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The application of strict liability principles in environmental damage cases by pt. Kalista alam

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Abstract
Based on pasal 88 UUPPLH, environmental pollution carried out by the activities both of a corporation or juridically do not need to be proven that there is an element of guilt on the part of the perpetrator of environmental damage (the defendant). However, in reality in resolving environmental pollution cases, judges still ask the plaintiff to prove the guilt of the defendant. So, this is not in accordance with the provisions of pasal 88 UUPPLH. This study aims to explain and analyze the application of the principle of strict liability by judges in deciding cases of environmental damage committed by PT. Kalista Alam. The type of research used is empirical legal research, using legal sociology and legal anthropology approaches. Data was collected through field research by interviewing respondents and informants. The results of the study show that the judges have not applied the principle of strict liability in decisions on environmental damage cases by PT. Kalista Alam. This can be seen in his legal considerations, the judge still focuses on the existence of an element of error that must be proven by the plaintiff.

Keywords: accountability, damage, environment

Introduction

Environmental damage that occurs somewhere in the territory of a country, apart from being detrimental to the country concerned, also has a very negative impact on other countries. This has resulted in policies issued by the government having to pay attention to environmental sustainability, in Indonesia environmental problems and lawsuits have occurred quite often, even though from a legal perspective, the position of humans towards the environment means that humans should be able to live side by side with each other and with their environment. The decline in the quality of the environment shows the lack of public attention to environmental preservation. Environmental law issues basically concern the quality of life of humans. There are two forms of environmental problems, there are environmental pollution and environmental damage. Environmental pollution is the entry or inclusion of living things, substances, energy and/or other components into the environment by human activities so that they exceed the established environmental quality standards. Furthermore, environmental damage is a direct and/or indirect change to the physical, chemical and/or biological characteristics of the environment that exceeds the standard criteria for environmental damage.

The development of environmental problems that are getting worse over time does not seem to be matched by adequate law enforcement. The basic principles underlying the development and protection of the environment in Indonesia are even contained in the preamble UU 1945 as the Republic Indonesia constitution (hereinafter referred UUD 1945) in the 4th paragraph which reads: “Kemudian daripada itu untuk membentuk suatu Pemerintahan negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan berbangsa dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial, maka disusunlah kemerdekaan kebangsaan Indonesia yang terbentuk dalam suatu susunan Negara Republik Indonesia yang berkedaulatan rakyat dengan berdasar kepada: Ketuhanan Yang Maha Esa, Kemanusiaan Yang Adil dan Beradab, Persatuan Indonesia, Kerakyatan yang dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan Perwakilan, Keadilan Sosial Bagi Seluruh Rakyat Indonesia”. It meaning: Form an Indonesian state government that protects the whole nation of Indonesia and all of Indonesia's bloodshed and to promote public welfare, educate the life of the nation and participate in carrying out world order based on freedom, eternal peace and social justice, the independence of the Indonesian nation was drafted which was formed in a structure of the Republic of Indonesia which is people's sovereignty based on to: Belief in One Almighty God, Just and Civilized Humanity, Indonesian Unity, Democracy led by Wisdom of Wisdom in Representative Deliberations, Social Justice for All Indonesian People”

The preamble UU 1945 emphasizes the state's obligation and the government's duty to protect all of Indonesia's natural resources for the happiness of all Indonesian people and all mankind. This thought is further elaborated in pasal 33 paragraph (1) UU 1945 which reads: “Bumi dan air dan kekayaan alam yang terkandung didalamnya dikuasai oleh negara dan dipergunakan sebesar-besarnya untuk kemakmuran rakyat”. It meaning: "Earth, water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". These provisions form the basis of reference for environmental protection in Indonesia. The government also began to take steps to make policies for enforcing environmental law which began with the UU Number 4 of 1982 concerning Basic Provisions for Environmental Management, which was later amended by UU 23 of 1997 concerning Environmental Management, and the last time it was amended by UU 32 of 2009 concerning Environmental Protection and Management (hereinafter referred as UUPPLH).

The protection and management of the environment in Indonesia which is regulated in the UUPPLH has the main

objective, namely management in an integrated manner in the utilization, restoration and development of the environment. The main goals and objectives are motivated by the fact that there has been exploration and exploitation, that knows no boundaries by humans for natural resources which has resulted in environmental damage. In this regard, the provisions of pasal 67 UUPPLH stipulate that everyone is obliged to maintain the preservation of environmental functions and control environmental pollution and/or damage. The definition of the phrase everyone in the UUPPLH is contained in pasal 1 number 32 which determines that everyone is an individual or business entity, whether incorporated or not.

The existence of environmental pollution carried out by their business, a person or a corporate company, it will cause damage and cause adverse effects on human life in the vicinity. In the UUPPLH, environmental damage can be applied to the principle of strict liability. This principle of strict liability is regulated in pasal 88 UUPPLH which states that: "Any person whose had business, and/or activities use B3, produce and/or manage B3 waste, and/or pose a serious threat to the environment are absolutely responsible for for losses incurred without the need to prove an element of guilt.

Referring to the elucidation of pasal 88 UUPPLH, what is meant by absolute responsibility or strict liability is that an element of error does not need to be proven by the plaintiff as a basis for payment of compensation. This provision is a lex specialis for unlawful acts regulated in pasal 1365 Kitab Undang-Undang Hukum Perdata (hereinafter referred to KUHPerdata). In absolute liability or strict liability, there is no question of actus reus (mistakes), the most important thing is seen from the principle of strict liability, namely mens rea (actions), so that what must be proven is the elements of mens rea (actions), not actus reus (mistakes).

A person who is responsible for such dangerous and risky of the activities can only release himself from responsibility if he can prove that the loss incurred was the result of anothers mistake or the result of a natural disaster. However, in reality in Indonesia there are several cases related to the protection and management of the environment in which the judges are still based on the fault factor of the defendant and burden the plaintiff with proving the guilt. Even though it is clearly stated in pasal 88 UUPPLH for every person whose pose a serious threat to the environment is absolutely responsible for the losses that occur without the need to prove an element of guilt.

Some examples of cases of pollution and environmental destruction that have occurred in Indonesia are those carried out by PT. Kalista Alam. PT. Kalista Alam is a company engaged in the processing of palm oil and the manufacture of palm oil. Environmental damage caused by PT. Kalista Alam occurs due to the clearing of oil palm land by the burning method which causes damage to peatlands with an average thickness of 5-10 cm so that 1,000,000 m^3 (one million cubic meters) of peat cannot be explained and causes massive environmental pollution due to the release of carbon gas while the fire was going on.

PT. Kalista Alam was sued by the Ministry of Environment and Forestry called KLHK in accordance with Meulaboh District Court Decision Number 12/Pdt.G/2012/PN.Mbo Jo Banda Aceh High Court Decision Number 50/Pdt/2014/PT.Bna Jo Supreme Court Decision Number 651K/Pdt/2015 stated that PT. Kallista Alam was found guilty and fined Rp. 114.303.419.000.- to the Ministry KLHK through the state treasury account and Rp. 251.765.250.000.- to carry out environmental restoration or land rehabilitation for burnt land, but in reality until now there has been no compensation at all owned by PT. Kalista Alam. Even though the losses incurred by the company reached billions of rupiah.

Another similar case was also found in a civil case with the Tanjung Pinang District Court Decision Number 26/Pdt.G/2009/PN.Tpi. Where is PT. Cahaya Bintan Abadi is proven to have polluted the environment by mining bauxite and building a port for docks that have stockpiled or stockpiled on the edge of the pier resulting in polluted sea air and fish deaths and marine habitats where fishermen live around the place. In his decision, the judge also did not state that this case was a case that could be applied as strict liability but instead decided it was a case of unlawful acts.

In addition, in the case of forest fires carried out by PT. Judge Rafi Kamajaya also stated that the case was an unlawful act. In the Decision of the Sintang District Court Number 44/Pdt.G/LH/2021/PN.Stg, PT. Rafi Kamajaya Abadi was found guilty of burning 2,560 hectares of forest in Tengkajau Village, North Pinoh District, Melawi Regency, West Kalimantan Province. In the decision of the Panel of Judges stated that PT. Rafi Kamajaya Abadi was proven to have committed an unlawful act and was obliged to pay material compensation of Rp.270807.710.959.- and environmental restoration costs of Rp. 646.216.640.000.-.

Analyzing the considerations of the panel of judges in deciding an environmental lawsuit case, there is not a single consideration from the panel of judges that leads to legal considerations related to the principle of absolute liability or strict liability as contained in pasal 88 of the PPLH Law which is used as the basis for the decision and is still make the provisions of pasal 1365 KUHPerdata used as the basis for the decision, namely that there was an unlawful act, there was an error, there was a causal relationship between the loss and the act, and there was a loss, even though civil environmental law (privaatrechtelijk miliuerecht) recognizes the principle of absolute responsibility (strict liability-risico). which is also adhered to by pasal 88 UUPPLH. Absolute responsibility arises immediately at the time the act occurred, without questioning the defendant's fault. The principle of "strict liability" is usually only implemented in certain "types of situations" (casuistic), including "types of situations" for the application of "strict liability" are "extra-hazardous activities" which according to pasal 88 UUPPLH cover environmental disputes resulting from business activities. which has a large and significant impact on the environment.

Methods

The type of research used in this thesis is empirical legal research, with legal sociology and legal anthropology approaches. Data collection was carried out through field research activities (field research) in order to obtain primary data which was carried out through direct interviews with respondents and library research informants supported by field research by interviewing relevant sources.

Results and discussion

1. The Principle of Absolute Responsibility (Strict Liability) for Environmental Damage Based on Pasal 88 of the PPLH Law

Regarding the definition of an unlawful act, it is not explicitly stated in KUHPerdata, however, the meaning of an unlawful act can be inferred from the provisions of Pasal 1365 KUHPerdata and Pasal 1366 KUHPerdata. Pasal 1365 KUHPerdata states that "Every act that is against the law and brings harm to other people, obliges the person who caused the loss because of his mistake to compensate for the loss" and Pasal 1366 KUHPerdata states that "Everyone is responsible not only for losses caused by negligence or careless." So, based on Pasal 1365 KUHPerdata and Pasal 1366 KUHPerdata, it can be concluded that an act can be considered an unlawful act if it fulfills the elements in the form of an unlawful act, an error, a loss, and a causal relationship between the loss and the act. If these four elements have been fulfilled, then an act can be said to be an unlawful.

Furthermore, the KUHPerdata stipulates that every person is not only responsible for losses caused by his own business, but must also be responsible for losses caused by the activities of people he is responsible under his control. Munir Fuady stated that the science of law classifies unlawful acts into three groups, namely: intentional unlawful acts, unlawful (without intentional or negligent elements), and unlawful acts due to default.

the form of legal liability in the form of responsibility with an element of error (intentional and error) as stated in pasal 1365. Responsibility with elements of error and delay is regulated in pasal 1366 KUHPerdata and pasal 1367 KUHPerdata. Apart from that, there is also vicarious liability which is regulated in pasl 1367 KUHPerdata. Accountability in pasal 1365 KUHPerdata and pasal 1366 KUHPerdata requires an element of error. That is, a person is guilty (liability based on fault) either intentionally or by mistake. The principle of accountability for errors (mistakes) is based on the principle that there is no accountability if there is no element of error. Who must prove the mistake is the claiming compensation, in other words, the burden of proof is on the plaintiff. This stipulates what is regulated in pasal 1865 KUHPerdata which states "Setiap orang yang mendalilkan bahwa ia mempunyai suatu hak atau untuk menegaskan haknya sendiri atau memperdebatkan hak orang lain, dengan menunjuk suatu peristiwa, wajib membuktikan adanya hak atau peristiwa itu",it meanig "Everyone who argues that he has a right or in order to confirm his own rights or argue for someone else's rights, pointing to an event, is obliged to prove the existence of said right or event".

In contrast to the KUHPerdata which requires mistakes as the basis for accountability, UUPPLH adheres to the principle of absolute responsibility (strict liability) as set forth in pasal 88 UUPPLH which reads: "everyone whose do and/or manages B3 waste and/or creates threats serious about the environment is absolutely responsible for the losses that occur without the need to prove an element of guilt. This principle of strict liability is a doctrine of responsibility in the environmental field where the responsibility arises immediately and does not have to be based on mistakes. Strict liability is the responsibility attached to legal subjects who carry out certain extrahazardous or abnormally hazardous activities by requiring all losses that may arise even though the person concerned has acted very carefully to prevent it and even if it is done without intention. Furthermore, this principle is not based on the fault (mistake) of the defendant in the sense that the element of guilt of the defendant no longer needs to be proven by the plaintiff, but instead it is the defendant who has to prove that he really did not damage/pollute the environment (reverse proof).

Referring to the history of the application of the principle of strict liability in the development of UUPPLH in Indonesia, it can be understood that the person in charge or manager of activities in the environmental field can be released from responsibility for paying compensation or other forms of responsibility if they can prove that the environmental damage was not the result of their activities because things that fall into excuses (defenses). Syahrul Machmud explained that the reasons for forgiving could be in the form of force majeure, natural disasters and wars, the victims own mistakes, and others mistakes.

The principle of responsibility based on fault is considered inappropriate or inefficient when applied in cases in the environmental field. This is because cases of destruction and environmental pollution are currently caused by industrial developments that use high technology. Where the risks that might arise due to the use of this technology will be very difficult and difficult to prove by the plaintiff and the effort to prove it also requires high costs. Meanwhile, on the other hand, the damage that might arise is already real to people, property, and the environment. So that a legal breakthrough was made by applying the principle of strict liability in order to overcome the limitations of the principle of liability based on errors in overcoming activities that contain large risks.

The consideration is that environmental pollution or damage can sometimes be caused by multiple causes. Conditions like this will certainly challenge the aggrieved parties in submitting technical evidence and it is also felt to be unfair if the aggrieved it is still required to prove their guilt. Therefore strict liability is considered a breakthrough in enforcing environmental law in Indonesia to overcome difficulties in the principle of responsibility based on mistakes adhered to in the KUHPerdata. The strict liability provisions are considered as special provisions (lex specialist) of the general provisions (lex generalis) of pasal 1365 KUHPerdata.

2. Application of the Strict Liability Principle in Environmental Damage Cases conducted

by PT. Kalista Alam

UUPPLH defines the protection and management of the biological environment as a systematic and integrated effort carried out in the context of handling environmental functions and preventing environmental pollution and environmental damage. The scope of environmental protection and management includes planning, utilization, control, maintenance, supervision and law enforcement. Against environmental pollution and/or damage, law enforcement must be carried out so that environmental sustainability is maintained. Enforcement of environmental regulations is an effort to achieve compliance with the provisions of environmental law which is carried out through supervision and the application of sanctions, civil lawsuits and criminal sanctions.

One form of law enforcement efforts in cases of environmental damage is like what was done by the KLHK for PT. Kalista Alam case, PT. Kalista Alam was the target of a civil lawsuit by the KLHK over the land and forest fires

it caused. At that time, PT. Kalista Alam is one of the companies that has received official permission to cut down rainforests to be replaced with oil palm plantations. But in 2014, PT. Kalista Alam conducted land clearing by burning peat areas for land clearing for oil palm plantations. In fact, before carrying out land clearing there are several processes that must be fulfilled first.

based on cases that have been carried out by PT. Kalista Alam finally KLHK filed a civil lawsuit against PT. Kalista Alam through the Meulaboh District Court with Number 12/Pdt.G/2012/PN. Mbo on the basis of PT. Kalista Alam has committed an unlawful act. In considering the legal decisions at the first level, the main issues in the case of PT. Kalista Alam leads to the issue of environmental pollution and destruction of the Leuser Ecosystem Area which must be protected in an area of 1000 hectares as a result of peatland burning. So based on these reasons PT. Kalista Alam is required to pay compensation and restore the peat land on the legal basis of pasal 1365 KUHPerdata.

Then, the consideration based on the reasons stated above was also strengthened by thirty pieces of evidence, three experts, and two fact witnesses. The facts revealed show that the fires also did not occur because of a spark from another company's land but because the burning was carried out on their own land, because the land that was the object of the burning was nothing but adjacent to the defendant's own land. So this burning is an act against the law and has caused pollution and environmental damage.

Based on several provisions, namely the provisions of pasal 69 paragraph (1) in part h UUPPLH which prohibits everyone from clearing land by burning, Pasal 3 Regulation of the State KLHK 10 of 2010 concerning Mechanisms for Prevention of Pollution and/or Environmental Damage (hereinafter referred to as PERMENLH No. 10/2010) which basically instructs those in charge of businesses to carry out land clearing without burning, pasal 26 of Law Number 18 of 2004 concerning Plantations (hereinafter referred UU Kehutanan) which prohibits every plantation business actor from clearing land with method of burning which results in pollution and damage to environmental functions, as well as pasal 11 of Government Regulation No. 4 of 2001 concerning Control and/or Environmental Pollution (PP No. 4/2001) which prohibits anyone from carrying out forest and/or land burning activities.

In addition to the provisions mentioned above, Pasal 87 UUPPLH also requires those in charge of businesses and/or activities to pay compensation and/or take certain for committing unlawful acts (in the context of environmental pollution and damage) which cause losses. to other people or the environment. Furthermore, in Pasal 90 paragraph (1) UUPPLH which gives authority to government agencies responsible for the environment to file claims for compensation and certain against PT. Kallista Alam who is suspected of carrying out environmental pollution and damage which resulted in environmental losses.

The judges in the court of first instance passed a decision stating that the defendant had committed an unlawful act, punishing the defendant to restore the environment in the amount of Rp. 251.765.250.000 which is the result of ecological loss calculations, punishing the defendant to pay compensation of Rp. 114.303.419.000.- which is the result of calculating economic losses, and paying dwangsom and court fees. It didn't stop there, this case continued up to the level of appeal that was submitted by the appeal (formerly the defendant) on the basis of the court's attitude that violated the balance of probability principle. But in the end it was refuted because in principle if the plaintiff argued, he must also prove his argument according to Pasal 1865 KUHPerdata.

Nonetheless, the appellant (who later became the cassation applicant) continued to file cassation in this case on the grounds that the District Court and High Court as judex facti were wrong in applying the law and misapplying the law regarding the amount of compensation and recovery costs that should have been carried out by the Court of Appeal. National Land Affairs Agency (BPN), the Supreme Court as a judex juris does not think so with legal considerations that there was indeed an element of error on the part of the cassation applicant which at least caused a land fire on the land.

Based on the provisions of Pasal 90 UUPPLH in its legal considerations the judge gave legitimacy to the plaintiff as a delegation from the Government on the principle of decentralization, licensed the measurement of the amount of compensation costs because the BPN did not have the capacity for this task but was limited to issues of land rights, the panel of judges decided to reject PT Kallista Alam cassation request.

In the legal effort for re-prosecution by the previous cassation applicant, the judge based his legal considerations on the decision in the Mandalawangi case No. 1794 K/Pdt/2004 as a jurisprudence to protect the environment. The fact that hunting is clear, especially the location of the fire area that occurred, namely 1.000 hectares of land in a certain period on an ongoing basis starting from 2009, 2010, 2011, to 2012 which caused damage to the peat layer with a thickness of 5-10 cm, caused disruption to the land ecosystem and required high costs. for the restoration of peatlands which simultaneously has also caused air pollution so as to challenge the constitutional right of citizens to obtain a good and healthy environment as a human right, making a strong basis for the judge to make a decision to reject PT. Kallista Alam.

Based on the Decision of the Melaboh District Court No. 12/Pdt.G/2012/PN. It can be seen, however, that this lawsuit does not fully apply the principle of absolute liability without requiring proof of an element of guilt (strict liability) as set forth in Pasal 88 UUPPLH. Where based on these provisions only focuses on the responsibility of the defendant but does not fulfill the element "without the need to prove the elements of guilt" even though in the decision the plaintiff demands responsibility for the defendant using the principle of strict liability. The decision still sees that the environmental damage in this case was caused by an error. That is why the panel of judges used the legal instrument Pasal 1365 KUHPerdata, where compensation can be given as long as it can be proven that environmental damage is an act against the law.

In line with that, Rezki Siregar who is one of the judges at the Meulaboh District Court said that under the principle of strict liability, the element of guilt of the plaintiff does not need to be proven. This is what distinguishes it from unlawful acts contained in Pasal 1365 KUHPerdata with strict liability. The provisions of Pasal 1365 KUHPerdata must first prove the act or action, whether the act is an unlawful act. While the principle of strict liability, if there is an activity by a corporation that causes environmental damage without the need for proof, a lawsuit can already be

filed. So in short, the difference between strict liability and an unlawful act can be seen in its impact. If there is an impact then they must make compensation.

Furthermore, according to Rezki Siregar, if the company were sued in a civil manner, he could just argue that his operational activities were in accordance with the SOP. However, if based on the principle of strict liability, if their operational activities cause or impact on environmental damage, it is no longer necessary to prove whether this is appropriate or not because the principle of strict liability aims to punish corporations to pay compensation.

Looking at the theory of legal purposes, a good law must have a purpose which contains elements of justice, benefit and certainty. All three are a unit in which only one element and or two other elements cannot be fulfilled. The purpose of law is the direction or target to be realized by using law as a tool in realizing this goal by regulating the order and behavior of society. Even though the principle of strict liability is in full, this principle is very important in order to provide compensation to people who are victims of pollution. Thus, even though the principle of strict liability is not fully implemented, it can provide justice, certainty, and benefits for the aggrieved, so that legal objectives are achieved.

From the explanation above, it can be concluded that in the case of environmental damage committed by PT. Kalista Alam by burning peat land in KEL has resulted in environmental pollution and damage. In the decision related to this case, the judge has not fully applied the principle of strict liability as contained in Pasal 88 UUPPLH. Where based on this principle, only the elements of the work are seen without having to prove the elements of error. This can be seen in the judges legal considerations which still focus on the existence of a mistake element.

Conclusion

Based on the court's decision regarding the case of environmental damage committed by PT. Kalista Alam, in its legal considerations the judge has not fully applied the principle of strict liability as contained in pasal 88 UUPPLH. This principle is seen only as an element of loss without having to prove a mistake element. This can be seen in the judges legal considerations which still focus on the existence of a mistake element. It is suggested to the KLHK as the plaintiff to urge the court to immediately carry out the execution of the decision on PT. Kalista Alam so that compensation money and environmental maintenance money are immediately in cash.

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