



The Concept of Liability Without Fault in Environmental Dispute Resolution in Indonesia

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Abstract This study aims to analyze the application of the concept of liability without fault in resolving environmental disputes in Indonesia, by highlighting the legal basis, implementation, and challenges faced. The method used is a conceptual approach to examine relevant regulations and court decisions in order to obtain legal clarity regarding absolute responsibility in environmental pollution cases. The results of the study indicate that although this principle has been regulated in Article 88 of UUPPLH No. 32 of 2009 and reinforced by various derivative regulations, its implementation still faces obstacles, especially in terms of law enforcement, supervision, and compliance of business actors in carrying out environmental restoration obligations. Therefore, it is necessary to strengthen regulations, increase the capacity of law enforcement officers, and implement environmental assurance mechanisms to ensure the effectiveness of liability without fault in environmental protection in Indonesia.

Keywords: Dispute, Environment, Liability Without Fault

1. BACKGROUND

Industrial development and massive exploitation of natural resources in Indonesia have significant environmental impacts. Environmental damage caused by industrial activities, mining, and infrastructure development often leads to disputes between business actors and affected communities (Arifin, 2022) . Environment, liability mechanisms are an important aspect in resolving disputes that arise. One concept that is widely applied in environmental dispute resolution is *liability without fault*, which allows the party causing the damage to be liable without having to prove the element of fault (Nurlaily & Supriyo, 2022) .

According to Siagian et al., (2024) the concept of *liability without fault*, otherwise known as absolute responsibility, is a legal approach applied in environmental cases in various countries, including Indonesia. This principle aims to accelerate the environmental recovery process and provide justice for affected communities without having to go through the often complex process of proving fault. The application of this concept is based on the understanding that environmental damage must be restored immediately and the perpetrators of potentially damaging activities must be fully responsible for the consequences, regardless of the presence or absence of elements of fault.

In Indonesia, the concept of *liability without fault* is regulated in various laws and regulations, especially in Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) (Mahardika, 2022) . Article 88 of the law emphasizes that every party

who carries out activities that have a serious impact on the environment is responsible for the losses incurred, even though there is no element of fault in their actions. This provision places the principle of absolute liability as one of the legal instruments in resolving environmental disputes.

The application of the principle of *liability without fault* in the environmental context has several main objectives. First, this principle encourages prevention and caution in carrying out activities that have the potential to damage the environment. Second, this concept provides legal protection for people affected by environmental pollution or damage. Third, this principle allows for faster and more effective environmental restoration without having to go through a long and complex process of proving fault (Wongkar, 2024). Thus, strict liability is an effective mechanism in ensuring justice for victims and environmental sustainability.

The implementation of *liability without fault* in Indonesia's environmental legal system still faces various challenges. One of the main challenges is weak law enforcement and uncertainty in the implementation of the rules (Arbani et al., 2022). Many environmental pollution cases are not resolved properly due to weak supervision and low compliance of business actors with environmental regulations. In addition, limited public access to environmental justice is also a significant obstacle in holding pollution perpetrators accountable (Arifin, 2022).

The concept of *liability without fault* also raises debates about justice for business actors. Some parties argue that this principle can burden business actors who do not intend to pollute the environment, but must still be responsible for the damage that occurs (Kusuma, 2022). Therefore, a balance between environmental interests, legal certainty, and economic sustainability is needed to effectively apply this principle.

In practice, several environmental pollution cases in Indonesia have applied the principle of *liability without fault* in their settlement (Akib et al., 2023). Examples of prominent cases are oil pollution in the Java Sea involving international oil and gas companies, as well as industrial waste pollution cases that damage river ecosystems in various regions. These cases show that the concept of strict liability can be a powerful legal instrument in upholding environmental justice (Romsan et al., 2019). However, its effectiveness is highly dependent on the commitment of the government and law enforcement agencies in enforcing existing regulations.

The importance of the application of *liability without fault* in environmental dispute resolution lies not only in the legal aspects, but also in the social and economic impacts caused (Nurlaily & Supriyo, 2022). Environmental damage that is not immediately addressed can

have long-term impacts on society, such as loss of livelihoods, increased health risks, and decreased quality of life (Siagian et al., 2024) . Therefore, the application of this concept must be supported by firmer policies, transparency in law enforcement, and increased community capacity in accessing environmental justice.

This study aims to analyze the concept of *liability without fault* in environmental dispute resolution in Indonesia. This study will discuss the legal aspects underlying the application of this principle, the challenges faced in its implementation, and recommendations to improve the effectiveness of this concept in protecting the environment and affected communities. Thus, this study is expected to contribute to the further development of a more responsive and equitable environmental law policy in Indonesia under the title "The Concept of Liability Without Fault in Environmental Dispute Resolution in Indonesia".

2. RESEARCH METHODS

This research uses a *conceptual approach* to obtain clarity and scientific justification regarding *liability without fault* in environmental dispute resolution in Indonesia. In addition, this research refers to various legal documents, court decisions, and academic literature that discuss absolute liability in environmental law. The study of national and international regulations is conducted to compare how the concept of *liability without fault* is applied in various jurisdictions and how it is relevant in the Indonesian legal context. With this method, the research is expected to provide a deeper understanding of the legal basis, implementation, and challenges in applying the principle of absolute liability in environmental dispute resolution in Indonesia (Sembiring et al., 2023) .

3. DISCUSSION

The Concept of *Liability Without Fault* in Environmental Law

The concept of *liability without fault* in environmental law is based on the principle that a person or legal entity can be held liable for environmental pollution or damage without the need to prove fault. *Liability without fault* removes the burden of proof on the plaintiff, which in most cases is the affected community or the government as a representation of the public interest (Kochashvili, 2023) . Thus, this concept places businesses or entities that carry out high-risk activities as the party that must bear the legal consequences of any pollution that occurs, without the need to prove the element of intent or negligence.

Normatively, the principle of *liability without fault* has been adopted in the Indonesian legal system through Article 88 of Law Number 32 of 2009 concerning Environmental

Protection and Management (UUPPLH), which explicitly states that every party carrying out a business or activity with a major risk to the environment is responsible for all forms of pollution or damage caused without the need to prove the element of fault (Mahardika, 2022) . This provision is based on the characteristics of environmental pollution which is often cumulative, where the impact can only be felt after a certain period of time, so that the mechanism for proving the element of fault can be a serious obstacle in environmental recovery efforts.

The implementation of *liability without fault* in environmental law in Indonesia can be seen in several major cases, such as cases of water pollution by the palm oil industry, ecosystem damage due to illegal mining, and environmental disasters involving large companies such as the Lapindo mud case (Wongkar, 2024) . However, the implementation of this principle still faces challenges, especially in the aspects of law enforcement and compensation mechanisms that are often not optimal in providing justice for victims of pollution (Nurlaily & Supriyo, 2022) . Therefore, strengthening regulations and harmonization with international legal standards are necessary steps to increase the effectiveness of the concept of *liability without fault* in resolving environmental disputes in Indonesia.

Legal Basis and Regulations in Indonesia

Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is the main basis for the application of liability without fault in Indonesia. Article 88 of UUPPLH states that every party whose activities result in environmental pollution or damage is absolutely responsible, without the need to prove the element of fault (Rokilah, 2020) . With the principle of *liability without fault*, environmental recovery can run faster, because the victim is not burdened with the obligation to prove the element of fault of the perpetrator of pollution.

In addition to the UUPPLH, the application of absolute responsibility is also strengthened by various government regulations and policies that support its implementation. Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management, for example, further regulates the mechanism of environmental responsibility and recovery due to pollution (Silalahi, 2020) . In addition, Minister of Environment and Forestry Regulation No. P.7/2021 emphasizes the importance of legal instruments in ensuring that companies proven to cause environmental damage are obliged to pay compensation and carry out ecosystem restoration. This regulation makes it clear that in cases of scientifically proven pollution, the perpetrator cannot avoid its responsibility on the grounds that there is no element of fault.

The application of this concept has also been confirmed through various court decisions that serve as legal precedents. For example, in the Citarum River pollution case (Bandung State Administrative Court Decision No. 21/G/LH/2019/PTUN.BDG), the court affirmed that companies proven to cause pollution are obliged to pay compensation and implement environmental recovery programs without the need to prove the element of fault (Muhtada & Diniyanto, 2021) . Similarly, in the Lapindo Mud case (Supreme Court Decision No. 34 P/HUM/2011), where the Supreme Court rejected PT Lapindo Brantas' argument that the incident was a natural disaster, and still stipulated the obligation of environmental restoration and compensation for affected communities (Rokilah, 2020) . This precedent strengthens the position of liability without fault as an effective legal instrument in handling environmental disputes in Indonesia.

Implementation of *Liability Without Fault* in Environmental Dispute Resolution

The implementation of *liability without fault* in environmental dispute resolution in Indonesia has been applied through various legal mechanisms, both in civil, criminal, and administrative courts. In civil court, this principle allows victims of environmental pollution to claim compensation without having to prove the fault of the perpetrator, as applied in the cases of pollution of the Citarum River and Lapindo Mudflow (Arifin, 2022) . Meanwhile, in administrative justice, the government can directly impose sanctions in the form of fines or environmental restoration orders to companies proven to pollute, as stipulated in Government Regulation No. 22 of 2021 (Siagian et al., 2024) .

In addition to judicial proceedings, non-litigation approaches are also widely used, such as dispute resolution through mediation facilitated by the Ministry of Environment and Forestry (KLHK) and local governments. This approach aims to accelerate the environmental restoration process without going through a lengthy court process (Arifin, 2022) . However, the effectiveness of the implementation of *liability without fault* still depends on the assertiveness of law enforcement and the government's commitment in ensuring that every polluter is fully responsible for the environmental impacts caused.

Challenges and Weaknesses in Implementing the *Liability Without Fault* Concept

Although the principle of *liability without fault* has been regulated in Indonesian legislation, its application still faces various challenges and weaknesses. One of the main challenges is the weak law enforcement due to the lack of coordination between relevant agencies and the low capacity of the authorities in handling environmental pollution cases (Arbani et al., 2022) . In addition, many business actors try to avoid responsibility by utilizing legal loopholes or claiming that the pollution is the result of natural factors (Suud, 2023) . This

was seen in the Lapindo Mud case, where the company initially argued that the mudflow was a geological disaster, although it was eventually required to pay compensation.

Another weakness is the difficulty of ensuring effective payment of compensation and environmental restoration. Many companies are found liable in court decisions, but do not immediately implement their obligations or instead declare bankruptcy to avoid sanctions (Suud, 2023) . In addition, limited funds for compensation and environmental guarantees are also a major obstacle in the implementation of this concept. The lack of transparency in monitoring and evaluating environmental recovery after pollution occurs also results in a lack of accountability in the application of liability without fault.

Recommendations for Strengthening the Implementation of *Liability Without Fault*

To increase the effectiveness of *liability without fault*, it is necessary to strengthen regulations and law enforcement mechanisms. One of the main steps is to clarify the mechanism of proof and responsibility in the implementing regulations, including in PP No. 22 of 2021 and other derivative regulations, so as not to provide space for business actors to avoid responsibility (Rokilah, 2020) . In addition, there needs to be an increase in the capacity of law enforcement agencies, both at the national and regional levels, so that they can be faster and more assertive in handling environmental pollution cases.

In terms of supervision, the government needs to tighten the application of environmental guarantees and recovery funds, so that companies with a high risk of causing pollution are required to set aside funds from the start for mitigation costs (Muhtada & Diniyanto, 2021) . In addition, the use of technology in environmental monitoring, such as sensor-based surveillance systems and satellite imagery, can accelerate the detection of pollution and ensure that perpetrators are held accountable without delay. Finally, transparency in the implementation of sanctions and environmental restoration must be strengthened through the involvement of the public and independent institutions so that the principle of *liability without fault* can truly be applied effectively in resolving environmental disputes in Indonesia.

4. CONCLUSIONS

The concept of *liability without fault* in environmental dispute resolution in Indonesia has an important role in ensuring that the party causing pollution is fully responsible without the need to prove the element of fault. A strong legal basis, especially in Article 88 of UUPPLH No. 32/2009, has provided a foundation for the application of this principle, which is reinforced by derivative regulations and court decisions. However, challenges in implementation are still significant, especially in the aspects of law enforcement, compliance of business actors, as well

as the effectiveness of compensation mechanisms and environmental restoration. To improve the effectiveness of this concept, it is necessary to strengthen regulations, increase the capacity of law enforcement officers, and implement stricter environmental guarantee mechanisms. With these steps, the principle of *liability without fault* can be more optimal in protecting the environment and upholding justice for communities affected by pollution.

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