

# LEGAL LIABILITY FOR COASTAL POLLUTION BY FACTORY WASTE WITH JUSTICE

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### Abstract

The purpose of this study is to analyze: 1) How is responsibility for pollution and or destruction of the environment? 2) What is the process of resolving disputes over pollution and / or environmental destruction? 3) What is the legal responsibility for coastal pollution by factory waste that is fair? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) In the context of environmental management or control of all natural resources and the environment, the responsibility inherent in it is not only owned by the state, but it is also related to the company. Companies or corporations managing B3 waste have the obligation to carry out social responsibility for the community and the environment around the company's activities. 2) Law Number 32 of 2009 Article 87 regulates the obligation of the person responsible for the business to compensate the person or environment who is harmed. In addition to victims, environmental organizations can also hold civil liability to business actors. However, if the lawsuit is made by an environmental organization, the request that can be made is limited to taking certain actions, except for real costs or expenses. So that people who suffer losses due to pollution and / or environmental destruction can bring lawsuits together by means of class actions. The most important thing in carrying out this lawsuit, community groups can take ways outside the court known as alternative dispute resolution mechanisms According to Article 1 point (5). 3) Regulation of the Minister of Environment Number 13 of 2011 concerning Compensation for Pollution and/or Environmental Damage. "Compensation is a cost that must be borne by the person responsible for activities and/or businesses due to pollution and/or environmental damage". Every person or legal entity that pollutes the environment and is proven, then he must be responsible for the environmental damage that has been done.

**Keywords:** Liability, Law, Pollution, Beach, Waste, Justice.

## INTRODUCTION

### Background

Indonesia annually experiences environmental problems whose impact seems visible, for that Indonesia responds to these environmental problems by starting to adopt the concept of state responsibility. By adopting this concept, it can show that it is a form of state responsibility for pollution that results in injury to the country itself. Environment is all external factors that affect an organism; These factors can be living organisms

(bioticfactor) or non-living variables (abioticfactor), which can be grouped into two main components of the environment, namely:<sup>1</sup> a) Biotic: Living creatures; and b) Abiotics: Energy, chemicals, etc.

Preservation of environmental functions is a series of efforts to maintain the continuity of the carrying capacity and accommodating capacity of the environment. The wealth of biodiversity and abundant natural resources of the State of Indonesia must be protected by the state and law. Environmental problems that arise are disasters that can affect the quality of life of mankind. Problems of pollution (air, soil, water), global warming, fog, acid rain, erosion, floods, and others have been seen since the mid-20th century. The issue of environmental damage should receive attention from all parties involved in order to provide a new perspective in order to prioritize an effort to protect the environment. It can indirectly contribute to avoiding other dangers that are more severe to the development of human life and living things to the sustainability of the environment.<sup>2</sup>

In relation to Environmental Protection and Management, the disposal and management of waste produced by factories must certainly meet the provisions of waste management in accordance with the mandate of Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management in order to ensure legal certainty for management businesses and all stakeholders so that environmental pollution or destruction does not occur.<sup>3</sup>

Environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities so as to exceed the established environmental quality standards, the definition of environmental pollution is regulated in the provisions of Article 1 number 14 of Law No. 32 of 2009. Environmental destruction is regulated in the provisions of Article 1 number 16 of Law No. 32 of 2009, which specifies that: "environmental destruction is an action that causes direct or indirect changes to its physical and/or biological properties that result in the environment no longer functioning"

In relation to the principle of laws and regulations, namely the precautionary principle, is that uncertainty regarding the impact of a business and/or activity due to limited mastery of science and technology is not a reason to delay steps to minimize or avoid threats to pollution and/or environmental damage.

The responsibility of the company as the manager of industrial estates to the community is very possible considering that in this case the company has neglected and / or negligent environmental pollution committed by companies to the community because the community is very disadvantaged by the pollution. In legal science and the Indonesian legal system, there are two unlawful acts, the first as regulated in article 1365 of the Civil Code and the other as regulated in article 88 of the UUPPLH which is specific in the field of environmental law. Article 1365 of the Civil Code states: "Every act that violates the law and brings harm to another person obliges the person who caused the damage because of his fault to compensate for the damage."<sup>4</sup>

## Problem Statement

1. What is the responsibility for pollution and/or destruction of the environment?
2. What is the process of resolving disputes over pollution and / or environmental destruction?
3. What is the legal liability for coastal pollution by factory waste that is fair?

## THEORETICAL FRAMEWORK

*The Grand Theory* or the main theory on which the analysis knife is based in this study is the theory of legal protection. Legal protection is the obligation of the state in providing legal protection to every citizen. Legal protection can also be described as a function of law both as a function of regulating and as a function of enforcing the law to achieve justice and legal expediency. Legal protection is defined as providing protection to human rights and such protection is given to the community so that they can enjoy legal rights<sup>5</sup>.

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law.<sup>6</sup> Meanwhile, according to C.S.T. Kansil, legal protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.<sup>7</sup> Philipus M. Hadjon argues that legal protection is an act to protect or provide assistance to legal subjects, using legal instruments.<sup>8</sup>

In terms of the utilization of coastal areas and small islands in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands is given in the form of coastal waters concession rights or can be called HP-3, namely in Article 16 which stipulates that the utilization of coastal waters is given in the form of HP-3.

The designation of HP-3 as "Rights" is inappropriate. It is more appropriate to use the term "permit" to utilize (in this case cultivate) coastal waters. The right to exploit coastal waters or HP-3 as described in Article 16 of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands.<sup>9</sup>

*Middle Theory* in this study uses the Hierarchy Theory of Legislation. According to Hans Kelsen, norms are tiered in layers in a hierarchical order. In this sense, the legal norms below apply and originate, and are based on higher norms, and higher norms also originate and are based on higher norms and so on until they stop at a highest norm called the Basic Norm (*Grundnorm*) and still according to Hans Kelsen is included in a dynamic norm system.

Law is formed and abolished by its authorities who are authorized to form it, based on higher norms, so that lower norms (*Inferior*) can be formed based on higher norms (*superior*), in the end the law becomes tiered and multi-layered forming a Hierarchy.<sup>10</sup>

*Applied Theory* in this study uses Authority Theory. The concept of authority can be seen in Dutch known as "*bevoegdheid*" which means authority or power.<sup>11</sup> Authority is the ability to perform certain legal actions in the sense of actions that cause legal consequences and include the emergence and disappearance of legal consequences.<sup>12</sup> All government actions must be based on applicable law. Thus that legitimate government action is if it is in accordance with authority. It further said that authority can only be obtained in two ways, namely attribution and delegation.<sup>13</sup>

## RESEARCH METHODOLOGY

In every research, a scientific work always requires complete and objective data and has certain methods in accordance with the research problem to be discussed and the steps to be taken. Scientific research means a method that aims to study one or several symptoms by analyzing by conducting an in-depth examination of the fact to then seek a solution to the problems caused by the fact.

The method used in this study is the descriptive method of analysis, which is a method that presents an event or symptom systematically, factually with accurate preparation. Review of legal research is<sup>14</sup> empirical legal research, which is descriptive.<sup>15</sup> The type of data used in this study is secondary data contained in the literature, in the form of related laws and regulations, journals, research results, articles, and other books.

## RESEARCH RESULTS

### Responsibility for pollution and/or environmental destruction

When discussing criminal liability in relation to the living environment, there are several things that need to be discussed, namely the scope / understanding of the environment, the form or type of loss in the environment, the category of actions that give rise to liability in the environment, and the form of responsibility.

The living environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the survival of life, and the well-being of humans and other living things.

Meanwhile, environmental losses are losses arising from pollution and/or environmental damage that are not private property. Environmental losses result in human health, living systems, the growth of flora and fauna that are within the range of pollution.

Symptoms of pollution can be seen in the short and long term, namely in behavior and growth. Pollution in a relatively short time, occurs a week to a year, while pollution in the long term occurs after a period of 20 years or more.

It can definitely be said that environmental damage caused by human activities has many losses. Humans use the environment without realizing it can harm the environment.

Examples of human activities that cause damage to the natural environment are as follows:

### **1. Garbage**

This waste problem can have chain consequences for environmental pollution in the form of: The stench disturbs people around him. Accelerate the outbreak of disease and sources of disease transmission. Clogged sewers and water flows that result in flooding. Impact spoils the comfort and beauty of the city.

### **2. Depletion of Flora and Fauna**

The depletion of flora and fauna is a creation of conditions for the existence of flora and fauna to be scarce. This is due to the disconnection of the network of life. The scarcity of flora and fauna can be feared extinction. Finally, humans in the next generation find it difficult to find rare types of flora and fauna, even just legends.

### **3. Pollution**

Pollution or pollution occurs due to rapid population growth and is not supported by the carrying capacity of the environment and does not pay attention to the rules of using natural resources that are environmentally sound. The pollution consists of water pollution, air pollution, and soil pollution.

Environmental pollution that occurs in the community is often done by hoarding waste continuously resulting in environmental damage such as pollution of water sources used to meet the need for water, then decreased air quality inhaled by people living around industrial companies producing B3 waste and other environmental damage caused by B3 waste.

The principle of polluters paying is closely related to the provision of liability for environmental pollution. Liability relates to pollution that is the subject or who is polluting the environment. Polluters can be either individuals or groups or legal entities. The basis for the implementation of this principle is Article 87 Paragraph (1) of the Environmental Protection and Management Law (UUPPLH), which is in accordance with the explanation of Article 87 Paragraph (1) that this article is a realization of the polluter paying principle, which reads: "Every person responsible for a business and/or activity that commits unlawful acts in the form of pollution and/or destruction of the environment that causes harm to other people or the environment must pay compensation loss and/or taking certain actions".<sup>16</sup>

Environmental laws and regulations must be obeyed and implemented by the government in the management and issuance of environmental permits, in addition to the function of environmental laws and regulations must be carried out properly. The role of the government, judicial institutions, and all Indonesian people must participate in protecting the environment and overseeing all issues related to the environment and environmental crimes in Indonesia.<sup>17</sup>

In the context of environmental management or control of all natural resources and the environment, the responsibility inherent in it is not only owned by the state, but it is also related to the company. Companies or corporations managing B3 waste have the obligation to carry out social responsibility for the community and the environment around the company's activities. This corporate social responsibility is an effort to create harmonious, balanced relationships in accordance with the environment, values, norms, and culture of the community around the company carrying out its activities. Corporate social responsibility for the community and environment around the company carries out its activities is called *corporate social responsibility (CSR)*.<sup>18</sup>

Article 68 of Law Number 23 of 2009 concerning Environmental Protection and Management stipulates:

Everyone who conducts business and/or activities is obligated to:

- a. Provide information related to environmental protection and management in a correct, accurate, open, and timely manner;
- b. Maintaining the sustainability of environmental functions; and
- c. Comply with the provisions on environmental quality standards and / or standard criteria for environmental damage.

Taking into account the above provisions, it can be stated that everyone who conducts business has the obligation to provide information related to environmental protection and management correctly, accurately, openly and in a timely manner; maintaining the sustainability of environmental functions; and comply with provisions on environmental quality standards and / or standard criteria for environmental damage. Because this is an obligation, it is the responsibility of everyone who does business.<sup>19</sup>

Based on Chapter XII of Law Number 32 of 2009, the first part regulates supervision in environmental protection and management from Article 71 to Article 75. Article 71 paragraph (1) ministers, governors, or regents/mayors in accordance with their authority must supervise the compliance of the person in charge of the business and/or activity with the provisions stipulated in laws and regulations in the field of environmental protection and management. Paragraph (2) the minister, governor, or regent/mayor may delegate his authority in conducting supervision to officials/technical agencies responsible for environmental protection and management. Paragraph (3) in carrying out supervision, ministers, governors, regents/mayors shall determine environmental supervisory officials who are functional officials.

Basically, the authority to control water pollution in the region, both from industrial waste and from other sources, lies with the governor as the head of the level I region. This is regulated both in article 13 of Government Regulation Number 20 of 1990 concerning water pollution control and in Article 18 paragraph (2) of Government Regulation Number 41 of 1999 concerning Air Pollution Control. However, in air pollution control, the governor's authority is to coordinate, especially in terms of pollution across districts /

cities. Pollution that occurs in a regency / city area that is authorized to carry out its control is the Regent / Mayor of the area concerned.<sup>20</sup>

For parties who feel aggrieved by pollution due to industrial business, can complain or submit information orally or in writing to the responsible agency, regarding allegations of environmental pollution and/or destruction from businesses and/or activities at the planning, implementation, and/or post-implementation stages as stipulated in detail in the Regulation of the State Minister of Environment Number 9 of 2010 concerning Procedures for Complaints and Handling Complaints Due to Alleged Pollution and/or Destruction of the Living Environment. The provision of compensation can be done after a decision that has permanent legal force. The award of compensation can be requested through filing a lawsuit (Petitum) to the court<sup>21</sup>

### **Process of Resolving Disputes over Pollution and/or Environmental Destruction**

Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) regulates environmental issues as a guideline basis for law enforcement officials to ensnare perpetrators of environmental crimes subject to criminal penalties in accordance with applicable regulations. Article 1 number 16, states the definition of environmental destruction is "The actions of people who cause direct or indirect changes to the physical, chemical, and/or biological properties of the environment so as to exceed the standard criteria of environmental damage".

Article 1 number 17 also states that environmental damage is a direct and/or indirect change in the physical, chemical, and/or biological properties of the environment that exceeds the standard criteria for environmental damage. Thus, in this law, acts that cause environmental pollution and / or environmental destruction carried out intentionally or unintentionally or negligence are directed to be criminal acts which in this law are crimes.

Article 80 paragraph (1) regulates government coercion to those responsible for businesses and/or activities that violate environmental permits in the form of; a) temporary suspension of production activities; b) transfer of means of production; c) closure of sewerage or emissions; d) demolition; e) confiscation of potentially infringing goods or devices; f) temporary suspension of all activities; g) other measures aimed at stopping violations and restoring environmental functions.

Article 87 regulates the obligation of the person responsible for the business to compensate the person or environment who is harmed. In addition to victims, environmental organizations can also hold civil liability to business actors. However, if the lawsuit is made by an environmental organization, the request that can be made is limited to taking certain actions, except for real costs or expenses. So that people who suffer losses due to pollution and / or environmental destruction can bring lawsuits together by means of class actions. The most important thing in doing this lawsuit, community groups can resort to methods outside the court known as alternative dispute resolution mechanisms.<sup>22</sup>

Humans who in their efforts to be part of development have a role in damaging the environment. Then this matter cannot be allowed to drag on. Because one of the triggers for a new polemic in the scope of the environment is environmental sengeka. The settlement of environmental disputes still uses the application of article 1365 of the Civil Code. The issue of compensation that still requires proof of the element of causal relationship between the act and the loss, which is imposed on the plaintiff as a victim. However, this is contrary to the principle of absolute responsibility in environmental law. This principle is as stated in Article 88 of the PPLH Law "Everyone whose actions, businesses, and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment are absolutely responsible for losses incurred without the need to prove an element of guilt." As stated in Article 100 of the PPLH Law that: "Any person who violates wastewater quality standards, emission quality standards, or nuisance quality standards shall be punished, with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah)".<sup>23</sup>

In order to be effective, the law in its activities is enforced with the support of sanctions, both administrative, civil, and criminal sanctions. So to ensure the support of these sanctions, a relationship of harmonization and synchronization must be established across all levels of common life, by making a guide as a guide regarding how to act and be expected to act. One way of effectiveness in environmental law enforcement is to use a *multi-door system* approach, namely the use of various kinds of laws and regulations to handle cases related to the environment, because consistent law enforcement will also activate prevention instruments.<sup>24</sup>

### **Legal Liability for Coastal Pollution by Equitable Factory Waste**

The birth of Law Number 32 of 2009 concerning Environmental Protection and Management is a formal source of law at the legal level in the context of the environment in Indonesia. Philosophically, Law Number 32 of 2009 concerning Protection and Management and Protection of Life, this views and appreciates the importance of human rights in the form of the right to a good and healthy environment for citizens.<sup>25</sup>

Law No. 32 of 2009 concerning Environmental Protection and Management (UUPLH) as a replacement for Law No. 23 of 1997 brought fundamental changes in environmental management arrangements in Indonesia. Because judging from the title of the 2009 UUPLH, there is an emphasis on efforts to protect life protection followed by the word environmental management. In fact, in terms of language rules, the word management has included protection activities or activities.

With an emphasis on protection efforts, in addition to the word environmental management, Law 32 of 2009 pays serious attention to regulatory rules aimed at providing guarantees for the realization of sustainable development and ensuring the environment can be protected from businesses or activities that cause damage or pollution to the environment.<sup>26</sup>



Furthermore, based on Article 97 of Law Number 32 of 2009 concerning Environmental Protection and Management, environmental crimes are categorized as crimes, so that criminal responsibility can be imposed on organs in the corporation.<sup>27</sup> It aims to prevent companies from protecting themselves and abdicating responsibility by devolving it on their workers.<sup>28</sup> In principle, every business activity will have an impact on the surrounding environment, but the size of the impact depends on the type of business activity, and most business activities in the field of environmental management that utilize and or exploit elements in the environment have a large and important impact on the environment. Environmental pollution or destruction carried out by corporations is one element for the implementation of environmental law enforcement processes which means repressive actions.<sup>29</sup> In environmental law, one of the principles of subsidiarity is known that prioritizes other legal remedies before enacting criminal law, namely the enforcement of State administrative law, civil law and dispute resolution outside the court.<sup>30</sup> The explanation of Law Number 32 of 2009 concerning Environmental Protection and Management confirms that environmental criminal law enforcement still pays attention to the principle of *ultimum remedium* which requires the implementation of criminal law enforcement as a last resort after the implementation of administrative law enforcement is considered unsuccessful.<sup>31</sup>

The problem of pollution is a very frequent problem, widely discussed by people around the world. The problem of pollution is a problem that needs serious handling by all parties. In fact, as much as possible to prevent environmental pollution. Environmental pollution occurs when the material cycle in the environment changes. Balance in terms of structure and function is disturbed can be disturbed. Imbalances in the structure and function of the material cycle can occur due to natural processes and also due to human actions.

As a juridical basis for this environmental pollution problem, it can be seen in Article 20 Paragraph (1) of the PPLH Law, namely "The determination of the occurrence of environmental pollution is measured through environmental quality standards." One of the environmental quality standards is the Wastewater Quality Standard as mentioned in Article 20 Paragraph (2) letter b of the PPLH Law.<sup>32</sup>

Environmental pollution by a company must be able to take responsibility. The principle of a company's responsibility for environmental pollution is about the principle of corporate social responsibility, the principle of legal responsibility, and the politics of administrative (political) responsibility.

Overall, this responsibility will be more clearly explained through the responsibility of every person whose business actions, and/or activities use, produce and/or manage B3 waste, and/or who pose a serious threat to the environment, are absolutely responsible for losses that occur without the need to prove the element of guilt (*principle strict liability*). The principle of social responsibility is also known as the principle of liability by companies due to environmental pollution.<sup>33</sup>

To achieve the above objectives, UUPLH establishes a number of legal instruments to prevent pollution and/or environmental damage, namely Strategic Environmental Assessment (KLHS), Spatial Planning, Environmental Quality Standards, Standard Criteria for Environmental Damage, AMDAL, Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL), Licensing, Environmental Economic Instruments, Environment-Based Laws and Regulations, Environment-Based Budgets, Environmental Risk Analysis, Environmental Audit, and other instruments according to the needs and development of science, where KLHS occupies the top position in environmental prevention and pollution. The emphasis on environmental protection aspects can also be seen from the two stages of permits that must be fulfilled by every person or business actor / activity related to environmental management, namely the obligation to obtain an environmental permit in advance as a condition for obtaining a business and / or activity license. In addition to preventive instruments, law enforcement instruments (administrative, civil, and criminal) are also regulated along with the application of administrative sanctions, compensation and criminal sanctions.<sup>34</sup>

According to Article 1 number (5) of the Regulation of the Minister of Environment Number 13 of 2011 concerning Compensation for Pollution and / or Environmental Damage. "Compensation is a cost that must be borne by the person responsible for activities and/or businesses due to pollution and/or environmental damage". Every person or legal entity that pollutes the environment and is proven, then he must be responsible for the environmental damage that has been done. And burdened costs towards the restoration of an environment that has been polluted. "The restoration of environmental functions is carried out in stages: stopping sources of pollution and cleaning polluting elements, remediation, rehabilitation, restoration; and/or other means in accordance with the development of science and technology"

Furthermore, in the Regulation of the Minister of Environment Number 13 of 2011 concerning Compensation for Pollution and / or Environmental Damage, the matters regarding compensation are as follows:

### **Article 3**

The person responsible for businesses and/or activities that commit unlawful acts in the form of pollution and/or environmental damage that causes losses to other people or the community and/or the environment or the state must:

- a. Perform certain actions; and/or
- b. Pay indemnity

### **Article 4**

The obligation to carry out certain actions as referred to in Article 3 letter a includes:

- a. Prevention of pollution and/or destruction of the environment;
- b. Tackling pollution and/or environmental destruction; and/or
- c. Restoration of environmental functions.

UUPPLH has regulated criminal liability for companies that commit environmental damage or pollution, as described in Law Number 32 of 2009 concerning Environmental Protection and Management.

#### **Article 116.**

1. If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed on:
  - a. Enterprises; and/or
  - b. The person who gave the order to commit the crime or the person who acted as the leader of the activity in the criminal act.

#### **Article 119.**

In addition to the crimes referred to in this Law, business entities may be subject to additional criminal or disciplinary actions in the form of:

- a. Deprivation of profits obtained from criminal acts;
- b. Closing all or part of the place of business and/or activity;
- c. Reparations due to criminal acts;
- d. Compulsion to do what is neglected without rights; and/or
- e. Company placement under supervision for a maximum of 3 (three).

Regarding the duties and responsibilities of the government that has issued a business license to a company, the relevant government is constitutionally obliged to revoke the license. The PPLH Law has regulated the administrative responsibility of a company, as explained in Law Number 32 of 2009 concerning Environmental Protection and Management.

### **CONCLUSION**

The results showed that;

1. In the context of environmental management or control of all natural resources and the environment, the responsibility inherent in it is not only owned by the state, but it is also related to the company. Companies or corporations managing B3 waste have the obligation to carry out social responsibility for the community and the environment around the company's activities
2. Law Number 32 of 2009 Article 87 regulates the obligation of the person responsible for the business to compensate the person or environment who is harmed. In addition to victims, environmental organizations can also hold civil liability to business actors. However, if the lawsuit is made by an environmental organization, the request that can be made is limited to taking certain actions, except for real costs or expenses. So

that people who suffer losses due to pollution and / or environmental destruction can bring lawsuits together by means of class actions. The most important thing in carrying out this lawsuit, community groups can take ways outside the court known as alternative dispute resolution mechanisms According to Article 1 point (5) of the Minister of Environment Regulation Number 13 Years.

3. 2011 on Compensation for Pollution and/or Environmental Damage. "Compensation is a cost that must be borne by the person responsible for activities and/or businesses due to pollution and/or environmental damage". Every person or legal entity that pollutes the environment and is proven, then he must be responsible for the environmental damage that has been done.

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