

Environmental Disputes Without The Principle Of Strict Liability After The Job Creation Law Regime

Lalu Aria Nata Kusuma¹

¹ Faculty of Law, University of Mataram, E-mail: arianata@unram.ac.id

ARTICLE INFO	ABSTRACT
<p>Keywords: Job Creation Law; Strict Liability; Environmental Disputes; Liability Based on Fault.</p> <p>How to cite: Lalu Aria Nata Kusuma . (2023). Environmental Disputes Without The Principle of Strict Liability After The Job Creation Law Regime. <i>Veterans Law Review</i>. 6 (1). 92-104.</p> <p>Received: 2022-09-06 Revised: 2022-09-15 Accepted: 2023-06-14</p>	<p>The 1945 Constitution of the Republic of Indonesia in Article 28 H paragraph 1 states that a good and healthy environment is a human right and a constitutional right for every Indonesian citizen. The form of environmental protection is then accommodated, one of which is in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) through the Strict Liability principle or what is called absolute responsibility for every party who pollutes and destroys the environment caused by Hazardous and Toxic Materials (B3) and B3 waste without the need for proof of the element of error first. However, after the enactment of Law Number 11 of 2020 concerning Job Creation, absolute responsibility for perpetrators of environmental destruction has disappeared due to the abolition of the phrase "without the need for proof of the element of fault" so that accountability is based on fault (liability based on fault). The purpose of this study was to determine the impact of the abolition of the principle of strict liability in the settlement of environmental disputes in Indonesia. The research method used is normative legal research using statutory, conceptual, and case approaches. Based on the results of the study, it is shown that the abolition of strict liability in the PPLH Law will burden victims in environmental disputes, especially ordinary people, to ask for accountability because of the complexity of proving the element of error in industrial activities that use high technology and is directly related to B3 (ultrahazardous activity and abnormally dangerous).</p>

1. Introduction

If we look at the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is clearly stated in the fourth paragraph that the purpose of the state is to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare. The formulation aims as a guide and guiding star in carrying out state life based on Pancasila as the legal ideals of the Indonesian nation (*rechtsidee*).¹ One form of protection for the entire Indonesian nation which later received special attention is the protection of the environment. The actualization of the realization of sustainable environmental protection in

¹Aziz, A. S. (2019). "Pancasila Sebagai Cita Luhur Pembangunan Hukum Nasional". *QISTIE*. 12(2). Hlm. 219-238.

Indonesia in an *expressive verbis* manner has been stated in the 1945 Constitution of the Republic of Indonesia as well as legislation as a form of guaranteeing legal certainty regarding the legitimacy of the seriousness of the legislators.² The Indonesian government is a state organ that is given the duty and authority to achieve these ideals.³

This seriousness can be seen from the accommodation of a special article that accommodates and recognizes the right to a good and healthy environment, namely human rights and constitutional rights, so that their existence must be protected in order to realize the greatest prosperity and welfare for the people of Indonesia.⁴ In the 1945 Constitution of the Republic of Indonesia in Chapter XA concerning Human Rights Article 28 H paragraph (1) which reads "everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and the right to health services". The existence of articles that support sustainability in the constitution are expected to be able to realize all policies made by the government to support environmental sustainability.⁵

However, the problem of environmental management and preservation is a challenge that is being faced by all nations today. The decline in the quality and use of the environment and the natural resources in it is an implication of the implementation of development which in the process does not see future impacts on the environment.⁶ This has caused damage to the environment and natural resources in the vicinity. The environmental crisis that has occurred in recent decades also shows the failure of law enforcement in cases of environmental pollution.⁷

Damage to the environment will always affect human life because we depend on nature to live, so nature must always be protected, cared for and preserved in order to create an ecological balance. Internationally, the central position of the importance of the balance between humans and the environment is stated in the preamble of The Rio Declaration on

²Rianda, H. G. (2021). "Problematika Konsepsi Strict Liability dalam Perlindungan Lingkungan Hidup Pasca Disahkannya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja". *Muhammadiyah Law Review*. 5(2). Hlm. 100-109.

³Nasution, A. I. (2021). "The Changes Impact on State Ministries Nomenclature Toward National Development Progress". *Veteran Law Review*. 4(2). Hlm. 94-108.

⁴Ferandi, Y. A. (2018). "Upaya perlindungan lingkungan perspektif konstitusi dan pendidikan kewarganegaraan". *Jurnal Pancasila dan Kewarganegaraan*. 3(2). Hlm. 28-35.

⁵*Ibid.*,

⁶Mina, R. (2016). "Desentralisasi perlindungan dan pengelolaan lingkungan hidup sebagai alternatif menyelesaikan permasalahan lingkungan hidup". *Arena Hukum*. 9(2). Hlm. 149-165.

⁷Sutoyo, S. (2013). "Paradigma Perlindungan Lingkungan Hidup". *ADIL: Jurnal Hukum*. 4(1). Hlm. 192-206.

Environment and Development in 1992.⁸ The destruction of nature by human actions and carelessness is evidence of shallow thinking because damage to nature is something that is consciously or unconsciously passed on to future generations.

Actions taken by humans have harmed themselves and have a wide impact that causes environmental damage such as water pollution, air pollution, soil pollution, and various other damages that affect the quality of the environment. Environmental impact control is an effort to carry out supervisory actions on an activity carried out by each party, both individuals and corporations that have a broad impact on the environment. All things that affect environmental changes as a result of human activities or activities can be interpreted as environmental impacts. The government has an obligation as a policy maker to realize sustainable development without neglecting its duties to protect and manage the environment that is used by the Indonesian people as a source of livelihood.⁹

In order to guarantee and ensure the fulfillment of the community's right to a good and healthy environment as well as to ensure legal certainty, the government established a regulation in the form of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law). Environmental protection and management based on Article 1 paragraph (2) of the PPLH Law is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and enforcement law.¹⁰

The conception of law enforcement in the field of environmental law as regulated in the PPLH Law, especially on environmental disputes (environmental disputes), which are disputes caused by actions that exist or are suspected of having an impact on environmental pollution. The PPLH Law in article (1) number 25 reads "environmental disputes are disputes between two or more parties arising from activities that have the potential and/or have an impact on the environment". It can be seen from the formulation that the subject of the dispute is the perpetrator and the victim of the environmental impact, while the object of the dispute is the activity or impact that has the potential to affect the environment.

Environmental disputes caused by environmental pollution recognize the concept of absolute liability (strict liability) to parties who pollute the

⁸Pasapan, P. T. (2020). "Hak Asasi Manusia dan Perlindungan Lingkungan Hidup". *Paulus Law Journal*. 1(2). Hlm. 48-58.

⁹*Ibid.*,

¹⁰Herlina, N. (2017). "Permasalahan lingkungan hidup dan penegakan hukum lingkungan di Indonesia". *Jurnal Ilmiah Galuh Justisi*. 3(2). Hlm.162-176.

environment without the need for proof of the element of fault first. However, currently the Strict Liability concept as regulated in Article 88 of the PPLH Law has been abolished by Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The presence of the Job Creation Law which has an impact on at least 79 laws on the pretext of facilitating investment inflows has indirectly eliminated the essence of environmental protection regulated in the PPLH Law. Absolute responsibility for the perpetrators of environmental destruction is lost due to the abolition of the phrase "without the need to prove the element of fault" so that the concept of responsibility has changed to being based on fault (liability based on fault).

The government's action to remove the phrase "without the need to prove the element of fault" has raised questions and criticism from various levels of society. The purpose of accelerating investment has obscured the legal ideals of the PPLH Law which aims to provide protection to the environment. The change in the concept of strict liability to liability based on fault is even considered a decades-old setback in environmental protection efforts when viewed from the history of setting up the concept. Based on this brief explanation of the background, the author is interested in trying to review the impact of the abolition of the strict liability principle in environmental disputes after the ratification of the Job Creation Law.

2. Method

The research method used in this study is a normative legal research. This approach method is carried out in order to be able to make changes from various theories in the discipline of law through a scientific process. Normative legal research is research conducted by examining library materials or primary legal materials. method using a statutory approach, conceptual approach and case approach.¹¹ The statutory approach is carried out by reviewing the laws and regulations relating to environmental protection and management. Then in the conceptual approach, the author examines concepts related to accountability in environmental disputes. While in the case approach, the author provides a study of facts or data that occurs in the field relating to strict liability in environmental disputes.

3. Result & Analysis

3.1 The Impact of Abolishing the Strict Liability Principle in the Settlement of Environmental Disputes

¹¹ Efendi, J., & Ibrahim, J. (2016). *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Prenada Media Group. Hlm. 78.

The Job Creation Law is a unique law because the process of its formation does not use the usual process of making laws, but uses the Omnibus Law process by bringing together a total of 79 laws that have different principles and objectives between one law and another. Omnibus law is the practice of drafting laws and regulations that have been adopted by countries with common law or anglo saxon principles, such as America, England, Canada, the Philippines, and others.¹² The approach to the formation of legislation using the Omnibus Law method was chosen with the aim and hope of accelerating inflows of investment and simplifying licensing so that it is easier for investors to obtain which has an impact on increasing employment opportunities and accelerating economic recovery. This is nothing but a way to realize one of President Jokowi's visions in his second term, namely to create a friendly investment climate for investors.¹³ Governments in modern "social status" prioritize the interests of everyone, which is a consequence that forces them to participate in social interactions so that social welfare for each person can be maintained.¹⁴

Of the total 79 laws that were changed due to the Job Creation Act, one of the laws that was affected was the PPLH Law. There are 30 articles that have been changed, 17 articles have been deleted and 1 additional article. There are at least 5 aspects affected by this change, namely environmental dispute law enforcement, public participation, supervision, information disclosure, and environmental licensing.

Strict liability or absolute responsibility is a form of responsibility for all parties whose actions damage the environment without the need for proof of an element of fault.¹⁵ In the PPLH Law, this principle is contained in Article 88 which reads "everyone whose actions, business and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible for the losses that occur without the need to prove the element of fault".

However, the Job Creation Law later changed the contents of Article 88 of the PPLH Law regarding absolute liability so that it reads "Everyone whose actions, business and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is

¹² Sugiyono, H., & Haryanto, I. (2021). "Plantation Regulation In The Palm Industry Sector In The Omnibus Law Of Employment Creation (Cipta Kerja)". *Veteran Law Review*. 4(1). Hlm. 14-34.

¹³ Sutrisno, N., & Poerana, S. A. (2020). "Reformasi Hukum Dan Realisasi Investasi Asing Pada Era Presiden Joko Widodo". *Undang: Jurnal Hukum*. 3(2). Hlm. 237-266.

¹⁴ Hartati, S., Sintara, D., & Maryani, H. (2022). "Utilization Of State Property By Partners In The Perspective Of Utilitarianism Legal Theory". *Veteran Law Review*. 5(1). Hlm. 15-26.

¹⁵ Akib, M. (2014). *Hukum Lingkungan Perspektif Global dan Nasional*. Jakarta: Raja Grafindo Persada. Hlm.181.

absolutely responsible for the losses that occur from his business and/or activities". It can be seen that the sentence "without the need to prove the element of fault" has been deleted in Article 88 and then the sentence "from its business and/or activity" is added.

The abolition of the sentence theoretically will have implications for the concept of absolute liability, where for the payment of losses in disputes the element of fault is something that does not have to be proven by the plaintiff. The terminology of this phrase is *lex specialist* in disputes relating to unlawful acts in the field of environmental law. Although in the amendment to Article 88 there is still the phrase "absolutely responsible" but in a good and correct legal conception and reasoning Article 88 can no longer be said to be absolute liability or strict liability because the dignity of this principle lies in accountability without the need to prove the element of fault. This means that in future environmental disputes, the injured victim must collect data and strong evidence to be used as evidence in order to receive compensation from the party who destroys the environment.

The principle of strict liability in the PPLH Law is a legal breakthrough with the perspective of protecting the victim so that the rights of the victim injured by the perpetrator can be restored through a compensation scheme. This concept of responsibility is very appropriate to be applied in the current era of disruption and technological progress and development where many people are disadvantaged by modernization which causes environmental damage and pollution.¹⁶ The abolition of the strict liability principle in the PPLH Law by the job creation law has brought logical consequences to the application of a liability based on fault mechanism in the settlement of environmental disputes.

Accountability based on fault or known as *schuld aanprakelijkheid* in the civil law legal system or what in the common law legal system is more familiarly called liability based on fault and tort liability, is the concept of liability in lawsuits which, historically, has existed since Roman times.¹⁷ This concept implies that the defendant is obliged to be responsible for the losses suffered by the plaintiff on the condition that there is evidence that confirms that he is guilty, but if he is able to prove that he is not guilty all charges imposed on him will be void and he will be released from this responsibility. If it is related to a claim for compensation due to pollution or environmental destruction, the defendant is only obliged to compensate if there is strong evidence to declare him guilty of polluting or destroying the environment which causes the plaintiff to suffer losses.

¹⁶ Praja, C. B. E., Nurjaman, D., Fatimah, D. A., & Himawati, N. (2016). "Strict Liability Sebagai Instrumen Penegakan Hukum Lingkungan". *Varia Justicia*. 12(1). Hlm. 42-62.

¹⁷ Akib, M, *Op.Cit.*,

In fact, the principle of liability based on fault has indeed been regulated in the PPLH Law as one of the mechanisms for proving accountability. However, this principle is used in Article 87 paragraph (1) regarding compensation and environmental restoration which reads "every person in charge of a business and/or activity who commits an act that violates the law in the form of pollution and/or destruction of the environment that causes harm to other people or the environment obliged to pay compensation and/or take certain actions".

Liability based on fault is formulated in Article 1365 of the Civil Code. Article 1365 of the Civil Code is based on the liability of a lawsuit based on a fault that requires the fulfillment of four main conditions, namely there is a loss, the defendant is proven guilty, there is a causal relationship between the act and the loss, and finally the act is an unlawful act. In order to be won in the lawsuit by the judge, the plaintiff must be able to prove the fulfillment of all these elements. The most important element proven by the plaintiff is the fault committed by the defendant. Fault in the legal literature are divided into two, namely those caused by intention (*dolus*) and those caused by negligence (*culpa*).¹⁸ Based on the concept of liability based on fault, the plaintiff is tasked with proving that there is an element of fault committed by the defendant in which the action is detrimental to the plaintiff.

The application of the principle of liability based on fault in Article 87 paragraph (1) is valid because after all, the act of pollution and environmental destruction must still be proven by the existence of an element of fault committed by the defendant. However, this is different from Article 88, where there are other considerations that eliminate the need for an element of proof of fault. Article 88 specifically regulates the act of pollution and environmental destruction caused by B3 materials and B3 waste. The formulators of the PPLH Law and environmental law experts have the same conclusion that strict liability liability is only used for the use of hazardous, toxic and ultra hazardous activities or substances.

If the actions taken have an impact on the right to environmental protection or injure the public interest, there is no need to prove the element of fault. This is in line with the adage *res ipsa loquitur*, namely facts that speak for themselves, facts that can be witnessed are detrimental to the community so that the element of error by this act does not require

¹⁸ Apriani, T. (2020). "Kedudukan Doktrin Res Ipsa Loquitur (Doktrin Yang Memihak Pada Korban) Dalam Tata Hukum Indonesia". *Ganec Swara*. 14(1). Hlm. 401-405.

the presence of proof. The losses suffered by the wider community became an important point why strict liability could then be used.¹⁹

Seeing the strict liability provisions in Article 88 of the PPLH Law which has been amended in the Job Creation Law so that it becomes a liability based on fault, it will certainly have an impact on efforts to take action against environmental pollution and damage caused by B3 materials and B3 waste through litigation in the form of environmental dispute resolution. Because liability is based on fault, the plaintiff will be burdened by the complexity of proving the element of fault. Although there is a relationship between losses, it can be realized that it comes from the actions of the defendant or the perpetrator (polluter) is not enough capital to punish the defendant. Proving that there is a wrong requires evidence of fault that is not easily obtained for unlawful acts related to dangerous acts. Due to the ever-changing circumstances of nature, it is not uncommon for usable evidence to be lost and no longer usable.

3.2. The Ideal Design of the Concept of Responsibility in Environmental Disputes in Indonesia

In the settlement of environmental disputes, which in fact are civil disputes, there are several elements that must be fulfilled, such as the element of responsibility. Responsibility in the legal world can be divided into two, namely ordinary responsibility and specific responsibility. (Machmud 2012). The legal basis for ordinary responsibility can be seen in Article 87 paragraph 1 of the PPLH Law. The article regulates the form of liability in civil lawsuits regarding environmental pollution based on unlawful acts that require an element of proof of fault as previously explained. Acts against the law expressly regulated in Article 1365 of the Civil Code which reads "every act that violates the law, which causes harm to another person, obliges the person who because of his mistake in publishing the loss, compensates for the loss". Then, the legal basis for accountability is specifically regulated in Article 88 of the PPLH Law which is known as strict liability or liability without fault, namely absolute responsibility without the need to prove the element of fault.

However, because the Job Creation Law amends Article 88 of the PPLH Law so that the sentence "without the need to prove the element of error" is abolished, Article 88 is no longer included in the category of specific forms of responsibility. Problems then arise because there are strong philosophical, juridical and sociological reasons why specifically in Article 88 of the PPLH Law ideally strict liability is used as the basis for liability

¹⁹ Muamar., Utari, A. A. S. (2020). "Pengaruh Penghapusan Asas Strict Liability Dalam Undang-Undang Cipta Kerja Terhadap Masif Deforestasi di Indonesia". *Jurnal Kertha Negara*. 8(12). Hlm. 1-12.

for environmental disputes so that if you eliminate the principle of strict liability, it shows the sensitivity of the government to the state of the country that is currently in a critical point of humanitarian danger caused by environmental damage.²⁰

If we look further into the history of strict liability, initially strict liability was first used by the British state which used the Anglo Saxon legal system in the 19th century and was used as the basis for liability in civil disputes. Then in 1868, one of the cases that later attracted attention related to the application of strict liability at that time and became popular was in the case led directly by Judge Blackburn, namely *Ryland vs Fletcher*.²¹

The decision from the case then becomes jurisprudence, where the perpetrator is automatically responsible for paying for the losses suffered by others for actions or actions committed for himself or for others without the need to see whether the act was carried out by mistake, accident or oversight due to elements of the act is another issue and the main focus is that the act has affected other people and must be compensated immediately.

Historically, the concept of strict liability in Indonesia was used for hazardous activities and was introduced through the International Civil Liability Convention for Oil Pollution Damage in 1969 which was later ratified by the government through Presidential Decree No. 18 of 1978.²² After the ratification, strict liability then began to be used in various laws and regulations such as the PPLH Law and Law Number 10 of 1997 concerning Nuclear Energy.²³

The question that arises is why is strict liability only used for activities that use B3 and B3 waste? Strict liability has become a real urgency in the dynamics of the times which also have an impact on legal modernization for the sake of sustainability and continuity of various activities with enormous responsibility because it is directly related to B3 (ultrahazardous activity and abnormally dangerous).²⁴ Kolose and Mayer also provide the same terms and conditions to apply the principle of strict liability which includes "Extra-hazardous activities and dangerous

²⁰ Amania, N. (2020). "Problematika Undang-Undang Cipta Kerja Sektor Lingkungan Hidup". *Syariat: Jurnal Studi Al-Qur'an dan Hukum*. 6(02). Hlm. 209-220.

²¹ Handayani, E. P., Arifin, Z., & Virdaus, S. (2019). "Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia". *ADHAPER: Jurnal Hukum Acara Perdata*. 4(2). Hlm. 1-19.

²² *Ibid.*,

²³ Wibisono, Andri G. (2018). *Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata*. Jakarta: BP-FHUI. Hlm.143.

²⁴ Praja et al, *Op.Cit.*,

animals can be the occasion for determining strict liability. The activities must be such that they are not in common usage in the community and involve a risk of serious harm to persons or property that cannot be eliminated by the use of due care".²⁵ So that if the activity is carried out without using strict liability, it is considered not strong enough to provide legal protection for victims.

In its implementation, environmental lawsuits that use strict liability as the basis for liability have been successfully applied in Indonesia several times. For the first time in 2003, the court issued a decision that granted the plaintiff's claim through the application of strict liability in seeking compensation from the defendant or polluter. Bandung District Court Decision No. 49/Pdt.G/2003/PN.Bdg which was strengthened again through a court decision at the appeal level and in the end it was won at the cassation level which later became known as the "Mandalawangi decision". Then in 2016 there was another decision that used strict liability, namely the decision of the South Jakarta District Court No. 456/Pdt.G-LH/2016/PN.Jkt.Sel. In addition, PT. Waringin Agro Jaya was also successfully asked for compensation through strict liability by the Ministry of the Environment with a total compensation of Rp. 466 Billion.

The concept of strict liability responsibility is a concept that prioritizes taking sides with the victim in order to get compensation from the perpetrator (polluter). Strict liability is very appropriate to apply to activities that use B3 and B3 waste because in today's very modern era of disruption, many people are victims of modernization, one of which is affected by environmental pollution. The principle of liability based on fault is a principle that is irrelevant to the times when it is used in cases related to the environment (Imamulhadi 2013).²⁶ Prioritizing the rights of victims in returning to their original state is the goal of the application of the principle of strict liability which sees the severity of the plaintiffs (lay people) proving the mistakes made by the perpetrators caused by modern and high-tech industrial equipment. The costs required are also not cheap, so the damage that is clearly visible and experienced may not necessarily be proven by the plaintiff to obtain compensation from the defendant.²⁷

²⁵ Kolosa, Blair J. & Meyer, Bernadine. (1978). *The American Legal System*. New Jersey: Prentice Hall. Hlm. 46.

²⁶ Imamulhadi, M. (2013). "Perkembangan Prinsip Strict Liability Dan Precautionary Dalam Penyelesaian Sengketa Lingkungan Hidup Di Pengadilan". *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*. 25(3). Hlm 416-432.

²⁷ Prakoso, A. L. (2016). "Prinsip Pertanggungjawaban Perdata Dalam Perspektif Kitab Undang Undang Hukum Perdata dan Undang Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup". In *Prosiding Seminar Nasional: Tanggung Jawab Pelaku Bisnis Dalam Pengelolaan Lingkungan Hidup*. 215. Hlm. 221.

The application of strict liability in environmental disputes is able to eliminate the obstacles experienced by victims. Then another thing that benefits the victim is that technically the perpetrator is automatically responsible regardless of whether he is guilty or not because what is enough to see is whether there has been environmental damage due to the perpetrator's actions and there is a real loss suffered by the victim. This concept is a very useful breakthrough in the field of environmental protection. Because the basis of liability for compensation that is always put forward is the existence of losses.

Then if we refer to the contents of the academic text of the Job Creation Act, then there is an extraordinarily fatal juridical defect carried out by the government and is a deliberate effort due to the misunderstanding of the compilers in amending Article 88 of the PPLH Law which then eliminates the principle of strict liability. In the academic text, it is stated that the reason for the abolition of the phrase "without the need to prove an element of fault" is that in every criminal act it must be proven that there is an element of error. The reasons made by the government are not based on good and correct legal logic because strict liability as stated in Article 88 of the PPLH Law is within the scope of unlawful acts which are civil law.

4. Conclusion

The concept of strict liability in Article 88 of the PPLH Law which has been amended in the Job Creation Law so that it becomes liability based on fault will certainly have an impact on efforts to take action against pollution and environmental damage caused by B3 materials and B3 waste through the settlement of environmental disputes. Because the liability is based on fault, the plaintiff will be burdened with the complexity of proving the element of fault. Although in the amendment to Article 88 there is still the phrase "absolutely responsible" but conceptually and legal reasoning Article 88 can no longer be said to be absolute responsibility or strict liability because the dignity of this principle lies in responsibility without the need to prove the element of fault. Ideally, in Article 88 of the PPLH Law, the concept of strict liability is used as the basis for liability for environmental disputes.

Strict liability is a principle that prioritizes taking sides with victims of environmental pollution in order to obtain compensation from the perpetrators (polluters). Technically, the perpetrator is automatically responsible regardless of whether there is an element of fault or not because the reference for responsibility is whether there has been environmental damage due to the perpetrator's actions and there has been a real loss suffered by the victim. In addition, if referring to the academic text of the Job Creation Law, the government has made a mistake in

omitting the phrase "without the need to prove the element of fault" on the grounds that the crime requires proof of an element of fault, while Article 88 of the PPLH Law is in the civil sector.

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