

Implementation of Strict Liability in the Settlement of Environmental Disputes Based on the Job Creation Act (Analysis of Decision Number 102/PDT.G-LH/2021/PT PLK)

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Abstract

Ministry of Environment and Forestry's lawsuit against PT. Kumai Sentosa (KS) over the fire in the defendant's oil palm plantation is the first environmental dispute in Indonesia with strict liability under Article 88 of the Job Creation Law. The existence of this Article was previously considered to confuse and even eliminate strict liability. This study aims to analyze the meaning strict liability Article 88 of the Job Creation Law and analyze its application in Decision Number 102/PDT.G-LH/2021/PT PLK. The results of the study show that based on the body and explanation, Article 88 of the Job Creation Law does not change the concept of strict liability into liability based on errors. This article also concludes that the court's interpretation of Article 88 of the Job Creation Law and its elucidation is a key factor in how courts construct strict liability. Partial meaning by only considering Article 88 of the Job Creation Law without relating it to the explanation of the article will greatly affect the construction of court evidence and bring it closer to the model of accountability based on errors or unlawful acts (PMH).

Keywords

job creation; environmental law; absolute liability; strict liability



I. Introduction

The Minister of Environment and Forestry filed a lawsuit against PT. Kumai Sentosa (KS) for the fire that occurred in the 3,000-hectare oil palm plantation owned by the defendant. In this litigation based on strict liability (absolute liability), the defendant is being ordered to pay 1.185 trillion rupiah in compensation for environmental damages. The case was filed on November 16, 2020, two weeks following the issuance of Law No. 11 of 2020 about Job Creation (also known as UU Cipta Kerja) on November 2, 2020. The case involves the Minister of Environment and Forestry against PT. Kumai Sentosa (KS) is the first environmental dispute under Article 88 of the Job Creation Law to apply strict liability.

The existence of earnings management can result in biased financial statements; the report is manipulated using certain accounting methods so as to produce financial statements that are in accordance with the needs or desires of the manager (Yannizar, 2020). Strict liability in Article 88 of the PPLH Law (Environmental Protection and Management Act) or before the birth of the Job Creation Law reads "Everyone whose actions, businesses, and/or activities use, produce and/or manage hazardous and toxic material waste (B3), and/or that pose a serious threat to the environment are absolutely responsible for losses that occur without the need to prove the element of errors". Meanwhile, in the Job Creation Law, Article 88 is changed to "Everyone whose actions, businesses, 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 losses incurred from their business and/or activities."

The phrase " absolutely responsible for losses that occur without the need to prove the element of errors" contained in Article 88 of the PPLH Law is changed to "absolutely responsible for losses incurred from their business and/or activities". The change in the Job Creation Law is considered to have confused the concept of strict liability which was previously explicitly stated in Article 88 of the PPLH Law. The idea of strict liability, which had previously been articulated in clear terms in Article 88 of the PPLH Law, is seen as having been confused as a result of the amendment that was made to the Job Creation Law. As a result of this modification, there is a school of thought that contends the responsibility of business actors for environmental contamination can only be prosecuted once it has been first been shown to determine whether or not there is an element of error (Arumingtyas & Saturi, 2020)

In the first case that applies strict liability based on Article 88 of the Job Creation Law between the Minister of Environment and Forestry against PT. Kumai Sentosa (KS), the decision of the court of first instance number 39/Pdt.G/LH/2020/PN Pbu, the Panel of Judges of the Pangkalan Bun District Court granted part of the applicant's request. PT. KS was declared absolutely responsible for the land fire incident in his plantation area located in Sungai Cabang Village, West Kotawaringin Regency, Central Kalimantan. The oil palm plantation company, whose plantation is adjacent to the Tanjung Puting National Park (TNTP), was sentenced to pay material compensation of Rp. 175 billion and restore burned land in its plantation area.

In response to this ruling, PT. KS filed an appeal. In Appeal Decision Number 102/PDT.G-LH/2021/PT PLK, contrary to the decision at the lower level, the Panel of Judges of the Palangkaraya High Court granted PT.KS's appeal. The Panel of Appeals Judges determined that the strict liability action lacked a legal basis, and the Pangkalan Bun District Court's Decision No. 39/Pdt.G/LH/2020/PN.Pbu was declared null and void. This study seeks to determine the conception of strict liability responsibility under Article 88 of the Job Creation Act, as well as the court's interpretation of strict liability responsibility in the settlement of environmental disputes under Article 88 of the Job Creation Act in Appeal Decision No. 102/PDT.G- LH/2021/PT PLK.

II. Research Method

This research is a normative legal research. The analysis was conducted to find out the meaning of strict liability in Article 88 of the Job Creation Law and how the court's perspective on the rule was reflected in the considerations and the Palangkaraya High Court in the Appeal Decision Number 102/PDT.G-LH/2021/PT PLK. This study uses secondary data sources originating from laws and regulations, court decisions, research results, and other references and is presented in an analytical prescriptive manner. The approach used in this research is a case approach, a statutory approach, and an analytical approach.

III. Results and Discussion

3.1 Comparison between Strict Liability Responsibility and Unlawful Acts in Civil Law Enforcement

Environmental protection can be accomplished through a variety of means, including administrative law enforcement, civil law enforcement, and criminal law enforcement. In the context of controlling environmental pollution, enforcement of environmental law entails utilizing available legal means in the fields of administrative, criminal, and civil environmental law enforcement (environmental dispute resolution) to ensure a clean, healthy, and sustainable environment.

There are two categories of liability in civil law enforcement: liability based on unlawful acts (PMH) and absolute liability or strict liability. Liability for unlawful conduct (PMH) involves an element of fault (fault based liability). The concept of an unlawful act is derived from Article 1365 of the Civil Code, which stipulates that the plaintiff must establish an element of fault. Article 1365 of the Civil Code states in its full extent: "Every unlawful act that causes injury to another person obligates the person who committed the act to recompense for the loss." On the basis of these provisions, there are various aspects of unlawful acts (PMH), including 1) the existence of actions, 2) the act is against the law, 3) the perpetrator's wrongdoing, 4) the victim's loss, and 5) a causal relationship between the perpetrator's actions and the victim's losses (Kamagi, 2018, p. 64).

The main element that distinguishes unlawful acts (PMH) from strict liability is the element of error, which is not considered in strict liability. In unlawful acts (PMH) an action is considered by law to contain an element of error so that it can be legally held liable if it fulfills the following elements:

- a. There is an element of intentionality, or
- b. There is an element of negligence (negligence, culpa), and
- c. There is no justification or excuse for forgiveness (*rechtvaardigingsrond*), such as *overmacht*, self-defense, insane, and others. (Sari, 2020, p. 68)

Article 87 of the PPLH Law regulates responsibility based on unlawful conduct (PMH) in the framework of environmental law in Indonesia. The Job Creation Act makes no modifications to this clause. Article 87, section 1, paragraph 1 states, "Every person in charge of a business or activity who performs an unlawful conduct in the form of environmental pollution or destruction that causes harm to other persons or the environment is required to pay compensation and/or take specified steps." According to the article's explanation, the formulation of this article is the implementation of one of the environmental law principles, namely the polluter-pays principle.

The plaintiff's inability to prove the element of the defendant's guilt is a further challenge, if not the primary one. In addition, it is difficult to establish causation between the defendant's conduct and the plaintiff's losses, which frequently entail chemicals, trade secrets, and complex polluting technologies (Muslim, 2000). Oftentimes, legal issues that are not addressed by existing laws and regulations are uncovered throughout the process of proving. This is due to the fact that the evidence in pollution trials is frequently defined by different qualities, such as:

- a. The reason is not usually derived from a single source, but rather from a number of sources (multi sources).
- b. Involving other disciplines and requiring the participation of non-legal specialists as expert witnesses.

- c. Consequences seldom occur instantly, but rather after a delay (long period of latency). (Haryadi, 2017, pp. 126–127)

The strict liability doctrine originated from the case between John Rylands and Jehu Horrocks vs. Thomas Fletcher, or what is known as the Rylands vs. Fletcher case in England in 1868 (Andri G. Wibisana, 2017). In that case, Rylands and Horrocks (the defendants) were businessmen who wanted to build a reservoir or water reservoir for their business purposes. After obtaining approval from the owners of the land adjacent to the site for the construction of the new reservoir, the plaintiffs began their work in 1860 by employing competent engineers and contractors.

Unbeknownst to the defendants, engineers, and contractors, the construction location for the reservoir turned out to lie atop the abandoned corridors of the former mine. After the reservoir was built and placed into operation in early December 1860, the reservoir's construction collapsed, causing water to flood the tunnels of the previous mine, including Fletcher's coal mining company, which eventually sued Rylands and Horrocks for damages sustained.

In the matter that was brought before The Exchequer Chamber, Judge Blackburn took into account the following points:

“We think that the true rule of law is, that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie responsible for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owed to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God. But as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

Judge Blackburn's consideration in Ryland vs Fletcher clarifies that there are two important elements in the initial decision regarding strict liability responsibility. First, about putting something dangerous or threatening into one's soil, and second, about how to get away from that responsibility (Mullis & Oliphant, 1993, p. 196.). In that case, despite being shown to be careful and employ skilled personnel, Ryland was found guilty of doing something risky through the construction of a dam that caused damage to Fletcher.

3.2 The Meaning of Strict Liability in the Job Creation Act

The importance of strict liability in environmental law enforcement has given rise to the view that the amendment to the provisions of Article 88 of the Job Creation Law which removes the phrase "absolutely responsible without the need for proof of an element of error" as contained in Article 88 of the PPLH Law and changes it to "absolutely responsible for the losses incurred from its business or activities" will affect the existence of the strict liability concept and environmental law enforcement in general.

The results of the analysis show that the abolition of the phrase "without the need to prove an element of fault" which is replaced with the phrase "from its business and/or activity", does not change the concept of implementing strict liability which does not require proof of guilt (Andri Gunawan Wibisana, 2021). This is reinforced by the Elucidation of Article 88 of the Job Creation Law which states "What is meant by "absolute responsibility" or strict liability is that the element of error does not need to be proven by the plaintiff as the basis for payment of compensation. The provisions of this paragraph are *lex specialis* in lawsuits regarding unlawful acts in general...". To clarify further, it is necessary to describe how the position of the explanation in the legislation is.

As with the technique of drafting laws and regulations as regulated by Law Number 12 of 2011 concerning the Establishment of Legislations, an Explanation serves as an official interpretation of the formation of Legislations on certain norms in the body. The explanation contains a description or further elaboration of the norms regulated in the body (Alfons & Susandi, 2019, p. 53).

Although removing the phrase "without the need to prove the element of error", Article 88 of the Job Creation Law still includes an explanation which essentially states that the element of error does not need to be proven. In other words, legislators still maintain the concept of accountability without any element of error in strict liability based on Article 88 of the Job Creation Law.

In order to further clarify the understanding of Article 88 of the Job Creation Law, it is necessary to elaborate on the elements contained in the article. With the changes made, the provisions of Article 88 of the Job Creation Law consist of the following elements:

- a. Each person,
- b. His actions, business and/or activities,
- c. Use B3, produce and/or manage B3, and/or pose a serious threat to the environment,
- d. Completely responsible for the losses incurred, and
- e. From its business and/or activities.

The existence of the phrase "from its business and/or activities", also does not make accountability based on error. Because when read in its entirety, the phrase emphasizes the aspect of causality that is needed in proof. Such a construction is actually something that remains in line with the general concept of strict liability that causality is one of the characteristics of that responsibility.

If implemented in the settlement of environmental disputes, strict liability can be started by determining that the defendant's activities are very dangerous activities. After that, liability arises if the plaintiff succeeds in proving causality between the losses he suffered and the activities of the defendant (Andri G. Wibisana, 2017).

By referring to the provisions of the body and explanations, the substance of Article 88 of the Job Creation Law can be interpreted as any person who carries out an action, business and or activity either in using B3 or producing and or using B3 and/or which poses a serious threat to the environment causing serious harm to the environment or cause environmental loss, then it is absolutely responsible if the loss occurs as a result of its business and/or activity, without the need for proof of an element of error. In other words, Article 88 of the Job Creation Law does not change the concept of strict liability in the settlement of environmental disputes.

3.3 Analysis of the Strict Liability Implementation on Article 88 of the Job Creation Law in Cases between Minister of Environment and Forestry against PT. Kumai Sentosa (KS)

Based on the decision Number 39/Pdt.G/LH/2020/PN.Pbu and the Appeal Decision Number 102/PDT.G-LH/2021/PT PLK, the Panel of Judges stated that they only used strict liability responsibility. This was done even though in the petition the plaintiff ensnared PT. KS with proof of unlawful acts (PMH) and strict liability at the same time. Strict liability was decided to be the only basis of liability because it is a *lex specialis* in proving unlawful acts (PMH).

Despite having different conclusions, from the two decisions it can be concluded that Article 88 of the Job Creation Law remains the court's basis in deciding environmental disputes with strict liability. The important thing to answer then is how the application of

Article 88 of the Job Creation Law is related to the general concept of strict liability in case Number 102/PDT.G-LH/2021/PT PLK. This topic will be answered by analyzing the key parts of strict liability evidence used to decide the case, focusing on the definition of activities that represent a severe threat to the environment and the causal relationship between losses and the defendant's actions and/or businesses.

a. Elements of Activities that Pose a Serious Threat to the Environment and Harm to the Plaintiff

The Panel of Appeals Judges found that there was no evidence that PT. KS engages in activities that represent a significant environmental concern. This conclusion is based on the fact that there are no plantation activities or companies that represent a significant hazard to the environment, such as land-clearing fires.

With this classification, plantation activities or companies that represent a significant harm to the environment are reduced to physical acts such as land burning. The application of the legislation pertaining to actions that represent a serious threat to the environment will then be compared to a variety of related rules, theories, and prior strict liability court rulings addressing fires.

The element of “activities that pose a serious threat to the environment” is completely unrelated to the amendment to Article 88 of the Job Creation Law. Both the PPLH Law and the Job Creation Law use the same phrase. This arrangement has also been applied to many environmental dispute cases with strict liability.

In the Restatement (Second) of Torts § 520 an activity is considered very dangerous if it involves the risk of serious harm to people, land, or property of others that cannot be removed with extreme care, and is not a common practice. In applying the broad definition of hazardous activity, Gerald W. Boston gives the example that although no maintenance can prevent harm from a “leaky” tank, reasonable maintenance can certainly avoid the risk of harm from placing petroleum in an undamaged tank.

Referring to the Restatement (Second) of Torts § 520, Andri Gunawan Wibisana is of the opinion that activities in the forestry or plantation sector, especially if the activities cover a very large area, are very dangerous activities. On that basis, plantation or forestry activities are activities subject to strict liability (Andri Gunawan Wibisana, 2016, p. 53).

Based on the description of related regulations, theories, and previous court decisions regarding strict liability regarding fires, “activities that pose a serious threat” should not be narrowly translated as physical activities such as land burning as stated in decision 102/PDT.G-LH/2021/ PT PLK.

A narrow interpretation that requires land burning under strict liability is a problematic interpretation. Considering the existence of land burning activities is unnecessary, which is even more problematic when making it a condition for entry into strict liability accountability. Because if it is known that the company has burned the land, then the basis of accountability used by the plaintiff is of course with unlawful acts (PMH) based on the PPLH Law and other laws, not with strict liability.

b. The Element of Causality between the Plaintiff's Loss and the Defendant's Actions

The panel of judges at the appellate level disagreed with the considerations of the panel of judges at the first instance regarding a causal relationship based on the occurrence of land fires in their plantations and actions that were not taken by PT. KS as well as due to non-compliance with a number of rules regarding fire control. According to the Appeals Panel of Judges, the consideration should be based on the occurrence of environmental losses due to fire and the business and/or activities of PT. KS.

Because it is not proven that there are actions, efforts and/or activities of PT. KS which can pose a serious threat such as clearing plantation land by burning, the Appeals Panel of Judges concludes that the losses that arise are not the result of the business and/or activities of PT. KS. The court assessed that the loss or environmental damage that occurred was the result of a fire originating from another party, namely the Tanjung Puting National Park (TNTP) which spread to PT. KS.

This consideration is based on the court's interpretation of strict liability in Article 88 of the Job Creation Law. According to the Panel of Judges, the article changed the provisions previously contained in Article 88 of the UPPLH by removing the word "without the need for proof of the element of error" and replacing it with the word from its business and/or activity.

By this modification, the Panel of Appeals Judges is of the opinion that Article 88 implies that any person who engages in an action, business, or activity involving the use of B3 or the production and/or management of B3 and/or which poses a serious threat to the environment and causes damage (environmental) is absolutely responsible if the loss results from its business and/or activities.

Several criticisms pertain to PT Palangkaraya's consideration of the applicability of causality in strict liability. First, the components of showing causality under the PPLH Law and the Job Creation Law are identical in concept. Although the phrase "absolute responsibility for losses incurred from its business and/or activities" has only emerged in the Job Creation Law, strict liability utilizing causation has also been applied in the age of the enactment of the PPLH Law and the practice of strict liability in other nations.

The construction of causality in strict liability, namely between the plaintiff's loss and the defendant's actions, has also been found in many strict liability decisions in the case of land fires in Indonesia. As in the case of plantation land fires number 234/PDT.G/LH/2016/PN PLG between the Minister of Environment and Forestry vs. PT. Waimusi Agroindah, Decision Number 65/Pdt/2017/PT Jmb between the Minister of Environment and Forestry vs. PT. Ricky Kurniawan Kertapersada, Decision Number 51/PDT/2016/PT. PLG between the Minister of Environment and Forestry vs. PT. Bumi Mekar Hijau, as well as Decision Number 107/Pdt.G/LH/2019/PN Jmb between the Minister of Environment and Forestry vs Agro Tumbuh Gemilang Abadi.

Second, in deciding the case of the Minister of Environment and Forestry vs. PT. KS, the Panel of Judges of Appeal emphasized the difference between Article 88 of the Job Creation Law and Article 88 of the PPLH Law. In the 13-page judge's deliberations, the Panel of Appeal Judges recorded four times outlining the comparison of the sound of Article 88 of the PPLH Law with Article 88 of the Job Creation Law in its entirety. Regarding the change in the sound of the article, the court considers that it also has implications for the application of strict liability.

With this in mind, the court determines that, in terms of causality, it is necessary to establish whether the loss in the fire was the result of PT. KS's plantation business and/or activities on his land. It was also the court's interpretation of Article 88 of the Job Creation Law that because it was not proven that PT. KS engaged in actions, efforts, and/or activities that posed a serious threat, such as clearing plantation land by burning, the resulting losses were not the result of PT. KS's business and/or activities.

Although it underlines the difference in essence between Article 88 of the Job Creation Law and the prior norms, it does not acknowledge the existence of the Elucidation of Article 88 of the Job Creation Law or the grounds for not considering the Elucidation in resolving cases. Under the Explanation of Article 88 of the Job Creation

Law, it is explained that the element of error is not required to be demonstrated in strict liability.

Why is the Elucidation of Article 88 of the Job Creation Act in this article's case significant? Because the content of the Elucidation can have a significant impact on how the court creates strict liability evidence. Existence of the Elucidation of Article 88 of the Job Creation Law stating that what is meant by total responsibility (strict liability) is that the element of error does not need to be shown by the plaintiff as the foundation for payment of compensation is the defining feature of strict liability.

In contrast to the PT Palangkaraya Appeals Council, the Panel of Judges of the Pangkalan Bun District Court that considered the identical matter at the first level decided the case based on Article 88 and Explanation of Article 88 of the Job Creation Law. In this case, PT. KS was punished by a panel of judges at the Pangkalan Bun District Court. The figure below depicts the framework for the panel's deliberations.

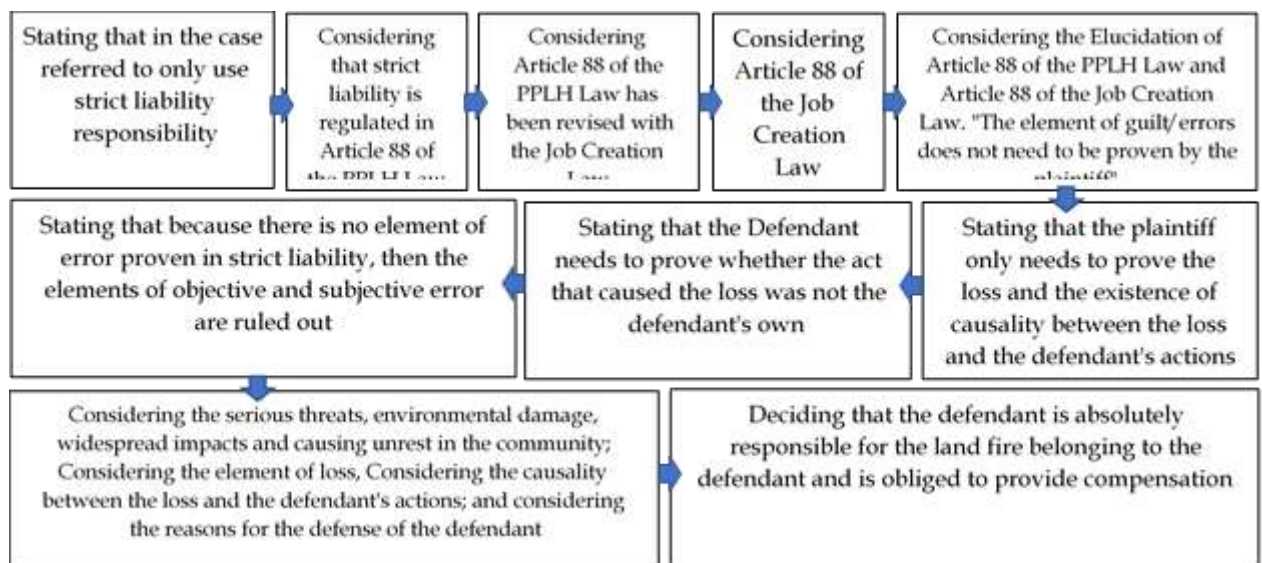


Figure 1. Panel's Deliberations

The legal construction developed by the Panel of Judges at the first level expressly states that the concept of strict liability has not changed despite the revision of Article 88 of the PPLH Law in the Job Creation Law. The existence of the Elucidation of Article 88 of the Employment Creation Law is the key to maintaining the integrity of the strict liability concept in the Job Creation Law, as previously regulated in the PPLH Law. In decision number 39/Pdt.G/LH/2020/PN Pbu, Pangkalan Bun District Court stated that PT. KS was fully responsible for the fires that occurred on his plantation land and was sentenced to pay compensation of Rp. 175 billion.

By referring to the provisions of the body and explanations, Article 88 of the Job Creation Law in the context of land fires should be interpreted as anyone who carries out actions, businesses and or activities that pose a serious threat to the environment that causes environmental losses, then he is absolutely responsible if the loss occurs as a result of the business and/or activity, without the need for proof of the element of error.

Third, in analyzing the case, the Appeals Panel of Judges is more likely to consider evidence based on errors, as required by Article 87 of the Job Creation Law, than to apply strict liability. One of its hallmarks is the judgment that the damages experienced are not the product of PT. KS's business and/or operations because there is no action that poses a significant hazard, such as burning land to clear it.

Through this causality construction, with a reverse interpretation, it will be established that without the errors or negligence of land managers in conducting business and/or actions that pose serious threats, such as clearing land by burning, the manager cannot be subject to strict liability-based sanctions in the event of a fire.

Companies are prohibited from burning land. The construction that requires the plaintiff to prove the existence of unlawful conduct (PMH) in the application of strict liability responsibility is a misconception and does not correspond to the notion in other countries, which unfortunately is frequently implemented in Indonesia (Andri Gunawan Wibisana, 2021).

Regarding the problem of errors in the application of strict liability in Indonesia, Andri Gunawan Wibisana said it was caused by at least two factors. One of them is the inaccuracy in interpreting strict liability by requiring the existence of elements against the law. This interpretation arises when the fault in civil law is focused on the inner attitude of the perpetrator, in the sense of intentional or negligent (Andri Gunawan Wibisana, 2021).

The pattern of proving causality built by PT Palangkaraya in the case of the Minister of Environment and Forestry vs PT KS is so narrow and inconsistent with the theory and application of strict liability causality in a number of previous decisions. In the case of plantation land fires number 234/PDT.G/LH/2016/PN PLG between the Minister of Environment and Forestry vs PT. Waimusi Agroindah, the court constructs that strict liability can be applied after it is proven that 1) there is a fire in the defendant's peatland, and 2) the burning of peat land is categorized as a serious threat, as stated in the Supreme Court Decree No. 36/KMA/SK/II/2013.

As the facts in the case of the Minister of Environment and Forestry vs PT KS where the Appellate Judge judged wrong if causality was based between the occurrence of land fires in his plantation and actions that were not taken by the defendant, in case Number 107/Pdt.G/LH/2019/PN Jmb between the Minister of Environment and Forestry vs Agro Tumbuh Gemilang Abadi (ATGA) , the source of the fire also did not come from the defendants. In the latter case, fires on peat land for oil palm cultivation covering an area of 12,430 hectares belonging to PT. ATGA comes from the activities of residents around the plantation land. The court believes that the defendant should be able to take safeguards to ensure that land fires in neighboring regions do not spread to the defendant's sick land area, as it is aware of the practice of local residents clearing land by burning it.

In its decision, the court stated that the defendant was absolutely responsible and obliged to pay a loss of Rp. 430 billion. In its judgment, the court guided the application of the precautionary principle as stated in the Supreme Court's decision No. 1794 K/Pdt/2004 in the Mandalawangi case, which was the first application of strict liability in Indonesia.

Construction of the case of the Minister of Environment and Forestry vs. PT. KS is also similar to the case Number 51/Pdt/2016/Pt.plg between the Minister of Environment and Forestry vs. PT. Bumi Mekar Hijau (BMH) is related to a 20,000-hectare land fire in Palembang, South Sumatra. In this case PT. BMH does not clear land by burning and fires are caused by irresponsible parties (external parties). However, in its judgment the court stated that PT. BMH as a business actor in which the land under his control has caught fire, the impact of which has resulted in Environmental Pollution and/or Damage, must be responsible for the Environmental Damage (absolute responsibility/strict liability).

One of the considerations, in various laws and regulations such as Law no. 41 of 1999 concerning Forestry, Government Regulation No. 4 of 2001 concerning Control of Environmental Damage and/or Pollution Related to Forest and/or Land Fires, and several other regulations have emphasized that the responsibility for preventing and controlling

environmental damage is attached to every business actor that has the potential to cause environmental damage, with the following part of consideration :

"Considering that the regulation mentioned above states that the obligation is attached to the license holder. In essence, forest utilization permit holders and forest use permit holders or forest owners are responsible for the occurrence of forest fires in their working area and there is no need to ask who burned the land/forest (strict liability)."

IV. Conclusion

On the basis of the findings of the research analysis, it is possible to conclude that Article 88 of the Job Creation Act does not change the notion of strict liability into error-based liability. As stated in the decision of case no. 102/PDT.G-LH/2021 PT PLK, the application of legal construction in the resolution of environmental issues with strict liability accountability hinges on the court's interpretation and clarification of Article 88 of the Job Creation Law. The explanation of Article 88 of the Job Creation Law is vital as it can have a significant impact on how the court establishes evidence of strict liability. The Elucidation of Article 88 of the Job Creation Law states that what is meant by absolute responsibility (strict liability) is an element of error that does not need to be demonstrated by the plaintiff as the ground for payment of compensation. Hence, Article 88 of the Job Creation Law does not change the notion of strict liability in environmental dispute settlement.

The Panel of Appeal Judges in case 102/PDT.G-LH/2021/PT PLK erred in its interpretation of the strict liability provision in Article 88 of the Job Creation Law by neglecting the presence of the Elucidation of Article 88 of the Job Creation Law, which impacts the idea of proof of causation. As a consequence, the applied causality is closer to the use of evidence based on unlawful conduct (PMH) than strict liability, as provided in Article 87 of the Job Creation Law. One of its hallmarks is the judgment that the damages experienced are not the result of PT. KS business and/or activities since there is no action that poses a serious threat, such as burning land to clear it. The criticism of the application of causality to this case is likewise quite strict interpreted and is contrary with the theory and application of strict liability causality in a number of prior decisions.

Although unrelated to the revision to Article 88 of the Job Creation Law, the Panel of Appeal Judges misapplied the element of "activities that pose a serious threat" by limiting it to the occurrence of physical actions such land burning. In strict liability responsibility, it is unnecessary to include the company's land-burning activities. Because if it is known that the company burned the land, then the basis of the plaintiff's accountability is unlawful activities (PMH) under the PPLH Law and other laws, and not strict liability.

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