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Strict Liability as an Expansion of the Meaning of Criminal Acts in Environmental Crimes

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Abstract.
The problems in overcoming criminal acts in the environmental sector not only need practice but also need development and improvement in theoretical studies, so that the purpose of the laws and regulations formed reaches their goals. One of the interesting discussions to be reviewed in depth is the applicability of the concept of strict liability or absolute responsibility in enforcing criminal law in the environmental sector, as regulated in Article 88 of Law Number 32 of 2009 concerning environmental protection and management. Strict liability in general is to put criminal liability to the perpetrator of a criminal act without the necessity of guilt. In other words, errors with the concept of strict liability can be ruled out. Eliminating wrongdoing does not mean eliminating evidence for criminal acts that have indeed been committed. The conduct of a criminal act is the basis on which a person can be held criminally liable (determining the presence or absence of a mistake). However, in the concept of strict liability, this does not apply on the contrary, a person who has committed a criminal act has also been fulfilled with the element of guilt, so it does not need to be proven or ruled out. The criminal act becomes completed, and the element of guilt is evidenced by the loss arising as a result of the criminal act committed.

Keywords: strict liability, criminal acts, environmental crime

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1. INTRODUCTION

The environment is an inseparable part of human life. As a place inhabited by humans, the environment can provide great benefits for humans if it can be managed properly and correctly. However, if managed improperly and correctly, it can not only damage the environment but will also endanger other living things, especially humans. We can find several events of damage or pollution of the environment caused by human actions, such as throwing garbage into river water, illegal logging, disposing of hazardous and toxic waste without prior filtering, and the phenomenon of forest burning carried out for the benefit of certain parties.

In fact, human consciousness to always maintain and maintain environmental sustainability is the main factor that makes the environment an integral part of human

life. Because the environment can determine human health and viability. The living environment and humans must go hand in hand so as not to cause harm or danger to both. It is undeniable that the natural riches contained in our living environment have the potential to give rise to an industrialized world, build infrastructure, and benefit the people themselves. Therefore, efforts to protect the environment from destruction and pollution must be coordinated and balanced with efforts to help accelerate the country's economy, including through industrialization activities and infrastructure development. Because the two influence each other. Humans can affect the environment, and the environment can also affect human life. Under conditions of mutual influence, human position becomes the dominant factor that causes positive and negative changes in the environment.

To maintain environmental sustainability and maintain healthy communities, states must monitor and enforce restrictions on industrialization activities that benefit the environment. These main goals are more or less motivated by the fact that humans are constantly exploring and exploiting natural resources, resulting in environmental damage and pollution []. Environmental degradation and pollution are indeed serious problems, and the resulting impacts can have a negative impact on the sustainability of communities as a whole and the environment itself, and must be addressed seriously. Moreover, difficult and inadequate evidence requires the existence of regulations that enable law enforcement agencies to act swiftly against perpetrators of environmental damage and pollution so that they can restore the state of the environment caused by environmental damage and pollution. Therefore, the Environmental Protection and Management Act (first regulated by Environmental Management Act No. 23, 1997 and completely repealed by Environmental Protection and Management Act No. 32, 2009) adopts the principle of no-fault liability, and Environmental Management Act No. 23, 1997 stipulates absolute liability in Article 35, while in Law Number 32 of 2009 concerning Environmental Protection and Management is regulated in Article 88: "Any person whose actions, efforts, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment are absolutely responsible for losses incurred without the need for proof of the element of faults". Strict liability means that if the perpetrator commits a crime stipulated by law, he/she can already be convicted regardless of his or her inner thoughts []. Faults that are the domain of criminal liability become something that does not need to be proven as long as the actions committed by the perpetrator have sufficiently met the elements of the formulation of the criminal act. An faults that does not need to be proved has certainly overridden the principle of no criminality without faults (geen straft zonder schuld/keine

straft ohne schuld). Even far from it, Sutan Remy Sjahdeini that strict liability not only eliminates the guilt of the perpetrator but imposes a penalty on the perpetrator even if the perpetrator does not have the required mens rea []. Therefore, Strict liability is also known as “liability without fault”.

Faults (mens rea) is an important factor in criminal responsibility for a person who is suspected of having committed a criminal act (actus reus). This is because according to Roeslan Saleh, mistakes must be the basis and reason for the sanctions []. Guilty therefore becomes a condition to convict the person who committed the crime. When it is said that the condition for a person being convicted of a crime must be that he or she is at fault, that fault is really a process of punishment. And if it turns out that there was a mistake, was there any criminal act committed by the person? There is nothing wrong as long as you have not committed a criminal offence.

Eliminating wrongdoing does not mean eliminating evidence for criminal acts that have indeed been committed. The commission of a criminal act is the basis on which a person can be held criminally liable (determining the presence or absence of faults). However, in the concept of strict liabity, this does not apply on the contrary, a person who has indeed committed a criminal act of guilt does not need to be proven or can be ruled out. This is certainly a challenge for law enforcement in Indonesia that adheres to the teachings of strict liability, in the context of law enforcement in the environmental field can impose criminal liability on a person who because of “the actions of others who have nothing to do with him” [], or external factors of human deeds. Therefore, imposing criminal liability for acts not committed by him gives rise to injustice because there is a request for legal responsibility more than what the person concerned should have (*versarii in reillicita*). Even imposing a criminal conviction on a person who has not committed a criminal act at all, so that it may be contrary to Article 28D paragraph (1) of the 1945 Constitution which essentially specifies that the state with the law it enacts should be able to provide “recognition, guarantees, protection, and fair legal certainty and equal treatment before the law”.

The application of the concept of strict liability in cases of pollution and environmental damage must be limited to parties who do have a relationship with activities that utilize the environment. That is, criminal charges are imposed on parties whose activities cause pollution or damage to the environment, not to other parties whose actions do not cause this. For example, in forest fires caused by the actions of individuals or communities that result in forest fires so that they enter the company’s land area, the burned company area should not be charged to the company because the company is actually one of the victims of the actions of the person or community. Therefore, although the concept of

strict liability is applied in law enforcement efforts in the environmental field, caution in imposing criminal penalties also needs to be considered so that the sentences imposed are not imposed on parties who should not be convicted. Contrary to this, it is clear that the scope is very broad, in order to prevent the breadth of the scope, and to facilitate discussion, it is necessary to limit the problem. The problems in this study can be formulated as follows: (1.) How is the application of the concept of strict liability to the subject of criminal law in environmental crimes? (2.) What is the view of strict liability as an extension of a criminal act with an element of guilt in environmental crimes?

2. METHODOLOGY/MATERIALS

For original research papers, this method is discretionary. The method is written descriptively and is intended to provide a description of the methodology of the study. This methodology aims to give the reader as much insight as possible, to explain the relevance of the strict liability issue of criminal law in environmental crimes, and to provide a basis for convicting those who have committed crimes in environmental crimes and have elements of guilt.

3. RESULTS AND DISCUSSIONS

3.1. Criminal Liability in Environmental Crimes

Studies in criminal law cannot be separated from three main studies, namely criminal acts, criminal liability, and criminal punishment. The three points mentioned above require different studies in the science of criminal law []. The issue of criminal liability is not included in the discussion of criminal acts. The discussion of criminal liability should be viewed from outside the discussion of criminal acts. Punishment in criminal acts is only limited to acts that are prohibited and threatened with criminal punishment for whoever by his behavior commits a criminal act []. Therefore, in criminal acts, it is only regulated to the extent of objective elements, or elements of the act.

Criminal liability is the process of determining whether a person who commits a criminal act can be convicted. Because if a person cannot be held criminally liable, then that person cannot be convicted. In accordance with the twoistic teachings, namely the view that separates between criminal acts (criminal acts) and criminal liability. The teaching requires that a person can be held criminally liable if he has been proven to have committed a criminal act. But not the other way around, a person who is proven to

have committed a criminal act can certainly be held criminally liable, unless there has been in himself a “faults”. The separation between criminal acts and criminal liability also has consequences for the separation between criminal liability and punishment. Accounting for a person determines whether or not there is a mistake in that person. If there is really a mistake in him, then for him a conviction. In terms of criminal liability, Romli Atmasasmita quoted Pound’s opinion, which was “I . . . Use the simple word “liability” for the situation whereby one may exact legally and other is legally subjected exaction” []. The term “liability” is used in circumstances, where on the one hand a person is entitled to retaliate legally, and on the other hand legally a person is charged with indemnification.

Based on the aforementioned formulation of “liability”, Pound discusses it from the philosophical point of view of liability, and the legal system reciprocally. The pound has further outlined the development of the concept of liability. The first theory, according to Pound, is that liability is defined as an obligation to pay the retribution that the perpetrator will receive from someone who has been harmed. In line with the increasingly effectiveness of the law’s protection of the interests of society in the interests of peace and order, and the belief that “retribution” as an antidote, the payment of “compensation” shifted its position, originally as a “privilege” then became an “obligation”. The measure of such “indemnity” is no longer the value of a retribution that must be “purchased”, but rather from the point of view of the loss or suffering caused by the actions of the perpetrator in question [[?]]. Thus the conception of “liability” is interpreted as reparation. There was a change in the meaning of the concept of “liability”: from the concept of “composition for vengeance” (a measure for revenge) to “reperation for injury” (recovery of circumstances). The change in the form of compensation with a sum of money to compensation by sentencing, has historically been the beginning of “liability” or liability [].

The above perspective shows that liability is the result of infringement by an individual. Compensation must be paid as compensation for the acts committed by the perpetrator. After all, a person who deprives others of their rights must be held accountable for his deeds. In this case Roeslan Saleh questioned whether what was meant by a person was responsible for his actions. Writers in general, according to Roeslan Saleh, do not talk about the conception of criminal liability. Roeslan Saleh said that, they had conducted an analysis or conception of criminal liability, namely by concluding that the person responsible for what he had done should do the deed with “free will”. Actually, if only so, according to Roeslan Saleh, they are not talking about the conception of criminal liability, but rather talking about measures about being able to be responsible

and therefore being viewed as criminal liability []. Furthermore, Roeslan Saleh also expressed the following opinions: “They seek and affirm about the conditions of how to exist hence a person can be said to be responsible for a criminal act. But the results of his research did not provide a description of whether it meant that a person was responsible for his actions. It is precisely the answer to this question that really needs to be thought about. Faults, Liability and Criminal are phrases that are heard and used in everyday speech, in morals, religion, and law. The three elements relate to one another, and are rooted in the same circumstance, that is, the existence of a violation of a system of rules. This system of rules can be broad and multifaceted (civil law, criminal law, moral rules and so on). The similarity of the three is that they include a set of rules about behavior followed by a particular group. So the system that gives birth to the conception of error, accountability and punishment it is a normative system” [].

The discussion of criminal liability cannot be separated from error. In the unwritten principle applicable in criminal law, i.e. no criminal without error (*geen straft zonder schuld/keine straft ohne schuld*), it is a condition that a person who commits a criminal act can be convicted. Here all that matters is the relationship between that accountable error and the sanctions that come with it afterwards. For “error must be the basis and reason for the sanction” []. Or it could also be that the rules regarding criminal liability serve as determinants of the conditions that must be present in a person so that it is legal to be sentenced. Thus, the conviction of a person is in accordance with the degree of guilt contained in the person [].

Environmental law has adopted liability without error or what is known as strict liability. This can be seen in Article 88 of the Environment Act. A perpetrator whose actions cause prohibited consequences have been deemed to be responsible for the losses incurred. Of course, this provision is different and even contrary to the principle of no criminality without error (*geen straft zonder schuld/keine straft ohne schuld*). However, strict liability in law enforcement in the field of the environment is a special rule (lex specialis) considering that the impact that arises from this criminal act results in such a large loss, both for humans, the State, and the environment itself, and its implementation sometimes makes it difficult for law enforcement officials to determine the element of guilt. Therefore, the concept of strict liability is defined as an absolute liability associated with the inflictment of damage. One of the main characteristics is the absence of a requirement for the need for faults [].

3.2. Relevance of The Application of Strict Liability to Criminal Law Subjects

Initially, the concept of strict liability was applied to the cases mentioned earlier. However, in its development, this concept was also applied to cases that had a difficult level of proof of guilt. In accordance with the reasons for the acceptance of this concept according to Kristian, there are several things that are the basis for implementing strict liability, including:

1. Proving the existence of guilt (mens rea) in various modern criminal acts will take a very long time and is very difficult to do;
2. In handling various modern criminal acts, fast handling is needed so that the need to prove guilt (mens rea) can hinder the law enforcement process (law enforcement);
3. In various modern criminal acts, the negative impact of the criminal acts committed is very dangerous and very terrible;
4. The incompetence of law enforcement officers is not yet qualified (given that modern criminal acts are often carried out using advanced technologies and have a high level of complexity);
5. In the development of the international world, to face and overcome various modern criminal acts the principle of error can be ignored or even abolished; and;
6. In various modern criminal acts, especially criminal acts committed systematically and organizedly, it will be very difficult to determine collective guilt as the fault of a corporation [].

However, the use of strict liability as a basis for imposing criminal penalties on parties whose actions have consequences prohibited by law continues to cause serious problems. When enacting criminal law, it was originally assumed that the legal objects referred to in the text of the law would continue to be directed at the people. Therefore, the introduction of strict liability would have negative consequences, as it would essentially allow penalties to be imposed on people who are not at fault, or who have not committed any crimes at all. This certainly tends to violate human rights that should be protected from the arbitrariness of the state (law enforcement in this case). Some criminal law scholars still oppose and reject the application of this principle because it results in innocent people being punished. So what's the point in punishing innocent

people? []. Initially this concept has also been applied in the Netherlands with a term known as *leer van het materialle feit* or *fait materialle*. Its applicability is only limited to criminal acts that fall into the category of offenses. However, since the arrest of the Milk Case in 1916 from the Supreme Court of the Netherlands (H.R. Netherland), its application has been abolished [].

The elimination of the application of strict liability in the Netherlands basically seeks that this concept is not applied to legal subjects in the form of humans because basically the element of error in humans can be tested and proven normatively. It is the mental state of the who that determines the presence or absence of guilt at the time of committing a criminal act so that it can be passed on in the form of reproach to him. It is the mental state of the person that determines the presence or absence of guilt at the time of committing a criminal act so that it can be passed on in the form of reproach to him. In some countries that adhere to the civil law system or common law in general, it is formulated negatively. This also includes Indonesia which is included in the civil law system which instead criminal law formulates circumstances that can cause makers to be unaccounted for (It can be seen in the Criminal Code in Article 44 concerning Acts committed by persons who are 'incapable of responsibility, Article 48 concerning Acts committed because there is 'coercive force', Article 49 paragraph (2) concerning forced defenses that exceed the limit, and Article 51 paragraph (2) concerning orders for office without authority), formulate circumstances that may cause the maker to be unaccounted for []. Therefore, the application of strict liability to humans is not so important and tends to deprive them of their right to get protection from legal certainty because they only see the impact that arises without paying attention to the relationship between the actions committed and the consequences that arise.

Based on the above explanation, the application of strict liability to humans is certainly unnecessary and should therefore be applied where the error factor is difficult to determine or where there are no tools or benchmarks to determine the error factor. That the application of strict liability in common law is done by corporations (subject to new criminal law), not crimes committed by humans. A corporation that is subject to criminal law is never the same as a human being with a natural will. Corporations do not have the same will as humans, even though they are recognized as objects of criminal law.

Corporations are passive subjects of law and are only driven by human activities. The will of the corporation in the study of criminal law actually returns to the will of man who has the capacity to drive the activities of the corporation. Therefore, in corporate crimes, a series of criminal acts committed by humans must be observed whether they have

anything to do with the business activities of the corporation itself. Therefore, according to Chairul Huda, absolute liability or strict liability is a concept based on the doctrine of liability without proving the existence of error (liability without fault), basically cannot be applied to humans (natuurlijke persoon), but can only be applied to corporations. Thus strict liability in the field of environmental law should also be interpreted in the form of corporations [].

Satjipto Rahardjo defines a corporation as a body that he created itself from the "corpus", that is, the physical structure and into it the law incorporates the animus element that makes the body have a personality. In line with this opinion, Kenneth S. Ferber gave the understanding that: *"a corporation is an artificial person. It can do anything a person can do. It can buy and sell property, both real and personal in its own name. it can sue and be sued in its own name, its formal"* []. Although a corporation based on this understanding is made by an artificial person (artificial person), its position is considered like a natural human being who can carry out all business activities based on the corporation itself, so the consequence is that the corporation can also sue and be prosecuted legally on its own behalf.

According to Hens Kelsen, a corporation as a group of individuals treated by law as a whole, that is, as "a person who has rights and obligations that differ from the rights and obligations of the individuals who form it. Hans Kelsen further explained that the "personal" herein is not the rights and obligations of the members, even though those rights and obligations concern the interests of the members of the corporate. Therefore, those rights and obligations should be interpreted as the rights and obligations of the corporation itself, created by the actions of the organs of the corporation []. From this explanation, it began to separate between corporate actions and human actions (natural), namely the existence of a series of actions by humans (natural) who carry out the rights and obligations of the corporation itself.

Viewed from a historical point of view, the first attempts to impose corporate criminal liability were made by countries that adhere to the common law system, such as the United Kingdom, the United States, and Canada, as a result of the start of the industrial revolution in these countries. The recognition of corporations as legal subjects who can commit criminal acts and can be held criminally liable has been going on since 1635. This recognition of corporations began when the British legal system recognized that corporations could be criminally liable, but were limited to minor criminal offences [].

Since the industrial revolution in England, which later made the development of criminal liability for coporation even more rapid, because changes in economic behavior were not limited to people, but also corporations. The application of corporate convictions

was first implemented by the Court in England in 1842, when the corporation, in the case of Birmingham & Gloucester Railway C0. has been sentenced to be criminally fined for failing to perform his obligations ordered to him. In America it only recognized it in 1909 through a court ruling in the case of New York Central and Hudson River R.R. v. United State. After that, many countries recognized corporations as criminals such as the Netherlands, Italy, France, Canada, Australia, Switzerland, and several countries in Europe [].

In Indonesia, the provision of corporations as subjects of criminal law is still regulated in laws outside the Criminal Code because the Indonesian Criminal Code has not regulated corporations as subjects of criminal law. The recognition and applicability of the corporation as a subject of criminal law can be seen in the following legislation below:

1. Emergency Law Number 17 of 1951 concerning Hoarding of Goods;
2. Law Number 7 of 1965 concerning Economic Crimes;
3. Law Number 11 PNPS of 1963 concerning the Crime of Subversion (this law has been repealed by Law Number 26 of 1999);
4. Law Number 9 of 1976 concerning Narcotics Storage;
5. Law Number 35 of 2009 concerning Narcotics;
6. Law Number 32 of 2009 concerning Environmental Management;
7. Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001;
8. Law Number 8 of 2010 concerning Money Laundering;
9. Law Number 1 of 2023 concerning Criminal Law

3.3. Strict Liability as an Expansion of Criminal Acts of Environment Crime

Basically, criminal liability in some of the views of legal scholars as stated above has been separated from the formulation of criminal acts. The issuance of criminal liability from the formulation of criminal acts makes criminal acts only limited to prohibited acts and criminal threats against whoever commits the act. In addition, the separation of criminal liability from the formulation of criminal acts also makes the concept of criminal liability included in a different discussion from outside the criminal act. Criminal liability

only discusses the determination of whether a person who at the time of committing a criminal act had an error that can be passed on to him. Therefore, the discussion of criminal liability is carried out after a criminal act committed by a person. However, this does not apply the other way around, a person who commits a criminal act cannot necessarily be held criminally liable unless there has been a mistake in himself when committing a criminal act. This is because criminal acts are only related to legislative policies that put prohibited rules in positive law, so that the presence or absence of criminal acts actually exists.

Basically, criminal convictions of a person must be based on his guilt. Guilt became a benchmark for the judge in imposing a verdict on the defendant. So that proving the element of someone's guilt is important for the judge, in addition to proving that there has indeed been a criminal act committed. However, in the concept of strict liability, which excludes the proof of the element of error, it becomes a different thing. Whether a person who because of his actions causes pollution or destruction of the environment can be declared responsible for the consequences that arise.

So in this case, according to Chairul Huda, there are two views that have differences and conflicts with each other in explaining the concept of strict liability. The first view, argues that criminal responsibility is imposed on a person for a criminal act even if there is no intention or wrongdoing on him. This view makes strict liability an extension of criminal liability (*strafausdehnungsgrund*), which means when a prohibited effect has arisen, then the strict liability provision extends the criminal liability thereof against anyone specified, regardless of whether there is a reasonable link between the consequences referred to and the acts concerned. The second view, strict liability should be viewed as an extension of a criminal act (*tatbestandausdehnungsgrund*) which means that criminal liability is based on activities that cause consequences that are prohibited in the form of environmental losses in accordance with the provisions formulated in the criminal law, without further proving the presence or absence of guilt. It's just that the error has been deemed to have existed as long as it cannot be proven otherwise [].

Based on the aforementioned explanation, it can be seen that the difference that occurs between the first opinion that strict liability is referred to as an expansion of criminal liability (*strafausdehnungsgrund*) and the second opinion that views strict liability is referred to as an expansion of a criminal act (*tatbestandausdehnungsgrund*). The first opinion departs from the judgment that a person's guilt has existed from the moment of arising the consequences prohibited by law without regard to the conduct that has been done before. So that if the prohibited consequences arise, anyone can

be determined as a party who can be charged with criminal liability without having to pay attention to the relationship between their actions and the consequences that arise. However, it is different from the second opinion which is dotted with refusing to impose criminal liability on a person who has been determined because his actions have fulfilled the elements of a criminal act, so in this case paying attention to the relationship between the act and the consequences that arise is very important.

The second view above, first departs from the dualist theory. The dualist theory emerged since the professor's inaugural speech delivered by Moeljatno in 1955. According to Moeljatno, who uses the term criminal act with a criminal act, interprets it as an act prohibited by a legal rule of prohibition which is accompanied by a threat (sanction) in the form of a certain criminal, for whoever violates the prohibition []. The definition of a criminal act does not mention the element of guilt in it. The fault lies elsewhere which is criminal liability. According to Chairul Huda, criminal liability is first of all a state that exists in the maker when committing a criminal act. Then criminal liability also means linking the state of the maker with the acts and sanctions that should be imposed. This has the consequence that the stage of criminal liability has two modes of discussion, namely to hold a person liable for having committed a criminal act and to impose a criminal offense for his guilt. Therefore, in the concept of strict liability, it should also be necessary to determine the acts that are infringing by looking at the series of actions with the consequences caused, although in that concept the proof of the element of guilt does not need to be done.

Based on the explanation above, the meaning of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management should be interpreted by: "Any person who is a corporation whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment are responsible for losses incurred, to the extent that the loss is due to the actions of persons acting for and on behalf of the corporation, on the basis of an employment or other relationship, in order to achieve the purposes of such corporation, so as to thereby the corporation obtains a profit".

4. CONCLUSION AND RECOMMENDATION

Strict liability as a provision of a special nature should be applicable to certain conditions and to certain parties. Its application cannot be laid to the offender who can basically be measured the element of error normatively. This means that in human offenders who have the will to do, strict liability cannot be applied to him, unless it is applied to

corporations whose form and nature as subjects of criminal law are different from those of humans. Therefore, the application of strict liability in the context of enforcing law in the environmental sector should only be aimed at actors in the form of corporations, not to humans.

The exclusion of wrongdoing on criminal liability does not mean negating prohibited acts that must be done first. Although the guilt does not need to be proven, in principle it must be determined the act committed by the perpetrator, and the act has a relationship with the consequences that arise. If a prohibited effect arises without being caused by the perpetrator's actions, then it cannot be applied strict liability. This view considers that strict liability as an extension of a criminal act is not an extension of criminal liability.

Based on the explanation above, Article 88 of the Environmental Law must be interpreted as "Everyone who is a corporation whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment is responsible for the losses that occur, to the extent that the loss is due to the actions of persons acting for and on behalf of the corporation, on the basis of an employment or other relationship, in order to achieve the purposes of such corporation, thereby the corporation obtains a profit".

Recommendations for law enforcement against environmental crimes, it is necessary to formulate an environmental offense regulated in laws and regulations. So that the use of strict liability is not just examining the existence of losses as a reason for criminal acts, but strict liability should be considered as an expansion of the form of environmental crime that places the subject of criminal law (corporation perpetrators of criminal acts) considered to have committed criminal acts in accordance with the provisions of applicable laws and regulations.

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