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JURIDICAL REVIEW OF THE REGULATION AND APPLICATION OF STRICT LIABILITY PRINCIPLES IN THE ENFORCEMENT OF ENVIRONMENTAL LAW

Demson Tiopan
Shelly Kurniawan
Setioko Yudha Pamungkas

ABSTRACT

The environment is one of the most important things in human life. The quality of water, air, soil is greatly affected by the good state of the environment. Enforcement of environmental law in the PPLH Law can actually be done through several instruments, namely administrative, civil or criminal legal instruments where these three instruments are resolved through the court in the process of proof, in addition to the plaintiff and the defendant must follow the law of proof in general as stipulated in the HIR, but in the UUPH regulates and opens the opportunity for the implementation of strict liability (strict / absolute accountability) related to the proof. Strict Liability frees up the burden of proof to prove the fault element (error) of the defendant. However, the plaintiff still has to prove the relationship of causal link that is that the loss suffered by the plaintiff is the result of the activities / actions of the defendant. so that the strict liability can be expanded application not only to the claim for damages in civil cases but can also be done in the legal protection of penal law, is expected with the integration of the law will be able to simplify the process of proving environmental crime by the corporation The research method is normative juridical that will dig from several secondary literature consisting of the Indonesian Constitution of 1945, Law No. 32 of 2009 on Protection and Management of the Environment Law No. 10 of 1997 on Electricity, books, journals and papers related to disputed election results.

Keywords: Strict Liability, Enforcer, Environment

INTRODUCTION

Environment

The environment is one of the most important things in human life. The quality of water, air, soil is greatly affected by the good state of the environment. A good environment makes the lives of humans and other creatures that live in it become more qualified. Like residents in big cities often feel the quality of their lives is not good because of air pollution caused by the number of motor vehicles. But unlike the residents who live in the village do not complain much about the quality of the air they breathe.

But lately it is not separated from the villagers or residents of the city, the air quality inhaled also decreased. This occurs in some areas close to peat forests such as on the island of Sumatra and Kalimantan. The cause of decreased air quality is the smoke of forest fires that feel in the forest area around where people live. This smoke even reached neighboring countries such as Malaysia and Singapore.

In accordance with the investigation conducted by the authorities of forest fires not only occurred due to extreme hot weather that hit Indonesia in 2015 but also due to plantation companies that deliberately opened land by burning the land. As a result, the land burned is not only the company's land but spreads up to the forests owned by the state or surrounding communities. Forest fires become inevitable and difficult to control so as to have a wide impact. Many people are affected by respiratory diseases, and cannot carry out normal daily activities such as school and work.

The government's move is to try to bring the companies that burn forests to justice. However, in its enforcement, not all succeeded because of administrative sanctions, fines, and criminals. But there are also those who are separated from the legal snare such as the case that occurred by PT Bumi Mekar Hijau where the verdict of the panel of Judges Parlas Nababan relieved PT. Bumi Mekar Hijau from a lawsuit by the Government on the grounds that forest fires are not destructive, both the environment and social relations of the community and burned forests can be planted and overgrown with acacia trees. This judge's decision clearly hurts the sense of justice in the community. Especially people affected by forest burning.

Environmental law enforcement in the PPLH Law can actually be done through several instruments, namely administrative, civil or criminal legal instruments where these three instruments are resolved through the courts. The resolution of environmental disputes through the court begins with a lawsuit from a party who feels aggrieved from another party who is considered as the cause of the loss. In the process of proof, in addition to the plaintiff and defendant must follow the law of proof in general as stipulated in the HIR, but in the UUPH regulates and opens the opportunity for the implementation of strict liability (strict / absolute liability) related to the proof. Strict Liability frees the burden of proof to prove the element of fault (error) of the defendant. However, the plaintiff still has to prove the relationship of causal link that is that the loss experienced by the plaintiff is the result of the activities / actions of the defendant. Activities that can be applied to the principle of strict liability are businesses and activities that cause a large and important impact on the environment, activities that use hazardous and toxic materials, and activities that produce hazardous and toxic materials.

Responsibility for these losses we know also with absolute responsibility / strict liability where this responsibility can be in the form of no-fault liability or liability without fault). For this reason, the author is interested in reviewing JURIDICAL REVIEW OF THE ARRANGEMENT AND APPLICATION OF THE STRICT LIABILITY PRINCIPLE IN ENVIRONMENTAL LAW ENFORCEMENT.

Strict Liability Theory

The English term "strict"[1], "Firm, Precise, Meticulous, Hard" (by comparing translated into Dutch into "strictness; stipt; nauwgezet; streng"). Thus, literally the term strict liability translates to, strict responsibility; proper responsibility; careful responsibility; And responsibility hard. "Absolute" is the exact translation of the word "Absolute" so the term strict should be translated into Indonesian literally becomes "Firm, Precise, Meticulous, Hard". However, when the meaning of the translation in the Indonesian is rigidly copied into: "responsibility firmly, precisely, thoroughly, and harshly" then the translation feels less "streg" although more literal. [2]

common law, strict liability:^[3]

1. Public nuisance (disruption to public order, blocking highways, issuing an unpleasant smell).
2. Criminal libel (slander, defamation).
3. Contempt of court (violation of the court order)

The principle of strict liability is also referred to as the principle of absolute responsibility (no-fault liability or liability without fault), is the principle of responsibility without the obligation to prove error based on the following reasons:^[4]

1. It is essential to ensure compliance with certain important regulations necessary for social welfare.
2. Proving the existence of "mens rea" will be very difficult for social welfare-related offenses..
3. The high level of social harm posed by the act in question. According to Sutan Remy Sjahdeini, the teachings of strict liability are only applied to certain criminal acts, namely criminal acts or criminal acts.^[5]

1. Criminal offense, or
2. Criminal acts that;
 - a. Has caused a disturbance of public order (public peace), or
 - b. Has inflicted mass death, or has inflicted mass bodily suffering that is not death, or
 - c. Have caused financial losses in a financial manner, or have caused environmental damage or pollution, or
 - d. Criminal acts relating to tax payment obligations
Has resulted in losses to the financial or economic of the State,

The PPLH Law has applied the principle of strict liability since the enactment of uuplh in 1997. The strict liability principle is set out in Article 88 of UUPPLH: "Any person whose actions, efforts, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment is absolutely responsible for any losses incurred without the need to prove the element of error."

Based on the sound of the article, Article 88 UUPPLH contains several important elements, namely:^[6]

1. Everyone (individual or business entity);
2. An action, effort or activity;
3. Using B3;
4. Generating and/or managing B3 waste;
5. Poses a serious threat to the environment;
6. Responsibility arises absolutely for the losses incurred;
7. Responsibility without the need to prove the element of error.

Based on some of the elements above, elements number (6) and (7) can be interpreted as a principle that is not yet common in the application of Indonesian law. In the common sense of law that it is impossible to determine a person is responsible for something that harms a person, until he or she is found guilty.

Strict Liability in Other Country

The development of strict liability theory began in 1868. At the time of the case in England, Rylands vs. Fletcher, first introduced this theory. After that this doctrine was introduced in various legislation in the United Kingdom, namely in the Civil Aviation Act (1949), Nuclear Installations Act (1959/1965) and Animal Act (1971). In the United States, namely in the Price Anderson Act (1957); Rivesr and Harbors Appropriation Act (1899); Trans Alaska Pipeline Authorization Act (1973); Comprehensive Environmental Response Compensation, and Liability Act (CERCLA 1980/1986/1994); Clean Water Act (CWA). Other states such as France contain a general clause in Article 1384 of the Civil Code; also in the Netherlands formulated in Article 175 paragraph (1), Article 176 paragraph (1) and Article 177 paragraph (1) BW; in Germany, strict liability is contained in the laws and regulations of transportation, water pollution, construction and operation of nuclear power plant installations; In Sweden, the Environmental Protection Act applies a strict liability principle for environmental pollution that is substantial in nature (general arrangement), but is complemented by special laws governing strict liability in the Act on the Risk of Nuclear Power Plants, Marine Pollution by Oil Spills. While in Thailand regulated in enhancement and conservation oil National Environmental Quality Act 1992)^[7]

Similarly, the principle of strict liability is quite widely embraced in international conventions. Some of these conventions are Convention on Third Party Liability in the Field of Nuclear Energy, 29 July 1960, Paris:

1. Convention on Civil Liability for Nuclear Damage, 21 May 1963, Vienna;
2. Liability for Oil Pollution Damage, 29 November 1969, Brussels);
3. Convention on International Liability for Damage Caused by Space Objects, 29 March 1972, Geneva);
4. Convention on the control of Transboundary Movements of hazardous Wastes and Their Disposal, 22 March 1989);
5. Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano 21 Juni 1993);
6. Convention on Biodiversity^[8]

Other countries that adhered to the Anglo Saxon legal system, also began to adhere to the principle of strict liability in the positive provisions of criminal law. In the sense of strict liability, this person can already be accounted for even though in that person there is no error (*mens rea*) for certain criminal acts that L.B. Curzon use is based on the following reasons:

1. essential to ensure compliance with certain important regulations necessary for the welfare of society;
2. Proof of the existence of *mens rea* will be very difficult for violations related to the welfare of the community.;
3. high level of "social harm" posed by the act in question^[9]

In the UK the principle of strict liability crimes applies only to acts that are minor offences and do not apply to offences of a serious nature. But the criminal law in the United States imposes it on moral crimes, regardless of whether they were committed intentionally or by negligence..^[10]

From the practice of strict liability in U.S. courts, as a form of further development than the previous case, the determination of a particular activity is an "ultrahazardous" activity, based on at least 6 (six) factors or criteria below :

1. High risk;
2. The likelihood (likelihood) of harm caused is very large;
3. ability or ability to eliminate risk by applying caution (reasonable care);
4. The extent to which such activity is not common in society;
5. eligibility to carry out activities at a specific location; and
6. the value or benefit of these activities for the community

To determine concretely whether an activity falls into the category of activities is very dangerous, so that subject to strict liability is the duty of the court or judge. The judges in handling cases are always guided by the verdicts of the previous judges. This is what is then abstracted by scholars into criteria as outlined in The Restatement of Torts.

According to sections of the 10th draft of the Second Restatement on Torts it is mentioned that whether an activity contains a high risk of harm is determined by the following:

1. whether an activity involves a high level of risk to the detriment of humans, soil and other moving objects;
2. whether a gravity (heavy force) of the losses incurred from that activity is likely to become greater;
3. whether the risks posed cannot be eliminated by exercising proper caution;
4. Is this activity not a common thing;
5. Is it not worth being somewhere where it is done;
6. the value of the activities concerned for the community.^[11]

In Anglo-United States law the activities subject to strict liability are:

1. business activities producing, processing and transporting B3 waste;
2. storage of large quantities of flammable gas in urban areas;
3. Nuclear Installation;
4. oil drilling;
5. the use of a large pile driving machine that causes extraordinary vibrations; and
6. overflow of water.^[12]

METHOD

Type of research

The type of research used by the authors is normative juridical law research. Research conducted on positive or written law, in solving legal problems of existing legal issues and facts. Normative juridical approach methods used are approaches that use rules and pre-legislation related to the problem being examined.

Research Approach

The approach used in this study is a type of statute approach and conceptual approach (conceptual approach) is carried out by reviewing the pre-legislation related to the problem studied. Conceptual approach is an approach that moves from legislation and doctrines that develop in the science of law, which will produce a sense of law, legal concepts and legal principles that are willing to be good..

Type of data

The type in this study uses secondary data that is distinguished into 3 (three) parts.:

- a. Primary Legal Materials, which are materials of legal science that are closely related to the problems examined, namely:

- 1) Constitution of the Republic of Indonesia of 1945
- 2) Related laws and regulations are:
 - a) Law No. 32 of 2009 on Environmental Protection and Management
- b. Law No. 10 of 1997 on Electricity

Secondary legal materials, namely legal materials that provide explanations or discuss or matters that have been studied in primary legal materials, namely:

- 1) Books that are willing to deal with the issues studied as well as written data related to the issues studied.

2) Various papers, journals, documents and data from the internet relating to the problem being examined.

Tertiary legal materials, namely materials that provide explanations of materials to primary and secondary law, namely the Great Dictionary of Indonesian.

Data Collection Techniques

The technique used in data collection is to use literature studies, namely by conducting assessments and searches of laws and regulations that are willing to study and read, review and make notes from books, pre-legislation, documents and writings related to problems that are the object of research.

RESULT AND DISCUSSION

Indonesia adheres to the understanding of the ceiling or ceiling in the concept of strict liability principle because in the explanation of Article 35 paragraph (1) of the UUPPLH and in the explanation of Article 88 UUPPLH explained that: "The amount of compensation that can be charged against polluters or environmental destroyers according to this Article can be determined to some extent. What is meant by "to some extent" is if according to the determination of the laws and regulations determined the necessity of insurance for the business and / or activities concerned or has been available environmental funds."

The explanation of Article 88 which is meant by "absolute responsibility" or strict liability is "an element of error does not need to be proven by the plaintiff as the basis for the payment of compensation. The provisions of this paragraph are *lex specialis* in lawsuits about unlawful acts in general. The amount of indemnity that can be charged against polluters or environmental destroyers under this article can be determined to some extent."^[13]

There is a strict liability principle in Law No. 10 of 1997 on Electricity, namely in Article 34 has also regulated the upper limit of the amount of compensation value.:

- (1) The liability of nuclear installation entrepreneurs to nuclear losses is at most Rp 900,000,000,000.00 (nine hundred billion rupiah) for each nuclear accident, both for each nuclear installation and for every transport of nuclear fuel or used nuclear fuel.
- (2) The limit of accountability as referred to in paragraph (1) is regulated by presidential decree.
- (3) The amount of liability referred to in paragraphs (1) and paragraph (2) is only used for the payment of nuclear losses, excluding interest and costs of the case.
- (4) The limits on the liability of nuclear installation entrepreneurs as referred to in paragraph (1) can be reviewed by Government Regulation.

Article 88 of the PPLH Act:

"Article 89

- (1) Arrangements regarding the upper limit of the amount of compensation as a form of liability.
- (2) For certain activities can be determined the upper limit of compensation in accordance with their respective sectors and must be adjusted to economic developments.;
- (3) For certain business activities that have a major impact on the mandatory environmental environment;
- (4) Certain business activities are further regulated in government regulations."

The benefit of this strict liability principle is the importance of guarantees to comply with certain important regulations necessary for the welfare of society, evidence of error is very difficult to obtain for violations of regulations related to the welfare of society, the high level of social harm arising from the act. With the use of strict liability as a new legal system, the obstacles experienced by sufferers can be broken. So that based on this system, proof is charged to the perpetrators of unlawful acts as the principle of reverse proof (*Omkerings van Bewijslast*).^[14]

Associated with cases of forest burning on the islands of Sumatra and Kalimantan, the person in charge of business and / or activities is the corporation itself. The company should be subject to the principle of strict liability because from its plantation activities on the islands of Sumatra and Kalimantan has caused a very large impact that polluted the air by burning forests for land clearing. Society suffers losses in the economic, social and cultural fields. Air quality on the island of Sumatra, especially Riau province, is very bad due to air pollution due to forest burning. Therefore, by applying the principle of strict liability, environmental damage can be reduced and people who are victims of polluted air get compensation for the losses they can do.

In the context of forest / land fires, it is also necessary to convey some provisions that are considered as the embodiment of strict liability, one of which is contained in Law No.41 of 1999 on forestry which states that permit holders are responsib

le for the occurrence of forest fires in their work areas. Responsibilities here can be interpreted including in the sense of strict liability^[16].

CONCLUSION

Law No. 32 of 2009 on Environmental Protection and Management has regulated the issue of absolute liability (strict liability), however, under Article 88 of the Act, the absolute liability (strict liability) is only limited to the obligation to pay compensation in the case of a liability lawsuit, instead criminal liability is embraced by Law No. 32 of 2009 on Environmental

Protection and Management. It's about the principle of error. In the case of environmental crimes involving corporations, it is also necessary to apply the principle of absolute liability (strict liability), so this absolute liability (strict liability) is expanded not only to civil damages lawsuits only.

The importance of this strict liability principle is as a guarantee to the state and the people affected by the implementation of a business that has a major impact on the environment, this can have a positive impact on law enforcement in Indonesia so as to provide legal certainty for the community and also business people.

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Demson Tiopan
Lecturer, Faculty Of Law
Maranatha Christian University, Bandung, Indonesia
Email: Demson.tiopan@yahoo.co.id

Shelly Kurniawan
Lecturer, Faculty Of Law
Maranatha Christian University, Bandung, Indonesia
Email: shellyelvira@gmail.com

Setioko Yudha Pamungkas
College Student, Departement Of Law
Maranatha Christian University, Bandung, Indonesia
Email: syudhapamungkas@gmail.com