

Strict Liability in Environmental Crimes Based on the Revision of Environmental Law within The Law Number 11 of 2020 on Job Creation

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ABSTRACT

This legal research would analyze the extent of the strict liability doctrine in environmental crimes based on the Implementation seen from several past court decisions, the development of environmental Laws in Indonesia, and the Job Creation Law. Other than that, it shall also analyze the possibility to resort towards other solutions in implementing such doctrine in the future.

The method used in this legal research is the normative method whereas it focuses on legal data such as legislations and cases. It would also include the use of legal literature in explaining the legal rules, theories and doctrines.

This legal research arrived at several conclusions whereas; First, the formulation of the strict liability doctrine is available in positive law relating to the environment, however it is still limited to the scope of civil law, whereas the principle of fault is still used for determining criminal liability. This indicates that the Job Creation Law has failed to accommodate strict liability to be used in environmental crimes; Second, the implementation of the strict liability doctrine in environmental crimes has not been appropriate as it is still limited to the domain of Civil Law and it could not yet be applied within the realms of Criminal Law within Indonesia as seen from Court Decision No. 54/Pid.Sus/2014/ PN.MBO, No. 1363 K/PID.SUS/2012, No. 309/Pid.B/LH/2020/PN Ktp., and No. 310/Pid.B/LH/2020/PN Ktp. The implementation from other countries such as the United Kingdom, United States, South Africa, Australia, and New Zealand could help determine the best possible method in implementing strict liability for environmental crimes; and Third, Although the Job Creation law has failed to accommodate strict liability to be applied for environmental crimes, there are still possibilities to apply the strict liability doctrine based on considerations towards legal theories. In addition, an opportunity also exists due to the formulation of the strict liability doctrine within Article 36 of the Bill of the Indonesian Criminal Code, although there are several considerations regarding the limitations on the use of such doctrine and the possible mechanisms for implementing it within Indonesia in the future

Keywords: Environmental Criminal Law, Environmental Law, Job Creation Law, Strict Liability, Bill of the Indonesian Criminal Code.

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Strict Liability dalam Tindak Pidana Lingkungan Hidup berdasarkan Revisi Hukum Lingkungan di dalam Undang-Undang No. 11 Tahun 2020 tentang Cipta Kerja

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INTISARI

Penelitian hukum ini akan menganalisa sejauh mana doktrin strict liability untuk tindak pidana lingkungan hidup bisa diterapkan berdasarkan implementasinya dalam beberapa putusan pengadilan, perkembangan Hukum Lingkungan di Indonesia, dan UU Cipta Kerja. Selain itu, karya ini juga akan menganalisa mengenai peluang untuk mengimplementasikan doktrin tersebut di masa yang akan datang.

Metode yang digunakan dalam penelitian hukum ini adalah metode normatif yang menitikberatkan pada data hukum berupa peraturan perundang-undangan dan putusan sidang. Selain itu, literatur hukum juga akan digunakan dalam menjelaskan aturan hukum, teori dan doktrin.

Penelitian hukum ini sampai pada beberapa kesimpulan yaitu: Pertama, rumusan doktrin strict liability terdapat dalam hukum positif yang berkaitan dengan lingkungan, namun masih terbatas pada lingkup hukum perdata, sedangkan asas kesalahan masih digunakan untuk menentukan pertanggungjawaban pidana. Hal ini menunjukkan bahwa UU Cipta Kerja telah gagal mengakomodasi strict liability untuk digunakan dalam kejahatan lingkungan; Kedua, penerapan strict liability dalam kejahatan lingkungan belum tepat karena masih terbatas pada ranah Hukum Perdata dan belum dapat diterapkan dalam ranah Hukum Pidana di Indonesia sebagaimana terlihat dalam Putusan Pengadilan No.54. / Pid.Sus / 2014 / PN.MBO, No. 1363 K / PID.SUS / 2012, No. 309 / Pid.B / LH / 2020 / PN Ktp., Dan No. 310 / Pid.B / LH / 2020 / PN Ktp. Penerapan dari negara lain seperti Inggris, Amerika Serikat, Afrika Selatan, Australia, dan Selandia Baru dapat membantu menentukan cara terbaik untuk menerapkan tanggung jawab ketat atas kejahatan lingkungan; dan Ketiga, Meskipun UU Cipta Kerja gagal mengakomodasi strict liability untuk diterapkan dalam hukum pidana lingkungan, masih terdapat kemungkinan untuk menerapkan strict liability berdasarkan pertimbangan terhadap teori-teori hukum. Selain itu, peluang juga muncul karena hadirnya rumusan doktrin strict liability dalam Pasal 36 RUU KUHP, meskipun terdapat beberapa pertimbangan mengenai batasan-batasan dalam penggunaan doktrin tersebut dan kemungkinan mekanisme pelaksanaannya di Indonesia di masa yang akan datang.

Kata Kunci: *Hukum Pidana Lingkungan, Hukum Lingkungan, Undang-Undang Cipta Kerja, Strict Liability, Rancangan Undang-Undang Hukum Pidana.*

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