

Criminal Liability without Fault in Environmental Legislation of Indonesia

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Abstract. This study looked at how the concept of criminal culpability without fault is viewed and applied in Indonesian environmental law. The idea was only applicable in civil proceedings under present legislation, removing the potential of its application in criminal cases. This was a doctrinal legal research project that used statutory and conceptual approaches. The study argued that regulatory infractions intended to safeguard the public interest are routinely subjected to criminal liability without fault. To avoid long-term and difficult-to-repair harm to people or the environment, this environmental violations philosophy was critical. Infractions with administrative repercussions had to be limited in the absence of proof of the mental element in the statute. Unauthorized waste/emissions discharged into the environment are forbidden, and have the potential to harm the environment.

Keywords: Criminal liability without fault; formal offenses; environmental legislation

1 Introduction

This paper aims to analyze the applicability of criminal responsibility without fault in environmental legislation. This is crucial since the Environmental Protection and Management Act, as governed by Article 88 of Law Number 32 of 2009, only applies to civil cases. Meanwhile, the vast majority of violations of this regulation are merely administrative infractions that do not have a mental element in the formulation[1]. Environmental offense are difficult to prove because criminals often hide behind permits issued by the government. The difficulty of proving environmental criminal prosecutions adds to the problem. In fact, the situation results in damage or long-term degradation of the ecosystem, making recovery extremely difficult[2].

This is a doctrinal legal research that looks at how criminal responsibility without fault is applied in environmental legislation. The offense formulation in the Act is analyzed and selected based on its regulatory character because the mental element may not be established. This research is enhanced by the application of a statutory and conceptual method, the first of which demonstrates legal standards that include the crime formulation. The liability theory and criminalization-based environmental damage models, particularly abstract and concrete endangerment, should be investigated to determine which violations do not require proof of perpetrators.

2 Result and Discussion

2.1 The Nature of Criminal Liability without Fault

The element of action (and its repercussions, notably for material offenses) (physical components) and the mental elements make up an offense[3]. When a person is found to have committed an act banned by criminal law (*actus reus* element), criminal sanctions or treatment are not automatically imposed unless the element of the perpetrator's guilt is established. When these requirements are met, the judge has the authority to impose criminal punishment. These two crucial aspects of its evolution are not fully realized, appropriate, and applied to all offense. In some circumstances, the mental element is no longer required in the equation of imposition of criminal sanction[4]. For example, in some situations, the offender can be held criminally accountable and punished for a crime he committed without having to establish his guilt. The principle of criminal accountability without fault, often known as the principle of strict criminal liability, is a type of crime that does not require an element of culpability, merely an act. The error still exists, but it does not need to be proven. Without looking into the purpose for the crime, the accused can be found guilty only by establishing that a criminal act was committed. As part or all of the crime, the perpetrator's culpability is no longer relevant[5].

The only thing that needs to be established is that the culprit has committed either an act of commission or an act of omission, if he is capable of doing so. Three goals underpin the criminal liability without fault principle. First, societal goals such as the necessity of nutritious and clean food and drink, fire safety, and safety at work and on the road (traffic) are some of the reasons of rigorous liability requirements. Second, with the purpose of maximizing social prevention, these social aims can best be achieved through sorts of criminal activities that do not require proof of the perpetrator's guilt. Third, because the criminal consequences of such offenses are minor, the theory of liability without fault is only recognized on utilitarian grounds[6].

The notion of such responsibility is commonly applied in cases involving violations of public welfare or regulatory infractions with minor criminal consequences, such as fines and brief incarceration. The responsibility for regulatory violations is primarily based on two factors. The first is that requiring individuals to establish their own guilt will make the criminal justice system less burdensome, while the second is that proving guilt is extremely difficult. Since the emergence of new types of criminal acts that do not necessitate intentionality, the construction of the law has begun to attract regulatory offenses, despite the fact that they are not purposeful in certain fields[7].

The responsibility without fault principle is used by considering the following criteria: a) is specific and limited; b) is a forbidden act under the law; c) acts or activities that are clearly against the law; d) activities that have the potential to impair the community's health, safety, or morals; and e) such acts or activities are not accompanied by reasonable prevention. One of these is the strict liability principle. It's typically seen on environmental decals, which denote acts that are restricted due to the fear of criminal penalties. The environment is a legal interest that wishes to be safeguarded from an act's ban[8].

2.1 Criminal Liability without Fault in Environmental Legislation

The principle is applied in environmental legislation for a variety of reasons. To begin with, the possibility of environmental damage or contamination as a result of human or

corporate acts is alarming. In this case, the liability without fault principle focuses full responsibility for such harm exclusively on those who are in a position to prevent it, with the primary goal of safeguarding the public interest[9]. When the environment is harmed or polluted, not just individuals but society as a whole are directly affected. Second, environmental legal qualities that acknowledge future generations' right to enjoy and obtain access to a healthy living environment in the same way as previous or present generations did[10]. Although the current generation has complete sovereignty over all natural resources on the planet, future generations should not be denied equal rights or access to acceptable environmental quality. If the liability without fault concept is not applied to environmental concerns, it will deprive, deny, or erase future generations' right to enjoy a clean and healthy environment, for example, by harming ecosystems' ecological and health functions in a variety of ways. When the environment is destroyed or polluted to the point where it is difficult or impossible to repair, future generations are at risk of dying as a result. As a result, it seems obvious that in environmental issues, the perpetrator's fault does not need to be established[11].

Such culpability have been judged proven by or at the same time as proven illegal conduct that have been threatened with criminal or administrative punishment. Even though the perpetrator's guilt does not have to be established, it is assumed. Third, severe responsibility should be confined to actions classified as administrative dependent crimes, i.e., offenses that are proven whether or not they are reliant on administrative requirements such as permits, regulations, or standard operating procedure. Under most cases, just demonstrating the act is sufficient proof in administrative law (actus reus). In administrative law, mental elements do not need to be proven, and they are explicitly excluded from the formulation of administrative dependent crimes, so that the culpability is considered proven by the proving the elements of deeds, actus reus, or physical elements to have been done. Fourth, the requirement for the principle of criminal culpability without fault to be applied in environmental legislation is backed up by the fact that court judgements on environmental crimes have been found to secretly follow the principle. That is, the accused was found guilty of environmental crimes only by proving the forbidden acts, without having to show his guilt[12].

The conduct of acts prohibited by criminal law is recognized to exist and can be used to prove the defendant's guilt. Only objective factors in the form of unlawful activities are utilized as proof. When this factor is established, the offender is presumed guilty of violating the charged decal without having to show his guilt further. Besides, the idea must be limited to formal offenses involving violations of administrative requirements such as permits or administrative procedures. Almost majority of the prohibited acts are active (commissions) offense. The legal offense does not expressly address mental aspects like "deliberately" or "by accident." As a result, the prosecutor is not required to prove the element. Furthermore, the offense is based on violations of administrative standards or processes. The majority of formal crime in environmental law is related to regulatory offenses, which are generally general welfare offenses that do not require proof of the perpetrator's element of culpability.

In addition to being limited to formal offenses, the application of the criminal liability without fault principle must consider the model for calculating environmental losses based on environmental losses, particularly abstract hazard models and real hazards, in order to determine which offenses in the proof do not require the perpetrator's culpability. Both models have behaviours that are forbidden as formal offenses, with the substance of a breach of administrative rules. Violations of administrative obligations are the subject of the first model. Only criminal acts that do not involve direct contact between polluting materials and the

environment are covered by this paradigm[13]. The second model does not require proof of actual losses, but it is adequate for showing the danger of loss and unlawful activities. Two things are highlighted in this model. The first is that emissions or pollution pose a risk of harm, which must be demonstrated[14]. The second point is that emissions and pollution are done in an illegal manner. If done legally, the conduct is not regarded a criminal offense as long as administrative requirements are fulfilled. The two models' environmental law offenses are the most similar to the general offense[15].

The following is how the criminal liability without fault principle is used to environmental crime verdicts: When it comes to environmental crimes perpetrated by persons, the liability principle is used to choose and evaluate the legal facts presented at trial that show that the defendant has been proven to have performed an unlawful act, such as violating permits or procedures. The defendant's guilt is thus regarded proven by the proven elements of criminal activities committed, even though it does not have to be established in real terms, according to the judge's legal considerations. The use of the criminal liability without fault concept in the case of environmental crimes perpetrated by businesses is to ensure that the formulation of the penalty in the Environmental legislation is truly targeted to the corporation as the culprit[16]. After that has been established, the next step is to demonstrate that the corporate administrator who performed the act did so only for and on behalf of the corporation. Managerial activities in the context of performing corporate functions. The actions of the board of directors for and/or on behalf of the corporation are illegal (specifically). Following that, the panel of judges noted in its legal considerations that the board's error in doing forbidden acts for and/or on behalf of the corporation was taken into account, even though it did not need to be factually proven[17].

3 Conclusion

Offense impacting the public interest and endangering human and environmental safety as well as health are frequently exposed to the criminal culpability without fault principle. This concept's applicability to environmental crimes is tied to the environment's status as a distinct legal interest that prioritizes risk minimization. Liability without fault should be confined to administratively dependent on criminal law infractions, such as abstract and concrete endangerment models. These two models' offenses are mostly related to waste/emissions poured into the environment without permission, and they are constructed as a formal offense in which the element of the perpetrator's wrongdoing is not included in the formulation of the offense and hence does not need to be proven. The following are some of the suggestions drawn from this study: First, with the formulation of "against criminal acts as referred to in Article... the principle of criminal liability without error (strict liability)," the law must strengthen the basic arrangement of criminal liability without fault, particularly in environmental fields that fall into the categories of abstract endangerment and concrete endangerment. Second, in court judgements, the Supreme Court should offer guidance for the use of the such liability concept in environmental criminal cases.

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