

CORPORATE CRIMES AGAINST NATURE: RETHINKING STRICT LIABILITY IN INDONESIAN ENVIRONMENTAL LAW

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ABSTRACT

This essay explores the issue of corporate liability in environmental degradation within the Indonesian legal framework, focusing on the application of strict liability as regulated in Law No. 32 of 2009. Although corporations are among the main contributors to environmental damage, legal enforcement remains weak and often ineffective. The concept of strict liability is essential to ensure accountability without the need to prove fault or negligence, yet its current implementation is limited to civil liability. This essay argues that expanding the use of strict liability to include criminal responsibility is necessary to deter environmental violations by corporations. It also highlights procedural obstacles, such as the lengthy judicial process and the imbalance in evidentiary burdens. The essay calls for legal reform, effective enforcement, and increased public involvement to strengthen environmental governance and ensure corporate accountability for environmental harm.

Keywords: *Corporate Liability, Strict Liability, Environmental Law, Environmental Damage.*

INTRODUCTION

Environmental laws target not only individual offenders but also corporations. However, Indonesia adopts relatively fine-oriented environmental laws, despite the low level of corporate participation in various environmental regulations. Corporations often refuse to consider environmental factors in their development and operations, resulting in extremely high levels of emissions, both in terms of quantity and the nature of pollution. Pollution arising from corporate production operations is usually far greater than that caused by individuals. The effectiveness of environmental law is determined not only by its criminal sanctions but also by the concept of criminal liability it applies. The concept of criminal liability is crucial, as environmental pollution or degradation can originate from corporate activities. A business entity (developer) involves many people with varying levels of job duties and responsibilities. In this regard, it is necessary to develop the concept of corporate liability, especially in cases of environmental pollution or damage caused by corporations. The purpose of this research is to examine and identify the extent of corporate liability for environmental damage, both in terms of punishment and compensation. Law enforcement on environmental issues plays a vital role in supporting environmental protection and management. However, environmental law enforcement is still considered suboptimal and below expectations. Reflecting on this, law enforcement clearly requires substantial evaluation and improvement. Solutions for improvement naturally involve various stakeholders and aspects. Environmental problems fundamentally involve environmental degradation. As noted by Wahana Lingkungan Hidup Indonesia, corporations, particularly those in extractive industries, remain the leading contributors to environmental destruction. Over time, corporations increasingly pursue profit maximization, which heightens their potential to negatively impact the environment. This phenomenon is inseparable from human life, as people rely on products manufactured by corporations.

DISCUSSION

Corporations now seem to dominate our lives—determining what we eat, watch, wear, do, and where we work. Society is enveloped by their cultural ideologies [1]. Similarly, large corporations dominate the global

economic system and determine many people's employment, food, drink, clothing, and other essentials, even posing threats to the governments of the countries where they operate. Corporate crimes in the environmental field—such as land/forest burning and large-scale natural resource exploitation—exacerbate the current environmental crisis and can lead to immense material and non-material losses. This is worsened by the difficulty in prosecuting and convicting corporate environmental offenders. Law enforcement is notably weak, as evidenced by environmental civil and criminal cases that take excessively long to process. Many corporations involved in environmental destruction or pollution delay execution by filing appeals and cassation. Meanwhile, polluted environments caused by corporations often remain unremediated, and polluters remain unaccountable. Law enforcement officers frequently overlook the ecological impacts of corporate-caused environmental damage. According to Clinard and Yeager [2], corporate crime refers to acts committed by corporations that can be punished by the state through administrative, civil, or criminal law. Law enforcement requires focused attention and legal authority—especially against companies responsible for environmental harm. The state also suffers significant losses from forestry-related crimes. If corruption is considered an extraordinary crime, forestry crime should be categorized as even more extraordinary, necessitating extraordinary enforcement efforts. In civil law enforcement, plaintiffs (the public) often experience not only material losses but also environmental damage. Thus, compensation should include not only financial reimbursement but also the restoration of damaged and polluted environments. In efforts to accelerate development, business entities (referred to as corporations) play a central role. Corporations have penetrated all aspects of life—agriculture, plantations, forestry, housing, telecommunications, automotive, banking, food and beverages, education, and even entertainment. In their production and business activities, corporations often neglect the environment, leading to significant pollution in both quantity and quality. Pollution from corporate operations typically exceeds that from individuals. To address corporate environmental crimes, policymakers revised Law No. 4 of 1982 with Law No. 23 of 1997 on Environmental Management, which was later replaced by Law No. 32 of 2009 on Environmental Protection and Management. This law provides criminal, administrative, and civil legal means to address corporate violations. Corporate criminal liability is regulated under Articles 116 to 120.

Article 116 (1) states that if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and sanctions shall be imposed on: a) the business entity; and/or b) the person who ordered or led the criminal activity. Paragraph (2) clarifies that if such offences are committed based on an employment or other relationship within the business entity's scope of work, the sanction shall fall on the order-giver or leader, regardless of whether the act was done individually or collectively. Article 116 anticipates corporations hiding behind contractual relationships. Thus, the responsible parties under Article 116(2) are those in command or making decisions, acting individually or together based on work or other relationships. In addition to regulating corporate liability, Law No. 32/2009 also adheres to the principle of strict liability, though it is limited to civil compensation, not criminal liability. This constitutes a *lex specialis* in tort law. Strict liability refers to absolute liability, requiring no proof of fault. The defendant can be found guilty merely by establishing that the prohibited act occurred—without examining intent. Unlike general criminal liability, which requires culpability (intent or negligence), strict liability only requires proof of knowledge and action. If the defendant was aware of potential harm to others (the state, society, etc.), this suffices for criminal liability. A crucial factor in strict liability is the burden of proof, which should fall on the party most capable of presenting evidence—in this case, the polluter (corporation). Based on the “polluter pays” principle, legal science has developed the concept of shifting (or alleviating) the burden of proof [3].

Therefore, intent or negligence is unnecessary to establish liability; the act causing environmental pollution is sufficient. Legal entities or corporations can be held criminally liable, particularly under strict liability, since it is difficult to assess corporate intent or negligence. Criminal punishment should follow from the commission of the act itself. Strict liability entails accountability without fault; a perpetrator can be convicted solely for committing a prohibited act, regardless of their internal mindset [4]. The application of strict liability progresses in stages, reflecting evolving societal needs. In environmental law, strict liability is applied through civil compensation for individuals and the public to ensure the continuity of environmental functions. The benefits of this principle include ensuring compliance with crucial regulations, and addressing the difficulty in proving corporate environmental offences. Courts that apply strict liability facilitate prosecution, so it should be recognized in both civil and criminal legal processes. The principle of strict

liability aligns with normative fault theory, which doesn't rely on psychological evidence like intent. Regulatory offences involving societal welfare and severe social harm support this approach. Although state responsibility is sometimes overlooked, it should not be treated as a "misplaced priority."

Strict liability systems shift the burden of proof from the injured party to the perpetrator. This is especially relevant in cases involving inherently dangerous industrial or commercial activities. Perpetrators must compensate for economic benefits gained from their crimes and cover investigation and environmental restoration costs. Civil law emphasizes "relativity" in legal matters (*relativiteit*). Liability for damages is fault-based, but the defendant may be relieved if they prove prudence through reverse verification (*omkering van bewijslast*) [5].

Applying strict liability in environmental cases must follow legal procedures and uphold human and environmental rights. Ted Honderich [6] emphasizes the preventive efficiency of criminal sanctions against corporations. Criminal sanctions are economical if: they genuinely prevent offences, they don't create worse consequences than non-enforcement, and no less harmful or costly alternatives exist. Criminal law must consider corporate characteristics and motivations. Gery Ferguson [7] outlines two perspectives:

Law and economics view: Companies are profit-driven and act criminally only if it's profitable. Therefore, effective deterrence requires companies to bear all social costs, including detection and prosecution. Financial penalties are the most effective sanctions.

Sociological view: Profit is a major but not exclusive goal. Corporations are composed of individuals whose personal interests (e.g., power, gain) may conflict with corporate rules, leading to offences. Non-financial sanctions are necessary for effective deterrence.

A key aspect of the criminal justice system is the burden of proof. During trial, the strength of evidence determines whether the defendant (corporation or individual) is acquitted or convicted. Hence, strict liability must be examined in relation to criminal liability and its evidentiary implications.

According to PROPER 2019 data from the Ministry of Environment and Forestry (KLHK), of 2,045 industrial companies in Indonesia: 26 received gold ratings, 174 green, 1,507 blue, 303 red, and 2 black. Thirteen companies were subject to law enforcement, and 20 were no longer operating. Although the number of red and black-rated companies declined compared to previous years, the remaining 305 still pose major environmental threats. Additionally, government policies continue to exploit natural resources with little regard for environmental consequences. Forest area conversions proceed without proper environmental impact assessments, increasing disaster risks.

Ongoing environmental damage, if unaddressed, could lead to even greater disasters. Francioni notes that while environmental risks are primarily caused by private industrial and technological actors, state oversight is essential. Therefore, the government must prioritize environmental protection over mere economic investment goals. Public participation in policy-making is also vital, as it informs decision-makers and reduces public opposition. Consideration of public objections leads to better legal protection.

Environmental harm and crimes include pollution, regulatory failures, corporate crime, workplace health violations, organized crime in toxic waste disposal, animal abuse, wildlife trafficking, and their human and ecological impacts. Relevant legal frameworks and enforcement strategies must be implemented accordingly. Environmental law governs human behavior towards the environment. Corporate environmental crimes result in significant material and non-material losses. While Law No. 32 of 2009 recognizes strict liability for corporate-caused environmental damage, Article 88 limits this to civil restitution. Meanwhile, criminal prosecution still follows the theory of fault. In cases of corporate environmental fraud, which should fall under strict liability, prosecutors should not be required to prove intent or negligence. Thus, the principle of strict liability facilitates prosecution in environmental criminal cases—eliminating the need to prove intent or motive behind corporate offences.

CONCLUSION

Tackling corporate environmental crimes in Indonesia requires a fundamental rethinking of legal accountability and enforcement. While Law No. 32 of 2009 offers mechanisms for civil restitution through the principle of strict liability, it still falls short in addressing the criminal dimensions of environmental harm caused by corporations. The persistent gap between environmental degradation and corporate accountability reflects not only weak law enforcement but also the inadequacy of fault-based approaches in prosecuting

corporate offenders. Given the complex structure of business entities and the scale of environmental harm they produce, expanding the scope of strict liability to include criminal liability is both necessary and urgent. This shift would ease the burden of proof for victims and ensure that corporations are not shielded by technicalities or delays. As environmental degradation intensifies, legal reform must prioritize ecological protection over economic expediency, ensuring that corporations are held fully accountable for their impact—materially, legally, and morally.

REFERENCES

- [1]R. Harshe, "Culture, Identity and International Relations," *Economic and Political Weekly*, vol. 41, no. 37, pp. 3945–3951, 2006, Accessed: Jun. 12, 2025. [Online]. Available: <http://www.jstor.org/stable/4418700>
- [2]M. Clinard and P. Yeager, *Corporate Crime*. in Law, Culture, and Society. Transaction Publishers, 2011.
- [3]H. C. Bugge, "The Polluter Pays Principle: Dilemmas of Justice in National and International Contexts," in *Environmental Law and Justice in Context*, J. Ebbesson and P. Okowa, Eds., Cambridge: Cambridge University Press, 2009, pp. 411–428. doi: 10.1017/CBO9780511576027.022.
- [4]V. Bergelson, "A Fair Punishment for Humbert Humbert: Strict Liability and Affirmative Defenses," *New Criminal Law Review*, vol. 14, no. 1, pp. 55–77, Jan. 2011, doi: 10.1525/nclr.2011.14.1.55.
- [5]M. Fikri, "Implementation of Strict Liability by Companies in Cases of Environmental Damage in Indonesia: An Overview of State Administrative Law in Indonesia," *Indonesian State Law Review (ISLRev)*, vol. 5, no. 2, pp. 41–52, Oct. 2022, doi: 10.15294/islrev.v5i2.47460.
- [6]T. Honderich, *Punishment*. Pluto Press, 2006. doi: 10.2307/j.ctt183q5s8.
- [7]G. Ferguson, *Global Corruption: Law, Theory and Practice Course Book*. in desLibris: Documents collection. Canadian Bar Association, 2015.