



CORPORATION LEGAL LIABILITY IN CASES OF ENVIRONMENTAL POLLUTION

Syaharani

Faculty of Law, Universitas Jambi, Indonesia. E-mail: syaharani2019@gmail.com

Abstract: The economy is positively impacted by the industry's presence. However, it will also generate a waste product known as waste as part of the production process. This research examines the company's accountability for trash contamination in the surrounding environment. Article 88 of Law No. 11 of 2020 about Job Creation removes businesses' total obligation to be responsible. Law No. 32 of 2009 concerning Environmental Protection and Management are compared in this study to examine examples. This research employs a normative juridical approach. It is well known that the Job Creation Law itself modifies the absolute responsibility clauses that once tied companies under Law Number 32 of 2009 concerning Environmental Protection and Management. The study's findings suggest that administrative responsibility is the only corporate accountability for waste pollution that arises once absolute duty is removed.

Keywords: Corporation; Environmental Law; Liability; Pollution

1. Introduction

Environmental pollution is a serious issue faced by many countries, including Indonesia. Companies' legal responsibility for environmental pollution is regulated by various laws, especially Law Number 32 of 2009 concerning Environmental Protection and Management. In this journal, several concrete cases will be discussed that show how companies can be subject to legal sanctions due to the pollution they commit. For Indonesia, natural resources and the environment have a dual role, namely as development capital and, simultaneously, as a support for the life system. All of them are in our beloved country.

It can be said that Indonesia is a prosperous country with its natural products, which means that we, as Indonesian people must take care of our environment because a clean and healthy natural environment is one of the most essential parts of the survival of humans, plants, animals and natural products are within the scope of the natural environment. This is reflected in article 28H, paragraph 1 of the 1945 Constitution, which states that "everyone has the right to live a prosperous and spiritual life, to live, and to get a good and healthy living environment and the right to receive health services".¹

At first, environmental issues were natural occurrences, as some events result from nature. This natural process will naturally recover and will not have any detrimental or lethal effects on the environment. Today's environmental issues, however, are no longer exclusively attributed to natural occurrences brought on by nature. Humans' role in the environment significantly impacts this age. Indonesia is a rising nation, particularly in the industrial sector,

¹ Undang-Undang Dasar Negara Republik Indonesia 1945



and many business owners have set up their establishments to ensure the success of their enterprises. An AMDAL (Environmental Impact Analysis) is a tool used by entrepreneurs who will conduct development activities and mandatory business. It examines the advantages and disadvantages of establishing a firm and determines if it is environmentally feasible. Physical, chemical, biological, socioeconomic, sociocultural, and public health factors form the basis of the study. However, not all businesses in Indonesia followed it; despite having an EIA, they frequently disposed of their trash in rivers, oceans, and on land negligently.

Who is affected by such careless rubbish disposal? The local community senses it. The local population cannot use the polluted river for their needs, and the unclean soil around them leads to illnesses like typhus, dengue, and skin allergies (itching). The neighborhood surrounding the business does not have access to a healthy and pleasant environment because of the company's trash disposal practices. So based on this, the study's focus is that the author will discuss "Legal Liability of Companies in Environmental Pollution Cases".²

2. Research Method

Here, as a writer, I use a juridical writing method, normative. This research approach is a legislative approach. Method Normative juridical research is legal research from an internal perspective through the object of research, namely legal norms.³ Writing scientific articles using sources to study primary legal materials, namely Peru, and secondary legal materials, namely doctrines or theories obtained from literature law and scientific research. Then, it is connected to the discussion of corporations as a subject of criminal law in UUPPLH and a form of corporate criminal liability for environmental damage caused by dumping production waste into rivers.

3. Discussion

Indonesia, a tropical country with a lot of biodiversity, faces a significant threat from human activities damaging its environment. It is often said that large industries such as oil, natural gas, and coal are the main culprits of greenhouse gas emissions and chemical pollution. Land reclamation and primary forest clearing also lead to deforestation and destruction of wild habitats. As a result, it is essential to understand and apply effective environmental laws to ensure the sustainability of human life and prevent ecosystem damage.

Legal responsibility is a continuing consequence that arises from the implementation of an action or role carried out by someone; either action or the role is carried out within the framework of rights and obligations or the presence of power. In general, legal responsibility is an obligation to do something or behave in a way that does not deviate from existing regulations. Meanwhile, Purbacaraka believes that legal responsibility is sourced or born from using facilities to apply each person's abilities to exercise their rights and/or carry out their

² Mentari Novia Umboh, "Perlindungan Hukum Terhadap Masyarakat Dari Dampak Pencemaran Lingkungan Yang Dilakukan Oleh Perusahaan," *Lex Et Societatis* 8, no. 1 (2020): 109–16, <https://doi.org/10.35796/les.v8i1.28477>.

³ Lusiana Bida and Ni Nengah Adiyaryani, "Perusakan Lingkungan Hidup: Bagaimana Tanggungjawab Korporasi Dalam Hukum Pidana?," *Kertha Semaya: Journal Ilmu Hukum* 10, no. 4 (2022): 727, <https://doi.org/10.24843/ks.2022.v10.i04.p01>.

obligations. It was further emphasized that every implementation of obligations and every use of rights, whether carried out, inadequate, or adequately done, must be accompanied by accountability and the exercise of power.

"Responsibility" is a key idea in criminal law, also called the teaching of error. This lesson is referred to as *mens rea* in Latin. One application of the *mens rea* (bad mental attitude) theory is Unless a person is evil, their actions do not constitute guilt. According to this theory, two requirements must be satisfied for someone to be found guilty: they must engage in prohibited exterior behavior and have a deplorable or evil mindset.

Positive law currently regulates environmental management, including provisions governing pollution, environment, and waste. Law Number 32 of 2009 concerning Environmental Management was enacted after the enactment of Law Number 11 of 2020 concerning Job Creation, and several provisions in Law Number 32 of 2009 changed.

Based on law no. 32 of 2009 states that pollution The environment is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities, thereby exceeding environmental quality standards that have been established. To stop the environment from being contaminated by different industrial and human activities, establishing ecological quality standards is essential to controlling environmental contamination. The limitations or amounts of living things, materials, energy, or components present, as well as any polluting elements allowed to exist in a specific resource as an aspect of the environment, are measured by environmental quality standards.

Furthermore, based on Article 97 of Law Number 32 of 2009 concerning Environmental Protection and Management, environmental crimes categorized as a crime, so that criminal responsibility can be charged to organs within the corporation. This aims to prevent companies protect themselves and abdicate responsibility by passing it on to their workers. In principle, every business activity will have an impact on the surrounding environment, but the size of the impact depends on the type of activity business, and the majority of business activities in the field of environmental management utilize and/or exploit elements in the environment they have large and essential impact on the environment.

Environmental pollution or destruction carried out by the corporation is one element for the implementation of the process enforcement of environmental law which means repressive action. In law The environment is known as one of the principles of subsidiarity which prioritizes other legal efforts before enforcing criminal law, namely enforcement of State administrative law, civil law and dispute resolution outside of court.⁴ Explanation of Law Number 32 of 2009 concerning Environmental Protection and Management emphasizes that

⁴ Dwi Febriyanti et al., "Fungsi AMDAL Dalam Pengendalian Kerusakan Dan Pencemaran Lingkungan Setelah Diundangkannya UU Cipta Kerja Abstrak A . Pendahuluan Menurut Undang Undang No . 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup Ialah Sebuah Kesatuan Ruang De," 2021 3, no. 2 (n.d.): 115–33.

enforcement of environmental criminal law continues to pay attention to principles *ultimum remedium* which requires the implementation of criminal law enforcement as an effort.⁵

3. 1 Civil Liability

In handling environmental pollution cases, civil responsibility is very important. To seek financial compensation to pollution victims, civil law is usually used. To prove that a company has violated environmental laws and caused real damage, this process requires strong empirical evidence.

Article 88 of Law Number 11 of 2020 concerning cluster job creation The Environment states that every person whose actions, business, and/or activities using B3, producing and/or managing B3 waste, and/or which poses a serious threat to the environment life is absolutely responsible for losses that occur from business and/or his activities. The article explicitly eliminates the phrase "without the need for proof element of error" stated in Law Number 32 of 2009 regarding the protection and management of the environment in essence is the soul of the principle of strict liability (absolute responsibility).

Article 22 number (33) Law No.11 of 2020 concerning Job Creation has changed the phrase "without the need to prove elements of error" in Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management. Where this phrase is the main characteristic of a basic element of the principle of strict liability. Removing this phrase makes it the responsibility of the corporation that does it acts of B3 waste pollution or environmental destruction based on fault (liability based on fault). Responsibility based on fault (liability based on fault) in the legal system is often called the doctrine of responsibility traditional. The principle of responsibility based on error is a concept that there is no liability if there is no element of error.⁶

The accountability system, which is founded on the idea of responsibility (liability based on fault), has repercussions, specifically the victim (those who experience pollution and/or environmental harm) being burdened with the burden of evidence. According to Koesnadi Hardjasoemantri's opinion, the offender (polluters or environmental destroyers) need not bear responsibility if the existence of an element of guilt is not demonstrated or cannot be proven.

Consequently, if you solely depend on theology Since traditional accountability is predicated on flawed principles, law enforcement in the environmental sector will face challenges and hardships because this concept is unable to adequately predict the effects of contemporary industrial activities that present significant risks to human health and the environment.

This is due to significant requirements that must be fulfilled in order for a corporation to be released from responsibility if it commits pollution or environmental destruction and manages to demonstrate that it was cautious, even though it caused loss. Negligence or fault (mistake) is defined as the failure to exercise the care of an ordinary prudent and careful

⁵ Hyronimus Rheti, "Tanggung Jawab Mutlak Dalam Penyelesaian Sengketa Lingkungan Hidup," *Justitia et Pax* 31, no. 2 (2017), <https://doi.org/10.24002/jep.v31i2.1343>.

⁶ Sodikin, "Penegakan Hukum Lingkungan Menurut UU No. 32/2009," *Kanun*, no. 52 (2009): 543–63.

person. On the other hand, environmental polluting firms (polluters) that pollute B3 waste can be held accountable for a problem without first proving its error under the principle of absolute responsibility (strict liability). As a result, it is extremely challenging to prove mistakes when enforcing environmental laws against firms that violate them and endanger the lives of people and other living things.

Although the above regulations have been made, they are often not implemented properly. Poor coordination between government departments is one of the main problems. For example, to ensure that environmental standards are maintained during international trade, the Ministry of Environment and Forestry (MoEF) must cooperate with the Ministry of International Trade (Ministry of Trade).⁷

3. 2 Legal analysis in Fulfilling the principle of Strict Liability By Law Job

Law Number 11 of 2020 concerning Job Creation has problems crucial problem when viewed from the regulatory aspect of internal sanctions policy areas, especially in the environmental cluster.³³ Policy abolition of criminal sanctions for environmental crimes which have been replaced with administrative sanctions can be seen in Article 82 B of Law Number 11 2020 concerning Job Creation. The words of Article 82 B paragraph (2) and paragraph (3) of Law Number 11 of 2020 concerning Job Creation are:

1) Every person who carries out business and/or activities that has a permit Doing business as intended in Article 24 paragraph (5), Article 34 paragraph (3), Article 36 paragraph (1), Article 59 paragraph (1), Article 59 paragraph (4) or Approval from the Government as intended in Article 20 paragraph (3) letter b or Article 61 which is not in accordance with the obligations in Business Licensing or Government Approval and/or violate the provisions of Legislative Regulations in the Field Environmental Protection and Management, subject to administrative sanctions.

2) Every person who violates the prohibitions as referred to in Article 69, namely: a. carry out acts that result in pollution and/or environmental destruction as intended in Article 69 letter a, where the act was carried out due to negligence and did not result in harm human health and/or injuries and/or serious injuries, and/or death of persons are subject to administrative sanctions and requires the person responsible for the action to carry out restoration of environmental functions and/or other actions necessary; or b. preparing an Amdal without having a drafting competency certificate Amdal as intended in Article 69 letter i is subject to administrative sanctions.

3) Every person who, through negligence, commits an act that results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage that is not in accordance with licensing The business he owns is subject to administrative sanctions.

In Article 82C it is explained that administrative sanctions are as intended in Article 82A and Article 82B paragraph (1), paragraph (2), and paragraph (3) in the form of a written warning,

⁷ Absori Absori et al., "Penyuluhan Dan Sosialisasi Uji Materi Undang-Undang Cipta Kerja Bidang Lingkungan," Jurnal Altifani Penelitian Dan Pengabdian Kepada Masyarakat 1, no. 2 (2021): 143–48, <https://doi.org/10.25008/altifani.v1i2.143>.

Government coercion, administrative fines, suspension of business permits and Revocation of Business License. Meanwhile in Law Number 32 of the Year 2009 concerning Environmental Protection and Management in Article 102 stated that "Everyone who manages B3 waste without permission as intended in Article 59 paragraph (4), shall be punished with a maximum prison sentence a minimum of 1 (one) year and a maximum of 3 (three) years and a minimum fine IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah)". Further in Article 103 that "Everyone who produces B3 waste and does not carry out management as intended in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) year and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum a lot of IDR 3,000,000,000.00 (three billion rupiah)". If you look closely at the PPLH Law, sanctions The criminal penalties are stated quite clearly and emphatically.

Environmental cluster regulations in Law Number 11 of the Year 2020 concerning Job Creation, especially the elimination of criminal sanctions, is very inappropriate. This matter because, in the provisions for eliminating criminal sanctions, there is no choice it is possible for the effectiveness of administrative sanctions if the administrative sanctions are not not complied with. Although the authority to basically apply administrative sanctions is a discretionary power. The elimination of criminal sanctions in Law Number 11 of 2020 concerning Job Creation results in administrative sanctions does not have firmness in its supervision. Imposing internal administrative sanctions Article 82B of the Job Creation Law is classified as making it easier due to the imposition of sanctions administration is not followed by other sanctions for the violation. Besides that, The implementation of sanctions in Article 82 B of the Job Creation Law is considered less strict and too partial to business actors in terms of managing the environment. So that repetition of the action is very possible.

Criminal penalties are still thought to be the best and most effective way to deal with a crime, particularly when the crime involves a significant loss. Therefore, in this situation, the state must take action and respond to lawbreakers by applying suitable penalties that are relevant to the offense and the offender. The purpose of criminal law is to shield society from unlawful activities that result in losses or, at the very least, jeopardize legal rights. The community used the offender who received the punishment as an example to discourage others from copying and engaging in similar behavior. so that no one who has evaded criminal threats is responsible for environmental degradation or destruction.

Several examples of environmental pollution cases in Indonesia have highlighted the shortcomings of the implementation of environmental law regulations. For example, the tragedy of the Citarum River Flash Flood in 2013 which was caused by textile industry waste and mineral mines. This controversy shows how important the adoption of green technology and the integration of ethical values are in business operations. Companies proven to have committed environmental pollution can be subject to various administrative sanctions in accordance with the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management. The following are administrative sanctions that can be given:

1. Written Warning

The company will receive an official reprimand from the authorities as a warning to correct actions that are detrimental to the environment.

2. Suspension of Environmental Permits

If companies do not comply with applicable regulations, their environmental permits may be suspended. This means the company cannot continue operations until the problem is resolved.

3. Revocation of Business License

In serious or repeated violations, the company's business license can be revoked, permanently stopping all operational activities.

4. Government Coercion

This sanction includes several actions, such as

- Temporary Suspension of Production Activities: Companies may be forced to halt operations to prevent further damage.
- Relocation of Production Facilities: Companies may have to move potentially polluting facilities or equipment.
- Sewer Closure: If a sewage drain does not meet standards, the government can close it.
- Demolition: In some instances, polluting structures or facilities may be ordered to be demolished.
- Confiscation of Items: The government may confiscate items or tools that could cause violations.
- Cessation of All Activities: In an emergency situation, all company activities may be stopped to protect the environment.

5. Environmental Recovery

Companies are also required to carry out repairs for damage caused by pollution, and the costs of this recovery are the responsibility of the company.

These sanctions aim to encourage companies to manage their environmental impacts responsibly and to protect public health and environmental sustainability. The following are the company's responsibilities for environmental pollution based on Law Number 32 of 2009 concerning Environmental Protection and Management:

Civil Liability Compensation: Companies must pay compensation to parties who suffer losses due to environmental pollution. Administrative Responsibilities Revocation of Business License: A business license can be revoked if the company pollutes the environment. Suspension of Environmental Permit: Environmental permits can be frozen until the company meets the specified conditions.

Written Warning: The company may receive a written warning from the relevant authority. Government Coercion: The government can take coercive measures to prevent the continuation of activities that pollute the environment. Closure of Business Activities: Business activities can be closed if the company is proven to have committed an environmental crime. Confiscation of Profits: Profits obtained from criminal acts can be confiscated. Remedies for the Consequences of Criminal Acts: Companies must make reparations for the consequences of criminal acts that have been committed. Carrying out work that has not been completed without rights: Companies must work on work that has not been completed without them having rights. Placement Under Protection: Companies can be placed under protection for a maximum of 3 years.

Apart from that, companies must also carry out environmental mitigation and restoration, including: Providing Public Information: Informing the public about pollution. Pollution Isolation: Isolate the source of pollution. Stopping Sources of Pollution: Stopping sources that cause pollution. Environmental Restoration: Carrying out environmental restoration to restore its initial condition. All of these responsibilities aim to ensure that companies are responsible for losses and negative impacts arising from their activities on the Indonesian environment.

3. Conclusion

Disputes related to environmental pollution can be resolved through litigation in court or non-litigation. In practice, many cases are resolved through mediation or negotiation before being brought to court. However, if this process is unsuccessful, the injured party can file a lawsuit to seek compensation and environmental restoration. Environmental restoration is an essential aspect of corporate legal responsibility. In addition to paying compensation, courts can order companies to take specific remedial steps, such as improving waste management systems or restoring disturbed ecosystem functions²⁵. This shows that a company's responsibility is not only limited to financial compensation but also includes active efforts to repair the damage that has occurred.

In principle, every person responsible for a business and/or activity that commits an unlawful act in the form of pollution and/or destruction of the environment, which causes harm to other people or the environment, is obliged to pay compensation and/or take specific actions. Examples of court decisions show that a panel of judges can order companies to pay material and immaterial compensation and take environmental restoration measures such as installing waste management units or restoring disturbed ecosystem functions. Overall, the legal system in Indonesia provides a comprehensive framework for dealing with environmental pollution by companies, with an emphasis on civil, administrative, and criminal responsibilities in an effort to protect the environment and society.

References

- Absori, Absori, Muhammad Indra Bangsawan, Arief Budiono, and Fitriani Nur Damayanti. "Penyuluhan Dan Sosialisasi Uji Materi Undang-Undang Cipta Kerja Bidang Lingkungan." *Jurnal Altifani Penelitian Dan Pengabdian Kepada Masyarakat* 1, no. 2 (2021): 143–48. <https://doi.org/10.25008/altifani.v1i2.143>.
- Bida, Lusiana, and Ni Nengah Adiyaryani. "Perusakan Lingkungan Hidup: Bagaimana Tanggungjawab Korporasi Dalam Hukum Pidana?" *Kertha Semaya : Journal Ilmu Hukum* 10, no. 4 (2022): 727. <https://doi.org/10.24843/ks.2022.v10.i04.p01>.
- Febriyanti, Dwi, Sartika Nur Aini, Alya Vena Resta, and Raka Bagaskara P K P. "Fungsi AMDAL Dalam Pengendalian Kerusakan Dan Pencemaran Lingkungan Setelah Diundangkannya UU Cipta Kerja Abstrak A . Pendahuluan Menurut Undang Undang No . 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup lalah Sebuah Kesatuan Ruang De." *2021* 3, no. 2 (n.d.): 115–33.
- Rhiti, Hyronimus. "Tanggung Jawab Mutlak Dalam Penyelesaian Sengketa Lingkungan Hidup." *Justitia et Pax* 31, no. 2 (2017). <https://doi.org/10.24002/jep.v31i2.1343>.

Sodikin. "Penegakan Hukum Lingkungan Menurut UU No. 32/2009." *Kanun*, no. 52 (2009): 543–63.

Umboh, Mentari Novia. "Perlindungan Hukum Terhadap Masyarakat Dari Dampak Pencemaran Lingkungan Yang Dilakukan Oleh Perusahaan." *Lex Et Societatis* 8, no. 1 (2020): 109–16. <https://doi.org/10.35796/les.v8i1.28477>.