

Corporate Criminal Responsibility In The Criminal Offense Of Burning Land, Forests Or Plantation

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Abstract: Damage to forest land, plantations, has had wide-ranging impacts on the environmental, institutional and political aspects associated with the accessibility and biodiversity of forest resources. The criminal offence of burning land, forest and plantation done by company (corporation) to open new land by burning/destroying habitat around it, is a form of criminal act that can't be tolerated anymore, because the impact of his actions harm the damage to environmental, and other ecosystems, and can damage the health of the surrounding community. - The most obvious damage is to the forest where the fires are occurring. Therefore, for the future it is time for the corporation both the board and its business may be subject to the provisions as regulated in the legislation both National and International as well as the most recent provision is Supreme Court Regulation No. 13 of 2016.

Keywords - Criminal Responsibility, Corporate, Bussiness Entity-Company.

Date of Submission: 07-08-2018

Date of acceptance: 24-08-2018

I. INTRODUCTION

The presence of corporations gives a great deal of meaning to the business world and contributes to the development of a country, especially in the economic field, such as state revenues in the form of taxes and foreign exchange, so that corporate impacts seem very positive, but the impacts of corporations are not always a positive but there are also negative impacts such as pollution and environmental destruction caused by corporate actions [Setiyono, 2004, p.1]. - If it comes with positive effect there will be not upset about, but in reality it comes with adversely effect on individuals and community.

Forest and Land fires have an impact on environmental damage not just the ecosystem's destruction but the haze it generates becomes a dangerous thing for life. Forest fires and peat lands during the dry season can be caused or triggered by natural events and the activities of companies engaged in plantations or carelessness. The burning of forests and land is prohibited because in addition to violating Article 50 of Law No 41 of 1999 in conjunction with Law No 19 of 2004 regarding Forestry, it also violates Article 11 of Government Regulation No 4 of 2001 concerning Control of Damage and or Pollution of Environment Related to Forest Fire and or Land, and Article 187 and Article 188 of the Criminal Code. In Law No. 39 of 2014 on Plantations in the provisions of Article 56 (1) state that "Every Plantation Business is prohibited to open and/or cultivate land by burning".

Case data released by the Ministry of Forestry in 2016 is the number of burnt forest area of 1. 835.4 Ha; which occurred in 7 (seven) provinces, namely:

Table 1 - Forest Fires in Indonesia, 2016

No	Province	Area Burned [Ha]
1	Center Kalimantan	0,0
2	West Kalimantan	2,0
3	East Kalimantan	412,4
4	Jambi	3,5
5	Riau	1. 359,5
6	South Sumatra	0,0
7	North Sumatra	58,0
	Total	1. 835,4

The destruction of forest areas has had wide-ranging impacts on the environmental, economic, institutional and sociopolitical aspects particularly with regard to the accessibility and biodiversity of forest resources. The rate of forest destruction continues to occur due to various factors such as illegal logging, forest fires, lack of control and oversight of the operation of licensing systems in the management of forest areas, conversion of forest areas to plantations, settlements and/or for non-forestry development interests others, which can't be denied all this has led to the occurrence of damage and destruction of forest resources. Exploitative and more business-oriented ways of exploiting natural resources have resulted in a decline in the standard of living of people, namely the increasing poverty of people living in and around forest areas. The fallacy of forest management principles practiced over the past decades has increased the rate of forest degradation that continues to the present day.

Corporate liability is based on the superior respondent doctrine, a doctrine which states that corporations themselves can't commit crimes and have errors. Only agents acting for and on behalf of corporations alone can commit criminal offenses and have errors. Therefore, corporate responsibility is a form of accountability for the actions of other people/agents (vicarious liability), where he is responsible for criminal acts and mistakes that are owned by agents. This doctrine is derived from the civil law of the torts of law based on the superior respondent doctrine. [Sutan Remy Sjahdeini, 2006, p.84]

Derived from agency principles in tort law, it provides that a corporation "may be held criminally liable for the acts of any of its agents [who] (1) commit a crime (2) within the scope of employment (3) with the intent to benefit the corporation." (p.1247), the same is also said by V.S Khanna that there are three conditions that must be met for the existence of corporate responsibility as quoted by Mahrus Ali [2013, p.100] namely: (1) Agent commits a crime, (2) within a scope of employment, and (3) with intent to benefit corporation. - This standard is quite broad, permitting organizational liability for the act of any agent, even the lowest level employee.

A corporation is not a live person, of course, and therefore it can act only through its agents. To prove that a corporation is guilty of a criminal offense that was committed by one of its agents, the Commonwealth must prove three things beyond a reasonable doubt:

1. That a specific person is guilty of this offense — that is, he or she committed all of the elements of this offense;
2. That such person, when he or she committed this offense, was engaged in some particular corporate business or project; and
3. That the accused corporation had given that person authority and responsibility to act for it, and on its behalf, in handling that particular corporate business or project.

The research of corporation criminal responsibility in some requirement outside of this criminal law textbook is a qualitative juridical and normative research, historical method and comparative method. The normative and juridical method of research is a making reference on law norms found in the statutes. The source of data in this research included primary material of law, secondary material of law and tertiary material of law. The collection of data is accomplished by library research. The normative juridical research is conducted to know how are the criminal acts of redemption of land, forest, and plantation conducted by, for or on behalf of a business entity, and how is the principle of corporation criminal responsibility in criminal law and how is the liability of a business entity for criminal acts of burning of land, forest and plantation by, for or on behalf of a business entity?

II. REVIEW OF RELATED LITERATURE

The concept of criminal liability becomes important, because the problem of pollution and/or destruction may occur, sourced from the activities of the corporate body (corporation) in which it engages many people with different levels of work and responsibilities. So in the case of criminal acts committed by the corporation should pay attention to the development of the concept of corporate criminal liability.

Punishment of corporations, basically has the same purpose with the criminal law in general, namely: 1. To stop and prevent future crimes; 2. Contains an element of punishment that reflects the public's obligation to punish anyone who carries a loss; 3. To rehabilitate corporate criminals; 4. Corporations' punishment must embody the nature of clarity, predictability and consistency in the principle of criminal law in general; 5. For efficiency; and 6. For justice ".

2.1 Definition of Corporation, Crime and White-Collar Crime

Definition of Corporation

The word corporation (corporatie, the Netherlands), corporation (English), corporation (Germany) itself is etymologically derived from the word "corporatio" taken from the Latin. As with other words ending with "tio", the corporatio as a noun (substantivum), comes from the verb corporare, which was used by many

people in medieval times and thereafter. Corporate itself comes from the word "corpus" which means body. [Muladi, Dwidja Priyatno, 2011, P.23]

The relevant and current legislation relating to companies is the Companies Act 2006. The Act treats companies and corporations separately although they are both similar concepts. A corporation is defined as an artificial person created by law. Corporations exist independent of human beings who are in fact members of the entity.

Lord Viscount Haldone LC in the Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd case defines a corporation as "an abstraction. It has no mind of its own any more than it has a body of its own..."

The distinguished New Zealand Judge Sir John Salmond, stated in the last edition of his jurisprudence that although corporations are deemed to be fictitious persons, the acts and interests, as well as rights and liabilities, attributed to those corporations by the law are in fact those of real and natural persons. If such is the case, we can thus deduce that just like human beings, that corporations could similarly be convicted for both tortuous and criminal offences.

According to John Braithwaite [1994,p.6], "Corporate crime is the conduct of a corporation, or of employees acting on behalf of a corporation, which is prescribed and punishable by law". Marshall B. Clinard and Peter C. Yeagar in Eddy O.S.Hiaried [2014, p.156] states " that a corporate crime is any act committed by corporation that is punished by the state, regardless of whether it is punished under administrative, civil or criminal law"

Definition of crime

A crime is a wrongdoing classified by the State as a felony or misdemeanor. The Courts look at crimes as a moral wrong demanding retribution. Corporate crime has been defined as "an illegal act of omission or commission, punishable by a criminal sanction, committed by an individual or a group of individuals in the course of their work as employees of a legitimate organization.

Definition of White-Collar Crime

White-collar crime refers to financially motivated nonviolent crime committed by business and government professionals. Within criminology, it was first defined by sociologist Edwin Sutherland in 1939 as "*a crime committed by a person of respectability and high social status in the course of his occupation*" The concept of white collar crime are to describe criminal activity by persons of high social status and respectability who use their occupational position as a means violate the law" [Sally S Simpson, 2005, p.6]

2.2 The liability of a business entity for criminal acts of burning of land, forest and plantation

Criminal legal liability if such action is committed by a legal entity (the Company) in accordance with the Environmental Protection and Management Act, which is stipulated in the provisions of Articles 116, 117, 118 and Article 119; Taking into account the provisions of Article 116 and its explanation, environmental crime is committed by, for and on behalf of the business entity. If described that the perpetrator of environmental crime pursuant to Article 116, namely:

1. Performed by a business entity;
2. Conducted for business entity;
3. Conducted in the name of a business entity;
4. Conducted by a business entity conducted by a person based on an employment relationship acting within the scope of work of a business entity;
5. Conducted by a business entity conducted by a person based on other relationships acting within the scope of work of a business entity;
6. Conducted for business entities conducted by persons based on employment relations acting within the scope of work of a business entity;
7. Conducted for business entities conducted by persons based on other relationships acting within the scope of work of a business entity;
8. Conducted in the name of a business entity conducted by a person based on an employment relationship acting within the scope of work of a business entity;
9. Conducted in the name of a business entity conducted by a person based on other relationships acting within the scope of work of a business entity.

By a business entity means a business entity as the actor, a business entity in this case as a passive agent, while the active actors such as: the management of the business entity or the managers of the business entity perform the act because of his/her position.

III. THE PRINCIPLE OF CORPORATION CRIMINAL RESPONSIBILITY IN CRIMINAL LAW

The general belief in the 16th and 17th century was that corporations were incapable of being subject to criminal law. Eighteenth-century legal thinkers approached corporate liability with an obsessive focus on theories of corporate personality. Corporate liability took very long to grow for various reasons.

It is important to understand the purpose for corporate liability because the choice of liability strategy is to be determined by this ultimately i.e. whichever strategy achieves the purpose better must be used.

A number of purposes can and have been offered to justify ideas of corporate fault.

1. Global purposes of criminal law i.e. to support and endorse fundamental values of our society by punishing their breach.
2. A second purpose is to deter undesirable activity. So corporate liability should aim to create incentives for corporations to monitor the activities of its employees. This argument restates the justification of corporate liability for vicarious, absolute and strict liability offences [Lilly J.R, 1994, PP 3-6]. Corporate criminal liability deters corporate managers and employees. Corporations and other groups are an important source of norms of behaviour for individuals. An individual is an instrument through which an individual organizes his/her affairs, and a larger corporation is more likely to be a highly developed organization that passes on its norms to its members. This refers to criminal organizations, i.e. organizations set up under a façade to basically facilitate criminal activities. Deterrence effect is needed to prevent corporations being set up for illegal purposes, as well as to prevent existing corporations from doing harm in any way.
3. Some scholars suggest that there is a retributive purpose in holding corporations criminally liable because of the possibility that the corporations might profit from engaging in illegal activities. It is proper that the fines should be borne by those who received the fruits of the illegal enterprise so as to prevent unjust enrichment.

There are certain things not wrong in themselves, but are deemed criminal for the sake of the public good. This sufficiently accounts for corporate liability for absolute and strict liability offences. But the case is different for mens rea offences. There are people who argue that the need for corporate criminal liability arises only when regulatory methods have been exhausted. But this view is inconsistent with the purpose of criminal liability, i.e. deterrence [Matsiko Godwin Muhwezi, 2016, pp 5-6]. As Glanville Williams writes, "the result of a rule disregarding fault may be that businessmen come to regard fines as part of their overhead costs. This attitude of indifference thus engendered toward the criminal process through the inflation of law may well spread to other offences, where an element of fault is present.....the ultimate result may be a decrease in the preventive effect of the law." [Williams, G., 1983, p.931] The conflict brings into focus the need to co-ordinate the liability strategy used with the aims corporate criminal liability seeks to achieve.

3.1 Models of Corporate Criminal Liability in Indonesia

The development of corporations as legal subjects in Indonesia became known through the Law outside the Criminal Code. This is because the Indonesian Criminal Code only recognizes humans as the subject of criminal law. Furthermore, through various laws outside the Code of Criminal Law is also regulated models of corporate criminal liability. There are three models of corporate criminal liability, namely:

1. The manager of corporation involved will assume the responsibility;

One of the first criminal liability models in the Criminal Code is Article 169 of the Criminal Code. In such provisions it is mentioned that it participates in associations aimed at committing a crime, other associations prohibited by rules, or associations for the purpose of committing an offense, as well as a penalty for the board or the founder. If you look at these provisions then criminal acts and liabilities are more emphasized to managers, not corporations. In some other Articles namely Article 398 and Article 399 of the Criminal Code regulating the bankruptcy of a corporation, it also imposes its punishment on the board.

2. The corporation as perpetrator that manager will assume the responsibility;

In the second corporate criminal responsibility model, the corporation as a legal subject is already known, so that the corporation has been acknowledged capable of committing a criminal act, but its responsibility is still charged to the board [Mardjono Reksodiputro, 2014, P.3]. Muladi and Dwidja [2011, P.84] argue that this model of criminal liability is the board appointed as responsible for what the corporation perceives to be done, ie what is done by the tool of the corporation according to the authority under its articles of association. More specifically, the board or leader of the corporation is responsible for the actions committed by a person or persons, regarded as an act of the corporation, whether he knows it or not. This is due to the obligation attached to the board or leader.

The other rules that have adopted this model of criminal responsibility are Law No. 41 of 1999 on Forestry (Forest Law), Article 78 paragraph (14) of the Forestry Law provides for:

"Criminal acts as referred to in Article 50 paragraph (1), paragraph (2), paragraph (3), if done by and or on behalf of a legal entity or business entity, the prosecution and penal sanctions are imposed on the board individually or jointly, shall be liable to criminal sanction in accordance with the respective criminal threat plus 1/3 of the imposed penalty "

From these provisions, it can be seen that the Forestry Act has acknowledged explicitly that a legal entity or business entity (corporation) may commit a crime. Associated with the imposition of responsibility also mentioned that the demands and penal sanctions imposed on the board. So it can be concluded that the Forestry Law has adopted a clear model of corporate criminal liability this second.

3. The corporation as perpetrator that managers and corporation as perpetrator that managers and corporation will assume the responsibility.

In this third corporate criminal responsibility model, the corporation's position as a legal subject can be said to be fully acknowledged. This is because the corporation has been regarded as a maker, and against it can also be held accountable [Mardjono Reksodiputro, 2014, P.4]. This model of criminal responsibility is only widely recognized through the Economic Criminal Act in 1955. This is set out in Article 15 of the Economic Criminal Act which regulates: " *If an economic crime is committed by or on behalf of a legal entity, a company, a union of another person or a foundation, then criminal prosecution shall be committed and criminal punishment and disciplinary action shall be imposed both to legal entities, the union or foundation, whether against those who give orders to commit the economic crime or who acts as the leader in the act or omission, or both* "

According to Sutan Remy S. [2014, P.59] three models of corporate criminal liability raises the implications of the existence of four possible systems of imposition of criminal liability to the corporation. The four possible systems that can be enforced are:

1. Corporations as perpetrators of criminal acts, therefore it is the board that must bear the criminal responsibility.
2. Corporations as perpetrators of criminal acts, but administrators who must bear criminal responsibility.
3. The corporation as the perpetrator of the crime and the corporation itself must bear the criminal responsibility.
4. Managers and corporations both as perpetrators of criminal acts, and both of which must bear criminal responsibility.

3.2 Theories of Corporate Crime [Criminal Liability]

Theory of Vicarious Liability

For the cases falling in the first category, since mere act or omission is sufficient to fasten liability, it is relatively easier to apply the concept of vicarious liability in the offences coming under this category. It may be worth mentioning here that most of the offences, which do not require existence of mens rea, are also torts in some form or the other, for example creating pollution is basically a tort of nuisance and fatal accident is a tort of negligence. These acts of omission, not only give rise to remedies in civil law, but in criminal law as well. The theory of vicarious liability appears better suited for prosecuting corporations for commission of offences, which do not require mens rea.

Vicarious liability concept has been borrowed from tort law, wherein there is automatic liability for the offences committed by the officers within the scope of their employment. This is a civil law concept that finds application in criminal law today. Vicarious liability describes the situation where one person is held liable for the misconduct of another.

Under the Vicarious Liability model, corporation may become criminally liable for the illegal acts of officers, employees or agents, provided it can be established that:

- a) The individual's actions were within the scope of his employment; and
- b) The individual's actions were intended, at least in part, to benefit the corporation.

The criminal law model of vicarious liability was adapted from the law of torts. The doctrine of respondent superior establishes the notion of "vicarious liability" where a master is responsible for the illegal conduct of their servant. The relationship is what creates the liability. It dispenses with the element of actus Reus in the same way strict liability dispenses with the element of mens rea.

The doctrine is more relevant in business, where a corporation (as an entity, not a person) cannot commit a crime (cannot form criminal intent) but it can be held criminally liable' if the only punishment sought is a fine or seizure of property. Officers of a corporation can be punished by imprisonment only if the corporation has been held 'criminally liable' first, the officer has been found guilty of malfeasance, misfeasance, or nonfeasance by their corporation, and (unless stated otherwise in statute) the officer causes, requests, commands, or in any way authorizes the illegal act to be committed.

Vicarious liability casts a wide net, although the attribution of liability to the corporation is not as 'automatic' as some have suggested. First, it must be found that an individual employee committed the crime with the requisite state of mind and, if that mens rea element is established, it is imputed to the corporation itself; the mens rea can also be shown on the basis of collective knowledge on the part of employees as a group, even though no single employee possessed sufficient information to know that a crime was being committed. Secondly, the employee must have acted within the scope of employment.

Identification Theory

The theory of Identification is the approach which is currently applied in Canada and subject to changes, in the United Kingdom. It is a legal fiction in which it focuses on the actions of the 'directing mind' of the corporation and merges individual and corporate persons in order to assign criminal liability to the latter.

The theory is narrower than vicarious liability. It requires that the corporation takes responsibility for those, who have decision-making authority over matters of corporate policy rather than those vested only with implementing the policy. It is not sufficient merely to establish that any employee or agent acted criminally.

Therefore, it may be seen that for crimes, which require mens rea, a conspiracy and planning is necessary at the top level and the conspiracy is materialized at the executive level I; and since the doctrine of vicarious liability fails to meet the situation, the identification theory seeks to supplant the theory of vicarious liability in crimes requiring mens rea. 'Identification Theory' enables to locate the core, where the conspiracy was planned and necessarily an agent cannot be said to be the core of the company. The core has to be the decisive authority, the senior management, which clears plans and projects for the company to be executed by the agents. Thus, in a way, the basic difference between the theory of 'vicarious liability' and 'identification theory' is that whereas in the former, the concentration is at the level of the agents, where the offence is committed and the culpability of the individual's acts are imputed to the corporation, the concentration in the case of the latter, is at the top level pursuant to which the offending act is committed by the agents. [Justice A. Ansari of Guwahati High Court, 2011]

Denning L.J, one of the judges in England, in the case of H.L. Bolton Engineering Co. Ltd. v T.J. Graham & Sons Ltd. in 1957 [H.L. Bolton Engineering Co. Ltd. v T.J. Graham & Sons Ltd. [1957] 1 QB 159], explains identification theory by likening a company as a human body [Sutan Remy Sjahdeini, *Pertanggungjawaban*, 2006, P.101-102]. He fully states that: "*A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tool and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such*"

From his explanation, Denning L.J argues that the attitude of the hearts of these managers or directors is a "directing mind" or attitude of the heart of the company itself and the law treats it as such. Doctrine Identification is also often referred to as alter ego theory [Cristina Maglie, 2005, P.556]. This doctrine is famous when used by Judge Reid in the case of Tesco Supermarket Ltd. v. Nattrass. In his judgment, Judge Reid mentioned that- "*(a corporation) must act through living persons...then the person who acts...is acting as the mind of the company*" Thus, based on the position of a particular person, such as a high-level manager, may be considered as "directing mind" and "will" of the corporation [Mark Pieth, Radha Ivory, 2012, P.626]. This makes the "mens rea" element that can not be found directly in corporations, can be done through the "mens rea" that is found in the individual who is the "directing mind" of the corporation.

Christopher M Little and Natasha Savoline [cited by Sutan Remy S, 2006, P.106-107] responded to the ruling issued by The Supreme Court of Canada, arguing that from the decision on identification theory came six principles, namely:

1. Directing mind of a corporation is not limited to one person, but also a number of officers and directors.
2. Geography is not a factor, or in other words the operational area difference of a corporation does not affect the determination of who is the directing mind of the company concerned. So that regional differences can not be the reason someone dodged as a directing mind.
3. A corporation can not deny to be responsible by arguing that certain persons or persons have committed a criminal offense even though there has been a strict command to them to commit only unlawful acts.
4. In order for a person to be found guilty of having committed a crime, he must have a wrong heart or an evil value, known in the penal law as mens rea. If the officer or director of the corporation who is the directing mind is not aware of the crime he committed, then he can not be accounted for.
5. To be able to apply the identification theory, it must be shown that the act of the individual as a directing mind is part of the activities assigned to him. The act is also not a fraudulent act directed against the corporation. And the crime yanag done should aim to benefit the corporation.
6. Corporal criminal liability requires the existence of contextual analysis. Or in other words, the analysis should be done on a case-by-case basis.

If you look at the use of this doctrine of identification, then this doctrine is directed to a high-ranking officer of a corporation such as a director or a high-level manager, since the authority to act for and on behalf of the corporation is essentially only at that level of office. This will affect the corporation only to be subject to criminal liability for the acts committed by the director or top manager, without accommodating the actions done by corporate agents, both inside the corporation and outside the corporation. Therefore, this doctrine is sometimes regarded as legal barrier to potential corporate criminal liability. [Sarah Field, Lucy Jones, 2011, P.3]

The identification theory has been criticized for its limited application. It is premised on the court being able to ascertain key managers who not only have control over making corporate policy, but have also actually committed an offence. While the Supreme Court, while acknowledging the geographical and operational decentralization of many corporations, has ruled that there may be more than one 'directing mind', the identification theory goes only part way towards addressing the manner in which large corporations function. Its focus on individual decisions by individual manager contrasts with the fact that companies are complex and may, in a very-negative scenario - create group norms and systemic pressures that lead to law breaking.

Strict Liability Theory

Strict liability is defined as a criminal act by not requiring an offender's wrong on one or more of the actus reus. Strict liability is a liability without fault. With the same substance, the concept of strict liability is defined as the nature of strict liability offences is that they are crimes which do not require any mens rea with regard to at least one element of their "actus reus".

Paul Dobson [2008, P.22] state that "These are some crimes for which with regard to at least one element of the actus reus, no mens rea is required". Therefore, in strict liability, the element of error does not need to be proven.- there are two main purposes of imposing strict liability, ie: (1) to protect the public from dangerous actings by creating a higher standard of care; (2) To regulate quasi-criminal activities in as efficient manner possible [Paul Dobson, P.27]

Aggregation Theory

The 'Aggregation Theory' is grounded in an analogy to tort law in the same way as the agency and identification doctrine. Under the 'aggregation theory', the corporation aggregates the composite knowledge of different officers in order to determine liability. The company aggregates all the acts and mental elements of the important or relevant persons, within the company, to establish whether, in to, they would amount to a crime if they had all been committed by one person. According Celia Wells, "aggregation of employees' knowledge means that corporate culpability does not have to be contingent on one individual employee's satisfying the relevant culpability criterion".

The 'aggregation theory' appears to combine the Vicarious Liability principle with one of 'presumed or deemed knowledge'. Even if no employee or agent has the requisite knowledge to satisfy requirement needed to be guilty of a crime, the aggregate knowledge and actions of several agents, imputed to the corporate executive could satisfy the elements of the criminal offence.

Theory of Sanctioning

With respect to sanctioning a corporate entity, the conventional and for the most part only, approach has been to impose a fine. This has obvious drawbacks, since a fine, whether imposed by an administrative agency or a judicial body, has only a limited preventive effect and must be considered to be reactive rather than proactive, or preventive.

Heine says, 'the imposition of fines creates problems mainly because it can prove difficult to determine which amount is both fair and effective when punishing a corporate offender. In countries where fines are relatively low, companies can include these fines into their operating costs, while large fines can drive companies out of business, thus having a tremendous impact on the employees of the company as well as other secondary results. [Heine, 1998] Over the last few years, however, there have been numerous suggestions, as well as a considerable number of attempts to remedy the situation.

The ultimate restriction of entrepreneurial liberty is the closure or winding up of the corporation. The aim for such action is protection of the general public from criminal organizations. Such criminal behavior can include a high degree of practical danger to the public, a history of dangerous corporate mismanagement or management, which demonstrates a high degree of irresponsibility. Less drastic action includes the prohibition of certain activities, such as participation in public tenders, the production of specified groups, as well as contracting and advertising.

The sanctioning, any way, involves a complicated and complex seven step process, which consists of the determination of (1) the base offence level, (2) the base fine, (3) the culpability, (4) multipliers, (5) disgorgement, (6) Implementation, and (7) Departures [Mirazek, Josep C.Jr, pp.1065 to 1078]

Other measures, which are not judicial in nature, include the 'Sequestration' and the 'appointment of a trustee'. The latter can bring about serious consequences. If the trustee's decisions are binding, the question arises who is responsible for wrong decision-making and possible consequences.

Apart from that, however, Sentencing Guidelines have been established in a number of countries, which aid courts in determining sanctions, while avoiding inequality in decisions.

The following new types of punishments are being advocated in USA for punishment of corporate crimes:

- 1) Equity Fines: The payment of fines not in cash, but stock - a penalty that diminishes the value of already issued stock and garners shareholder attention.
- 2) Probation: Placing companies under the continuing surveillance of a court appointed supervisor, with strong sanctions issuing powers for repeat violations.
- 3) Revocation of Subsidies and Privileges: Taking away government-granted tax and other subsidies, or denying government-granted privileges for corporate offenders; and
- 4) Adverse Publicity: Requiring corporate criminals to advertise their criminal convictions, an antidote to the image - enhancing advertisements.

IV. CORPORATE CRIMINAL LIABILITY IN INTERNATIONAL DOCUMENTS

Apart from individual countries' penal codes, administrative regulations or civil statutes, corporate criminal liability is also mentioned in a number of international documents. It is reflective of the differing developments in common law and civil law countries that the topic was not taken up on an international level until the late 1920s at the 2nd Congress of the Association Internationale de Droit Penal in Bucharest.

A number of conferences have dealt with the same issues since the end of World War II. Among them are the '8th International Conference of the Society for the Reform of Criminal Law' in 1994 in Hong Kong and the 'International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment' in Portland, in 1994.'

"due consideration should be given by Member States to making criminally responsible not only those persons who have acted on In behalf of an institution, corporation or enterprise, or who are in a policy-making or executive capacity but also the institution, corporation or enterprise itself, by devising appropriate measures that could prevent or sanction the furtherance of criminal activities"

Another document, which advanced the formulation of corporate criminal liability on an international level and is considered a milestone by some commentators was 'Recommendation 18 of the Committee of Ministers of the Council of Europe' to 'Member States concerning Liability of Enterprises having Legal Personality for Offences committed in the exercise of their Activities.'

It mentioned on the one hand the "application of criminal liability and sanctions to enterprises, where the nature of the offence, the degree of fault on the part of the enterprise, the consequences for society and the need to prevent further offences so require," and on the other hand the "application of other systems of liability and sanctions, for instance those imposed by administrative authorities and subject to judicial control, in particular for illicit behavior which does not require treating the offender as a criminal."

In 1998, the Council of Europe passed the Convention on the Protection of the Environment through Criminal Law, which stipulated in Article-9 that both 'criminal or administrative sanctions and measures' could be taken in order to hold corporate entities accountable.' [ETS No. 172. Council of Europe] The Member States of the OECD agreed on the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 17th December, 1997. It obliges the parties to introduce at least the possibility to impose non-criminal monetary sanctions on legal persons for the bribing of foreign public officials.

There are numerous other international documents that include provisions on corporate criminal liability. The latest attempt to include the concept of corporate criminal liability is Art-5 of the draft United Nations 'Convention against Transnational Organized Crime.' These international documents have put a considerable amount of pressure on a number of European countries which currently do not contain provisions pertain to Corporate Criminal Liability to consider reforms to their criminal laws.

V. CONCLUSION

Based on the result of research, it could be concluded that principle of corporation criminal responsibility in corporation or in non-corporation include: the manager of corporation in volved will assume the responsibility, the corporation as perpetrator that manager will assume the responsibility and the corporation as perpetrator that managers and corporation as perpetrator that managers and corporation will assume the responsibility.

In the application of sanctions against corporations and administrators for the actions it makes is the application of sanctions by not necessarily based on justification or reasons of forgiveness. It can be understood that burning of land, forests, plantations is damage to the surrounding environment and disrupts the survival of existing ecosystems. Therefore, the Panel of Judges in the judicial process should be able to apply criminal, civil, and administrative sanctions against both individuals and corporations.

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Abdul Corporate Criminal Responsibility In The Criminal Offense Of Burning Land, Forests Or Plantation." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*. vol. 23 no. 08, 2018, pp. 48-56.