

Strict Liability Principles Regulation on Corporate Crimes in Environmental Pollution & Strengthening Criminal Penalties in Indonesia

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Abstract. Corporations as legal subjects have great potential to cause environmental pollution, especially in the era of increasingly massive industrialization. Legal protection for the environment in Indonesia was initially strengthened through the application of the strict liability concept in Article 88 of the Environmental Protection and Management Law (UU PPLH). However, since the enactment of the Job Creation Law, the principle of absolute responsibility has experienced significant degradation, which has an impact on weak law enforcement against corporations that pollute the environment. This study aims to analyze in detail the legal regulations for corporate crimes in cases of environmental pollution in Indonesia, with a focus on significant changes after the enactment of the Job Creation Law and their impact on environmental protection efforts and justice for affected communities. This study used a normative juridical method with a statutory approach and a conceptual approach. Data are analyzed qualitatively by examining laws and regulations, court decisions, legal doctrines, and relevant literature. The results of the study show that the elimination of the phrase "... without the need for proof of guilt ..." in Article 88 of the PPLH Law by the Job Creation Law has weakened the application of the strict liability principle, making it more difficult for business actors to be held legally accountable. This has the potential to increase environmental damage because the burden of proof is now shifted back to the victim. As a result, substantive justice for the community and the effectiveness of environmental protection are increasingly threatened. In addition, the presence of PP No. 22 of 2021 and Law No. 6 of 2023 emphasizes legal uncertainty and opens loopholes for corporate actors to avoid criminal responsibility.

Keywords: Accountability; Corporations; Criminal; Environment; Penalty.

1. Introduction

The national development paradigm in Indonesia places humans at the center of the social and economic transformation process, where individual growth as a whole is considered the main foundation in creating prosperity for the wider community (Kejaribone, 2020). This

development process is not something temporary or sporadic, but rather a sustainable journey, touching all aspects of life, both in terms of economy, social, culture, law, and environment (Prianto Fakultas Hukum, Nahdlatul Ulama, Sulawesi Tenggara, Jl Mayor, Jenderal Katamso, Kec Baruga, And Kota Kendari, 2024). In order to achieve the National Goals, national development must be implemented with an integrated, comprehensive, and phased strategy, and run within a long-term planning framework (Maya et al., 2023). This shows that the main goal of national development is to create a just, prosperous, democratic society based on Pancasila values, with an emphasis on justice and equity in the distribution of development benefits (Satyahaprabu And Raynaldo Sembiring, 2021).

The role of the government is very vital in designing and implementing policies that encourage economic growth (Rusmana et al., 2018). One of them is by expanding the industrial and service sectors that have high technological capacity to be able to meet the demands of the domestic and global markets. This expansion is important not only to increase the country's GDP, but also in providing jobs and improving people's standard of living (Yuliastrin, 2016). However, along with this progress, major challenges also arise, especially those related to environmental sustainability. Development that does not pay attention to ecological aspects often has serious impacts such as pollution, land degradation, flooding, and even social conflict due to forced relocation of residents by large corporate interests (Hafizah Madiasa Ablisar, And Rafiqoh Lubis, 2022).

In the role of environmental law is becoming increasingly important as a social engineering tool (Markoni et al., 2024). Environmental law in Indonesia has developed not only as a means of control and protection, but also as an instrument in realizing social change through law enforcement and policy engineering (Markoni et al., 2024). Given that environmental law is a relatively young field of law, most of its regulations are still within the scope of administratif recht or administrative law. However, with increasing public awareness and demands for environmental justice, the implementation of this law now includes various criminal acts, especially in terms of environmental crimes, both by individuals and legal entities (Miftah & F, 2022).

Environmental crimes are frequently perpetrated by corporations or business entities rather than by individuals alone. As a result, the legal approach to addressing such offenses extends beyond regulating individual actions it also acknowledges corporations as legal subjects that can bear criminal liability. This reflects the significant role that business entities play in environmental degradation and emphasizes the need for specific legal frameworks to hold these actors accountable. According to (Rawwung, 2013), incorporating corporate accountability within the criminal justice system is essential to ensure that companies are not above the law when it comes to environmental violations.

In the Indonesian legal framework, the concept of corporate criminal liability is regulated through various legislative instruments. Key regulations that govern this concept include Law No. 32 of 2009 on Environmental Protection and Management (PPIH), Law No. 31 of 1999 in

conjunction with Law No. 20 of 2001 on the Eradication of Corruption, and Supreme Court Regulation (Perma) No. 13 of 2016 concerning the Handling of Criminal Acts by Corporations. These legal provisions affirm that corporations can be held criminally responsible when they violate the law, including cases involving environmental pollution. The existence of such legal instruments provides a solid foundation for the state to take firm action against corporate environmental offenders (Paramyta et al., 2022)

Corporations have the status of a legal entity, which is legally separate from its management or shareholders. In the civil law system, companies have rights and obligations like other legal subjects (Abubakar, 2019). Therefore, in cases of violation of the law, it is the company that must be held responsible, not the individual acting on behalf of the company, unless it is proven that the action constitutes an abuse of the legal entity, or known as piercing the corporate veil. In such situations, the alter ego doctrine can be used by the court to demand direct accountability from the individual behind the corporation (B et al., 2016).

One concrete example of a violation of the law by a corporation is the oil spill incident at the Montara Oil Platform in 2009. This incident not only polluted Australian waters, but also had a direct impact on Indonesian waters around Rote Island. Thousands of fishermen lost their livelihoods, and seaweed harvests dropped drastically. The Indonesian government estimates the total economic, social, and environmental losses due to this incident to reach IDR 22 trillion. Although initially PTTEP Australasia, a subsidiary of PTTEP Thailand, showed good faith in the negotiations, the negotiation process later reached a dead end. Therefore, the Indonesian negotiation team recommended that legal steps be taken, both through national and international litigation channels, including using the UN Convention on the Law of the Sea and the jurisprudence of the International Court of Justice.

In addition to the Montara case, Indonesia is also faced with various cases of forest and environmental damage due to domestic corporate activities. Examples include the case of PT PMB in Batam which destroyed the Protected Forest area without permission, as well as PT KAS and PT AMJB which participated in these illegal activities. In various court decisions, the perpetrators were subject to criminal penalties, including fines of billions of rupiah and prison sentences. These cases show that corporations are not immune from the law, and the state is committed to enforcing the law against environmental damage carried out by business actors.

To strengthen the criminal liability system, Article 88 of the PPLH Law adopts the principle of strict liability, which means that the perpetrator does not need to be proven to have committed a mistake (either intentionally or negligently) to be held accountable (Rachmat, 2022). It is sufficient to show that their actions have caused environmental damage (Suhariyanto, 2017). This is different from the general criminal system which requires malicious intent or negligence (*mens rea*). In strict liability, the emphasis is on the consequences, not the intention. Therefore, if a corporation causes pollution, then legal responsibility is immediately imposed without the need to prove guilt subjectively (Suhartono, 2019).

The principle of strict liability is a *lex specialis* of Article 1365 of the Civil Code which regulates unlawful acts (Artadi, 2016). In practice, the application of this principle is very important to provide a deterrent effect for perpetrators of environmental crimes, as well as to encourage corporations to run their businesses responsibly. By strengthening the criminalization and law enforcement aspects, Indonesia shows its seriousness in protecting the environment and taking firm action against perpetrators of corporate crimes, both locally and internationally.

Therefore, strengthening the legal framework, both in terms of regulation, implementation, and institutions, is very important. Further research on the regulation of the principle of strict liability in corporate crimes related to environmental pollution is very important, in order to formulate legal policies that are more responsive to the challenges of sustainable development in Indonesia. Thus, the national legal system can be more adaptive, progressive, and in favor of environmental protection and sustainable ecological justice.

2. Research Methods

This study uses a normative legal approach as the main design, which focuses on legal analysis from its own internal perspective (Purwati, 2020). This approach views law not only as a set of rules that must be obeyed, but also as a value system that reflects the social and moral aspects of society. Therefore, this study was conducted using a literature study method, using secondary data such as books, journals, official documents, and relevant laws and regulations. In analyzing legal materials, a statute approach is used which examines related regulations, as well as a conceptual approach which refers to legal theory and principles to formulate scientific arguments in answering the problems studied.

The type of research applied is normative legal research, namely research that aims to explore the meaning of law in depth based on applicable principles and norms (Qamar & Rezah, 2020). Legal data sources are divided into primary legal materials such as the 1945 Constitution, the Criminal Code, various laws, and Supreme Court regulations. While secondary legal materials include books, scientific articles, journals, and online references. Data collection techniques are carried out through literature studies, where all materials are analyzed systematically with a qualitative legal approach. Interpretation is carried out both grammatically and historically, to understand the meaning of the regulations being studied. The data obtained is then compiled and organized logically to support arguments and produce conclusions that are relevant to the formulation of research problems.

3. Results and Discussion

3.1. Application of the Strict Liability Concept to Corporate Crimes in Environmental Pollution Cases in Indonesia

The environment is an essential component in supporting the survival of humans and other living things (Rukmini & Putra, 2022). It is not only a natural resource, but also a heritage that must be maintained for future generations. Therefore, a firm and progressive legal approach is

needed in regulating and prosecuting any actions that have the potential to damage the environment (Perdana, 2018). In Indonesia, the concept of strict liability has been adopted in the environmental legal framework through Law No. 32 of 2009 concerning Environmental Protection and Management. This principle facilitates the legal process, especially in enforcing environmental pollution, because it does not require proof of an element of error or malicious intent. This means that anyone who causes environmental pollution or damage can still be held accountable, without the need to prove individual negligence (Suartha, 2017).

The application of the strict liability principle is very relevant in corporations. As legal entities with complex structures and large resources, companies are often difficult to touch by traditional legal instruments that require proof of personal guilt. In many cases of environmental pollution, the damage that occurs is systemic, hidden, and has long-term impacts, so that technical proof requires expertise, time, and large costs, something that is often not available to the affected community (Satria, 2020). Therefore, the strict liability principle allows legal efforts to be more efficient and effective. Corporations are still held accountable for the pollution generated by their operational activities, without having to drag individuals in the organizational structure one by one to court (Suryandari, 2022).

The existence of this principle has been seriously challenged after the enactment of Law No. 11 of 2020 concerning Job Creation. In this regulatory framework, important phrases that support the principle of strict liability in enforcing environmental law have been removed, thus providing room for new interpretations that tend to weaken environmental protection. The loss of the principle of absolute liability explicitly causes legal ambiguity, which in turn benefits corporations (Ibid, 1945b). Now, victims of pollution must prove an element of fault in order to claim compensation or criminal liability, a process that is not only difficult but also often results in the defeat of the victim due to the imbalance of resources and legal knowledge.

This condition becomes even more concerning when looking at how the Job Creation Law was drafted. The process, which lacked public participation and seemed rushed, has drawn criticism from various groups, including academics, legal practitioners, and environmental activists. The resulting legal substance is also considered not to reflect ecological justice. The law actually directs the environmental legal framework from a conservation paradigm towards exploitation, in order to encourage investment and economic growth. Simplification of licensing, elimination of strict provisions on legal responsibility, and restrictions on the rights of the community to participate in supervision are real examples of how the Job Creation Law reduces environmental protection in the national legal system. (Ibid, 1945a).

One of the real implications of the loss of the strict liability principle is the emergence of difficulties in prosecuting perpetrators of environmental crimes. Corporations, especially large ones with political connections, can easily avoid responsibility on the grounds that there is no evidence of direct wrongdoing (Rodliyah Any Suryani, And Lalu Husni, 2021). In fact, in many cases, environmental damage is caused by poor management systems, weak internal supervision, or business strategies that consciously ignore environmental risks for the sake of cost efficiency. When the strict liability principle is no longer enforced, all of these factors escape

the law, because it cannot be proven that there is individual error or explicit malicious intent (Aryani, 2023).

Globally, the application of strict liability has become the standard in many countries. The European Union, for example, has established the Environmental Liability Directive which requires business actors to be responsible for the environmental damage they cause, without having to prove negligence or intent. In the United States, policies such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also adhere to similar principles. Companies involved in pollution are required to clean up or finance the environmental remediation process, even if they did not intend to cause damage. This approach has proven effective in encouraging companies to be more careful in carrying out their activities, while also providing justice for victims of pollution.

On the other hand, in Indonesia, after the removal of the strict liability principle from the Job Creation Law, environmental law enforcement tends to stagnate. Major pollution cases such as oil spills at sea, forest fires due to land clearing, or industrial waste disposal into rivers, often end without strict sanctions for corporate actors. The communities that become victims lose their right to a healthy environment as guaranteed in Article 28H paragraph (1) of the 1945 Constitution (Kurniawan et al., 2022). When the law is unable to provide justice and proper restitution, public trust in the legal system will collapse, and the ecological impact will become more widespread and uncontrollable.

To overcome this condition, various strategic steps need to be taken immediately. First, a revision of the Job Creation Law is needed, especially in terms of environmental protection, in order to restore the principle of strict liability as the main legal basis. This can be done by reformulating Article 88 of the PPLH Law firmly, so as not to cause multiple interpretations in its enforcement. Second, the government needs to strengthen the capacity of environmental law enforcement institutions such as the Ministry of Environment and Forestry (KLHK), including in technical, budgetary, and human resource aspects. Third, a transparent and technology-based monitoring system needs to be built, such as the use of satellite imagery, aerial sensors, or drones to monitor industrial activities in pollution-prone areas.

In addition, the role of the community is no less important. Public participation in monitoring and reporting environmental violations must be facilitated and protected by the state (Sudirta, 2020). Local governments, NGOs, mass media, and local communities can be strategic partners in ensuring that corporations operate in accordance with established environmental standards. Environmental education must also be instilled from an early age so that the community has a collective awareness of the importance of protecting nature.

The application of the strict liability principle must also be used as a strategic instrument in encouraging changes in corporate behavior. With the high risk of legal liability for environmental damage, corporations will be encouraged to implement clean technology, better waste management systems, and instill a culture of compliance with environmental regulations in every line of their operations. In fact, in the long term, this principle can act as a driver of more responsible and sustainable investment. (Manullang, 2020).

Enforcing the principle of strict liability in environmental law is not just a matter of sanctions or legal coercion. It is a manifestation of the state's commitment to protecting human rights to a healthy environment, while maintaining the integrity of the ecosystem as the foundation of life (Sarira, 2019). In a world increasingly threatened by the climate crisis, deforestation, and massive pollution, a firm and environmentally friendly legal system is no longer an option, but a necessity. Indonesia must dare to take steps forward, strengthen the principles of progressive environmental law, and make ecological protection a priority in every development policy.

3.2. Legal Regulations for Corporate Crimes in Environmental Pollution Cases in Indonesia

Environmental protection is fundamental for the survival of humans and other living things. Therefore, environmental management is not only an ethical obligation, but must also be legally regulated as part of efforts to maintain ecological heritage for future generations. In sustainable development, it must be the main foundation in designing and implementing environmental policies, so that economic activities do not damage ecological sustainability (Azami & Takwim, 2023).

As a concrete step, Indonesia has passed law No. 32 of 2009 concerning Environmental Protection and Management (UU PPLH), which is the main legal umbrella in enforcing environmental law in the country. One of the main concepts in the PPLH law is the application of the principle of strict liability, as stated in Article 88. This concept stipulates that parties who utilize, produce, or manage hazardous and toxic materials (B3) that cause environmental pollution or damage will be responsible for the losses incurred without having to prove any element of fault. Thus, proof is no longer the burden of the victim, but the perpetrator must prove that he is not guilty (Fahrudin, 2019).

The application of strict liability in environmental law is a progressive approach that supports substantive justice. This theory allows the court to hold polluters, including corporations, accountable even though they have run their businesses with certain standards of care (Wati Otong Rosadi, And Fitriati Fitriati, 2021). This is in line with LB Curzon's thinking, which states that strict liability is important for: (Afiftania and Dian Purnama Anugerah, 2022)

1. Ensuring compliance with regulations concerning the interests of the wider community,
2. Overcoming difficulties in proving violations of the law, especially in environmental cases,
3. Protecting society from the potential for high social hazards due to pollution.

However, it is important to note that strict liability does not apply universally to all forms of crime. Only certain types of criminal acts determined by law, especially those related to the public interest and potentially causing great harm, are subject to this principle (Zulkifli, 2022).

In 2020, Indonesia passed the Job Creation Law, which revised several legal provisions, including Article 88 of the Environmental Management Law. This revision removed the important phrase regarding "responsibility without the need to prove fault", and replaced it with the phrase "responsibility for losses from business/activities". This change is very significant because it has essentially blurred the meaning of strict liability, and opened loopholes for environmental polluters, especially corporations, to avoid responsibility. (Ibid, 1981).

This revision is considered a major setback in environmental law enforcement. In practice, proving the element of guilt in environmental cases is very difficult, especially if the perpetrator is a large company that has legal, political, and economic power. As a result, victims of pollution, namely the community, will have difficulty in obtaining justice because they are burdened with the obligation to provide proof that was previously not necessary.

This condition is exacerbated by the presence of Government Regulation No. 22 of 2021, which indirectly adds the requirement for proof of guilt to determine accountability. In Articles 500 and 501 of the PP, the element of the perpetrator's guilt must be proven first before he can be held legally accountable. Whereas previously, through the principle of strict liability, the legal process could proceed even without proof of the element of guilt (*mens rea*) (Ibid, 2009).

When a corporation commits an act that causes environmental damage, legal responsibility should not depend on whether or not there is an element of fault. However, with the elimination of the principle of strict liability, the legal process becomes more difficult. Corporations can now defend themselves by showing that they have carried out standard procedures, and are therefore not guilty (Harahap Riantika Pratiwi, And Yalid Yalid, 2022). In a legal system that adheres to the principle of "fault as the basis for responsibility", as happened after the Job Creation Law, the position of the community is getting weaker. Moreover, collecting evidence in environmental cases is very complex and requires certain technical expertise. Thus, the elimination of the principle of strict liability actually perpetuates corporate impunity, which is often the main actor in large-scale environmental crimes such as deforestation, river pollution, and damage to marine ecosystems.

The consequences of weakening the principle of absolute responsibility are very much felt in the field. Communities directly affected by environmental pollution face great difficulty in fighting for their rights. Pollution cases that should have been immediately prosecuted, instead drag on or are never resolved because the victims are unable to prove the perpetrators' guilt. The Job Creation Law, which was initially claimed to be aimed at accelerating investment, actually ignores ecological justice (Hakim, 2017).

Instead of strengthening the environmental law enforcement system, the state seems to provide immunity to corporations. This is contrary to the basic purpose of establishing environmental law, namely to guarantee the community's right to a healthy, clean, and sustainable environment as mandated in the 1945 Constitution (Stocks, 2016).

In international practice, many countries such as the United States, the Netherlands, and the United Kingdom have adopted the principle of strict liability in dealing with environmental crimes. This principle is considered the most effective in providing a deterrent effect and ensuring that parties carrying out high-risk activities are fully responsible for the potential environmental impacts caused (Ramelan, 2016).

This concept has three main pillars: (Paramyta et al., 2022)

1. Reverse burden of proof, where the perpetrator must prove that they are innocent,
2. Absolute liability, where the element of fault is not the main focus,

3. Total liability, meaning there is no limit to the amount of compensation or restitution that must be paid by the perpetrator.

This principle reflects the legal philosophy of *res ipsa loquitur*, namely that the facts speak enough to show that an act caused harm.

The elimination of the strict liability principle from the PPLH Law through the revision of Article 88 in the Job Creation Law is a step backward in environmental protection in Indonesia. Instead of strengthening the law enforcement mechanism, this change actually makes it more difficult for the public to seek justice. The government should reconsider the application of this principle in order to ensure corporate accountability and provide maximum legal protection for the public and the environment.

Therefore, reinstatement of strict liability is very important to ensure ecological protection and social justice amidst the increasing threat of pollution due to industrial activities. Firm, fair, and impartial law enforcement can only be realized if the fundamental principles of environmental protection including strict liability are again made the main pillar of the Indonesian legal system.

4. Conclusion

The change in the phrase “...without the need for proof of fault...” in the Job Creation Law has had a major impact on the effectiveness of environmental protection in Indonesia, because it shifts the approach of absolute liability to fault-based liability, which requires proof of the element of fault of the business actor. This shift not only increases the burden of proof for communities affected by environmental damage, especially due to limited access to information, technology, and resources compared to corporations, but also weakens the preventive and legal power of environmental regulations themselves. Previously, the principle of strict liability in Law No. 32 of 2009 provided a strong legal basis for demanding responsibility from perpetrators without having to prove fault first, so that environmental recovery could proceed more quickly and provide a deterrent effect. However, the elimination of this principle through the Job Creation Law creates a legal loophole that has the potential to be exploited by corporations to avoid responsibility, slow down the legal process, and threaten environmental sustainability due to reduced accountability. If the principle of absolute liability is not immediately restored, Indonesia is threatened with a significant setback in environmental law enforcement and an increased risk of uncontrolled exploitation of nature, which ultimately worsens the environmental crisis and inequality of ecological justice.

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