol. 19, no. 3, pp. 473-518. Springer Netherlands, 2008.
- Cressey, Donald R. "The poverty of theory in corporate crime research." In *Advances in criminological theory*, pp. 31-56. Routledge, 2017.
- Elvany, Ayu Izza. "Kebijakan Formulatif Penanggulangan Tindak Pidana Destructive Fishing di Indonesia." *Justitia Jurnal Hukum* 3, no. 2 (2019).
- Hafrida, Helmi, and Bunga Permatasari. "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 7, no. 3 (2020): 314-333.
- Helmi, Fauzi Syam, Nopyandri, and Akbar Kurnia Putra. "Evaluation of the Regulation Changes on Environment and Forestry in Indonesia." *Hasanuddin Law Review* 6, no. 1 (2020): 100-108. <http://dx.doi.org/10.20956/halrev.v6i1.2290>
- Karim, Ridoan, Farahdilah Ghazali, and Abdul Haseeb Ansari. "Renewable Energy Regulations in Indonesia and India: A Comparative Study on Legal Framework." *JILS (Journal of Indonesian Legal Studies)*, 5 no. 2: 361-90. <https://doi.org/10.15294/jils.v5i2.41986>.
- Muchtar, Syamsuddin, and Ahsan Yunus. "Environmental law enforcement in forestry crime: A disjunction between ideality and reality." In *IOP Conference Series: Earth and Environmental Science*, vol. 343, no. 1, p. 012066. IOP Publishing, 2019.

- Ratomi, Achmad. "Korporasi Sebagai Pelaku Tindak Pidana (Suatu Pembaharuan Hukum Pidana Dalam Menghadapi Arus Globalisasi Dan Industri)." *Al-Adl: Jurnal Hukum* 10, no. 1 (2018): 1-22.
- Reksodiputro, Mardjono. *Kemajuan Pembangunan Ekonomi dan Kejahatan*. Pusat Pelayanan Keadilan dan Pengabdian Hukum (Lembaga Kriminologi), Universitas Indonesia, 1994.
- Rhett A. Butler. "Consequences of Deforestation". Available online: <https://rainforests.mongabay.com/09-consequences-of-deforestation.html>
Accessed April 1, 2019
- Sollund, Ragnhild. *Eco-global crimes: Contemporary problems and future challenges*. Routledge, 2016.
- Tegnan, Hilaire, Lego Karjoko, Jaco Barkhuizen, and Anis H. Bajrektarevic. "Mining Corruption and Environmental Degradation in Indonesia: Critical Legal Issues." *BESTUUR* 9, no. 2: 90-100. <https://doi.org/10.20961/bestuur.v9i2.55219>
- UNODC Regional Office for Southeast Asia and the Pacific. Available online at: <https://www.unodc.org/roseap/en/indonesia/forest-crime.html>
- Vickers, Ros. "The Regulation of Natural Resources Law in Australia for Indigenous People." *Jambe Law Journal* 2, no. 2 (2019): 99-117.
- White, Rob. "Reparative justice, environmental crime and penalties for the powerful." *Crime, Law and Social Change* 67, no. 2 (2017): 117-132.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © HALREV. This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Hasanuddin Law Review (Hasanuddin Law Rev. – HALREV) is an open access and peer-reviewed journal published by Faculty of Law, Hasanuddin University, Indonesia.

Open Access 

Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible?

ORIGINALITY REPORT

14%

SIMILARITY INDEX

12%

INTERNET SOURCES

7%

PUBLICATIONS

3%

STUDENT PAPERS

PRIMARY SOURCES

1

ijsshr.in

Internet Source

2%

2

Submitted to Lambung Mangkurat University

Student Paper

1%

3

Submitted to Universiteit van Amsterdam

Student Paper

1%

4

repub.eur.nl

Internet Source

1%

5

www.sysrevpharm.org

Internet Source

1%

6

journal.unnes.ac.id

Internet Source

1%

7

Submitted to City University

Student Paper

1%

8

docplayer.net

Internet Source

1%

9

www.sciencegate.app

Internet Source

1%

10	jurnal.radenfatah.ac.id Internet Source	1 %
11	journal.unhas.ac.id Internet Source	1 %
12	journal.uad.ac.id Internet Source	1 %
13	Submitted to Kean University Student Paper	1 %
14	jih.ejournal.unri.ac.id Internet Source	1 %
15	Andri G. Wibisana, Michael G. Faure, Raisya Majory. "Error in Personam: Confusion in Indonesia's Environmental Corporate Criminal Liability", Criminal Law Forum, 2021 Publication	1 %
16	repository.ubaya.ac.id Internet Source	1 %
17	www.researchgate.net Internet Source	1 %
18	Vivi Tri Kasih, Antory Royan Adyan, Herlambang Herlambang. "CORPORATE LIABILITY FORMULATION POLICY ACCORDING TO ARTICLE 101 OF LAW NUMBER 31 OF 2004 JUNCTO LAW NUMBER 45 OF 2009 CONCERNING FISHERIES IN TERM OF	1 %

CRIMINAL LEGAL REFORM IN INDONESIA", Bengkoelen Justice : Jurnal Ilmu Hukum, 2021

Publication

Exclude quotes On

Exclude matches < 1%

Exclude bibliography On