

Civil Liability in Protection and Management of the Environment Post Law No. 11 Year 2020 Concerning Creation of Work

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Abstract

This paper will discuss the protection and management of the environment after Law no 11 of 2020 concerning Job Creation which has a negative impact on the sustainability of the Environment in Indonesia in terms of Civil Liability, which is due to the influence of an addition, change and deletion in Law no. 11 of 2020 concerning Job Creation in Law no. No. 32 of 2009 concerning Environmental Protection and Management, Law no. 17 of 2019 concerning Water Resources, Law no. 39 of 2014 concerning Plantations, and Law no. 41 of 1999 concerning Forestry, and its derivative regulations.

Keywords

environmental law;
environmental civil law;
enforcement of environmental
civil law; civil law; civil
liability



I. Introduction

Environmental Civil Code is divided into two things, namely unlawful acts ("PMH") and absolute liability ("strict liability"). the against the law such as a violation of rights and obligations or a violation in terms of prudence and propriety, loss, and causality in which the plaintiff must provide a proof of the element of error committed by the defendant. Then Strict Liability is responsibility for the element of error committed by the defendant based on a presumption or assumption about an error which in the end the defendant is declared responsible, but the defendant can prove that he is not guilty so that he is free from his responsibility.

The difference between PMH and Strict Liability in general is in Strict Liability, where the plaintiff does not need to prove the element of negligence or intent. In Indonesia, the plaintiff in the Strict Liability still has to provide evidence on the basis of a presumption or assumption if the defendant commits an element of error, even though in the plaintiff's posita it is stated that the plaintiff uses Strict Liability, it can be said that Strict Liability is an inseparable part of the PMH lawsuit.

Between PMH and Strict Liability is regulated in Law no. 32 of 2009 concerning Protection and Management of the Environment ("UU PPLH 09"), then the changes made by Law no. 11 of 2020 concerning Job Creation on civil liability in UU PPLH 09 amends Article 88 which regulates the imposition of Strict Liability for losses that occur as a result of actions, businesses, and/or activities in the use of B3 Waste. Previously in Article 88 of the PPLH 09 Law there were words, namely "without the need for proof of an element of guilt" and then it was deleted by the Ciptaker Law which caused the loss of an important principle in civil law enforcement. Amendment to Article 88 of the PPLH 09 Law is one example of a very significant change caused by the presence of the Ciptaker Law because it can have a tremendous impact on civil liability in environmental protection and management and environmental damage.

II. Review of Literature

This research is in the form of a normative juridical research using literature related to the applicable laws and regulations. The selection of this method is done to find the rule of law, legal principles, and legal doctrines in order to answer the legal problems faced, which is done by researching library materials or secondary data. In this case, the primary legal materials or legal materials that are closely related to this research are:

1. Law no. 11 of 2020 concerning Job Creation;
2. Law No. No. 32 of 2009 concerning Environmental Protection and Management;
3. Law No. 17 of 2019 concerning Water Resources;
4. Law No. 39 of 2014 concerning Plantations;
5. Law No. 41 of 1999 concerning Forestry;
6. Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management;
7. Government Regulation No. 74 of 2001 concerning Management of Hazardous and Toxic Materials; and
8. Government Regulation no. 23 of 2021 concerning the Implementation of Forestry.

Then in this writing, there are secondary legal materials which are legal materials that provide an explanation of primary legal materials and aim to find theoretical or conceptual foundations in the form of legal books, articles or journals, theses, theses, dissertations, and newspapers or online news.

III. Result and Discussion

3.1 Environmental Civil Liability in the Civil Code

a. Liability Without Fault in Strict Liability

Strict Liability which contains the meaning that responsibility arises at the time of the act, without questioning the defendant's fault. Based on the Positive Law that applies in Indonesia in terms of Civil, Article 1365 of the Civil Code ("KUHPer"), which reads:

"Any act that violates the law, which causes harm to another person, obliges the loss to another person, obliges the other person to who, by mistake, published the loss, compensated for the loss."

It can be said that the provisions in Article 1365 of the Criminal Code, one of which regulates Strict Liability, can be used as a requirement for the occurrence of an error if an act has damaged or polluted the environment. Strict Liability is a dispute that is carried out in court, Strict Liability in Article 1365 of the Criminal Code contains the principle of Liability Without Fault which the plaintiff does not have to prove the defendant's fault.

Strict Liability itself is also mentioned in principle 23 of the 1972 Stockholm Declaration which is currently considered a customary law, in which the application of Strict Liability provides a separate obligation in paying attention to the level of knowledge and economic and socio-cultural capabilities of the community which is used as one of the basic considerations used as a measure of the community's ability to understand the nature of risks and hazards that are likely to occur. According to James E. Krier that the Strict Liability is very influential in cases carried out in a court regarding environmental cases, due to the many problems which historically have caused losses caused by actions on environmental damage so as to minimize the effect of losses, so that the provisions for liability are enforced. answer without fault or Liability Without Fault.

b. Liability Based on Fault in Unlawful Acts

PMH which is also a way of resolving environmental disputes in the judiciary, PMH is an act that has violated an obligation because the defendant has carried out an inappropriate and careless act or as a trait that is against the law of an action.

PMH occurs because there is a loss for the victim, the loss is caused by PMH such as:

1. Material

Losses that arise because someone has committed an act that has violated the law.

2. Immaterial Losses

There are 4 (four) things referred to in immaterial losses, namely:

- a) moral losses;
- b) Ideal loss;
- c) Losses that cannot be calculated with money; and
- d) Non-economic losses.

PMH which is also based on Article 1365 of the KUPer such as Strict Liability, adheres to the principle of Liability Based on Fault in which the plaintiff is given the obligation to provide evidence if for example the defendant has committed an unlawful act and an error and the consequences of his mistake such as a violation of rights and obligations or a violation in terms of due to prudence and propriety, loss, and causality that caused the loss felt by the plaintiff. Errors committed by the defendant can be measured by 2 (two) conditions, namely:

1. Objective, proven by basic logical thinking if a normal human being would suspect the possible consequences of his actions and whether it would be done or not.
2. Subjective, proven by how the defendant would suspect the consequences of his actions.

According to Galligan, Jr., the elements that can be used as evidence in the occurrence of an element of error in PMH are:

1. an obligation;
2. the existence of obligations that have been violated;
3. there is a loss felt by the plaintiff; and
4. a causal relationship between the mistakes made by the defendant in the form of obligations that have been violated by the plaintiff and the losses felt by the plaintiff.

Proving the defendant's guilt is not an easy thing so it can be said that it is a difficult thing with a small chance that the dispute will be won by the plaintiff, because of this difficulty, Strict Liability arises which contains the principle of Liability Without Fault with the same legal consequences in Article 1365 of the Criminal Code. although basically the plaintiff must also continue to prove the element of error that has been committed by the defendant on the basis of presumption or assumption.

However, PMH is not only based on Article 1365 of the Criminal Code, but is also based on Article 1865 of the Criminal Code, which reads:

"Everyone who argues that he has a right, or, in order to confirm his own right or to refute a right of another, refers to an event, is obliged to do so. prove the existence of such rights or events."

Because as previously mentioned the plaintiff is given the obligation to provide evidence if for example the defendant has violated his rights and obligations or violated in terms of prudence and propriety, loss, and causality.

Apart from Article 1865 of the Criminal Code, based on Article 163 of the Herzien Inlandsch Regulation ("HIR"), which reads:

"Whoever says he has rights, or he mentions an act to strengthen his rights, or to dispute the rights of others, then it must prove the existence of that right or the existence of that occurrence."

The two articles above between Article 1865 of the Criminal Code and Article 163 of HIR have similarities in their conclusions, namely:

1. for anyone who says that he has rights or presents an event that is used as a reinforcement of his rights, is given an obligation to prove his rights;
2. for those who dispute the rights of others, are given the obligation to provide proof of their rebuttal.

On October 28, 2021, the Panel of Judges handed down an interim decision which accepted the exception and won PT. Pesona Belantara Persada as Defendant I and PT. Putraduta Indah Wood as Defendant II, who stated that the lawsuit for absolute responsibility for forest and land fires ("Karhutla") was not the authority of the Jambi District Court but the Jambi State Administrative Court, which was a change in the lawsuit from Strict Liability to PMH.

3.2 Regulation of Environmental Civil Liability in Indonesian Positive Law after the presence of Law no. 11 of 2020 concerning Job

a. Creation, Law no. 32 of 2009 concerning Environmental Protection and Management

Based on Article 88 which is a form of Settlement of Environmental Disputes through the Court. In this case, Article 88 regulates Strict Liability, which previously read: "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is absolutely responsible. for losses that occur without the need for proof of the element of guilt."

Then in the Ciptaker Law, Article 88 of the PPLH 09 Law has been amended, so that it reads:

"Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment, is responsible for absolute responsibility for losses that occur from their business and/or activities."

The amendment to Article 88 of the PPLH 09 Law in the Ciptaker Law has clearly removed a word that is quite important in Article 88 of the PPLH 09 Law, namely "without the need to prove an element of error", with the abolition of the provision in Article 88 of the PPLH 09 Law in the Ciptaker Law, it will facilitate accountability for people who have damaged the environment. The deletion of these words will result in changes to the provisions regarding Article 88 of the PPLH 09 Law, because if something happens that poses a serious threat to the environment caused by B3 waste, then in accountability it is necessary to prove the element of error first, whereas previously an accountability was carried out without proof of error. The author feels that the deletion of these words is also influenced by the lawsuit against Strict Liability in Indonesia, which still has to provide a proof of guilt based on presumptions or assumptions.

b. Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management ("PP PPPLH 21")

PP PPLH 21 is a derivative regulation of the Ciptaker Law concerning the PPLH 09 Law, while the regulation of civil liability is stated in Article 500 paragraph (4) explaining that "in terms of the conclusion of the report the results of supervision are declared disobedient, the Environmental Supervisory Officer provides recommendations for follow-up law enforcement which includes administrative, civil and/or criminal acts."

Then in the next article, namely Article 501 which regulates Civil Law Enforcement, that in paragraph 1 clearly describes absolute liability or Strict Liability, as for the contents of the paragraph, namely "Civil law enforcement can be carried out by proof of absolute liability."

This is also reinforced based on the Elucidation of Article 501 paragraph (1), which reads:

"What is meant by "absolute liability" or Strict Liability is that an element of error does not need to be proven by the plaintiff as the basis for payment of compensation."

Although the main regulation, namely UU PPLH 09 regarding Strict Liability in Article 88, does not contain the principle of Liability Without Fault, in its derivative regulations it still contains the true principle of Strict Liability, namely Without Fault.

c. Law No. 17 of 2019 concerning Water Resources ("UU SDAir 19")

Then in the relationship between UU PPLH 09 and UU SDAir 19 which is one form of Environmental Protection and Management in the field of Water Resources, which in this case UU SDAIR 19 describes concerning the management of water resources, which "Management of water resources is an effort to plan, implement, monitor, and evaluate the implementation of Water Resources Conservation, Utilization of Water Resources, and Control of Water Damage."

Civil liability in the SDAir Law 19 is contained in Chapter X regarding Rights and Obligations in Article 61 paragraph (1) letter d which explains the rights of the community, which reads:

"to obtain proper compensation for the losses they experience as a result of implementing Water Resources Management."

As for in this case, proper compensation for losses is carried out by everyone, which in Article 1 number 24 of Law no. 17 of 2009 concerning Water Resources, it is stated that "Every person is an individual or a corporation, whether a legal entity or not a legal entity."

Based on civil liability in Article 61 paragraph (1) letter d states Liability Based on Fault, which is because Article 61 paragraph (1) letters g and h explain that: "submit reports and complaints to the competent authorities for the losses that befell him". relating to the implementation of water resources management; and/or filing a lawsuit to the court against various water resources problems that are detrimental to life."

Thus, it is clear that the plaintiff is given the obligation to prove in advance to file a report and complaint to the competent authority for the loss received or file a lawsuit to the court. In this case the community's obligations in Article 61 of Law no. 17 of 2019 concerning Water Resources is an obligation in the principle of Liability Based on Fault which is stated in the words "prove first to file a report."

d. Government Regulation No. 74 of 2001 concerning Management of Hazardous and Toxic Materials ("PP B3 01")

Management of Hazardous and Toxic Materials is "an activity that produces, transports, distributes, stores, uses and or disposes of B3." It should be noted beforehand that at the time this journal was formed, PP B3 01 was still in effect and had not been revoked, however, Government Regulation No. 101 of 2014 concerning Management of Hazardous and Toxic Waste ("PP PLB3 14") has been revoked with the latest derivative regulation of the Ciptaker Law, namely PP PPLH 21.

Civil liability in PP B3 01 is regulated in Chapter XII regarding Compensation in Article 39, which reads :

- "1) The person in charge of the business and or activity whose business and activity causes a major and significant impact on the environment, which uses hazardous and toxic materials, and or produces hazardous and toxic waste, shall be absolutely responsible for the losses incurred, by the obligation to pay compensation directly and immediately at the time of the occurrence of environmental pollution and or damage
- 2) in charge of the business and or activity may be released from the obligation to pay compensation as referred to in paragraph (1) if the person concerned can prove that the environmental pollution and or damage was caused one of the following:
 - a. a disaster a lam or war; or
 - b. the existence of forced circumstances beyond human capabilities; or
 - c. the action of a third party that causes pollution and or damage to the environment.
- 3) In the event of a loss caused by a third party as referred to in paragraph (2) letter c, the third party is responsible for paying compensation."

The contents of Article 39 paragraph (2) explain that, the defendant can be free from his obligation, namely compensation, if the defendant can prove that environmental pollution or destruction is not caused by it. It can be concluded that the Civil Liability in PP B3 01 is contained in Article 39 paragraph (2) which in this case states Liability Without Fault, which was previously stated in Article 39 paragraph (1) mentions absolute responsibility, and has a relationship with Article 39 paragraph (2). As previously mentioned if in the principle of Liability Without Fault, that the defendant is given the opportunity to prove that he is not guilty.

e. Law No. 41 of 1999 concerning Forestry ("Forestry Law 99")

Civil liability in Forestry Law 99 is regulated in Chapter XV concerning Compensation and Administrative in Article 80 paragraphs (1) and (3). It should be noted in Article 80 that civil liability only relates to paragraphs (1) and (3) of the Forestry Law 99, but this has been amended in the Copyright Act and in that amendment only paragraph (3) relates to civil liability. Before being amended in the Copyright Act Article 80 paragraphs (1) and (3), it reads:

- "1) Every act that violates the law as regulated in this law, without reducing the criminal sanctions as stipulated in Article 78, obliges the person in charge of the act. to pay compensation in accordance with the level of damage or consequences required to the State, for the cost of rehabilitation, restoration of forest conditions, or other necessary actions
- 2) Further provisions as referred to in paragraph (1) and paragraph (2) shall be regulated by a Government Regulation."

Article 78 of the Forestry Law 99 which is also amended in the Ciptaker Law explains the criminal provisions, which sanctions will be given if anyone violates the provisions in Article 50 of the Forestry Law 99 regarding the prohibition, previously the article prohibited anyone from destroying forest protection infrastructure and facilities. After being amended in the Copyright Act, the article prohibits anyone who is granted a Business Permit in a forest area to carry out activities that cause forest damage.

Then as for the changes to Article 80 paragraph (3) in Law no. 11 of 2020 concerning Job Creation, which reads:

"Further provisions regarding the procedure for compensation as referred to in paragraph (1) and the procedure for imposing administrative sanctions as referred to in paragraph (2) shall be regulated in a Government Regulation."

In Article 78 regarding criminal provisions, it is said that a person will be subject to sanctions if "everyone intentionally violates the provisions of Article 50 and every person

because of his negligence violates the provisions of Article 50". then it can be said that civil liability in Article 80 is PMH which basically adheres to the principle of Liability Based on Fault, because if it is interpreted carefully regarding the contents of Article 78, namely "every person intentionally and every person because of their negligence violates the provisions of Article 50", which in Article 50 regulates the prohibition logically the prohibition It is an obligation that cannot be violated.

f. Government Regulation No. 23 of 2021 concerning the Implementation of Forestry ("PP Forestry 21")

Based on the amendments to Article 80 paragraph (3) of the Forestry Law 99 in the Ciptaker Law, the procedure for compensation must be reviewed first. Based on the latest derivative of the Ciptaker Law which regulates Forestry is PP Forestry 21, which is regulated in Chapter VII concerning Forest Protection in Article 260, while it reads as follows:

- "1) Holders of Business Permits for Forest Utilization, holders of approvals for the management of Social Forestry, holders of approvals The use of the Forest Area or the owner of the Private Forest shall be responsible for the occurrence of forest fires in their working area.
- 2) The liability as referred to in paragraph (1) shall be regulated by a separate statutory regulation."

As for the explanation of Article 260 paragraph (1), it is:

"The responsibility of the holder of a Forest Utilization Business Permit, the holder of an Approval for the Use of Forest Areas or the owner of a private forest for the occurrence of forest fires in their working area is an absolute responsibility, which means that the holder of the Forest Utilization Business Permit, the holder of the The use of the Forest Area or the owner of the Private Forest, either intentionally or unintentionally, must be criminally responsible and/or pay compensation for the occurrence of forest fires in their working area, except if the holder of the Business Permit for Utilizing Forest, the holder of the Approval for the Use of the Forest Area or the owner of the Private Forest can prove that he is not guilty"

Based on the explanation of Article 260 paragraph (1) Government Regulation no. 23 of 2021 concerning the Implementation of Forestry which relates to civil environmental responsibility in Article 80 of Law no. 41 of 1999 concerning forestry as amended in Law no. 11 of 2020 concerning Job Creation, that civil liability in the Ciptaker Law on Forestry is a Strict Liability, the principle of Liability Without Fault is clearly stated in the explanation of Article 206 paragraph 1 PP Forestry 21 it says "absolute responsibility" and "unless it can prove he is innocent" .

On November 25, 2021, the Constitutional Court of the Republic of Indonesia ("MKRI") handed down Decision No. 91/PUU-XVIII/2020 in the case of the Formal Examination of the Copyright Law in the MKRI decision No. 91/PUU-XVIII/2020 it is stated that the Ciptaker Law will remain in effect until an amendment is made to the establishment with a grace period of 2 (two) years, so during that period it is not permitted to issue new implementing regulations that are related to the Ciptaker Law. So it can be said that with the presence of the decision as a statement of the existence of a formal defect in the Copyright Act, it can give meaning to the existence of material defects in the Copyright Law.

IV. Conclusion

1. Environmental Civil Liability in the Civil Code is divided into two, namely Strict Liability and PMH, both of which have the same legal basis based on Article 1356 of the Criminal Code, but because PMH needs proof so that PMH is also based on Article 1865 of the Criminal Code which same as Article 163 HIR concerning Evidence. Both of them also adhere to different principles, in which Strict Liability contains the principle of Liability Without Fault and PMH contains the principle of Liability Based on Fault. And with the example of the case of PT. Pesona Belantara Persada as Defendant I and PT. Putraduta Indah Wood as Defendant II provides evidence that the evidence in Strict Liability can cause a change in a lawsuit because it is considered PMH.
2. Regulation of Environmental Civil Liability in Indonesian Positive Law after the presence of Law no. 11 of 2020 concerning Job Creation is more dominated by Strict Liability. From 7 (seven) regulations discussed, 4 (four) of which are Strict Liability and the rest are PMH. The presence of the MKRI decision No. 91/PUU-XVIII/2020 due to a formal defect in the Copyright Act, so it is possible to have material defects which are clearly contained in Article 88 of the PPLH Law concerning Strict Liability which deletes the words "without the need to prove an element of error", due to the influence of the lawsuit on Strict Liability in Indonesia which still has to provide a proof of the element of guilt on the basis of presumptions or assumptions.

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