

OPPORTUNITIES FOR IMPLEMENTING THE PRINCIPLE OF STRICT LIABILITY AS A BASIS FOR CORPORATE CRIMINAL RESPONSIBILITY IN ENVIRONMENTAL OFFENSES

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ABSTRACT

Implicitly, the provisions in the Environmental Protection and Management Law (henceforth UUPPLH- *Undang-Undang tentang Perlindungan dan Pengelolaan Lingkungan Hidup*) regarding the principle of strict liability, as stated in Article 88 and its explanation, only regulate strict liability as a civil responsibility. The UUPPLH does not provide provisions on whether the principle of strict liability can be applied as a model for criminal liability, particularly for legal entities or corporations recognized as legal subjects in criminal law (*rechtsperson*). This research aims to analyze and examine the implementation of the principle of strict liability in the UUPPLH and to analyze that violations of environmental offenses under the UUPPLH by corporate legal subjects can be subjected to strict liability as criminal responsibility. The criminal responsibility adopted by Law Number 32 of 2009 concerning Environmental Protection and Management still adheres to the principle of fault. Therefore, in applying the strict liability principle in court, it is only used for civil claims, and its use in criminal law enforcement is minimal, as evidenced by several court decisions. In conventional criminal law, criminal liability is based on fault, commonly known as the principle of no punishment without fault (*geen straf zonder schuld*). However, the principle of strict liability, as liability without fault, is also recognized as a fundamental principle in criminal responsibility.

Keywords: Strict Liability, Criminal Liability, Corporate Environmental Offense

INTRODUCTION

1. Background Research

Referring to the UUPPLH provisions, environmental law enforcement is divided into three categories: administrative law enforcement, civil law enforcement, and criminal law enforcement.

Implicitly, the provisions in the UUPPLH regarding the principle of strict liability, as stated in Article 88 and its explanation, solely regulate this strict liability as a civil responsibility. The UUPPLH does not provide provisions determining whether the principle of strict liability can be applied as a model for criminal liability, specifically regarding legal entities or corporations as business entities recognized as legal subjects in criminal law (*rechtsperson*). The assumption is that in conventional criminal law, criminal liability is based on the presence of a fault, commonly known as the principle of no

punishment without fault (*geen straf zonder schuld*). However, in legal principle, criminal responsibility is also known through the principle of strict liability as liability without fault. This condition implies that strict liability can be considered a form of criminal liability specifically for legal entities or corporations.¹

Regarding the principle of strict liability as a model of civil legal responsibility regulated in the UUPPLH (Article 88), the question arises as to whether it is solely applicable as a form of civil liability for environmental matters or whether there is a possibility to implement the principle of strict liability as a model for criminal liability against businesses or corporations engaged in environmental offenses.² What is

¹ Muladi & Sulistyani, D., *Pertanggungjawaban Pidana Korporasi (Corporate Criminal Responsibility)* Bandung: Alumni, 2013, Hlm. 89.

² Danil, E., *Korupsi: Konsep, Tindak Pidana, Dan Pemberantasannya* Jakarta: Raja Grafindo Persada, 2012, Hlm. 110.

the justification or rationale for viewing the principle of strict liability as significant in the form of criminal liability for corporations, and what urgency exists in applying the principle of strict liability to environmental offenses committed by corporations?

This reason forms the basis for the author to further examine the possibility or opportunity of implementing the principle of strict liability in the criminal liability of corporations that violate environmental criminal provisions, based on the assumption that strict liability is not only recognized in civil law but also criminal law regarding criminal liability for legal entities or corporations. Therefore, the author has chosen the title "Opportunities for Implementing the Principle of Strict Liability as a Basis for Corporate Criminal Responsibility in Environmental Offenses," considering the following factors:

1. Environmental crimes committed by corporations

cause direct environmental damage or impact on the local communities, whether in the form of destruction or pollution, often with long-lasting effects.

2. Regarding the proof of environmental crimes, the current application of scientific evidence often hinders criminal law enforcement, particularly for corporations. It is, therefore, appropriate to apply criminal liability without fault to corporations, considering the increasing environmental crimes committed by corporations and the far-reaching impact they have, sometimes even crossing national borders.

2. Identification of Problems

The identified research problems are as follows:

1. How is the implementation of the principle of strict liability in the UUPPLH?

2. Can the violations of environmental offenses under the UUPPLH by corporate legal subjects be subjected to the principle of strict liability as criminal responsibility?

RESEARCH METHODOLOGY

1. Type of Research

In this research, the type of study conducted is normative legal research, utilizing the method of legal inventory by examining positive law relevant to the legal issues to be discussed. This approach is combined with legal research to identify legal principles and doctrines.

2. Research approach

The research approach employed in this study is the statutory approach, also known as the juridical-normative approach. It examines legal issues related to the principle of strict liability in the UUPPLH and its implementation in law enforcement.³ A case approach

is also utilized to analyze relevant legal cases based on legally binding court decisions. This approach allows for examining the legal considerations made by judges, which can be used as arguments to address legal issues. Furthermore, a conceptual approach is employed to explore the perspectives of legal doctrine regarding the principle of strict liability in criminal law, integrating theoretical frameworks.

3. Legal Materials

According to Soerjono Soekanto, secondary data in the field of law can be classified into three categories based on their binding strength: primary legal materials, secondary legal materials, and tertiary legal materials.⁴ Based on the types of legal materials mentioned, the author of this study utilizes primary, secondary, and tertiary legal materials. Primary legal

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Ui Press, Jakarta 2015, Hlm 52

⁴ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Pt.Rajagrafindo Persada, 2014, p.13.

materials are binding sources of law and consist of fundamental norms or principles, legislation, non-codified legal materials, jurisprudence, treaties, and legal materials from colonial periods that are still in effect. Secondary legal materials, on the other hand, provide explanations and interpretations of primary legal materials.⁵ Tertiary legal materials, on the other hand, refers to materials that provide instructions and explanations of primary legal materials and secondary legal materials.⁶

4. Procedure for Collecting Legal Materials

The collection of legal materials in this research is conducted through a literature review, which aims to acquire legal materials used to explore concepts, theories, opinions, and findings closely related to the core issues of the research.

5. Processing of Legal

Materials

The processing of legal materials involves categorizing the collected materials according to the specific items the research addresses. These categories include primary legal materials, secondary legal materials, and tertiary legal materials. The classification is done by aligning the substance of the materials with the core issues under investigation.

6. Analysing Legal Materials

This research employs a logical legal argumentation approach, using deductive syllogism and prescriptive and theoretical methods to conclude the analysis. The analysis methods applied in this research include content analysis and qualitative analysis.

RESULTS AND DISCUSSION

1. Implementation of Strict Liability in the Environmental and Natural Resources Law (UUPPLH).

⁵ Soerjono Soekanto & Sri Mamudji, *Op.Cit.* p.13

⁶ Bambang Sunggono, *Metode Penelitian Hukum*, Pt Raja Grafindo Persada, Jakarta 2012, p. 114.

The concept of strict liability plays a crucial role in enforcing environmental law. In many aspects, strict liability can serve as a solution to holding corporations criminally accountable. In practice, environmental law enforcement often needs help imposing penalties due to the difficulty in collecting evidence, which provides corporations with opportunities to evade their responsibilities.⁷ However, introducing strict liability can enhance the judiciary's effectiveness in reaching concrete decisions and holding corporations accountable.

The regulation concerning strict liability in the Law Number 32 of 2009 concerning

Environmental Protection and Management (UUPPLH) is stipulated in Article 88, which states that:

"Any person whose actions, activities, and endeavors involve the use of hazardous and toxic substances, the production and management of hazardous and toxic substances waste, or pose a serious threat to the environment shall be liable for any resulting damages, without the need for proving fault."

The principle of strict liability in Law Number 32 of 2009 on Environmental Protection and Management primarily governs activities related to hazardous and toxic substances, whether it involves

⁷ Sutoyo, *Pengaturan Tangung Jawab Mutlak (Strict Liability) Dalam Hukum Lingkungan*, 2011, No. 1.. Hlm 67

using, producing, or managing such substances.⁸ Article 1, paragraph 21 of the UUPPLH defines hazardous and toxic substances as substances, energy, and other components that, due to their nature, concentration, or quantity, directly or indirectly, can pollute and damage the environment, as well as pose a threat to the environment, human health, and the survival of other living beings.⁹

Several court decisions demonstrate that strict liability under the UUPPLH is predominantly implemented as

civil liability. These are evident in various court rulings, such as:

a. Decision of Bandung District Court No. 49/Pdt.G/2003/PN.Bdg between Perum Perhutani and the Community of Mandalawangi

Concerning the landslide in the Mandalawangi forest area, the Bandung District Court pronounced a verdict holding Defendants I, II, III, and IV strictly liable for the consequential damages. The court ordered the defendants to undertake environmental restoration and pay the restoration costs of IDR 20,000,000,000 (twenty billion Indonesian Rupiah).¹⁰ The

⁸ Siswanto Sunarso, *Hukum Pidana Lingkungan Hidup Dan Strategi Penyelesaian Sengketa*. Jakarta: Rineka Cipta, 2005. Hlm. 12

⁹ Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi Dalam Russel Heaton, Criminal Law Textbook*, Oxford University Press, London, 2006, Hlm. 403.

¹⁰ Imamulhadi. 2013. *Perkembangan Prinsip Strict liability Dan Precautionary Dalam Penyelesaian Sengketa*

defendants were also held jointly and severally liable to compensate the landslide victims in the Gunung Mandalawangi area with an amount of IDR 10,000,000,000 (ten billion Indonesian Rupiah), and the court declared the judgment to be immediately enforceable (*uitvoerbaar bejvooraad*). The judge considered that the landslide in Mandalawangi resulted from Perhutani's activities and applied strict liability following Article 20 of Law Number 4 of 1982 on the Basic Provisions of Environmental Management.

b. Decision of South Jakarta

District Court No.

456/Pdt.G-

LH/2016/PN.Jkt.Sel

Lingkungan Hidup Di Pengadilan. Jurnal Mimbar Hukum. Vol 25 No.3 Hlm. 417.

between PT Waringin Agro Jaya and the Ministry of Environment.

The court ruling declares that this lawsuit utilizes the principle of strict liability in its burden of proof. The defendant is ordered to pay material compensation in cash to the plaintiff through the State Treasury account, amounting to IDR 173,468,991,700 (one hundred seventy-three billion four hundred sixty-eight million nine hundred ninety-one thousand seven hundred Indonesian Rupiah). The defendant is also mandated to undertake environmental restoration actions on the burned land covering an area of 1,626.53 hectares, ensuring its proper functionality, with a cost

of IDR 293,000,000,000 (two hundred ninety-three billion Indonesian Rupiah). Additionally, the defendant is liable to bear the current litigation costs, amounting to IDR 426,000 (four hundred twenty-six thousand Indonesian Rupiah).

**c. Decision Number
107/Pdt.G/LH/2019/PN
Jmb, PT.Agro Tumbuh
Gemilang Abadi (ATGA).**

The district court ruling grants partial approval to the plaintiff's claim. It declares the defendant's strict liability for the environmental damages resulting from the fire on the defendant's plantation land. The defendant is ordered to pay material compensation to the plaintiff for IDR

160,180,335,500. The defendant is also mandated to bear the cost of environmental restoration for the burned oil palm plantation land owned by the defendant, amounting to IDR 430,362,687,500. Additionally, the defendant is liable for the current litigation costs of IDR 520,000. The plaintiff's remaining claims are rejected.

**d. District Court Decision
No.54/Pid.Sus/2014/PN.M
BO.**

According to the provisions of Article 191 paragraph (1) of the Criminal Procedure Code (KUHAP), it can be derived that PT. SPS should have been acquitted. However, the panel of judges held a different opinion, ruling PT. SPS is guilty. Their reasoning was based on the fact

that Law Number 32 of 2009 concerning Environmental Protection and Management adheres to the principles of strict liability and *res ipso loquitur* (the fact that the land in PT. SPS's area caught fire due to human actions is sufficient to hold PT. SPS criminally responsible without considering fault).

Therefore, although the principle of strict liability is regulated in the UUPPLH, its application is limited. It can only be used in civil lawsuits involving damages from using and managing hazardous and toxic substances. Based on the rulings mentioned earlier, the current application of the principle of strict liability is more commonly implemented as

a form of legal liability in civil law.¹¹

2. Can The Principle of Strict Liability Be Applied as Criminal Liability for Environmental Offenses Under The UUPPLH For Corporate Legal Entities?

Strict liability is predominantly applied in civil liability cases, while it is rarely utilized in criminal liability. However, strict liability should also be employed in criminal liability, particularly considering that environmental pollution constitutes a criminal offense and has extensive and long-lasting impacts on society.¹²

¹¹ Putusan Pengadilan Negeri No. 54/Pid.Sus/2014/Pn.Mbo, Hlm. 203.

¹² Ridho Kurniawan Dan Siti Nurul Intan Sari D. *Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strict liability (Studi Pembaharuan Hukum Pidana Lingkungan Hidup)*. Jurnal Yuridis Vol.1 No.2. <https://Media.Neliti.Com/Media/Publications/282142-Pertanggungjawaban->

Strict liability differs slightly from the longstanding criminal law principle known as "*actus non facit reum*," "*nisi mens sit rea*" or "*geen straf zonder schuld*," which means "no crime without a guilty mind." This principle is called the doctrine of criminal liability based on fault (*mens rea*). Strict liability, however, refers to an absolute obligation without the need to prove fault (intent and negligence) on the perpetrator's part.

Criminal offenses and their criminal liability can be imposed on the perpetrator even if they do not possess the required *mens rea*, as long as it can be proven that the perpetrator has committed the *actus reus* (the

prohibited act under criminal provisions) or failed to perform the actions required by criminal provisions.¹³

Regarding strict liability and the process of proving environmental criminal offenses, Koesnadi Hardjosoemantri emphasizes that in some instances, the burden of proof can be shifted to the defendant partially or entirely in the field of criminal law, which is now expanded in cases of environmental destruction and pollution. This fact means that the absence of guilt is not automatically eliminated by applying strict liability in criminal responsibility. The guilt

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¹³ H.Setiyono, "*Kejahatan Korporasi Analisis Viktimologi Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana*", Edisi Kedua, Cetakan Pertama, Malang: Banyumedia Publishing, 2003, Hlm. 121-123

still exists, but the burden of proof is shifted from the prosecution (public prosecutor) to the suspected party involved in the pollution (defendant).

Therefore, the most essential aspect of strict liability regarding accountability lies in proving the criminal offense. Corporations can be found guilty merely by proving that the public prosecutor has committed the criminal act. Thus, the primary function of strict liability is related to procedural law. This burden of proof, known as the reverse burden of proof, is also recognized in the Anti-Corruption Law, Law Number 31 of 1999, and its amendment, Law Number 20 of 2001. This law adopts a limited reverse burden of proof, where

the defendant must prove that they did not commit the corruption offense, while the Public Prosecutor must also prove their indictment. What is proven in the indictment is the elements of the indictment, not the guilt.

Guilt only arises after a judge's verdict (sentence). The proof of environmental criminal offenses committed by corporations should also apply the principle of strict liability with a reverse burden of proof as provided in the Anti-Corruption Law, Law Number 20 of 2001. If the reverse burden of proof applies to proving the origin of wealth in the anti-corruption law, then the concept of strict liability applied to corporations committing environmental

criminal offenses pertains to the proof of the element of guilt.

It can be said that the focal point in the criminal justice system is during the process of proving, where through the evidentiary process in court, it will be determined whether the strength of the evidence presented will result in the defendant (corporation/individual) being acquitted, released from all charges, or convicted.

The application of strict liability to corporations in proving environmental criminal offenses entails the consequence of not requiring proof of fault, whether intentional or negligent, including the motive behind the corporation's commission of the offense, as stipulated in the criminal provisions regulated in

Law Number 32 of 2009 concerning Environmental Protection and Management. By implementing the principle of strict liability in criminal responsibility with a little reverse burden of proof, our law enforcement agencies will not encounter difficulties in proving the occurrence of pollution.

CLOSING

1. Conclusion

In court proceedings, strict liability is primarily implemented as a corporate liability in environmental civil cases. In contrast, its implementation as criminal liability for corporations committing environmental crimes is limited. This implementation can be observed in several court decisions. However, in cases involving corporate environmental crimes, it is essential to note that conventional criminal law principles regarding criminal

liability are based on the presence of a fault, commonly known as the principle of no punishment without fault (*geen straf zonder schuld*). Nevertheless, the principle of strict liability is also recognized in criminal law as a form of liability without fault. This condition means that the principle of strict liability can be applied as a specific form of criminal liability for legal entities or corporations.

2. Suggestion

In dealing with and addressing issues related to the application of strict liability, particularly in criminal law, law enforcement authorities also consider several principles in criminal law. This condition becomes a consideration because implementing strict liability against corporations suspected of committing environmental crimes will affect the burden of proof in

environmental criminal proceedings. The principle of strict liability will facilitate the prosecution's burden of proof in court, as the prosecution does not need to prove the corporation's fault, intentional or negligent, in committing the criminal act.

In order to address these concerns, one possible alternative solution is for the Legislative Body to revise the Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) by normatively regulating strict liability as a specific model of corporate criminal liability. This revision should go beyond the current practice in judicial decisions, where the implementation of strict liability

is only interpreted as a civil liability principle for corporations.

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