



# Environmental Pollution in the Perspective of Civil Law

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**Abstract:** Issues relating to the environment are intrinsically linked to human behavior, as there is a significant relationship between humans and their environment, characterized by the idea that humans have a right to the environment. Environmental issues are important challenges that require our collective attention, as they are closely linked to safety, public health, and the functioning of our daily lives. The objective of the issue at hand is for the Government to take the initiative to foster public awareness and ensure effective implementation of environmental laws and regulations. This is important to prevent any prejudice against environmental management policies enforced by public enterprises. Therefore, law enforcement related to environmental pollution is very important. The approach method implemented in this research is normative research. The findings of this research show that to address environmental pollution, effective solutions are needed that aim to facilitate environmental restoration, as outlined in the Environmental Law No. 32 of 2009. This law manages environmental law to also include measures designed to prevent actions that may cause environmental degradation, thereby contributing to the mitigation of such damage. In addition, this law also emphasizes the need for environmental law enforcement within the framework of Civil Law.

**Keywords:** Environmental Pollution; UUPPLH; Environmental Law Regulation

## 1. Introduction

The environment, referring to Law No. 32 of 2009 on Environmental Protection and Management, is recognized as “transcending territorial boundaries” and does not only include countries or alternative territories. In the law, the environment is characterized as “the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, that affect nature.” Sustainable existence, along with the well-being of humans and other organisms, is prioritized. However, management requires clearly defined parameters regarding the locus of responsibility. Indonesia also has a unique ecological context. Indonesia's environment encompasses the territory over which the state exercises sovereignty and jurisdiction legally. The environment in this scenario includes 2 continents as well as oceans, characterized by a tropical climate with distinct seasonal and weather patterns. This unique natural condition has significant strategic value and is an important location for the people of Indonesia in carrying out various dimensions of social, national, and state life. In addition, Indonesia has the second longest coastline in the world and is home to the largest population in the world. Indonesia's natural resources and biodiversity are truly extraordinary. (Haryadi, 2017)

This definition encompasses a wide range of natural elements, including ravines, rivers and seas, in addition to economic and political considerations. The environment encompasses a variety of components, not limited to physical and biological elements, but includes economic, social and cultural dimensions. The environment serves as a place where individuals engage in their social activities, encompassing all aspects of the environment that suit human needs and encourage interconnected social interactions

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among individuals. (L. Hakim, 2021) Problems about the environment can certainly be separated from human actions. Since humans have rights over their environment, environmental issues are clearly related to human behavior. There are two components in determining the right to the environment. (Herlina, 2017) The procedural aspect arises from the procedural right to a healthy environment and is considered a determining element in achieving the realization of substantive environmental rights. The substantive aspect relates to essential or material rights, including the right to a satisfactory standard of living and the right to justice both within and between groups. These have been regulated in international regulations, exemplified by the 1998 Aarhus Convention, and are also recognized in Indonesian environmental regulations. (Najicha et al., 2020)

The issue of environmental pollution and degradation is a significant challenge for Indonesia today. This issue remains an important concern because of its implications for the survival of the Indonesian population in the years to come. Increased utilization of natural resources and the environment has led to a significant decline in environmental quality. Continued deforestation due to development activities has resulted in an increase in floods, landslides, and various forms of natural destruction. As a result, the health of vital natural ecosystems, including marine environments and forests - often referred to as the lungs of Indonesia and the world - has been significantly reduced. (Rahayu et al., 2022) It takes the role of the government to overcome environmental problems because environmental damage can cause disasters that can endanger the country and its people. Thus, the government must implement various rules that are used as an effort to prevent environmental damage, for example disaster mitigation, which shows that the state is responsible for the preservation of nature or the environment. (H. M. I. El Hakim, 2021) Therefore, this research is intended to encourage the government to apply environmental law to protect the environment. Because Indonesia is a state of law, because any action that causes a risk that concerns the interests of others must be accountable, and it is the government's obligation to strictly apply environmental law.

## 2. Materials and Methods

This research uses a normative legal research method, which uses a statutory approach. This normative research seeks to examine the implementation of the legal framework regarding environmental law enforcement by government agencies, with the aim of protecting against environmental degradation. The statutory approach analyzes various related regulations, which include the Environmental Law, the Civil Code (KUHPerdata), Government Regulations on the Environment, as well as laws related to environmental protection.

## 3. Results and Discussion

### 3.1 *Forms of Environmental Protection and Management According to Law Number 32 of 2009*

Environmental law encompasses a domain that addresses issues related to the regulatory framework or standards set by society in relation to environmental issues. Environmental law covers the entire natural environment (*natuurlijk milieu*). (Widianti Putri, 2021) Environmental law serves as the legal framework for the governance and

management of environmental issues. It is recognized that the right to a decent and healthy environment is a fundamental human right within the framework of social rights. As explained in the previous discourse, the legal framework and conventions describe the right to a quality and healthy environment. Each individual has the right of access to the 1945 Constitution of the Republic of Indonesia and Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH). According to this regulation, people's right to a healthy and quality environment is included as part of fundamental social rights. (Akhmaddhian, 2016) It is true to state that basic rights are rights that humans have and can then be codified into legal rights. Article 3 of Law No. 32/2009 on Environmental Protection and Management (PPLH) explains that "environmental protection and management are essential to fulfill the state's responsibility to ensure that everyone enjoys a good and healthy environment." The realization of the human right to live in a quality and healthy environment is the main objective of environmental protection and management. (BPS, 2021)

According to Law No. 32 of 2009, Industrialization causes Law No. 32 of 2009 confirms that industrialization results in environmental damage, which causes material and immaterial losses felt by humans and other living things. In this regard, the rights of victims who are directly affected by environmental damage have been recognized and protected by Article 84 of the Environmental Law, which articulates: (Najicha et al., 2020)

(a.) Environmental disputes can be resolved in court or through alternative out-of-court settlements. (b.) The parties concerned have the right to voluntarily determine the method of resolving environmental disputes. (c.) A lawsuit can only be filed in court after the out-of-court dispute resolution efforts have been unsuccessful.

According to Article 87 of the Environmental Law, the payment of forced money against perpetrators of environmental damage and compensation for losses is legally guaranteed. (D. A. Hakim, 2016) In addition, the Environmental Law provides room for resolving environmental issues in both litigation and non-litigation forms, stating: "Every person in charge of a business and/or activity that commits an unlawful act in the form of pollution and/or destruction of the environment that causes harm to others or the environment is obliged to pay compensation and or take certain actions."

Article 116 of Law No. 32 of 2009 outlines "criteria for determining liability" and describes "the conditions necessary to establish the liability of business entities." The purpose of Law No. 32 of 2009 on Environmental Protection and Management is to "prevent environmental degradation or pollution" in the Republic of Indonesia. It also foresees global ecological challenges through the implementation of sustainable development practices, and recognizes "the right to a quality and healthy environment." According to Article 28H of the 1945 Constitution, there is an urgent need to address the increasing "problem of global warming," which has far-reaching implications for climate change and subsequently leads to a decline in the quality of the environment. (Umar, 2019).

In the face of worsening environmental degradation, the Indonesian government created Government Regulation No. 22 of 2021 to strengthen environmental management law. To realize these various objectives, Law No. 32/2009 regulates various legal instruments aimed at preventing pollution and reducing environmental

destruction.(Arvin Asta Nugraha et al., 2021) The instruments covered under this category are as follows: Instruments covered under this framework include "Strategic Environmental Assessment (KLHS)," "Spatial Planning," "Environmental Quality Standards," "Environmental Damage Standard Criteria," "Environmental Impact Assessment (AMDAL)," "Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL)," "Licensing," and "Environmental Economic Instruments." The importance of environmental protection is clearly reflected in the two-tier licensing system that must be adhered to by every individual or organization involved in environmental management.(Direktorat statistik ketahanan sosial, 2023) At first, it is imperative that they apply for an environmental permit, which serves as a prerequisite for obtaining a business or activity license.

### 3.2 Forms of Environmental Law Enforcement in Civil Law Perspective

Civil law encompasses the legal framework that manages interactions arising from civil actions or deeds between individuals and legal entities. Any civil action that causes loss or suffering to another person is entitled to compensation for the damage caused by their actions. An important aspect of environmental law enforcement relates to the civil law associated with the management of environmental resources. Individuals affected by environmental pollution and degradation are identified as injured parties in such cases of environmental damage. Entities that suffer harm may include individuals, communities, or the state. Chapter XIII, Articles 84 to 93 describe the framework governing environmental law enforcement in the UUPPLH. To protect the civil rights of the parties involved in a dispute, the civil dimension outlined in these Articles describes the mechanisms that can be used for environmental dispute resolution, either judicially or through out-of-court alternatives.(Kusumantari & Udiana, 2016)

One of the many parts of environmental law is environmental civil law. Not only environmental law, but also administrative, criminal, tax, and international law, which eventually evolved into a distinct legal discipline. Civil environmental law includes regulations that define the social order among individuals operating under civil legal entities. The victim's interest in the harm caused by harmful activities has increased, but it is difficult to prove that the perpetrator was at fault, which has resulted in a system of special liability (*strich liability*). Such a system is known as Special Liability due to the highly complex aspects of environmental civil liability. Several factors make it difficult to determine the extent of damage and pollution for which the environment is responsible, among others:

First, studying the relationship between environmental damage and pollution is very difficult because the materials that cause pollution or damage can be very rare and dangerous.

Secondly, the nature of damage depends on the specific environmental instrument that is polluted or damaged, resulting in specific and overarching environmental characteristics.

Third, the defining feature of the instrument's operational procedure is that the medium responsible for pollution exerts influence. The medium responsible for environmental damage produces direct consequences. Such direct effects can be further

categorized into several different characteristics: (a.) Immediate lethal effect, which means that the contaminant causes death within a short time after the event or occurrence. (b.) *Sub-lethal effect*, which means an effect but not direct killing. This is also a type of adverse environmental effect, which means an effect but not immediate lethality. Later effects, which are usually later, are usually known only after a long time, such as a year or more. (c.) Effects that are known only after a long time *Long term effects*. (d.) Relate to elements of environmental change that require technical assistance.

Meanwhile, Article 88 of UUPPLH-2009 states that regarding the strict involvement of *strict liability*, it states: “*Any person whose action, business, and/or management of hazardous waste, and/or which poses a serious threat to the environment is absolutely liable for the loss incurred without the need to prove the element of fault.*” Thus, responsibility can be defined as an individual's obligation to do what is required of him/her if anything happens, and one can be prosecuted, blamed, and brought to justice. (Karima, 2020) Liability under civil law is basically categorized into 2 main types: fault and risk. There are therefore two categories of liability: that which is not based on fault and that which is characterized by the absence of a known fault. This alternative is usually referred to as risk liability or strict liability. (Sari & Si, 2014)

When a person engages in an act that causes harm to another person, that person is liable in accordance with the basic principle of liability based on fault. Meanwhile, the principle of risk liability asserts that consumer claimants are exempted from liability when the defendant manufacturer is directly responsible for their operations. Article 1365 of the Civil Code defines “tort” as “an unlawful act committed by a person that causes harm to another person.”

*Strict Liability* has several components, including: (a.) There is a specific act or activity. (b.) The act has a significant impact on the environment. (c.) The use or generation of waste and hazardous and toxic materials. (d.) The liability is strict. (e.) The liability is directly linked to the case of environmental damage or pollution. (Qodriyatun, 2024)

Generally, individuals perceive the harm caused by environmental pollution or destruction, as these events significantly disrupt their daily lives. (Bram, 2011) These nuisances come in many forms, including contaminated air, unpleasant odors, undrinkable water, and flooding. Individuals have the legal right to file lawsuits against entities responsible for disruptions to their living conditions. The act of suing establishes a direct link between the plaintiff and the incident in question, with the primary objective of obtaining compensation for damages sustained by the victim. Another objective of a lawsuit is for the defendant to repair the harmed environment. Civil law principles, relating to personal law, are relevant to the initiation of these individual suits, as the preferences of each individual vary widely.

In environmental disputes, victims' interests are aligned in the pursuit of compensation; however, the level of loss varies widely. Within the realm of environmental civil law, two examples of litigation can be identified: (Hapsari, 2020). (a.) Class Action: In a legal context, the term *class action* (CA) can be interpreted as a representative suit, *class action*, or representative suit. In civil environmental law, environmental disputes are not always between individuals, but can also involve class

actions, known as *actio popularis* in the United States. This lawsuit can be filed as a representative of a group of individuals where there is a common goal. In the environmental context, civil suits are not only concerned with property rights or damages but also with “public interest and environmental welfare.” In pollution cases involving a large number of people who are unfamiliar with the issue, these actions are essential to help people assert their rights. (Said & Nurhayati, 2020). (b.) Legal Standing: In cases related to the environment, the lawsuit focuses not only on property rights or damages, but also on “the existence of a healthy and safe environment for citizens.” Environmental organizations need to have the authority to file a lawsuit to protect environmental interests. However, the application of the legal status of environmental organizations is not a simple matter, considering that conventional civil law doctrine adheres to the principle of “no lawsuit without a legal interest” (*point d'intérêt, point d'action*), which is articulated as the plaintiff may only file a lawsuit based on a legal relationship and interest in the defendant and the losses suffered. (Kementrian Lingkungan Hidup dan Kehutanan, 2022)

Article 1 point 25 of Law No. 32/2009 on Environmental Protection and Management (UUPPLH 2009) defines “environmental dispute” as “a conflict that occurs between two or more parties caused by activities that have the potential to cause impacts on the environment or that have caused environmental impacts.” Thus, the focus of the dispute is between the parties involved and those affected by the environment, while the issue in question is the activity that potentially affects or has affected the environment. As stated in Article 84 paragraph (1) of the 2009 UUPPLH, the settlement process can be pursued through legal proceedings in court or out of court, as well as by using alternative methods to resolve disputes, in line with the provisions emphasized in Article 84 of the 2009 Environmental Management and Protection Law (UUPPLH), contains a number of important things that need to be considered: (Hayatuddin & Aprita, 2021) (a.) Environmental disputes can be resolved in court or through alternative out-of-court settlements. (b.) The parties concerned have the right to voluntarily determine the method of resolving environmental disputes. (c.) A lawsuit can only be filed in court after the out-of-court dispute resolution efforts have been unsuccessful.

In the most difficult cases of environmental disputes, the aim of a civil lawsuit is to prove that there is no element of fault on the part of the perpetrator, instead, they must prove that there is a causal link between the act and the harm suffered by the sufferer. In environmental pollution cases, the plaintiff needs to show that the defendant's industrial or factory activities caused him harm. It is very difficult to prove this due to the complex characteristics of chemical substances, the reactions of chemical substances with each other, and the reactions of chemical substances to abiotic and biotic elements of the ecosystem, which in turn have an impact on human health. Therefore, some have proposed to eliminate proof of causality in environmental matters. However, as Law No. 32 of 2009 has provided a solution on the concept of liability, also known as *strict liability*, in the doctrine of strict liability, the element of loss becomes an important element in the submission. This is because this doctrine does not need to prove the element of fault, but only the element of loss.

#### 4. Conclusions

Environmental monitoring and enforcement refers to initiatives that aim to ensure compliance with the rules and regulations set out in broadly applicable and specific environmental laws. Environmental law enforcement has a dual purpose: it aims to impose penalties or sanctions on individuals or entities that damage the environment, while also seeking to prevent future environmental degradation. Environmental law enforcement can be carried out with the mechanism of a “tort” lawsuit in accordance with environmental civil law. This is due to Articles 84, 87, and 91 of Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH). It is hoped that the government can control environmental pollution by complying with the law and implementing environmental management properly.

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