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Rights of Lawsuit for Interested Parties against Damage to Natural Resources and the Environment

Hak Gugat Bagi Pihak Berkepentingan Terhadap Kerusakan Sumber Daya Alam Dan Lingkungan

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Abstract

Efforts to develop the right to sue in environmental cases are carried out through the role of the judge in determining the cost of recovery based on evidence, burden of proof, and examination of laboratory analysis results which are entirely based on the calculation of expert testimony in non-legal fields. Development of evidentiary law by applying the concept of strict liability without proving the element of guilt for the perpetrator, the most important thing is that the causal relationship between activities and environmental losses is carried out through examination of the truth and suitability of evidence submitted by both parties as well as testimony given by expert witnesses in court proceedings and environmental damage.

[*Upaya pengembangan hak gugat dalam perkara lingkungan hidup dilakukan melalui peranan hakim dalam menentukan biaya pemulihan berdasarkan pada alat bukti, beban pembuktian, maupun pemeriksaan hasil analisis laboratorium yang seluruhnya didasarkan pada penghitungan keterangan ahli di bidang non-hukum. Pengembangan hukum pembuktian dengan menerapkan konsep strict liability tanpa membuktikan unsur kesalahan bagi pelaku, yang terpenting adalah hubungan sebab akibat antara kegiatan dan kerugian lingkungan dilakukan melalui pemeriksaan atas kebenaran dan kesesuaian alat bukti yang diajukan oleh kedua belah pihak serta kesaksian yang diberikan oleh para saksi ahli di persidangan maupun adanya kerusakan lingkungan hidup.*]

Keywords: Rights to Claim, Stakeholders, Natural Resources, Environment

I. Introduction

In environmental law, enforcement can also go through civil law channels. This route is less favorable in Indonesia because of the protracted process in court. Nearly all civil cases go to the highest court for cassation because the losing parties are always dissatisfied. In fact, there is a tendency for people to deliberately stall for time by always using legal remedies, even though it is less reasoned that they usually continue to review them. After a decision is made, it is often difficult to enforce it (Hamzah, 2005).

Environmental (civil) disputes can be pursued through the court or outside the court based on the voluntary choice of the parties concerned. If the selected out-of-court effort is unsuccessful, then one or the parties may pursue a court route. A lawsuit through the court can only be pursued if the dispute settlement effort outside the chosen court is declared unsuccessful by one or the parties to the dispute.

Problems in environmental civil liability consist of acts against the law as regulated in the provisions of Article 1365 of the Civil Code (KUHPerdata), and the application of the principle of strict liability (absolute responsibility) regulated in the provisions of Article 88 in Law on Environmental Protection and Management (UUPPLH). In addition, it also regulates the calculation of compensation for environmental pollution and/or damage based on the Regulation of the State Minister for the Environment Number 13 of 2011 concerning Compensation for Damages Due to Pollution and/or Environmental Damage (Permen KLH 13/2011) (Haryadi, 2017), as repealed by the Minister of Environment Regulation Number 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage (Permen KLH 7/2014).

Article 88 of the UUPPLH regulates absolute liability (strict liability) for every person whose actions, business and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment are absolutely responsible for the loss. that happens without the need to prove the element of error.

In the elucidation of Article 88 UUPPLH describes the definition of absolute responsibility as follows: "absolute responsibility" or strict liability is an element of error that does not need to be proven by the plaintiff as a basis for compensation payments. The provisions of this paragraph constitute *lex specialis* in lawsuits regarding acts of violation of the law in general. The amount of compensation that can be imposed on polluters or destroyers of the environment, living 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, insurance requirements for the business and/or activity concerned or environmental funds are available". Arnold H. Loewy in the book Criminal Law provides information about strict liability as follows:

> "Strict liability occurs when a conviction can be obtained merely upon proof that defendant perpetrated an act forbidden by statute and when proof by defendant that the utmost of care to prevent the act would be no defense."
>
> Absolute responsibility is applied without the need to prove first whether the defendant is proven guilty of an act prohibited by law and if it is proven by the defendant that he has made every effort to prevent the act, it does not constitute a defense (Hamzah, 2005).

The provision of absolute responsibility is new and deviates from the provisions of Article 1365 of the Civil Code or *Burgerlijk Wetboek* (BW) concerning illegal acts (*onrechtmatige daad*). It has been explained that activities or businesses that apply strict liability that use hazardous and toxic materials, if there is an act of damage or pollution to the outside environment, the way to choose is to turn to Article 1365 of the Civil Code regarding requirements, such as mistakes (Hamzah, 2005).

The settlement of environmental disputes through civil law instruments, according to Santosa (2001), that in order to determine a person or legal entity responsible for losses caused by environmental pollution or destruction, the plaintiff is required to prove the existence of pollution, as well as the link between pollution and the losses suffered. Proving means providing certainty to the judge about the truth of the disputed concrete event (Santosa, 2001). So far, environmental law enforcement by using civil law is often constrained by the difficulty of proof.

Proving environmental cases requires high human and technological resources, so that resolution of environmental cases becomes complicated, expensive and takes a long time. In the handling of civil environmental cases, legal problems are often found that are not covered by existing laws and regulations. This is because the evidence in pollution cases is often marked by its distinctive characteristics, including:

1. The causes are not always from a single source, but come from multiple sources (multisource).
2. Involves other disciplines and requires the involvement of experts outside the law as expert witnesses.
3. Often the consequences that are suffered do not appear immediately, but after a long period of time (long period of latency).

In handling environmental cases, judges are expected to be progressive considering that environmental cases are complex and there are many scientific evidence found. Environmental cases have different characteristics from other cases. In addition, environmental cases can also be categorized as structural cases

that confront vertically between parties with greater access to resources and parties with limited access.

Therefore, the Supreme Court deems it necessary to establish Guidelines for Handling Environmental Cases through the Decree of the Chairman of the Supreme Court of the Republic of Indonesia Number: 36/KMA/SK/II/2013 concerning Enforcement of Guidelines for Handling Environmental Cases (SK KMA 36/2013). Guidelines for the Handling of Environmental Cases came into effect on 22 February 2013. Guidelines for the Handling of Environmental Cases are aimed at (Haryadi, 2017):

1. Assisting judges, both judges at the court of first instance, at the appellate level and the Supreme Court in carrying out their duties to examine and adjudicate environmental cases.
2. Provide the latest information for judges in understanding environmental problems and environmental developments.
3. Completing the applicable civil procedural law, namely HIR/BRG, Book II and other regulations that apply to judicial practice.

Thus, environmental law enforcement is not easy in practice. Due to the complicated proving process, judges in handling civil environmental cases do not simply apply existing legal provisions, but also require a judicial activism which is carried out by means of legal discovery and law creation through decisions, in order to achieve justice for humans and environment so that a good and healthy environment can be maintained, which ensures the realization of a balance in the ecosystem. Judges must support the paradigm shift in claiming compensation in environmental cases, which in general is in the form of material, is of concern for the preservation of the environment and the universe.

In this case the judge must understand the lawsuit filed by the parties with an interest in preserving nature. The interest is not only in the form of compensation for the amount of money suffered by the victim but also includes compensation which at the same time restores an environment that has been polluted and/or damaged as a result of the perpetrator's actions. This means that in civil law enforcement, the plaintiff does not always have to suffer material losses, but also the party who is harmed due to the damage to the environment around where he lives.

II. Problem Formulation

Based on the aforementioned background, in this case the problems that can be raised are how to develop the right to sue for parties with an interest in environmental law enforcement?

III. Discussion

Development of Lawsuit Rights in Environmental Law Enforcement Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is a policy to further ensure legal certainty and provide protection for the rights of everyone to have a good and healthy living environment as part of the overall protection ecosystem. This UUPPLH consists of 17 chapters and 127 articles which regulate more thoroughly the protection and management of the environment.

The fundamental difference between Law Number 23 Year 1997 concerning Environmental Management and UUPPLH is the strengthening of the principles of environmental protection and management based on good governance because in every process of formulating and implementing instruments for preventing environmental pollution and/or damage life as well as prevention and enforcement of the law requires the integration of aspects of transparency, participation, accountability and justice. The UUPPLH is a mandate of the provisions of the 1945 Constitution, issued through a national legislation program stating that a good and healthy environment is a right that is carried out jointly between the Government and the DPR, as an effort to create justice for present and future generations, through a an integrated system in the form of a national policy on environmental protection and management that must be implemented in accordance with principles and consequently from the center to the regions.

Environmental protection and management according to Law Number 32 Year 2009 concerning Environmental Protection and Management (Law 32/2009) is carried out to preserve environmental functions and prevent environmental pollution and/or damage. Enforcement of environmental laws can also be done through civil law channels. This route in Indonesia is less favorable because of the protracted process in court because almost all civil cases are sought before the highest court for cassation and even proceed to reconsideration. After a decision is made, it is often difficult to enforce it (Hamzah, 2005).

According to the provisions of Article 84 UUPPLH, environmental (civil) disputes can be pursued through a court or outside the court based on the voluntary choice of the parties concerned. If the selected out-of-court effort is unsuccessful, then one or the parties may pursue a court route. Article 88 of the UUPPLH regulates absolute liability (strict liability) for every person whose actions, business and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment are absolutely responsible for the loss. that happens without the need to prove the element of error. In the explanation of Article 88 UUPPLH, it is explained that the definition of absolute responsibility or strict liability is an element of error that does not need to be proven by the plaintiff as a basis for compensation payments. The provisions of this paragraph constitute *lex specialis* in a lawsuit concerning acts of violating the law in general. According to the UUPPLH, the representative authorized to file a lawsuit for compensation for environmental pollution and or destruction is the

Government and Local Government, the Community, and Environmental Organizations (Keraf, 2010). Rights claims have arisen because one party feels that his legal interest has been violated by another party. As a result, his legal interests are violated by other parties resulting in losses for him. So far, these losses can be assessed in the form of money, but along with legal developments, these losses are not only in the form of money but damage and environmental pollution in cases related to the environment.

The parties who experience the loss can file a lawsuit in court. This is in line with Husin's (2009) view which emphasizes that the right to sue in general in the field of environmental law still uses the adagium *point d'interet*, *point d'action* or nemo *judex*, sine *actore* or no interest, no action, which means that in civil terms a person only has the right to sue if he has an interest that is aggrieved by others. The provisions on the right to sue the environment as referred to in the adage above can be seen explicitly in Article 34 of Law Number 23 Year 1997 concerning Environmental Management. According to this Article, people who have the right to sue the environment are people who are victims of environmental pollution and/or destruction who suffer losses (Husin, 2009).

Husin (2009) said there were 2 (two) ways that could be taken to resolve environmental disputes. First, dispute resolution through an out-of-court dispute resolution mechanism. Second, dispute resolution through courts. Each party is free to decide whether to choose an out of or through court settlement. If the disputing party chooses to settle the dispute out of court, he/she cannot seek settlement through the court before a statement is made that the mechanism was not successful by one of the parties to the dispute. Out of court dispute resolution cannot be used to resolve environmental crimes.

If the selected out-of-court effort is unsuccessful, then one or the parties may pursue court routes. A lawsuit through the court can only be pursued if the dispute settlement effort outside the chosen court is declared unsuccessful by one or the parties to the dispute. Out-of-court environmental dispute resolution is carried out to reach an agreement on: (a) the form and amount of compensation; (b) recovery measures due to pollution and/or damage; (c) certain measures to ensure that pollution and/or damage will not be repeated; and/or (d) measures to prevent negative impacts on the environment. Out of court dispute resolution does not apply to environmental crimes. In settling environmental disputes outside the court, the services of mediators and/or arbitrators can be used to help resolve environmental disputes.

The right to sue can be interpreted broadly, namely the access of individuals, groups/organizations or government institutions in court as the plaintiff to demand restoration of their rights that have been violated by the defendant, or compensation for what has been done suffered. The UUPPLH guarantees access to claim rights for several parties, namely:

1. Individual rights to sue (*individual*);

2. environmental organizations' legal rights (NGO);
3. group action rights (*class action*);
4. the right to sue the government and local governments;
5. citizens' right to sue (*citizen lawsuit*).

Evidence Development in Settling Environmental Disputes Environmental pollution and/or destruction is an act that can cause harm to other people, so that environmental polluters and/or destroyers have an obligation, provide compensation and take certain actions to their victims. The responsibility with the obligation to provide compensation is due to the errors of environmental polluters and/or destroyers that cause harm to others. This is in line with our civil law system which embraces liability based on error (*"schuld aansprakelijkheid"*or "*liability based on fault*". Article 1365 of the Civil Code states that every act violating the law, which brings harm to others, obliges the person who due to his wrongdoing to issue said loss, to compensate for the loss (Rangkuti, 2000). The polluter pays principle is a model of allocating and reducing environmental damage and demands for accountability from polluters, both individuals, companies and the state to bear the financing for the occurrence of pollution.

IV. Conclusion

Based on the above discussion, the writer can conclude that efforts to develop the right to sue in environmental cases are carried out through the role of the judge in determining the cost of recovery based on evidence, burden of proof, and examination of laboratory analysis results which are entirely based on the calculation of expert testimony in non-legal fields. Development of evidentiary law by applying the concept of strict liability without proving the element of guilt for the perpetrator, the most important thing is that the causal relationship between activities and environmental losses is carried out through examination of the truth and suitability of evidence submitted by both parties as well as testimony given by expert witnesses in court proceedings and environmental damage.

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