International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 5
June, 2020
Pages: 473-485

Implementation of Strict Liability Principle in Civil Law Enforcement in Environment Law files as Consequence of Forest and Land Fire in Indonesia Justice Practice

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http://dx.doi.org/10.18415/ijmmu.v7i5.1703

Abstract

Strict liability is a concept of civil liability that does not require mistakes made by the defendant but rather defendant has caused losses to the plaintiff. Strict liability can help enforcement of environmental law that is oriented towards prevention. This is because strict liability can change the behavior of potential injurer to be more conscientious in performing their activities. The effectiveness of strict liability in supporting these ideals can certainly be realized if we first can correctly interpret the concept of strict liability. Strict liability is well known in the practice of civil justice in Indonesia in relation to the elements of error in the lawsuit based on Acts Against the Law in Article 1365 of the Civil Code (BW). Although the elements of objective and subjective errors are irrelevant if the action of the perpetrator is an activity with risk that whether the perpetrator has made a preventive effort and has been careful does not meant that risk is eliminated (abnormally dangerous activity). The application of strict liability in relation to civil law enforcement in the field of environmental law, especially as a result of forest and land fires in judicial practices in Indonesia is based on the provisions of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) as in the case of land fires in PT. (Incorporated) Arjuna Utama Sawit which runs its business activities in controlling and opening land for oil palm plantations.

Keywords: *Strict Liability; Forest and Land Fires; Judicial Practice*

Introduction

Enforcement of environmental law is not only intended to punish environment destroyers or polluters but also intended to prevent actions or behaviour that can cause damage—enforcement of environmental law. Therefore, environmental law enforcement is not only repressive but also preventive (Rangkuti, 2000, pp. 209-210; see also Harahap, 2004, p. 7).

Represive enforcement of environmental law is aimed at overcoming environmental damage and/or pollution by imposing sanctions (penalties) to the perpetrator in the form of criminal sanctions (imprisonment and fines), civil sanctions (compensation and or certain actions), and/or administrative

sanctions (government coercion, forced money, and revocation of licenses) (Harahap, 2004. p. 8). According to Rahmadi (2018, p. 199), enforcement of environmental law can be interpreted as the use or application of instruments and sanctions in the field of administrative law, criminal law and civil law with the aim of forcing legal subjects that are targeted to comply with environmental legislation.

Meanwhile, preventive environmental law is intended to prevent actions or actions that can cause environmental damage or pollution. The legal instrument intended for the preventive enforcement of environmental law is in the form of composing of Environmental Impact Analysis (AMDAL) documents and Environmental Management Efforts/Environmental Monitoring Efforts (UKL/UPL) as well as ownership of environmental permits.

In relation to these three sanctions, Law Number 32 Year 2009 concerning Environmental Protection and Management (UUPPLH) recognizes the three types that can be imposed on the perpetrators of environmental destruction or pollution at the same time, so that the imposition of the three sanctions in a case of environmental damage or pollution will not cause *ne bis in idem* (Muladi, 1998, p. 10; cf. Hadjon, 1996, p. 343; see also Harahap, 2004, p. 9). Furthermore, Article 84 Paragraph (1) of the UUPPLH regulates that the settlement of environmental disputes can be taken through the court or outside the court (Kemenkumham, 2009).

Research Method

This research employ normative juridical approach that emphasis on secondary data of legal material that has been documented. The focus of research with a normative juridical approach is aimed at research on literature. This study examines more secondary data in the form of primary, secondary, and tertiary legal materials. This is due to the legal issues under investigation are related to regulations and court decisions. However, this juridical-normative research approach is supported by empirical juridical research methods with an emphasis on elements or factors related to the object of research as part of field research.

Analysis and Discussion

Civil Liability in Relation to Civil Law Enforcement in the Field of Environmental Law

In the context of civil law, civil liability is an act, usually in the form of compensation payments, which must be carried out by a person or party whose actions have caused harm to people. One measure used to determine this civil liability is the Act Against the Law (PMH).

In Indonesia, according to Lotulung (1993, p. 29), to say that someone has done PMH refers to Article 1365 of the Civil Code, namely that the person's actions must meet the following elements:

1. The nature of breaking the law of an action (*onrechtmatigsheid*);
2. Error (*schuld*);
3. Loss (*schade*);
4. Causal relationship (*causal verband*);
5. Violating norms that protect the interests that are undermined (*relativiteit*).

According to Koeman (as cited in Rahmadi, 2018) in his book Environmental Law in Indonesia, civil law has four relevant functions, namely:

Civil law, specifically lawsuits based on acts against the law, and civil judges actually have significance for environmental law. Koeman (as cited in Brussaard et al., 1996) explained that essentially this relates to the four functions below:

1. Law enforcement through civil law;
2. Establishing additional norms;
3. Lawsuit for compensation;
4. Additional legal protection.

Furthermore, the deterrent and compensation functions are the main functions of civil liability (Schäfer and Müller-Langer as cited in Faure, 2009, p. 265). The purpose of civil liability is to provide compensation for losses caused by breach of the obligations established by law (Harpwood, 2009, p. 2). Calabresi argued from an economic point of view that:

> The aim of tort law, the proposes, apart from the requirement for justice, is to minimise the social costs of a tort, defined as the sum of total accident costs, administration costs, costs of properly allocating accident losses by means of insurance, and accident prevention costs of both the injurer and the victim. (Calabresi as cited in Schäfer & Müller-Langer, 2008, p. 345)

Unlawful conduct is the closest qualification to tort. Etymologically, Tort rooted in the Latin '*tortus*' which means 'twisted' which changes the meaning to 'wrong', which is still used in French. In English, tort is a legal language which means "a legal wrong for which the law provides a remedy" (Harpwood, 2000, p. 1) or mistakes which by law can be corrected. Winfield (as cited in Harpwood, 2000, p. 1) argues that "Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages."

Described negatively, faced with the liability originating from the contract, Tort is a civil liability that does not originate from the contract (non-contractual liability), where the liability arising from the contract aims to fulfill the achievements and establish sanctions for contract violations (Harpwood, 2009, p. 2).

The Concept of Unlawful Acts and Strict Liability

Acts against the law (PMH) in Indonesia are regulated in article 1365 of the Civil Code. Mariam Darus Badrulzaman (as cited in Agustina, 2003, pp. 49-50) outlines these elements of acts against the law into five elements, namely: (1) there must be actions (both positive and negative); (2) the act must be against the law; (3) there are losses; (4) there is a relationship as a result of the act against the law and the loss, and (5) there is a mistake.

Acts against the law are different from Tort in the Common Law. **First**, in the 'against the law' element, PMH is formulated more broadly and includes violations of other people's subjective rights or violates the legal obligations of the perpetrators or is contrary to decency or propriety in social relations; whereas Tort is formulated more limited in the sense that his actions have been recognized by the court which broadly include: negligence, defamation, interference, detrimental falsehood, detrimental to domestic relations, detrimental to economic and business relations, fraud, and evil charges. **Second**, in the 'error (schuld)' element, the PMH formulated in Article 1365 of the Civil Code still requires an element of error that must be proven; while in Tort, a person can be held responsible for losses that arise without the need to prove the existence of an element of error, as in the concept of strict liability. **Third**, in the element of 'loss', PMH can be proven by the plaintiff, which the form can be material or non-material loss. While for Tort, in violation of land rights and defamation, the element of loss does not need to be proven, and the form of loss can be in the form of compensation of loss or damage. Fourth, in the element of 'causality', at PMH, this element of bad faith must be included for a lawsuit due to insults as regulated

in Articles 1376 and 1377 paragraph (2) of the Civil Code; whereas in Tort, elements of bad intent (malice) are not considered except in certain Torts (Agustina, 2003, pp. 160-171; see also Shidarta, 2015).

After knowing the difference between acts against the law and tort, the next will be explained an easy way to understand the difference between acts against the law (PMH) and strict liability by looking at what can be called acts against the law (PMH). This comparison is important to find out which system is more appropriate to support prosperity by first supporting people to carry out safer activities by providing incentives and supporting people to increase the level of security of these activities (Schäfer and Müller-Langer, 2008, p. 4). Peter Cane (1997, p. 36) in his book "The Anatomy of Tort," defines strict liability as "conduct neither intentional nor negligent"[1] or acts that can be liable for civil liability without an intention or negligence, is not an act carried out with awareness that it can produce certain consequences as well as with a certain cause. In other words, in strict liability is liability arising from actions that do not violate a standard of conduct (duty of care).

In Indonesia legal system, Acts Against Law (PMH) and Tort have differences (Agustina, 2015; Shidarta, 2015), duty of care is an equivalent of the element "Acts Against the Law" in the sense that there is a violation of an obligation determined by law or rights protected by law. Nicholson (2009, p. 80) firmly believes that "the subjective or objective 'fault' of the defendant is, for the purposes of strict liability, irrelevant." This is different from the opinion of Munir Fuady (2002, p. 17) that strict liability is a liability without fault, which is interpreted as eliminating the element of "error" in the element of Unlawful Acts in Article 1365 BW, making the element of Acts Against the Law still counted. This will be discussed further in the section on proving strict liability.

According to Peter Cane (1997, pp. 45-49), there are several types of strict liability, namely: conduct-based,[2] relationship-based,[3] and outcome-based. The focus of this research is outcome-based strict liability. Outcome-based strict liability is a strict liability that departs from a concept of risk creation. Activities of risk[4] are defined as the cumulation of dangerous things with a non-natural purpose (non-natural purpose), where there is no need for intention, carelessness or neglect. Peter Cane (1997, pp. 48) summarizes that in outcomes based on strict liability means that the perpetrators can be held liable even though the defendant does not intend to incur losses, even though the defendant has been careful, even though the defendant did not violate a duty of care and even though the defendant caused it become real.

In the Rylands v. Fletcher, Common Law jurisprudence regarding strict liability enforces strict liability when "a proprietor accumulates dangerous substances which escape from his land and causes damage to other property," (i.e. when the landowner in which the land contains hazardous substances causes damage). This jurisprudence is applied in several actions that are considered "likely to cause mischief", in other words "tend to cause damage", only in the case of the definition of "likely to cause mischief" is not really analyzed (Reid, 1999).

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[1] Negligence conduct in this case is defined as an act that violates a standard of conduct and differs from the 'Tort of Negligence' which has elements of duty of care, duty of care violations, and losses due to the violation. *Tortious negligence is not a state of mind but rather a failure to reach a certain standard of conduct. There is no necessary relationship between states of mind and negligence.* In Peter Cane, *The Anatomy of Tort Law, (*Oxford: Hart Publishing, 1997), p. 36

[2] "*Conduct-based strict liability* is the voluntary doing of a specified act, most notably interference with or exploitation of another's property without their consent or legal justification," in Cane, The Anatomy of Tort Law, pp. 45-49

[3] "Relationship-based strict liability means the person responsible for having a legal relationship with a person who commits torture, this is also called" vicarious liability," in Cane, The Anatomy of Tort Law, pp. 45-49

[4] *Accumulation of dangerous things for a non-natural purpose*

substances causes damage. This jurisprudence is applied in several actions[5] that are considered "likely to cause mischief", in other words "tend to cause damage", only in the case of the definition of "likely to cause mischief" is not really analyzed (Reid, 1999). Rylands v. Fletcher affects the acceptance of the principle of strict liability for unusual dangerous activities such as the use of dynamite and other explosives in America, only this jurisprudence is not accepted in all states because the number of dangerous activities carried out by US companies every day (Reid, 1999). Then, Paragraph 520 Restatement (second) of Tort regulates activities such as what can be categorized as abnormally dangerous activity, the paragraph reads:

> In determining whether an activity is abnormally dangerous, the following factors are to be considered: (a) existence of a high degree of risk of some harm to the person, land, or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes. (American Law Institute as cited in Reid, 1999, pp. 733-743)

Strict liability arises only in connection with losses that have an abnormal risk. Not all risk factors need to be fulfilled so that an activity becomes an abnormally dangerous activity or "unavoidable risk remaining in an activity, even though the party concerned has taken all precautions beforehand and has taken all care in its implementation, so that it is not negligent" (American Law Institute as cited in Wibisana, 2016, p. 43). Paragraph 520 Restatement allows objective risk factors to be determined for the social function of the party concerned (see factor (f)) (Reid, 1999). It is clear that strict liability regardless of how careful the perpetrator (tortfeasor) is, when the act committed is an abnormally dangerous activity,[6] direct liability can be imposed (Harpwood, 2009, pp. 276-277).

Ignorance on the precautionary factor causes the perpetrator (tortfeasor) to internalize the marginal costs and benefits of caution, which gives it an incentive when applying efficient caution (Cooter & Ulen, 2014, p. 191). When compared with Negligence, with a low potential for accountability, potential injurers will be less careful (Cooter & Ulen, 2014, p. 206). On the other hand, strict liability does not give victims an incentive assuming that people who do abnormally dangerous activity know that their actions will cause loss (Cooter & Ulen, 2014, p. 191).

Strict liability itself, reviewed by Cooter and Ulen (2014) in "Law and Economics," is a form of fair accountability for clans in customary law communities (stateless tribes). This was also common in most of Europe before the 19th century, but according to Legal Historians, negligence became a common form of accountability in the early 20th century. Thus, the use of the element of fault (fault) as an element is a relatively new thing.

In Indonesia, strict liability regulations can be found in telematics law, consumer protection law and environmental law. This research will focus on the strict liability in the field of environmental law, especially in the case of forest or land fires. It is very relevant to discuss strict liability in accordance with the provisions in Article 88 of the UUPPLH.

[5] "*damage caused by the escape of a wide range of substances, including gas, sewage, explosives, and, more fancifully, aberrant fairground machinery, yew tree clippings, and even persons likely to cause disturbance if let loose."*

[6] With the limitations of the Act of a stranger, Default of the claimant, Statutory authority, Act of God, Consent, in Harpwood, Modern Tort Law, p. 276-277

Strict Liability based on Countries

Under German law, strict liability is applied in connection with certain hazardous and toxic substances with separate rules, usually with a limit of compensation for the amount recovered (Reid, 1999). The Liability Act 1978, for example, uses strict liability for property damage and personal injury caused by the construction of railways, gas, electricity and water installations. Other rules related to the implementation of strict liability are also contained in the Environmental Liability Act 1990 in terms of damage to the environment, or even to damage caused by aircraft, nuclear installations, and the use of certain drugs can also be enforced by strict liability (See Reid, 1999).

A similar approach is also adopted by French law which implements no-fault liability that arises due to the large number of certain harmful activities, such as HIV infection arising from contaminated blood transfusions, damage caused by emissions of nuclear installations, and pollution sea caused by hydrocarbons (See Reid, 1999). Departing from the German legal approach related to the implementation of the strict liability, Article 1384 of the French Civil Code creates an assumption regarding liability for damages caused by many things, but not limited to inherently dangerous things (Reid, 1999, p. 733).

Furthermore, Russia in Article 1079 of the Civil Code of the Russian Federation regulates the list of non-exhaustive hazardous activities or activities. These dangerous activities or activities may be subject to strict liability including the use of transportation, mechanical goods, electrical energy voltage, explosions, toxic substances, and other related activities. Furthermore, R.S.F.R. Law on the Protection of the Environment also regulates the application of strict liability to injuries or damage to property caused by activities that damage the environment (See Reid, 1999).

Something similar is related to the regulation of hazardous (non-exhaustive) activities or lists. Spain in Article 1908 of the Civil Code (Departemento de Derecho Civil), imposes strict liability for damage caused by explosions, excessive smoke and fallen trees. It is also regulated in the European Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (the "Lugano Convention") which defines the terms 'dangerous activities' and 'hazardous substances' as a reference from the relevant list (See Yearbook of International Environmental Law, 1993, pp. 691-712).

Strict Liability in Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management

Settlement of environmental disputes through the court begins with a suit from a party that feels disadvantaged against another party deemed to have caused the loss. The UUPPLH provides two forms of lawsuits that can be submitted by the plaintiff, which are asking for compensation and asking the defendant to take certain actions. In law studies, there are two types of accountability, these are liability based on fault and non-fault liability (also called strict liability) (Rahmadi, 2018, p. 272).

Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, is the first law concerning environmental management, this law introduces the principle of strict liability within the scope of environmental law, but in the case of its application it requires the enforcement of further implementing regulations which are not yet been established (Nuryanto as cited in Nicholson, 2009, pp. 80-81). Practically, this article has never been applied in a court of law. According to Nicholson (2009, pp. 80-81), Article 35 of Law Number 23 of 1997 UUPLH has set more specifically related to strict liability, which will apply to three conditions including:

1. When a business or an activity that has a large or significant impact on the environment;
2. When a business or an activity that uses toxic and hazardous materials;
3. When a business or an activity that produces toxic and hazardous waste.

In addition to adopting accountability based on mistakes, the UUPLH also imposes strict liability for activities that use hazardous and toxic materials or produce and / or manage hazardous and toxic waste or which pose a serious threat to the environment" (Kemenkumham as cited in Rahmadi, 2018, p. 273), whose activities are categorized as being beyond normal and dangerous limits can be held liable regardless of the element of error, both subjectively and objectively (Wibisana, 2016, p. 36).

The UUPPLH uses the terminology of absolute accountability without the need to prove the element of error. Rahmadi (2018, p. 273) believes that the terminology in Law No. 32 of 2009 is in accordance with the concept of strict liability that is adopted in the Anglo-Saxon system which is different from the 1997 UUPLH. However, the stipulation relating to strict liability for a number of acts of environmental destruction by Article 35 is one of the most extensive legal provisions in the UUPLH 1997. By excluding the element of error in certain situations, the principle of strict liability is a legal way to implement "polluters must pay damages" also known as the "polluters must pay principle" (Nicholson, 2009, p. 85).

Another opinion put forward by Muhammad Sood (2019), the application of compensation provisions carried out based on the principle of "strict liability" (strict liability) as regulated in Article 88 is that the element of error does not need to be proven by the plaintiff as the basis for compensation payments. This provision is a lex specialis in a lawsuit about violating the law in general. The amount of compensation that can be charged to environmental pollutants or destroyers according to this article can be determined to a certain extent. What is meant by "up to a certain time limit" is if according to the stipulation of laws and regulations the insurance must be determined for the business and/or activity concerned or already available and the environment (Sood, 2019, pp. 391-392).

Proof of Strict Liability

Proof in the strict liability plaintiff does not need to prove the existence of an element of error, both objective and subjective, because it is not relevant, by stating in writing in the lawsuit that the suit is with the strict liability principle. Strict Liability is not the same as *Res Ipsa Loquitur*, the one who postulates must prove. When a damage occurs, as long as the cause is not explained, the doctrine of *Res Ipsa Loquitur* will play a role. This statement will give rise to an allegation of an error caused by the party carrying out the dangerous activity. This allegation can be replaced by an explanation by the defendant consistent with the absence of error (Reid, 1999, p. 749). Although there is no further regulation in the UUPPLH regarding exceptions to the principle of strict liability, according to the Guidelines for Handling Environmental Cases, Defendants can submit a defense by proving that the loss or damage caused by the actions of other parties, he does not use, produce B3 and pose a serious threat, and there is a force majeure (Mahkamah Agung, 2013).

Strict Liability in Case of Forest and Land Fire

According to Andri G. Wibisana (2016), Indonesia already has a unique and progressive arrangement[7] related to obligations, prohibitions and civil liability for forest / land fires, where the burden of liability and responsibility lies with business actors. The permit holder has legal obligations and responsibilities to prevent forest / land fires from occurring in his area and to overcome and restore the environment if a fire occurs in his area, even though the fire was started by someone outside the permit

[7] Law Number 41 of 1999, Law Number 32 of 2009, Law Number 39 of 2014 concerning Plantations, Governmental Regulations Number 4 of 2001 concerning Environmental Damage and or Pollution Control relating to Forest and Land Fires, Governmental Regulations Number 45 of 2004 concerning Forest Protection.

holder's work area. Forest / land burning itself is a prohibited act and is a criminal offense (Wibisana, 2016). These arrangements can be seen as Duty of Care and violations against them can be the basis of a civil suit for accountability based on Unlawful Acts.

The question is whether forestry or plantation activities are very dangerous. Since it is likely that forestry or plantation activities do not use B3 or produce or manage B3 waste, it must be demonstrated that forestry or plantation sector activities are activities that "pose a serious threat." In this case, the Supreme Court of the Republic of Indonesia states that a "serious threat" is "the occurrence of environmental pollution and / or damage with potentially irreversible impacts and / or environmental components that are severely affected, such as human health, surface water, underground water, soil, air, plants and animals" (Mahkamah Agung, 2013, p.2). In the opinion of Rahmadi (as cited in Wibisana, 2016, p. 53) that links forest and land fires with disruption to the lives of many people, for example in the form of disruption of flights, then we can conclude that there is a serious threat.

Furthermore, in terms of peatlands, the University of Leicester's Tropical Research & Consultancy Department of Geography conducted research and concluded that:

> When peatlands are drained, they become highly vulnerable to peat fire. A simple discarded cigarette butt or a match can cause huge devastation, degradation of the resource base, accelerated carbon emission and a host of health issues for local communities. Dry peat ignites very easily and can burn for days or weeks, even smouldering underground and reemerging away from the initial source. This makes these fires incredibly difficult to extinguish, and highly unpredictable and uncontrollable. (Tropical Research & Consultancy, n.d.)

It can be seen that there is a risk in processing peatlands. If the peatland is drained or naturally dry, the possibility of fire is greater. Not only are fires triggered by combustion, but also because of small things. In this case, the risk cannot be eliminated by the careful actions taken by the defendant. the activity carried out by the defendant is not appropriate to be carried out in the area where the activity was carried out (American Law Institute, 1977).

This is different from developments in the Common Law system. Provisions in the case of Rylands v. Fletcher is the basis for the implementation of strict liability, although statutory law does not seem to regulate legal liability for spreading fire unless there is negligence. However, in its development, according to Harpwood (2009, p. 278), this has been manipulated for years so that it has a very close interpretation of the accountability that requires proof of the element of error.

Application of Strict Liability related to the Case of Forest and Land Fires in the Practice of Justice in Indonesia

Since the enactment of UUPPLH, especially Article 88, many civil lawsuits have based their claims on strict liability. As explained in the previous section, there are differences of opinion regarding the strict liability adopted in Indonesia which have implications for the elements that must be proven in a civil case based on strict liability. This research will elaborate on how the parties define strict liability and analyze how judges consider the matter. The case to be investigated is land fires in the area of the Defendant's plantation land (Arjuna Utama Sawit Inc.), namely through land preparation activities by systematic and planned burning. The Plaintiff (Ministry of Environment and Forestry) considers that land preparation by burning violates the law, which is the Environmental Law, so that the claim filed by the Plaintiff is an act against the law with strict liability. In the end, the panel of judges at the court of first instance, accepted the Plaintiff's claim and stated that the Defendant had committed an unlawful act with a system of strict liability principle. See Application of Strict Liability in Palangkaraya District Court

Decision Number 213/Pdt.G/LH/2018/PN Plk. The Case of the Ministry of Environment (KLKH) against Arjuna Utama Palm Inc.

The Plaintiff's View in Defining Strict Liability

After postulating that there has been a land fire in the area of Arjuna Utama Sawit Inc. (Defendant), that runs business activities has controlled land and cleared land for oil palm plantations, the Minister of Environment (Plaintiff) postulates an environmental damage, land clearing by burning is an act that violates the law (Palangkaraya District Court, 2018, p. 23-25). The Defendant has deliberately burned land and/or allowed land fires with the intent to clear land and/or clear and/or prepare plantation land because it was more profitable (Palangkaraya District Court, 2018, p. 28), negligence by basing his arguments on the doctrine of res ipsa loquitur, Decision of Mahkmah Agung Number 1794K / Pdt / 2004 (popularly known as the "Mandalawangi Decision") and precautionary principle (Palangkaraya District Court, 2018, pp. 34-38). The plaintiff emphasized that there were environmental losses and that the losses were the result of the defendant's actions (Palangkaraya District Court, 2018, p. 39).

In arguing for strict liability, the defendant stated that Article 88 of the UUPPLH was a *lex specialis* and tried to prove that the defendant's activities contained a serious threat to the environment (Palangkaraya District Court, 2018, pp. 53-57). However, the Plaintiff does not need to prove that there is a violation of the law, because mistakes, both objective and subjective, are not relevant in a strict liability suit. The use of the principle of *res ipsa loquitur* and precautionary principle is not appropriate in the strict liability lawsuit because both require an element of error. *Res ipsa loquitur* assumes an error but does not annul the element of error, but the defendant must prove that he did not do any unlawful acts. Meanwhile, the precautionary principle is not required in proving strict liability, because the risk of an abnormally dangerous activity, despite all the actors being careful, the risk of the activity will not disappear, and the perpetrator must remain to be responsible regardless of all efforts that have been done to reduce the risk.

Defendant's View in Defining Strict Liability

The Defendant argued that the Defendant had in principle carried out the principle of strict liability. The Defendant argued that the Defendant was the aggrieved party and had sought environmental recovery and management after the fire incident. This is evidenced by the expenditure of recovery costs incurred without advice from the government or any party (Palangkaraya District Court, 2018, pp. 114-115).

The Defendant defended his interests by trying to prove that he had applied the principle of "polluter must pay" principle which, according to Nicholson (2009), was the goal of applying the principle of strict liability in environmental law. However, it should be noted that in the case of forest or land fires, it is not only the loss suffered by the defendant that needs to be internalized but also environmental losses due to smoke produced from the fire.

Judge's View in Defining Strict Liability

The judge stated that in trial of this case the burden of proof and the system of liability used the principle of strict liability in its relevance to the principle of goodwill and stated that the Defendant had committed an unlawful act which harmed the Plaintiff because he had committed an act that was contrary to the laws and regulations. Some things that according to the Judge must be proven are:

1. Is it true that the Defendant has committed an illegal act because he has committed an action that is contrary to the law and/or the Defendant has not carried out a precautionary principle that is detrimental to the Plaintiff?
2. Is it true that in relation to land fires in the plantation area managed by the Defendant, the Defendant did not commit any unlawful act that harmed the Plaintiff because of the said fire, was not the Defendant's responsibility?
3. Is it true that there was a land fire on the estate managed by the Defendant and what is the evidence?
4. Is it true that the land fire has occurred, is a deliberate act carried out by the Defendant or is it due to negligence committed by the Defendant?
5. Is it true that due to the forest and / or land fire, it has caused pollution and or severe environmental damage so that the Defendant should be punished to pay compensation and other demands as stated by the Plaintiff in his petitum?

The things required by the judge to prove are not in accordance with the concept of strict liability in theory. In the first condition, it can be seen that the judge emphasizes proof of error (violation of the law), further in the fourth case, the Judge states that it must be proven whether there is intentional or negligence. This is different from the proof of strict liabiity which emphasizes that dangerous activities must be proven which, despite being careful, these risks will not disappear. Strict liability does not require proof whether the action carried out is contrary to the laws and regulations, in other words, strict liability eliminates the element of subjective and objective error. If the peatland has proven dry or there is an attempt to drain the peatland, then the act can be said to be an abnormally dangerous. See Application of Strict Liability in the Decision of the Court of Appeal Number 73 / PDT.G-LH / 2019 / PT. Plk, Minister of Environment and Forestry Republic of Indonesia Against Arjuna Utama Sawit Inc, this decision is an appeal on the decision of Palangkaraya District Court Number 213 / Pdt.G / LH / 2018 / PN Plk.

Defendant-Appelant in Definding Strict Liability

According to the Defendant-Appelant, all written evidences and statements of witnesses or experts submitted by the Plaintiff-Appellee have proven that there is no act against the law.

The Defendant-Appelant considered that there is no element of negligence or intentional acts done by the defendant found on the incident, even the fire that occurred in the plantation area. Thus, the First Level *judex factie* is judged by the Defendant-Appelant, does not prove that there is an inner element to do as argued by the Plaintiff-Appellee.

As explained earlier, in the case of PMH, it is not necessary to prove that the act is contrary to either the element of error or with the laws and regulations. Moreover, eventhough the defendant for example succeeded in proving that he did not violate his obligations or prudence, he is still responsible for the damages to the plaintiff as well as those caused by the defendant's activities. Therefore, the Defendant-Appelant's argument in this case is irrelevant.

High Court Judge's View in Defining Strict Liability

The Panel of Judges of the High Court assess that the consideration of the First Level Judges is related to the burden of proof and the system of accountability Defendant-Appelant uses the principle of strict liability in relevance to the principle of goodwill.

The difference with the First Level Decision regarding this case is in terms of the value of the material loss requested by the Plaintiff-Appellee, which the Panel of Appellate Judges disagreed with. The Appellate Judge Panel considers that the so-called compensation value is the value that is really suffered, or the loss is really caused by the Defendant-Appelant's actions, so the nominal value of the compensation needs to be corrected.

In the end, the Panel of Judges at the High Court level upheld the decision of the Palangka Raya District Court Number 213 / Pdt.G / LH / 2018 / PN Plk dated October 29, 2019, by improving amendment number 4 (four) and 5 (five) related to nominal of the compensation.

Related to the lawsuit for compensation, indeed the UUPPLH does not state explicitly the minimum amount of damage or pollution in an environmental case, but theoretically, losses can be divided into two major groups, which are: (1) losses that can be directly counted by money (pecuniary losses) and (2) losses which cannot be directly calculated with money (non-pecuniary losses). For claims that include strict liability as a basis for liability, the amount of compensation that can be charged is limited.

Conclusion

Strict Liability is a form of civil liability, where objective and subjective errors are irrelevant. The plaintiff only needs to prove that the perpetrator's conduct is a risky activity which even though the perpetrator has made a preventive effort and has been careful not to eliminate the risk (abnormally dangerous activity). Eventhough all efforts have been made in accordance with the laws and regulations to prevent pollution and/or environmental damage, it still must be held responsible. In this case forest and land fires are a result of abnormally dangerous activities. There are several things that need to be underlined namely the dangerous nature of forest fires that have a great effect on human life and the dangerous nature of a peatland that is dry or intentionally drained.

Although strict liability is already well known in the Indonesian legal system, in practice, there is still an effort to prove the elements of error in Acts Against the Law in Article 1365 BW, although the explanation of Article 88 of the UUPPLH has confirmed that the Article applies *lex specialis*. Specifically, in the Arjuna case, the parties have not been able to define strict liability in terms of outcome-based strict liability in accordance with Article 88 of the UUPPLH. The Plaintiff has followed guide of proof of strict liability by arguing the Defendant's activities as a dangerous activity. The judge can identify the applicability of strict liability, however, the judge still proves that the strict liability uses the conditions of action against the law by removing the element of error and the Precautionary Principle and *Res Ipsa Loquitur* which is applied inappropriately.

Strict liability can help environmental law enforcement that is oriented on prevention. This is because strict liability increases the likelihood of a potential injurer to be responsible for a dangerous activity that can change the potential injurer's behavior so that he is more careful in carrying out his activities. The effectiveness of strict liability in supporting these ideals can certainly be realized if we can correctly interpret this term in advance.

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