



# Implementation of Environmental Dispute Settlement Through Absolute Responsibility Before and After The Implementation of Omnibus Law

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## ABSTRACT

The environment has a very important role in society. Land fires are something that will have a detrimental impact. The method used is a normative juridical research method using a statutory approach, a conceptual approach, and a case approach. Then in this paper aims to determine the principle of absolute responsibility as environmental law enforcement is determined in the provisions of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management. Then also examines the relevance of the judge's decision to environmental laws and regulations with absolute responsibility carried out by the corporation in the case of land fires in the civil decision number 107/Pdt.G/LH/2019/PN Jmb. However, then the provisions of Article 88 of Law Number 11 of 2020 concerning Job Creation eliminate the principle of absolute responsibility. The abolition of absolute responsibility in the settlement of environmental disputes is considered a shift as if it provides an opportunity for corporations to pollute the environment without absolute responsibility. Then the government seems to protect the sustainability of corporations more than the community.

## ABSTRACT

Lingkungan memiliki peran yang sangat penting dalam masyarakat. Kebakaran lahan merupakan sesuatu yang akan berdampak merugikan. Metode penelitian yang digunakan adalah metode penelitian yuridis normatif dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Kemudian dalam tulisan ini bertujuan untuk mengetahui asas tanggung jawab mutlak sebagai penegakan hukum lingkungan hidup yang diatur dalam ketentuan Pasal 88 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Kemudian juga mengkaji relevansi putusan hakim terhadap peraturan perundang-undangan lingkungan hidup dengan tanggung jawab mutlak yang dilakukan oleh korporasi dalam perkara kebakaran lahan dalam putusan perdata nomor 107/Pdt.G/LH/2019/PN Jmb. Namun, kemudian ketentuan Pasal 88 Undang-Undang Nomor 11 Tahun 2020 tentang Penciptaan Lapangan Kerja menghilangkan prinsip tanggung jawab mutlak. Penghapusan tanggung jawab mutlak dalam penyelesaian sengketa lingkungan hidup dianggap sebagai pergeseran seolah-olah memberikan peluang bagi korporasi untuk mencemari lingkungan tanpa tanggung jawab mutlak. Kemudian pemerintah seolah-olah lebih melindungi keberlangsungan korporasi daripada masyarakat.

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## I. Introduction

Forest and land fires often occur in the territory of Indonesia which have a very detrimental impact. It is natural for the government to look for ways to protect the environment, one of which is in the field of law. Law enforcement according to conditions in Indonesia includes preventive and repressive methods. In particular, the involvement of the government has also increased public legal awareness. In addition, environmental law issues are very complex. Various problems in implementing environmental laws, the complexity of proving environmental disputes. Enforcement of environmental law often encounters difficulties with proving problems submitted by victims of environmental pollution. The victim must prove the element of guilt of the perpetrator and explain the loss using the principle of responsibility for the element of error.

With the limited principle of fault based liability or proof of elements of error causing ineffective losses in the implementation of responsibility for high-risk activities, Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management adheres to the principle of absolute responsibility. The principle of strict liability is considered a shield to protect the rights and protection of the victims of environmental pollution, demanding the perpetrators. With the application of strict liability, the Plaintiff did not prove the element of guilt of the perpetrator in asking for compensation. In addition, with strict liability, corporations or business actors will be more careful in taking actions related to environmental issues.

According to Satjipto Rahardjo, the theory of legal protection arises from legal provisions and legal regulations applicable to the community, basically as a community agreement to regulate behavioral relations between community members and between individuals and the government as representatives of the interests of the community. Legal protection is the basic point of legal relations related to justice. Interactive justice theory is a legal obligation or legal responsibility for interactive actions or everyone's responsibility towards others because of legal consequences so that there is an equal appreciation of the external demands of everyone.

Some previous research 1). Administrative Sanctions Against Forest and Land Fires by Civil Law Entities in Muaro Jambi Regency. 2). Comparison of the Application of the Principle of Absolute Accountability in Judges' Decisions: Case Studies of Environmental Cases in Indonesia. Land fires in Jambi in 2019 caused losses to society and the state. The Minister of Environment and Forestry of the Republic of Indonesia against PT. Agro Grows Eternally Brilliant. After the trial stage, the Jambi District Court Judges decided on the Civil case Number 107/Pdt.G/LH/2019/PN Jmb that PT. Agro Grows Gemilang Abadi as the Defendant resulted in a fire in the Defendant's garden land causing a serious threat to the environment, so the principle of absolute responsibility or strict liability was applied.

Since the enactment of the Job Creation Act, the provisions of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management were changed to Article 88 of Law Number 11 of 2020 concerning Job Creation which eliminates the phrase "without the need to prove an element of error" in previous law. Resulting in the non-application of the principle of strict liability in the settlement of environmental disputes and is considered to be beneficial for corporations or business actors who pollute the environment.

With the problems above, the writer is interested in analyzing the decision of the Jambi District Court and paying attention to the laws and regulations. Then problem 1). How to apply the absolute responsibility arrangement in the case Number 107/Pdt.G/LH/2019/PN Jmb on land fires. 2). How is the comparison of absolute liability arrangements based on Law Number 32 of 2009 concerning Environmental Protection and Management with Law Number 11 of 2020 on Job Creation. So the purpose of this study is to find out and analyze the application of absolute responsibility arrangements in the case Number 107/Pdt.G/LH/2019/PN Jmb on land fires and a comparison of absolute liability arrangements based on Law Number 32 of 2009 concerning Protection and Management Environment with Law Number 11 of 2020 Job Creation.

Literature review, environmental law is a regulation of environmental protection and management carried out to preserve environmental functions by structuring, utilizing, controlling, maintaining, monitoring and enforcing the law and aims to regulate human behavior and actions in order to provide protection to the environment from damage so that its sustainability is maintained.

An environmental dispute is a dispute caused or suspected to have an environmental impact. Article 1 number 25 of the Law on Environmental Protection Management Number 32 of 2009 defines "environmental disputes as disputes between two or more parties arising from activities that have the potential and/or impact on the environment". The subjects of environmental disputes are perpetrators and victims of environmental impacts. While the object of dispute is an activity that has the potential and/or environmental impact.

Identification of environmental loss valuation is determined a) who do damage and/or pollution, b). the amount of damage that can be calculated, and c). causal relationship between damage and/or pollution and losses from environmental damage. In the legal aspect, the valuation of losses relates to the activities of evidence in court. There are evidentiary activities, namely identification of evidence against perpetrators and forms of accountability as well as calculating the total value of losses from environmental damage and the relationship with existing actions.

## II. RESEARCH METHODS

The legal research used is qualitative doctrinal or normative juridical collect and analyze relevant laws and legal norms related to legal products reviewing laws and regulations systematically arranged to get the findings in a study with several approaches to legislation, case approaches, and historical approaches related to the legal issues being handled. Then only use literature study data as secondary data that is very dominant with 3 (three) primary, secondary and tertiary legal materials. Jambi District Court Decision Number 107/Pdt.G/LH/2019/PN Jmb with laws and regulations Number 32 of 2009 concerning Environmental Protection and Management and Law Number 11 of 2020 concerning Job Creation. The data were analyzed in a qualitative deductive manner to the conclusion stage so that the problems were answered.

## III. RESULTS AND DISCUSSION

### 1. Application of absolute liability arrangements in case Number 107/Pdt.G/LH/2019/PN Jmb on land fires

Initially the Ministry of Environment and Forestry of the Republic of Indonesia as the Plaintiff sued PT. Agro Grows Gemilang Abadi as a civil Defendant for the Defendant's 1,500 (one thousand five hundred) hectare land and garden fire on December 27, 2015 in Dendang sub-district. The defendant is the holder of a cultivation plantation business license and a plantation business license for the management of cultivation plantations and palm oil mills with an area of 12,430 hectares in the sub-districts of Muara Sabak Timur, Muara Sabak Barat, Dendang, and Bebak. That the oil palm and palm oil plantations of PT. Agro Grows Gemilang Abadi operates on peatlands.

As a result of the Defendant's garden land fire, there was a serious threat to the environment a). the area of garden land is burned with a decrease in the thickness of the peat soil, the death of flora and fauna. b). decrease in the ability of the soil to store water. The serious threat category based on the provisions of Article 1 number 34 of Law Number 32 of 2009 concerning Environmental Protection and Management is a threat that has a wide impact on the environment and disturbs the community. Then the damage to the peat soil in the burned gardens shrinks and the ability to store water and nutrients cannot be restored.

The provisions of Article 67 paragraph (3) letter a of Law Number 39 of 2014 concerning Plantations that environmental impact analysis is a requirement that must be fulfilled to obtain a plantation business permit which is likely to have a major and significant impact on the

environment, while for plantation companies whose business is plantations or their activities that do not cause a major and significant impact on the environment must have environmental management and monitoring efforts so that only activities that have a large and significant impact on the environment must have an AMDAL analysis The Defendant's AMDAL proves that the plantation has the potential to cause a major impact.

The Jambi District Court judges decided a). The defendant is absolutely responsible for environmental losses due to land fires. b). Sentencing the Defendant to pay the Plaintiff material compensation in cash amounting to Rp. 160,180,335,500,-. c). sentenced the Defendant to pay the cost of environmental restoration of the Defendant's oil palm plantation area which experienced a fire in the amount of Rp. 430.362.687.500,-.

Due to the judge's consideration a). fire in the Defendant's oil palm plantation area in 2015 the cause of the fire was due to human-made fires during the dry season carrying out land clearing activities by burning. b). The Defendant knows the community's habit of clearing land by burning land, so it is appropriate that the Defendant can take precautions to prevent land fires that occur in areas bordering oil palm plantations from causing fires in Defendant's oil palm plantations. c). Article 12 Government Regulation Number 4 of 2001 Control of Environmental Damage and/or Pollution related to forest and/or land fires that everyone is obliged to prevent damage to pollution related to forest and land fires. Article 13 every person in charge of a business whose business can have a major and significant impact on environmental damage and fires at the location of his business. d). damage caused by fires that damage the environment for flora, fauna, soil respiration function and analysis that burned peat soil is difficult to recover, the presence of extraordinary smoke has an impact on the wider community of Jambi province with the emergence of canal diseases, flight disruptions, learning activities do not run.

Based on the considerations and statements above, the form of the Defendant's liability for the fire which has extensive consequences has fulfilled the elements of absolute liability: a) In the provisions of Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management, absolute responsibility is *lex specialis* from accountability in general, to be held accountable there must be an error from the legal subject. b) The article states that because of their actions, their efforts pose a serious threat to the environment, according to the AMDAL stipulated in UUPPLH, the phrase "important impact" is the same as a serious threat in absolute liability. c) the granting of the Defendant's right to carry out land management business activities covering an area of 12,430 hectares related to absolute responsibility for land fires is indeed in the management of the Defendant with a serious threat. d) the threat in the trial the community experienced some of the problems above and the peat soil laboratory burned the damage could not be recovered as previously considered. e) the truth of land fires is that human actions are not natural factors so that the Defendant must be responsible regardless of whether the Defendant made a mistake or not because it poses a serious threat related to absolute responsibility. f) The defendant responsible for environmental damage is obliged to pay compensation to the state as the person in charge of the burnt oil palm plantation land in accordance with the SK.KMA. No.36/KMA/SK/II/2013 in the absolute responsibility of the person who causes environmental damage is responsible for compensating. g) due to environmental destruction violates Law Number 32 of 2009 concerning Environmental Protection and Management. h) Cuase in fact proof as the basis for absolute liability is sufficient to prove simple factual causes, the fact that the fire on concession lands of the Defendant is responsible for the degradation of peat or mineral land, internal risk land fires in the Defendant's business. i) the basis of absolute responsibility has been carried out by the Defendant to prevent land fires from being irrelevant because it has caused land degradation losses by the Plaintiff. j) The defendant is responsible for the burned land in accordance with the laws and regulations and must pay the cost of material losses and recovery costs.

## **2. Comparison of Absolute Responsibility Arrangements based on Law Number 32 of 2009 concerning Environmental Protection and Management with Law Number 11 of 2020 concerning Job Creation**

The civil liability system for environmental law is an instrument for obtaining compensation and environmental recovery costs caused by pollution and/or environmental damage. In general, there is a civil liability that is used to settle environmental disputes a). Accountability for Unlawful Acts (PMH), dan; b). responsibility based on absolute responsibility.

Accountability based on unlawful acts (PMH) is regulated in Article 34 paragraph (1) of Law Number 23 of 1997 which states "Every unlawful act in the form of pollution and/or environmental destruction that harms other people or the environment, requires the person in charge of the business and/or activities to pay compensation and/or take certain actions". A lawsuit for compensation and environmental restoration is a lawsuit that arises as a result of an unlawful act. It is emphasized in Article 87 paragraph (1) of Law Number 32 of 2009, which states: "Every person in charge of a business and/or activity that commits an unlawful act in the form of pollution and/or destruction of the environment that harms other people or the environment must pay compensation and/or take certain actions". It seems clear that there is a realization that polluters pay or as an economic principle in preventing or dealing with environmental pollution.

Principles related to the responsibility or liability of potential environmental polluters so that this principle is not related solely to discussing payments, but according to Reiner Schmidt consists of stipulating laws and regulations on obligations and responsibilities of liability in preventing pollution and environmental destruction. The provisions of Article 42 and Article 43 of Law Number 32 of 2009 concerning Environmental Protection and Management regulate economic instruments that are preventive in nature from pollution and environmental destruction. Then the principle of this economic instrument is in accordance with the principle that polluters pay as above, namely paying not because they have polluted or polluted but have an obligation to provide funds for the prevention and control of pollution or environmental damage.

Acts against the law (PMH) are also regulated in Article 1365 of the Civil Code or the Civil Code (KUHPer), stating "that every act against the law and harms other people obliges the person who made the mistake. compensate the victim for his actions". Meanwhile, strict liability is regulated in Article 88 paragraph (1) of Law Number 32 Year 2009, which states: "Every person whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or poses a serious threat to the environment who is absolutely responsible for the losses incurred without the need to prove the element of guilt."

Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management, claims for compensation and environmental restoration specifically norms for settlement of civil environmental disputes. The explanation of Article 88 that absolute responsibility is an element of error that does not need to be proven by the Plaintiff as the basis for payment of compensation. So the legal view is that the need for proof is a special rule *lex specialis* for acts that violate the law because in general violations, the Plaintiff has the burden of proof. Then Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management also explains the characteristics of absolute responsibility in the clause in which responsibility appears immediately at the time of the act so that it does not need to be associated with the element of error. According to Krier environmental damage is part of a dangerous event. So that absolute responsibility is very important to be applied not because the party who is harmed by the Plaintiff can explain but the Defendant must be able to explain the mistakes that cause environmental damage.

The ratification of Law Number 11 of 2020 concerning the Employment Creation Act or the Omnibus Law gave birth to debates and controversies in the environmental field. Initially, Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management stated that: "Everyone whose actions, business, and/or activities use B3, generate B3 waste, treat B3 waste

and/or pose a serious threat to the environment, shall be absolutely responsible for the losses incurred without the need to prove the element of guilt”.

Meanwhile, the provisions of Article 88 of the Job Creation Act regulates: “Every person whose actions, business and/or activities use, generate, and manage B3 waste and/or pose a serious threat to the environment shall be absolutely responsible for the losses that occur from its business and/or activities”. In the provisions of the article the sentence...” without the need to prove the element of guilt”... removed. Even though this sentence is important, because in the regulation of absolute responsibility, every action that causes environmental consequences must be immediately or immediately responsible for the action since everything is known and is at risk. According to James E. Krier, the principle of absolute responsibility is great assistance to the judicial system regarding environmental cases, because activities based on his experience, namely causing environmental losses so that it is a dangerous act, can then be carried out with the implementation of responsibility arrangements without mistakes.

Loss of absolute responsibility, resulting in no environmental protection, so there is no legal basis for punishing the perpetrators of environmental pollution without the need to prove the perpetrator's guilt. Many companies will be very irresponsible, afraid of the application of absolute responsibility. The shift in omnibus law regulations provides many opportunities for polluting companies to escape their responsibilities. In arresting perpetrators of environmental crimes, the government has used Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management as a legal instrument. Although the application of strict liability is only an exception because it is only applied to certain activities, it has provided a breath of fresh air for enforcing pollution and environmental destruction. Therefore, if Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management is amended as in Article 88 of Law Number 11 of 2020 concerning Job Creation or the Omnibus Law, it can cause the absolute responsibility of corporations for environmental pollution to be reduced, and over time it will disappear. In the formation and implementation of the Omnibus Law, the government is more protective of the sustainability of the corporation, namely the interests of protecting and preventing damage to the corporate environment and the government seems to protect the corporation rather than the interests of the wider community.

Elimination of strict liability environmental dispute resolution a). shift, which in the provisions of Article 88 of Law Number 11 of 2020 concerning Job Creation seems to provide an opportunity for corporations to pollute the environment without clear responsibilities. b). loss of government control to manage the environment against corporations. This can be used as an excuse for corporations to run away from responsibility for their actions. The existence of the principle of strict liability as a control over corporations in the environmental field is also an effort to preserve the environment. c). weakening the enforcement of corporate law that endangers the environment, thereby injuring the commitment of the Indonesian government to maintain and maintain environmental stability, endangering and harming the community. Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management is considered a sacred article because it holds the possibility that a corporation in the act of polluting and destroying the environment and effective in trapping rogue corporations can be responsible for actions in carrying out their business activities, especially in relation to the transfer of functions to land that causes massive deforestation in Indonesia.

#### IV. CONCLUSION

Land fire case Number 107/Pdt.G/LH/2019/PN Jmb absolute responsibility based on Law Number 32 of 2009 concerning Environmental Protection and Management occurred in the area of business user permit Defendant is the absolute responsibility of the business license holder resulting in threats The seriousness of the community and the fire area is that peat soil is difficult to recover. Therefore, fulfilling the principle of absolute responsibility for the Defendant and

violating the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management, the Defendant is obliged to pay the costs of material losses and recovery costs. The Plaintiff's absolute responsibility does not have to prove the Defendant's guilt because there are public losses and serious threats. Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management applies the principle of strict liability to make it easier for victims to ask for compensation and sue perpetrators of environmental pollution because victims do not prove the perpetrators' faults which are difficult to prove. However, Law Number 11 of 2020 concerning Job Creation changes Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management to Article 88 of the omnibus law which removes strict liability, resulting in the release of environmental pollutants in recovery of compensation and is more protective of corporations than interests public.

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