The Absolute Responsibility Principle in Environmental Environment System

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Abstract: The application of the principle of absolute liability in the environmental system is not based on the definition of error of negligence or intentional misconduct (not based on fault liability) Problems and Risks are posed by various factors (multiple causes) is difficult and expensive to prove. As a ratifying State to the CLC 1969/1992, Indonesia has implemented compulsory insurance either in legislations or in practice. The implementation in legislation, particularly rules related to compensation and environmental. The application of the Absolute Liability Principle in the environmental system is not based on the evidentiary aspect of the error form factor of negligence or error of intent (not based on an error obligation) other than a legal approach focused on the consideration of the existing risk management as well as the underlying problems and or environmental risks posed by various factors (multiple causes) are difficult and expensive to prove. Indonesia as a country that has ratified CLC 1969/1992 has applied provisions on insurance obligations. (Compulsory insurance) either into the provisions of legislation or in practice in the field. However, the application to the legislation still requires the claim of compensation for compensation and the cost of restoring the environment.

Keyword: Strict liability principle, environmental system.

1. Introduction

Reform era that many want to realize the condition of legal certainty, social justice, climate and atmosphere of democratization, the establishment of human rights, as well as the benefits of National Development in the life of the community, is actually a strategic opportunity and potential to realize the realization of the Absolute Principles of Absolute Responsibility Legal compliance and environmental management by utilizing the role, ability and support of the people's voice.

The effectiveness phenomena of the National environmental Law is factually still considered low, this situation provides a bad image for legal certainty, social justice, and the benefits of National Development, and even in chronic circumstances will form unexpected conditions such as decreasing government authority in implementing various norms and requirements Which has been determined in the law of the Environment, the decreasing of legal compliance and order in the life of the society which in the nadir will form an anomic atmosphere that is harmful to the sustainability of development as well as the condition of National resilience; The waning of the legal forces which can lead to a sense of community dissatisfaction and disobedience to the law enacted; And create a bad stigma for the national economy that can reduce the attractiveness of foreign investment and the formation of a pessimistic feeling from the national economic actors in global market competition. Taking into account these conditions and considering the nature of the legal system. The environment is very specific in its legal practice, it is necessary to arouse the willingness and ability to optimize and dynamist the legal effectiveness of every juridical aspect which is formalized in the Environmental Law System, so that the norms and or environmental requirements applied in the Legal System Environment can be made as self...
regulation in attitude and behavior of citizen and or become self motivation for development process in improving society prosperity of life. The above efforts should also be made in realizing the application of the Strict Liability Principle as legal aspects of the Environmental Law System by using various tools contained in various aspects of community life.

To optimize and dynamists the application of the legal aspects of the principle of Absolute Responsibility in the arrangement of law and environmental management, it is necessary to conduct research and assessment on various legal forms and or legal forms which include its legal containers and or its legal content, legal content and or legal application Content), as well as legal conduct (legal conduct) which provides the color and or legal ideology.

2. Analysis

2.1 Strict Liability

The definition of absolute liability or strict liability, ie, the element of error does not need to be proven by the plaintiff as the basis of compensation payment, this is a lex specialis in the formality of a lawsuit against unlawful conduct in general.

Principle of Absolute Responsibility in Legal Studies through the approach of Legal Culture (legal culture) as legal aspects in Environmental Law are:
1) The principle of Absolute Responsibility which has been agreed upon as a legal aspect in the Environmental Law System shall be implemented and implemented in accordance with the values, culture, spirit, and pattern of life of the national community;
2) Absolute Responsibility Principle is an alternative law which was originally enacted to find solutions in the settlement of environmental problems and / or disputes, and to give attention or advocacy in legal compliance and environmental management that require immediate and complex handling;
3) Implementation of the principle of Absolute Responsibility as a legal aspect in the Environmental Law System is implemented by taking into account various success factors, among others, as follows:
   a) Such legal aspects should be designed as a demand for demand in the operational activities of production;
   b) Implementation The legal aspect should be supported by the readiness of legal institutions and funding agencies;
   c) The application of legal aspects is done with the principle of kemitaraan, agreement and togetherness between parties;
   d) The meaning of the word Absolute responsibility is not connoted as a sanction or burden by its legal subjects, but rather defined as self-regulation for the activity of the object of the activities of its legal subjects; and
   e) The application of the legal aspects must provide a broad role to each party, so that and its potential in practice law.

2.2 The Principle of Absolute Responsibility in Environmental Law.

According to Daud Silalahi (1996: 129-132) the Implementation of the Strict Liability Principle as a legal aspect in the Environmental Law System is based on the demands of development in the life of the community, although the meaning and mechanism and or practice of law are still limited, this can be observed in various ways as follows:
According to National Environmental Policy Act (NEPA), (1986: 9:601-675). The Implementation of Absolute Responsibility Principles shall be applied only temporarily to various project development activities as well as industrial business, trade and transportation activities which are deemed to have the potential to create an abnormally dangerous environmental risk with the following characteristics:

a) The activities can have an impact! Human survival, natural ecosystems and/or material rights;

b) The risk of danger is large and/or difficult to overcome in a variety of ways that are unreasonable;

c) The existence and/or the results of its activities are less beneficial to the surrounding community; And or

d) The activity is a high risk production activity and/or the type or location of its activities is deemed unfeasible to be undertaken or continued.

According to Rudiger Lummert (1980): The application of such legal aspects shall be limited to the matters set out in the Civil Liability Convention of 1969; and According to Mochtar Kusumaatmadja (1972), The legal aspect is applied to various industrial business activities, trade, and or transportation that are considered potential to pose an environmental risk; According to Mas Achmmad Santoso, (1997: 27-28) The application of the principle of absolute responsibility as a legal aspect in the environmental law system is based on the following ideas:

a. The legal principle is applied as a means to apply various provisions established to safeguard and/or utilize natural resources and spatial efforts effectively and efficiently;

b) The principle of law is applied as a strategy and/or politics to overcome various difficulties and/or various weaknesses in legal arrangement and environmental management;

c) The application of legal aspects in environmental law which is a positive legal element is expected to become a model reference in the effort to realize social justice conditions, legal certainty, the establishment of a climate of democratization, the upholding of human rights, as well as the benefit of national development in the life of the community;

d) The Application of such legal aspects in the provisions of environmental law legislation may serve as the basis for the establishment of funding institutions for legal arrangement and environmental management.

According to Heinhard Steiger, (1980: 1-27), The benefits of applying the principle of absolute responsibility as a legal aspect in legal arrangement and environmental management are as follows:

1) Establish a guarantee of coverage from each party to the various risks of the impact and/or environmental crisis occurring;

2) Creating a form of togetherness and nuance of democratization and social justice in the development of the sector of environmental management, especially in relation to the increasing demands of needs and interests in community life;

3) Increasing the credibility of the government and society in the effort to create a climate of democratization, as well as the enforcement of human rights in the regulation of law and environmental management; and

4) Create conditions of stability needed in national development as well as efforts to achieve sustainable national security.

According to J. Gordon Arbuckle, (1993: 482-559), The application of the principle of absolute responsibility as a legal aspect in the regulation of law and environmental management contains various patterns of action, among others, as follows:
1) The pattern of applying the legal liability burden in the form of payment of penalties (restitusidan or penalties) associated with the occurrence of loss of right events from the public;

2) The pattern of enforcement of the provisions and or legal sanctions in connection with the occurrence of an environmental risk containing the claim of responsibility to the source of the cause;

3) Pattern of punishment in the form of corporal punishment (incarceration), penalties (pinalties), and / or the revocation of certain rights in connection with the occurrence of a violation and / or crime that has been enacted in the provisions of environmental law legislation;

4) The pattern of applying the obligation to repair and / or restore (remedy requirement) the environmental media in connection with the occurrence of environmental impacts resulting from an activity that requires a certain amount of funds for recovery (clean up cost) and or for closure requirements (closure requirement cost)

5) Compensatory, punitive, and / or voluntary compensation obligations, in relation to the occurrence of environmental risks resulting from the construction of projects and / or certain business activities; As well

6) Provision of authority to the government as a regulatory agency to be able to apply the principle of absolute responsibility in political and national development activities in the sector of environmental management through various instruments of legal arrangement. Implementation of Principles of Absolute Responsibility as a legal aspect in the System of Environmental Law is essentially a variety of manifestations in the fulfillment of legal interests as follows:

   a) Implementing strategies to establish self-help, self-preservation, and self-defense in handling and solving various environmental problems;

   b) Installing signs to establish the order in the construction of projects and or business activities that have potential impacts and or environmental risks; and

   c) Establish procedures for performing and realizing personal injury against various forms of material loss or demand from groups or public parties to improve environmental conditions in relation to the occurrence of risks to the environment in the ecology of life.

According to Indonesian Center for Environmental Law (ICEL) (42-43), From various judicial decisions (Restatement of Torts) can be selected various types of activities that can and have been subject to the provisions contained in the legal aspects of the principle of absolute responsibility, which are as follows:

1) The types of activities that contain and / or have a high risk of human life, the condition of the natural ecology, and / or property (the existence of a high degree of some harm to the person, natural, or chattel of others)

2) Activities that may be possible to cause a great degree of danger (like that harmful result of it will be great);

3) Activities that are not accompanied by the manager's ability to eliminate risk, both in their prevention and responsibility (liability to eliminate risk by the exercise of reasonable care) (hal.5-6)

4) Activities that have a value of benefits, but not an activity that is commonly done (extent to wich the activity is not a matter of common usage);

5) The location of activities is not in accordance with the conditions of carrying capacity and / or environmental capacity (inappropriateness of the activity to the place where it is carried on); and
6) The nature of the hazards contained in its production activities discourage the meaning and/or benefits of such activities (extent to which its value to the community is outweighed by its dangerous attributes).

According to Askin Kusumaatmadja (1996), The Implementation of Absolute Responsibility Principle as legal aspect in Environmental Law System is based on the following matters:

1) The International Convention concerning the material responsibility of third parties in the field of nuclear energy (Paris 1960), civil liability for nuclear loss (Vienna, 1963), civil liability for losses from oil pollution (Brussels, 1969), international responsibility for losses caused by space objects (Geneva, 1972), civil liability for losses from environmentally harmful activities (Lugano, 1993), and responsibility for environmental impacts related to the production, transport and management of hazardous toxic waste (Bassel 1994);

2) Market share liability theory applied in the aspects of legal arrangement and environmental management, especially in the program of environmental damage and pollution control;

3) The interest of the community in its desire to form a joint power and ability to simultaneously protect, preserve and/or manage the environment simultaneously; and

4) A variety of alternative mechanisms, capabilities, containers, and funding agencies in the form of liability trust funds, superfunds, closure liability trust funds, and or readily available funds that can support and or support the implementation of law enforcement and environmental management programs.

2.3 The application of the Absolute Liability Principle as a legal aspect

The application of the Absolute Liability Principle as a legal aspect in the Environmental Law System is almost identical and closely related to the application of the legal aspects of compensation provided for in the provisions of civil law legislation specified in articles 1243, 1365, and 1865 Burgerlijk Wetboek (BW). According to Richard A. Posmer (1990:14), The demand for liability in the legal aspects of indemnity determined in the civil law is based on the aspect of error as the core of liability based on fault, so that if the defendant is able to show the various proofs of caution done through the reverse verification process (omkering van bewijslast) then They may be exempt from the charge to exercise the care of an ordinary prudent and careful man to indemnify him. Proof of the mistake (negligence, schuld, or fault), moreover the deliberate aspect of the impact and or risk of environmental damage is very difficult to be realized in the practice of Environmental Law, because to prove that there are mistakes in various cases and/or environmental events takes a long time. Large enough, and high technical capability, so that if the concept is applied in the legal arrangement and environmental management then in addition will complicate the improvement of environmental conditions can also increase the burden of affected communities and or environmental risks.

The application of the legal aspect of the absolute responsibility in the environmental law system is not solely based on the element of error, because it is expected from the application of the legal aspect is that the immediate response of the condition of the affected community and to the immediate repair of the environmental condition in order to be re-functioned as before, The concept of applying aspects of responsibility in the management of the environment is not based on the liability without fault but is more directed to the fulfillment of the right and the obligation to form a good and healthy environment. According to Robert L. Rabin (1990:1), The concept of applying the legal aspects of the principle of absolute responsibility in the regulation of law and environmental management is manifested by the form of compensation to assist the fulfillment of public interests individually and publicly related to the continuity of environmental functions (private and public compensation). According to Mas Achmad
Santosa (13_15), The concept of applying the principle of absolute responsibility in the environmental law system in most countries of the world is strict liability to activities that pose risks that could endanger health or survival. Human (significant risk), especially to environmental risks caused by various activities classified as extra hazardous, ultra hazardous, or abnormally dangerous.

The legal aspect of absolute responsibility in the provisions of Article 21 of Law Number 4 of 1982 and Article 35 of Law No. 23 of 1997 and Law No. 32 of 2009 are defined as strict liability and not as absolute liability, because it is enforced as follows:

1) Concept Absolute responsibility is directed solely to various project development activities and / or business activities that have the potential to have a major and / or important impact on environmental conditions and or activities related to hazardous and toxic materials;

2) The concept of responsibility for environmental risks shall be determined within the maximum limits established by a certain calculation and enforced under a legitimate provision of legislation; and

3) In the interest of risk management, a proof process is required, among others, as follows:
   a) The presence or absence of environmental risks expressed as acts that interfere with the interests of others;
   b) To the extent that prevention efforts have been taken by the parties in anticipation of such risks
   c) Determination of how much the burden of legal obligations that must be accounted for. In this case the evidentiary aspect is not an effort in the process of legal defense but is solely focused on the interest of the insurance coverage.

According to Arnold H. Loewy (1990), The application of the principle of absolute responsibility to a case and or environmental problem is carried out in accordance with the environmental rights and procedures specified in the environmental law, so that for the purpose of administration in the framework of the fulfillment of environmental procedural it is necessary a process of proof of the condition of pollution and or environmental damage caused by the activity human. According to L.B. Curzon (1990) Various reasons do not need to prove the error aspect for the defense of the law in the concept of applying the principle of absolute responsibility to the environmental law system, among others as follows:

1) Evidence of the error element (mens rea) in various cases and / or environmental problems is very difficult and expensive to do;

2) The magnitude of the degree of harm and suffering arising from an environmental risk concerning social life that requires immediate action and mitigation;

3) The application of the legal aspects is actually intended to establish a guarantee of financial readiness for the prevention of environmental crises;

4) Implementation of the principle of law aims to create conditions of legal certainty, social justice, and or upholding of human rights, in addition to assisting and or supporting efforts to improve people's lives.

The evidentiary process that applies in the application of absolute responsibility in the environmental law system as applied in the compensation system, so that the proofing is done is simpler and based on the main purpose to facilitate the settlement of the problem. According to Komar Kantaatmada (1981:127), that the application of the principle of absolute responsibility in the regulation of law and environmental management is manifested in the form of compensation as done in the system of compensation in various cases of oil pollution at sea which is established by various concepts, among others as follows:
a) CRISTAL (Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution);
b) TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution); and
c) Funds Convention or CLS (Convention on The Civil Liability for Oil Pollution Damage, Brussels 1969).

The concept of applying the principle of absolute responsibility as a legal aspect in the environmental law system is essentially the application of a special provision (lex specialis) which is enacted in a general provision (lex general) which regulates unlawful acts (onrechtmatigedaad) specified in the provisions of article1365 civil law. Praktek of this kind can actually be regarded as a legal aberration, but on the other hand is considered a form of legal reform in realizing modern law that fit the needs of people's lives.

According to the provisions of civil law (A. Hamzah: 1995: 128-132), it requires compliance with schuld, schade, causaal verb and, and relativity in the circumstances of the law (relativiteit), and it is no longer appropriate to the conditions of life Social society today that requires aspects of speed, effectiveness, and or efficiency in all things.

The mechanism and or procedure for settling the case lawsuit and / or demands for the coverage of environmental problems is not yet regulated and determined in a lawful law, so that with this situation many environmental lawsuits are filed based on the procedures and mechanisms of the General Courts, while for lawsuits against frequent environmental issues Conducted by the Government on behalf of the public interest is based on the provisions of Admonistrative Law through the Procedures and mechanisms of the State Administrative Court, this raises a legal aspect which is inconsistent with the intent and purpose of the concept of the implementation of the Absolute Responsibility in the Environmental Law System.

3. Concluding Remarks

Implementation of the Principle of Absolute Responsibility as a legal aspect in the Environmental Law System contains the interest to utilize various mixed tools of compliance to realize the channeling for environmental risk risks (liability) as well as fund management for the prevention of environmental risks encountered (Trust funds for environmental risks management).

Implementation of Principle of Absolute Responsibility as legal aspect in Environmental Law System has meaning giving obligation to each party to manage environmental risk (risk assessment), while application of Mechanism of Insurance Service as instrument of law compliance and environmental management have role to realize the application of Absolute Responsibility Principle through process of transfer Guarantee of coverage and management of funding to anticipate various environmental risks.

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