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THE APPLICATION OF STRICT LIABILITY PRINCIPLE IN ACEH PROVINCE'S FOREST FIRE CASES

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ABSTRACT

This article investigates the reason that is likely to cause inaccurate interpretation by an Indonesian Court and the application of the 'strict liability' principle in Aceh forest fire cases. Mainly, this article discovers the cause of inaccurate interpretation of strict liability is an insufficient legal instrument and the lackness of law enforcement while applying the strict liability principle. It is proposed to amend the law and regulations that are inconsistent with one another to ensure the principle's application and outlines a comprehensive procedure for imposing strict liability on the plaintiff, defendant, and judge.

Keywords: Strict liability principle; Strict liability; Forest fire; Aceh forest fire cases; Environmental law.

INTRODUCTION

Forests face many disturbances that can impact forest health, including fire (Lierop & (et al.), 2015). A forest fire has a significant impact on forest sustainability; in 2015 only, about 98 million hectares were affected by the fire that mainly occurs in the tropical area, where the fire burned about 4 per cent of the total forest area (Nations, 2020). In Indonesia, the estimated massive forest and land loss due to forest fire in 2019 are over 942,000 hectares (Reuters, 2019).

Indonesia has one of the highest deforestation rates, referring to forest area loss reported by the United Nations Food and Agriculture Organization (FAO), only behind Brazil (Hansen & (et al.), 2009). Forests, including dried peatlands, are being cleared to make way for oil palm plantations, pulpwood production, logging, and mining by big companies. Among the cases is a lawsuit brought by the Ministry of Environment and Forestry (hereinafter referred to as Ministry of Environment and Forestry) against companies that cleared land through the fire, including PT Kallista Alam, PT Nasional Sago Prima, PT Bumi Mekar Hijau, PT Merbau Pelalawan Lestari, and PT Waringin Agro Jaya (Jong, 2017).

The cases have been brought to the Court and punished according to two liability regimes: tortious liability and strict liability. In tort, the plaintiff must prove the defendant's fault element, while strict liability eliminates the subjective fault element (fault and negligence) and the objective fault element(an act against the law). Therefore implementation of tort requires plaintiff to prove loss and causality between the loss incured and the defendant activity (Wibisana, 2016). Tort in Indonesia

is regulated in Article 1365 of the Indonesian Civil Code, which requires four elements *id est* act violating the law, a fault to be proven, the perpetrator is accountable for their losses, and the causal link between illegal act to the losses. A Hoge Raad decision expanded the act's definition against the law to include actions that violate written legislation, subjective rights of others, the perpetrator's legal obligations, decency, and propriety in society (Anand, 2018).

On the other hand, strict liability can be used to omit the element of fault in environmental disputes, which, according to J.E. Krier, aims to assist victims, who act as plaintiffs in ecological degradation/pollution cases, by relieving the weaker party of the burden of proving the fault element, which is generally difficult to establish (Rhiti, 2015). Strict liability applies to activities that have the potential to cause harm despite reasonable care (Cassotta, 2012). Civil liability also applies when a perpetrator engages in damaging industrial action. However, if the fault is not discovered, the person who suffers loss must establish a causal connection to receive compensation, and thus the question of whether reasonable care was exercised becomes irrelevant (Cassotta, 2012). Strict liability seeks to compensate individuals who suffer environmental damage due to high-risk activities or activities classified as hazardous (Cassotta, 2012).

In the Ministry of Environment and Forestry lawsuit against PT Bumi Mekar Hijau, the application of tort failed to hold forest fire perpetrators accountable for the damage. The Palembang District Court dismissed the case for failing to meet the tort's elements. As a result, the company is discharged from all liabilities (Wibisana, 2016). Unfortunately, the disadvantage of suing in tort is that it enables businesses to avoid compensating for losses if the plaintiff fails to establish the company's fault.

Quoting Sandra Cassotta, "fault-based liability was not, and would not have been, suitable to solve legal demands and justice problem in a wide range of cases, where damage was caused by enterprise's activities (Cassotta, 2012)." Strict liability should be utilized to abolish the need of proving the defendant's fault. Implementing strict liability will set aside issues of compliance evidence or any violation of customary practice and statutory that is necessary for the rule of negligence (Abraham, 2012). So, there is no need to collect evidence to prove whether the defendant violated a statute or was conducting any negligence.

Regarding environmental protection, strict liability has been incorporated into numerous treaties concerning dangerous activities such as nuclear energy and oil transport (Shelton & Kiss, 2007). That incorporation ensures that the defendant bears responsibility for the losses by paying compensation and restoring environmental damages without regard for fault. The 1969 International Convention on Civil Liability for Oil Pollution sets liability for shipowners over the damage from oil

spills on the territory of a convention party. The liability can be excluded if the shipowner can prove that act of war, hostilities, civil war, a natural disaster that is inevitable and irresistible has caused the damage. Other defences are acts or omissions of a third party done with intent to cause harm or results from the negligence or other wrongful act of any government or other authority (Shelton & Kiss, 2007).

The 2010 International Convention on Liability and Compensation for Damage related to the Carriage of Hazardous and Noxious Substances by Sea, or HNS Convention, expanded the strict liability for marine pollution to other hazardous substances as Article 7 states that shipowner is strictly liable for damages caused by dangerous and noxious substances aboard the ship (Ruixuan Zhuo, 2020). According to Kiss and Shelton, the approach to strict liability in international conventions has similarities. It is imposed only on the operators of the nuclear installations with rigid standards that set operators liable even when no fault is found. However, liability is limited in amount and time, but the limitation of amount becomes irrelevant (Shelton & Kiss, 2007).

Besides international conventions, strict liability is also incorporated into the domestic law of many states. England adopted the principle in the 1949 Civil Aviation Act and 1959 and 1965 Nuclear Installations Act and the 1971 Animal Act (Sadino et al., 2020). The United States enacted the River and Harbours Appropriation Act (1899), the Price Anderson Act (1957), the Trans-Alaska Pipeline Authorization Act (1973), Comprehensive Environmental Response Compensation and Liability Act (CERCLA 1980/1986/1994), and Clean Water Act (CWA) (Sadino et al., 2020). The Netherlands as a civil law country also has it in Article 175 paragraph (1), Article 176 paragraph (1), and Article 177 paragraph (1) of its BW. Article 176 paragraph 1 of Netherlands BW regulates liability for an operator of the landfill site (*de exploitant van eenstortplaats*), which held the operator liable for losses incurred before or after the site's closure as a result of pollution of the air, water, or soil caused by waste disposal conducted before the site's closure. (Wibisana, 2021).

Strict liability provisions are incorporated into several areas of Indonesian law, including consumer protection, environmental protection, and telecommunications law(Sadino et al., 2020). In 1978, the Indonesian government ratified the Civil Liability Convention 1969 and Funds Convention 1971 through Presidential Decree Number 18 of 1978 (Fakhriah, 2016). Indonesia acknowledged the strict liability principle by ratifying the two conventions since 1978. The strict liability provisions have been addressed in environmental law since the first environment act was enacted. Article 21 of Law Number 4 of 1982 on Basic Provisions for the Management of the Living Environment applies strict liability to certain activities on specific kinds of resources (Sutoyo, 2011). It imposed liability

to those who caused damage and pollution of the environment when it occurred, and the rule is carefully constructed by giving limitations to cases that could implement strict liability principles.

Law Number 23 of 1997 on Environmental Management revoked the previous 1982 environmental law. According to Article 35 (1) of the 1997 Environmental Management Act, The owner or operator of a business whose activities have the potential to profoundly and significantly impact the environment is solely responsible for the damage and is obligated to compensate when the injury occurs directly. That article limits the scope of strict liability to activities that use or produce hazardous and toxic material and activities that may cause an impact on the environment. The law also provided an exception not to compensate if the business owner or people in charge can prove that a natural disaster, war, *force majeure* beyond one's power, or act committed by a third party causes environmental damage or pollution. If the third party causes the pollution, they are responsible for compensating.

Law Number 32 of 2009 on Environmental Protection and Management also acknowledges strict liability in Article 88. The law states that anyone in charge of activities that pose a severe threat to the environment, such as hazardous and toxic material waste (B3 waste), is liable for any losses incurred, even if no fault can be established for the activity (Law Number 32 of 2009 concerning Environmental Protection and Management 2009, 2021). It means that anyone who conducts dangerous activities can be held liable without considering the fault element, both subjectively and objectively (Rohaedi, 2020). However, based on the explanation of Article 88 of the 2009 Environmental Protection and Management Act, the provision of strict liability is considered as *lex specialis* of tort lawsuit. This means that the law recognizes strict liability as a distinct law that governs the subject matter and supersedes the more common tort that typically serves as the basis for the lawsuit.

The principle is also found in Law Number 11 of 2020 on Job Creation. The Act revised Article 88 of Law Number 32 of 2009 by replacing the phrase "without having to prove fault" with "from his business or activity." Several legal scholars believe that the law has changed the concept or the orientation of strict liability. Wibisana asserts that the Job Creation Law did not alter the 2009 Environmental Protection and Management Act's concept of strict liability because the elucidation of Article 88 following the revision remained unchanged, as it continued to define strict liability as a fault element is not required to be established by the plaintiff as the basis for compensation payment (Wibisana, 2021). Wibisana also added that the elimination of the phrase "without having to prove fault" does not remove strict liability in Indonesian environmental law by referring to the application of strict liability in the Netherlands and the United States where the statute did not explicitly state the

phrase "strict liability" (Wibisana, 2021). However, since the Act was enacted in 2020, no case has been brought to the Court based on the new Act utilizing strict liability in forest fire cases.

Nevertheless, implementing the strict liability principle in forest fire cases has not been very successful. Indonesian courts and scholars still believe that strict liability is part of tortious liability; therefore plaintiff needs to point out perpetrators illegal acts (Wibisana, 2016). Even when strict liability becomes a basis for litigation, it is rarely considered in implementation, and the decision is made based on tortious liability. (Wibisana, 2019).

According to Wibisana, different interpretations of the strict liability principle in the Indonesian Court are applied in Indonesia's wildfire litigation. First, it is considered part of a tort, and as a consequence, the Court applies the precautionary principle in fault-based liability (Wibisana, 2019). For instance, in the Ministry of Environment and Forestry vs. PT Nasional Sago Prima case, the Court based its decision on tort and referenced Article 88 that provides a strict liability principle in its consideration (Wibisana, 2019). Strict liability is considered part of a tort, as a special provision applicable in environmental cases. In Ministry of Environment and Forestry vs. PT Ricky Kurniawan Kertapersada, the Jambi Court of Appeal held the defendant liable on tort and strictly liable according to the strict liability principle (Wibisana, 2019).

The interpretation of strict liability in the above cases is considered inaccurate because it combined the two liability rules, tort, and strict liability, which have a different nature: fault-based liability and liability without fault. Strict liability should be applied regardless of the defendant's fault or any act that may be construed as an illegal act. Rather than that, it must consider the nature of the activity as abnormally dangerous and the causal connection between the plaintiff's loss and the defendant's dangerous activity.

The second interpretation considers the strict liability principle as a consequence of the precautionary principle in a tort lawsuit. In the Mandalawangi case, the Court ruled favour the plaintiff using the strict liability principle in conjunction with the precautionary principle. The district court, in this case, applies the precautionary principle written in Rio Declaration because severe damage to the environment has occurred (Bandung District Court, 2003). Therefore, applying the precautionary principle has shifted the liability rule from tort to strict liability (Wibisana, 2019). This case has been cited as a reference for judges, such as in Ministry of Environment vs. PT Kallista Alam, Ministry of Environment and Forestry vs. PT Bumi Mekar Hijau, and Ministry of Environment and Forestry vs. PT Jatim Jaya Perkasa (Wibisana, 2019).

This interpretation is unsurprising, given that existing law and legal scholars frequently treat a strict liability as a subset of tortious liability. It is problematic because applying the strict liability

principle in Indonesian court decisions requires establishing fault elements. According to Siahaan, strict liability is a liability that immediately appears when an event occurs regardless of fault (Praja et al., 2016). According to Syahrul Machmud, this principle is not based on the defendant fault; instead, the defendant must establish that he did not cause damage or pollution to the environment (shifting burden of proof) (Prakoso A. L., 2016).

Munir Fuady views strict liability as a tort that eliminates the element of proving fault (Wibisana, 2019). Sudikno Mertokusumo and Hardjasoemantri argue that in strict liability, the plaintiff's burden of proof is shifted to the defendant, who must demonstrate that he committed no wrong (Elnizar, 2018). Mas Achmad Santosa sees strict liability as a personal liability that can be utilized in environmental law enforcement to obtain compensation and recovery cost of the environment (Rhiti, 2015).

This article aims to ascertain why Indonesian courts interpret the strict liability principle in numerous and erroneous ways because they depart from the concept of strict liability in which the element of fault is not considered. Additionally, this research aims to ascertain how the strict liability principle should be applied in forest fire cases in Aceh province, Indonesia. Prior research has been conducted on similar topics involving different variables, objects, or purposes.

RESEARCH METHOD

This article is normative in nature to find legal rules to address the specific legal issues (Christiani, 2016). This method will describe and analyze the application of strict liability provisions in Indonesian law based on Article 88 of 2009 Environmental Protection and Management Act in forest fire cases. Several court decisions have been used to understand the implementation of the legal rules in the litigation process of Aceh forest fire cases.

The data is collected through library research, including primary, secondary, and tertiary legal authorities analyzed using a qualitative approach. The qualitative method is used to juridical normative aspects through descriptive analysis, which describes collected data and its relation to each other to get clarity over certain truth, gain a new description, or strengthen existing description (Ishak, 2017). So, the analysis is in the form of explanations, not a statistical number or other numerical forms.

FINDING AND ANALYSIS

1) The Reason of Inaccurate Interpretation of Strict Liability Principle in Indonesia's Forest Fire Litigation

Strict liability is found in Article 88 of the 2009 Environmental Protection and Management Act which reads that everyone whose actions, undertakings, and/or activities that use B3 produce and/or manage B3 wastes and/or pose a serious threat to the environment shall be fully liable for any losses incurred without first establishing fault. Strict liability obliges the owner or responsible party to be accountable for compensation regardless of fault and negligence. However, even when a judge has already recognized and implemented strict liability in one case, the fault element is still heavily weighted.

Tort or fault-based liability is the most frequently used liability principle in forest fire cases, both by the plaintiff in composing their lawsuit and by the judge in rendering a verdict. As discussed previously, strict liability has been cited in numerous forest fire cases. However, strict liability has not been expressly stated as the sole basis for decision-making; only two forest fire cases use strict liability as to the sole basis for decision-making.

Ministry of Environment and Forestry vs. PT Waringin Agro Jaya is the first case to establish strict liability as to the sole liability for forest fires, where the verification procedure eliminates all issues of fault, which are frequently used in fault-based liability (Jakarta Selatan District Court, 2016). Ministry of Environment and Forestry vs PT Waimusi Agroindah is the only case that correctly applies the strict liability principle. For the first time, the Court examined whether defendant activity qualifies as an activity imposing strict liability under the 2009 Environmental Protection and Management Act, quantified the plaintiff's loss, and determined the causal connection between plaintiff's loss and defendant activity (Wibisana, 2021).

Nevertheless, in Ministry of Environment and Forestry vs. PT Bumi Mekar Hijau case, although strict liability is not explicitly stated as the ground of decision, the Court of Appeal considers that the defendant shall be responsible for environmental damage based on strict liability because forest fire occurred in the defendant plantation. Thus, as a permit holder, the defendant is liable for forest fire at his concession area, regardless of who started the fire or strict liability (Palembang Court of Appeal, 2016). In its consideration, the Court mentioned strict liability to claim that defendant must be responsible for environmental damage at their plantation. Strict liability is referred to once more to explain that permit holder is responsible for forest fire at their plantation area without regard to who started the fire or who was at fault (strict liability). Similar to the previous cases, the Court of Appeal

decided on the ground of tort, although strict liability is mentioned several times, which implied that strict liability is not conceived as a distinctive liability from tort.

In other cases, strict liability is interpreted differently in Indonesia, primarily as a component of tort and as a liability that applies when a tort is combined with the precautionary principle. According to Wibisana, the Indonesian Court interprets strict liability in wildfire litigation in three stages (Wibisana, 2019). The first is a component of a tort, which is interpreted similarly to the negligence rule. Following that is *res ipsa loquitur* and concluding that the defendant is strictly liable in its verdict (Wibisana, 2019).

Few instruments express this principle plainly; however, the court proceeding is governed by a general rule applicable to tort cases because the procedural law is unavailable. While strict liability is distinct from tort, it is frequently combined with and considered part of tort.

Two factors contribute to the ambiguity surrounding the application of the strict liability principle. First, there is a misconception that strict liability requires an element of unlawfulness in the defendant's act. Second, an erroneous belief that strict liability is analogous to the reversal of the burden of proof (Wibisana, 2021). For instance, in Ministry of Environment and Forestry vs. PT Ricky Kurniawan Kertapersada case, the plaintiff sued the defendant on tort (intentional tort and negligence) and strict liability grounds. The Court concluded that the plaintiff's liability standard was a hybrid of tort and strict liability. As a result, the Court found the defendant guilty of tort and liable under strict liability (Jambi Court of Appeal, 2017).

According to the judges, imposition of strict liability, in this case, mandated the plaintiff to prove tortious act conducted by the defendant that led to a forest fire that caused plaintiff loss. This, too, departs from the strict liability concept, which requires no proof of tort because it applies even when no element of fault is discovered. The second misinterpretation that considers strict liability as reversal burden of proof has been denied by the 2009 Environmental Protection and Management Act and Supreme Court Chief Justice Decree No.036/KMA/SK/II/2013 concerning Guidance on Handling Environmental Cases because the plaintiff needs to prove elements of strict liability.

In short, Indonesia's interpretation of strict liability still considers the lawfulness of activity and the exercise of due diligence. This interpretation is because strict liability implementation is considered part of tort where the two elements mentioned above are required to be proven. Although strict liability has been included in Indonesian environmental law since 1982, it is rarely used to resolve environmental disputes. Since 2013 Ministry of Environment and Forestry started to sue oil palm and timber companies for a fire case at their plantation areas. Within these government lawsuits,

plaintiffs often employ strict liability to support their tort argument that results in environmental damage. Once again, the plaintiff and the Court are misusing it.

Different interpretations are most likely due to an insufficient legal framework and ineffective law enforcement. Currently, the legal instrument for applying strict liability in forest fire litigation is the environmental law and Supreme Court Chief Justice Decree No.036/KMA/SK/II/2013. Nonetheless, the existing law is insufficient to support the application of the strict liability principle in forest fire litigation because the principle's scope of application has not been made clear and specific. That unclear scope includes criteria of dangerous activity, limitation of time, amount of compensation, compensation mechanism, and procedural law that specifically deals with environmental law cases involving scientific evidence and the hazardous nature of the activity.

Strict liability provision is considered as *lex specialis* of tort lawsuit according to the elucidation of Article 88 of Law Number 32 of 2009 on Environmental Protection and Management. This means that the law recognizes strict liability as a distinct law applicable to indemnity lawsuits involving environmental disputes, which may supersede the common law tort that frequently serves as the basis for the lawsuit. Therefore, the fault element is not required to be proven. In this matter, Hyronimus Rhiti, in his critics, questioned which of the provision is considered *lex specialis* because until recently, there is no other provision except a normative statement that strict liability is a *lex specialis* in tortious liability. The author argues that this provision has influenced the Court's incorrect interpretation of strict liability because the legislation implies that it is a type of tort but deviates from it in terms of fault elements that judges frequently misunderstand.

Moreover, the term "serious threat" provided in the regulation is also questionable. As defined in Article 1 point 34 of Law Number 32 of 2009 on Environmental Protection and Management ,a serious threat is one that affects the environment on a large scale and causes public anxiety (Rhiti, 2015). According to the Supreme Court Chief Justice's Decree Number 36 of 2013, a serious threat is defined as environmental pollution or damage to the environment that has enormous consequences for human health, soil, underground water, plants, and animals and is very likely to be irreversible. No other indicator quantifies how the aforementioned damage has impacted human health, soil, underground water, plants, and animals.

The United States court cited Restatement (Second) of Torts, section 520, to comprehend the characteristics of hazardous activities and justify the imposition of strict liability. It stated that *in determining whether an activity is abnormally dangerous, the following factors are to be considered: (a) existence of a high degree of risk of some harm to the person, land, or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the*

exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes (Cantu, 2002).

From the Restatement, several things needed to be considered and examined by the Court before imposing strict liability. European Group on Tort Law describes the abnormally dangerous activity as an activity that *"creates a foreseeable and highly significant risk of damage even when all due care is exercised in its management"* and *"is not a matter of common usage"* (Wibisana, 2019).

Further elucidation of Article 88 provides that the amount of compensation paid by polluters is up to a specific limit. In Article 88 of Law Number 32 of 2009 on Environmental Protection and Management, the phrase "until specific limit" refers to a specific amount of compensation limiting strict liability. Unlike international conventions, which state explicitly the maximum amount that must be paid, Indonesian law bases compensation calculations on Ministry of Environment Decree No. 13 of 2011 on Compensation for Environmental Damage and Pollution, which was revoked by the current Ministry of Environment Decree No. 7 of 2014 on Environmental Loss as a Result of Environmental Pollution and Damage. (Anindita, 2017). It guides how to calculate the economic valuation of environmental damage that shall be done by experts. However, the Ministerial Decree is not a specific provision governing strict liability cases that establishes a maximum amount that must be paid.

Because the amount of compensation required is far greater than the company assets, a corporation convicted to pay compensation may fail to fulfil its obligation if the current law is still enforced, as PT Merbau Pelalawan Lestari in The Supreme Court Decision No. 460K/Pdt/2016 demonstrated. The company is required to pay fines totalling more than 16 trillion rupiahs, but its assets are only 1 trillion rupiahs; as a result, the decision could not be carried out properly, and this norm is not followed in practice. These arguments about a lack of regulation and its disadvantages have swayed the Court to give an incorrect interpretation of strict liability in forest fire cases.

Secondly, weaknesses in law enforcement also have caused inaccurate interpretations. In court litigation, plaintiffs and law enforcement officers, prominently judges, have different views regarding strict liability, which becomes an obstacle to implementing the principle (Elnizar, 2018). The plaintiff frequently mentions strict liability in his closing arguments, and he asks judges to consider specific cases where strict liability is used. Although the plaintiff requested that the defendant be held liable under strict liability, this is not stated explicitly in the plaintiff's request, and there is no clear separation of strict liability and tort in the lawsuit. Strict liability without proving fault is often interpreted as a lack of *mens rea*, or a subjective element referring to intent and negligence. In

practice, the plaintiff must show that the defendant was negligent. This practice makes it difficult to distinguish strict liability from tort.

In most forest fire cases, the plaintiff only stated tort as the ground of the lawsuit and asked the Court to hold the defendant liable based on tort, but not based on strict liability (Syarif & Wibisana, 2015). The plaintiff also asks that the judges decide "*ex aquo et bono*." Plaintiff also asks the judge to rule that the defendant committed a tort, in which the plaintiff bears the burden of proof, which is a difficult task. The error of requesting that judges consider the liability rule may result in differences in judge's verdicts (Syarif & Wibisana, 2015). Plaintiff and judge end up using this mixed logic that results in law enforcement officers being trapped at company technical issues that are hard to prove (Ayu, 2018). Plaintiffs are likely to be weak in proving evidence of defendant fault, according to Syarif and Wibisana, which was refuted by defendant experts (Syarif & Wibisana, 2015).

The Chief Justice Decree No.36/KMA/SK/II/2013 instructs judges on examining environmental cases that are distinct from other cases involving scientific evidence and ecological knowledge. The District Court of Palembang's decisions in favour of the defendant because the land is still usable and there is no evidence of damage because the burnt land can still be planted and the plants grow well do not reflect the environmental principles that judges must consider when making decisions (Palembang District Court, 2015). The judge acknowledged that a forest fire occurred but denied that it resulted in environmental damage, as explained by an expert. This view was inconsistent with the spirit of environmental law enforcement as defined in The Chief Justice Decree. The judge disregarded environmental protection concerns and did not rule in accordance with the decree.

Through Chief Justice Decree No. 134/KMA/SK/IX/2011 Concerning Environmental Judge Certification, the Supreme Court established certification for environmental judges in 2013. (Prakoso et al., 2021). The decree authorizes the Chief of Supreme Court to appoint certified environmental judges to try environmental cases. There are approximately 1.000 judges who have an environmental certification by 2020, which is still not enough judges to try all environmental cases (Prakoso et al., 2021). In 2013, The Supreme Court issued Decree Number 36/KMA/SK/III/2015, establishing that where a court lacks a certified environmental judge, environmental cases must be tried by the Chief Court. This demonstrates a dearth of environmental law experts, which creates difficulties in enforcing environmental laws (Prakoso & et al., 2021).

2) Application of Strict Liability Principle in Aceh Forest Fire Cases

The Ministry of Environment has sued two companies, PT Kallista Alam and PT Surya Panen Subur, separately, for using fire to clear land in Aceh province's Tripa peatlands. In the first case, Ministry of Environment vs. PT Kallista Alam, the plaintiff asserted strict liability, stating that in tort cases involving environmental damage, the defendant, as a plantation owner, is liable under the strict liability doctrine. According to the plaintiff's claim, strict liability is defined as a liability that arises from the occurrence of a tort that results in environmental damage. Therefore, the plaintiff sees strict liability merely as part of tortious liability. Unfortunately, the plaintiff did not provide further information on how the Court shall respond to strict liability used by the plaintiff, for instance, whether the stringent liability provision should be used to verify evidence, obviating the need for a fault element. Plaintiff also did not request the Court to explicitly rule based on strict liability but solely referring to tort.

The expert mentions strict liability once more, stating that it could be used in environmental cases. However, the judges were silent on this matter. The Court makes no mention of strict liability, despite the fact that the plaintiff invoked strict liability by referencing *res ipsa loquitur*, in which the plaintiff established the following facts: (i) fires at the defendant's plantation area, (ii) traces of human activities that contribute to fire, (iii) no prevention by the defendant and a lack of adequate resources to prevent and control fire (Meulaboh District Court, 2012).

According to the Court of Appeal, civil liability is based on fault under Article 1365 of the Indonesian Civil Code, which allows for compensation if it can be established that a tort caused the damage to the environment. In cases involving environmental damage, strict liability applies as the basis for compensation where the fault element is not required to be established. The defendant must establish that no act violating the law was committed to avoid being held accountable. This implies a reversal of the burden of proof, which is somewhat perplexing given the judges' apparent blending of the liability rules. Although strict liability is a consideration, tort elements appear in place of strict liability.

Banda Aceh Court of Appeal also cited strict liability in the *dubio pro natura* principle. The Court of Appeal argued that when implementing the in *dubio pro natura* principle, two factors must be considered: negligence and strict liability. According to the Court of Appeal, in negligence cases, the party who caused the damage must be held accountable if his exercises of due care fall short of the required standard. Strict liability requires the perpetrator who causes damage to be accountable for compensating and reclaiming the environment. Finally, the Court of Appeal determined the case based on tort and made no further reference to strict liability.

The previous hearing in the second case, Ministry of Environment vs. PT Surya Panen Subur, determined that the defendant is not liable for a forest fire that occurred on his plantation. Although the judges considered and mentioned strict liability several times, the Supreme Court's decision revoked the previous decision. The final decision in this forest fire for land clearing case is based on tort law (Supreme Court, 2017). When a business activity is classified as a serious threat to the environment, the Court explains that anyone in charge is held liable for any damage or loss it causes, regardless of the fault committed. The defendant is liable based on strict liability, as evidenced by the consideration that a forest fire on the defendant's plantation posed a serious threat to the environment. The imposition of strict liability, in this case, appear with the consideration that forest and peatlands area have essential ecological function for a human being at present and in the future time as water protection, earth's lungs, habitat for flora and fauna as well as important God creation that must be preserved and protected. In this case, both liabilities are considered, with strict liability taking precedence in the analysis but tort serving as the final decision ground.

CONCLUSION

Several factors contribute to the Indonesian Court's inaccurate interpretation of the strict liability principle provided by Article 88 of the 2009 Environmental Protection and Management Act in forest fire litigation, including (i) a lack of a legal framework and (ii) weaknesses in law enforcement. Because the legislation and regulations governing strict liability are unclear and insufficient to support the application of strict liability due to a lack of explicit limitation and definition, additional regulations should be issued to ensure that all strict liability instruments are enforced. The disadvantage in law enforcement as judges and plaintiffs have different conceptualizations of strict liability has been demonstrated in previous cases, where most judges consider the strict liability as an element of the tort, requiring proof of fault in a strict liability lawsuit, and frequently interpreted as *res ipsa loquitur* or reversal of the burden of proof. The lack of environmental certified judges exacerbates this problem.

The application of strict liability in Aceh forest fire cases in the Ministry of Environment Lawsuit directed to PT Kallista Alam and PT Surya Panen Subur can be considered inaccurate because it appeared in some form that did not reflect the concept of strict liability as liability without fault. While the Supreme Court applied the principle in a review of Ministry of Environment v. PT Surya Panen Subur, the Court continued to base its decision on tort law while elaborating on the strict liability principle and its elements. In Ministry of Environment v. PT Kallista Alam, the plaintiff referred to strict liability in the lawsuit, but the Court did not respond. Additionally, the plaintiff

concluded that the defendant's conduct contributed to the forest fire as *res ipsa loquitur*, implying the imposition of strict liability as *res ipsa loquitur*.

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