

Implementation of Corporate Absolute Responsibility for Land fires Causing Air Pollution

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Abstract—Corporate activities in forest and plantation exploration are related to the environment issue. Indonesian Law Number 32 the year of 2009 concerning Environmental Protection and Management, article 68 point B stated that in conducting its business activities, it has an obligation to maintain the sustainability of environmental functions. Fires on corporate land causing pollution must be managed with Absolute Corporate Responsibility (ACR).

This paper will discuss on the rationality on applying the ACR due to land fires that cause pollution. Furthermore, it describes the benefits of applying the ACR as the effect of land fires the which cause pollution.

This research is a normative legal research Juridical normative approach method used to analyze various laws and regulations related to the ACR due to land pollution causing fires.

As a conclusion, the application of the ACR due to land fires that cause pollution is a way to respect the principles of human rights in environmental issues by maintaining the sustainability of ecological functions. Furthermore, it is the implementation of the mandatory principles of polluters that have determined to Article 2 point A and J of Indonesia Law Number 32 The year 2009. Benefits of applying the ACR as the effect of land fires the which cause pollution are every corporate performing its obligations to maintain the sustainability of environmental functions, as well as with corporate compensation provided by the government can recover the situation of Contaminated people and environment.

Keywords—Responsibility; Cooperation; Pollution

I. INTRODUCTION

Law is a political product established by the Government to regulate the life of the people, by its very nature of governing and forcing. With the law, it is expected to create justice, legal certainty, the benefit/happiness, truth, peace, order, and prosperity in people's lives.

Law forms and develops as a product that encompasses all fields in people's lives [1]. Legal development is affected by culture, history, and Also time. Therefore, the law should not be static, but the law must be dynamic [2]. The law controls justice, where justice must fulfill the values; Equality before the law, human rights, truth, obedience, and protecting society [3].

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945) provides that: "Indonesia is a state of law." A good and healthy environment is a human right and also constitutes a constitutional right guaranteed by the Government for all Indonesian Citizens (citizen) [4].

In carrying out sustainable development, the Government and all concerned parties must protect the environment, so that the environment can still be a life support for all citizens and other sentient beings.

In Indonesia, many corporations whose business operations are closely related to the environment [5]. Business activities undertaken by the companies are closely linked to the environment, among others, are the exploitation of forest land and plantations.

Based on the provision of Article 68 Sub-Article b of Law Number 32 Year 2009 regarding Environmental Protection and Management (Law Number 32 Year 2009), in conducting its business activities, the corporation is obliged to maintain the sustainability of environmental functions by Preventing the occurrence of pollution that exceeds the standard of damage [6].

In the case of corporate forestry and real cultivation activities, there are a variety of corporations burned. Land fires that have occurred certainly result in environmental pollution [7]. In many cases, the pollution that has occurred, fires of corporations exceeds the standard criteria of damage, the which of course causes environmental damage [8].

The presence of contamination that goes beyond the standard criteria of environmental damage in the resulting harm raises absolute responsibility for the corporation, this can be emphasized in accordance with the provisions of Article 88 of Law Number 32 the year 2009, and Article 49 of Law Number 41 Year 1999 concerning Forestry (Law Number 41 Year 1999) [9].

PT. National Sago Prima (PT NSP) is one of the Several corporations based on the civil lawsuit of the Ministry of Environment and Forestry (KLHK) sentenced South Jakarta District Court (PN) in August 2016 to pay compensation of Rp. 1,040,000,000,000- (one trillion forty billion Rupiahs) to the KLHK for errors in the form of Negligence land that the caused fire in Meranti Islands, Riau Province, in 2015 ago.

Judged by the Civil Law, the occurrence of fires of corporations that cause pollution that exceeds the standard criteria of damage the resulting in environmental damage, of

course, is the Act against the Law, where one of the elements that must be proven is certainly an element of error, affirmed that there is actually disharmony about the element of mistakes between the provisions of Article 88 of Law Number 32 Year 2009 and Article 49 of Law Number 41 Year 1999 with elements of Act against the Law based on the provisions of Article 1365 of the Civil Code (Civil Code) regarding the absolute liability for the resulting corporations land from the occurrence of fires that cause pollution to exceed the standard criteria of environmental damage in the resulting damage [10].

Further Examined under the provisions of Article 28 D Paragraph (1) of the 1945 Constitution, the application of absolute responsibility for corporations pursuant to Article 88 of Law Number 32 Year 2009 and Article 49 of Law Number 41 Year 1999 as a result of land fires that cause pollution that exceeds the standard criteria of the resulting damage in Environmental damage, Clearly is a legal norm that does not accommodate the principle of fair legal certainty [11].

II. PROBLEMS

The problems of this research are; What is the rationale and benefits of applying absolute responsibility to the corporation due to the occurrence of fires causing land pollution.

III. RESEARCH METHODOLOGY

This study used a type of normative legal research [12]. The method used is the normative Juridical method [13]. This research is analytical descriptive. This research of data is like a normative law research, that is using the data secondary either in the form of primary, secondary, and tertiary legal material as the main data/research subject [14].

Data collection is performed through library research study, i.e., the collection of data document, literature and studying the provisions of legislation related to the issues to be answered the in this study.

All the information that has been obtained and collected will then be reviewed restaurants and Analyzed qualitatively. Described then again to be presented systematically, the resulting in a discussion that can be used to answer the problems in this study.

IV. DISCUSSION

Indonesia is a right country. The legal state in question is recht staat. Elements of recht staat: first, recognition and protection of human rights; Second, the state are based on Trias Politica; Third, the government builds on the law (wegmatigeheid van bestuur); Fourthly, there is an administrative court authorized for cases of unlawful acts committed by the Government [15].

By the provisions of Article 28 H paragraph (1) of the 1945 Constitution, a good and healthy environment is a human right and constitutional right of all citizens. Consequently, everyone is obliged to preserve the environment by Preventing and Preventing damage and pollution.

In Indonesia, many corporations Whose business operations are closely related to the environment. Business

activities undertaken are closely linked to the environment, among others, are the exploitation of forest land and plantations.

Based on the provisions of Article 68 letter b Law Number 32 The year 2009, in conducting its business activities, the corporation is obliged to maintain the sustainability of environmental functions by Preventing the occurrence of pollution that exceeds the standard criteria of damage, the which in fact leads to environmental damage.

Facts that exist in Indonesia, in the case of the implementation of forest and plantation operations, there is many corporate land on fire. Land fires that occur certainly result in environmental pollution. In many cases of pollution the caused by fires in corporate lands, pollution exceeds the standard criteria of Destruction roommate certainly causes environmental damage.

Regarding the standard criteria of general damage due to land fires can be seen in various tables, as follows:

Table 1. General Criteria Mineral Raw Land Damage Associated With Fire Land. Source Provided by Government Regulation No. 4 of 2001 on Damage Control and Environmental Pollution Associated With Fires and/or Land (PP No. 4, 2001).

THE PHYSICAL PROPERTIES OF LAND			
No	Parameter	The Damage	measurement Method
1	Soil structure	1. Soil structure damage occurred; 2. Water infiltration Down; 3. Plant Roots Not Evolving; 4. The increasing rate of soil erosion.	Direct observation (Visual).
2	Porosity	1. Decreased occurrence of porosity; 2. Decreased infiltration; 3. The increased flow of surface; 4. Availability of Air and Water To Reduce Crop.	Weight Calculation Of Moisture Content and Maximum Capacity Retention.
3	Fill weights (g / cm ³)	1. Compaction occurs; 2. Plant Roots Not Evolving; 3. Availability of Air and Water To Reduce Crop.	Ring Plate - Gravimetry.
4	Available Water Content (%)	1. The decline occurred Moisture; 2. Declining Soil Water Holding Capacity; 3. Water Shortage plants.	Pressure Plate - Gravimetry.
5	Potential development and contracting	1. Losing ground Inflate properties; 2. Increasing the rate of erosion.	COLE.
6	Soil penetration (kg / cm ²)	1. Soil Penetration Rises; 2. Water infiltration Down; 3. Plant Roots Not Evolving.	Penetrometer.
7	consistency Land	1. Losing ground cure plastic; 2. The rate of erosion Rises	Piridan hand.

Table 1, cont.

CHEMICAL SOIL PROPERTIES			
No	Parameter	Damage Occurred	Measurement methods
1	C - Organic (%)	1. Organic C- Levels Down; 2. Soil Fertility Decline; 3. Influential Against Soil Physical Properties.	<i>Walkey and Black</i> or the CHNS Elementary Analysis Tool.
2	N Total (%)	1. Levels of N Total Down; 2. Soil Fertility Decline.	Kjeldahl or the CHNS Elementary Analysis Tool.
a	Ammonium (ppm)	1. Ammonium levels are down; 2. Soil Fertility Decline.	Kjeldahl or Specific Electrodes or Autoanaliser.
b	Nitrate (ppm)	1. Nitrate Levels Rise; 2. Groundwater poison.	Kjeldahl or Specific Electrodes or Autoanaliser.
3	P (ppm)	1. Available P content Up; 2. Nutrient balance Impaired.	Spectrophotometer or Autoanaliser.
4	pH	1. pH goes up or down; 2. Nutrient balance Impaired.	PH meter.
5	Electrical conductivity ($\mu\text{S} / \text{cm}$)	1. Electrical Conductivity Up; 2. Plant Roots Growth Interrupted; 3. Salt Levels Up.	Conductometer
BIOLOGICAL PROPERTIES OF SOIL			
No	Parameter	Damage Occurred	Measurement methods
1	carbon microorganisms	1. Microorganisms Carbon Down; 2. Many microorganisms Dead; 3. Disturbed Land Biochemistry reaction.	CFE - TOC or CFE Walkley and Black.
2	Respiration	1. Respiration Down; 2. Disturbed Soil Chemical Reactions; 3. Reduced diversity of Soil Microorganisms.	Jars method.
3	<i>metabolic Quotient</i> (QCO ²)	1. <i>metabolic Quotient</i> rose; 2. Soil microorganisms; 3. Reduced diversity of microorganisms.	Respiration and Carbon Calculation Of Microorganisms.
4	Total Microorganisms (SPK / g)	1. Total Microorganisms Down; 2. Reduced diversity of microorganisms.	<i>Counting plate.</i>
5	Total Function (SPK / g)	1. Total Function Down; 2. Impaired balance microorganism population.	<i>Counting plate.</i>

 Table 2. General Criteria Peat Raw Damage Associated With Fire Land.
 Source Provided by Government Regulation No. 4 of 2001.

PHYSICAL LAND			
No	Parameter	Damage Occurred	Measurement methods
1	Porosity (%)	1. Decreased occurrence of porosity; 2. Decreased infiltration; 3. The increased flow of surface; 4. Availability of Air and Water to Reduce Crop.	Weight Calculation Of Moisture Content and Maximum Capacity Retention.
2	Fill weights (g / cm^3)	1. Compaction occurs; 2. Plant Roots Not Evolving;	<i>Ring Plate - Gravimetry.</i>

Table 2, cont.

		3. Availability of Air and Water To Reduce Crop	
3	Available Water Content (%)	1. The decline occurred Moisture; 2. Declining Soil Water Holding Capacity; 3. Water Shortage plants.	<i>Pressure Plate - Gravimetry.</i>
4	Soil penetration (kg / cm^2)	1. Soil Penetration Rises; 2. Water infiltration Down; 3. Plant Roots Not Evolving.	Penetrometer.
5	Subsidence.	1. The decline occurred Surface Peat; 2. Declining Soil Effective depth; 3. Age Use Land Down.	Subsidence stakes in the Field.
CHEMICAL SOIL PROPERTIES			
No	Parameter	Damage Occurred	Measurement methods
1	C - Organic (%)	1. Levels of C - Organic Land Down; 2. Soil Fertility Decline.	<i>Walkey and Black</i> or the CHNS Elementary Analysis Tool.
2	N Total (%)	1. Levels of N Total Down; 2. Soil Fertility Decline.	Kjeldahl or the CHNS Elementary Analysis Tool.
A	Ammonium (ppm)	1. Ammonium levels are down; 2. Soil Fertility Decline.	Kjeldahl or Specific Electrodes or Autoanaliser.
B	Nitrate (ppm)	1. Nitrate Levels Rise; 2. Groundwater poison.	Kjeldahl or Specific Electrodes or Autoanaliser.
3	P (ppm)	1. Available P content Up; 2. Nutrient balance Impaired.	Spectrophotometer or Autoanaliser.
4	pH	1. pH Up or Down; 2. Nutrient balance Impaired.	PH meter.
5	Electrical conductivity ($\mu\text{S} / \text{cm}$)	1. Electrical Conductivity Up; 2. Plant Roots Growth Interrupted; 3. Salt Levels Up.	Conductometer.
BIOLOGICAL PROPERTIES OF SOIL			
No	Parameter	Damage Occurred	Measurement methods
1	carbon Microorganisms	1. Microorganisms Carbon Down; 2. Many microorganisms Dead; 3. Disturbed Soil Biochemical reactions.	CFE - TOC or CFE Walkley and Black.
2	Respiration	1. Respiration Down; 2. Disturbed Soil Chemical Reactions; 3. Reduced diversity of Soil Microorganisms.	Jars method.
3	<i>metabolic Quotient</i> (QCO ²)	1. <i>metabolic Quotient</i> rose; 2. Soil microorganisms; 3. Reduced diversity of microorganisms.	Respiration and Carbon Calculation Of Microorganisms.
4	Total Microorganisms (SPK / g)	1. Total Microorganisms Down; 2. Reduced diversity of microorganisms.	<i>Counting plate.</i>
5	Total Function (SPK / g)	1. Total Function Down; 2. Impaired balance microorganism population.	<i>Counting plate.</i>

Table 3. Common Criteria Raw Flora Damage Associated With Fire Land.
Source Provided by Government Regulation No. 4 of 2001

No	Parameter	Damage Occurred	Measurement methods
1	Species diversity	1. Occurrence of Change Diversity; 2. Occurrence Reduction and Addition of Varieties; 3. The occurrence of species extinction; 4. The ecosystem imbalance.	Sampling.
2	Population	1. Density Changes occur; 2. Population changes occur; 3. Ecosystem imbalance occurs.	Sampling.

Table 4. General Criteria Baku Fauna Damage Dealt With Fire Land.
Source Provided by Government Regulation No. 4 of 2001.

No	Parameter	Damage Occurred	Measurement methods
1	Species diversity	1. Changes occur Diversity; 2. Behavior Changes occur; 3. Reduction and Addition Varieties occur; 4. Species Extinction occurred; 5. Ecosystem imbalance occurs.	Sampling.
2	Population	1. Density Changes occur; 2. Behavior Changes occur; 3. Population changes occur; 4. Ecosystem imbalance occurs.	Sampling.

Pollution damage which exceeded the standard criteria would result in environmental damage. Under the provisions of Article 88 of Law No. 32 of 2009 and Article 49 of Law No. 41 of 1999, which applied for corporate accountability as a result of the occurrence of forest fires that cause pollution beyond the standard criteria for damage resulting environmental damage is an absolute liability.

Assessed by the Civil Code, the corporate forest fires that cause pollution beyond the standard criteria for damage resulting environmental damage is Act against the Law, where one of the elements that must be proven is the element of fault.

In the case of a corporation applicable absolute responsibility for his mistakes in the form of occurrence of forest fires that cause pollution beyond the standard criteria for damage resulting from environmental damage, of course, the implementation of such accountability has accommodated equitable principle of legal certainty.

Conversely in the case of a corporation applicable liability absolute no fault, of course, it was contrary to the provisions of Article 28 D Paragraph (1) of the 1945 Constitution and Article 1365 of the Civil Code, so it can be confirmed that Article 88 of Law No. 32 of 2009 and Article 49 of Law No. 41 of 1999 is the legal norms that do not accommodate the principle of legal certainty fair.

Based on existing exposure, it can be affirmed that in fact there is a discrepancy and disharmony between the provisions of 28 D paragraph (1) of the 1945 Constitution and Article 1365 of the Civil Code with the provisions of Article 88 of Law No. 32 of 2009 and Article 49 of Law No. 41 of 1999. However, of course, there is the rationale the application of

absolute liability for the corporation as a result of the forest fires that cause pollution.

One element of a constitutional state is the recognition and protection of human rights. Protection is designated legal protection. Based on the Theory of Legal Protection by Fitzgerald, legal protection for the interests of a party may be given by way of limitation various interests on the other side. Legal interest is none other than to deal with the human rights and interests by the legal provisions outlined in the various legislation [16].

The legal protection of human rights must be able to protect the affected communities, and given that the public could enjoy all the rights that the law was adopted. Legal protection is not just to be adaptive and flexible, but also to be predictive and anticipatory. Law is needed for humans are weak and not strong socially, economically, and politically, so that a weak man can obtain social justice as it has been mandated V precepts of Pancasila [17].

As the law states, Indonesia also recognizes and protects human rights. Under the provisions of Article 28 H paragraph (1) of the 1945 Constitution and the provisions of Article 9 paragraph (3) of Act No. 39 of 1999 on Human Rights (Act No. 39 of 1999), the right to a healthy environment and health is a human rights for everyone citizen [18].

Laws must be enforced. Law enforcement is harmonious relationship values that have been outlined in the norms, steady gaze and embodied in attitude acts as a series of translation of the value of the final stages to create peace in social life [19].

Law enforcement is the implementation of an idea or concept of justice, legal certainty, usefulness, and even truth. Through law enforcement, then the idea or concept of justice, legal certainty, usefulness, and even truth becomes a reality. With the implementation of the law, not automatically mean there has also been human rights enforcement.

Law enforcement includes a variety of fields, one of which is the area of environmental law [20]. To that end, the various provisions contained in Law No. 32 of 2009 and other laws and regulations relating to the environment, must be enforced [21].

In law, there are an essential and basic elements, namely the principle. The principle is the ratio legitimate of various laws. The position of principle in law is a state of mind which is the background in the formation of the different norms of law [22]. Laws must not be understood without principle. The principle is the symptom that directs human morality to the law [23].

In Act No. 32 of 2009 also has loaded a variety of principles. Principles relating to the application of absolute liability for the corporation as a result of the occurrence of forest fires that cause pollution are the principle of national responsibility, and the polluter pays principle, as set out in Article 2 letter a and j Act No. 32 of 2009 [24].

Based on the exposure that has been there, it can be affirmed that the rationale for the application of absolute liability for the corporation as a result of the occurrence of forest fires that cause pollution are: first, the implementation

of the recognition and protection of human rights in the environmental field; and secondly, the application of the principle of national responsibility and the polluter pays principle specified in Article 2 letter a and j Act No. 32 of 2009.

One purpose of the law is the benefit [25]. Expediency theory teaches a law is considered safe in bringing happiness; otherwise, an act is not considered good if it brings unhappiness. Expediency doctrinal theory of consequentialism as the final orientation of law is a benefit [26].

Thinker Jeremy Bentham regarded as a complete and comprehensive utilitarianism because he has been able to formulate and popularize the Expediency theory [27]. Jeremy Bentham utilitarianism initiated as part of the ethical system [28]. Ethical quality of an act can be assessed based on the achievement of objectives of good works, which would base the benchmark is the result of expediency, which, if not useful, then it certainly does not deserve categorized as good [29].

Utilitarianism seeks to create sustainable development [30], which emphasizes the collected wisdom to prosper [31]. John Stuart Mill successfully Expediency elaboration and development theory. Criteria benefits according to John Stuart Mill is a prosperous state if able to show the individual more resistant as a result of the desired [32].

The principle benefit could be used to justify the law as an instrument of state control for the public interest and to achieve happiness. Therefore, it can be enforced compulsion for everyone to prevent doing damage and harm others in the search for individual happiness or group, by countries restrict the rights and obligations of each person in the legislation.

Has been described previously that under the provisions of Article 88 of Law No. 32 of 2009 and Article 49 of Law No. 41 of 1999, which applied for corporate accountability as a result of the occurrence of forest fires that cause pollution beyond the standard criteria for damage resulting environmental damage is an absolute liability.

The benefits of the application of absolute responsibility for the corporation as a consequence of the occurrence of forest fires that cause pollution are: first, every society that controls forests and plantations fulfill the obligation to sustain environmental functions; second, with compensation given corporation due to the forest fires that cause pollution, the Government through KLHK can restore the state of people and the polluted environment [33].

V. CONCLUSION

The rationale for the implementation of the accountability essential for the corporation as a result of the occurrence of forest fires that cause pollution are the application of the recognition and protection of human rights in the environmental field, as well as the implementation of the principle of national responsibility and the principle of the polluter pays specified in Article 2 letter a and j Law Number 32 the year 2009.

Benefits of the application of absolute liability for the corporation as a result of the occurrence of forest fires that cause pollution is every corporation carrying out the

obligation to maintain the sustainability of environmental functions, as well as with compensation granted government corporation can restore the state of people and polluted environment.

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