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The Application of the Strict Liability Principle in The Indemnity Laws for Livelihoods in Indonesia; Analysis of The Supreme Court's Decision Number 1794K/PDT/G/2004*

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Abstract

This study is applied a descriptive-normative method which used to explain, describe, and analyze a particular event that is a proceeding submitted by the plaintiff against environmental pollution and damage, namely landslides on Mount Mandalawangi, using the concept of illegal acts The results of this study are: *First*, the compensation applied in the case of the Mount Mandalawangi landslide is based on the strict liability principle. The implication of the theory stated that the injured complainant is not required to prove the mistakes made by the defendant. Even if the defendant can prove that he is blameless, but there is a clear and proven impact of the loss in court, the defendant still obliged to pay for the compensation. *Secondly*, the Supreme Court's cassation decision is under the provisions of the prevailing laws and regulations in Indonesia, especially in the case of illegal acts, both confirmed in Article 1365 of the Civil Code (*KUHPer*) or regulated in the Protection Law and Environmental Management (*UU-PPLH*).

Keywords: Environmental law, strict liability, claim for compensation, Supreme Court

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Penerapan Prinsip *Strict Liability* Dalam Gugatan Ganti Rugi Bidang Lingkungan Hidup Di Indonesia: Analisis Putusan Mahkamah Agung Nomor 1794 k/pdt/g/2004

Abstrak:

Studi ini bersifat deskriptif-normatif. Studi ini akan menjelaskan, menggambarkan, dan menganalisis suatu peristiwa tertentu yaitu suatu peristiwa tuntutan hukum yang diajukan oleh pihak penggugat yang terhadap pencemaran dan rusaknya lingkungan yaitu longsornya lahan di gunung Mandalawangi, dengan menggunakan konsep hukum perbuatan melanggar hukum. Adapun temuan dari studi ini adalah: *Pertama*, ganti kerugian yang diterapkan dalam kasus longsornya gunung Mandalawangi ini berdasarkan pada asas *strict liability*. Implikasi dari penggunaan teori tersebut, penggugat yang dirugikan tidak diharuskan untuk membuktikan kesalahan yang dilakukan oleh tergugat. Bahkan, bilapun tergugat dapat membuktikan bahwa dia tidak bersalah, namun ada dampak kerugian yang jelas dan dibuktikan di pengadilan, tergugat tetap memiliki kewajiban untuk membayar ganti kerugian tersebut. *Kedua*, putusan kasasi Mahkamah Agung sesuai dengan ketentuan peraturan perundang-undangan yang berlaku di Indonesia, terutama dalam hal perbuatan melawan hukum, baik yang ditegaskan dalam Pasal 1365 Kitab Undang-Undang Hukum Perdata (KUHPer) ataupun yang diatur di dalam Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup (UU-PPLH).

Kata kunci: Hukum lingkungan, *strict liability*, gugatan ganti rugi, Mahkamah Agung

Применение принципа прямой ответственности (*Strict Liability*) в правовом споре о компенсации в сфере жизнедеятельности в Индонезии; Анализ решения Верховного суда № 1794 K/PDT/G/2004

Аннотация

В данном исследовании применяется описательно-нормативный метод, который используется для объяснения, описания и анализа конкретного события, представляющего собой судебную тяжбу, представленную истцом в отношении загрязнения и нанесению ущерба окружающей среды, а именно дело о лавине на горе Мандалаванги, с использованием концепции закона неправомерного акта. Полученные результаты в этом исследовании: Во-первых, компенсация, применяемая в случае схода лавины на горе Мандалаванги, основана на принципе *Strict Liability*. Вовлечение теории гласило, что потерпевший истец не обязан доказывать ошибки, допущенные ответчиком. Даже если ответчик может доказать, что он невиновен, но существует явное и доказанное влияние потери в суде, ответчик все же обязан выплатить компенсацию. Во-вторых, кассационное решение Верховного суда соответствует положениям действующего законодательства и нормативных актов Индонезии, особенно в случае неправомерного акта, которые подтверждены в статье 1365 кодекса Гражданского права (KUHPer) или регулируются Законом о Защите и Регулировании Окружающей Среды (UU-PPLH).

Ключевые слова: экологическое право, S*trict liability*, Тяжба о компенсации, Верховный суд

Introduction

Law and the environment have a close relation, while the environmental problems are so vast, including forestry matter. In terms of function, woodland can support the development of a country, particularly from its natural resources. It must be realized that the forest potential can be seen as an economic function, besides it also becomes a source of life for the organism, such as humans, animals, or plants, consequently, it is worth preserving.

From the biotic environment perspective, the forest is the place where animals or plants live and continue their lives. Besides, woodland can also be utilized as a tourist attraction and destination or it can be useful for other fields such as medicine and economically as the exploitation of wood used for daily purposes. Meanwhile, regarding the abiotic environment, forests can have an economic aspect that can increase the national income such as the presence of mining sites in the tree area. Indeed, there are more essential reasons than merely taking the economic function of utilizing its natural resources, since the wood area can protect animals and against the dangers of natural disasters such as floods and erosion.

The exploitation of tree resources without considering the natural balance will cause environmental damage. In this case, if the forest is only regarded as an economic function, sooner or later there will be deforestation. Protection against forest damage is a shared responsibility for all people, not only the people of a country, but it is also the responsibility of all citizens of the world to continue for forest sustainability. Considering the function of the wood area itself which is essentially required for environmental safety which ultimately stems also from the safety of humanity.

Humans, their behavior, and forests have mutual interrelationships in a natural ecosystem. Concerning humans, it has to be regulated and as a legal basis for the entire legal relationship between forests and humans is the Forestry Law, namely The Law Number. 41 of 1999, State Gazette No. 167 of 1999, additional state sheet No. 3888.

The law provides a strong legal basis in the forestry field in Indonesia because forests have complex aspects. If an incident affects the forest, for instance, landslides and illegal logging, therefore, it is necessary to have a specific criminal and civil settlement aspect following the environmental legal system. The study case of this paper is a landslide in the Mandalawangi mountain area which resulted in environmental damage and caused losses to

the surrounding community, as a consequence, people in the filing of a lawsuit massively, namely a claim made by class actions. However, the focus of this paper is not the problem of a claim filed by class actions.

According to Rosa Agustina, in the Civil Law, there are two forms of claim in the form of illegal acts, a lawsuit violates the rules are regulated in Article 1365 of the Civil Code. While if there is a default on the agreed, then one of the parties can file a claim for default (Agustina, 2003).

Article 1365 of the Civil Code is then adopted into Law Number 32 of 2009 concerning Environmental Protection and Management. Likewise, Law Number 23 of 1997 regarding Environmental Management before being replaced with Law Number 32 of 2009 regulates compensation claims through the compensation claims concept under Article 1365 of the Civil Code. However, the focus of this study is not in the discussion of Law Number 32 of 2009, but the problem regulated in Article 1365 of the Civil Code with the object of research is the environment, namely the landslide of Mount Mandalawangi as a result of exploitation conducted by a business or activity.

To sharpen this writing, the study focused on the case in the Bandung District Court on September 27th, 2003 No: 49/Pdt/G/2003/PN.BDG until the cassation step in the Supreme Court with Number 1794 K/Pdt/2004 in a claim of class actions sued by victims of the Mount Mandalawangi landslide in West Java against the Government including the Minister of Forestry, the Governor of West Java, and the Regent of Garut. The complainants as victim's community of erosion in the Mandalawangi mountain area are holding the defendants responsible for the landslides. Attributed to the description above, the problems in writing this study are: First, how is the claim for compensation through the conception of an illegal act Article 1365 of the Civil Code in the case of the landslide of Mount Mandalawangi Garut, West Java? Secondly, is the judge's verdict in accordance with the concept of unlawful acts in Article 1365 of the Civil Code specifically in the case of the landslide of Mount Mandalawangi Garut, West Java?

Environmental Law and Its Development

One of the inseparable impacts of development is environmental damage, particularly when development is based on rough materials that rely on non-renewable energy sources. At the global level, there are some efforts initiated by the international community to guarantee and recognize the importance of environmental protection. This can be discovered in the

Stockholm Declaration adopted by the United Nations (UN) on the Human Environment on June 16th, 1972. Legally, this International Declaration has become a soft law set in relations between countries and a global agreement that is morally binding countries in acting and behaving, especially in environmental matters.

This declaration confirmed that "the protection and improvement of the human environment is a major problem affecting the welfare of society and economic development throughout the world." This becomes a desire that urges nations all over the world and as an obligation of all Governments. The provisions mentioned are recognized the importance of protecting the human environment and is a major trouble that determines community welfare and economic development across the world. With this great importance, countries in the world are pushing for an agreement so the Government can take responsibility to ensure the realization of a good and healthy environment, for the actualization of the welfare and human survival.

The declaration also emphasizes how many humans and countries treat the environment and causes a lot of damage. The brutality of human behavior in various parts of the world has become clear evidence of how the level of water pollution, air, earth, etc. has caused living things at a dangerous level. Other evidence is when severe disasters happened and ecological biosphere imbalances, the destruction and depletion of non-biological resources, and gross definition, including harmful effects on the physical, mental, and social health of humans.

This phenomenon of environmental damage, according to the Declaration, also occurs in many developing countries due to development programs that often do not aware of the environmental aspects. For this reason, the Declaration affirms that although developing countries focus on development, they should still pay attention to important aspects related to the environment. Moreover, related to the environment and development, the United Nations held a Conference on Environment and Development held in 1992 in Rio de Janeiro. The conference again produced this environmental protection document, which reaffirmed the 1972 Declaration of the UN Conference on Human Environment in Stockholm. The 1992 Declaration, also known as the Rio Declaration, consisted of 27 Basic Principles on the Environment and Development and became a framework for cooperation at the international level that respects the interests of all and protects the integrity of the environment and development system.

The impact of development and business activities on the environment has also occurred in Indonesia. In the new order period, Indonesia adopted the development system, the prediction of the impact of development on the environment seems to have been perceived. As for that, the existence of Law No. 4 of 1982 was approved by the Government at that time and currently has undergone several revisions. Indonesia's historical record stated that the development of environmental law in Indonesia first appeared since the enactment of Law no. 4 of 1982 concerning Basic Provisions for Environmental Management on 11 March 1982 (called *UULH* 1982).

UULH 1982 was born from a number of situations that existed at that time, so that the significance and needs can be seen in accordance with the formation period. Among the significant situations are: *First*, this Law was born when the State was actively launching development in various fields and aspects of life. In fact, every aspect of life is related to the development, this law will always deal with environmental aspects that surround it. With such a situation, and the fact that environmental aspects are often become victims of economic development, it has become a *conditio sine qua non* to intervene the regulations in various interests, both development and environment.

Secondly, PH Law is a basic law for implementing regulations for all environmental sectors. This law serves for any existing lower regulations for environmental matters or further regulations.

Third, Indonesia's ecological features are very specific, consisting of islands, with two-thirds of the sea area, located between two continents (Asia and Australia), and two oceans (the Indian and Pacific Oceans). Indonesia is a country with enormous natural resources, with a diverse population ethnically, culturally, religiously, socially, economically and so on (Sahaan, 2004).

According to several records, the 1982 LH Law Draft had been planned since the 1970s, at that time carried out in conjunction with the request of the United States government to USAID (US Aid for International Development) to begin completing its report with environmental impact analysis of the aid and grants of each project (Margaretha, 2014). On September 19^{th,} 1997 the Act was then revised through Law No. 23 of 1997 and then declared invalid because it was revised again through Law No. 32 of 2009 concerning Environmental Protection and Management, State Gazette of 2009 No. 140 (called PPLH Law).

The PPLH Law can be determined more perfect than the previous law. Since its inception, this law has realized the potential negative impacts caused as a consequence of development, hence, it is important to develop impact

control early. In this case, preventive efforts are carried out by strengthening the system and maximizing the use of the instrument of supervision and licensing (Syahrin, 2014).

The Mechanism of Solving Conflict in Environmental Law

An environmental dispute is a conflict between two or more parties that results or suspected of environmental pollution and/or damage. Environmental disputes or are "species" of "*genus*" disputes that contain conflicts or controversies in the environmental field. In this case, as in general cases of disputes, environmental disputes do not only have a duration of conflict between parties but also are accompanied by "claims". Claims are the primary attribute of the existing dispute or conflict in a particular problem. Although in the PPLH Law, disputes are only interpreted "between two parties" and without accompanying claims in them (Sawitri, Wirastuti, & Rahadi, 2010).

According to academics, environmental law is a field of law called the functional law field, or a field of law that contains the state administrative, criminal, and civil law provisions. When it was examined carefully, the three laws on the environment, namely the 1982 LH Law, the 1997 LH Law, and the 2009 PPLH Law contain norms that fall into the fields of state administrative, criminal, and civil law (Rahmadi, 2013). This shows that environmental management is related to various aspects of the law, not only about criminal, but also civil and administrative matters. Furthermore, the resolution of environmental problems is then related to a variety of legal approaches, especially those based on the three branches of law above. This environmental suit can also be made through an outside court mechanism or in a court of law, as regulated in Article 84 of the PPLH Law.

Firstly, completing the dispute through administrative law. Administrative mechanisms in environmental law are emphasized more on preventive efforts so that environmental disputes or problems do not appear significant, even eliminated, which aims to enforce legislation as it should, especially in the environmental field. Preventive law enforcement through administrative legal means in environmental matters occupies an important position because its function is based on the principle of overcoming the source (abatement at the source principle) (Kartono, 2009).

The Efforts to resolve pollution or environmental damage problems through this administration are carried out by the government or more concretely carried out by authorized officials to give permits. The facilities used

are supervision and administrative sanctions. Supervision is a mechanism to prevent pollution or environmental damage, while administrative sanctions are repressive facilities when the pollution or environmental damage occurred (Efendi, 2011).

Administrative law enforcement is lean on several main reasons, those are: (a) functioned as a controlling, preventing and overcoming tool for some prohibited acts; (b) a preventive juridical instrument of administrative law and function to end or stop the environmental violations; (c) as a reparatory (restore to the original condition); (d) administrative sanctions does not require a long court process; (e) as a means of prevention which more efficient in terms of funding and settlement time compared to criminal and civil law enforcement; (f) administrative law enforcement costs including the costs of supervision and laboratory testing which are lower than the costs of collecting evidence, field investigations, and the costs of expert witnesses to prove aspects of causality in criminal and civil cases.

Related to the administrative mechanism, the 2009 PPLH Law addresses the technical problems that arise in the 1997 PLH Law, namely between the supervisory authority possessed by the State Ministry of Environment and the authority to issue permits. The Ministry of Environment must continue to coordinate with the Sectoral Ministry, thus, when the results of monitoring indicate a violation, the Ministry cannot impose sanctions, but have to make coordination with the sectoral ministry first. Article 36 of the PPLH Law improves the mechanism, by emphasizing:

(1) Every business and/or activity that is required to have an Environmental Impact Assessment or UKL-UPL must have an environmental permit.

(2) Environmental permit as referred to in paragraph (1) is issued based on the environmental feasibility decision as referred to in Article 31 or UKL-UPL recommendation.

(3) Environmental permit as referred to in paragraph (1) must include the requirements contained in the environmental feasibility decision or UKL-UPL recommendation.

(4) An environmental permit is issued by the Minister, Governor, or Regent/Mayor following their authority.

Secondly, The Civil Law. The solution of the environmental conflict is regulated further in the PPLH Law in Chapter XII concerning Completion of Environmental Disputes Article 84 and so on. Article 84 stated:

(1) Completion of environmental disputes can be reached through the court or outside the court.

(2) The choice of resolving environmental conflict is made voluntarily by the parties to the dispute.

(3) A lawsuit through a court can only be taken if the effort to settle a dispute outside the chosen court is declared unsuccessful by one of the parties to the dispute.

According to paragraph (1) of Article 84, settlement of environmental disputes can be carried out through court or outside the court, which is left entirely to the parties (Article 84 paragraph (2). However, paragraph (2) Article 84 seems to indicate contradictory provisions with paragraph, because paragraph (3) of Article 84 confirms the contrast, that the court can only be pursued if the effort to settle a dispute outside the chosen court is declared unsuccessful by one of the parties to the dispute.

Completion of conflict outside this court: 1) Cannot be carried out for criminal disputes; 2) applies when in a lawsuit without a statement by one of the parties that this attempt is not successful; 3) aims to reach agreement on the form and amount of compensation and/or certain actions; 4) can be in the form of mediation or arbitration; 5) the government and/or the community can form an environmental conflict resolution services.

The legal basis for environmental dispute lawsuits in general courts is stated in Article 87 of the PPLH Law, which told:

(1) Every responsible party for a business and/or activity that commits an illegal act in the form of environmental pollution and/or damage that causes harm to others or the environment is obliged to pay compensation and/or take certain actions.

(2) Every person who transfers changes the nature and form of business, and/or activities of a business entity that violates the law do not relinquish the legal responsibilities and/or obligations of the said business entity.

(3) The court may stipulate forced payment of money for each day of delay in the implementation of court decisions.

(4) The amount of forced money is decided based on statutory regulations.

Regarding on Article 87 of the PPLH Law, it is noticeable that a civil suit in the case of environmental disputes can be submitted to the court if it meets the elements of (a) each person who responsible for business activities; (b) committing an illegal act; (c) in the form of pollution and/or environmental damage; (d) cause harm to others or the environment; (e) the party responsible for the activity and/or effort to pay compensation or take certain actions (Efendi, 2011).

From the accountability perspective, conflict completion through this court has two types of accountability. **Firstly**, liability based on the fault is a fault that has associated with an element of error in action. This responsibility can be seen from Article 87 paragraph (1) of the PPLH Law, which confirmed: Every person who is responsible for a business and/or activity that commits an illegal act in the form of pollution and/or environmental damage that causes harm to others or the environment must pay compensation loss and/or take certain actions.

This provision is closely related to Article 1365 of the Civil Code which was mentioned earlier that, "Every act that violates the law, which brings harm to another person, obliges to compensate for the loss." Besides, in the context of settlement of compensation, it is commonly used the provision of Article 1243 of the Civil Code which stated: "Reimbursement of costs, losses, and interest due to the non-fulfillment of an agreement, only then begins to be obliged, if the debtor, after being declared, negligent to fulfill the agreement, continues to neglect it, or if something must be given or it can only be given or made within the grace period it has exceeded."

From the provisions above, it can be understood that the principle used in these articles is liability based on fault, namely with the burden of proof which incriminates the sufferer, because the new sufferer or victim will get compensation if he succeeds in proving the existence of an element of an error on the defendant. "Error" in this context is the element that determines responsibility, so that if it cannot be proven, then there is no obligation for the perpetrator to compensate or to take certain actions. **Secondly**, strict liability. The second approach in terms of compensation and acts against this law is strict liability, which is a provision that requires compensation even though no element of error is found, but there is a clear impact experienced by a person or group. This responsibility is called absolute responsibility by the PPLH Law.

This is regulated in Article 88 of the PPLH Law, which mentioned that: Every person whose actions, businesses and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment is solely responsible for losses which occur without the need for proof of the error.

The explanation of Article 88 of the PPLH Law said that the definition of absolute liability or strict liability, namely the element of error does not need to be proven by the plaintiff as the basis for compensation. The provisions of this paragraph are lexed specialize in lawsuits concerning acts against the law in general.

Compared to the old PLH Law (1997), the 2009 PPLH Law does not provide exceptions in the application of this principle of strict liability. While in the PLH Law (1997), this principle is granted exceptions to natural disasters, force majeure, and the actions of third parties that the person in charge of the business is exempted from the obligation to pay compensation if the losses incurred can be proven to be influenced by the three exceptions above.

Case Position

Decision Case of the Supreme Court No. 1794 K/Pdt/2004 is a lawsuit originally proposed by five citizens as representatives of those affected by the victims of floods on Tuesday, January 28th, 2003. This flood is strongly suspected to be the result of the deforestation that has been used as a buffer of mountain water, consequently, when the forest loses the trees and there is no change of similar hard plants, then the mountain water that hit the village cannot be avoided.

The five representatives who filed this lawsuit were: (1) Dedi, residing in Bojong Jambu Village, Mandalasari Village, Kadungora District, Garut Regency, West Java; (2) Hayati, living in Kampung Renggel, Mandalasari Village, Kadungora District, Garut Regency, West Java; (3) Entin who lived in Mandalasari Village, Kadungora District, Garut Regency, West Java; (4) Oded Sutisna a resident in Kampung Bojong Jambu, Mandalasari Village, Kadungora District, Garut Regency, West Java, and; (5) Ujang Ohim, domiciled in Sindangsari Village, Mandalasari Village, Kadungora District, Garut Regency, West Java; (6) Dindin Holidin, residing in Kampung Bunianten, Mandalasari Village, Kadungora District, Garut Regency, West Java; (7) Aceng Elim, who lived in Mandalasari Village, Kadungora District, Garut Regency, West Java; (8) Mahmud, domiciled in Maribaya Village, Mandalasari Village, Kadungora District, Garut Regency, West Java (Supreme Court, 2004).

This lawsuit is aimed at three parties representing State-Owned Enterprises (*BUMN*) that manage the Mandalawangi mountain forest, namely to: (1) Directors of Forestry Cq. Unit Head of Forestry Unit III of West Java, located in Jalan Soekarno Hatta No. 628, Bandung; (2) Regional Government of Level. I West Java Province Cq. Governor of West Java Province, domiciled at Diponegoro Street, Bandung; (3) The Government of the Republic of Indonesia Cq. President of the Republic of Indonesia Cq. The Minister of Forestry of the Republic of Indonesia domiciled at Gatot Subroto Street, Jakarta.

In the First Level lawsuit, the Bandung District Court granted all claims filed by the complainant and stated that the defendants had committed illegal acts which caused flash floods and losses to the citizens. (Liputan 6, 2013) According to several records, this citizen lawsuit began when 275 victims of the Mount Mandalawangi landslide, which was divided into nine groups, on February 18th, 2003 filed a representative lawsuit over the landslide that struck their village on January 28th, 2003.

Yayat Ruhiyat, a coordinator of the community group who also becomes one of the complainants, stated that the lawsuit filed because of the landslide had resulted in 21 deaths and 408 families or 1,781 people had to be displaced. Besides, 70 hectares of rice fields and 25 hectares of gardens were damaged and 5,150 animals were killed by a mudslide. The lawsuit is intended to hold the forest manager on Mount Mandalawangi, the location from which the landslide occurred. Moreover, residents said that the threat of landslides was not notified of the surrounding community. Perut Perhutani Garut Supena Bratamiharja Administrator revealed, since August 2002 it is known that there were eight landslide points in the limited protected area of Mount Mandalawangi. However, the data about mudslide points -which later became the start of a landslide disaster- was not shared with the Garut Regency Government or the people living around Mount Mandalawangi.

After undergoing a hard session, the Bandung District Court Judge granted the plaintiff's request. In its decision, the Bandung District Court stated that Defendant I (Directors of Perum. Perhutani cq Head of Perum Unit. Perhutani Unit III West Java), Defendant III (Minister of Forestry), Defendant IV (Local Government of Tk. I West Java) and Defendant V (Government of West Java) Kawasan Tk II Garut), is responsible (strict liability) for the impact caused by landslides in the Mandalawangi Mountain area of the Kec. Kadungora Regency Garut, West Java. Therefore, Perhutani as a defendant I must pay the cost of rehabilitating the forest and land on Mount Mandalawangi for Rp20

billion. In addition, Perhutani is also have to pay compensation to the community of Rp 10 billion (Kompas, 2003).

In the final decision, the Bandung District Court even confirmed that the verdict on this case could be carried out first despite the legal efforts of the Defendants (*Uitvoerbaar bij voorraad*), even though in practice the defendant did not implement the decision until the process went to cassation. The defendants were not satisfied with the Bandung District Court Decision, then finally filed an appeal to the West Java High Court as the Plaintiff. In line with the District Court Decision, the High Court also won the flood victims community and rejected the appeal submitted by Perhutani and the Regional Government.

Upon the Decision of the High Court, the Perhutani filed an appeal again to the Supreme Court because they were not satisfied with the decision of the High Court.

Considerations of the Supreme Court Judges

As mentioned above, in regard to the plaintiff's legal status granted by the Bandung District Court and the High Court, the Supreme Court rejected the appeal submitted by Perhutani, the Level I Regional Government of West Java, as well as other petitioners. The rejection of the cassation was built upon several considerations.

First, the considerations for the Cassation I and II Appellants: Perum Perhutani and the Level I Regional Government of West Java: (1) *Judex facti* is not wrong in applying the law because the High Court takes over the consideration of the District Court if the District Court's decision is considered correct, so the Petitioner's reasons rejected. (2) *Judex Facti* is not wrong to apply the law, because Judex Facti granted the Plaintiff's claim based on *the ex aquo et bono* lawsuit based on direct observations by asserting a sense of justice and propriety, so that the appeal for cassation was rejected. (3) That *Judex Facti* is not wrong to apply the law, because it is based on Perum legal facts. Perhutani is the manager of the forest area in West Java, including Mount Mandalawangi where a landslide disaster has occurred which has resulted in loss of life and property. From the results of the study, the landslide incident was caused by, among others, environmental damage/pollution due to land use not in accordance with its function and designation, as a protected forest area. This fact has a causal relationship with the occurrence of landslides which resulted in casualties and property. These facts lead to strict liability for the Defendant,

and they even cannot prove the contrast. Therefore, because of ths reason, then the appeal was rejected.

(4) The Judges of the Supreme Court of Appeal stated that the judge is not wrong in applying the law if he adopts the international law provisions. The application of the precautionary principle in environmental law is to fill the legal vacuum (*Rechts vinding*), the opinion of the Cassation Appellant who believes that Article 1365 BW can be applied in this case cannot be justified, because the enforcement of environmental law is carried out with international legal standards. That a provision of international law can be used by national judges if it has been seen as *"ius cogen."*

(5) *Judex Facti* is not wrong to apply the evidentiary law, instead, the State is obliged to protect and preserve the environment in people's lives. Country of i.c. The Cassation Appellant is obliged to provide compensation to the community including the people who suffered losses due to his actions. The Cassation Appellant cannot rely on discretion, because the consequences of legal policies that are detrimental to the community cannot be tolerated.

Second, concerning the reasons for the cassation submitted by the Petitioner Appeal III, the Supreme Court Judges also stated that the *Judex Facti* was not wrong in applying the law, so the reasons for the appeal were not accepted.

Illegal Acts in Environmental Cases

As the author explained earlier, that Acts Which Against the Law (*PMH*) is regulated in Article 1365 of the Civil Code and reaffirmed through jurisprudence. Article 1365 and Article 1366 of the Civil Code mentioned that: "Every act that violates the law, which brings harm to others, obliges the person, who because of his mistake to issue the loss, compensates for the loss. Every person is responsible not only for losses caused by his actions but also for losses due to negligence or carelessness" (Tjitrosudibjo, 1996). Departing from this Article and the theoretical framework concerning *PMH*, the author will further analyze the Court's Decision. Agung No. 1794 K/Pdt/2004 who rejected the petition of the Perum Perhutani, West Java Regional Government Level I, and the Ministry of Environment.

First, *the existence of an act.* Actions are the first element of *PMH*, hence, if these elements are not fulfilled, then *PMH* is not possible. This act must also be intentional, whether active or passive due to negligence of the obligations born due to applicable law. As a result, referring to the Supreme

Court Decision No. 1794 K/Pdt/2004, the obligation of Perum Perhutani and others as an appealing applicant (defendant in the Bandung District Court) can be seen from several clauses of the Decision, those are:

a. Government Regulation *(PP)* No. 2 of 1978 jo. Decree of the Minister of Agriculture No. 43/KPTS/HUM/1978 and confirmed through Government Regulation No. 53 of 1999, which gave authority to the management of production and protected forest areas in West Java, in case of the Mount Mandalawangi area, Kadungora District, Garut Regency. Furthermore, through the Minister of Forestry's Decree No. 419/KPTS.II/1999 Defendant III (Minister of Forestry) has changed the status of the Mandalawangi protected forest to be a limited production forest and gave management authority to Perhutani.

b. The management carried out by Perhutani should be based on the activities of planning, planting, maintenance, harvesting, processing, and marketing as well as forest protection and safekeeping. (Government Regulation, 1999) Moreover, all Defendant I's legal actions in managing forests must refer to on company aims and objectives, namely "preserving and improving the quality of forest resources and environmental quality" (Government Regulation, 1999).

Based on this and the fact that Perum Perhutani has managed the Mandalawangi forest, it is undeniable that Perhutani is the main party conducting forest management based on the authority granted by the Ministry of Forestry as Defendant III. Thus, according to the authors, the first element in *PMH* has been fulfilled in this case.

Second, the act is against the law. The second element that must be present in *PMH* is that the act is clearly against the law, both theoretically or practically, the intended law neither has to be written nor unwritten. In this section, Perhutani and the defendant have broken the law with several considerations. First, what has been done by the defendants is contrary to the subjective rights of others, namely violating the special authority given by the law to someone as the essential nature of the subjective

These acts are contradicted to the legal obligations of the perpetrators or the defendants. In the decision of the Supreme Court, it is written that in managing the forest, Defendant I had ignored regulations and/or deviated from the company's goals and objectives, which act resulted in 8% of forest area in West Java (including Mandalawangi Garut forest) from 53 million Ha (20%).

Moreover, as mentioned in the Cassation Decision itself, that Article 7 in point b *PP*. No. 53 of 1999 firmly stated that all legal actions of Defendant I in managing forests must refer to the company's aims and objectives, namely "preserving and improving the quality of forest resources and the environment quality ". In contrast, from the facts that appeared at the trial, Defendant I as the manager abandoned the forest and did not restore the quality of forest resources and the environment as it should. Another act that is also against the law is that secondary forest conditioning that should be reforested is leased to residents around it for unclear reasons/objectives. Even though the act of renting out the forest area is not justified by regulations.

Other stipulations in the element of acts against this law are contrary to decency, namely that the act violates normative rules which are socially adopted in society, as long as these norms are seen as an unwritten form of legal regulations. From this element, in the writer's opinion, besides normative law in Indonesia prohibits environmental destruction and the requirement for Defendants to manage forests properly, environmental destruction itself is contrary to moral and ethical norms anywhere, even after making forests neglected and destroy existing forest resources.

This action conflicts propriety, accuracy and caution, namely that: 1) The act is detrimental to others without proper interests; 2) useless actions that cause danger to others based on normal thinking need to be considered (Agustina, 2003) From this, it is very clear that what was done by the defendant has fulfilled these elements, regarding:

(1) *PP* No. 2 of 1978 jo. Decree of the Minister of Agriculture No. 43/KPTS/HUM/1978 which gave the authority to manage production and protected forest areas in West Java and was strengthened by Decree of the Minister of Forestry No. 419/KPTS.II/1999 issued by Defendant III with the amendment to change the status of the Mandalawangi protected forest to be a limited production forest and give the management authority to Defendant I is an act of caution and inaccuracy that allows Defendant I to carry out actions that ignore regulations and/or deviates from the company's aims and objectives.

(2) Defendant I's act did not reforest after logging and/or changed the primary forest to secondary is the Defendant's negligence. By not doing something (passive), Defendant I had posed a danger to normal thinking.

(3) Defendant III has neglected to guide Defendant I (vide article 16 paragraph 1 and 4 PP No. 53/1999) and/or approved the actions of Defendant I or at least allowed Defendant I (vide article 17 b PP No. 5/1999) made mistakes/violations in forest management in the forest area of Mount Mandalawangi.

(4) Renting out land that should be reforested to residents without any reason is an act that is useless and even creates danger before our eyes. Moreover, the potential for disaster threats has been detected since the beginning.

Thus, it seems that the second element of *PMH* from the Supreme Court Decree which mentioned above and it is clear that the element with several stipulations in it has been fulfilled, and it is proven that the Defendant's actions are against or breaking the law.

Third, *the presence of an error*. The element of error in an act is almost the same with the element of breaking the law, this element emphasizes the combination of the two elements above where the act (including intentional or negligence) that fulfills the elements against the law. The element of error is used to state that a person is declared responsible for the adverse effects that occur due to illegal activity. The element of error must also fulfill the following provisions: 1) the existence of an intentional element; 2) the element of neglect; 3) There is no reason to justify and forgive (Abdullah).

From the two explanations above, it can be seen that this intentional element can be proven in court because the negligence committed by the Defendants is firmly stated in the Decision. Therefore, this element can be declared fulfilled. On the other hand, since the defendant has no objections or excuses for forgiveness, such as loss of mind, children, or coercion, it can also be said that the sub-element of excuse is absent in this case. As a consequence, there is no reason for the judge to state that the defendant did not break the law.

Fourth, *the availability of a loss*. Article 1365 of the Civil Code determines the obligations of offenders to pay compensation. But there are no further arrangements regarding the compensation itself. Article 1371 paragraph (2) of the Civil Code provides a little guidance for that by stating, "Also this compensation is assessed according to the position and ability of both parties and according to circumstances."

Losses suffered by a person's "body" can happen, if a person is persecuted by another person and make one part of his body, for instance, his

hands or fingers cannot be moved. The damage suffered to one's "soul" will occur if, for instance, the result of the killing of ahead of family, is another part of families become displaced. The disadvantages suffered on one's "honor" would take place if, for example, as a result of insulting writing, the pride of insulted person was disturbed or dropped in the eyes of the public (Prodjodikoro, 2006).

In the investigated case, the Supreme Court's Decision mentioned aspects of the loss suffered by the complainant, those are: 20 people died (11 men and 9 women), one person is undiscoverable, about 165 pieces of permanent/non-permanent house has destroyed, 67 houses were severely damaged, 44 houses were suffered a light damaged, 104 landslides threatened, 104 houses, two schools, three mosques, 25 hectares of garden, 70 hectares of rice fields, 1-hectare pool, 150 sheep, chickens, and 5000 ducks, 3000 kg fish.

Thus, due to the landslide incident from Mount Mandalawangi, affected residents were forced to be evacuated and only hoped for assistance/donations, and are currently accommodated in the posts, namely: Post I Rumah H. Atri S located in Cilageni village (217 family card (*KK*) = 1,069 inhabitants), post-II Mandalasari Village Hall (45 *KK* = 261 inhabitants), post-III Madrasah AI-Hikmah Kp. Sindangmulya (78 KK = 240 inhabitants), post IV *Madrasah* Baitul Muklis (22 *KK* = 98 inhabitants), post-V RW. 10 Door village (Baetul Mutaqin) 14 *KK* = 128 inhabitants. Total 376 households = 1,769 people. The Plaintiff as a victim of the Defendant I and Defendant II action, consequently, the complainant has suffered both material and immaterial losses, estimated reaches about IDR 50,417,200,000.

Fifth, ***there is a causal relationship (cause and effect) between the actions carried out with the losses produced***. As explained in the previous section, the least important element in analyzing a categorized as an illegal act or not is about the causal relationship of cause and effect that happened and the loss suffered by the victim. Theoretically, this causal relationship is a relationship between suffered actions and losses. In this element, the disadvantage suffered by the victim must be true as a result of an act committed by the perpetrator, not by the result of another act (Agustina, 2003).

The debate in this responsibility theory is the mistakes made, whether the impact of the loss arises as a result of the direct action of an error (liability based on fault) or otherwise the impact arises not because of an error (strict liability). Strict liability is a stipulation that requires compensation even if no error element is found, yet, because there is a clear impact experienced by a person or group. This responsibility is called absolute responsibility by the

PPLH Law, as confirmed in Article 88 of the PPLH Law, which stated: "Every person whose actions, efforts and/or activities use B3, produce and/or manage B3 waste, and/or that cause serious threats to the environment are solely responsible for losses resulted without the need to prove the element of error."

From the theoretical provisions and the *PPLH* Law above, it can be understood that the environmental legal system in Indonesia adheres to two forms of accountability, which are the accountability of errors and absolute accountability. Secondly, this is implicated in the complainant's inability to prove illegal acts by the perpetrators, but it is sufficient that there is a clear impact of an act. As a consequence, in the context of Supreme Court Decree No. 1794 K/Pdt/2004, Judges have used a legal theory under the PPLH Law, namely strict liability.

In this case, the Supreme Court Judge stated that *Judex Facti* was not faulted in applying the law and because based on legal facts which stated that Perum Perhutani was the manager of the forest area in West Java, including Mount Mandalawangi where a landslide disaster had occurred resulting in fatalities and property of the population. From the results of the study, the landslide incident was caused by, environmental damage/pollution due to land is inappropriately used with its function and designation, as a protected forest area. This fact has a causal relationship with the occurrence of landslides which resulted in casualties and property. These facts give rise to accountability (Strict Liability) for the Defendant, and they cannot prove the opposite (Decision of the Supreme, 2004).

In this case, according to the writer's opinion, the Supreme Court judge has rightly decided this case as an act against the law, with the elements that have been fulfilled, those are the existence of the act, the act is against the law, the loss, and the causality between the act and loss suffered. Indeed, there is a debate in the use of the principle of absolute accountability, but this can be understood when the PPLH Law itself provides an opportunity for the use of the principle and the judge's belief in the loss received is the result of the defendant's actions.

Conclusion

Build upon the description and explanation above, two conclusions can be raised at the end of this paper. First, the compensation applied in the case of the Mount Mandalawangi landslide is based on the principle of strict liability or absolute liability. The theory used implies that the aggrieved plaintiff is not required to prove the mistakes made by the defendant. Even if the defendant

can prove that he is not guilty, but there is a clear and proven impact of the loss in court, the defendant still should pay compensation. This was experienced by the judges at the Bandung District Court, the West Java High Court, and was strengthened by the Supreme Court in Cassation Decision No. 1794 K/Pdt/2004.

Secondly, the Decision is following the provisions of the existing laws and regulations in Indonesia, particularly in the case of acts against the law, both confirmed in Article 1365 of the Civil Code or regulated in the PPLH Law. This opinion is based on an analysis of the elements of illegal acts which the author has explained in the previous chapters, namely: the existence of an act, the act is contrary to the law, the loss, and the causality between the act against the law and the harm suffered by the complainant. Therefore, the Judges who decided this case had followed what was supposed to be applied because the statutory regulations had firmly set it.

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