

ABSTRAK

Undang-Undang Nomor 4 Tahun 2009 merupakan turunan dari Undang-Undang Dasar 1945 dimana negara menguasai (mengelola) sumber daya alam (batubara) untuk sebesar-besarnya kemakmuran rakyat. Korporasi merupakan mitra pemerintah dalam mengelola sumberdaya alam tersebut dengan melakukan penambangan. Namun, dalam praktik pertambangan sering menimbulkan dampak negatif dan pelanggaran oleh korporasi yang dalam penerapannya belum berbasis keadilan dan membawa manfaat bagi lingkungan dan masyarakat.

Tujuan dari penelitian ini adalah untuk mengetahui penerapan sanksi pidana terhadap korporasi dalam Undang-Undang Nomor 4 Tahun 2009 selama ini, dan untuk mengetahui kelemahan penerapan sanksi pidana terhadap korporasi dalam Undang-Undang Nomor 4 Tahun 2009 saat ini, serta merekonstruksi sanksi pidana terhadap korporasi dalam Undang-Undang Nomor 4 Tahun 2009 yang berbasis nilai keadilan.

Penelitian ini menggunakan paradigma konstruktivisme. Metode pendekatan yang digunakan adalah *yuridis sosiologis*, dengan spesifikasi penelitian bersifat *deskriptif analisis*. Data yang digunakan adalah data primer dan data sekunder, yang kemudian dianalisa secara *kualitatif*.

Hasil penelitian menunjukkan bahwa : (1) Penerapan sanksi pidana terhadap korporasi saat ini dihadapkan pada belum jelasnya subjek hukum korporasi, dimana disebutkan sebagai badan hukum yang jika melaksanakan tindak pidana, selain dikenai pidana penjara dan denda terhadap pengurusnya, juga dijatuhi pidana denda dengan pemberatan ditambah 1/3 (satu per tiga) kali ketentuan maksimum pidana denda yang dijatuhan. Selain itu, badan hukum juga dapat dijatuhi pidana tambahan berupa pencabutan izin usaha dan/atau pencabutan status badan hukum. (2) Kelemahan penerapan sanksi pidana terhadap korporasi dalam Undang-Undang Nomor 4 Tahun 2009 sat ini dari aspek : (a) ketidakjelasan subjek pidana korporasi; (b) belum ada aturan sanksi pidana bagi yang tidak melaksanakan reklamasi dan pascatambang; (c) adanya multitafsir norma hukum; (d) adanya disparitas pemidanaan dalam putusan hakim yang tidak mencerminkan rasa keadilan; (e) Sanksi pidana belum berorientasi pelestarian lingkungan; (3) Rekonstruksi penerapan sanksi pidana terhadap korporasi berbasis nilai keadilan dengan mengganti kata badan usaha dengan korporasi, memasukkan kewajiban memberim laporan reklamasi dan pascatambang dalam pasal 159, dihapuskanya pasal yang multitafsir, memberikan batasan minimum pidana penjara dan pidana denda yang besarnya melalui kajian lebih dulu serta menambahkan sanksi kerugian juga biaya rehabilitasi lingkungan yang besarnya diatur melalui kajian lebih dulu.

Kata kunci: *Sanksi Pidana, Korporasi, Undang-Undang Minerba, Rekonstruksi*.

ABSTRACT

Law Number 4 of 2009 is a derivative of the 1945 Constitution in which the state controls (manages) natural resources (coal) for the greatest prosperity of the people. The corporation is the government's partner in managing the natural resources by mining. However, mining practices often cause negative impacts and violations by corporations which in their criminal application are not yet based on justice and bring benefits to the environment and society.

The purpose of this study is to determine the application of criminal sanctions against corporations in Law Number 4 of 2009 so far, and to find out the weaknesses of the application of criminal sanctions against corporations in Act Number 4 of 2009 at this time, as well as reconstructing criminal sanctions against corporations in Law Number 4 of 2009 based on the value of justice.

This research uses the constructivist paradigm. The method of approach used is sociological juridical, with descriptive research specification analysis. The data used are primary data and secondary data, which are then analyzed qualitatively.

The results of the study show that: (1) The application of criminal sanctions against corporations is currently faced with the unclear subject of corporate law, which is stated as a legal entity that if committing criminal offenses, in addition to imprisonment and fines against its management, criminal fines are also added with weighting plus 1/3 (one-third) times the maximum penalty for fines imposed. In addition, legal entities can also be subject to additional penalties in the form of revocation of business licenses and / or revocation of legal entity status. (2) Weaknesses in the application of criminal sanctions against corporations in Act Number 4 of 2009 from the aspect of: (a) obscurity of corporate criminal subjects; (b) there are no criminal sanctions for those who do not carry out reclamation and post-mining; (c) there are multiple interpretations of legal norms; (d) there is a disparity in punishment in a judge's decision that does not reflect a sense of justice; (e) Criminal sanctions have not been oriented towards environmental preservation; (3) Reconstruction of the application of criminal sanctions against corporations based on justice values by replacing said business entities with corporations, including the obligation to submit reclamation and post-mining reports in article 159, abolishing articles that are multiple interpretations, providing a minimum limit of imprisonment and criminal fines of the amount through a prior study as well as adding loss sanctions as well as the cost of environmental rehabilitation, the amount of which is regulated through a prior study.

Keywords: *Criminal Sanctions, Corporations, Minerva Law, Reconstruction.*