VARIA JUSTICIA

Varia Justicia
Vol. 19 No. 2 (2023) pp. 116-133
pISSN: 1907-3216 | eISSN: 2579-5198

Progressivity of Judges in Using The Principle of Strict Liability as A Legal Reasoning in Forest Fire Cases

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DOI: https://doi.org/10.31603/variajusticia.v19i2.9319

Submitted: June 21, 2023 *Revised: July 25, 2023* *Accepted: August 22, 2023*

Keywords:
Progressive Judge; Forest Fire; Pollution; Strict Liability.

ABSTRACT

Pollution disturbs the ecosystem's balance and endangers living things' survival. Therefore, the perpetrators of pollution must be responsible. In environmental cases, the principle of liability based on fault is burdensome for the plaintiff. This research aims at analyzing the implementation of the principle of strict liability as legal reasoning in forest fire cases. Progressive judges are needed in a responsive system that favors the environment. The method used in this study is a doctrinal legal research method with a statutory and conceptual approach. The research shows that in the decision of case number 801/Pdt.G/LH/2019/PN Jkt. Sel, in a judge-fact manner, the defendant had carried out slash and burn during land clearing, and there was a widespread fire in the peatland area managed by the defendant. The fire caused pollution and environmental damage which refer to the Environmental Protection and Management Act No. 32 of 2009 prohibits the slash-and-burn system. This slash-and-burn action by the company shows that the company did not take precautions in preventing forest fires; based on this, the judge decided that the defendant was guilty and liable under strict liability. In the abnormally dangerous activity category, the plaintiff does not need to prove if the defendant commits a detrimental activity but can directly demand accountability. This principle shows that judges have been progressive using the pro-environmental In Dubio Pro Natura paradigm. The use of this pro-environmental paradigm encourages judges to use the principle of strict liability, which is regulated in UUPPLH No. 32 of 2009, jurisprudence and the Decree of the Chief Justice of the Supreme Court of the Republic Indonesia Concerning the Enforcement of Guidelines for Handling Environmental Cases.

1. INTRODUCTION

The slash-and-burn practice carried out by plantation companies is one of the land-clearing strategies for plantation development, usually for the expansion of oil palm plantations or the pulp and paper industry. The practice of slash and burn often occurs, especially in plantation areas on the islands of Sumatra and Kalimantan. This slash-and-

burn strategy is prohibited by law, because this practice has huge risks and impacts on the environment, such as causing forest fires. However, slash and burn is often practiced because it is the most practical and cheapest option.

Despite the advantages of the slash-and-burn method, this practice has major risks and implications for the environment. For example, the forest fires in Indonesia from June to October 2015 were out of control. According to a World Bank report - released in December 2015 - around 100,000 man-made fires (forest fires) destroyed around 2.6 million hectares of land between June and October 2015 and caused a toxic haze to spread to other parts of Southeast Asia, resulting in catastrophic fires. This led to diplomatic tensions between countries.[1]

The impact of forest fires is very complex. Forest fires do not only impact the ecology but cause environmental damage. However, the impact of forest fires extends to other areas. According to Syumanda,[2] four aspects are indicated as the impact of forest fires. These four impacts include impacts on social, cultural, and economic life, impacts on ecology and environmental damage, impacts on relations between countries, as well as impacts on transportation and tourism.

The Indonesian Constitution has regulated environmental provisions formulated in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution. Article 28H paragraph (1) of the 1945 Constitution clearly states: "Everyone has the right to live in prosperity and mentally, have a place to live, and get a good and healthy living environment and have the right to obtain health services. The right to obtain a good and healthy environment and good health services is a human right.

Based on Article 28H paragraph (1), the 1945 Constitution is very pro-environmental, so it can be called a green constitution. As a balance, the existence of human rights for everyone means that the state is required to guarantee the fulfillment of everyone's right to obtain a good and healthy environment which is included in the human rights category.

Based on the mandate of the Constitution and laws regarding the people's right to a good and healthy environment, the problem of pollution and environmental damage due to forest fires is a concern of the government; one form of this attention is the role of the courts to take action against the perpetrators of pollution with progressive decisions. This is following the decision of the Panel of Judges of the South Jakarta District Court

[1] BBC News Indonesia, "Bank Dunia: Indonesia Rugi Rp221 Triliun Karena Kebakaran Hutan," *BBC*, December 2015.

[2] Syumanda Rully, Article Forest Fire Case, Need for Policies Regulating State Responsibility. Accessed on January 2023 from http://www.walhi.or.id/kampanye

Number: 801/Pdt.Plw/LH/2019/PN.Jkt.Sel who sees the interests of the environment and society as a whole.The decision of the Panel of Judges Number: 801/Pdt.Plw/LH/2019/PN.Jkt.Sel regarding forest fires in Kalimantan granted the lawsuit of the Ministry of Environment and Forestry (KLHK) and found PT Prana Indah Gemilang (PIG) guilty, proven guilty of logging burn to expand the area of oil palm plantations and causing huge forest fires. The Panel of Judges sentenced PT Prana Indah Gemilang (PIG) to pay material compensation for losses caused by pollution.

What is interesting in this case is that the Panel of Judges has been progressive in protecting the environment, namely the use of the Strict Liability principle. Absolute/strict liability (Strict Liability) is accountability without having to prove the existence of an element of error, where accountability and compensation immediately appear after the act is committed. This is different from the doctrine of liability, which is commonly used in civil cases, namely liability based on fault, liability which requires proof of the element of error that causes loss.

The progressivity of judges to be out of the box is not to use liability based on fault in this case of forest damage and pollution, with strong reasons, namely that in enforcing environmental law through the courts, they often face various obstacles when using liability based on fault. This is due to the important requirements that must be met in negligence or fault. So that if the defendant (polluter) succeeds in showing caution even though he has caused a loss, he can be released from responsibility.

From the experience of using liability based on fault, the principle of absolute responsibility (Strict Liability) exists as an idea that responds to conventional environmental policies, which have not been able to defend and protect the environment. This principle is used to assist further environmental protection, concretized in Law No. 32 of 2009 concerning Environmental Protection and Management.

Several studies on strict liability have been carried out, such as by Wibisana,[3] who analyzed strict liability and liability for unlawful acts in forest fire cases and concluded that the application of strict liability for forest fires could be maintained as long as it can be proven that the defendant had previously made an opening. Moreover, draining peatlands, further research from Al Fikri ,[4] Viewing strict liability from the perspective of corporate responsibility in the occurrence of environmental pollution and destruction, and research from Yadav,[5] Viewing strict liability in the perspective of international

[3] Andri G. Wibisana, "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation," *Review of European, Comparative and International Environmental Law* 28, no. 2 (2019): 185–96, https://doi.org/10.1111/reel.12284.

[4] Muhammad Ainurrasyid and Al Fikri, "Implementation of Strict Liability by Companies in Cases of Environmental Damage in Indonesia : An Overview of State Administrative Law in Indonesia" 5 (2022): 41–52.

[5] Alexandre Kiss and Dinah Shelton, "Strict Liability in International Environmental Law," *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah* 3, no. 1 (2007): 1131–51, https://doi.org/10.1163/ej.9789004161566.i-1188.183.

environmental law as the state's responsibility in the occurrence of pollution and environmental damage. The position of the research that the author did was to complement previous research. The location of the differences and the novelty of this research is the Progressiveness of Judges in their legal considerations for protecting victims and the environment.

Based on the background above, it is very interesting to analyse how the Progressiveness of the Judge's legal considerations in the first-level court decision regarding the development of the implementation of the principle of strict liability in forest fire cases with a focus on studying the court decision Number 801/Pdt.G/LH/2019/PN Jkt.Sel.

2. RESEARCH METHOD

This research is doctrinal research, namely conceptualizing law as a norm. This research does not only examine law in terms of statutory regulations but also covers broader aspects, namely the norms that exist in the legal considerations of judges in deciding cases in court and sources that can be traced through literature.[6] The object of this research is the operation of legal principles, namely the principle of absolute responsibility/Strict Liability in the Judge's legal considerations for environmental pollution cases.

The data collection technique used in this study was a literature study, namely carrying out an inventory and analysing legal literature materials related to the issues studied in the research.[7] The literature includes Judge's decisions, Legislation, Supreme Court Regulations and jurisprudence. The analytical technique used in this research is the analysis of legal interpretation. This analysis technique is used to understand the text in the research object. The text is a series of signs arranged systematically in the Judge's decision in court, legislation, Supreme Court Regulations and Jurisprudence.

3. RESULTS AND DISCUSSION

3.1. The Principle of Strict Liability is a New Breakthrough in the Accountability System

The development of modern industry has brought with it some risks that occur every day that cannot be avoided. The risk is in the form of pollution and environmental damage. The risk of this modern industry has caused suffering or loss to victims, namely society and the environment. Suffering and losses cannot be borne without compensation.

[6] Salim Ibrahim Ali et al., "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development* 4, no. 1 (2017): 2394–9333.

[7] Pradeep M.D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences*, no. December 2019 (2019): 95–103, https://doi.org/10.47992/ijmts.2581.6012.0075.

In line with this, Rudiger Lummert, in his writing "Changes in Civil Liability Concept," argues[8] that with the development of industrialization, which results in increased risk and more complicated causal relationships, legal theory has abandoned the concept of "error" and turned to the concept of "relevant risk". The principle of strict liability has developed in the modern environmental legal system to see accountability from the concept of risk as an option to overcome the weaknesses of liability based on errors adopted by civil law.

Using this principle of strict liability, one can be ensnared in environmental crimes requiring scientific evidence, which is unlikely to succeed if prosecuted based on ordinary liability based on fault. The strict liability principle holds that liability arises "directly" and "instantly" when environmental pollution and damage occur as a result of businesses or activities that pose a risk of "large and significant impact on the environment." which "uses hazardous and toxic materials," and produces "hazardous and toxic waste materials," without questioning the "mistakes" of the person in charge of the business or activity concerned unless he can prove that the environmental pollution and/or damage not caused by the business and/or activities carried out.[9]

In the mid-nineteenth century, the principle of strict liability was introduced, at least for several cases related to environmental risks.[10] The principle of absolute responsibility or absolute liability is civil liability, namely liability without fault from the defendant. In this absolute liability, the element of error does not need to be proven by the plaintiff as a basis for payment of compensation. The plaintiff will later prove that he did nothing wrong, so he is free from the obligation to pay compensation.[11]

The same thing was stated by James E. Krier[12] in his writings 'Environment Litigation and the Burden of Proff', that "the strict liability doctrine can be a very big help in trials regarding environmental cases, because many activities according to experience give rise to harm to the environment are dangerous acts, for which the provisions of liability without fault can be applied.

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[8] P. H. Sand, "The Creation of Transnational Rules for Environmental Protection.," *Trends in Environmental Policy and Law*, 1980, 311–20. See also: Rudiger Lummert, Changes in Civil Liability Concept in Trend Environmental Policy and Law, IUCN, Gland, Switzerland, 1980.

[9] Tamara Lotner Lev, "Liability for Environmental Damages from the Offshore Petroleum Industry: Strict Liability Justifications and the Judgment-Proof Problem," *Ecology Law Quarterly* 43, no. 2 (2017): 483–94.

[10] Nicola Atkinson, "Strict Liability for Environmental Damage: The Cambridge Water Company Case: Cambridge Water Company v Easter Counties Leather Plc," *Journal of Environmental Law* 5, no. 1 (1993): 173–84, https://doi.org/10.1093/jel/5.1.173.

[11] Alan Reed, "Strict Liability and the Reasonable Excuse Defence: R v Unah [2011] EWCA Crim 1837," *Journal of Criminal Law* 76, no. 4 (2012): 293–97, https://doi.org/10.1350/jcla.2012.76.4.778.

[12] James E. Krier, Environmental Litigation and the Burden of Proof , Institute of Government and Public Affairs, University of California, 1971

The message that Krier[13] convey that environmental damage is a dangerous activity. Thus, the strict liability doctrine becomes very important to be implemented. It is not the aggrieved party who has to explain. In this case, the defendant must be able to explain the error resulting from the resulting environmental damage. This is one of the traditional criteria of strict liability, which determines the division of the burden of proof given to the party with the greatest ability to provide evidence about something. In relation to environmental damage or pollution caused by industrial activities, it is clear that the destroyer and/or polluter has a greater capacity to provide evidence.

The principle of strict liability is quite widely adhered to in international conventions. Some of these conventions are the Convention on Third Party Liability in the Field of Nuclear Energy, 29 July 1960, Paris; International Convention on Civil Liability for Oil Pollution Damage, 29 November 1969, Brussels; Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano 21 June 1993).

In Indonesia, the principle of absolute responsibility (Strict Liability) is an idea conveyed in Law No. 32 of 2009 concerning Environmental Protection and Management Article 88, namely: "Any person whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or which poses a serious threat to the environment is responsible for losses that occur without the need to prove an element of guilt.

In the elucidation of Article 88, it is explained that what is meant by absolute responsibility is "an element of error does not need to be proven by the plaintiff as a basis for payment of compensation." From a legal point of view, the need for proving is a special rule (lex specialis) rather than an unlawful act, and this is because general violations have a burden of proof for the plaintiff .[14]

This element in Article 88 also explains clearly that, in Article 88, UUPPLH characterizes the main characteristics of strict liability, wherein the regulation there is a clause which explains that in the emergence of responsibility immediately at the time of the action, there is no need to be associated with an element of error. The emergence of responsibility without questioning the defendant's guilt, James Krier stated: "The doctrine of strict liability for abnormally dangerous activities can be of assistance in many cases of environmental damage; strict liability is, of course, more than a burden-shifting doctrine, since it does not only relieve the plaintiff of the obligation to prove fault but forecloses the defendant proving the absence of fault.

[13] Mahfud Mahfud, "An Overview of Strict Liability Offences and Civil Penalties in the Uk'S Environmental Law," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 154, https://doi.org/10.25216/jhp.9.1.2020.154-169.

[14] Zahranissa Putri Faizal, "Strict Liability in Environmental Dispute Responsibility Before and After the Enabling of Omnibus Law," *Administrative and Environmental Law Review* 2, no. 1 (2021): 53–60, https://doi.org/10.25041/aelr.v2i1.2318.

According to B. Harvey and J. Marston in their book "Cases and Commentary" as well as A.J. Pannet in his book "Law of Torts Handbook" suggests that the criteria for extraordinary risk or abnormal risk are included as criteria for applying the principle of strict liability, which include:[15]

1. very dangerous operations (ultra-hazardous operations);
2. operational activities that contain extraordinary dangers to people (extraordinary risks to others involving such operations);
3. operations outside the normal limits (non-natural operations);
4. extraordinarily dangerous activities (ultra-hazardous activities);
5. activities outside the limits (abnormal activities);
6. activities that are potentially very dangerous (potentially dangerous activities)

From the practice of applying the principle of strict liability in United States courts, as a form of further development from the previous case, the determination of certain activities to be "ultrahazardous" activities, based on at least 6 (six) factors or criteria below:

1. high level of risk;
2. the likelihood of the hazard being generated is very large;
3. ability or ability to eliminate risk by applying prudence (reasonable care);
4. the extent to which the activity is not common in society;
5. feasibility in carrying out activities at certain locations; And
6. the value or benefits of the activity for the community

To determine concretely whether an activity is included in the category of very dangerous activities so that it is subject to strict liability is the task of a court or judge. The decisions of previous judges always guide the judges in handling cases. This is what the scholars then summarized into criteria as outlined in The Restatement of Torts.

According to Section 250 regarding the 10th draft of the Second Restatement concerning Torts, it is stated that whether an activity contains a high risk of harm is determined by the following matters:

a. Whether an activity involves a high level of risk that is detrimental to humans, land and other movable objects;
b. Whether a gravity (gravity) of the losses arising from the activity is likely to become greater;
c. Whether the risks posed cannot be eliminated by exercising reasonable caution;
d. Whether the activity is not unusual;
e. Whether the activity is inappropriate in a place where the activity is carried out;
f. The value of the activity concerned for society.

[15] Barbara Marston, John, Harvey, *Harvey & Marston: Cases and Commentary on Tort* (England: Oxford University Press- OUP, 2004).

3.2. Use of the principle of strict liability in legal considerations of judges in cases of forest fires. Decision case number 801/Pdt.G/LH/2019/PN Jkt.Sel.

In making a decision, the most important thing for the Judge is the facts and events; where from these facts or events, after being proven, the Judge can find the law. A judge must be able to generalize an event considered true through evidence. In civil cases, the Judge, in legal considerations in his decision, is obliged to provide legal reasons not included by the parties.

The Judge must ascertain the concrete events in dispute through proof to look for the appropriate law. This is what is called legal discovery (rechsvinding). Legal discovery is not an activity that stands alone but an activity that is continuous with evidence activities. In this case, the law must be adjusted to the concrete event so that the law can be enacted.

The application of law to a legal event is nothing but the application of a syllogism. After determining the law, the law is applied to the legal event, and then the Judge will decide. In deciding a case, judges should pay attention to three factors: justice, legal certainty, and expediency.

As in decision Number: 801/Pdt.G/LH/2019/PN.Jkt.Sel, regarding forest fires, the South Jakarta District Court, which examined and decided on civil cases at the first level, found that there had been a fire on the Plantation land Defendant. Based on these facts, it is true that a fire has occurred on the plantation land owned by the Defendant. Based on the laboratory analysis results from samples taken from Defendant's burnt-out land, it was confirmed that environmental damage had indeed occurred.

Whereas the Forest and Land Fire Expert in the certificate of forest and land fire expert also explained that the Defendant's oil palm plantation land was not equipped with adequate facilities and infrastructure for controlling forest and land fires, as well as other adequate firefighting equipment per the guidelines and that the facts in burned land located in the Defendant's plantation land, there are traces of fires caused by human actions, not having adequate prevention facilities and infrastructure has become evidence of the Defendant's negligence based on the legal doctrine of re ipsa loquitur (a doctrine used by victims only needs to prove directly at the scene of the incident through the facts that occurred that he had suffered losses as a result of the actions of the business actor through a local examination conducted by a judge).[16] Therefore, Plaintiff does not need to prove Defendant's objective or subjective elements of error as described above.

The reason for the Plaintiff filing for proof of absolute liability (strict liability) is based on the following provisions: Article 88 UUPPLH states: "Any person whose actions, business and/or activities use B3, generates and/or manages B3 waste, and/or

[16] Hafrida, Helmi, and Bunga Permatasari, "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 314–33, https://doi.org/10.22304/pjih.v7n3.a2.

which poses a serious threat to the environment are responsible for the losses incurred without the need to prove an element of guilt." The judge considered that slashing and burning was an act that posed a serious threat to the environment, namely causing a very large risk of forest fires. So, the defendant is required to be held responsible for his mistake using the principle of strict liability

The serious threat referred to in Article 88 is the occurrence of environmental pollution and/or damage whose impacts are potentially irreversible and/or the environmental components affected are very broad, such as human health, surface water, underground water, and soil, air, plants, and animals. In addition, the fire in Defendant's plantation area has caused environmental damage, especially in the burned plantation area. This is evidenced by a decrease in the thickness of the peat soil (subsidence), death of flora (ferns, grasses, kelakai harendong and others), and death of fauna (spiders, ants, termites, worms, crickets and others).

This serious threat to environmental damage as defined as the general standard criteria for damage to peat soils related to forest and/or land fires in the annex to Government Regulation No. 4 of 2001 dated January 5, 2001, concerning control of environmental damage and or pollution related to forest and or land fires. Whereas based on the expert's certificate of damage to land and the environment due to fires that occurred on burnt plantation land, which was reinforced by the verification report, the facts on the ground have shown that it is true that there has been a fire on burnt plantation land which has caused a decrease in the ability of the soil to store water, namely the function hydrological (water system).

The framework of the laws and regulations that are currently in effect strictly and straightforwardly stipulate the norms of the Prohibition of clearing plantation land by burning and the Obligation to carry out land clearing without burning; That the Prohibition referred to is contained in Article 69 paragraph (1) letter h UUPPLH, which states: "(1) Everyone is prohibited from: (h) Clearing land by burning. Provisions regarding these prohibitions and obligations are further emphasized in implementing regulations for the Law on Environmental Protection and Management, namely, among others: Article 11 Government Regulation No. 4 of 2001 (hereinafter abbreviated PP No. 4/2001, states: "Every person is prohibited from carrying out forest and/land burning activities)

The legal considerations used by the Judge in deciding were that UUPPLH (Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup) or Environmental Protection and Management Law adheres to the principle of absolute responsibility (strict liability) for businesses and/or activities that pose a serious threat to the environment. This is regulated in Article 88 UUPPLH. What is meant by the principle of absolute responsibility (strict liability) in UUPPLH is explained in the elucidation of Article 88 UUPPLH, namely: "What is meant by "absolute responsibility" or strict liability is that

an element of error does not need to be proven by the Plaintiff as a basis for compensation payments. The provisions of this paragraph constitute a specialist lex in lawsuits regarding unlawful acts in general. According to this Article, the amount of compensation that can be charged to polluters or environmental destroyers can be determined up to a certain limit.

The burden of proof in applying the principle of strict liability: a) In this procedure, the Plaintiff does not need to prove the existence of an element of error. The defendant can escape responsibility if the loss or damage occurs as a result of the actions of another party; b) Evidence with the principle of strict liability must be requested by the Plaintiff and contained in the Plaintiff's letter of complaint; c) Strict Liability is not reverse proof. The proof is not of his guilt. Even though they have made all efforts according to laws and regulations to prevent environmental pollution and/or damage, they still have to be responsible.

Whereas the irreversible or irreversible damage to peat land due to fires on burnt plantation land has fulfilled one of the conditions or categories of serious threats, namely environmental damage whose impact can be irreversible, Defendant must be responsible (Strict Liability) against the environmental damage that has occurred and other losses that have been caused.

Whereas the Supreme Court of the Republic of Indonesia has applied extensive legal findings (rechtsvinding) by applying the precautionary principle to business actors who use forests and/or land to protect the environment as stated in the Mandalawangi decision Number 1794K/Pdt/2004, which decision be used as material for consideration of the Panel of Judges examining this case.

Based on these legal considerations, the Panel of Judges has rendered a verdict: The Defendant is guilty in the lawsuit and must be responsible for all of his actions with Strict Liability.

3.3. Progressiveness of Judges for Environmental Protection and Justice for Victims

In the decision of the South Jakarta District Court Number: 801/Pdt.Plw/LH/2019/ PN.Jkt.Sel. The Panel of Judges at the South Jakarta District Court, on July 28, 2020, granted the KLHK's lawsuit against PT Pranaindah Gemilang (PG) and decided that PT PG was proven to have caused a 600 ha land fire which resulted in damage to peatlands in the PT PG area, in South Matan Hilir District, Ketapang Regency, Kalimantan Province. PT PG was sentenced to pay Rp 238 billion in environmental damages.

The Panel of Judges believes that forest/land burning is a crime with extraordinary impact. The resulting smog harms health, often lasting quite a long time. Many of the wildlife and biodiversity that exist are disturbed or even die. Peat ecosystems damaged by fire cannot be restored to their original state. The environmental and economic losses

incurred are enormous, "So that punishment must be upheld for the sake of justice for society and the environment, both punishment in the form of administrative, criminal and civil sanctions, in order to provide a deterrent effect.

The South Jakarta District Court Panel of Judges chaired by Hariyadi, SH, MH, Member Judges Suswanti, SH, MH, and Ahmad Suhel, SH, MH, in their decision, stated that PT PG's actions were against the law with the principal of absolute liability (strict liability) for the occurrence of land fires. Peat area of 600 ha in the PT PG area, in South Matan Hilir District, Ketapang Regency, West Kalimantan Province. The Panel of Judges for the South Jakarta District Court also sentenced PT PG to pay Rp. 238.000.000.000 (Two hundred thirty-eight billion) for environmental damages forbade any activity in PT PG's peatlands, paid a fine of 6% per year of the total value of environmental compensation, and paid a lawsuit of Rp. 5.5 million. The Panel of Judges decided the case without the presence of PT PG, with the legal consideration that PT PG had been obediently summoned but was not present (verstek decision).

The Panel of Judges at the South Jakarta District Court in the legal considerations of the forest fire case has changed from a general paradigm oriented towards the interests of the Defendant to the interests of the environment. The Judge applies the in dubio pro natura principle. The birth of the principle of In Dubio Pro Natura[17] in enforcing environmental law has a long background of thought. If traced, the In Dubio Pro Natura principle has a close relationship with the in dubio pro reo principle which is known in criminal law, the theory of biocentrism, the idea of deep ecology, and at the same time, is the antithesis of the concepts of anthropocentrism and shallow ecology.

If related to the in dubio pro reo principle, the concept of the In Dubio Pro Natura principle actually intersects with the in dubio pro reo principle. Previously, if the in dubio pro reo principle was used in environmental cases, the Defendant often escaped the claim for compensation because when the Judge had doubts about a matter, the Judge imposed a light sentence on Defendant.[18]

Along with the paradigm shift from homo-centric to eco-centric, in resolving disputes in court, the principle of in dubio pro reo changes to the principle of In Dubio Pro Natura, which means that when a judge experiences doubts about existing evidence, the Judge prioritizes environmental protection in the verdict. So far, there has been a dualism of thought; on the one hand, there is the notion that the environment is viewed superficially (shallow ecology), and on the other hand, the environment is viewed in depth

[17] V.A.R.Barao et al., "The In Dubio Pro Natura Principle: An Attempt Of A Comprehensive Legal Reconstruction," *The Braz Dent J. SSRN -Elsevier* 33, no. 1 (2022): 1–12, https://doi.org/10.2139/ssrn.4313438.

[18] Marko Ahteensuu, *In Dubio pro Natura? A Philosophical Analysis of the Precautionary Principle in Environmental and Health Risk Governance.* (Tampere University, 2008).

(deep ecology). Shallow ecology is influenced by anthropocentric thoughts, utilitarianism or economic concepts that the environment is exploited for maximum benefit.[19]

Contrary to this view, deep ecology originates from the thought of biocentrism, which sees the environment as having to be preserved; the environment must be preserved for the sake of ecology or a place to live together. Deep ecology is an environmental, ethical theory with a core of biocentrism. Humans are not just social beings but ecological beings. Human life cannot be found only in society but in an ecological community in its manifestation as an ecological being.[20]

Based on dubio pro natura, the paradigm of this Judge's Decision includes a progressive decision in defending the environment. The Judge's decision stated that the Defendant was guilty and fully responsible for the forest fire case. The legal considerations are based on:

1. UUPPLH No. 32 of 2009, which regulates strict liability, is a concept of civil liability that does not require a fault on the Defendant but has caused harm to the plaintiff. In Law Number 32 of 2009, this condition is for everyone whose actions, business and/or activities use Hazardous and Toxic Materials (B3), produce and/or manage B3 waste, and/or pose a serious threat to the environment life.

   Wibisono revealed that the concept of strict liability is actually very simple. To sue with this concept, the plaintiff does not need to prove whether the company violated the law by causing environmental damage. It is enough to see whether environmental damage has occurred due to the company's operations. Regarding the company's practice, whether it violates the law or not, it has nothing to do with it."

   This means that strict liability lawsuits are often mixed with unlawful acts/PMH lawsuits in various lawsuits. This type of lawsuit is different from strict liability. In the PMH lawsuit, the plaintiff must first prove that the company has violated the law in carrying out its business after that, new to the consequences of environmental damage.

   In this forest fire case, the Judge used the principle of strict liability without interfering with the lawsuit for unlawful acts. The Judge only proved that a fire had occurred, a slash-and-burn system caused the fire, and there were no supporting operational tools for fire prevention, so it is very appropriate to be subject to the principle of absolute responsibility without more complicated scientific proof.[21]
2. The second legal consideration used by the panel of judges at the South Jakarta District Court is the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning the Enforcement of

[19] Cary L. Klemmer and Kathleen A. McNamara, "Deep Ecology and Ecofeminism: Social Work to Address Global Environmental Crisis," *Affilia - Journal of Women and Social Work* 35, no. 4 (2020): 503–15, https://doi.org/10.1177/0886109919894650.

[20] Arne Naess, "The Deep Ecology Movement," *Problems Of International Justice*, no. 1979 (2019): 144–48, https://doi.org/10.4324/9780429303111-9.

[21] Andri G. Wibisana, "The Development of the Precautionary Principle in International and Indonesian Environmental Law," *Asia Pacific Journal of Environmental Law* 14, no. 1–2 (2011): 169–202.

Guidelines for Handling Environmental Cases. The Supreme Court, as the Republic of Indonesia's highest judicial institution, has the authority to administer justice to uphold law and justice based on Pancasila. The judicial bodies exercise judicial power under it; namely, the General Court, the Military Court, and the State Administrative Court. The highest supervision for justice and the behavior of judges is at the Supreme Court of the Republic of Indonesia.

In dealing with environmental cases, judges are expected to be progressive and pro-environmental (in dubio pro nature) because environmental cases are complex and there is much scientific evidence. Therefore environmental judges must have the courage to apply the principles of environmental protection. And environmental management. Efforts to protect the environment require environmental principles. These principles can be applied by utilizing various instruments, for example, determining the liability rule of those suspected of polluting and/or destroying the environment.

There are two important things to note in determining liability: (i) negligence and (ii) strict liability.

1. Oversight; Regarding negligence, the person who caused the damage must be held responsible if the person concerned applies the precautionary principle below standard or applies it improperly.
2. Strict liability; In the case of strict liability, the person causing the environmental damage is responsible for providing compensation for the damage caused by it. Here, the social costs must be borne by the perpetrators.[22] To prevent the perpetrators from bearing large social costs, the perpetrators should take preventive measures. In this strict liability, the perpetrator must still be responsible even though he has optimally applied the precautionary principle.
3. Furthermore, in this forest fire case, the Judge is progressive by using other sources of law besides the law. Namely the use of jurisprudence in the form of a previous Judge's decision. Namely the decision of the Bandung District Court No. 49/Pdt.G/2003/PN.Bdg. which was strengthened by the decision of the Supreme Court Number 1794K/Pdt/2004 in the forest fire case or what is known as the "Mandalawangi Case".[23] The Panel of Judges considers that the Supreme Court of the Republic of Indonesia has applied extensive legal findings (rechtsvinding) by applying the precautionary principle and strict liability to protect the environment.

Using jurisprudence is a breakthrough for judges to strengthen their legal considerations in protecting the environment. In legal theory, it is stated that in formal sources of law, in addition to laws, there is jurisprudence, so that in deciding a case, the Judge can find the law from various sources of legal law, both written and unwritten.

[22] Herlyanty Y.A. Bawole, "Criminal Law As Primum Remedium in Combating Environmental Destruction Action," *Russian Law Journal* 10, no. 1 (2022): 27–33, https://doi.org/10.52783/rlj.v10i1.269.

[23] Imam Mulhadi, "Perkembangan Prinsip Strict Liability Dan Precautionary Dalam Penyelesaian Sengketa Lingkungan Hidup Di Pengadilan," *Mimbar Hukum* 25, no. 3 (2014): 416–32.

Sources of written law consist of statutes, treaty law and jurisprudence. Then the unwritten laws consisted of unwritten customs, village rulings and doctrines.[24]

Jurisprudence is the habit of judges following judges' decisions with the existing legal force for similar cases. The high court's decision contains the main ideas regarding legal issues called standard arrested. The Indonesian legal system does not concern the principle of the binding force of precedent, but jurisprudence can be considered a source of the Judge's decisions. According to Blackstone, this principle aims to maintain the scale of justice even though it won and is not responsible for shaking any new judge's opinion. Causes for a judge to follow another judge for a similar case: psychological considerations, worthwhile causes and the same opinion.

According to Daniel S. Lev,[25] the law is not just written or constitution. Law and change where the law is the practice of law enforcement officials so that if the behavior of law enforcement officials changes, the law changes even though the written law or law has not changed. The gap between law and social change gives place to the role of judges' decisions to balance the rigidity and stability of written law with social change.

Concerning the progressiveness of judges, Satjipto Rahardjo[26] stated that judges must be progressive because judges, as social beings, must establish themselves in society, and the law is for the people, not the other way around. Through their decisions, judges are said to represent the voices of those who are underrepresented and not represented. In this case, it represents the people's voice and the environment.

Based on the assumption that a product of a judge's legal decision is not born from a situation without the nuances of "the sociological context that surrounds it" (a state of social vacuum) but is full of social influences that surround it.[27] According to Satjipto Rahardjo, sociologically, it isn't easy to accept the existence of a neutral court. The court cannot be separated from political, social, economic and cultural influences. A political system that prioritizes economic growth unknowingly or subconsciously often ignores the environment.

As a Pancasila state, courts in Indonesia have a side to fight for and realize Pancasila in society. Thus, the court becomes one of the important places where Pancasila's justice and morals are realized. The realization of Pancasila is not enough only

[24] Rehna Gul and Abdallah Mohamed Othman El Nofely, "The Future of Law From the Jurisprudence Perspective for Example :The Influence of Science & Technology To Law, Ai Law," *Journal Equity of Law and Governance* 1, no. 1 (2021): 77–83, https://doi.org/10.55637/elg.1.1.3249.77-83.

[25] Lev Daniel S, Hukum dan Politik di Indonesia: *Kesinambungan dan Perubahan [Law and Politics in Indonesia: Continuity and Change*] (Jakarta: LP3ES, 1991). (This is a collection of essays and articles by Lev in translation with an original introduction.)

[26] Satjipto Rahardjo, *Membedah Hukum Progresif*, ed. Ufran Trisa, Revisi 2 (Jakarta: Kompas Group, 2006). See also Satjipto Rahardjo, *Memahami Hukum: Dari Konstruksi Sampai Implementasi*, 1st ed. (Jakarta: PT. Raja Grafindo Persada, 2009).

[27] Carol Chomsky, "Progressive Judges in a Progressive Age: Regulatory Legislation in the Minnesota Supreme Court, 1880–1925," *Law and History Review* 11, no. 2 (1993): 383–440, https://doi.org/10.2307/743618.

through laws and government rhetoric but requires it to be truly realized. The new legislative institution carries out part of the effort to create such a society, and even then, it usually uses abstract and very general language. It is only through a court decision that everything becomes clear and concrete.

Manullang[28] further added that there was a struggle to realize ideologies in court. That means that courts and judges do not only concretize the contents of laws or make decisions based on laws but go further than that. The Judge is also involved in politics and becomes an ideological fighter because he turns ideological thoughts into reality through his decision. Deep Ecology will become a new paradigm to participate in upholding the Pancasila Ideology in developing countries like Indonesia 29. In the deep ecology paradigm, humans live in an environment that is interrelated with all ecosystem units. Therefore the perpetrators of environmental pollution and destruction must be responsible for restoring the environment and compensating for the actions they cause.

4. CONCLUSION

Panel of Judges in South Jakarta District Court decision Number: 801/Pdt.G/LH/2019/PN.Jkt.Sel. apply the principle of Strict Liability in its legal considerations. The judge assessed in judec factie PT. Pranaindah Gemilang (PG) as the defendant carried out slash and burn in clearing new land for oil palm plantations, which resulted in widespread forest fires. The judge assessed that the slash and burn activities in the peatland area fell into the abnormally dangerous activity category.

Based on this assessment, the judge declared the defendant guilty and sentenced the defendant using the principle of strict liability. The plaintiff does not need to prove that the defendant carried out a detrimental activity, but can immediately demand liability. The decision of the Panel of Judges at the South Jakarta District Court is a progressive decision, namely that the judge has gone out of the box by using the principle of In Dubio Pro Natura which is pro-environment, meaning that when the judge has doubts about the evidence in a case of environmental pollution or destruction then The judge prioritized environmental protection in his decision. The use of this pro-environment paradigm then encourages judges to use the principle of strict liability in their legal considerations, as contained in UUPPLH No. 32 of 2009, the jurisprudence of Bandung District Court decision no. 49/Pdt.G/2003/PN.Bdg. which is confirmed by the Supreme Court decision Number 1794K/Pdt/2004 and also the Decision of the Chairman of the Supreme Court of

[28] E. Fernando M. Manullang, "The Purpose Of Law, Pancasila And Legality According To Ernst Utrecht: A Critical Reflection," *Indonesia Law Review* (2015) 2 (2015): 187–207, https://doi.org/:10.15742/ilrev.v5n2.141.

[29] Antonius Mahendra Dewantara and Dika Kirana Larasati, "Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges," *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 237–64, https://doi.org/10.15294/ijel.v1i2.58044.

the Republic of Indonesia Number 36/KMA/SK/II/2013 concerning the Implementation of Guidelines for Handling Environmental Cases.

AUTHOR DECLARATION

Author contributions and responsibilities - The authors made substantial contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.

Funding - No funding information from the author.

Availability of data and materials - All data are available from the authors.

Competing interests - The authors declare no competing interest.

Additional information - No additional information from the author.

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