

## Analysis of the Elimination of Strict Liability in the Omnibus Law on Massive Deforestation in Indonesia and its Effect on Global Warming and Climate Change

Khoirunnisa Khoirunnisa <sup>1</sup>, Didi Jubaidi <sup>2</sup>

<sup>1, 2</sup>Universitas 17 Agustus 1945 Jakarta

Khoirunnisa@uta45jakarta.ac.id <sup>1</sup>, didijubaidi@gmail.com <sup>2</sup>

### ABSTRAK

*Undang-Undang Cipta Kerja atau omnibus law yang disahkan pada tahun 2020 telah menimbulkan kontroversi di kalangan masyarakat dan pakar hukum. Salah satu aspek yang menarik perhatian adalah penghapusan korporasi sebagai pihak yang dapat dimintai pertanggungjawaban pidana. Sebelumnya, korporasi dapat dipidana jika terlibat dalam kejahatan lingkungan hidup. Namun, dengan disahkannya Omnibus Law, pertanggungjawaban pidana korporasi dihapuskan, kecuali dalam kasus-kasus kejahatan lingkungan hidup yang mengakibatkan kematian manusia. Penghapusan Strict Liability dalam Omnibus Law terhadap pelaku Deforestasi Masif di Indonesia dapat berdampak besar terhadap pemanasan global dan perubahan iklim. Artikel ini menganalisis dampak penghapusan pertanggungjawaban korporasi dalam tindak pidana dan pentingnya mempertimbangkan keseimbangan antara kepentingan ekonomi dan keadilan sosial. Tujuan dari penelitian ini adalah untuk mengetahui bagaimana dampak dari penghapusan asas strict liability dalam tindak pidana perusakan hutan yang disahkan pada tahun 2020 terhadap Pemanasan Global dan Perubahan Iklim. Penelitian ini menggunakan pendekatan yuridis normatif, dengan studi kepustakaan yang mencakup berbagai sumber seperti tulisan atau artikel ilmiah baik berupa buku, media online, disertasi maupun literatur lainnya. Penghapusan prinsip strict liability dalam omnibus law berdampak pada deforestasi yang masif di Indonesia yang berkaitan erat dengan perlindungan dan pemeliharaan lingkungan hidup. Tanpa strict liability, pembuktian kesalahan atau kelalaian dalam kasus-kasus deforestasi menjadi lebih berat. Penghapusan strict liability terhadap pertanggungjawaban pidana korporasi dalam kasus-kasus deforestasi masif di Indonesia dapat berimplikasi signifikan terhadap pemanasan global dan perubahan iklim. Hal ini dapat mengurangi efek jera, mempersulit pertanggungjawaban korporasi, dan menghambat upaya perlindungan lingkungan hidup.*

**Kata kunci:** *Perubahan Iklim, Korporasi, Kejahatan Deforestasi, Lingkungan Hidup, Pemanasan Global, Omnibus Law.*

### ABSTRACT

*The Job Creation Law or omnibus law passed in 2020 has caused controversy among the public and legal experts. One aspect that has attracted attention is the elimination of corporations as parties that can be held criminally liable. Previously, corporations could be convicted if they were involved in environmental crimes. However, with the adoption of Omnibus Law, corporate criminal liability has been abolished, except in cases of environmental crimes that result in human death. The elimination of Strict Liability in the Omnibus Law*

*against perpetrators of Massive Deforestation in Indonesia can have a major effect on global warming and climate change. This article analyzes the impact of the elimination of corporate liability in criminal acts and the importance of considering the balance between economic interests and social justice. The purpose of this research is to find out how the impact of the elimination of the principle of strict liability in the criminal act of forest destruction passed in 2020 on Global Warming and Climate Change. This research uses a normative juridical approach, with a literature study that includes various sources such as scientific writings or articles in the form of books, online media, dissertations or other literature. The elimination of the principle of strict liability in the omnibus law has affected massive deforestation in Indonesia closely related to environmental protection and maintenance. Without strict liability, proving fault or negligence in deforestation cases becomes more. the elimination of strict liability for corporate criminal liability in cases of massive deforestation in Indonesia can have significant implications for global warming and climate change. It may reduce deterrence, make it harder to hold corporations accountable, and hinder efforts to protect the environment.*

**Keywords:** *Climate Change, Corporation, Deforestation Crime, Environment, Global warming, Omnibus Law.*

## **INTRODUCTION**

Development is an important process to fulfill human needs in improving the quality of life. However, the implementation of development often results in negative impacts on the environment. This is because development is often implemented without considering the environmental consequences, resulting in harm to individuals and ecosystems. One common negative impact is environmental pollution, which comes from production processes, industrial waste disposal, and air pollution. This can cause damage to ecosystems as well as human health.

Uncontrolled development can also cause damage to natural ecosystems, land degradation and destruction of wildlife habitats. Other adverse impacts include flooding and erosion, which can result from a lack of adequate drainage planning or excessive logging. Climate change includes long-term changes in temperature, weather patterns, and atmospheric conditions, which can threaten human survival including Global Warming, an increase in temperature in the Earth's atmosphere, oceans, and land, which is one of the main components of climate change. The impacts of global warming and climate change can be widespread around the world affecting key sectors such as health, agriculture, forests, infrastructure, transportation, tourism, energy, and social. This can threaten the survival of local communities. In addition to physical impacts, unsustainable development can also trigger social problems such as forced relocation,

loss of traditional livelihoods and resource conflicts due to the dominance of corporate interests over local community interests.

In Indonesia, we often witness cases of development that ignores environmental aspects. The motivation of entrepreneurs to establish corporations and make profits often takes precedence over considering the impact on the environment and local communities. To face this challenge, it is important for governments, corporations and communities to pay attention to the principles of sustainable development. Sustainable development must consider the impact on the environment, involve community participation in decision-making, and implement environmentally friendly production practices. In addition, the need for strong and effective law enforcement in maintaining corporate compliance with environmental laws and regulations is also very important. With strict regulations and consistent law enforcement, it is expected that corporations will be more responsible and pay attention to environmental impacts in their business activities.

It is important for all parties involved to work together to ensure that development respects and protects the environment so as to achieve a balance between economic interests and environmental sustainability for long-term prosperity. In addition, Indonesia in 2015 contributed the sixth most carbon emissions in the world (Daisy Dunne, 2019), with forests being the main and largest contributor to carbon emissions released as a result of degradation and deforestation (Sari et al., 2024).

Indonesia has a long history of deforestation into other renewal lands, where in the 1970s it reached 300,000 hectares/year, then in the 1990s it increased to 1,000,000 hectares/year (Admin, 2024) and in the 2001-2010 period it increased to 1,500,000 hectares/year, meaning that the rapid loss of forest existence in Indonesia is equivalent to three times the area of a soccer field per minute. From this history, it cannot be denied that deforestation in Indonesia occurs on a large scale so that its existence cannot be stopped, the biggest cause of forest degradation and deforestation that occurs in Indonesia is the development of plantation activities with the most in the oil palm plantation business sector (Virgy, 2020), the expansion of the area is suspected because Indonesia has the title as one of the largest exporters of oil palm in the world so that it will underlie the increasingly massive deforestation that occurs.

The Omnibus Law, passed in 2020, aims to encourage investment and improve the business climate in Indonesia. However, the enactment of the Omnibus Law through Government Regulation in Lieu of Law (PERPU) No. 2 of 2022 has been controversial, as it was deemed to not involve an improvement process as decided by the Constitutional Court. In addition, there were various objections to the Omnibus Law on the grounds that it was too favorable to investors and less favorable to the community. One of the issues of concern is the discussion of the principle of absolute liability or strict liability for corporations that commit violations against the environment. This principle of absolute liability applies when a corporation commits a violation against the environment that can have an impact on life without having to prove direct fault (Eryarifa, 2022). However, with this abolition, questions arise regarding the legal consequences and its impact on law enforcement and human rights protection.

The presence of the omnibus law that combines many rules into one unified law in Indonesia, better known as the Omnibus Law, has a significant impact on various aspects of law including environmental protection and management. The aim is to ease investment inflows and create new jobs. The bill was quickly drafted by the House of Representatives and the Central Government. The term "Omnibus Law" was first introduced by President Joko Widodo in his inauguration speech, where he committed to simplifying various regulations into one.

The Omnibus Law reflects President Joko Widodo's commitment to streamline various regulations into one, with the hope of facilitating various activities that provide benefits to the country. In the drafting process, more than 70 rules consisting of 15 Chapters, 174 articles, and 11 Clusters were changed, which included approximately 79 laws with a total of 1,203 articles (Dwiono et al., 2024). These changes are designed to ease environmental regulations related to investment and economic activities. It is expected that with the simplification of rules, investment will increase and new jobs will be created, while maintaining a balance between environmental protection and economic development. While the Omnibus Law is expected to bring benefits to the country, the changes to the law have also generated controversy. Some are concerned that environmental protection and workers' rights may be overlooked in the effort to accelerate investment and development. Therefore, it is important to conduct a careful

evaluation of the implementation and impact of the Omnibus Law to ensure the right balance between economic development and environmental sustainability.

Previously, this absolute liability principle was used in the environmental context to provide stronger protection to the environment and society. However, in the passed Job Creation Bill, there are provisions that eliminate or reduce the application of this absolute liability principle. This is a concern for environmental activists, who argue that the elimination or reduction of the application of the absolute liability principle could open opportunities for corporations to commit violations against the environment without adequate sanctions. The existence of the absolute liability principle in the context of environmental protection has an important role in encouraging corporations to be responsible and pay attention to the environmental impact of their activities. The controversy regarding the elimination or reduction of the application of the absolute liability principle in omnibus law highlights the importance of considering the balance between economic development and environmental protection in legislation.

In this paper, the author refers to Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management which regulates the principle of strict liability and the United Nations Conventions on Biological Diversity which has been ratified through Law No. 5 of 1994. This binds Indonesia to comply with the international principles contained in the convention, which encourage sustainable management of forest resources and environmental protection in general.

However, through the Omnibus Law, the principle of strict liability has been removed or no longer exists. This leads to the prediction that the practice of environmental violations by corporations in the future is expected to continue to increase. One example is that massive and large-scale deforestation can change the function of forest land that is important for maintaining ecosystem stability into a place for giant companies that do not pay attention to environmental impact assessments.

Without a deterrent principle such as strict liability contained in the Omnibus Law, corporations can commit acts of deforestation without adequate consideration of environmental impacts. This can have serious environmental consequences, including habitat destruction, biodiversity loss, climate change, and overall ecosystem loss. In the absence of strict liability, corporations may not feel legally responsible for the negative impacts they have on the environment.

The existence of strict liability in environmental protection plays an important role in encouraging corporations to take responsibility and consider the environmental impacts of their activities. However, with the removal of this principle through the Omnibus Law, environmental protection may be compromised, and the practice of environmental violations by corporations may continue to increase in the future. The principles emphasize the importance of maintaining ecosystem balance and preserving the environment, especially in the context of forests that have an important role as ecosystem balancers. These principles are also related to Law No. 41 of 1999 concerning Forestry in Indonesia (Nitha, 2014).

Although Indonesia has sovereignty over its own territory, as a member of international conventions, Indonesia is expected to comply with and respect the rules that apply in international law. This demonstrates Indonesia's commitment to safeguarding the environment and protecting biodiversity globally. In the context of forests and the environment, it is important for Indonesia to maintain and implement the provisions contained in relevant conventions and national laws. By doing so, Indonesia can play an active role in protecting biodiversity, maintaining ecosystem balance, and ensuring environmental sustainability for current and future generations.

The enactment of Law No. 11 of 2020 on the Omnibus Law has indeed raised questions and concerns related to the preservation and maintenance of the environment. The elimination of the principle of strict liability contained in Law No. 32 of 2019 can provide space for corporations to commit acts of violation of the environment without adequate legal consequences.

In this context, the issue of deforestation is one example of concern. Without the principle of strict liability, corporations can easily carry out massive deforestation for their own interests and benefits, without considering the negative impacts on the environment and ecosystem sustainability. This can harm biodiversity, destroy wildlife habitat, increase the risk of flooding and erosion, and have other negative impacts on the environment and society.

Based on the discussion in the introduction above, the formulation of the problem to be discussed is how the impact of the elimination of the principle of strict liability in the Omnibus Law on the massive level of high deforestation in Indonesia and its influence on climate change globally?

**Literatur Review**

Several previous studies have highlighted the impact of the elimination of strict liability in the Omnibus Law on Indonesia's environmental policies. Research by Ikhsan (2022), titled "The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights," shows that the removal of strict liability could reduce the efficiency of law enforcement in cases of illegal deforestation. The author argues that by eliminating this mechanism, Indonesia may face difficulties in addressing companies involved in illegal logging and land conversion for large-scale industries, such as palm oil and mining. Ikhsan further argues that weak law enforcement could worsen Indonesia's deforestation crisis, considering the reliance on negligence evidence, which is often difficult to obtain in environmental damage cases involving multiple parties.

Research by Wulandari & Wahyuningsih (2021) in their study titled "The Strict Liability by Corporate in Enforcement of Environmental Law," emphasizes the importance of strict liability in international environmental law, particularly in developing countries that face significant challenges in managing natural resources sustainably. Wulandari & Wahyuningsih argue that the elimination or weakening of strict liability often complicates the implementation of effective policies to address major environmental issues, such as deforestation.

Although referring to the same law, namely the Omnibus Law, by discussing the principle of strict liability, but with a different perspective, the author in this paper emphasizes more on the principle of strict liability and its relationship with massive deforestation in Indonesia and climate change resulting in global warning, so that it is still actual for discussion. With a different approach, the author can provide new insights, deeper analysis, and diverse perspectives related to the impact of the abolition of the principle of strict liability and the problem of deforestation in Indonesia.

**RESEARCH METHOD**

This research employs a normative legal approach, which focuses on analyzing legal norms contained in regulations and other relevant legal rules related to the legal issues under investigation (Khoirunnisa & Jubaidi, 2023). The objective of this approach is to understand, evaluate, and interpret these norms without conducting field

observations or collecting data directly from the field (Peter Mahmud Marzuki, 2016). Normative legal research, with a focus on legal concepts and principles, aims to find and identify pertinent legal rules or doctrines to address or respond to the legal problems at hand (Soerjono & Mamudji, n.d.).

This research further explores the implications of these legal norms within the context of Indonesia's Omnibus Law, particularly with regard to environmental sustainability and deforestation. By employing the normative legal approach, the study seeks to examine how the legal framework—both pre-existing and introduced by the Omnibus Law, addresses environmental issues, including deforestation, and how the elimination of strict liability affects enforcement and compliance with environmental regulations.

Through the normative analysis, this research aims to provide a comprehensive understanding of the potential gaps in the law and whether the changes brought about by the Omnibus Law align with broader environmental protection goals. In doing so, the study will identify the relevant legal principles and doctrines, and assess their application in the context of corporate responsibility, land rights, and environmental damage, particularly in sectors such as agriculture and mining.

By analyzing these legal norms and principles, this research will also explore how Indonesia's legal framework compares with international legal standards and best practices in environmental law, specifically regarding the enforcement of regulations to prevent deforestation and mitigate climate change impacts. This comparative analysis will contribute to a broader understanding of Indonesia's role in addressing global environmental challenges while balancing economic development priorities.

## **RESULTS AND DISCUSSION**

### **1. Deforestation, Global Warming and its Effect on Climate Change**

In response to the widespread and unpredictable impacts of global warming and climate change, countries have implemented policies to mitigate the contributing factors. These measures are taken in the hope that early awareness of global warming will help minimize damage and preserve the environment (Wildan et al., 2019).

Widespread deforestation also has an impact on weather conditions, as it can cause a rise in temperature. This results in phenomena such as the melting of icebergs



in northern regions, causing land shrinkage and the potential loss of snowpack that was previously routine. The impacts of massive deforestation greatly affect global warming and climate change, significantly impacting human life. This is reflected in extreme weather and climate uncertainty, as well as rising sea levels due to melting glaciers and polar ice (Septaria, K. & Habibulloh, 2019).

Sea level rise has the potential to result in serious consequences in coastal areas, such as beach erosion and increased sand dunes. In Semarang, high sea levels and land subsidence have caused tidal flooding to become a common occurrence in the last 25 years (Wirasatriya et al., 2016). The coast of Subang Regency is also experiencing significant changes in its coastal morphology, along with accretion and erosion processes. The main driving factors are land use change and global climate change that trigger sea level rise and intensification of extreme phenomena (Handiani, D. N. et al., 2019). These conditions exacerbate the coastal situation in various regions around the world.

The agricultural sector is one of the sectors that is highly vulnerable to the impacts of global warming. In particular, semi-arid tropical farmland in some parts of Africa may experience difficulties in growth. This is because agriculture is highly dependent on weather and climate conditions (K., P. Aggarwal, 2018). With unpredictable climate change, farmers in these regions may face major challenges in maintaining stable agricultural production.

Major efforts in adjustment and adaptation are needed to address these challenges and maintain the sustainability of the agricultural sector in the future. Indonesia, as an agricultural country, is highly vulnerable to climate change, especially in the context of changing rainfall patterns. Many agricultural activities in the country are highly dependent on rainfall (Ruminta, 2016). Changes in rainfall patterns pose a major risk to agriculture, especially when rice production experiences a significant decline due to prolonged droughts and floods caused by climate change. In addition, inadequate management of water resources can cause problems related to groundwater capacity becoming too low or too high.

High temperatures during critical phases of climate change can also disrupt crop development and flowering processes, increasing the risk of damage to agricultural land. High temperatures and drought can create conditions that trigger an explosion of

pests and plant diseases (Ruminta & Handoko, 2016). All these indicate that the agricultural sector in Indonesia is highly vulnerable to climate change, and adjustment and mitigation measures must be taken to maintain the sustainability of agriculture in the future.

The impact of environmental changes caused by human activities greatly affects ecosystems and the survival of animals and plants. Humans have controlled many natural resources, causing animals and plants to lose their food sources. Unfortunately, it is often difficult for animals and plants to move because the land has been occupied by humans. In response, some animals migrate to mountainous or polar regions, while plants change their growth direction in search of new, more suitable environments. However, human development often hinders these efforts. This can lead to the extinction of some species that are unable to move.

The influence of growing cities is also a big obstacle for animals and plants. Green land and forests are often converted into settlements, leading to reduced forest areas and damage to ecosystems. In addition, the loss of forests due to massive deforestation also disrupts oxygen productivity as plants as the main producers of oxygen begin to diminish.

Extreme temperature changes also have a serious impact on plant growth and production. Excessively high temperatures can cause physical damage to plants and reduce crop yields. In addition, climate change also affects the physiology of plants, which impacts their growth and production. Animals, especially herbivores, are also affected due to the reduction of plants that can be used as food sources.

The long-term impacts of climate change also affect the food chain. The death of herbivores leads to a decrease in the population of carnivores. Farm animals also have difficulty in growing due to the lack of plants for their food. Some plants also become unfit for farm animal consumption due to genetic and physical changes. This results in the death of farm animals. Overall, continued climate change has far-reaching and serious implications for ecosystems and human life.

Widespread deforestation has a major impact on climate change, affecting the quality of crops produced from the agriculture and plantation sectors. Some crops may suffer from reduced quality due to different sensitivities to weather changes. Some crops may not even survive and those that do will suffer a decline in quality and physical

integrity. The effects of extensive deforestation can also affect the viability of cultivated crops, causing shifts in the population dynamics of pests and natural enemies. Therefore, strong mitigation and adaptation efforts are needed to address these impacts.

Mitigation strategies aim to reduce greenhouse gas emissions from agricultural land, with the hope of controlling climate change. Increased greenhouse gas concentrations can affect crop production and food availability. Projections from the International Panel for Climate Change (IPCC) indicate a potential global temperature increase of around 1.8 to 4°C by 2100. Carbon dioxide (CO<sub>2</sub>) concentration is one of the main causes of temperature rise, with impacts varying depending on crop type and location. In this context, seriously addressing deforestation and managing greenhouse gas emissions is a must to overcome adverse impacts on food production and ecosystem balance.

Global climate change has had a significant impact on the animal health sector, with the emergence of new or re-emerging diseases in both domestic and wild animals such as blue tongue, avian influenza and west nile. The link between climate change and animal diseases is spatial, with climate influencing the spread of these diseases.

In addition to impacts on animal health, global warming also impacts the agricultural sector. Increasing global temperatures can lead to a decrease in crop productivity, especially in the tropics. One serious impact of global warming is the risk of plant species extinction. As the ambient temperature increases, plants require more water for transpiration, which is a way of adapting to high temperatures. However, the negative impact is problems with the photosynthesis process, where plants need water to carry out photosynthesis. Disruptions in photosynthesis can impact the production of oxygen (O<sub>2</sub>), which is an important aspect for human needs.

In other words, global climate change not only affects animal health and the spread of disease, but also has a serious impact on food security and the ecosystem as a whole. Understanding and mitigating climate change is critical to maintaining environmental health, agricultural sustainability and human well-being.

Global warming has serious impacts on marine life, especially coral reefs. Hermatic coral reefs, which form a skeleton from the accumulated calcium carbonate (CaCO<sub>3</sub>) photosynthesized by millions of zooxanthellae algae symbiotic with coral animals, are disrupted by rising temperatures. High temperatures disrupt the

zooxanthellae's ability to photosynthesize and spur the production of harmful chemical compounds that can damage their cells.

Increasing concentrations of carbon dioxide (CO<sub>2</sub>) in the atmosphere cause changes in the chemical compounds of carbon in the surface ocean. This results in a decrease in pH and concentration of carbonate ions (CO<sub>3</sub><sup>2-</sup>) in seawater. These conditions reduce the saturation of calcium carbonate (CaCO<sub>3</sub>) which is necessary for the formation of coral reef structures.

These impacts lead to the vulnerability of coral reefs to bleaching and other disturbances, which in turn affects biodiversity in coral reef ecosystems and affects the many species that depend on them. The protection and maintenance of coral reefs is key to mitigating the impacts of global warming on these highly sensitive marine ecosystems.

Climate change has broad and serious impacts on many aspects of ecosystems and human life. One such impact is changes in the reproductive and growth behavior of living things, such as birds migrating earlier which can disrupt their reproductive processes. These shifts in reproductive cycles can result in serious problems in the sustainability of animal populations.

All of this emphasizes the importance of climate change mitigation efforts and adaptation to its impacts. The protection of ecosystems and human well-being depend on actions to reduce greenhouse gas emissions and prepare for the inevitability of climate change.

**2. Comparison of the Strict Liability Principle in omnibus law with Law No. 32 of 2009** In the context of the environment, the principle of strict liability is a concept in law that establishes the absolute responsibility of a corporation or individual in an action or activity, without having to prove the element of fault or malicious intent (Kurniawan Ridho dan Intan, 2014).

The principle of strict liability is regulated in Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management, which reads: "Any person who uses hazardous and toxic materials (B3), produces or manages B3 waste, or poses a serious threat to the environment, will be absolutely responsible for the losses incurred without the need to prove the element of fault" (Republik Indonesia, n.d.).

The principle of strict liability is regulated in Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management, which reads: "*Any person who uses hazardous and toxic materials (B3), produces or manages B3 waste, or poses a serious threat to the environment, will be absolutely responsible for the losses incurred without the need to prove the element of fault*" (Republik Indonesia, n.d.).

However, in omnibus law, Article 88 has changed. The phrase "from its business and/or activities." Replacing it with "without the need to prove the element of guilt", this change has sparked controversy and attracted the attention of many parties. The change is considered to make it easier for corporations to violate the environment, because it is no longer necessary to prove the element of fault and only applies if the loss occurs directly from the actions or activities carried out, not due to negligence or corporate error.

Some parties argue that the removal of the phrase makes it easier to invest and develop the economy, but others criticize that such actions can harm the environment and violate the principle of environmental protection.

As such, this change has sparked pros and cons, and raised concerns over environmental protection. Some have argued that the Indonesian government has abandoned its commitment to protecting and preserving the environment by removing a phrase that is an application of the principle of strict liability.

An in-depth understanding of the principle of strict liability and its implications for environmental protection is important in the context of the legal changes taking place. Further discussion is needed to explore the impact of the deletion of the phrase and find a balanced solution between economic development and environmental sustainability.

The principle of strict liability is the principle of absolute liability in which a corporation can be held responsible for an environmental problem without the need to prove the fault of the corporation. In other words, corporations will be held absolutely responsible for environmental impacts arising from their activities or operations, without having to prove that they intentionally or unintentionally violated environmental rules or norms (Kurniawan Ridho dan Intan, 2014).

The development of this principle is quite significant and has developed since ancient times, namely a case in England known as the Rylands v. Fletcher case in 1868

(Sodikin, 2022). Later, the principle of strict liability was adopted in positive law in many countries, as well as various international conventions. In Indonesia, this principle began with the ratification of the Civil Liability Convention for Oil Pollution Damage (CLC) in 1969 through Presidential Decree No. 18 of 1978. However, in 1998 it was revoked. Previously, in 1982, the principle of strict liability was included in several laws, including:

1. Law No. 4 of 1982 concerning Basic Provisions for Environmental Management;
2. Law No. 10 of 1997 concerning Nuclear, as well as
3. Law No. 23 of 1997 concerning Environmental Management.

Finally, this principle is contained in Law No. 32 of 2009. The principle of strict liability is rooted in the concept of liability for acts of environmental damage and pollution. In Indonesia, this principle began to be applied by linking it to pollution problems experienced by victims as plaintiffs in proving all types of provisions listed in Article 1365 of the Civil Code (KUHAP). This article analyzes the impact of Deforestation, Global Warming and its influence on Climate Change due to the elimination of criminal deforestation in the omnibus law passed in 2020. The positive impacts include strengthening the investment climate and accelerating economic development, while for negative impacts such as the risk of global warming and its effects on climate change and the increase in criminal deforestation by corporations without serious sanctions. This research uses a normative juridical approach, with a literature study. The elimination of the principle of strict liability in the omnibus law has an impact on massive deforestation in Indonesia and is closely related to environmental protection and maintenance. Without strict liability, which can lead to global warming and climate change, fault or negligence in deforestation cases becomes more difficult to prove and this can reduce the legal pressure that should be exerted on parties responsible for environmental damage, this is mainly related to the elements of fault and causality, which involves the principle of responsibility based on fault with reference to the burden of proof stipulated in Article 1865 of the KUHAP or Article 163 HIR / Article 283 R.Bg, which is the responsibility of the plaintiff (Ussu, 2014).

The provision of the principle of strict liability is a *lex specialis* in the case of a lawsuit regarding unlawful acts regulated in the previously mentioned article of the Criminal Procedure Code. However, this principle in Indonesia has not yet reached the

stage of criminal liability, only limited to the obligation of a corporation to pay a sum of money as civil compensation.

There are several cases in Indonesia that have been decided by the Court related to the principle of strict liability, including the South Jakarta District Court Decision No. 456/Pdt.G-LH/2016/PN.Jkt.Sel and the Bandung District Court Decision No. 49/Pdt.G/2003/PN.Bdg. in both cases the environmental damage and pollution committed by the defendant was successfully proven by the plaintiff.

Law No. 32/2009, which includes a discussion of the provisions of Article 88, was submitted to the Constitutional Court (MK) in 2017 by GAPKI (Indonesian Palm Oil Association) and APHI (Indonesian Forest Entrepreneurs Association) (Mahkamah Konstitusi Republik Indonesia, n.d.), but was eventually withdrawn by the applicants.

The use of the aspect of fault that does not need to be proven in the principle of strict liability has several reasons that can be considered (Anindita, 2017):

1. Guarantee of compliance with the rules: With the principle of strict liability, corporations or individuals will have a guarantee that they must comply with rules relating to the environment. This is important to maintain the welfare of the community and prevent losses or negative impacts on the environment.
2. Difficulty in obtaining evidence of guilt: In cases of violations of regulations relating to the welfare and survival of the community, it is often difficult to obtain clear evidence of fault or malicious intent. In such situations, the principle of strict liability can help ensure fair and effective liability without the need to rely on proving the element of fault.
3. High degree of harm: Acts that violate environmental regulations can have a high degree of harm to the social environment and public welfare. In this context, the principle of strict liability can strengthen environmental protection and provide strict sanctions against such violations (Anindita, 2017).

The elimination of the concept of strict liability in the Omnibus Law may raise concerns in law enforcement against corporations that endanger the environment. The concept of strict liability provides an effective tool in dealing with environmental violations committed by corporations.

Article 88 of Law No. 32/2009, which regulates the principle of strict liability, is considered important because it provides strong legal power to hold corporations

responsible for their actions that can pollute and damage the environment. This article has proven effective in ensnaring corporations that commit deforestation and activities that harm the environment.

With the removal of the phrase governing the principle of strict liability in the Omnibus Law, there are concerns that it could be detrimental to the environment and society. Without strict liability, corporations may become less careful and responsible in their actions towards the environment. This could result in an increased risk of massive deforestation in Indonesia and wider negative impacts on people's lives and environmental sustainability.

### **3. The Effect of the Elimination of Strict Liability Principles on Deforestation in Indonesia**

Forests play an important role in maintaining the sustainability of life. Forests are habitats for various species of flora and fauna, sources of biodiversity, clean water buffers, and climate regulators. Massive forest loss every year can disrupt the balance of the ecosystem, threaten the survival of species in it, cause environmental damage such as floods and landslides, and contribute to global climate change through greenhouse gas emissions.

In addition, forests also have economic, social and cultural values for communities. Forests provide natural resources such as timber, medicine, food and other non-timber materials that support human life. Forests are also the site of various traditional and spiritual activities of indigenous peoples. To maintain survival and environmental sustainability, it is important for the government and communities to pay attention to environmental aspects in every development activity. Protection and maintenance of forests must be prioritized, both through sustainable forest conservation efforts, wise management, strong law enforcement against illegal logging and illegal deforestation, and active community participation in forest conservation.

It is also important to ensure a balance between development and environmental sustainability. Economic and social development must be carried out in a sustainable manner, taking into account its impact on the environment and involving sustainability principles, such as efficient use of natural resources, good waste management, and utilization of renewable energy.



With awareness and collective action, Indonesia can realize sustainable development and maintain the stability and integrity of the environment, so as to create harmonious conditions between humans and nature.

The development carried out in Indonesia in recent decades has not always paid attention to environmental stability and integrity. Land conversion, including the replacement of forests with development purposes such as plantations or industrial areas, has resulted in various problems and negative impacts on the environment. Indonesia is known for its vast wealth of tropical rainforests. As an archipelago with a large area, Indonesia has about 10% of the remaining resources of tropical rainforests in the world, covering various types of forests, such as lowland forests, mountain forests, swamp forests, and mangrove forests. This means that Indonesia's role in environmental and climate stability is very important, not only for Indonesia itself, but also for the sustainability of the world globally. Indonesia's tropical forests provide significant benefits in maintaining biodiversity, regulating the global climate, and providing ecosystems that support human life.

The most significant impacts of environmental and forestry exploitation are felt by surrounding communities, as seen for example in the Amungme and Komoro indigenous communities in Papua. In this region, large-scale and long-lasting gold and copper mining activities were carried out which resulted in the region experiencing ecological damage (Amin Hamid, 2016).

Based on a report from the Indonesian Center of Environmental Law (ICEL), indicators of environmental law enforcement in Indonesia do not show an improving trend, and on the contrary, it is getting bleaker. Environmental law enforcement efforts, both initiated by the government and the community, have failed to achieve satisfactory results (Amin Hamid, 2016).

Human life requires a healthy and good environmental condition. However, the reality shows that many environmental and forestry problems are often caused by human actions themselves. It is found that many individuals or corporations unconsciously damage the environment, which ultimately impacts and affects the lives of others. They overexploit natural resources, such as destroying forests, cutting down trees illegally, polluting water, air and soil due to company activities in the vicinity, and similar things (Supramono, 2015).

However, deforestation in Indonesia, especially through the conversion of forests into plantations or industrial areas, has raised major concerns about environmental damage. Deforestation that occurs continuously and without careful attention to environmental protection and maintenance can cause serious impacts, such as loss of wildlife habitat, ecosystem damage, increased greenhouse gas emissions, and global climate change.

The issue of deforestation in Indonesia has become a concern at both national and international levels in recent decades. Many studies and research have been conducted to explore the causes, impacts, and mitigation efforts related to deforestation. The issue is complex because it involves various aspects, including policy, forest governance, agriculture, industry, and community participation and roles. An in-depth understanding of the deforestation issue in Indonesia is essential to take the right steps to protect the environment and ensure ecosystem sustainability.

The definition of deforestation provided by the Food and Agriculture Organization (FAO) of the United Nations (UN) describes deforestation as the conversion or replacement of forest areas into non-forest land uses. This includes the conversion of forests into plantations, urban settlements, industrial areas, agriculture, and other human activities that do not maintain intact forest characteristics (Handayani et al., 2022). In addition, FAO also mentions that deforestation also includes forest degradation that results in a decrease in forest quality. Degradation can be caused by human activities such as illegal logging, forest burning, excessive use of wood, or changes in natural patterns that damage forest sustainability. Deforestation has serious impacts on the environment and human life. Forest loss can lead to biodiversity loss, climate change, increased greenhouse gas emissions, soil erosion, flooding, and overall ecosystem damage.

Meanwhile, the Regulation of the Minister of Forestry of the Republic of Indonesia No. P.30/Menhut-II/2009 provides a definition of deforestation that is similar to the definition presented by FAO. The definition describes deforestation as the permanent change from forested to non-forested areas caused by human activities. This definition covers all situations where forest loss occurs, whether through conversion of land to non-forest uses, such as plantations, agriculture, or urban settlements, or through

activities that damage or reduce the quality of forests, such as illegal logging, forest burning, or general forest degradation.

Everyone has the right to live in a good and healthy environment in accordance with article 28H paragraph 1 of the 1945 Constitution. A prosperous life requires a good and healthy environment. To guarantee the rights and obligations of the state towards its citizens, the Government of Indonesia has taken steps in the context of environmental protection, one of which is through criminal regulation in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law).

The regulation of environmental crimes regulated in the PPLH Law aims for two things. First, to protect the interests of humans and the environment, because humans cannot enjoy their property, objects, and health if good environmental quality is not met. Second, to create fear for potential polluters, as criminal penalties are severe, such as imprisonment, fines, environmental restoration orders, and even announcements in the mass media about the identity of the polluter. This aims to create a deterrent effect and awareness for those who tend to damage the environment so as not to do so (Amin Hamid, 2016).

Article 49 of the 1999 Forestry Law in conjunction with Article 30 paragraph (1) of Government Regulation No. 45 of 2004, there is an interpretation that this is a form of formulation of the principle of strict liability in criminal offenses for cases of forest or land fires. In this case, no element of fault is required as a condition of liability. This view is supported by the explanation in Article 30 paragraph (1) of GR No. 45/2004, which clearly states that rights holders and permit holders are absolutely responsible for forest fires within their rights/permit. Without this explanation, PP No. 45/2004 actually contains the principle of strict liability correctly (Gunawan Wibisana, n.d.).

Biodiversity is the diversity of genetics, species, and ecosystems in an area. Biodiversity has important ecological, economic and social values. Biodiversity provides ecosystem services, such as clean water provision, climate regulation, and sustainable food production. Human activities, both inside and outside forest areas, play a major role in deforestation. Economic activities, agriculture, industry and infrastructure development are often the main causes of deforestation. In the Indonesian context, deforestation is also linked to land use change for the purposes of oil palm plantations, coal mining, or agricultural expansion.

Law No. 5 of 1994 on the ratification of the United Nations Conventions on Biological Diversity has an important role in maintaining the balance of ecosystems and biosphere life in Indonesia. The Convention aims to conserve biodiversity, ensure sustainable use of natural resources, and promote fair and equitable benefits for all parties.

Deforestation activities, such as those caused by development, can threaten biodiversity. The loss of forests as habitats and important natural resources can result in species extinction, disruption of food chains, damage to ecosystems, and negative impacts on communities that depend on forest resources. Massive deforestation in Indonesia is often carried out by corporations that convert forest land into plantations, especially oil palm plantations. Oil palm plantations have been one of the main causes of deforestation in Indonesia in recent decades (Septyan, n.d.).

With the application of the principle of strict liability, massive deforestation can be suppressed because a corporation will stem its intentions and be much more careful about whatever it will do, especially in environmental issues, in the principle of strict liability, there is no need to prove the element of guilt because the actions taken directly affect the general interests of the community. This concept recognizes that the existence of losses or impacts is sufficient evidence to determine liability (Fadhli, 2018).

In the context of the environment, the principle of strict liability enables effective law enforcement against environmental violations. In cases of deforestation or environmental pollution, the impacts and losses caused are clearly visible and can be perceived by the public directly and provide a guarantee that the corporation or responsible parties will pay compensation or take the necessary actions to address the negative impacts they cause, without having to prove the element of fault specifically. This facilitates the law enforcement process and strengthens the protection of the environment and affected communities.

The concept of *res ipsa loquitur*, which means "the facts speak for themselves" in Latin, emphasizes that there are some cases where evidence of the impact or harm incurred is sufficient to demonstrate a violation or wrongdoing. In such cases (environment), when there is significant deforestation or pollution, the impact is obvious and hurts the affected communities. Therefore, there is no need for complicated proof of fault in such cases.

The application of strict liability in the context of deforestation can be one of the effective measures in reducing massive deforestation by corporations. The principle of strict liability implies that corporations will be absolutely responsible for the losses incurred due to their deforestation actions, without having to prove the element of fault. With strict liability, corporations will have greater motivation to avoid deforestation because they will consider the significant legal and financial consequences. This may encourage corporations to adopt more environmentally responsible business practices and engage in sustainability practices.

The elimination of the concept of strict liability principle for forestry crimes in omnibus law is considered to weaken law enforcement against corporations that endanger the environment. With the abolition, the Indonesian government's commitment to safeguarding and maintaining environmental stability is considered threatened, because such actions have the potential to harm the community and have a negative impact on the environment.

Previously, Article 88 of Law No. 32 of 2009 was considered a "magic article" because it could withstand the encouragement of corporations to pollute and damage the environment. This article is a powerful tool in ensnaring corporations that are not responsible for their actions in carrying out their business activities, especially related to land use change and forestry crimes, such as forest fires that can cause environmental and forestry damage in Indonesia.

The removal of the phrase is considered to undermine the government's commitment to protecting the environment and providing appropriate sanctions to corporations responsible for damaging the environment. This raises concerns about environmental protection and the possibility of wider negative impacts on society and ecosystems in Indonesia.

Although the Omnibus Law provides sanctions for environmental violations, the new phrase "from its business and/or activities" may lead to different interpretations and complicate the process of filing a lawsuit by affected parties. This can be burdensome for victims and communities who want to fight for their rights to a polluted or damaged environment. It is important to consider environmental protection as a common interest and sustainability for future generations. The principle of strict liability provides a strong foundation in upholding justice and accountability for

environmental violations. Therefore, it is worth reconsidering to re-incorporate the principle of strict liability in legal regulations to protect the environment and affected communities.

## **CONCLUSION**

The ratification of omnibus law still has many problems and is still being debated, one of which is the elimination of the phrase "without the need to prove the element of guilt" in Article 88 of Law No. 32 of 2009 replaced with "from the business and/or its activities". The change of phrase in the article has harmed the Indonesian Government's intention to protect and maintain the environment, because the phrase in Law No. 32 is the application of the principle of strict liability in matters related to the environment. Then, the change in the phrase can also affect massive deforestation in Indonesia because in the absence of an ensnaring legal basis, in this case the principle of strict liability, and can facilitate the arbitrariness of a corporation in damaging the environment further. A corporation will carry out massive forest land use change which is then replaced with industrial area plantations that sacrifice affected communities and biodiversity for the benefit of several groups.

The removal of strict liability in the omnibus law has raised concerns that it could incentivize irresponsible deforestation. Without strict liability, proving fault or negligence in deforestation cases becomes more difficult, and this may reduce the legal pressure that should be exerted on those responsible for environmental damage. It can be concluded that, Without the principle of strict liability, massive deforestation can lead to global warming and climate change, fault or negligence in deforestation cases becomes more difficult to prove and this can reduce the legal pressure that should be given to those responsible for environmental damage.

## **REFERENCES**

- Admin. (2024). *Persoalan Deforestasi di Indonesia: Sebuah Polemik Berkelanjutan*. Tropis.Co. <https://fwi.or.id/persoalan-deforestasi-di-indonesia-sebuah-polemik/>
- Amin Hamid, M. (2016). Penegakkan Hukum Lingkungan Hidup dalam Menanggulangi Kerugian Negara. *Jurnal Legal Plurism*, 6(1), 90–94.
- Anindita, S. L. (2017). Perkembangan Ganti Rugi Kerugian dalam Sengketa Lingkungan Hidup. *Jurnal Hukum Acara Perdata*, 3(2).
- Daisy Dunne. (2019). *Profil Carbon Brief: Indonesia*. Carbon Brief Ltd.

- <https://www.carbonbrief.org/profil-carbon-brief-indonesia/>
- Dwiono, S., Ja'far, A. K., & Haryadi, S. (2024). An Analysis on the Omnibus Law and Its Challenges in Indonesia: The Perspectives of the Constitutional and the Islamic Law. *Samarah*, 8(2), 706–725. <https://doi.org/10.22373/sjhk.v8i2.22720>
- Eryarifa, S. (2022). Asas strict Liability dalam pertanggungjawaban tindak pidana korporasi pada tindak pidana lingkungan hidup. *Mahupas*, 1(2), 1–20.
- Fadhli, R. (2018). Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Kebakaran Hutan dan Lahan. *Jurnal Renaissance Fakultas Hukum Universitas Islam Indonesia*, 3(2).
- Gunawan Wibisana, A. (n.d.). *Peraturan Pemerintah Nomor 45 Tahun 2004 tentang Perlindungan Hutan (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 147, Tambahan Lembaran Negara Republik Indonesia Nomor 4453)* (p. Pasal 30).
- Handayani, H., A. Yusra, A. H., & Fitrianti, W. (2022). Dampak Konversi Hutan Menjadi Lahan Pertanian Terhadap Pembangunan Desa Studi Kasus Di Hutan Lindung Pinang Luar – Kabupaten Kubu Raya. *Perkebunan Dan Lahan Tropika*, 12(2), 48. <https://doi.org/10.26418/plt.v12i2.60027>
- Handiani, D. N., S. D., Heriati, A., & Aditya., Y. D. (2019). Kajian kerentanan pesisir terhadap kenaikan muka air laut di kabupaten subang-jawa barat. *Kelautan Nasional*, 14(3), 145–154.
- Ikhsan, E. (2022). The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights. *Journal of Human Security*, 18(2), 47–53. <https://doi.org/10.12924/johs2023.19010036>
- K., P. Aggarwal. (2018). Global climate change and indian agriculture: impacts, adaptation and mitigation. . 78(10):911–919. *Indian Journal of Agricultural Sciences*, 78(10), 911–919.
- Kurniawan Ridho dan Intan, S. N. (2014). Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strict Liability. *Jurnal Yuridis*, 1(2).
- Mahkamah Konstitusi Republik Indonesia. (n.d.). *Asosiasi Pengusaha Hutan dan Kelapa Sawit Uji UU Kehutanan*. Retrieved July 13, 2023, from <https://mkri.id/index.php?page=web.Berita&id=13791&menu=2>
- Nitha, C. (2014). Tanggung Jawab Negara Indonesia Terhadap Deforestasi Hutan Berdasarkan Konvensi Perserikatan Bangsa-Bangsa Mengenai Keanekaragaman Hayati. *Journal Universitas Brawijaya*.
- Republik Indonesia, P. (n.d.). *Undang-Undang Republik Indonesia Nomor 32 Tahun 2009*.
- Ruminta. (2016). Analisis Penurunan Produksi Tanaman Padi Akibat Perubahan Iklim Di Kabupaten Bandung Jawa Barat. *Kultivasi*, 15(1), 37–45.
- Ruminta, & Handoko. (2016). Indikasi Perubahan Iklim Dan Dampaknya Terhadap Produksi Padi Di Indonesia. *Asian Journal of Crop Science*, 8(2), 31–42.
- Sari, C. P. M., Trisniarti, N., & Nailufar, F. (2024). Antara Hutan, Investasi, Dan Kemiskinan: Dinamika Emisi Karbon Di Indonesia. *Jurnal Ekonomi Pertanian*

- Unimal*, 7(1), 22. <https://doi.org/10.29103/jepu.v7i1.17708>
- Septaria, K., B. A. D., & Habibulloh, M. (2019). Implementasi metode pembelajaran spot capturing pada materi pemanasan global untuk meningkatkan keterampilan proses sains. *IKIP Mataram*. 7(1):27–37. *Prisma Sains : Jurnal Pengkajian Ilmu Dan Pembelajaran Matematika Dan IPA*, 7(1), 27–37.
- Septyan, A. R. (n.d.). *Deforestasi: Pengertian, Penyebab, Dampak, dan Pencegahan*.
- Sodikin, S. (2022). Perkembangan Konsep Strict Liability Sebagai Pertanggungjawaban Perdata Dalam Sengketa Lingkungan Di Era Globalisasi. *Al-Qisth Law Review*, 5(2), 261. <https://doi.org/10.24853/al-qisth.5.2.261-298>
- Supramono, G. (2015). *Penyelesaian Sengketa lingkungan Hidup Di Indonesia*. Rineka Cipta.
- Ussu, D. (2014). Hukum Pembuktian dalam Perkara Perdata. *Lex Privatum*, 2(1), 127–133.
- Virgy, M. A. dan Y. D. (2020). Strategi Jaringan Advokasi Transnasional Greenpeace Indonesia Terkait Isu Deforestasi Hutan Indonesia oleh Wilmar Internasional. *Journal of Politic Issues*, 1(2).
- Wildan, A. H., Laksmiwati, D., & Supriadi. (2019). Sosialisasi perangkat pembelajaran berbasis lingkungan untuk guru ipa smp/mts di lombok barat dalam upaya mengurangi laju pemanasan global. *Jurnal Pendidikan Dan Pengabdian Masyarakat*, 2(1), 1-9–113.
- Wirasatriya, A., Hartoko, A., & Suripin. (2016). *Kajian kenaikan muka laut sebagai landasan penanggulangan rob di pesisir kota semarang*. 1(2), 31–42.
- Wulandari, P., & Wahyuningsih, S. E. (2021). The Strict Liability by Corporate in Enforcement of Environmental Law. *Law Development Journal*, 2(4), 477. <https://doi.org/10.30659/ldj.2.4.477-488>