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Implementation of Strict Liability by Companies in Cases of Environmental Damage in Indonesia: An Overview of State Administrative Law in Indonesia

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Abstract

Strict liability in the context of companies in environmental damage refers to the legal principle which states that companies can be held fully responsible for environmental damage resulting from their operational activities, without having to prove the fault or negligence of the company. This means that the company can be held responsible for environmental damage caused, whether intentionally or unintentionally. This study used normative legal research, while the approaches used are combining statutory, a conceptual and a case approach. The development of strict liability in positive law in Indonesia has experienced development and refinement over time, indicated by the application made in several cases concerning environmental violations by several irresponsible parties. Basically, the implementation of strict liability really helps the aggrieved parties, especially the common people, in enforcing environmental laws in Indonesia. The principle of strict liability in environmental damage has a number of important implications. First, companies are required to take careful precautions in their operations to prevent environmental damage. They must follow strict environmental standards and implement suitable technologies to reduce their negative impact on the environment. Second, companies must pay compensation for environmental damage resulting from their operations, even if they are not to blame for the damage. The principle of strict liability eliminates the need to prove the company's fault or negligence, therefore that the company must be financially responsible for the environmental losses incurred.

Keywords

Strict Liability, Administrative Law, Environmental Violations, Company



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Introduction

Environmental damage caused by the company's operational activities has become a global issue that is receiving increasing attention. Business practices that are detrimental to the environment, such as air pollution, water pollution, habitat destruction and greenhouse gas emissions, can have serious impacts on ecosystems, people and the sustainability of our planet. In this context, the concept of strict liability is an important topic in environmental law.¹

Strict liability is a legal principle which states that companies can be held fully responsible for environmental damage resulting from their operational activities, without having to prove the fault or negligence of the company. That is, the company can be held responsible for environmental damage caused, whether intentional or unintentional. This principle is different from the concept of fault (fault-based liability), where there must be evidence of error or negligence that can be attributed to the environmental damage that has occurred.²

The principle of strict liability in environmental damage aims to ensure that companies consider environmental consequences in their operational activities and encourage them to reduce the risk of environmental damage. This principle also provides incentives for companies to adopt sustainable and environmentally friendly business practices, and to avoid environmental damage that may arise as a result of their operational activities.³ However, the principle of strict liability in environmental

¹ Some studies even state that business practices trigger massive environmental damage, one of which is because business activities are only investment and profit oriented, not prioritizing environmental sustainability aspects. See Listiyani, Nurul, Muzahid Akbar Hayat, and Subianta Mandala. "Penormaan pengawasan izin lingkungan dalam pencegahan pencemaran dan kerusakan lingkungan hidup dalam eksploitasi sumber daya alam." *Jurnal Media Hukum* 25.2 (2018): 217-227; Sukananda, Satria, and Danang Adi Nugraha. "Urgensi penerapan analisis dampak lingkungan (AMDAL) sebagai kontrol dampak terhadap lingkungan di Indonesia." *Jurnal Penegakan Hukum dan Keadilan* 1.2 (2020); Rahmatillah, Syarifah, and Tasbi Husen. "Penyalahgunaan pengelolaan pertambangan terhadap kerusakan lingkungan hidup di Kecamatan Kluet Tengah." *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7.1 (2018): 149-171.

² Wulandari, Purnomo, and Sri Endah Wahyuningsih. "The strict liability by corporate in enforcement of environmental law." *Law Development Journal* 2.4 (2021): 477-488; Wibisana, Andri G. "The many faces of strict liability in Indonesia's wildfire litigation." *Review of European, Comparative & International Environmental Law* 28.2 (2019): 185-196; Hafrida, Hafrida, Helmi Helmi, and Bunga Permatasari. "The implementation of the strict-liability principle to the perpetrators of forest and land burning." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 7.3 (2020): 314-333; Bakry, Muammar, et al. "Establishing Omnibus Law in Indonesia: Strict Liability in Environmental Law." *Journal of Legal, Ethical and Regulatory Issues* 24 (2021): 1-9.

³ Several cases of environmental damage have occurred in Indonesia which are in the public spotlight, for example the Buyat Bay case by PT. Newmont Minahasa Raya in 2004, the mercury waste case in Nanggroe Aceh Darussalam by PT. Exxon Mobil Oil Indonesia in 2005, and the montara oil case in the Timor Sea by PT. TEP Australia (Ashomre Cartier) in 2009. Apart from that, there is also natural damage caused by PT. Free port Indonesia. other than that, PT. Freeport is also reported to have caused deforestation and pollution of tailings (residual material from the separation process) which is discharged directly into the Agabagong River and then shrinks into the Aikwa River and then into the Arafura Sea. The deposition of the tailings caused flooding which destroyed most of the lowland forest and

damage also has complex implications, including issues of implementation, limitations and scope, as well as the balance between the interests of the company, society and the environment. Therefore, it is necessary to pay close attention to how the principle of strict liability is applied in an appropriate legal framework, in order to achieve its goal of maintaining environmental sustainability.

According to the Big Indonesian Dictionary (KBBI), the definition of responsibility is the obligation to bear everything if anything happens that can be sued, blamed, and prosecuted. In the legal dictionary, responsibility is the necessity for a person to carry out what has been required of him. While according to the law, responsibility is the result of the consequences of a person's freedom about his actions related to ethics or morals in doing an action.⁴ According to Abdulkadir Muhammad, the theory of responsibility in *tort liability* is divided into:

1. Responsibility for unlawful acts committed intentionally (*international tort liability*), the defendant must have committed the act in such a way as to harm the plaintiff or know that what the defendant did would result in damage.
2. Responsibility due to unlawful acts committed due to *negligence* (*negligence tort liability*), is based on the *concept of fault* related to morals and laws that have been mixed (*interminglend*).
3. Absolute responsibility for unlawful acts without questioning fault (*strict liability*), based on his actions either intentionally or unintentionally, meaning that even if not his fault is still responsible for losses arising from his actions.⁵

Problems in environmental civil liability consist of unlawful acts as stipulated in the provisions of Article 1365 of the Civil Code (hereinafter as KUH Perdata), and the application of the principle of *strict liability* (absolute responsibility) regulated in the provisions of Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management.

The provision on *strict liability* is new and deviates from the provisions of Article 1365 of the Civil Code or *Burgerlijk Wetboek* (BW) concerning unlawful acts (*onrechtmatige daad*). Activities or businesses that apply *strict liability* are activities that use hazardous and toxic materials, in case of damaging or polluting the environment. Achmad Santosa said that to determine a person or legal entity responsible for losses caused by pollution or environmental destruction, plaintiffs are

threatened the city of Timika. Flooding or dumping of mining waste into Lake Wanagong has also resulted in the death of company workers and threatened the survival of settlements under the lake. See Rifai-Hasan, Pipip Ahmad. "Development, power, and the mining industry in Papua: A study of Freeport Indonesia." *Journal of Business Ethics* 89 (2009): 129-143; Symon, Andrew. "The Politics of Power: Freeport in Suharto's Indonesia." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 26.2 (2004): 379-383; Luhukay, Roni Sulistyanto. "Tanggung Jawab PT Freeport Indonesia terhadap Penanganan Kerusakan Lingkungan Akibat Pertambangan di Kabupaten Mimika Papua." *Lex Et Societatis* 4.3 (2016); Astuti, Amelia Dwi, and Ika Riswanti Putranti. "Implikasi Kebijakan Indonesia dalam Menangani Kasus Pencemaran Lingkungan oleh PT. Freeport terhadap Keamanan Manusia di Mimika Papua." *Journal of International Relations* 4.3 (2018): 547-555.

⁴ Soekidjo Notoatmojo, *Etika dan Hukum Kesehatan*, (Jakarta: Rineka Cipta, 2010).

⁵ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, (Jakarta: Citra Aditya Bakti, 2010).

required to prove pollution, and are related between pollution and losses suffered. Proving means giving the judge certainty of the truth of the real events in dispute.⁶

Methods

The type of research used in this writing is normative juridical research, which is conducting research by examining legal rules and norms collected from existing legal literature data and according to the legal case raised. Peter Mahmud Marzuki said that normative legal research is a process to find a rule, principle or legal doctrine to answer the problems that occur. The approach used is with statute approach, conceptual approach, and case approach.⁷ The approach to legislation is carried out by looking for every regulation that regulates the strict liability of companies in environmental conservation in Indonesia. The conceptual approach is carried out by examining the principles and doctrines of legal experts, especially those concerning the concept of strict liability in environmental conservation law. The case approach is carried out by looking for cases or rulings related to the concept of strict liability in environmental conservation to strengthen arguments and provide solutions to existing legal problems.

Results and Discussion

A. Development of Strict Liability Regulation in Indonesian Legal System

1. Regulation of Strict Liability in Law No. 4 of 1982 concerning Basic Provisions of Environmental Management

Law No. 4 of 1982 is a follow-up to Indonesia's participation in the World Environment Conference held in Stockholm, Sweden in 1972. Law No. 4 of 1982

⁶ Ahmad Santosa, *Good Governance Hukum Lingkungan*, (Jakarta: ICEL, 2001). It was further emphasized that the principles of good governance in environmental law refer to the principles of good governance in environmental management. This involves transparency, accountability, public participation, and decision-making that is fair and based on accurate and up-to-date information. Good governance also includes consistent and effective application of laws in environmental protection, as well as proper monitoring of corporate and individual activities that may impact the environment. Implementation of good governance in environmental law is important to maintain environmental sustainability, involve all stakeholders, and ensure fairness in making decisions related to the environment. *See also* Bennett, Nathan J., and Terre Satterfield. "Environmental governance: A practical framework to guide design, evaluation, and analysis." *Conservation Letters* 11.6 (2018): e12600; Ahmadi Niyaz, Sadaf, Reza Zeinalzadeh, and Ali Raeispour Rajabali. "Study of Good Governance Effect on Environment Quality Index in Selected Developing Countries." *Journal of Environmental Science and Technology* 20.4 (2018): 165-177; Naldi, Ari, Herdis Herdiansyah, and LG Saraswati Putri. "Good Governance Role for a Sustainable Solid Waste Management in Rural Community." *IOP Conference Series: Earth and Environmental Science*. Vol. 819. No. 1. IOP Publishing, 2021.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2008).

applies the principle of *the pollution pay principal* as stated in Article 20 of Law No. 4 of 1982:⁸

- 1) Whoever damages and/or pollutes the environment bears responsibility with the obligation to pay compensation to sufferers who have violated their right to a good and healthy environment.
- 2) Procedures for complaints by sufferers, procedures for research by the team on the form, type, and number of losses and procedures for prosecuting compensation are regulated by laws and regulations.
- 3) Whoever damages and/or pollutes the environment bears the responsibility of paying the costs of environmental restoration to the State.
- 4) Procedures for determining and paying environmental restoration costs are regulated by laws and regulations.

Law No. 4 of 1982 regulates *strict liability* for selective activities in activities that meet the criteria as activities that contain abnormally dangerous activities. The person in charge of the activity is considered to be absolutely responsible for all risks arising from the activity, even if there is no risk that the activity provides benefits to the community in general.

Daud silalahi said that the measure or benchmark that can be used to determine activities can be categorized as activities that contain *abnormally dangerous activity* based on the following considerations: (a) *The degree of risk*, risk is considered high if it cannot be reached by ordinary efforts, according to existing technological capabilities; (b) *The gravity of harm*, in which case the hazard is considered very difficult to prevent at the time of its occurrence; (c) *The appropriateness*, in which case the person responsible must show maximum efforts to prevent the occurrence of consequences that cause harm to other parties; (d) Consideration of the overall value *of the activity*, in this case Consideration of the risks and benefits of the activity has been carried out adequately so that it can be estimated that the benefits obtained will be greater when compared to the costs that must be incurred to prevent the emergence of danger.⁹

2. Regulation of Strict Liability in Law No. 23 of 1997 concerning Environmental Management

The regulation of Strict Liability in Law No. 23 of 1997 concerning Environmental Management is contained in Article 35 which states:¹⁰

- (1) The person responsible for businesses and/or activities whose businesses and activities have a major and important impact on the environment, who use hazardous and toxic materials, and/or produce hazardous and toxic waste, are

⁸ Article 20 of Law No. 4 of 1982 concerning Provisions and Principles of Environmental Management

⁹ Daud Silalahi in Koesnadi Hardjosoemantri, *Hukum Tata Lingkungan*, (Yogyakarta: Gadjah Mada University Press, 1994).

¹⁰ Article 35 of Law No. 23 of 1997 concerning Environmental Management

absolutely responsible for the losses caused, with the obligation to pay compensation directly and immediately at the time of pollution and environmental destruction;

- (2) The person responsible for the business and or activity may be exempted from the obligations referred to in paragraph (1) if the person concerned can prove that environmental pollution and/or destruction is caused by one of the reasons below:
 - a. the presence of natural disasters or wars; or
 - b. the existence of force majeure beyond human capacity;
 - c. the existence of third-party actions that cause pollution and / or destruction of the environment.

3. Strict Liability Regulation in Law No. 32 of 2009 concerning Environmental Protection and Management (UUPLH)

Regulations regarding *strict liability* in Law No. 32 of 2009 concerning Environmental Protection and Management (UUPLH) are regulated in Article 88 which reads:

*"Any person whose actions, businesses, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a **serious threat to the environment** are solely responsible for losses incurred without the need to prove an element of guilt."*¹¹

The principle of *strict liability* in Law No. 32 of 2009 concerning Environmental Protection and Management regulates activities related to hazardous and toxic materials (B3), whether the activities are using B3, producing and/or managing B3 waste. In Article 1 paragraph 21 of the UUPPLH states that: Hazardous and toxic materials hereinafter abbreviated as B3 are substances, energy, and or other components due to nature. Its concentration, dar/or amount, either directly or indirectly, can pollute and/or damage the environment, and/or endanger the environment, health, and survival of humans and other living things.

B. Application of Strict Liability in Indonesian Positive Law

1. PN Bandung Decision No. 49/Pdt.G/2003/PN.Bdg between Perum Perhutani and the Mandalawangi Community

Perhutani Public Company based on Government Regulation Number 2 of 1978 *jo.* Decree of the Minister of Agriculture Number 43 / KPTS / HUM / 1978 *jo.* Government Regulation Number 53 of 1999 is a state-owned company that is granted Management Rights for Protected Forest Areas and Production Forests in the West Java Region. This includes the Mount Mandalawangi Area, Kadungora District, Garut Regency. Perum Perhutani then converted primary forest into secondary forest and

¹¹ Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management

cut down trees. Perum Perhutani also grants permits for logged forest land to local residents to be used as agricultural land.

On January 28, 2003, there was a landslide in the Mandalawangi forest area. The landslide has resulted in 20 (twenty) people died, 165 houses destroyed, 67 (sixty-seven) houses severely damaged, and has resulted in 1769 people being displaced and losing their livelihoods. The results of the investigation by the Directorate of Vulkanology obtained info that the factors causing the landslide of Mount Mandalawangi include: (a) the thickness of soil weathering which reaches 3 meters; (b) nests (easy to escape water); (c) volcanic rocks that are not yet solid; (d) steep slopes of 20-50% and relatively gentle bottoms, and (e) changes in the land use of the upper hills from perennials to seasonal crops.¹²

The Bandung District Court then issued Bandung District Court Decision Number 49/Pdt.G/2003/PN BDG regarding the Request for Compensation in the case of Dedi, et al, dated September 4, 2003 whose decision granted the *class action* lawsuit; declaring Defendant I, Defendant II, Defendant III, and Defendant IV liable absolute (*strict liability*) for the impact caused by the landslide of the Mount Mandalawangi forest area. Punish the defendants to carry out environmental restoration and payment of restoration costs of Rp 20,000,000,000 (twenty billion rupiah). Punish para defendant responsibly pay compensation to the victims of the Mount Mandalawangi landslide in the amount of Rp. 10,000,000,000,- (ten billion rupiah) and declare the verdict can be implemented first (*uitvoerbaar bejvooraad*).

The judge considered that the landslide that occurred in Mandalwangi was the result of Perhutani's activities and the judge applied *strict liability* in accordance with Article 20 of Law No. 4 of 1982 concerning Basic Provisions for Environmental Management.¹³

¹² Imamulhadi, Imamulhadi "Perkembangan Prinsip Strict Liability dan Precautionary dalam Penyelesaian Sengketa Lingkungan Hidup di Pengadilan." *Mimbar Hukum* 25.3 (2013): 416-432.

¹³ One example of an interesting decision in terms of a judge prioritizing environmental protection is the Mandalawangi case. A number of victims of the Mandalawangi hill landslide, Garut, have sued the government, including Perum Perhutani. The plaintiffs considered that the defendants did not carry out their legal obligations so that the landslide caused material and moral losses to the plaintiff. Through a decision dated September 4, 2003, the Bandung District Court granted the plaintiff's claim. The decision was later upheld on appeal. In the cassation decision no. 1794 K/Pdt/2004, the Supreme Court rejected the arguments made by the defendants. The Supreme Court judge stated that the use of the precautionary principle does not violate the law. Judges can use the provisions of international law if they are considered as *ius cogen* (recognized by civilized nations-ed). Therefore, the defendants are obliged to provide compensation to the community. Interestingly, this decision was handed down long before Law no. 32 of 2009 concerning Environmental Protection and Management (PPLH) was issued. After this law was born, the concept of environmental protection increasingly gained a place. See also Parlina, Nurasti. "Penerapan Class Action di Indonesia Studi Kasus Putusan Nomor 1794 K/PDT/2004." *Jurnal Poros Hukum Padjadjaran* 2.2 (2021): 237-252; Hardjaloka, Loura. "Ketepatan Hakim dalam Penerapan Precautionary Principle sebagai "Ius Cogen" dalam Kasus Gunung Mandalawangi." *Jurnal Yudisial* 5.2 (2012): 134-153; Fadhillah, Fajri. "Tanggung renteng dalam perkara perdata pencemaran udara dari kebakaran hutan dan lahan." *Jurnal Hukum Lingkungan Indonesia* 3.1 (2016): 51-85; Prasetya, Imam, Florentina Br Hombing, and Rudolf Silaban. "Pertimbangan Hakim dalam Perkara Tindak Pidana Pencemaran Lingkungan." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 4.2 (2022): 34-45; Wahyuni, Sri, et al. "Konsistensi Putusan Hakim Terhadap Perkara Kerugian

2. South Jakarta District Court Decision No.456/Pdt.G-LH/2016/PN. Jkt.Sel PT Waringin Agro Jaya

The South Jakarta District Court found PT Waringin Agro Jaya guilty of land fires using strict *liability* principles. The company is required to restore 1,626.2 hectares of land and material compensation of IDR 173.46 billion. The judge stated that PT Waringin Agro Jaya was proven not to have installed the viewing tower according to the rules and did not have adequate *early warning*. However, the penalties for land restoration are not as large as those proposed by the MoEF. In the KLHK lawsuit, the company was asked to take recovery actions against burned land worth Rp 584.9 billion. The judge gave consideration based on Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management regarding *strict liability*.¹⁴

Conclusion

Strict liability is a principle that explains that the liability of the defendant does not have to be proven by the governor and must be implemented immediately when there is a loss in society. This principle is important because in the fulfillment and

Lingkungan Hidup di Indonesia." *ADLIYA: Jurnal Hukum dan Kemanusiaan* 15.2 (2021): 197-216; Romsan, H. Achmad, Abunawar Basyeban, and Moh Idris. "The Use of the Strict Liability Principle by the Indonesian Courts in Solving Environmental Conflicts." *6th International Conference on Community Development (ICCD 2019)*. Atlantis Press, 2019; Permana, Rizky Banyualam, Dewo Baskoro, and Arie Afriansyah. "Hukum Internasional Made in Garut? Mengkritisi Status Jus Cogens Atas Prinsip Kehati-hatian Dalam Mandalawangi." *Bina Hukum Lingkungan* 5.1 (2020): 153-179.

¹⁴ President Joko Widodo (Jokowi) through the Ministry of Environment (KLHK) won against the PT Waringin Agro Jaya (WAJ) forest burner with a winning value of IDR 466 billion. This is in line with the rejection of the Judicial Review (PK) submitted by PT WAJ. The case began when a forest fire occurred in Sumatra. Then the KLHK team verified forest and/or land fires in Ogan Komering Ilir Regency and Musi Banyuasin Regency, South Sumatra (Sumsel) which occurred from July to October 2015. In February 2017, the South Jakarta District Court with Number 456/Pdt.G-LH / 2016/PN.Jkt.Sel, decided WAJ was obliged to pay compensation and recovery costs of IDR 466.5 billion because it was proven that land was burning. In the lawsuit by the Ministry of Environment and Forestry, demanded that WAJ pay compensation and recovery costs of IDR 758 billion. Although the value of the verdict is not as big as the lawsuit, Roy thinks this decision proves that there was a company violation. The Ministry of Environment and Forestry filed a lawsuit against WAJ at the Jakarta District Court on July 18, 2016, after a land fire occurred in Pampangan District, Ogan Komering Ilir, South Sumatra covering an area of 1,802 hectares. Most importantly, the decision uses the principle of strict liability (absolute responsibility) based on Law Number 32/2009 concerning Environmental Protection and Management Article 88. Every person in charge of a business risks absolute responsibility for losses without requiring an element of guilt. See also Kartilantika, Ambar. "Penerapan Prinsip Strict Liability dalam Gugatan Ganti Rugi oleh Kementerian Lingkungan Hidup dan Kehutanan dalam Kasus Kebakaran Hutan dan/atau Lahan", *Dissertation* (Yogyakarta: Universitas Gadjah Mada, 2019); Mahardika, Ahmad Gelora. "Implikasi Penghapusan Strict Liability Dalam Undang-Undang Cipta Kerja Terhadap Lingkungan Hidup di Era Sustainable Development Goals." *Legacy: Jurnal Hukum Dan Perundang-Undangan* 2.1 (2022): 58-85; Putra, I., Wayan Dedi, and Kadek Agus Sadiarawan. "Perbandingan Penerapan Prinsip Pertanggungjawaban Mutlak Pada Putusan Hakim: Studi Kasus Perkara Lingkungan di Indonesia." *Magister Hukum Udayana* 10 (2021): 166-176.

protection of the law, it is a legal obligation to be able to provide arrangements that are able to provide convenience for the community to access justice. The application of the principle of strict liability will greatly help the disadvantaged parties, especially for small communities who do not have minimal knowledge about environmental law and limited funds to prove environmental violations. Environmental violations committed by large corporations or companies that have abundant funds in carrying out their business will be very difficult to prove by parties who experience environmental losses, especially ordinary people. The participation of the government and state in solving cases of environmental violations is certainly very necessary to restore environmental conditions as they were so that all parties can enjoy a decent living environment and can benefit all parties as stated in article 28 H of the 1945 Constitution.

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*Nature provides a free lunch,
but only if we control our
appetites.*

William Ruckelshaus
Business Week, 18 June 1990