



## **INTEGRATION OF THE ENVIRONMENTAL REGULATIONS AND NATIONAL CRIMINAL CODE AND TOWARD ACCOUNTABILITY CRIMINAL LAW**

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### **ABSTRACT**

Study This aim For know How provision action criminal post Constitution environmental cluster job creation life as well as accountability absolute on action criminal Constitution Environment, as well as integration in the National Criminal Code. As for the research This use method juridical-normative, so that can concluded : 1). Action criminal (strafbaar feit) which includes each person is an individual or business entity, whether incorporated law or not bodied law according to Constitution Environment. Among others, Articles 98-120, acts without own legal permits / approval by the government, the occurrence of victims/ damage health, safety environment, officials who do not do supervision, and subjects law corporation, then on action criminal the including action criminal 2). Footing problem error in Constitution this is what is deviant from principle error with use accountability criminal absolute, has There is in a way juridical in National Criminal Code Article 37a, and formulated in the Job Creation Law cluster environment life as strict liability the one who is asleep in Article 88, and vicarious liability ( National Criminal Code Article 37b, and Article 116 of the Job Creation Law Upper LH cluster accountability substitute), besides criminal, there are also dropped criminal addition or action in the Environmental Law life.

### **KEYWORDS**

environmental protection;  
national criminal code; strict  
liability

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### **INTRODUCTION**

Environment good and healthy life is right basic every Indonesian citizens as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. So that guarantee environment green life is right citizenship and the obligations of the state in management environment life and resources Power nature. (Rachmad Safa'at, 2022) . The environment is unity repeat with all objects, forces, circumstances, and beings life, including humans and their behavior, which influences natural That alone, continuity life and well-being man as well as creature other lives. Protection and

Management The Environment is effort systematic and integrated manner For preserve function Environment and prevent occurrence pollution and/ or damage The Environment which includes planning, utilization, control, maintenance, supervision and enforcement law. (Republic of Indonesia, 2023) .

Pollution Environment comes in or inclusion creature life, matter, energy, and/ or other components to in Environment by activities man so that exceeding the Environmental Quality Standards that have been established. Pollution The Environment is enter or inclusion creature life, matter, energy, and/ or other components to in Environment by activities man so that exceeding the Environmental Quality Standards that have been determined. Damage The Environment is change directly and/ or No direct to characteristic physical, chemical, and/ or biological Environment that transcends Standard Criteria for Damage Environment.

Hazardous and Toxic Materials which are next abbreviated as B3 is substances, energy, and/ or other components because nature, concentration, and/ or the amount, well in a way direct and No directly, can pollute and/ or damage Environment, and/ or endanger Environment, health, and continuity life humans and creatures another life. (Republic of Indonesia, 2023) .

Problems environment life is many problems happened in Indonesia and has not resolved. Problem This will increasingly critical when weather extreme hit Because bring significant impact like overflowing river or landslide. Problem environment life on purpose and No intentional caused by activities human beings who do not notice sustainability environment. Problems the caused by activities scale big like mining and pollution activity industry. Requires business integrated from on to lower and lower to on For overcome it, from policies made from people who obey it. There are some problem environment frequent life happen in Indonesia, reported from various source. First, river pollution, logging forests, and abrasion (Rachmad Safa'at, 2023a)

The Newmont case is one of them from Lots crime companies that occur in Indonesia. Policy investment by the government that provides concession for foreign investors For exploit source experience has bring impact on safety humans and systems environment surrounding areas, such as what happened to the citizens of Buyat Beach Gulf. Failure the Indonesian government to request not quite enough answer from Newmont Minahasa Raya Company shows weakness the position of the country when face company foreigners. In the name of ' climate' investment ', they can pressing a country to cancel the legal process that was carried out. A valuable lesson from Newmont case can used by the government For prevent and minimize impact negative and maximize impact positive at a time from activity company mining in Indonesia. (Lutfillah, 2011)

Leave matter, srtikel This will review How provision action criminal environment life post change existence Job Creation, and how usage *strict liability* implemented in law criminal environment based on regulation legislation.

## RESEARCH METHODS

Study This is study normative normative, which is done For inspect material library or secondary data obtained in a way No straight away, good related literature and regulations with the problem being researched. (Soekanto, 2006) . Research This use approach conceptual approach law. (Peter Mahmud Marzuki, 2010). Main data in study This is secondary data obtained through studies literature.

## RESULTS AND DISCUSSION

### 1. Provision Criminal Law in Law Number 6 of 2023 Concerning Job Creation Changes to the Law Number 39 of 2009 Concerning Management and Protection Environment

Action terms criminal used as substitute for " *strafbaar feit* ". In Indonesia it is found another term that is also meant is " *strafbaar*" *feit* : For example : Event crime, act criminal, an act that can be punished, action criminal. Forming Constitution according to Sudarto Already rather still, in usage the term " action" criminal law ". Scholars law Indonesian criminal law is still maintain the term he chose alone, for example Muljatno, the Professor of Gadjah Mada University, considers more appropriate used term : action criminal. He argues that " the act That is a situation created by someone or goods something that is done". Furthermore said : " This (deed), pointing good in the consequences or which gives rise to due to. E. Utrecht using term Behavior insider behavior public No nature voluntary, but rather disciplined by a network the rules that exist in society. (Rochmani et al., 2024) .

Environment life in Article 1 number 1 of the Law Number 32 of 2009 concerning Protection and Management The next environment abbreviated as UU PPLH, defined as unity objects, forces, circumstances, and beings life, including humans and their behavior, which influences natural That alone, continuity life and well-being man as well as creature life others. Meanwhile that, act criminal law in the field of management and protection environment life is every threatened act criminal as crime or violation in accordance provision the listed crimes in laws in the field of management and protection environment life. (Cahya Devi, 2021) . " Every person is an individual or business entity, whether incorporated law or not bodied law ".

Article 109

Every person who does business and/ or activity without own :

- a. *Licensing Try or agreement Central Government, or Regional Government as intended in Article 24 paragraph (5), Article 34 paragraph (3), or Article 59 paragraph (4);*
- b. *agreement from Central Government or Regional Government as intended in Article 20 paragraph (3) letter b; or*
- c. *agreement from Central Government as intended in Article 61 paragraph (1), which resulted occurrence of casualties/ damage to health, safety, and/ or Environment, punished with criminal imprisonment for a minimum of 1 ( one ) year and a maximum of 3 ( three ) years and criminal a fine of at least Rp. 1,000,000,000.00 ( one billion rupiah) and a maximum of Rp. 3,000,000,000.00 ( three billion rupiah) billion rupiah).*

Article 110 is deleted.

Article 111

*Official giver Agreement The publishing environment Agreement Environment as intended in Article 24 paragraph (4) and Article 34 paragraph (3) without equipped with Amdal or UKL-UPL shall be punished with criminal imprisonment for a maximum of 3 ( three ) years and*

*criminal a maximum fine of IDR 3,000,000,000.00 ( three billion rupiah).*

#### Article 112

*Every officials authorized with on purpose No do supervision to obedience guarantor answer business and/ or activity to regulation legislation and licensing Try or agreement Central Government or Regional Government as intended in Article 72 which results occurrence Pollution Environment and/ or Damage Environment that results in disappearance life man convicted with criminal imprisonment for a maximum of 1 ( one ) year or criminal a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).*

There are two types the offenses contained in the UUPPLH are action criminal material and action criminal formal. Action criminal or The crimes contained in Articles 98-99 of the UUPPLH are grouped as offense material. Crime This believe principles error, where the use of dropping criminal to the suspect must proven more Formerly the presence of error. Articles 100-108 of the UUPPLH are grouped as offense formal. (Hayya et al., 2023) . Offense formal, namely the formulation of the crime focuses on actions ( handling ), without requires occurrence consequence from actions said. Crime finished with he did deeds and not wait emergence consequences. (Santoso, 2023) . In the crime formal, consequences happen No is condition completion crime, so that the consequences that arise No need existence.

## 2. Impact and Criticism

A number of issues raised from experts and practitioners related change This :

- a. Decriminalization.  
Because the article that was "de- licated " namely from offense formal become material, meaning if No there are victims/ damage / impact to health / safety / environment, violations permission Possible No will convicted.
- b. Restrictions from side officials giver permission.  
The changes to Article 111 mean the issuing official permission business / activity without permission environment Formerly Can convicted, now only officials giver agreement publishing environment Agreement Environment without AMDAL/UKL-UPL. Some permission previous businesses / activities are also included Possible now No.
- c. Claim proof consequence.  
If the element " causes casualties/ damage" to health, safety, and/ or environment live " to be conditions, then burden proof become more high. This can make things difficult enforcement law criminal environment in practice.

Job Creation Law changes a number of articles in the PPLH Law that regulate action criminal environment live. Some previous offense offense formal (sufficient) violate permission, although Not yet happen damage /victims) now become offense material ( must There is consequences : damage, victims, impact to health, safety, or environment ) for Can ensnared criminal. So Article 109 (amended) Business/ activity without permission environment or agreement, now convicted If There is consequences (crime material) that drips focus on the consequences that occur namely example in the form of victims/ damage to health, safety and/ or environment.

### 3. **Strict Liability in Law Number 6 of 2023 Central Job Creation Changes to Clusters Constitution Environment As Integration of the National Criminal Code ( Law Number 1 of 2023)**

*Strict liability* as form accountability criminal offenses that are not require existence error for perpetrator action criminal. In the context of this, someone can convicted solely Because has do acts prohibited by law, though without proven existence intentional or negligence. This is as form deviation from principle error as per Criminal Law. With words other, the person must can accountable on his actions or If seen from corner his actions, must can accountable to that person.

At the point this, in law criminal taught valid what is called the principle of "No Criminal Punishment" Without Error" ( *Kene Strafe Ohne Schuld*) or basically built on principle error (*green staff zonder Schuld or Nulla Poena Sine Cula (Culpa)*" here in a broad sense covering intention), namely somebody only can convicted If There is proven error through element intentional (*dolus*) or negligence (*culpa*). (Sudarto, 2014) . Enforcement principle error this is also already listed in the National Criminal Code article 36.

However, developments law can show existence deviation or possible from principle error the through draft accountability criminal absolute / without error (*strict liability*). This has in a way firm formulated in the National Criminal Code (KUHP) as foothold in embodiment existence principle deviation error as implementation *Strict Liability* stated in the Criminal Code Article 37a of the Law Number 1 of 2023 concerning National Criminal Code. However principle the must listed in a way firm in legislation for example in Constitution Environment.

In Indonesia, the concept This start known in a number of Constitution special, especially those related to with protection interest general, environment live, and safety society. Concept This develop from doctrine Anglo-Saxon law, which later adopted to in law positive in various countries, including Indonesia, for interest certain things that are considered vital.

Constitution Number 32 of 2009 concerning Protection and Management Environment Law (UUPPLH) Article 88 states that : (Republic of Indonesia, 2009)

*"Everyone whose actions cause pollution and/ or damage environment life must bear change losses and costs recovery, although without existence error "*.

Post change existence Constitution Job Creation chapter This Still exist However There is change phrase as below This :

Article 88 (CIPTAKER Law)

*" Everyone whose actions, efforts, and/ or his activities using B3, producing and/ or manage B3 waste, and/ or that which causes Threat Are you serious to Responsible Environment answer absolute on losses incurred from business and/ or his activities."*

Although the article above No formulated existence error, but principle strict liability close with draft accountability absolute which indeed where the same very without must proven error. So that in Constitution Job Creation more focusing on the losses experienced by the community on actions carried out by business entities to its activities.

Whereas draft this is very good For maintaining sustainability life society who are

victims. Elements in *Strict Liability* loaded in Article 35 paragraph (1) of the Management Law The Environment is :

- a. A actions or activity
- b. Cause impact big and important to environment
- c. Use or produce materials / waste dangerous and poisonous;
- d. Responsible Java arise in a way absolute responsibility answer in a way directly and immediately at the time of pollution / destruction environment. (NHT Siahaan, 2004)

On the other hand, Article 37 of the National Criminal Code (Law 1 of 2023) states "In the event of determined by law, everyone can : (Republic of Indonesia, 2023)

- a. *Convicted solely Because has fulfilled it elements Criminal Act, without notice existence error ; or (Strict Liability)*
- b. *Asked accountability on Action Crime committed by another person (Vicarious Liability )*

In our National Criminal Code still recognizes two forms exception namely principle accountability absolute ( *strict liability* ) and principles accountability vicarious liability. In the context of accountability absolute, perpetrator action criminal can convicted If element action criminal has fulfilled without notice error. In other words, someone can asked accountability criminal If all over formulation offense proven without consider aspect intentional or negligence. The Supreme Court has too confirm principle This through decision Number 297 PK/ Pdt /2024, which states not quite enough answer absolute Enough proven with emergence losses and relationships causality. However important noted, good accountability absolute and accountability replacement only can applied in action criminal certain, which has been mentioned in a way firm in laws, one of which is Law No. 32 of 2009 concerning Protection and Management Environment. (Hardhika, 2025) .

#### **4. Vicarious Liability in Law Number 6 of 2023 Central Job Creation Changes to Clusters Constitution Environment As Integration of the National Criminal Code ( Law) Number 1 of 2023)**

Next, accountability replacement is expansion not quite enough answer criminal somebody up to the action his subordinates who did work or actions for him, or who still within the limits of his orders. In the National Criminal Code, the Law Number 1 of 2023, Article 37 letter b, states that : *Requested accountability on Action Crime committed by another person (Vicarious Liability )*

This is also a harmony that is in the Environmental Law life, for example Article 116 on accountability corporations and accountability replacement reads :

*(1) If action criminal environment life done by, for, or on behalf of business entity, demands criminal and sanctions criminal dropped to :*

*a. business entity ; and/ or*

*b. the person who gives order For do action criminal the or the person who acts as leader activity in action criminal the.*

*(2) If action criminal environment life as referred to in paragraph (1)*

*carried out by people, based on connection Work or based on connection others who act in scope business entity work, sanctions criminal dropped to give order or leader in action criminal the without notice action criminal the done in a way Alone or together.*

Article 117 existence in weighting criminal :

*If the claim criminal submitted to give order or leader action criminal as intended in Article 116 paragraph (1) letter b, threatens the sentence imposed in the form of criminal imprisonment and fines aggravated with one third.*

Article 118

*To action criminal as intended in Article 116 paragraph (1) letter a, sanctions criminal dropped to a business entity represented by an authorized administrator representing inside and outside court in accordance with regulation legislation as perpetrator functional.*

Article 119 Criminal Code Addition

*Apart from criminal as intended in Constitution this, towards business entities can charged criminal addition or disciplinary action in the form of :*

- a. confiscation profits earned from action criminal ;*
- b. closing all over or part place business and/ or activity ;*
- c. repair consequence action criminal ;*
- d. obligation work what is neglected without rights ; and/ or*
- e. placement company below The longest tenure is 3 ( three ) years.*

Article 120

*(1) In implementing provision as intended in Article 119*

*letter a, letter b, letter c, and letter d, prosecutor coordinate with agencies that responsible answer in the field protection and management environment life For carry out execution.*

*(2) In implementing provision as intended in Article 119*

*letter e, Government authorized For manage the business entity that was sentenced sanctions placement below guardianship For carry out decision the court that has powerful law still.*

Article 37 of the National Criminal Code determines *Strict Liability* and *Vicarious Liability*.

Viewed from, placement, second matter This become identical with accountability absolute and responsibility substitute. With *strict liability* so proven elements action criminal has viewed Enough For to punish the defendant, without notice existence error. Due to the

existence of draft *strict liability absolute* ) in addition For ensure protection law in aspect law environment but also oriented towards one when happen case environment more easy For advocate law in realize right upper citizens environment life and resources Power nature. (Rachmad Safa'at, 2024) . In perspective enforcement law, *strict liability*, as form in carry out means enforcement a safe and protected environment by the system law criminal Good sub - systemically material ( rules) criminal / witness criminal ) in law criminal, sub- system formal criminal, sub- system functionalization law criminal offenses that result in For uphold law criminal. Because when one of the sub- systems No Can stand upright, then other sub- systems are needed as support in enforcement law criminal.

*Strict Liability* as system the law that deviate from teachings principle error, but will make things easier in obstacles experienced party sufferers can minimized For prove without There is direct error in the existence of loss. With that's how it is can taken as the thing that profitable the victim is in a way assumptive the maker stated responsible answer, regardless from whether He guilty or No is meaning from strict liability principle. *Strict Liabilities* There is For overcome limitations doctrine traditional that is accountability criminal based on error in anticipate activities that contain risk important or big (*significant risk*). Because in pollution and/ or company environment sometimes there are possibility reason double (*multiple causes*). Condition kind of this is very difficult seeker justice or the parties who are truly harmed in put forward evidence technical so that when perpetrator action protected crime in receptacle oligarchy that controls governance environment life and resources Power the abundant nature in Indonesia does not Hana just powerful people as holder control, but more from That need existence absolute responsibility For ensnare perpetrator action criminal as accountability criminal because carried out by the party ruler. (Rachmad Safa'at, 2023b) . In other words if felt by those who do not fair, then while parties harmed by waste industry big required does not prove either error from industry *Strict liability* if entered in legislation (Environmental Law ) in general more clear, then He will own implications dire consequences perpetrator industry in the field environment. (Bagus et al., 2016)

A number of bachelor law put forward about objective law criminal, namely : (Novia Kusumastuti IP and Astri Dyah Utami, 2014)

- a. For don't scare people until do crime, good with to scare the crowd (*generale preventie*), as well as in a way scare certain people who have already operate crime, so that in the future day No do crime again ( *special prventie* );
- b. For educate or improve those who like do evil in order to be a good person his habit, so useful for society ;
- c. For prevent he did action criminal law for the protection of the state, society and residents, namely :
- d. For guide the convict realize and become member a civilized society good and useful ;
- e. For remove stains caused by acts criminal.

Implementation *strict liability* in law Indonesian criminal law shows existence development draft accountability more criminal wide from just principle errors. Some Constitution special has adopt it For interest protection environment, consumers, health and safety public. However Thus, the concept This must positioned as exceptions, not as principle

general, so as not to be contradictory with principle based law criminal. With Thus, *strict liability* in Indonesia works as instrument modern law which is of a nature preventive and protective, at the same time confirm not quite enough answer perpetrator to risks involved from his activities.

## CONCLUSION

Implementation provision criminal arranged in Constitution Environment life and existence accountability absolute (*strict liability*) in action criminal environment life as arranged in Law No. 32 of 2009 concerning Protection and Management Environment (PPLH Law ) and amended in the Job Creation Law which is form accountability absolute that is not requires proof error. This is intended For strengthen protection environment from damage consequence activity business and actions man.

In the National Criminal Code (Law No. 1 of 2023), the concept of strict liability has been arranged in a way explicit, Article 37, principle similar can found in the provisions certain that emphasize accountability without need proof error full, but must formulated clear and firm in law. Differences fundamental lies in the orientation : the PPLH Law focuses on the principle caution (*precautionary principle*) and protection environment, while the National Criminal Code is more emphasize certainty law criminal in a way general. With Thus, strict liability is in law environment living in Indonesia still nature sectoral and there are get certainty law as integrated footing in system law criminal general as arranged in the National Criminal Code.

Study This give recommendation existence shift paradigm accountability criminal from the beginning based nothing criminal without the error as fundamental principles of law criminal but also can done deviation origin in legislation determined with firm as *strict liability* in field environment live. Another novelty is existence harmonization law criminal sectoral in the field environment and the National Criminal Code in frame give certainty law at a time guard sustainability environment life.

Recommendation For Study Furthermore is :

1. Analysis Comparative : Need done study comparison application of strict liability in law environment in other countries ( for example the Netherlands, the United States, or Japan ) for see possibility more adoption comprehensive in Indonesia.
2. Empirical Study : Research to front should study How application of strict liability by the courts, including constraint in proof, implementation sanctions, and their effectiveness in prevention action criminal environment.
3. Integration with the National Criminal Code: in focus on accountability corporatization as effort harmonization rule sectoral (PPLH Law) with the National Criminal Code so that it does not happen dualism or uncertainty in enforcement law criminal environment.
4. Strengthening the Principle of Prudence : Necessary investigated How principle *precautionary principle* and *strict liability* can expanded to other sectors ( for example health, food, energy ) for strengthen protection interest general.

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