

# Criminal Liability of Holding Company in Environmental Crime in Indonesia

ABDUL AZIZ ALSA<sup>1</sup>, FX ADJI SAMEKTO<sup>2</sup>, PUJIYONO<sup>2</sup>

<sup>1</sup>Doctoral Program in Law, Diponegoro University, Semarang, INDONESIA

<sup>2</sup>Faculty of Law, Diponegoro University, Semarang, INDONESIA

**Abstract:** This study seeks to analyze the form of law enforcement in Indonesia against environmental crimes committed by the parent company, and the criminal liability of the parent company in the event of an environmental crime within the parent company. This research uses library research method and post-positivism paradigm. by collecting data in the form of sources of legal material in the form of legislation, literature, and writings related to this research, processed and analyzed qualitatively. Empirical data was obtained to strengthen the findings. The results showed that there has not been a single law enforcement against holding companies in environmental crimes in Indonesia. The criminal responsibility of an environmental crime within the scope of the holding company is directed to the holding company as the leader and/or the giver of orders; subsidiary as actor; and/or both together.

**Keywords:** criminal law, environment protection and management, environmental crimes, holding company, company liability.

## 1. Introduction

The Constitution of the Republic of Indonesia gives the president the authority to exercise government power in order to achieve the goals of the state, namely to provide welfare to the community, and to give everyone the right to live in physical and spiritual prosperity, to have a place to live, and to obtain a good and healthy environment. healthy and obtain their rights in health services. In addition, the Constitution guarantees that everything that exists in the earth and water and the natural resources contained therein is controlled by the state and is intended as much as possible for the prosperity of the people. This is the basis for the implementation of constitutional duties for the components of the Indonesian (Juliani, 2016). The development of holding companies is happening very rapidly in Indonesia. The parent company owns and supervises directly the subsidiary, and is usually referred to as an affiliated company. Simanjuntak (1994) stated that a group company is a combination or

composition of companies that are legally independent, which are so closely related to each other that they form an economic unit that is subject to a head of the parent company as the central leader. The parent and subsidiary companies are related to each other. The parent company has the authority to act as the central leader who controls and coordinates the subsidiaries that are incorporated in the economic unit. The fact that the parent controls these subsidiaries cannot be qualified only based on the parent's total ownership of the subsidiary's shares. Parent control over subsidiaries refers to the actualization of the parent company's authority through policies or instructions to direct the subsidiary's business activities in supporting the economic interests of the group companies as an economic entity (Sulitiowati, 2010). However, companies/corporations also often commit environmental crimes. This can be seen from the data released by the Directorate General of Environmental Law Enforcement 2015-2020 as shown in Table 1.

Table 1. Environmental Criminal Cases

No	Criminal Case Type	Number of Criminal Cases
1	The handling of complaints	4942
2	Done Handled	1182
3	In Process of Handling	272
4	Permission monitoring	1445
5	Criminal Law Enforcement	892
6	Application of Administrative Sanctions	1456

Source: Directorate General of Environmental Enforcement and Forestry, 2020

Against environmental crimes committed by corporations in the form of a single company, the criminal liability is imposed on the business entity and/or the person who gave the order or acted as the leader in the crime (Lasmadi, 2021; Greife et al., 2017; Sinaga et al., 2019). However, if an environmental crime is committed by a holding company, the relationship between the parent and a subsidiary based on a work relationship or other relationship acting within the scope of the business entity, criminal sanctions are only imposed on the giver of the order or the leader in the crime without regard to the crime being committed alone or together (Jan, 2003; Ali et al., 2020; Ali et al., 2021).

As the essence of law is justice, law serves to serve the needs of justice in society (Tanya et al., 2006). The current regulations do not reflect the value of justice, because the criminal acts that occur (whether committed by the parent or subsidiary), will provide benefits for the company, so the author mentions that with an anomaly of success, profits are obtained from deviations. The holding company's criminal liability for crimes committed by subsidiaries in the protection and management of the environment in the future is that criminal liability can be addressed to a person who acts as a giver of orders and/or acts as a leader in environmental crimes without regard to the crime being committed individually or jointly. In the regulation, it is stated that a business entity within the scope of the construction of a holding company (either a subsidiary and/or parent company) that gives orders and/or acts as a leader in environmental crimes without regard to the crimes committed alone or jointly; and the two of them together.

## 2. Literature Review

The decline in the level of environmental quality causes a real impact on people's lives and has a negative impact on the survival of humans and other creatures. Environmental protection and management must be carried out seriously and consistently, this is done with a planned effort and integrates environmental, social, economic aspects into development strategies, so as to realize sustainable national development (Turisno & Dewi, 2021). Corporations have a major contribution and role in national development. Corporations are a common term used by legal experts to refer to legal entities (Ali, 2013). Rahardjo (1986) stated that a corporation is an entity created by law. Subekti and Tjitrosudiblo (2002) also stated that the corporation is a company and is also a legal entity. Corporations are legal entities that do not have a body, and therefore cannot act except through their directors or employees. Directors and employees who are in the corporate structure are also different entities from corporations, but are closely related. Therefore, the form of legal liability for corporations is carried out through vicarious liability (Ali, 2013). If viewed more broadly, the relationship between a corporation and its directors or employees is the same as the relationship between the parent and its subsidiaries in the construction of a holding company. The parent and subsidiary are two distinct entities, but are closely related, and constitute an economic unit composed of independent legal entities.

The concept of criminal acts has been formulated by many criminal law experts (Ali,

2013). Between the concepts put forward by one criminal expert and another criminal expert have similarities in substance, but there are also some differences in meaning and legal implications. Understanding of criminal acts begins with knowing the meaning of the word *strafbaar feit* which is used in *Wet Boek van Strafrecht* as the forerunner of the Criminal Code. Various criminal law experts in Indonesia, translated in several terms. Moeljatno (2002) defines *strafbaar feit* as an act that is prohibited by a rule of law, a prohibition, accompanied by sanctions (threats) in the form of certain crimes, for anyone who violates the prohibition, and it can also be said that a criminal act is an act which by a rule of law is prohibited and is subject to criminal punishment. However, keep in mind that the prohibition is aimed at the act (i.e., a situation or event caused by the behavior of the person), while the criminal threat is aimed at the person who caused the incident. *Strafbaar feit* is defined as a criminal event, according to him an offense is an unlawful act related to the fault (*schuld*) of someone who is able to take responsibility (Farid, 2007). Some prefer to use the term criminal event, and states that a crime is defined in two senses, namely a theoretical understanding, namely a violation of norms, rules or legal systems that are held because they can maintain the legal order and save the general welfare; and is statutory or positive law which is an event which by law is determined to contain handling (actions) and *natalen* (ignorance); do not do; act passively, usually done in some circumstances that are part of an event.

Arief (2002) defined a criminal act as an act of doing or not doing something which, based on the laws and regulations, is declared as an act that is prohibited and the act is punishable by a criminal offense. The definition of a criminal act according to the Draft Law on the Criminal Code, giving a statement what is meant by a criminal act is an act which by legislation is threatened with criminal sanctions and/or action. To be declared a criminal act, an act that is subject to criminal sanctions and/or action by laws and regulations must be against the law or contrary

to the law that lives in society. Article 67 of Law on Environment Protection and Management and Article 68 regulated obligations in environmental protection and management. Article 67 states that "everyone is obliged to maintain the preservation of environmental functions and control pollution and/or environmental damage. In Article 1 of the Law stated that what is meant by "everyone" is an individual or business entity, whether it is a legal entity or not a legal entity. The inability or failure to fulfill obligations without reasons that are objectively acceptable according to law can certainly result in the birth of legal liability in the field of civil law and criminal law for legal subjects who are unable or fail to fulfill these obligations.

### 3. Methodology

This research uses library research method and post-positivism paradigm. by collecting data in the form of sources of legal material in the form of legislation, literature, and writings related to this research, processed and analyzed qualitatively.

### 4. Results: Holding Company Liability in Environmental Crime

Corporations in carrying out their business activities are required to continue to protect and manage the environment, but in practice, there are still many corporations that violate these obligations. This can be seen from the environmental and forestry law enforcement performance report issued by the Indonesian Ministry of Environment and Forestry, at least from 2015 to mid-October 2020, there were 4942 cases of handling complaints in environmental law enforcement in Indonesia.

Although many environmental cases have been handled in Indonesia, there has not been a single law enforcement against holding companies in environmental crimes in Indonesia. There is a complex development of a company structure, thus creating a company structure for the sake of creating an efficiency in company management. An actor and/or company owner will choose to separate the company entities according to their own fields

or sub-sectors, this is useful to make it easier to control the running of the company. However, ironically, although the development of group companies is growing so rapidly, it is not matched by the development of regulations regarding group companies in Indonesia. The LLC Law only regulates single companies, matters regarding group companies are only mentioned in one article, namely Article 84 Paragraph (Sulistiowati, 2010). The contents of

Article 84 stated that each issued share has one voting right, unless the articles of association provide otherwise, and voting rights do not apply to shares of the company which are controlled by the company itself; shares of the parent company which are controlled by its subsidiaries directly or indirectly; or company shares controlled by another company whose shares are directly or indirectly owned by the company.

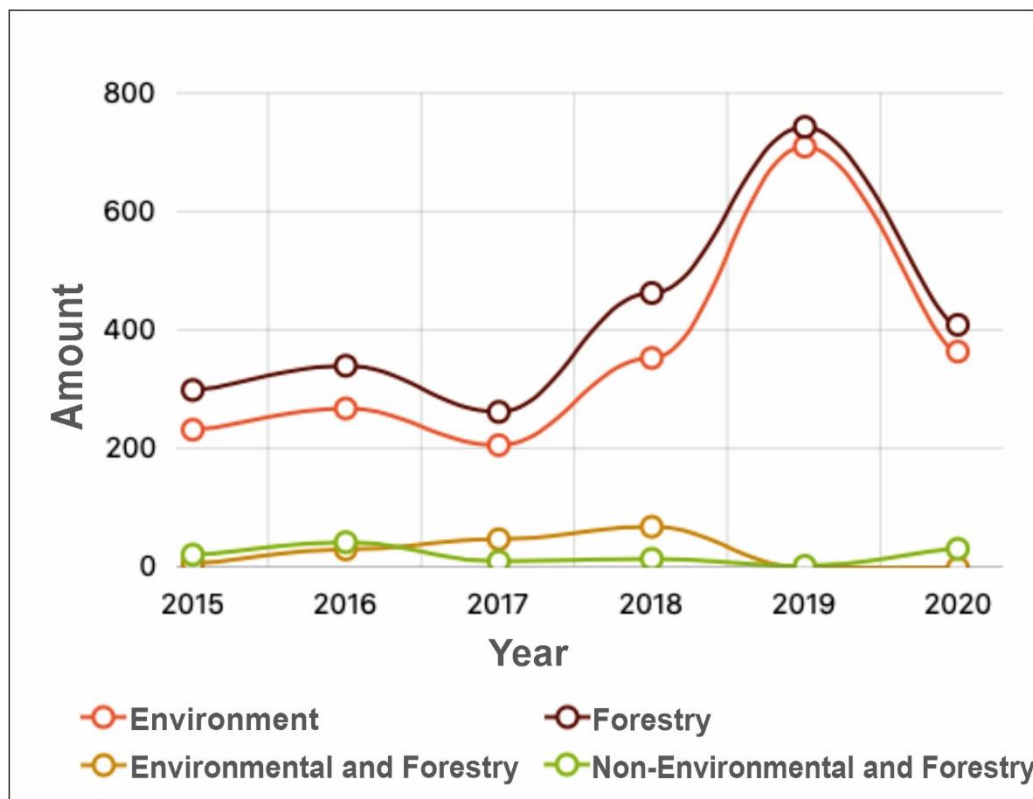


Figure 1. Graph of Complaint Handling Data by Industry Sector

The LLC Law still maintains juridical recognition of the legal entity status of the parent company and subsidiary company as independent legal subjects, even though the regulatory framework for group companies in Indonesia still uses a single company approach. Sulistiowati (2010) stated that in countries that have not specifically regulated group companies, such as Indonesia, the regulatory framework for group companies still uses a single-company relationship approach to the special relationship between parent companies and subsidiary companies. Problems arise when the arrangement regarding the liability

relationship between the parent company and subsidiary company still uses a single company approach, then the parent company will not be held accountable in the event of an environmental crime, because it is protected by the principle of limited liability for the legal actions of the subsidiary. The parent company in the holding company can be held criminally responsible for criminal acts committed by the subsidiary. Based on the vicarious liability doctrine, if a criminal act is committed by a subsidiary, the parent company can still be held accountable for what the subsidiary has done, although there is a limited liability principle in

company law, the parent company can still be held criminally responsible. This is because the parent company acts as the giver of orders and/or the leader in carrying out business activities within the group company.

The relationship between the parent company and all members of the subsidiary arises from beneficial ownership of the shares granted by the parent company to the subsidiary. According to the traditional legal analysis of the company, this gives rise to 2 (two) separate business entities and have separate rights as well as share ownership owned by the parent company (Murphy, 1998). Corporate accountability needs to be determined on the basis of the "leadership" of the company organization who has the power to represent as a decision-maker or control holder of the company. Based on the principle of the delegation, an employee of a company can be held responsible for a criminal act that occurs if the employee of the company has the power or capacity to prevent or correct the violation committed or allow the crime to continue (Noe, 1992). Sjahdeini (2017) stated that although corporations cannot carry out *actus reus* of alleged criminal acts, but through their management, corporations should be liable to criminal liability for crimes committed by corporate management.

Even though the corporation in carrying out its activities does not carry out its own activities, the actions taken by the corporate management are not only carried out for and on behalf of the corporation, but are also carried out to provide benefits in the form of financial benefits and avoid/reduce financial losses for the corporation concerned (Subki & Lisdiyono, 2020). Thus, it is possible that subsidiaries incorporated in the holding company in carrying out their business activities and/or committing violations in environmental crimes are "accommodated" or "financed" by the parent company, so naturally if there is a criminal act committed by the subsidiary, then the imposition of criminal liability for the crime can be charged to the parent company. Corporations as business entities also have two opposing sides, namely when viewed from the positive side as a means to meet the needs of

the community by improving the welfare of the community, and on the other hand, corporations have a negative impact that harms the community materially, immaterially, and even causes death (Pujiyono & Susanti, 2019; Dhiksawan et al., 2018; Rahayu et al., 2018). Sjahdeini (2017) argues that it is not enough to only impose criminal responsibility on the company's management for the crimes they have committed, this responsibility must also be borne by the corporation because corporations are far more capable of paying criminal fines than if they were imposed on individual managers.

If it is related to the holding company, then if there is an environmental crime committed by a subsidiary, the imposition of criminal responsibility for environmental crimes that occur is not only borne by the subsidiary, but also must be charged to the parent company, because apart from the parent company gets financial benefits. for the crime and has a control function over the subsidiary, also because the parent company is considered more capable of paying the fine/criminal sanction given than the fine/criminal sanction is only aimed at the subsidiary. Sjahdeini (2017) stated that to impose criminal responsibility only on the management of the corporation is not enough because if the corporation participates in enjoying the results of the crime, it is unfair if the corporation does not share in the criminal responsibility. In the author's opinion, if it is linked to the structure of a holding company, it will be unfair if the parent company is not held responsible for criminal acts committed by the subsidiary, while the parent company enjoys the results of the crime.

Holding companies are also required to assume responsibility for environmental crimes committed within the scope of their activities, this will have the impact that the holding company as a shareholder in a unitary entity provides strict supervision of the course of business activities so that it will not commit a crime. The risk accepted by the holding company is the possibility that the assets owned by the corporation will be confiscated by the state, revocation of the corporation's business

license, and dissolved by the court and several other sanctions (Bolifaar et al., 2019; Suhadia et al., 2020). To a company that is constructing a holding company, there is a possibility that the shares owned by the subsidiary are controlled or owned by the parent company. This is done so that the parent company can better supervise the business activities carried out by the subsidiaries that are members of the holding company construction. In the practice of the business world, it is possible that the parent company only has the capacity as a minority shareholder, and does not even rule out the possibility that the parent company is not in the path of the subsidiary's management structure, but can provide decisions and/or policies in the course of the subsidiary's business activities. The concept of criminal responsibility for environmental crimes as stated in Article 116 of Law on Environment Protection and Management, those responsible for these crimes are the business entity concerned; the person who gives the order to commit the environmental crime, and/or the people or those who act as the leader in the environmental crime; and both together.

The scope of corporate criminal liability is based on the theory of prevention in the context of the relationship between actors and agents within the company (Polidori & Teobaldelli, 2012). Criminal liability to the parent company for environmental crimes committed by the subsidiary, it is necessary to prove the fact that the parent company controls the subsidiary which causes the subsidiary to be unable to carry out the obligation to protect and manage the environment as regulated in Article 68 Law on Environment Protection and Management, resulting in criminal acts as stipulated in the criminal provisions in the Law (Malau, & Syahrin, 2020). Based on Article 116 Paragraph (1) Law on Environment Protection and Management, in the event that a criminal act is committed by, for and on behalf of a business entity, those who can be prosecuted and sentenced are business entities and persons giving orders to commit environmental crimes; business entities and persons acting as activity leaders in

environmental crimes; business entity; people who give orders to commit environmental crimes; and people who act as leaders of activities in criminal acts. environment. Furthermore, Paragraph (2) states that if the environmental crime is committed by a person, based on an employment relationship or based on another relationship acting within the scope of work of a business entity, criminal sanctions will be imposed on the giver of the order, or leader in the crime without regard to the crime being committed individually or jointly. In the event that a criminal act is committed by, for and on behalf of a business entity and the criminal act is committed by a person based on a work relationship or other relationship, which can be prosecuted and sentenced, namely the giver of an order in an environmental crime without regard to the crime being committed individually or jointly; and leaders in environmental crimes regardless of whether the crime is committed individually or jointly (Malau, P., & Syahrin, 2020).

## 5. Conclusion

It is also mandated in it that the development and implementation of national economic activities are based on the principles of economic democracy which are in line with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, as well as maintaining the balance of progress and national economic unity. Sustainable national development is carried out by empowering natural resources which is carried out wisely, integrated and comprehensively, this is also taking into account the needs of natural resources for present and future generations. Natural resource management must also be carried out with environmental insight based on legal norms that take into account the level of global public awareness.

Although many environmental cases have been handled in Indonesia, there has not been a single law enforcement against holding companies in environmental crimes in Indonesia. The existing company law should not only regulate companies in the construction of a single company. In practice, companies

often come into contact with the environment in carrying out their activities, and this is not only done by corporations in the form of single companies, but also by corporations in the form of groups or holding companies. The Law on Environmental Protection and Management has opened up opportunities for companies with the construction of group companies to be ensnared, although in its regulation, the law does not clearly regulate criminal liability in environmental crimes committed by companies that construct holding companies, it is necessary to carry out further legal interpretation in order to be able to ask for criminal liability to group companies when environmental crimes occur. Company law must also be able to direct the form of responsibility for the management in the company, both in the construction of a single company and holding company. It is very unfair if only the parent or subsidiary can be accounted for, while in the construction of a holding company, the parent and subsidiary are an inseparable economic entity.

The criminal responsibility of an environmental crime within the scope of the holding company is directed to the holding company as the leader and/or the giver of orders; subsidiary as actor; and/or both together. In this case, a holding company can file a criminal offence and be free from criminal liability if it has carried out its obligations and responsibilities in carrying out the management of the company within its scope in good faith, full of responsibility, as well as applying and applying the principles of business judgment risk.

### References

- [1]. Ali, M. (2013). *Asas-asas hukum pidana korporasi*. Jakarta: RajaGrafindo Persada.
- [2]. Ali, M. Al Halim, A. Yunita, R., Permana, W. P. M., Arief, B. N., & Pujiyono, P. (2020). A psychological perspective of corporate criminal liability in environmental crimes. *Systematic Reviews in Pharmacy*, 11(12), 925–930
- [3]. Ali, M., Tahir, A., Faisal, F., Irnawati, I., Pujiyono, P., & Arief, B. N. (2021). Criminological Outlook of Overcoming Disproportionate Punishment in Environmental Crimes. *International Journal of Criminology and Sociology*, 10, 22-32.
- [4]. Allen, M. (2013). *Textbook on criminal law*. Oxford: Oxford University Press.
- [5]. Arief, B. N. (2002). *Perbandingan hukum pidana*. Jakarta: RajaGrafindo Persada.
- [6]. Bolifaar, A. H., Jaya, N. S. P., & Arif, F. (2019). Authority of Indonesian Attorney in Handling the Corruption Crimes: A Perspective of Integrated Criminal Justice System. *Journal of Legal, Ethical and Regulatory Issues*, 22(5), 1-8.
- [7]. Dhiksawan, F. S., Hadi, S. P., Samekto, A., & Sasongko, D. P. (2018). Involvement of indigenous people in environmental impact assessment. *Environmental Policy and Law*, 48(5), 307-312
- [8]. Farid. A. Z. A. (2007). *Hukum Pidana I*. Jakarta: Sinar Grafika.
- [9]. Greife, M., Stretesky, P. B., Shelley, T. O. C., & Pogrebin, M. (2017). Corporate environmental crime and environmental justice. *Criminal Justice Policy Review*, 28(4), 327-346.
- [10]. Hamdan, M., & Gunarsa\_gunarsa. (2012). *Alasan penghapusan pidana: teori dan studi kasus*. Bandung: Refika Aditama.
- [11]. Jan, R. (2003). *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari Kitab Undang-undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-undang Hukum Pidana Indonesia*. Jakarta: Gramedia Pustaka Utama.
- [12]. Juliani, H. (2016). Pertanggungjawaban Direksi Bumn Terhadap Perbuatan Yang Mengakibatkan Kerugian Keuangan Negara. *Masalah-Masalah Hukum*, 45(4), 299-306.

- [13]. Lasmadi, S. (2021). Corporate Criminal Liability on the Environmental Crime in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 24(1), 1-15.
- [14]. Malau, P., & Syahrin, A. (2020). An Obligation of Corporate Criminal Liability in the Case of Non-Implementation of Occupational Health and Safety (OHS). *J. Advanced Res. L. & Econ.*, 11, 121.
- [15]. Moeljatno, S. H. (2002). *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta.
- [16]. Murphy, D. (1998). Holding Company Liability for Debts of its Subsidiaries: Corporate Governance Implications. *Bond Law Review*, 10(2), 5317.
- [17]. Noe, S. A. (1992). Willful blindness: A Better Doctrine for Holding Corporate Officers Criminally Responsible for RCRA Violations. *DePaul L. Rev.*, 42, 1461.
- [18]. Polidori, P., & Teobaldelli, D. (2012). Corporate Criminal Liability and Optimal Behavior by Firms. Internal Monitoring Devices versus Managerial Incentives. *WP-EMS Working Papers Series in Economics, Mathematics and Statistics*, WP-EMS#2012/16. Retrieved from [http://www.econ.uniurb.it/RePEc/urb/wpaper/WP\\_12\\_16.pdf](http://www.econ.uniurb.it/RePEc/urb/wpaper/WP_12_16.pdf).
- [19]. Pujiyono, P. P., & Susanti, R. D. (2019). Alternatif Model Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Keadilan Restoratif. *Pembaharuan Hukum Pidana*, 2(2).
- [20]. Rahardjo, S. (1986). *Ilmu Hukum*. Bandung: Alumni.
- [21]. Rahayu, D. P., Pujirahayu, E. W., & Samekto, F. X. A. (2018). Institutional Territory on Folk Mining in Indonesia. *IOP Conference Series: Earth and Environmental Science*, 175(1), 012186.
- [22]. Simanjuntak, E. P. (1994). *Perusahaan Kelompok: Seri Hukum Dagang*. Yogyakarta: Fakultas Hukum Universitas Gadjah Mada.
- [23]. Sinaga, H. D. P., Samekto, F. A., & Emirzon, J. (2019). Ideal Corporate Criminal Liability for the Performance and Accreditation of Public Accountant Audit Report in Indonesia. *International Journal of Economics & Business Administration (IJEBA)*, 7(4), 451-463.
- [24]. Subekti, R., & Tjitrosudibio, R. (2002). *Kamus Hukum*. Jakarta: Pradnya Paramita.
- [25]. Subki, T., & Lisdiyono, E. (2020). Rights of Lawsuit for Interested Parties against Damage to Natural Resources and the Environment. *Inkalindo Environmental Journal*, 1(1), 67-74.
- [26]. Suhadia, S. Yusriyadi, Y. Samekto, F. A. (2020). The new meaning of state control of electricity and its impact on the supply of electricity in Indonesia. *International Journal of Innovation, Creativity and Change*, (4), 528-539
- [27]. Sulistiowati. (2010). *Aspek hukum dan realitas bisnis perusahaan grup di Indonesia*. Erlangga.
- [28]. Sutan Remy Sjahdeini, S. H. (2017). *Ajaran Pidanaan: Tindak Pidana Korporasi dan Seluk-Beluknya*. Jakarta: Kencana.
- [29]. Tanya, B. L., Simanjuntak, Y. N., & Hage, M. Y. (2006). *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi*, Surabaya: Genta Publishing.
- [30]. Turisno, B. E., & Dewi, I. G. A. G. S. (2021). Impact of coastal reclamation on environmental sustainability and tourism-based economy on the north coast of Java. *International Journal of Criminology and Sociology*, 10, 695-702