

## Implementation of the Polluters Pays Principle in The Case Of PT. Kumai Sentosa



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**ABSTRACT:** The Polluters Pays Principle is the obligation of environmental polluters to bear the costs of environmental losses and the costs of environmental restoration in the amounts specified in statutory regulations. This principle is contained in Law Number 32 of 2009 concerning Environmental Protection and Management. This research aims to determine the implementation of the Polluters Pays principle and what are the important things that influence the implementation of the Polluters Pays principle in cases of large-scale environmental pollution such as the case of land fires owned by PT. Kumai Sentosa in Central Kalimantan in the Supreme Court Review Decision (Decision No. 527 PK/Pdt/2023). This type of research uses juridical-normative and library research collection techniques using qualitative descriptive content analysis. The result shows that in this case PT. Kumai Sentosa, which is proven to be a polluter, is obliged to pay damages for the costs of dealing with environmental damage as well as restoring life and/or ecosystem losses.

**KEYWORDS:** Environment; Land and Forest Fire; Polluters Pays Principle State

### I. INTRODUCTION

Indonesia is a country rich in natural resources, which can be used and managed for people's prosperity. This wealth is protected by the state's constitutional foundations as stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Therefore, the state, government and all parties involved have the responsibility to protect and manage the environment in implementing sustainable development, so that the Indonesian environment continues to play a role in supporting life for the Indonesian population and other creatures.

The consequences of natural resource management practices certainly cannot be separated from the risk of environmental damage. According to Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the "Environmental Law"), to determine whether natural damage can be said to be environmental damage, a limit measure of changes in physical, chemical, and/or natural properties is required. or biological environment that can be tolerated by the environment itself to continue to preserve its functions with standard criteria. If natural damage is assessed as exceeding standard criteria, then the damage can be categorized as environmental damage.<sup>1</sup>

Environmental damage arises from environmental damage carried out by people which causes direct or indirect changes to the physical, chemical, and/or biological environment so that it is said to exceed the limits of standard criteria. Due to

<sup>1</sup> Pasal 1 angka 15 dan 17 Undang – Undang Lingkungan Hidup.

environmental damage, a person responsible for a business and/or activity who is proven to have committed an unlawful act may be obliged to pay compensation and/or take certain actions as stated in Article 87 of the Environmental Law. This is one form of realization of a principle in environmental law called the Polluters Pays Principle, hereinafter referred to as "Polluters Pays") where the polluter is the party who is obliged to make compensation payments.<sup>1</sup>

Polluters Pays was first introduced by E.J. Mishan in The Cost of Economic Growth in the Sixties defined that polluters are simply people who commit pollution that they could have avoided. Then in 1972 this principle was adopted and developed by

<sup>1</sup> Pasal 87 Undang – Undang Lingkungan Hidup.

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Member Countries of the Organization of Economic Cooperation and Development (OECD) where polluters must bear the burden or costs of preventing and controlling the pollution that has been caused.<sup>2</sup>

Initially, the legal basis regarding Polluters Pays was not adequately regulated in Law Number 23 of 1997 concerning Environmental Management. This law only provides a legal basis for entrepreneurs to provide compensation payments to victims of pollution but does not provide sanctions against perpetrators of pollution.<sup>3</sup> The legal basis that contains the new Polluters Pays is regulated in the Environmental Law in Article 87, where it is strictly regulated that polluters and/or destroyers of the environment are required to pay compensation, and can be added to the obligation to take certain actions such as restoring the function of the environment to eliminating the cause of the occurrence environmental pollution.<sup>4</sup> This obligation to pay compensation is also accompanied by provisions regarding absolute liability (or what is hereinafter referred to as "strict liability").

Strict liability is a civil liability doctrine that states that responsibility arises immediately without being based on any element of fault (liability without fault). The principle of strict liability is the responsibility of persons involved in any activity that can be classified as extremely dangerous or extremely dangerous or extremely dangerous. Thus, he is obliged to bear all the losses he suffers, even if he acts very carefully to avoid such damage or loss, even if it occurs accidentally.<sup>5</sup>

The detailed calculation of the amount of compensation that must be paid by polluters is regulated in the Regulation of the Minister of the Environment of the Republic of Indonesia Number 7 of 2014 concerning Environmental Losses Due to Environmental Pollution and/or Damage (hereinafter referred to as "Permen of the Environment No. 7 of 2014). This Ministerial Regulation is a guideline for Central and regional Environmental Agencies to determine environmental losses and calculate the amount of environmental losses that must be paid by polluters.<sup>6</sup> There are several types of environmental losses for which polluters can be obliged to pay, including:<sup>7</sup>

- 1) Losses due to exceeding Environmental Quality Standards due to non-implementation of obligations for wastewater treatment, emissions, and/or management of hazardous and toxic waste (B3);
- 2) Losses to compensate for the costs of implementing Environmental Dispute Settlement which include costs for field verification, laboratory analysis, experts in supervising the implementation of payments for environmental losses; And
- 3) Losses to compensate for the costs of dealing with environmental pollution or damage along with the costs of restoring the environment or ecosystem.

From the explanation above, Polluters Pays has been implemented in several cases of environmental damage, one of which is the PT land fire. Kumai Sentosa in Central Kalimantan, which has been finalized in the Supreme Court Review Decision stage no. 527 PK/Pdt/2023 where the company is burdened with the obligation to pay compensation in a certain amount.

Based on the description above, the author is interested in further studying the implementation of the Polluters Pays principle in the PT land fire case. Kumai Sentosa and what are the important things that influence the implementation of the Polluters Pays principle at PT. Kumai Sentosa.

## II. RESEARCH METHODS

This research was conducted using a normative juridical method using a statutory approach and a conceptual approach. Normative legal science is directly related to legal practice which concerns two main aspects, namely the formation of law and the application of law.<sup>8</sup> Apart from that, this research also uses a literature approach where writing is carried out after studying statutory regulations, books, journals, and other written sources related to this research.

There are three legal materials used in this research, namely primary, secondary, and tertiary legal materials. The primary legal materials used are legal provisions in laws and regulations that contain the Polluters Pays principle. Secondary legal materials use all kinds of publications on environmental law that concern compensation for environmental damage and the Polluters Pays principle, such as books, journals, and court decisions. Meanwhile, the tertiary legal materials used are the KBBI, legal dictionary, and others. These legal materials were collected using a library study model.<sup>9</sup>

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<sup>2</sup> Muhamad Muhdar, *Eksistensi Polluter Pays Principle dalam Pengaturan Hukum Lingkungan di Indonesia*, Mimbar Hukum Vol. 21 No. 1 Februari 2009, hlm. 69.

<sup>3</sup> Ibid, hlm. 69

<sup>4</sup> Pasal 87 Undang – Undang Lingkungan Hidup.

<sup>5</sup> Syahrul Machmud, *Penegakan hukum lingkungan Indonesia: Penegakan berdasarkan hukum administrasi, hukum perdata dan hukum pidana menurut Undang-Undang No. 32 Tahun 2009*. (Yogyakarta: Graha Ilmu, 2012), hlm. 209.

<sup>6</sup> Pasal 2 Peraturan Menteri Lingkungan Hidup Nomor 7 Tahun 2014.

<sup>7</sup> Pasal 3 Peraturan Menteri Lingkungan Hidup Nomor 7 Tahun 2014.

<sup>8</sup> Hardijan Rusli. *Metode Penelitian Hukum Normatif: Bagaimana?*, Law Review Fakultas Hukum Universitas Pelita Harapan Volume V No. 3 Tahun 200, hlm. 50.

<sup>9</sup> Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*. (Malang: Banyumedia Publishing, 2006), hlm. 126.

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The legal material analysis technique used is a content analysis technique, where there is a systematic procedure for reviewing the content of the information obtained from all existing secondary data. Then the data is analyzed logically, systematically, and juridically. Analyzed logically means that the data that has been collected is then analyzed using deductive logic which concludes general problems to more specific problems. It is carried out systematically, meaning that the data is analyzed by comparing and linking one data with other data that have an informational relationship and are interdependent. The data is then analyzed juridically by linking existing regulations with positive laws currently in force.<sup>10</sup>

### III. RESULTS AND DISCUSSION

The existence of Environmental Law not only aims to carry out preventive efforts to control environmental impacts but also contains repressive efforts, where there is the utilization of the provisions of administrative law, civil law, and criminal law in the context of law enforcement against environmental pollution and damage that has already occurred<sup>11</sup>. That is why the Environmental Law includes provisions regarding the resolution of environmental disputes through judicial channels by filing class action lawsuits, the right to sue environmental organizations, and the right to sue the government.

The implementation of this law can be found in the case of land fires in Central Kalimantan where PT. Kumai Sentosa was obliged to pay compensation as finalized at the Judicial Review stage by the Supreme Court in Decision Number 527 PK/Pdt/2023. PT. Kumai Sentosa is a company whose plantation land was burned down in the fire incident in Tanjung Puting National Park (hereinafter referred to as "TNTP"). The hotspots originating from TNTP spread to the PT area. Kumai Sentosa failed to be extinguished, resulting in the burning of a 2600 ha plantation block located in Sei Branch Village, Kumai District, West Kotawaringin Regency, Central Kalimantan Province.

The Ministry of Environment and Forestry of the Republic of Indonesia (hereinafter referred to as "KLHK") sued PT. Kumai Sentosa went to the Pangkalan Bun District Court for an unlawful act and was sentenced to Pangkalan Bun District Court Decision No. 39/Pdt.G/LH/2020/PN.Pbu on September 23, 2021. In this decision PT. Kumai Sentosa was declared responsible for land fires under its management based on evidence based on the principle of strict liability. Apart from that, PT. Kumai Sentosa is required to pay compensation to the Ministry of Environment and Forestry through a state treasury account in the amount of Rp. 175,179,930,000,- (one hundred seventy-five billion one hundred seventy-nine million nine hundred thirty thousand), and requires PT. Kumai Sentosa to carry out environmental restoration actions in this area.

Then on October 26, 2021, PT. Kumai Sentosa, through its attorney, submitted a memorandum of appeal stating that it objected to the decision of the first instance court because the application of strict liability imposed by the judge was not appropriate as stated in the Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/ 2013 concerning the Implementation of Handling Guidelines. Environmental Matters. This is because the fire that occurred was not caused by PT. Kumai Sentosa itself is the owner of the plantation land but as a result of the expansion of fire hotspots that hit TNTP. There are certain forgiving reasons for the application of strict liability in environmental cases used by the appellant, including:<sup>12</sup>

- a. Force Majeure circumstances;
- b. The victim's fault; And
- c. Third-party error.

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Because the fire did not originate from PT. Kumai Sentosa itself, in this case, the fire can be categorized as a force majeure, so that PT. Kumai Sentosa rejects the application of strict liability and refuses to pay compensation. Based on these considerations, on November 26, 2021 the Palangkaraya High Court issued Decision No. 102/PDT.G-LH/2021/PT PLK which rejected the strict liability lawsuit from the Ministry of Environment and Forestry and declared the previous level court decision annulled.

On August 3, 2022, the Ministry of Environment and Forestry submitted a Request for Judicial Review through the Pangkalan Bun District Court stating that in the previous level decision, there were obvious errors or mistakes by the Judge, thus asking the Supreme Court to cancel the Palangkaraya High Court Decision No. 102/PDT.G-LH/2021/PT PLK.

In this case, the Supreme Court confirmed the KLHK's reasons that the previous level court's decision had misapplied the law because the essence of strict liability related to this case is contained in the Environmental Law and Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the "Undang – Undang Cipta Kerja/Job Creation Law"), wherein these two laws the element of error in implementing accountability is excluded.

Apart from that, the consideration that if the fire originates from TNTP makes PT. Kumai Sentosa can be released from responsibility for the loss and damage that occurs, which is a wrong consideration because the nature of the strict liability adopted

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<sup>10</sup> Bachtiar Marbun, *Konsep Pemulihan dalam Pencemaran Lingkungan Hidup (Studi Pada Putusan Pengadilan Negeri Jakarta Utara Nomor 735/PDT.GLH/2018/PN.Jkt.Utr)*, LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria Volume 1, Nomor 1, Oktober 2021, hlm. 95.

<sup>11</sup> Penjelasan umum Undang – Undang Lingkungan Hidup.

<sup>12</sup> Andri G Wibisana. *Hukum Lingkungan: Teori, Legislasi, dan Studi Kasus*, (Jakarta : Kemitraan Partnerhip, 2015), hlm. 584.

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still refers to the Job Creation Law. So in this case PT. Kumai Sentosa remains the party that must be responsible for fires that occur in its plantation area because the area is under the control of PT. Kumai Sentosa itself.

So in the end it was decided in the Supreme Court Review Decision No. 527 PK/Pdt/2023 that PT. Kumai Sentosa was sentenced to pay material compensation in cash to the Ministry of Environment and Forestry through a state treasury account amounting to Rp. 175,179,930,000,- (one hundred seventy-five billion one hundred seventy-nine million nine hundred thirty thousand rupiah), carrying out environmental restoration of the burnt plantation land area, and paying court costs of Rp. 400,000,- four hundred thousand rupiah. The amount of material compensation costs determined by the judge at this level of review is the same as at the first level where there are no details regarding what kind of material compensation is included in the amount of the compensation money because the amount is different as requested by the Ministry of Environment and Forestry in its lawsuit.

The Ministry of Environment and Forestry is a government agency responsible for the environment and forestry sector which has the authority to file compensation claims against companies or activities that cause environmental pollution or damage, as regulated in Article 90 of the Environmental Law<sup>13</sup>. This is reflected in the Ministry of Environment and Forestry using its authority to sue the PT land fire. Kumai Sentosa demands compensation for dispute resolution and environmental restoration. Apart from that, the existence of the Job Creation Law also gives more authority to the central government to force parties responsible for companies and/or their business activities to carry out environmental restoration due to environmental pollution and destruction as stated in the provisions of Article 82 of the law.<sup>15</sup>

In determining whether a party can be obliged to pay compensation and carry out environmental restoration, the principle of strict liability is used, which was originally regulated in Article 88 of the Environmental Law, now amended by the provisions of Article 88 of the Job Creation Law which reads:

"Every person whose actions, business, and/or activities use B, produce and/or manage B3, and/or which pose a serious threat to the environment is responsible for losses arising from their business and/or activities."

Just like the provisions in Article 88 of the Environmental Law, strict liability in the Job Creation Law is normatively explained as responsibility imposed without assessing any fault. So that anyone responsible for an event that causes environmental damage, both according to the Environmental Law and the Job Creation Law, can be subject to the obligation to pay compensation.

Seeing the forest fire case above, PT. Kumai Sentosa can be designated as a polluter subject to the Polluters Pays principle, even though at the PT appeal level. Kumai Sentosa was declared not guilty because there was an error in applying the law which should have used the provisions of the Environmental Law and Job Creation Law, instead of using the Decree of the Chief Justice of the Supreme Court Number 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases.

According to the principle of strict liability, PT. Kumai Sentosa does not need to be proven to have done anything wrong even though its land was burned due to fires originating from TNTP. This is because the fire occurred in an area controlled by PT. Kumai Sentosa so the company must be responsible for all compensation costs and environmental restoration costs.

As stated in the review decision, PT. Kumai Sentosa was sentenced to pay material compensation in cash to the Ministry of Environment and Forestry through a state treasury account in the amount of Rp. 175,179,930,000,- (one hundred seventy-five billion one hundred seventy-nine million nine hundred thirty thousand rupiah), and sentenced to undertake the environmental restoration of the burnt plantation land area.

## CONCLUSIONS

The Polluters Pays principle in environmental law is a principle that requires perpetrators of environmental pollution to pay a certain amount of compensation, the amount of which is determined in certain special regulations. To determine which party is subject to this principle, it is necessary to apply the principle of strict liability or absolute responsibility where the party responsible for environmental damage does not need to assess the existence of fault as regulated in the Environmental Law which was updated with the Job Creation Law. In the case of the PT. Kumai Sentosa above, it can be concluded that the company was subject to Polluters Pays after being determined to be responsible under the principle of strict liability, as was decided in the Supreme Court Judicial Review Decision No. 527 PK/Pdt/2023.

## SUGGESTION

If you look at the PT. Kumai Sentosa land fire case, law enforcers should from the start, before making a decision, pay attention to strict liability as regulated in the Environmental Law and the Job Creation Law to avoid errors in applying the law, so that the Polluters Pays Principle can be implemented following applicable laws and regulations. This is because the calculation and imposition of compensation are closely related to who polluters are responsible for environmental damage.

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<sup>13</sup> Pasal 90 Undang – Undang Lingkungan Hidup. <sup>15</sup>  
Pasal 82 Undang – Undang Cipta Kerja.

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