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APPLYING THE PRINCIPLE OF STRICT LIABILITY IN ENVIRONMENTAL PROTECTION

(Ministry of Environment and Forestry of the Republic of Indonesia (KLHK RI) against PT Waimusi Agroindah)

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Abstract

Forest and land fires are an unavoidable chore for Indonesia every year. Law enforcement continues to be pursued to hold the perpetrators responsible for the losses arising from the fires. This research analyses the validity of PT WMA's corporate position as a legal subject to be liable using the principle of strict liability for fires that occur in Indonesia. It also analyses the application of collateral confiscation in providing certainty over liability in accordance with the applicable verdict. This research is normative juridical in nature by analysing Decision Number 234/Pdt.G/LH.2016/PN.Plg by using several approaches, namely juridical approach, statutory approach and conceptual approach. Based on the results of the research, it is concluded that PT WMA is legally a legal subject that is absolutely responsible for the fires that occurred in its work area and the application of collateral confiscation can be carried out if this is confirmed in environmental legislation, especially to regulate the asset verification mechanism.

Keywords: *Forest fire; Compensation; Strict liability.*

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A. INTRODUCTION

Indonesia is a country that has a large area of forest from west to east. The Ministry of Environment and Forestry has recorded that Indonesia's current forest area spans at least approximately 120.5 million hectares (Ha). The area is divided into several areas, namely 21.9 million hectares of conservation forest (HK), 29.6 million hectares of protected forest (HK), 29.6 million hectares of production forest (HP), 26.8 million hectares of permanent production forest (HPT), and 12.8 million hectares of convertible production forest (HPk) based on "*The State of Indonesia's Forest (SOIFO) 2020*" (Nurbaya and Efransyah 2021). No wonder that Indonesia's forests still rank third after Brazil and the Congo. The vastness of Indonesia's forests is an important value in its usefulness to the lives of the Indonesian people, both in the present and the future.

However, threats and pressures that result in a reduction in the area of forest land cover still exist and tend to increase day by day. The conversion of forest land into plantation land and/or non-forest areas is the starting point for the increasing rate of deforestation of forest land cover in Indonesia. Deforestation is the change of land cover condition from the forest/forested category to the non-forested category. The official release of the Ministry of Environment and Forestry of the Republic of Indonesia's annual deforestation rate states that at least 4 million hectares occurred in the 2013–2014 period, an increase to 1.09 million hectares in the 2014–2015 period, and a decrease to 0.63 million hectares in the 2016–2017 period (Susetyo 2023). Various community activities have also become an important indicator of the fluctuating deforestation rate. In addition to other factors, forest and land fires also contribute to the increased rate of deforestation.

Forest and land fires have always been a recurring problem that occurs every year in Indonesia. Forest and land fires (hereinafter referred to as "Karhutla") are defined as "*The burning of forests and/or land, either naturally or by human actions, resulting in environmental damage that causes ecological, economic, socio-cultural, and political losses*" (Government Regulation No. 4 of 2001 concerning Control of Damage and/or Environmental Pollution Related to Forest and/or Land Fires, 2001). It is recorded in the data from the Ministry of Environment and Forestry that in 2015, forest and land fires in South Sumatra reached an area of 646,298.80 ha, in 2016 an area of 8,784.91 ha, then there was a significant decrease in 2017 to an area of 3,625 ha, but in 2018 there was an increase in forest and land fires again, namely to an area of 13,019 ha (Agiesta 2020).

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In the event of forest and land fires, corporations, as legal entities, do not relinquish their participation. Corporations are responsible for maintaining the sustainability of environmental functions within the scope of their business activities, also referred to as "corporate land." Corporations directly impact the environment through their business activities, necessitating environmental management that involves both minimizing current impacts and preventing future ones (Jamaluddin, Suhaidi, and Marzuki 2020).

The Act No. 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as “PPLH Law”), especially in Article 8 letter b, states that every corporation is obliged to maintain the sustainability of environmental functions by preventing pollution or damage from exceeding quality standards or quality criteria for environmental damage (The Act No. 32 of 2009 concerning Environmental Protection and Management, 2009). For the pollution or damage that arises, the corporation is subject to civil liability, namely strict liability, as sanctioned in Article 88 of the PPLH Law.

Case Number 234/Pdt.G/LH.2016/PN.Plg is a civil case in which the government files a lawsuit against a corporation for strict liability, compensation, and recovery for environmental damage. In this case, the Ministry of Environment and Forestry of the Republic of Indonesia, also known as "KLHK RI," represents the government's interests in accordance with applicable laws and regulations. Article 90 of the PPLH Law stipulates that the government and regional governments possess the authority to pursue legal action, including compensation, against business actors and/or activities based on the potential consequences of environmental losses, such as pollution and/or damage. PT Waimusi Agroindah, as the holder of a plantation business license, has caused environmental damage, namely the occurrence of fires in a plantation area of 580 ha (five hundred and eighty hectares) of the total area of 4000 ha (four thousand hectares).

The forest and land fires that occurred in PT Waimusi Agroindah's plantation area were proven in the trial to be peatland, which, in the judge's consideration, should not be damaged and needs to be maintained, especially the level of water content in peatlands, so as to prevent potential fires. Drying out peatland increases the potential for forest and land fires (Arisanty et al. 2020). Wetting dry peatlands is an effective step to stop or reduce the risk of land fires (Junaidy, Sandhyavitri, and Yusa 2019). Whenever fires occur on peatlands, the resulting smoke will undoubtedly lower the air quality. Furthermore, these fires can harm the ecosystem, result in

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economic losses, and pose a threat to the health of the surrounding community. PT Waimusi Agroindah has failed to make efforts to prevent forest and peatland fires in its working area. The efforts to prevent fires in question are knowing the potential hotspots, knowing the mechanism of fire spread, and mitigating potential hotspots (Junaidy, Sandhyavitri, and Yusa 2019).

According to the petitum that KLHK RI requested in its lawsuit, the Panel of Judges ruled in favor of "granting the Plaintiff's Lawsuit in Part". M. Yahya Harahap said that a lawsuit is granted if the claim can be proven according to the evidence submitted by the plaintiff. Based on the description and the judge's decision above, this research aims to analyze the civil liability of PT. WMA as a subject of civil law and the concept of bail confiscation in environmental cases.

B. RESEARCH METHODS

This research is normative juridical in nature by analyzing Decision Number 234/Pdt.G/LH.2016/PN.Plg using several approaches, namely the juridical approach, the statutory approach, and the conceptual approach. These approaches are used to obtain answers to the problem formulation. Then the existing problems are analyzed descriptively to provide a detailed description of the data and see the depth of the judge's consideration in related cases. This research is descriptive-analytic, using secondary data to analyze research problems. Data collection is carried out through library research, tracing archives regarding regulations issued by the government relating to Decision Number 234/Pdt.G/LH.2016/PN Plg.The legal materials used in this research include primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, laws, government regulations, ministerial regulations of the Ministry of Environment and Forestry, and other regulations that the author deems necessary to include. Textbooks, theses, dissertations that discuss legislation in the forestry sector and its implications, journal articles, and other secondary legal materials are all used. While tertiary legal materials in this case use dictionaries, encyclopaedias, magazines, or newspapers, including sources of information from the internet,.This research then ends with a conclusion drawn from the analysis conducted. The conclusions drawn are carried out deductively, meaning that they go from general conclusions to specific conclusions.

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C. RESULTS AND DISCUSSIONS

1. PT WMA's Responsibility as a Civil Law SubjectArticle 1 point 32 of the Environmental

Protection and Management Law states, “Every person is an individual or business entity, both legal entities and non-legal entities” (Article 1 point 32 of Law No. 32 of 2009 concerning Environmental Protection and Management, 2009). This article can be interpreted as explicitly recognising the position of corporations as legal subjects. The legal subject in question is everything that, in this case, bears the rights and obligations of carrying out a legal action. The subject of law, which comes from the Dutch language rechtsubject, is generally a human and legal entity that bears rights and obligations (Tutik 2008). It can be explained that “legal entities” referred to in the PPLH Law are limited liability companies, associations, cooperatives, state-owned enterprises, and foundations, while “business entities that are not legal entities” are civil partnerships, firm partnerships, and limited liability partnerships (Mulyadi 2004).

Corporations themselves are closely related to legal entities (*rechtpersoon*) as subjects of civil law other than humans (*naturlijkpersoon*). Subekti and Tjitrosudibio explained that a corporation is a company that is a legal entity (Jamaluddin, Suhaidi, and Marzuki 2020). A corporation becomes an entity that has the status of a legal subject and is considered capable of performing legal acts in its legal relationship with other legal subjects. These legal relationships, both contractual legal relationships and non-contractual legal relationships, are a condition for civil liability. Of course, the legal relationship has given birth to rights and obligations between legal subjects or parties, so if those rights and obligations are not fulfilled, civil legal liability can be raised.

In Hans Kelsen's theory of legal responsibility, it is stated that the legal responsibility assumed by a person makes him responsible for sanctions for his contrary actions. In other words, responsibility becomes a burden when an individual fails to fulfill agreed-upon or legally mandated obligations. Furthermore, Hans Kelsen elaborates that “negligence is a failure to exercise the care required by law, and negligence is usually seen as another type of fault (*culpa*), although not as severe as fault that is fulfilled because it anticipates and intends, with or without malicious intent, harmful consequences” (Somardi 2007). Although there is no clear dividing line between liability based on fault

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and liability without fault, negligence and strict liability are intermingled and influence each other (Grey 2001).

The provisions contained in Article 1365 of the Civil Code are the real basis for claiming civil liability for a person. This article provides provisions in the form of elements of liability, namely: (1) the existence of an unlawful act; (2) having an element of fault; (3) the loss caused; and (4) the causal relationship between the fault and the loss caused. The definition of an unlawful act includes the following: (Widiyastuti 2020)

a. Which violates the rights of others;
b. Which is contrary to the legal obligations of the perpetrator;
c. Which is contrary to decency; and
d. Which is contrary to propriety in taking into account the interests of oneself and the property of others in the association of life.

The element of fault is the basis for determining tort liability, in line with the expression “no liability without fault” (no responsibility without fault). This also determines whether or not there is an obligation to compensate for the tort that has occurred. In December 2016, PT Waimusi Agroindah (hereinafter referred to as “PT WMA”) was sued by the Indonesian Ministry of Environment and Forestry in relation to forest and land fires that caused environmental damage and occurred in its working area. PT WMA is a corporation based on the Decree of the Minister of Justice of the Republic of Indonesia Number C2-29300.HT.01.04-Th.98 dated December 29, 1998, in the form of a legal entity, namely a Limited Liability Company. As a Plantation Business Licence Holder, PT WMA has the right to manage palm oil plantations with an area of 4,000 ha based on the Decree of the Regent of Ogan Komering Ilir Regency No.425/KEP/D.PERKE/2008 dated September 22, 2008. Based on the above decree, PT WMA's position as a valid and recognised legal entity establishes a corporate relationship with the state. If one of the parties fails to fulfill their obligations, the party who suffers harm can hold PT WMA civilly liable through either tort or strict liability lawsuits. Furthermore, as a limited liability company engaged in business activities closely related to the management and utilisation of natural resources, it is obligated to uphold environmental responsibility while also adhering to the principles of propriety and fairness (Supriyatin and Herlina 2020).

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Land fires that occurred on PT WMA's land and plantations in August 2015 were based on hotspot data obtained from the Karhutla Monitoring System (KMS) of KLHK RI and the MODIS Terra-Aqua Satellite issued by NASA. The observed hotspots had been detected since July 2015, and they increased in August 2015. Upon reviewing the evidence, facts, witnesses, and expert testimony in the trial, the Panel of Judges has determined the truth. As a legal subject, PT WMA has met the legal responsibility requirements for actions that violate the law. PT WMA maintains a non-contractual legal relationship. The non-contractual nature explains that the imposition of legal consequences is not based on the parties' direct will, but rather on the applicable law (PPLH Law).

The hotspots that have been detected typically occur on peatlands, where fires tend to last for a long time, continuously, and until changing months (Rezainy, Syaufina, and Sitanggang 2020). PT WMA's detection of risk and subsequent omissions strongly suggest that it has committed a tort. The element of fault in tort that can be proven is the negligence committed by PT WMA in handling hotspots in the company's work area in the form of detection, monitoring, patrols, and other activities in an effort to prevent fires. This aligns with the concept of fault in the form of negligence, which states that “a person is considered guilty of the unlawful act he committed if the person has (deemed to know) the risk of his actions but did not prevent the risk” (Wibisana 2016). The element of fault is the basis of justification in determining the obligation of compensation in tort, so it is important to elaborate on it first. However, this is not the case when using the concept of absolute liability, as regulated in Article 88 of the Environmental Law, to enforce environmental law.

Strict liability is a principle applied to businesses and/or activities that pose a serious threat. This principle can be explained as follows: "*What is meant by 'absolute responsibility' or strict liability is that the element of fault does not need to be proven by the plaintiff as a basis for compensation payment." The provision of this paragraph is a lex specialis in a lawsuit regarding unlawful acts in general.*” (Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management, 2009)

Lex specialis, which is explained in the explanation of the article above, is a specific exception to the liability of the perpetrator or defendant as stated in Article 1365 of the Civil Code or tort claims in general. The specificity is emphasized by the fact that requesting legal liability is carried out regardless of

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the fault of a party (perpetrator or defendant) who commits a tort. For environmental losses caused, the perpetrator or defendant is obliged to pay compensation and/or certain actions, and the amount of compensation obtained will be charged to a certain limit. Article 1365 of the Civil Code, which is part of Article 88 of the PPLH Law, broadened the meaning of liability in tort. This was done only to make things fair in public legal relationships that aren't contracts. Strict liability is applied with the consequence that there is a loss that needs to be proven by the Plaintiff (KLHK RI) and a causal relationship between the activities of the Defendant (PT WMA) and the loss of KLHK RI, without not eliminating the element of subjective fault and the element of objective fault that usually exists in the fulfillment of elements such as in the case of tort (Wibisana 2016).

In its application, Article 88 of the PPLH Law often provides different legal perceptions for the community, especially law enforcement. Of course, there are opinions that provide legal arguments regarding the limitations of applying the principle of strict liability in environmental law enforcement. This principle is said to only apply to activities involving the use and management of hazardous and toxic materials (B3) (Nurhidayat and Sutiana 2018). Note that the article also refers to activities that "pose a serious threat to the environment," a term that the Supreme Court of the Republic of Indonesia interprets broadly to include pollution and/or environmental damage that potentially irreversibly affects environmental components such as human health, underground and surface water, soil, air, plants, and animals (Government of the Republic of Indonesia, 2013). It is emphasized that activities in the forestry or plantation sectors are not only seen in the activities that occur in a very large area and the potential of the impacts caused, but also in terms of the inherent responsibility of the permit holder to be responsible for forest and land fires in accordance with the applicable forest fire laws and regulations in Indonesia (Wibisana 2016). One of the regulations in question is PP No. 4 of 2001, which outlines the obligations and responsibilities of the person in charge of a business or activity to strive for fire prevention measures. This person is also required to monitor and report the monitoring results to the government at least once every six (six) months, using remote sensing data from satellites.

KLHK RI as an institution that organizes government affairs in the field of environment and forestry certainly has special authority to hold accountable those who are considered to have harmed the environment itself. The authority

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of KLHK RI is stated in Article 90 of the PPLH Law to file a lawsuit in accordance with the mandate, specifically filing a lawsuit for compensation and certain actions. The filing of the lawsuit needs to be examined in looking at two things, namely (1) whether the business and/or activity causes pollution and/or environmental damage; and (2) whether it results in environmental losses. The judge in his consideration, recognized the authority and legal capacity of KLHK RI in filing the lawsuit. This is also in accordance with the principle of state responsibility contained in Article 2 letter an of the PPLH Law which can be described as follows:

a) *The state guarantees that the utilization of natural resources will provide maximum benefits for the welfare and quality of life of the people, both present and future generations;*
b) *the state guarantees the rights of citizens to a good and healthy environment;*
c) *the state prevents natural resource utilization activities that cause pollution and / or environmental damage"*.

Article 90 of the PPLH Law grants the Government the right to sue for losses arising from the environment that are not private property rights (Wibisana 2016). From the above explanation, the author argues that PT WMA is a legal entity with a non-contractual legal relationship, which carries legal liability in every legal action it undertakes. The legal liability applied to PT WMA is strict liability based on land fires that occur in the company's work area or work area and have a serious impact on the environment. This application means that regardless of any proven fault, PT WMA is still held liable in the form of compensation and certain actions. This is because the fires that occurred could not be prevented by PT WMA as a risk that should have been known. Furthermore, data from KLHK RI indicates that PT WMA has neglected to monitor hotspots that have repeatedly occurred within its working area. The legal responsibilities and obligations held by PT WMA as the holder of a business license or management permit including preventing forest/land fires, seeking mitigation and being responsible for environmental recovery due to fires are something that cannot be avoided from its responsibility in accordance with positive environmental and forestry law in Indonesia (Wibisana 2016). Therefore, the Indonesian Ministry of Environment and Forestry is also

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authorized to be the party that can sue PT WMA for compensation and environmental restoration as stated in the relevant decision.

2. Security Seizure in Environmental Cases

In its lawsuit, KLHK RI submitted a petitum in the main case as follows "Declare valid and valuable Security Seizure on the Object of PT WMA's Plantation Land, covering an area of 580 Ha (five hundred and eighty hectares) based on the Plantation Business License (IUP) of the Regent of Ogan Komering Ilir Regency Number 425/KEP/D.PERKE/2008 dated September 22, 2008 located in Pulau Geronggang Village, East Pedamaran District, Ogan Komering Ilir Regency, South Sumatra Province". This petitum is requested to be granted by the Panel of Judges of the Palembang District Court in accordance with the losses incurred by PT WMA. The petitum in this case refers to matters requested by the Plaintiff in accordance with the legal considerations described in the postulates to be decided, determined and ordered by the Panel of Judges.

In the judge's consideration, it was stated that the Application for Bail Confiscation submitted by KLHK RI was "rejected". Because there is no indication of efforts that PT WMA will transfer the assets in question as the reason for this application submitted before the panel of judges. KLHK RI in this case wants to protect the implementation of fulfillment to restore state losses incurred by PT WMA in order to realize legal certainty. The confiscation of PT WMA's assets is to facilitate the recovery of state losses if PT WMA does not pay state compensation to the state treasury voluntarily. Delivered in its decision, the Panel of Judges of the Palembang District Court ordered PT WMA to pay compensation to KLHK RI in the amount of Rp.29,658,700,000 (twenty-nine billion six hundred fifty-eight million seven hundred thousand rupiah). That the cost of environmental restoration was also not granted by the Judge due to the assumption that the burnt peatland in PT WMA's working area could not be restored. If there is no collateral confiscation, it will have an impact on the plaintiff's defeat, because the process takes a long time and costs a lot of money but the desired goal is not achieved, even the losses incurred cannot be replaced (Sutantio and Oeripkartawinata 2009). M. Yahya Harahap emphasized that confiscation is carried out in two purposes, namely so that the lawsuit is not illusoir / void and there is certainty of the object to be executed (Harahap 2017).

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Bail confiscation or conservatoir beslag in environmental cases is not clearly explained in the PPLH Law, but based on the losses suffered by the state, it can be a starting point for applying for bail confiscation in environmental cases. If the lawsuit is granted, it guarantees the rights of the community, maintains legal certainty, and prevents the transfer of company assets. Security seizure is carried out by confiscating movable and immovable property belonging to the Defendant so that the goods are kept as collateral and may not be transferred or sold (Devi 2019). Collateral confiscation is usually in disputes over ownership status or claims for compensation, where confiscation is carried out on goods that have the status of property of the perpetrator/defendant (Mutyara et al. 2022).

The author argues that the provision of bail confiscation should be included in the next amendment to the PPLH Law regulations in order to maintain the certainty of compensation and recovery actions taken by the Plaintiff. Rasio Ridho Sani as the Director General of Law Enforcement of the Ministry of Environment and Forestry of the Republic of Indonesia in the Webinar “Challenges and Opportunities for Environmental Recovery through the Execution of Criminal and Civil Judgments” explained that the execution of environmental decisions still experiences obstacles, therefore, verification of confiscated assets and strengthening the capacity, commitment and enforcement instruments related to the execution of decisions need to be strengthened in the future (Marsya 2023).

D. CONCLUSION

A person's civil liability stems from the legal relationship they have with other parties, which is based on their awareness of their binding obligations and/or those arising from applicable law. For the peat forest fires that occurred in PT WMA's work area, civil liability can be imposed by looking at PT WMA's failure to fulfill its obligation to take preventive measures to prevent the fires. Strict liability, a responsibility that does not require proof of proved conduct to satisfy the tort requirements, is a suitable and effective step in law enforcement in environmental matters, according to KLHK RI.

With regard to the judge's decision in the Palembang District Court between KLHK RI and PT WMA, namely “granting the Plaintiff's claim in part”, it is known that there is a rejection of the application for bail confiscation. Bail confiscation has

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not been fully granted due to the absence of provisions implicitly contained in laws and regulations in the context of environmental law enforcement. Bail seizure is requested on the basis of state losses arising from someone's illegal actions. Bail confiscation is expected to be a provision that can force the perpetrator/defendant to fulfill the compensation incurred and certain other actions. The author suggests conducting a comprehensive study on bail confiscation in environmental cases, as well as verifying the assets of companies involved in environmental management and utilization, with a focus on comparisons with other countries.

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