



## Law Enforcement Against Environmental Damage and Pollution by Mining Companies

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### Abstract

**Introduction:** The environment inhabited by humans must be a good and healthy environment, far from pollution and damage, so that humans can continue their lives in this world.

**Purposes of the Research:** The objectives of this study are: To study and analyze the responsibility of companies that pollute the environment in Central Halmahera, North Maluku Province.

**Methods of the Research:** The type of research conducted in this paper is normative juridical law research that is descriptive and analytical. Normative legal research is a form of legal writing that is based on the characteristics of normative law. The approach used is a statutory approach or a juridical approach, namely research on legal products, and a conceptual approach. This approach is carried out because there is no legal regulation for the problems discussed. This conceptual approach starts from the views and doctrines that have developed in legal science, resulting in an understanding of the law and legal principles that are relevant to the problems discussed.

**Results of the Research:** The results of this study show that the responsibility of the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) which is suspected of environmental pollution that occurs includes preventive measures, waste management and recovery if environmental damage occurs, then business actors are absolutely responsible. Civil Liability of the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) includes installing a waste management unit so that the waste is in accordance with the specified environmental quality standards, restoring environmental functions, increasing supervision and evaluation to anticipate the recurrence of negligence and carrying out moral responsibility to the environment by accelerating the process of restoring polluted river stream environments by carrying out Routine cleaning of river flows so that the remains of waste that comes out into the river can be quickly decomposed.

**Keywords:** Law Enforcement; Environmental Damage and Pollution; Mining Companies.

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## INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD NRI 1945) mandates that the government, business people and all elements of society are obliged to protect and manage the environment and natural resources in the implementation of development and environmental management in Indonesia.<sup>1</sup> Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy living environment and the right to receive health services. Furthermore, Article 33

<sup>1</sup> Helmi, *Hukum Perizinan Lingkungan Hidup*, (Jakarta: Sinar Grafika, 2013), p. 1.

paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that the national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining a balance between progress and national economic unity. Based on the provisions above, a good and healthy living environment has been constitutionally guaranteed for all citizens. The implementation of integrated environmental management will create harmony, balance, and balance in order to achieve a good and healthy living environment.<sup>2</sup>

Article 1 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, hereinafter referred to as Law Number 32 of 2009) states that the environment is a unified space with all objects, power, conditions, and living creatures, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures. The environment inhabited by humans must be a good and healthy environment, far from pollution and destruction, so that humans can continue their lives in this world.

Everyone wants to have a clean, good and healthy environment, the constitution clearly guarantees that everyone has the right to enjoy and have a healthy environment equally. Legal certainty needs to be provided, therefore a legal umbrella is needed to provide limits on rights and obligations in environmental management for individuals and business actors.<sup>3</sup> According to Wisnu Arya Wardhana, environmental pollution can have both direct and indirect detrimental effects on living things. The direct impact can be felt in a relatively short time, while indirect damage damages the environment, reducing the natural carrying capacity for human survival. Companies that prioritize industrial growth and ignore the potential losses that arise from neglecting their responsibilities must be dealt with firmly.<sup>4</sup>

Environmental pollution can be declared an unlawful act if an action is carried out that harms another party and violates the law and the public interest. Of course, every action that harms another person, whether an individual or a legal entity, must be held accountable for its actions. As stipulated in Article 87 paragraph (1) of Law Number 32 of 2009, it states: Any person responsible for a business or activity who commits an unlawful act in the form of environmental pollution and/or destruction that causes harm to another person or the environment is obliged to pay compensation or perform certain actions.

It is understandable that the provisions in Article 87 paragraph (1) of Law Number 32 of 2009 above require the perpetrators of the pollution to pay compensation and take other actions to restore the environment to its original condition. Meanwhile, Regarding Unlawful Acts (PMH), as regulated in Article 1365 of the Civil Code (KUHPerdata), it stipulates: "Every unlawful act that causes harm to another person, obliges the person causing the loss through their fault to compensate for that loss."

Article 145 paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law Number 4 of 2009) states: "Communities directly impacted by Mining Business activities have the right to: a) receive appropriate compensation for errors in the conduct of Mining

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<sup>2</sup> Siswanto Sunarso. *Hukum Pidana Lingkungan Hidup Dan Strategi Penyelesaian Sengketa*. (Jakarta: Rineka Cipta, 2005), p. 47

<sup>3</sup> Lilik Mulyadi, *Hukum Lingkungan*, (Jakarta: Intermasa, 2012), p. 89

<sup>4</sup> Eman Rajagukguk. "Pembaharuan Hukum Memasuki PJPT Kedua Dalam Era Globalisasi." *Majalah Hukum Dan Pembangunan* 6 (1993): 505-526

activities in accordance with statutory provisions; and/or; b) file a lawsuit through the courts for losses resulting from Mining operations that violate provisions.

Furthermore, Article 74 paragraphs (1), (2), and (3) of Law Number 40 of 2007 concerning Limited Liability Companies state: "1) Companies conducting their business activities in and/or related to natural resources are required to implement Social and Environmental Responsibility; 2) Social and Environmental Responsibility as referred to in paragraph (1) is a Company obligation that is budgeted and calculated as a Company expense, the implementation of which is carried out with due regard to propriety and fairness; 3) A Company that does not carry out the obligations as referred to in paragraph (1) will be subject to sanctions in accordance with the provisions of laws and regulations".

In reality, there are still companies and industries that neglect to pay attention to environmental impacts, even though Article 29H paragraph (1), Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia, Article 87 paragraph (1) of Law Number 32 of 2009, Article 1365 of the Civil Code, and Article 74 paragraphs (1, 2, and 3) of Law Number 40 of 2007 concerning Limited Liability Companies stipulate that compensation and restoration of the environment to its original condition are required for companies to maintain the environment.

Environmental pollution in Indonesia has largely not been fully resolved. Compensation should be given to victims (who suffer losses), and the company is fully responsible for the environment. One such environmental pollution case occurred in Weda, South Halmahera Regency, North Maluku Province. The nickel mining company PT Indonesia Weda-Bay Industrial Park (IWIP) has harmed the environment and the livelihoods of coastal communities due to the impact of nickel mining sedimentation. Major rivers in Weda Bay such as the Kobe River and Sagea River are now polluted due to the operations of a number of nickel mining companies, all of which are integrated with IWIP.<sup>5</sup> A study by Forest Watch Indonesia (FWI) shows that PT Indonesia Weda-Bay Industrial Park (IWIP) is suspected of dumping nickel conversion factory waste on the banks of large rivers in Weda Bay, such as the Kobe River and Sagea River, which are now polluted due to the operations of a number of nickel mining companies.<sup>6</sup>

According to environmental organizations such as the Indonesian Forum for the Environment (WALHI) and Forest Watch Indonesia (FWI), the flooding is an ecological disaster caused by intensive nickel mining activities. River water and wells have been contaminated with mud and heavy metals from mining waste. Research also indicates the presence of hazardous metals in fish in Weda Bay. Furthermore, deforestation and changes in land cover due to massive land clearing for mining and industrial development have reduced the natural water absorption capacity, thus exacerbating the risk and impact of flooding.

Based on the aforementioned issues, PT Indonesia Weda-Bay Industrial Park (IWIP) is suspected of polluting the area by dumping waste into major rivers in Weda Bay, such as the Kobe River and Sagea River, resulting in losses for both the environment and the

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<sup>5</sup> Cermat.co.id. 5 Tahun PT IWIP dan Potret Kerusakan Lingkungan di Teluk Weda, 2023.. <https://www.cermat.co.id/5-tahun-pt-iwip-dan-potret-kerusakan-lingkungan-di-teluk-weda/>.

<sup>6</sup> FWI.or.id. BENCANA DI BALIK TAMBANG: Resiko Banjir dan Dampak Sosial-ekonomi di Teluk Weda, Halmahera Tengah. 2024. <https://fwi.or.id/resiko-banjir-dan-dampak-sosial-ekonomi-di-teluk-weda/#:~:text=Terbaru%2C%20pada%2028%20Juli%202024%2C%20banjir%20kembali%20melanda,Lelilef%2C%20dengan%20genangan%20air%20hampir%20mencapai%20dua%20meter.>

communities living near the mine. Furthermore, on Wednesday, July 28, 2024, flooding struck several villages in the Weda Tengah District after two days of heavy rain. The Kobe River overflowed, inundating settlements in these villages.<sup>7</sup> The formulation of the problem that will be studied in this study is: What are the responsibilities of companies that commit environmental pollution in Central Halmahera, North Maluku Province?

## METHODS OF THE RESEARCH

The type of research conducted in this paper is normative juridical legal research that is descriptive and analytical in nature. Normative legal research is a form of legal writing that is based on the characteristics of normative legal science. The approach used is the statute approach or juridical approach, namely research on legal products, and the conceptual approach. This approach is carried out because there are indeed no legal regulations for the problem at hand. This conceptual approach starts from the views and doctrines that have developed in legal science, thus giving rise to legal understandings and legal principles that are relevant to the problem at hand.<sup>8</sup>

## RESULTS AND DISCUSSION

In answering the formulation of the first problem, the author uses two theories, namely the Theory of the State of Law and the Green Constitutional Theory. According to the State Theory of Law, a state must be understood as a state whose administration is based on law. All actions of the government and the people must be subject to the law, prevent arbitrary actions and uphold human rights. The rule of law also emphasizes the importance of the division of powers, law-based governance in the management of mining in Indonesia.

In modern times, the concept of the State of Law in Continental Europe was developed by Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term, namely "*rechtsstaat*". Meanwhile, in the Anglo American tradition, the concept of the State of Law was developed on the pioneering work of A.V. Dicey called "*The Rule of Law*". According to Julius Stahl, the concept of the State of Law, which he called "*rechtsstaat*", includes four important elements, namely: a) Protection of human rights; b) Sharing of power; c) Government based on law; d) State Administrative Court.

In the Theory of the State of Law Environmental management means integrated efforts to preserve the function of the environment, prevent pollution and damage, and ensure the responsible use of natural resources, all of which are regulated and accounted for by law. Regulations such as Law Number 32 of 2009 concerning Environmental Protection and Management are an important foundation.

A state of law is a state that places legal power as the basis of power and the implementation of this power in all its forms is carried out under the power of law.<sup>9</sup> Based on this view, all state administrators in a state of law are based on law. The law is an instrument of controlling the life of the state.<sup>10</sup> In terms of the responsibility of companies that pollute and destroy the environment, that is, responsibility is based on actions or deeds

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Syamsuhanya Bethan, *Penerapan Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Aktivitas Industri Nasional: Sebuah Upaya Penyelamatan Lingkungan Hidup Dan Kehidupan Antar Generasi*, (Bandung: Alumni, 2008) p. 15

<sup>10</sup> *Ibid.*

as the embodiment of the essence of moral values as well as moral and religious values. Responsibility means that a person should not shy away when asked to explain his actions. Responsibility also includes understanding the reasons why a person is responsible for his or her actions.

In the legal dictionary, responsibility can be understood as a necessity for a person or individual to carry out what has been obligated to him.<sup>11</sup> Responsibility is articulated as something that cannot be separated from human beings as a subject of law, because it is with its role as a subject of law, human beings have rights and obligations, that is, responsibility cannot be separated from rights and obligations. According to the law, responsibility is the result of a person's freedom of behavior that has consequences that intersect with moral ethics in doing an act.<sup>12</sup>

The concept of responsibility was also expressed by the initiator of pure legal theory, namely Hans Kelsen. According to Hans Kelsen, responsibility is related to obligations but not similar. It can be seen that an obligation is present when there is an order derived from a rule of law that regulates and gives obligations to the subject of law. Sanctions will apply to legal subjects if their obligations are not carried out. Everyone bears responsibility for every act and sanctions can be imposed for actions that are contrary to the rule of law.<sup>13</sup>

Based on this theory, it can be said that responsibility arises from the existence of a rule of law that gives obligations to legal subjects with the threat of sanctions if these obligations are not carried out. Such an obligation can be considered as a legitimate obligation, as there is a demand for law and order/regulation and the authorization given is also a support specified by the regulations. As a result, the liability obligations fulfilled by the legal subject are legal obligations.<sup>14</sup>

Laws and regulations have been enacted with the intention of protecting and compensating aggrieved parties from environmental pollution. In Indonesia, the basic concept of legal responsibility in Indonesia is as follows: a) Responsibility for the element of error, this responsibility is born from the existence of error as stipulated in Article 1365 of the Civil Code; b) Responsibility for the element of fault, this responsibility was born because of the element of negligence in it, as contained in Article 1366 of the Civil Code; c) Absolute liability (without fault) in a very limited sense in Article 1367 of the Civil Code.

The principles of legal responsibility, in general, can be classified as follows:<sup>15</sup> 1) The principle of liability *based on fault*, the principle of responsibility based on fault *liability* or *liability based on fault*. Explanation of liability based on mistakes in the Civil Code This principle explicitly states that a person can only be held legally responsible if there is an element of wrongdoing that he committed. In essence, the claim of liability does not depend on the existence or absence of a contractual relationship, but on the existence of an unlawful act; 2) The *presumption of liability* principle, this principle states that basically the defendant is always considered responsible (*presumption of liability principle*), then until he can prove his innocence. This principle can be understood that a person who becomes a defendant can

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<sup>11</sup> Andi Hamzah, *Kamus Hukum*, (Jakarta: Ghalia Indonesia, 2005), p. 27

<sup>12</sup> Soekidjo, Notoatmojo. *Etika dan Hukum Kesehatan*. (Jakarta: Prestasi Pustaka, 2010), p. 48

<sup>13</sup> Hans Kelsen, *Teori Hukum Murni: Dasar-Dasar Hukum Normatif*, (Jakarta: Rimdi Press, 1995), p. 67

<sup>14</sup> Vina Akfa Dyani, "Pertanggungjawaban Hukum dan Perlindungan Hukum bagi Notaris dalam Membuat Party Acte." *Lex Renaissance* 2, no. 1 (2017): 162 - 176.

<sup>15</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, (Jakarta: Grasindo, 2004) p. 73-79

avoid responsibility;<sup>16</sup> 3) The principle of presumption of *non-liability*, The definition of this principle in the field of transportation law is very limited. This principle emphasizes that a person cannot be held directly responsible due to negligence or fault from the party that caused it. This principle can be understood that everyone is responsible for loss or damage to cabin baggage or hand baggage, which is usually carried and supervised by passengers (consumers) is the responsibility of the passenger and not the responsibility of the carrier (business actor); 4) The principle of strict *liability*, this principle stipulates that fault is not a determining factor to declare a person to be responsible for his actions. However, there are exceptions that allow to be exempted from liability, for example in a force *majeure situation*, on the other hand, *absolute liability* is the principle of liability without fault and there are no exceptions. According to E. Suherman, *strict liability* is equated with *absolute liability* in this principle there is no possibility to free oneself from responsibility, unless the loss arises due to the fault of the aggrieved party himself. This responsibility is absolute;<sup>17</sup> 5) The *principle of limitation of liability* is *very beneficial to business actors due to the freedom of business actors to include clauses in the standard agreement they make and bind unilaterally*. Legal liability is a term used in civil law to describe a person's liability for their illegal actions. The motivation behind this arrangement is to secure and provide remuneration to the distressed party.<sup>18</sup>

In general, there are two types of liability standards used in general regulations for solving environmental problems, in particular, namely the principle of *liability based on fault* and the principle of strict *liability*. The principle of *liability based on fault*, and certain actions that may give rise to some kind of responsibility for such actions must be compensated by finding some fault on the part of the perpetrator. This is known as the principle of *liability based on fault* based on an unlawful act in the field of Indonesian civil law. The general public regulatory framework regarding civil law is largely overshadowed by the *Common Law system*. This system says that if someone does something that violates the law and harms others, the person who does it must pay for the losses they cause, this principle is in line with what is stated in Article 1365 of the Civil Code, which contains elements, among others:<sup>19</sup> a) There is an action; b) Unlawful acts; c) There is an element of guilt; d) Acts cause loss; e) The existence of causes and consequences of actions and losses.

That for the reason in the proof, it is difficult for people to prove that the environment they live in has been polluted due to the dependence of science and technology in measuring the number of dust particles that have crossed the threshold. It cannot be used as an excuse to discourage efforts to reduce or avoid the threat of pollution to environmental damage. Decision-making officials, including judges as state officials when faced with "scientific uncertainty," do not necessarily conclude that there are no consequences or no environmental damage. On the contrary, as a state official, decisions must be made in the interest of environmental protection or restoration *in dubio pro natura*, because environmental damage is latent (not immediately visible) and often cannot be irreversed.

According to Article 87 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, all business actors or parties who carry out an activity for actions that result in pollution or environmental damage that result in

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<sup>16</sup> Suherman, *Masalah Tanggung Jawab Pada Charter Pesawat Udara Dan Beberapa Masalah Lain Dalam Bidang Penerbangan (Kumpulan Karangan)*, (Bandung: Alumni, 1979) p. 21

<sup>17</sup> *Ibid*, p. 23

<sup>18</sup> Komariah, *Hukum Perdata*, (Malang: UMM Press, 2019), p. 12

<sup>19</sup> Munir Fuady, *Perbuatan Melanggar Hukum Pendekatan Kontemporer*. (Bandung: Citra Aditya Bakti, 2005), p. 10

endangering the environment or parties who are obliged to compensate and perform certain acts are required to carry it out.<sup>20</sup> Based on the above article, it can be interpreted that all business actors or their company activities for their actions result in polluting the environment, for such actions must carry out a certain act. If prevention and countermeasures efforts have been in accordance with procedures and have not solved the problem as a whole, there must be policies and methods taken to deal with these environmental problems.

Certain acts or actions are intended to ensure that there will be no recurrence of environmental pollution. Certain actions are regulated in the Regulation of the Minister of Environment Number 7 of 2014 concerning Environmental Loss or Environmental Damage. In the guidelines for calculating environmental losses due to pollution or environmental damage. The person in charge of businesses and/or activities that commit unlawful acts in the form of pollution and/or environmental damage that causes losses to others or society and/or the environment or the state is obliged to take certain actions by restoring environmental functions. Civil law itself regulates compensation caused by unlawful acts can be in the form of:<sup>21</sup> a) Compensation is based on the nominal amount: The compensation system resulting from an act against is used when there is a serious impact, the serious impact does not have a visible effect on the aggrieved party, the aggrieved party is given a certain amount of money in accordance with the sense of justice without calculating how much loss is actually experienced. In this case, the compensation has been carried out by the company by giving a sum of money to people affected by environmental pollution. Of course, it is necessary to calculate the losses experienced by the community and how severe the level of environmental damage is so that the compensation is worthy of being given by the party who pollutes the environment; b) Compensatory damages: Compensatory compensation is actually compensation because it looks at the circumstances of a person who is harmed by an act. Because of these losses, a person must spend money or cover the losses experienced, this is called actual compensation; c) Punitive damages: Punishment here can be understood as a reward for actions done by a person who harms others so that a person has to compensate for losses that exceed the actual amount.

The plaintiff or the general public who suffers losses must be able to show the existence of an element of fault in accordance with Article 1365 of the Civil Code. In the context of rapid advances in science and technology, relying on the possibility of error often makes it difficult to anticipate the risks associated with industrial development. The equivalent of this principle has its own dependency because of the limitation of liability based on fault for pollution or environmental destruction without being liable. The principle of strict *liability*, in its development the principle of absolute responsibility or (*strict liability*) is known as one of the principles of absolute responsibility (*no fault liability or liability without fault*) where in the literature it is known in the principle of responsibility without the necessity to prove the existence of error.

Mistakes can occur in development, industrialization and progress anywhere and anytime will have positive and negative impacts. The positive impact will apply when the development benefits humans. Meanwhile, negative impacts will arise if risks that harm the community are born. The strict application of responsibility, or absolute responsibility, to

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<sup>20</sup> La Ode Angga, and Miracle Soplanit. "Penyelesaian Sengketa Lingkungan Hidup Menurut Undang-Undang No. 32 Tahun 2009 Tentang UUPPLH". *LUTUR Law Journal* 1, no. 1 (2020): 9 - 14. <https://doi.org/10.30598/lutur.v1i1.2837>.

<sup>21</sup> Munir Fuady, *Op. Cit.* p. 134-135

those responsible for environmental pollution is one of the most important aspects in this case. The emergence of this principle of absolute responsibility is based on several reasons, as stated by J.E Krier, that in addition to proving that it is expensive for the victims, it is also not easy to prove the element of fault and tort in environmental cases.<sup>22</sup> Naturally, this action can help the victims while avoiding the threat of environmental pollution. As a result of industrialization or development, including in areas that endanger environmental security, that must be followed by accountability. Juridically, this is stated in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management which states that every person whose actions, businesses, and/or activities that use B3, generate funds or manage B3 basins, funds that pose a serious threat to the environment are absolutely responsible for the losses that occur without the need for proof of error. Absolute liability is a part of the deficiency that there is no need to worry about being shown by the offended party or the victim of natural contamination as a reason for the payment of compensation. According to J. E Krier, this aims to help the community as victims of environmental destruction who have suffered losses, to not have to bear the burden of proving the elements of the defendant's fault which are not easy to prove.<sup>23</sup> In writing this thesis, the responsibility of the company that is suspected of environmental pollution by the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) by disposing of the nickel refining plant on the banks of the Motui river, Motui District, North Konawe Regency, is responsible for the element of fault, (*liability without based on fault*) this responsibility was born because there was an element of negligence in it, as contained in Article 1365 of the Civil Code.

Legal Responsibility According to Djojodirdjo, legal responsibility in the realm of public law is for example the responsibility of state administration and criminal law responsibility. Meanwhile, related to responsibility in the realm of private law, legal responsibility in civil law can be in the form of liability based on default and liability based on unlawful acts. With such an understanding, it can be affirmed that the government's legal responsibility for various actions carried out within the framework of *bestuurzorg* must be distinguished in the legal field in which the government acts.<sup>24</sup>

Civil legal liability can be filed on the basis of, namely: (i) the existence of an unlawful act as stipulated in Article 1365 of the Civil Code which basically determines that whoever commits an act that causes harm to another person obliges the wrong person because of his fault to compensate for the loss; and (ii) the existence of default, namely not giving achievements at all, being late in giving achievements, making achievements that have not been stipulated in the agreements made by one of the parties in the agreement as specified in Article of the Civil Code. Another thing that needs to be emphasized is that the government's legal responsibility as a consequence of various actions carried out in the framework of carrying out government functions that are within the scope of its authority has its own characteristics, namely within the limits of its authority.

In this context, understanding the source and method of obtaining the authority of government organs is a key word to be able to determine who is responsible for the government's legal actions, including in the field of civil law. This was critically emphasized

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<sup>22</sup> Siti Sundari Rangkuti. *Hukum Lingkungan Dan Kebijakan Lingkungan Dalam Proses Pembangunan Hukum Nasional Indonesia*. (Surabaya: AirLangga University, 1996) p. 188

<sup>23</sup> Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*. (Yogyakarta: Gadjah Mada University, 2006) p. 386-387

<sup>24</sup> Salim HS, *Pengantar Hukum Perdata Tertulis (BW)*. (Jakarta: Sinar Grafika, 2019). p. 45.

by Ridwan HR, Civil legal liability arises from the existence of an engagement that comes from an act that can cause harm to others because it is committed by an error in civil law which is referred to as the existence of PMH (Unlawful Acts) in which there is an element of this fault that gives rise to civil liability or also called civil liability. According to the law, responsibility is a consequence of a person's freedom about his actions related to ethics or morals in doing an act. Furthermore, according to Titik Quarter, liability must have a basis, namely what causes the emergence of a legal right for a person to sue another person as well as something that gives birth to the legal obligation of others to give him or her responsibility

According to civil law, the basic liability is divided into two types, namely errors and risks, thus it is known as *liability without based on fault*.<sup>25</sup> Liability due to fault can be based on Articles 1365 to 1367 of the Civil Code regarding unlawful acts. If the victim who suffers a loss applies for compensation using the qualification of an unlawful act, then the elements of the unlawful act must be fulfilled and prove the fault of the business actor. Elements of unlawful acts that must be fulfilled as mentioned in Article 1365 of the Criminal Code. Civil, including: These acts are unlawful acts, there are mistakes, there are losses, there are compensation. Liability based on fault is a subjective principle of responsibility, which is a responsibility determined by the behavior of business actors based on this theory, the negligence of business actors that results in losses to others is a determining factor for the right of the aggrieved person to file a lawsuit for compensation against the business actor. According to article 1365 of the Civil Code, what is meant by unlawful acts is unlawful acts committed by a person who, due to his fault, has caused harm to others.

In law, there are 3 categories of unlawful acts, which are as follows:<sup>26</sup> a) Unlawful acts due to intentionality; b) Unlawful acts without fault (without elements of intentionality or negligence), and c) Unlawful acts due to negligence. The responsibility of companies suspected of polluting the environment The nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) and liability *based on fault* requires the company to compensate for losses. The implementation of compensation that must be carried out by the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) by providing a sum of money to the community affected by environmental pollution should need to be calculated in depth so that the compensation is commensurate with the actual environmental damage, as well as the environment must be repaired to the polluted environment.

## CONCLUSION

The results of this study show that the responsibility of the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) which is suspected of environmental pollution that occurs includes preventive measures, waste management and recovery if environmental damage occurs, then business actors are absolutely responsible. Civil Liability of the nickel mining company PT Indonesia Weda Bay Industrial Park (IWIP) includes installing a waste management unit so that the waste is in accordance with the specified environmental quality standards, restoring environmental functions, increasing supervision and evaluation to anticipate the recurrence of negligence and carrying out

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<sup>25</sup> M. Yahya Harahap, *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. (Jakarta: Sinar Grafika, 2017), p. 498

<sup>26</sup> Elyta Ras Ginting, *Hukum Hak Cipta Indonesia: Analisis Teori dan Praktik*, (Bandung: Citra Aditya Bakti, 2012), p. 51-52

moral responsibility to the environment by accelerating the process of restoring polluted river stream environments by carrying out Routine cleaning of river flows so that the remains of waste that come out into the river can be quickly decomposed.

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