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The Law Political Setting of Strict Liability Principles for Polluters in Environmental Law to Realize Ecological Justice

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Abstract

The essence of environment is the source of life. Each environmental pollution should be held legally responsible. The use of the method liability strict environmental laws that put the burden of proof on the defendant, not a guarantee of protection of the environment. The presence of incompleteness of Article 88 of Law No. 32/2009, where the imposition of strict liability is limited to matters related to hazardous and toxic materials, whereas there are other aspects that potentially poses a serious threat to the environment. The problem studied is: What is behind the legal political settings? And what are the legal implications of setting strict liability laws are limited in the environment?

The method used to address normative studies done, with a qualitative approach, the analysis using the appropriate choice theory. From the research that the laws governing political principles of strict liability in environmental law puts more dominant in the context of the economic sense, i.e., as capital construction, so it cannot be realize ecological justice.

Keywords: Political law, strict liability, environmental law

1. Introduction

The environment is the source of human life, animals, plants and other biodiversity. The environment has a system which is a system of life itself. Humans and all living entities, to meet their needs are always in contact with the environment. Therefore, in every aspect of human activity, must pay attention to aspects of environmental protection and management, in order to maintain a harmonious balance in ecology. The whole of human activities related to the environment will be a resultant of a certain environmental conditions. [1]

An effort to preserve the environment is a necessity that is implemented in the life of the nation. The environment should not be sacrificed for any reason, but must be able to come along with efforts to develop the national economy and create social welfare.

Every business plan and/or activities related to the community and the environment should be well planned and carefully, so as not to adversely impact the public let alone result in damage to the environment. Environmental management must be implemented with the principles of sustainability, in order to realize the development of environmentally sustainable human development in order to complete Indonesian and Indonesian society development, the faithful and devoted to God Almighty.

However, until today the preservation of the environment is still much neglected. Low mastery of science and technology capabilities, increasing cases of environmental pollution due to the rate of population growth is concentrated in urban areas, changes in consumer lifestyle, lack of public awareness, pollution of rivers and land by industry, agriculture and households, as a whole has resulted in an imbalance of the system environment . This is exacerbated by climate change and global warming. As a result, the carrying capacity of the environment continues to decline and the availability of natural resources depleted.[2]

[1] The influence of human activities affect the environment has evolved into the field of ecology, the study of the relationship between one organism to another, and between the organisms with its environment. Fuad Amsyari dalam Koesnadi Hardjasoemantri. *Law of Environmental Management,* Yogyakarta: Gadjahmada University Press, 1994, p. 2

[2] Condition of the forest resource is now at an alarming rate due to increased illegal logging, smuggling of timber, forest/land, forest encroachment and conversion of natural forests. In 2004, the destruction of forests and land in Indonesia has reached 59.2 million ha, with a deforestation rate reached 1.6 to 2 million ha / year. The occurrence of natural resource use conflicts,

Section 28H of the Constitution of the Republic of Indonesia Year 1945 asserts that the right to a good environment and healthy is everyone's human rights, which must be respected by anyone else, because the right is a natural right inherent in every human life.

Violation of a right result in injustice. Therefore neglect the aspect of environmental protection in every activity, is a violation of ecological justice, that justice for humans and the environment are realized in the form of respect and protection of the environment, so that it can maintain a good and healthy environment, which ensures the realization of the balance in the ecosystem.

An essential factor that resulted in the occurrence and continuation of various cases of environmental pollution is a factor of the weak aspects of environmental law enforcement, whether civil, criminal or administrative. Law enforcement is hope for those seeking justice (*justiabellen*) in order to obtain justice.

Aspects of the civil law enforcement environment, is closely related to the accountability system. Generally accepted system is based on fault liability, as provided in Article 1365, 1366 and 1367 of the Civil Code. Damages awarded by the defendant, if the plaintiff can prove that the error committed by the defendant. Elements of proving an essential element in a tort lawsuit.

If only rely on the doctrine of public accountability (liability based on fault), then the enforcement of environmental law will face many obstacles, because this doctrine is not able to effectively anticipate the impacts of modern industrial activities that contain potential risks (Unwanted Consequences and uncertainty). This is because the essential requirement that must be met in Negligence or fault element is the failure to exercise the care of an ordinary prudent and careful man. Therefore, when the defendant failed to show caution, it was absolved of responsibility.[1]

Accountability is very difficult for the victims, who actually harmed. Moreover, the victim for environmental cases in Indonesia are generally the weak segments of society, both economically, politically and education. Therefore, it would be an objection if the victim/plaintiff should be saddled with the burden of proof for pollution that occurred and its relevance to their losses.

In order to protect the victims of environmental cases, it is in Article 88 of Law No. 32 of 2009 on the Protection and Management of the Environment on the principle of strict liability, but still be limited to matters related to hazardous and toxic materials.

Adheres to strict liability burden of proof is reversed. Plaintiff/losers/victims of environmental pollution, it is not required to prove the fault of the pollutant or environmental destruction. This means that the defendant is required by law to prove the presence or absence of an error of the act he was doing. [2] Defendants can be released from liability, when he can prove otherwise.

Theoretical problem is refers to a causal theory, that every effect can occur because of cause. Environmental pollution cannot be happen without cause. If the cause by the human activity/subject of law, then the law should be held responsible. In the setting of strict liability, the Defendants may be released from liability when he can prove that he is innocent. If so, who is next to being held legally responsible for the environmental pollution?

Juridical Problems is the presence of the incompleteness of the law in regulating principle of strict liability as set forth in Article 88 of Law No. 32/2009 on the Protection and Management of the Environment, where the imposition of strict liability is limited to matters relating to the hazardous and toxic materials, but there are many other aspects that potentially poses a serious threat to the environment.

The principle of the protection and management of the environment is essentially a state responsibility. State shall ensure the use of natural resources in order to deliver the greatest possible benefits for the welfare and quality of life of the people, both the present generation and future generations; guarantee the rights of citizens

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both between regions, between central and local, interstate, or between users. Pollution of water, air and soil are still not handled properly, due to the more rapid activity of the less noticed aspects of the preservation of the environment. These things have led to the environment are undermined. Republic of Indonesia, Law on the National Long-Term Development Plan for 2005-2025, No. 17 of 2007, Annex, Chapter II, II.1. Current conditions, the letter I.

[1] Richard A. Posner, *A Theory of Negligence in Perspectives on Tort Law, Robert L. Rabin,* (Boston: Little Brown and Company, 1990), p. 14

[2] System of proof means will require the defendant before the court, to provide information that could possibly against the rights and interests. Because the system of proof that a deviation from the principle of innocent pre guessed, the principle of absolute responsibility and its system of proof will only be applied to specific cases. Abdul Hakim G. Nusantara. *Indonesian Legal Politics.* (Jakarta: Indonesian Legal Aid Foundation, 1988), p. 145

on the environment is good and healthy, and shall prevent the perpetration natural resource use activities that cause environmental pollution.[1]

Strict liability setting is closely related to the political laws of the State. In the end, politics-law was dominant in influencing the formation, implementation, and enforcement of the provisions of the legislation.

From the background as described above, this dissertation will focus on the study of the law political setting the principle of strict liability contaminants in environmental law to realize ecological justice.

The Law No. 32 of 2009 on the Protection and Management of the Environment set up the application of strict liability only to the actions or efforts or activities related to the hazardous and toxic materials. The problems studied were:

a. What is behind the legal political settings?
b. What are the legal implications of setting strict liability laws are limited in the environment?

2. Methodology

2.1 Type of Research

Attamimi law states that science is never a purely normative science or social science pure, because the law is derived from-sein sollen and can also be derived from sein-sollen. In principle, the law always contains aspects of ideals and reality, or in other words the law always contains aspects of normative and empirical aspects. [2]

The same thing also expressed by Sidhartha, that the development of legal science activities always include two aspects, namely the rule of law and fact, roommate's both Interact with Each Other or in interaction.

The same thing also expressed by Sidhartha, that the development of legal science activities always include two aspects, namely the rule of law and fact, which both interact with each other or in interaction.[3] In the object of legal science norms (laws), then the legal research done to prove several things, namely: a) Is legal setting form set out in a provision of positive law in the practice of law has been fit or reflect the principles of law which wants to create justice? b) If a provision of law is not a reflection of the principles of law, whether it is a concretization of the philosophy of law? c) Are there any new legal principle as a reflection of the values of existing law? d) Does the idea of a law setting a certain action will be guided by the principles of law, legal theory or philosophy of law? [4]

The view that science and practice of law is essentially interrelated, interdependent and mutually supportive, a view accepted by all parties. Therefore, with the development of the practice of law will be developed also in law. The practice of law requires legal knowledge; contrary jurisprudence requires the practice of law, so that the study of law should always be done. [5]

The study entitled law political setting strict liability principle contaminants in environmental law in order to realize ecological justice, a legal research (legal research) normative. The focus of this research study is a positive legal norms and doctrines to develop a normative legal system, as well as its application for the purpose of professional practice.

2.2 Legal Materials

Legal material in this study consists of three kinds, namely: first, the primary legal materials in the form of legal principles contained in various legislations related. Secondly, secondary legal materials, such as explanations of primary legal materials, namely: scientific books, journals, research results, symposiums and other deliberations that relate directly or indirectly to the research material. Third, legal materials tertiary, i.e. materials that provide guidance and insight to primary legal materials and secondary, for example, a dictionary of legal terms Fockema

[1] Article 2 of Law No. 32 of 2009 on the Protection and Management of the Environment.
[2] A. Hamid S. Attamimi, The theory of the laws of Indonesia, A Side of Science Legislation Explaining Indonesia and Clearing Comprehension, Speech pronounced at the inaugural professor of the Faculty of Law dated 25 April 1992, in Hendra Nurcahyo (editor), *Politics Constitutional Law of Indonesia*, and Jakarta: Center for the Study of HTN Faculty of Law, 2004, p. 109-142.
[3] Bernard Arief Sidharta. *Reflections on the Structure of Legal Studies, a study of the philosophical foundations and the Scientific Nature of Legal Studies as a Development Platform for Legal Studies of the Indonesian National,* Bandung: Mandar Maju, 2006, page 193.
[4] Johnny Ibrahim. *Theory and Methodology of Normative Legal Research,* Malang: Bayumedia Publishing, 2006, p. 48
[5] Sudikno Merto Kusumo, *Civil Procedure Code Indonesia,* (Yogyakarta: Liberty, 2001), p. 28-29

Andrea (Dutch - Indonesia), Big Indonesian Dictionary, Black's law Dictionary, Nine Edition, Terminology English Law - Indonesia, and various other tertiary materials.

2.3 Technical Presentation and Analysis of Legal Materials

Researching in essence means looking for, and who sought in legal research is *Siwak*, or das *sollen* norm, not an event, the behavior in terms of facts or das *sein*. [1]

Normative methods used to analyze the primary legal materials in the form of legislation, court decisions, agreements and other related laws. With this normative method also conducted searches on the legal history of the formation of norms, *Siwak* and the doctrines of accountability, to uncover the philosophical and political law contained therein.

The approach used in this study is: Philosophical approach, the statute approach, conceptual approach, the historical approach and comparative approach.

The process of analysis in this study is done in the following manner: legal materials collected primary, secondary and tertiary, arranged systematically, to then analyze normative, theory-based framework that has been developed, using deductive reasoning and logic inductive.

The results of a descriptive analysis presented in the order of the problem and based on the format and writing standards set by the Faculty of Law, University of Brawijaya.

3. Result and Discussion

3.1 Existing Law Politics behind Setting Strict Liability Principle in Environmental Law

Present state function is to ensure the utilization of natural resources in order to provide maximum benefit to the prosperity and quality of life of the people, both the present generation and the generations to come; guarantee the rights of citizens on the environment is good and healthy, and shall prevent the perpetration of the utilization of natural resources that cause pollution and/or environmental damage. Given the principle of the protection and management of the environment is essentially a State Responsibility, as defined in Article 2 letter a of Law No. 32 Year 2009 on Environmental Protection and Management.

With the responsibility of the State, then the State to make regulations/rules in order to prevent (precautionary principle) and tackle pollution and /or destruction of the environment, especially as outlined in the administration of the State; regulations/rules to cope with pollution and/or destruction of the environment, both the State administrative, criminal, or civil, including setting strict liability principle. The setting is strongly associated with the political laws of the State.

Political organizers state law is a policy that is fundamental in determining the direction, the form and content of the law to be formed and on what criteria would be used to punish something. Policy of the state administrators includes the formation, implementation, and enforcement.[2]

a. The Setting Formation of Strict Liability Principle in Law No. 32 of 2009 on the Protection and Environment Management

Draft Law on Environmental Management in 2009 was an initiative of the House of Representatives 2004-2009. The bill signed by the Chairman of the House of Representatives that period, HR Agung Laksono, submitted to the President, on June 15, 2009.

The bill is a response to the House of Representatives on the severity of environmental degradation in Indonesia. Although it is unfortunate, since the filing of this bill is done at the end of the term of office of the House of Representatives 2004-2009 period, so there is no enough time to adequately discuss in depth over all the material necessary for improving Protection Act and Environmental Management.

Jurisdiction facts that refer to weakness in the setting of Act No. 23 Environmental Management in 1997, especially in the field of environmental completion, the lack of clear regulations on the application of the strict liability principle in civil law liability. This resulted in non-optimal application of strict liability principle as a basis for filing a lawsuit for compensation and/or specific action against destructive/polluting the environment. This condition often results in environmental lawsuit was defeated in court.

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[1] *Ibid*, p. 29

[2] Padmo Wahjono in Moh. Mahfud MD, *Legal Politics in Indonesia,* revised edition, (Jakarta: PT. Raja Grafindo Persada, 2010), p. 1-5

In the Academic Bill on Environmental Management proposed by the Parliament, in Chapter III: Material Content and Linkage with Positive Law, C: Sanctions Provisions, number 2: Civil (Environmental Dispute Settlement), c. Absolute Responsibility, stated:

Responsible for a business and/or business activities and/or activities have a significant impact on the environment, the use of hazardous and toxic materials are absolutely liable for losses incurred, with the obligation to pay compensation directly and immediately upon the occurrence of pollution and/or destruction of the environment.

Responsible for a business and/or activity can be released from the obligation to pay compensation if it can prove that the pollution and/or destruction of the environment caused one of the reason of a natural disaster or war, the existence of a state of forced beyond human capability, or any actions of third parties that cause pollution and/or destruction of the environment.

From this background, the House of Representatives formulate provisions on strict liability arrangement as set forth in Article 65 of the Draft Law on Environmental Management in 2009, as follows:

(1) The party responsible for a business and/or business activities and/or activities have a significant impact on the environment, the use of hazardous and toxic materials and/or generate hazardous wastes and toxic, strict liable for losses incurred, with liabilities compensation paid directly and immediately upon the occurrence of pollution and/or destruction of the environment.
(2) He party responsible for a business and/or activity can be released from the obligation to pay compensation as referred to in paragraph (1) if it can prove that the pollution and/or destruction of the environment caused by one of the following reasons:
    a) The existence of a natural disaster or war;
    b) The existence of forced circumstances beyond human capabilities, or
    c) The existence of third party actions that cause pollution and/or destruction of the environment.
(3) In the event of losses caused by third parties referred to in paragraph (2) letter c, the third party liable to pay compensation.

Explanation:

Subsection (1)

Definition of strict liability, the fault element need not be proved by the plaintiff as the basis for payment of damages. This provision is *lex specialis* in a lawsuit about misconduct on general. The amount of compensation which may be charged to the polluter or the environment destroyers under this Article may be determined to some extent.

Referred to a certain extent, is if, in the determination of the legislation in force, the insurance requirement specified for the relevant business activity or have available funding environment.

Subsection (2)

Self-explanatory

Subsection (3)

What is meant by the actions of third parties in this paragraph is an act of unfair competition or mistakes made by the Government.

If we look, the formulation of regulations proposed by the Parliament in the Environmental Management Bill, the substance no different with the provisions of Law No. 23 Year 1997 on Environmental Management. Thus according *Promovendus* that setting strict liabilities in the formulation of the bill have not been able to enhance deficiencies in setting strict liability, as described above.

After the bill be discussed jointly by the Parliament and the Government, then on October 3, 2009, a comprehensive Act No. 32 of 2009 on Protection and Environmental Management. As stated in the State Gazette of the Republic of Indonesia Number 140, Supplement to State Gazette of the Republic of Indonesia Number 5059.

Setting absolute liability principle, outlined in Chapter XIII: Environmental Dispute Resolution, Part Three: Environmental Dispute Settlement through the Courts, Paragraph 2: Strict Liability, Article 88, which states:

Each person whose actions, efforts, and/or activities using B3, produce and/or manage the B3 waste, and/or who pose a serious threat to the environment strict liability for damages that occur without proving fault element.

Elucidation of Article 88:

What is meant by strict liability is no fault element needs to be proven by the plaintiff as the basis for payment of compensation. This provision is *lex* in the lawsuit on unlawful acts in general. The amount of compensation which may be charged to the polluter or the environment destroyers under this Article may be determined to some extent.

What is meant by "to some extent" is if the determination according to laws prescribed mandatory insurance for businesses and/or activities concerned or have available funding environment.

Formulation setting strict liability provisions in Article 88 of Law No. 32 of 2009 the imposition of strict liability focuses on two things: First, action, effort, and/or activities related to hazardous and toxic materials, good use, generate or manage B3. Secondly, action, effort, and/or activities that poses a serious threat to the environment.

Hazardous materials and toxic is a substance, energy, and/or other components due to the nature, concentration, and/or amount, either directly or indirectly, can pollute and/or damage the environment, and/or environmental harm , health, and survival of human beings and other living beings.

According to the provisions of Article 5, paragraph (1) of Government Regulation No. 74 of 2001 on Management of Hazardous and Toxic can be classified as follows: a) explosive; b) oxidizing; c) extremely Flammable; d) highly flammable; e) flammable; f) extremely toxic; g) highly toxic; h) moderately toxic; i) harmful; j) corrosive; k) irritant; l) dangerous to the environment; m) carcinogenic; n) teratogenicity; o), mutagenic.

Every business and/or activities that use or manage or produce B3, bears the ultimate responsibility for all of the risks. This provision is very appropriate in order to protect the environment and the lives of the living entities in it, especially as a result of the existence, use and management of hazardous materials and toxic.

Nevertheless, action, effort, and/or activities that pose a serious threat to the environment, not only related to hazardous materials and toxic. Article 88 of Law No. 32 of 2009 states that: action, business, and/or activities that pose a serious threat to the environment may be subject to strict liability. But what can be categorized as an action, effort and/or activities that pose a serious threat to the environment? It is not in the description or the provisions of Law No. 32 of 2009 on Protection and Environmental Management.

b. Application of Protection Policy and Environmental Management in National Development

Protection policies and environmental management is strongly associated with national development policies. National development policy framework as set out in Law No. 25 Year 2004 on National Development Planning System poured in: Law No. 17 Year 2007 on National Long Term Development Plan Year 2005-2025, and President of the Republic of Indonesia Regulation No. 5 of 2010 on the National Medium Term Development Plan 2010-2014.

National Long-Term Development Plan and the National Medium Term Development Plan is described in more detail in the Government Work Plan during the year, the Ministry of the Institute Strategic Plan and Work Plan of the Ministry/Agency.

National Development Plan includes the implementation of all the functions of government macro planning that covers all areas of life, including the environmental field, in an integrated manner in the territory of the Republic of Indonesia.

Plans are currently in various stages of development in essence a law political implemented by the Government in the implementation of national development. 2005-2025 long-term development in the environmental field is realizing a beautiful and sustainable Indonesia. Environment and natural resources is a national development and sustaining capital for the life of the system. A result of natural resources and the environment have been able to contribute 24.8% of the Gross Domestic Product and are able to absorb 48% of the workforce.

National medium-term development priorities in 2010-2014, the environment and disaster management is that the conservation and utilization of the environment to support economic growth and sustained prosperity, accompanied by the control and disaster risk management to address climate change.

If we look at, that the policy of the Long Term Development Plan and the National Medium Term Development Plan of the more dominant view of environment and natural resources in the economic context (economic sense), i.e., as a national development capital in an effort to boost economic growth and welfare.

Referring utilities theory as presented by Jeremy Bentam, Jame Mill and John Stuart Mill, we can see that the greatest possible happiness to be realized that the Government is to fulfill the needs of the economy, so that the natural resources and the environment is seen as an asset that can be utilized to realize economic welfare of the community as much as possible.

When the environment and natural resources is more dominant in the light of the economic aspect, then when there is a clash between economic and environmental protection, it is often the more preferred is the economic aspect. This is evident in the political government law enforcement cases of environmental pollution in Buyat Bay, Minahasa conducted by PT. Newmon Minahasa Raya.

Referring to the theory of ecological justice G. Tyler Miller, Jr., and John Rowl Plato, that ecological justice can be realized when balancing can be done to all the rights and obligations associated with the environment. The protection of human rights and environmental rights. Fulfillment of the obligation to create a benefit for the present generation and the generations to come.

If the environment and human resources are constantly being exploited, then the resources will eventually run out, justice for future generations so neglected. With the exploitation of which exceeds the capacity, the environmental carrying capacity will decrease, so it is not able to meet the required bearing capacity. Implementation of such a policy clearly violates ecological justice.

c. Strict Liability Principle Law Enforcement in Environmental Law

In recent decades, there have been some cases that have a big impact and serious threat to the environment. First, pollution of Buyat Bay, which could be due to the disposal of waste (tailings) which is a hazardous material and toxic conducted by PT. Newmont Minahasa Raya (PT. N.M.R). Second, environmental pollution that occurred in Papua earth, due to the exploration of gold, silver and copper were performed by PT. Freeport Mc. Moran. Third, hot mudflow in Sidoarjo region Porong has caused environmental damage and loss of invaluable amount, material and immaterial.

In the enforcement stage, the few cases that the environment has a large impact on the environment, setting the strict liability principle in environmental law cannot be applied to the fullest. Governments tend to choose the path of political settlement through economic policy sense, from the settlement of litigation through the ecological sense.

Policy pursued policies that growing niche to protect the interests of investors, with the orientation that investors remain infuses capital in Indonesia. Although investors have clearly that did environmental pollution, but the policies pursued by the Government is a policy that is oriented cooperative economic sectors.

3.2 The legal implications of the principle of strict liability limited setting in Article 88 of Law No. 32 of 2009 on the protection and management of the environment

There are two legal implications as a result of setting the absolute principle of limited liability in environmental law, namely:

a. Such arrangements have not been able to accommodate all of the activities that potentially pose a serious threat to the environment.

Strict liability enforcement in environmental law is limited only to the actions or efforts or activities related to hazardous materials, but there are other aspects that could potentially pose a serious threat to the environment, such as mining activities.

The occurrence of the various cases that have a major impact causing environmental pollution in Indonesia, for example, the case of hot mudflow in Sidoarjo Porong; case of mining gold, silver and copper in Gesbert, Copper Temple - Papua; Buyat Bay pollution case in South Minahasa Regency, North Sulawesi; the case of coal mining in Kalimantan, and others, should be a valuable lesson in environmental protection in Indonesia. Environmental pollution caused by these activities, has caused the loss of priceless ecological justice and violated.

From a variety of environmental cases above can be understood that certain mineral mining activities, including activities that potentially result in environmental pollution. The Government and Parliament should be sensitive

to these events and make it as a consideration in the preparation of setting strict liability principle in environmental law.

As for the potential mining of minerals which cause environmental pollution are: strategic minerals for defense/security of the state or to the state's economy and vital minerals which can guarantee the lives of many people. Minerals include: 1) Petroleum, liquid bitumen, wax earth, and natural gas; 2) solid Bitumen, asphalt; 3) Anthracite, coal, lignite; 4) Uranium, radium, thorium, and radioactive materials other; 5) Nickel, cobalt; 6) Lead; 7) Iron, manganese, molybdenum, chromium, walfran, vanadium, titanium; 8) Bauxite, copper, lead, zinc; 9) Gold, platinum, silver, mercury, diamonds and 10) Arsenic, antimony, bismuth;

b. The arrangement of space yet provides flexibility in demanding legal responsibility to perpetrators of environmental pollution.

According to the Causal Theory of Von Buri that: any person who commits an unlawful act, always considered liable if his actions are *qonditio sine qua non* (CSQN).

Referring to a causal theory that every effect may occur because of the cause. For it is a certain fact or a chain of causal facts that could have disastrous effect. Each of the conditions that must exist for the occurrence of consequences, then it should be considered as a cause. Each must be held accountable for the law.

Therefore, it is not possible an environmental contamination can happen without any reason. Cause of environmental pollution there are two things, namely:

(1) Natural disasters. For example, volcanic eruptions, earthquakes, floods. Natural disasters are a natural event that is certain to happen. If the environmental pollution caused by natural disasters, it is categorized as a state force (overmatch), so that no party can be held accountable law.
Human activities related to nature that lead to natural events, of course, cannot be classified as a natural disaster. Perpetrators of these activities, it should still be held accountable for the incident law.
(2) The act of human/legal subjects, for example: B3 waste disposal, mining, and others. Environmental pollution arising from human actions/legal subject or triggered by human actions/legal subjects, then, he should be held responsible law.

In environmental law, the Defendants may be released from legal responsibility, when he can prove instead that environmental pollution is happening is not a result of his actions.

A limitation setting strict liability principle in environmental law is only about the transfer of the burden of proof on the defendant, but it cannot ensure that parties who should be held legally responsible for the environmental pollution.

To determine which party should be held legally responsible for the occurrence of environmental pollution, it must be given the freedom of space for the plaintiff (victims of environmental pollution) to find parties who are legally responsible for environmental pollution. Remembering victims of environmental pollution on average a weaker segment of society, both economically, politically and education.

If the state is truly committed that the environment is the source of life that must be protected, then the legal aspects of environmental protection should be strengthened to the maximum. Aspects of environmental protection should be a priority in order to create embodied ecological justice.

4. Conclusions

4.1 Law Political setting behind Strict liability principles in Act No. 32 of 2009 on Protection and Management of the Environment, can be viewed from three main aspects, namely:
   a) The Setting Formation aspects: not supported with a comprehensive academic study, so not succeeded in formulating a good setting.
   b) The implementation aspects of the policy: environmental protection is often overlooked because of the legal political government prefers economic policies (economic sense).
   c) The law enforcement aspects: the strict liability principle has not been implemented effectively due to government policies that tend to choose the path of non-litigation settlement through political policy of economic sense, from the settlement of litigation through the ecological sense.

4.2 The legal implications of the strict liability principle arrangements are limited in Article 88 of Law No. 32 of 2009 on the protection and management of the environment, namely:

a) The settings have not been able to accommodate all of the activities that potentially pose a serious threat to the environment.
b) The setting of space yet provides flexibility in demanding legal responsibility to perpetrators of environmental pollution.

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