

# Analysis of Absolute Liability in Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases

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*Received: 22 August 2025; Revised: 05 December 2025; Accepted: 27 January 2026*

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## ABSTRACT

*Environmental issues in Indonesia continue to be a significant issue requiring serious attention, particularly due to weak law enforcement and low commitment by law enforcement officials to environmental protection. This study aims to analyze the application of the principle of strict liability in resolving environmental disputes based on Supreme Court Regulation (PERMA) Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases. This study uses a normative legal method with a normative juridical approach through a literature review of relevant laws, doctrines, and court decisions.*

*The research results indicate that normatively, the issuance of Supreme Court Regulation Number 1 of 2023 is appropriate as a guideline for judges in resolving environmental disputes, as it strengthens the principles of justice and legal certainty. However, in its implementation, this Regulation shifts some of the burden of proof to the victims of pollution, thereby weakening the essence of the principle of strict liability as stipulated in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management. As a result, victims often struggle to obtain justice due to limited economic capacity and access to scientific evidence.*

*Thus, it is necessary to reaffirm the application of the principle of absolute responsibility so that it is in line with the principles of progressive law, as well as the commitment of the judiciary to guarantee ecological justice and the protection of the right to a good and healthy environment as part of human rights.*

**Keywords:** *Absolute Responsibility; Environment; Proof*

## 1. Introduction

Indonesia is a country based on law, this is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which expressly states that "Indonesia is a country based on law". Therefore, all aspects of social, national, state life, and including environmental issues are regulated in laws and regulations.

Besides that, Indonesia is a country that adheres to the teachings of a welfare state (*verzogingstate*, welfare state) and can be categorized as a democratic state of law.<sup>1</sup> Where every implementation of government affairs must be based on applicable law. According to the teachings of Hans Kelsen,<sup>2</sup> The state is essentially a *Zwangsordnung*, a legal order or social order that is coercive in nature, which

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<sup>1</sup> Ridwan, *Hukum Administrasi* (Yogyakarta: UII Press, 2009).

<sup>2</sup> Soehino, *Ilmu Negara Edisi Kedua* (Yogyakarta: Liberty, 1993).

gives rise to the right to command and the obligation to obey. Therefore, law takes the form of regulations that contain sanctions if violated.

As members of Indonesian society and citizens, it is fitting that we be grateful to God Almighty for having been blessed with a beautiful and complete environment, consisting of thousands of islands, some of which are still densely forested and serve as the lungs of the world, and a vast ocean stretching from Sabang to Merauke. Compare this to other countries, which are largely landlocked, devoid of forests and oceans. We should certainly be grateful for this gift and also take care of it and preserve it well, for the well-being of present and future generations.

Environmental issues have become a hot topic and are very interesting to examine in more depth because of the ongoing environmental problems. Current environmental problems are not only due to government policies that are not in favor of the environment, the low political commitment that is detrimental to the environment, but also due to the weak commitment of law enforcement officials themselves. According to Law No. 32 of 2009 concerning Environmental Protection and Management, the Environment is a unity of 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.<sup>3</sup>

As a spatial entity, the environment, in the ecological sense, recognizes no territorial boundaries, whether national or administrative. However, the environment related to management must have clearly defined boundaries of management authority. The environment in question is the Indonesian environment. Legally, the Indonesian environment encompasses the space where the sovereign state resides and its jurisdiction. In this context, the ecosystem, located between two continents and two oceans, with a tropical climate and varying weather and seasons, provides a natural environment and position of high strategic value. This provides a place for the Indonesian people and nation to live their social, national, and state lives in all dimensions. Furthermore, Indonesia has the second-longest coastline in the world and is home to a large population. Indonesia is also rich in biodiversity and possesses abundant natural resources.

This wealth needs to be protected and managed within a unified environmental protection and management system that encompasses the marine, terrestrial, and air environments, based on an environmental perspective. Therefore, the perspective for implementing environmental protection and management in Indonesia is the archipelagic perspective.<sup>4</sup>

The public's right to a good and healthy environment is a form of human rights

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<sup>3</sup> 'Pasal 1 Angka (1) Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup'.

<sup>4</sup> Wahyu Nugroho, *Buku Ajar Hukum Lingkungan Dan Pengelolaan Sumber Daya Alam* (Yogyakarta: Genta Publishing, 2022).

regulated in the 1945 Constitution. In the legislation governing the environment, namely Law Number 32 of 2009, it is stated that every individual has the right to a good and clean environment. Provisions regarding the right to a healthy environment are also complemented by community responsibilities towards the environment. These provisions cover rights and obligations regarding the environment, and provide opportunities for the community to be involved in environmental management.

Several principles of governance serve as the foundation for public participation in environmental management, based on community rights, obligations, and contributions. These principles include active public participation, information transparency, and equality among all parties. Furthermore, the legal basis for public involvement in environmental management is regulated by Law Number 32 of 2009, which outlines the principles of environmental protection and management. One important principle here is the principle of participation.

Environmental issues are constantly linked to the existence of land, air, and water. The sustainability of these three elements is crucial for human life today and for future generations. Therefore, maintaining environmental sustainability is a crucial issue in today's era of globalization. Preventive measures and law enforcement are essential. In the context of law enforcement, filing rights claims is one way to monitor pollution and environmental damage.

Everything related to the environment is regulated in Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH). UUPPLH implements environmental law enforcement, involving various types of law, such as administrative, criminal, and civil law. To address environmental issues in Indonesia, ensuring legal certainty in law enforcement is crucial. Environmental law enforcement is a step to achieve compliance with applicable legal rules and requirements, both generally and individually, through supervision and implementation in the administrative, civil, and criminal fields.

Seeking harmony in the law is not easy, but it is not impossible either. The challenge in achieving ideal law arises from the parties in dispute or dealing with the law, who expect a satisfactory outcome. Conversely, the ease of achieving ideal law can be seen when there is harmony between theory and practice. As a state based on the rule of law, one consequence is that the law must be above all aspects of state and social life. The administration of the state and society is governed by law, not by individuals. The law holds the highest position, and all powers and authorities must comply with it. One component of a state based on the rule of law is the exercise of independent judicial power by the judiciary.

In general, laws are created to provide trust to society (humans) regarding their various interests, with the aim of achieving prosperity. Law regulates all aspects of human activity, including relationships between humans, between humans and legal entities, and human interactions with the environment (ecosystems). Through law, it is hoped that human ideals (legal subjects) can be achieved, in

accordance with Gustav Radburch's thinking that in achieving these goals, law must pay attention to justice, certainty, and benefits. The law referred to here includes both passive law (statutory regulations) and active law (judgmental actions in court).

Furthermore, it is hoped that institutions will be more effective and efficient. This is because institutions play a crucial role in realizing sustainable development. Institutions can be seen in government agencies, non-governmental organizations (NGOs), legal instruments and regulations, and government programs aimed at preserving the environment and implementing sustainable development.

However, many environmental problems remain unresolved. A number of companies legally pollute or damage the environment but face no firm action. This may be due to weaknesses in the legal framework, a lack of authority among law enforcement officials, and conflicts between economic interests and social and environmental concerns.

In terms of social life, humans are living creatures with daily needs that must be met, both primary and secondary. Meeting these needs typically involves the extraction, management, and utilization of natural resources in their surrounding environment. All human activities related to the environment will ultimately impact the condition of that particular environment.

The environment is a unity of 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. And environmental protection and management are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which include planning, utilization, control, maintenance, supervision, and law enforcement, as regulated in Law No. 32 of 2009.

The Supreme Court is the primary guardian to guarantee the supremacy of law and eliminate the supremacy of personal interest as once observed by legal philosophers. This paradigm differs from countries that adhere to the common law system, according to H.L.A. Hart, the views of the Supreme Court are highly respected by both the French Cour de Cassation, the Dutch Hoge Read, the Austrian Oberste Gerichtshof, the United States Supreme Court, and the British Privy Council.

Settlement of environmental disputes outside the courts is carried out to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that negative impacts on the environment will not occur or recur. In the settlement of environmental disputes outside the courts, it can be facilitated through the services of third parties, either those without decision-making authority or those with decision-making authority, to help resolve environmental disputes, such as the Government and/or the community. The community in this case can form an institution that provides environmental dispute resolution services that are independent and impartial.

However, the good intentions of the drafters of the Environmental Management Law to address the declining legal system in Indonesia by providing opportunities for non-litigation environmental dispute resolution have not been matched by adequate institutional support. Given that it remains unclear how environmental disputes can be resolved outside the courts (non-litigation) through third-party services, this institutional support plays a crucial role in the effectiveness of law enforcement and implementation. According to Soerjono Soekanto,<sup>5</sup> Factors that can influence the functioning of law in society or the effectiveness of law enforcement and implementation are influenced by several factors, namely: legal factors themselves, law enforcement factors, facilities and infrastructure factors and community factors, namely the environment in which the law is applied.

## 2. Research Method

The type of research used is Normative Legal Research, namely library legal research. Normative legal research includes research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, legal comparisons, and legal history. In this study, the scope of this research will be conducted by drawing legal principles, which is carried out on written and unwritten positive laws. Where this research discusses absolute responsibility in Supreme Court Regulation (PERMA) No. 1 of 2023 related to the environment.

## 3. Result and Discussion

### 3.1 Analysis of the Issuance of Supreme Court Regulation (PERMA) Number 1 of 2023 is Appropriate as a Guideline for Resolving Environmental Disputes

In the creation of legislation in Indonesia, the 1945 Constitution is the basic law and source of all laws, in addition to that, Law No. 12 of 2011 concerning the formation of laws is also an important legal basis in the process of its formation.

a. 1945 Constitution

The 1945 Constitution is the state constitution and the highest source of law, serving as the basis for all legislation in Indonesia. All legislation must be derived from and not contradict the 1945 Constitution.

b. Law Number 12 of 2011

This law specifically regulates the formation of statutory regulations, including the principles that must be observed, the types and hierarchy of regulations, and the formation mechanisms.

The formation of legislation is the process of creating legislation, encompassing the stages of planning, drafting, discussion, ratification or stipulation, and promulgation.

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<sup>5</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum* (Jakarta: CV Rajawali, 1983).

Furthermore, the process of forming legislation is based on a number of principles for the formation of legislation.

Next, in this discussion, we will discuss Supreme Court Regulations (PERMA), which will raise the question of whether PERMA is included in statutory regulations. Yes, Supreme Court Regulations (PERMA) is included in statutory regulations according to Article 8 paragraph (1) of Law 12/2011.

"Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions of the same level established by law or by the Government on the orders of law, the Provincial People's Representative Council, the Governor, the Regency/City People's Representative Council, the Regent/Mayor, the Village Head or those of the same level.<sup>6</sup>

Judging from the hierarchy of statutory regulations, the position of the Supreme Court Regulation is not written in it. Based on the provisions of Article 7 paragraph (1) of Law No. 12 of 2011, it states that the Supreme Court Regulation has a position outside the hierarchy of existing statutory regulations. However, the position of the Supreme Court Regulation is further explained in Article 8 paragraph (1) of Law 12/2011.

"Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions or commissions of the same level established by law or by the Government on the orders of law, the Provincial People's Representative Council, the Governor, the Regency/City People's Representative Council, the Regent/Mayor, the Village Head or those of the same level."

As Noor M. Azis argues in his study on the existence of laws and regulations outside the hierarchy, placing Supreme Court Regulations as Regulations based solely on Recognition that are not accompanied by actions to place Perma within the hierarchy of laws will make them difficult to control. However, if reviewed substantively, several Perma have the characteristics of a law that is binding on the public.

In the explanation of Article 79 in Law Number 14 of 1985 concerning the Supreme Court, it is explained that.

"If during the course of justice there is a legal deficiency or gap in a matter, the Supreme Court has the authority to issue supplementary regulations to fill the gap or gap. Under this law, the Supreme Court has the authority to determine regulations regarding the method of resolving a matter not yet or not regulated in this law. In this

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<sup>6</sup> 'Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan'.

regard, the regulations issued by the Supreme Court are different from those formulated by the legislators."

As for the function of the Supreme Court Regulation (PERMA), the following are some of the functions of the Supreme Court Regulation (PERMA), the function of the Supreme Court as a judicial institution helps "regulate matters that have not been regulated in law" to prevent legal vacuums, which is a "legal breakthrough" in resolving the problem of legal vacuums in the field of judicial practice, the Perma functions to fill legal vacuums by forming new legal rules to regulate circumstances or events that have not been regulated by law. Delegation of authority to the Supreme Court because the DPR is of the view that matters regulated in the Supreme Court Regulation do not need to be regulated in law because these matters are of a technical judicial nature.<sup>7</sup> Legally, statutory regulations are defined as written regulations containing generally binding legal norms and are established or stipulated by state institutions or authorized officials through procedures stipulated in the statutory regulations. The Supreme Court is a state institution authorized by law to enact statutory regulations. Statutory regulations established by the Supreme Court are recognized and have binding legal force as long as they are mandated by higher-level statutory regulations or are established based on authority.

In the formation of legislation there are also several principles that need to be considered, this is regulated in Article 5 of Law 12/2011, there are 7 principles for the formation of legislation, namely the principle of clarity of purpose; the principle of the appropriate institution or official forming it; the principle of suitability between type, hierarchy, and content material; the principle of implementation; the principle of usefulness and effectiveness; the principle of clarity of formulation; and the principle of openness.

In response to the ongoing environmental disputes, the Supreme Court issued Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases by the Supreme Court of the Republic of Indonesia (PERMA Number 1 of 2023). The enactment of PERMA Number 1 of 2023 is part of the Supreme Court's ongoing efforts to strengthen environmental law enforcement in Indonesia. With this new regulation, it is hoped that environmental cases can be handled more fairly, effectively, and environmentally consciously, in accordance with legal developments and public demands.

Supreme Court Regulation No. 1 of 2023 is expected to provide a stronger and clearer legal basis for judges in deciding environmental cases. This includes handling environmental disputes involving communities, companies, and the government. With more detailed and structured guidelines, it is hoped that the resulting decisions will not only be fair but also encourage better environmental protection.

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<sup>7</sup> Hotma Pardomuan Sibuea Agus Satory, "PROBLEMATIKA KEDUDUKAN DAN PENGUJIAN PERATURAN MAHKAMAH AGUNG SECARA MATERIIL SEBAGAI PERATURAN PERUNDANG-UNDANGAN", *PALAR (Pakuan Law Review)*, 2020, p. 6.

In adjudicating environmental cases, not all issues are placed on the plaintiff and defendant. Judges, as law enforcers in court, must also be active in adjudicating environmental cases. For the purposes of this regulation, an Environmental Judge is defined as a judge who has passed training and holds a decree issued by the Chief Justice of the Supreme Court as an environmental judge.

Judging from the objectives of Supreme Court Regulation No. 1 of 2023, its issuance is a positive step for environmental case enforcement. It stipulates that judges handling environmental cases should be more proactive and progressive in their adjudication. The law is designed to prioritize justice and the welfare of the community or victims, ensuring a comfortable and sustainable life in a healthy and sustainable environment.

In its dissemination, Supreme Court Regulation No. 1 of 2023 regulates environmental cases in three courtrooms: state administrative, civil, and criminal, in accordance with the nature of environmental cases, which often have intersections between aspects of law enforcement. PERMA No. 1 of 2023 then details the court handling process, from the registration of a lawsuit/filing of a case to the implementation and execution of environmental decisions.

### 3.2 Analysis of the principle of strict liability as an effort to resolve environmental disputes according to Supreme Court Regulation Number 1 of 2023

In this discussion, the author will focus more on discussing Absolute Responsibility (strict liability), and will analyze Court Decisions in environmental civil cases, namely,

#### a) Decision Number 39/Pdt.Sus-LH/2024/PN Sak

The plaintiffs in this case are the community whose land was contaminated by an oil pipeline leak due to an accident where the oil from the pipeline leak had flowed onto the community's land. The defendants are PT. Chevron Pacific Indonesia, the Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas), PT. Pertamina Hulu Rokan, and the Ministry of Environment & Forestry of the Republic of Indonesia.

In this decision, there are several explanations and discussions regarding Perma Number 1 of 2023 regarding evidence in environmental cases, which can be seen from expert opinions and also judges' decisions that have views on Perma Number 1 of 2023.

Judging from the panel's decision at the Siak District Court Number 39/Pdt.Sus-LH/2024/PN Sak, the considerations of the panel of judges stated, Considering, that based on Article 45 of the Regulation of the Supreme Court of the Republic of Indonesia (Perma) Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, it regulates;<sup>8</sup>

- 1) Determination of the occurrence of environmental pollution and/or damage is measured through Environmental Quality Standards and/or

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<sup>8</sup> Putusan, 'Putusan Nomor 39/Pdt.Sus-LH/2024/PN Sak'.

environmental damage criteria.

- 2) Proof of environmental pollution and/or damage in civil cases can be done based on the results of studies or expert testimony if the Environmental Quality Standards, environmental damage standard criteria, and/or parameters therein have not been determined by the government.

Furthermore, the panel in adjudicating this case also looked into Article 42 of Supreme Court Regulation Number 1 of 2023 which refers to evidence in environmental cases in letter a number 1 which states that "laboratory results are stated in written form which can be strengthened by expert testimony in court."

It is considered unfair to the victims affected by pollution because they also have to prove laboratory results to prove whether it is B3 waste or not, which is very expensive to carry out laboratory tests and the community only has limited capabilities.

In the lawsuit, the plaintiff has filed his lawsuit with the strict liability doctrine adopted in Article 88 of the UUPPLH, therefore the element of fault does not need to be proven by the plaintiff and the provisions of this paragraph are *lex specialis* in lawsuits regarding unlawful acts. Strict liability is very helpful for victims of pollution in terms of proof. However, based on Perma Number 1 of 2023, strict liability can be applied if the plaintiff can prove that the Defendant's business and/or activities are businesses and/or activities that use and process hazardous and toxic materials, produce and/or process hazardous and toxic waste, and/or pose a serious threat to the environment; there are environmental, material and health losses as a result of the Defendant's active or passive actions and there is causality that shows that the losses suffered are a result of the Defendant's dangerous business and/or activities, from this explanation the plaintiff or the polluted victim fails to meet this requirement. Supreme Court Regulation Number 1 of 2023 explains that the principle of strict liability cannot be immediately applied even if the plaintiff has filed a lawsuit under the strict liability doctrine.

According to the expert in the trial Dr. H. SupartoWijoyo, S.H., M.Hum., that absolute responsibility (strict liability) is present as a concept of absolute responsibility, referring to the Environmental Law that strict liability is applied to businesses that use B3, produce B3 waste, which poses a serious threat as also regulated in Perma No. 1 of 2023, which is much more complete. That the principle of strict liability is indeed aimed at businesses that use B3 waste, produce B3 waste and pose a serious threat and later there will be other items, this needs to be emphasized that there is an element of serious threat, because not all types of businesses that produce B3 or use B3 process B3, it must be strict liability because the character of strict liability that applies throughout the world, whether in Civil Law or in Common Law is for activities that are very

dangerous, a liability based on risk.

In the decision, the judge rejected the plaintiff's lawsuit in its entirety due to the judge's considerations regarding the proof that the plaintiff could not present scientific evidence in the form of laboratory analysis results showing that the plaintiff's land had been contaminated with B3 waste, and also did not present experts who had certain knowledge to provide scientific opinions regarding the presence of B3 waste on the plaintiff's land, so because he could not prove that his land was contaminated with B3 waste, it could not be proven which party was responsible.

Based on the explanation above, the author analyzes that there are still obstacles to providing evidence even though the lawsuit has requested the use of the principle of strict liability, because in the perma the application of strict liability cannot be immediately applied. This makes the perma proportional or balanced between the plaintiff and the defendant, which means it is a general provision in civil cases of unlawful acts, namely 1365 of the Indonesian Civil Code.

**b) Decision of the Supreme Court of the Republic of Indonesia No. 1794 K/Pdt/2004**

In resolving this case, the judge prioritized the principle of justice for the victims as the priority principle chosen in making a decision that benefits the surrounding residents and for the restoration of the damaged environment. This Mandalawangi case occurred before the enactment of the 2009 UUPPLH through the Decision of the Supreme Court of the Republic of Indonesia No. 1794 K / Pdt / 2004 in conjunction with the Decision of the Bandung High Court Number 507 / Pdt / 2003 / PT Bdg in conjunction with the Decision of the Bandung District Court Number 49 / Pdt.G / 2003 / Pn.Bdg. This lawsuit was filed based on strict liability due to a landslide in the Mandalawangi Mountain area that harmed local residents in the form of death, damage to homes and the environment. In this case, the plaintiff argued that the damage occurred due to human factors, because the incident should have been predictable, but due to negligence by not implementing the principle of caution, the landslide occurred. This is different from the defendant who said the incident was a natural disaster. In its deliberations, the Panel of Judges at the Bandung District Court referred to the precautionary principle as formulated in Principle 15 of the Rio Declaration. Although the Rio Declaration remains a provision of international law and has not yet been incorporated into Indonesian law, the Panel of Judges at the Bandung District Court still referred to it and used it as a basis for its deliberations in deciding the Mandalawangi case.

In this case, the Panel of Judges has applied the principle that judges do not only act as mouthpieces of the law and implementers of the law, but judges have been active and made legal discoveries, by filling the legal gap in the

environmental field. At the cassation level, the Supreme Court argued that the District Court and the High Court had applied strict liability, where the defendants were absolutely responsible for the impacts caused by the landslide in the Mount Mandalawangi area. The cause of the landslide due to the defendants' fault has been proven and conversely the defendants were unable to prove their guilt, so the defendants were absolutely responsible for the losses incurred.

In the decision, the considerations by the Panel of Judges are interesting to note that the Judge appears to have expanded the implementation of strict liability. Law Number 23 of 1997 concerning Environmental Management as the basis for regulating strict liability that was in effect at the time of the Mount Mandalawangi landslide. And also in the decision the judge was progressive because he abandoned rigid legal teachings and went beyond the traditional legal order in order to create a legal order that illustrates that law exists to provide benefits for human life, and not humans who serve the law, so that the law is useful for humans.

In the first point of Article 38 of PERMA Number 1 of 2023, the author analyzes that in adjudicating an environmental dispute, the judge examining the case has the authority to impose or enforce absolute responsibility on the defendant. This ensures that judges are active in carrying out their duties to examine cases, and encourages judges as law enforcers to be progressive. Progressive law, as proposed by Satjipto Rahardjo, is a legal perspective that prioritizes human interests and moral values of justice in society.<sup>9</sup> This differs from positivistic law, which focuses solely on written rules. Progressive law emphasizes the human capacity to reason and understand, and uses conscience to interpret the law more broadly and provide solutions appropriate to the social context.

Absolute liability can also be applied by the examining judge even though the plaintiff in his lawsuit does not request/apply for the implementation or application of absolute liability to the defendant, this is stated in the second point in Supreme Court Regulation (PERMA) Number 1 of 2023.

Furthermore, strict liability means that the plaintiff does not need to prove fault as a primary element in civil liability for unlawful acts. Therefore, the plaintiff's burden of proof is reduced because they are no longer burdened with proving fault. However, the plaintiff must still prove that the losses suffered by the victims of environmental pollution/damage were caused by the business actors/defendants. This is known as proving causality or a cause-and-effect relationship.

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<sup>9</sup> Satjipto Rahardjo, *Hukum Progresif*.

### 4. Conclusion

The issuance of Supreme Court Regulations (PERMA) Number 1 of 2023 is appropriate as a guideline for resolving environmental disputes in general according to Law 12 of 2011 concerning the creation of legislation seen from the principles regulated therein and Law 48 of 2009 concerning judicial power. Where in Article 79 of Law No. 14 of 1985 "the Supreme Court has the right to make regulations to confirm existing regulations or fill legal gaps that are not regulated in any law."

This Supreme Court Regulation emphasizes the importance of transparency in the environmental justice process. This is evident in Article 21 of Supreme Court Regulation Number 1 of 2023, which reiterates the principle of openness stipulated in Law Number 12 of 2011. Article 21 re-regulates the examination of the feasibility of environmental impact analysis (EIA) by involving the public in point b, which addresses the preparation procedures, including fulfilling the right to access information and the public's right to meaningful participation.

The principle of absolute responsibility (strict liability) as an effort to resolve environmental disputes according to Perma Number 1 of 2023 is basically very useful for victims and for parties in environmental disputes, Perma Number 1 of 2023 explains that this principle of strict liability cannot be immediately applied even though the plaintiff has made his lawsuit with the doctrine of strict liability. However, it can be seen in the judge's considerations in the Decision of the Supreme Court of the Republic of Indonesia Number 460 / K / Pdt / 2016 in which in this case the Panel of Judges has applied the principle that judges do not only act as mouthpieces of laws and implementers of laws, but judges have been active and made legal discoveries, by filling the legal vacuum in the environmental field. In the cassation level, the Supreme Court argued that the District Court and the High Court had applied strict liability, where the defendant was absolutely responsible for the impact caused by the landslide in the Mount Mandalawangi area. The cause of the landslide due to the defendants' mistakes has been proven and conversely the defendants could not prove their guilt, so the defendants were absolutely responsible for the losses incurred.

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