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RES IPSA LOQUITUR DOCTRINE IN PROOFING PROCESS OF ENVIRONMENTAL DISPUTE

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Abstract

The purpose of this study is to discover the philosophy of accountability in environmental disputes and discover the legal rationality of the validity of the Res Ipsa Loquitur doctrine in resolving environmental disputes in Indonesia. The results of the study show that 1) The philosophy of accountability in environmental disputes is the human right because of the existence of human beings as conscientious, intelligent, conscious and free beings who use their conscience, reason, awareness and freedom (ontologism) where their fulfillment is based on moral legislation (epistemological) to bring about justice, legal certainty and expediency (axiological) and 2) The rationality of the legality of the doctrine of res ipsa loquitur is in the environmental dispute is first, the difficulty of proving mistakes (intentional or negligence) in environmental disputes; Second, reversing the burden of proof still requires proof of innocence and causality between loss and mistakes; The three absolute responsibilities still require proof from the defendant regarding the loss caused; Fourth, the allegation evidence still requires the support of other evidence, so that a mechanism for resolving environmental disputes in favor of the environment (novio pro natura) is needed without proof of the mistakes, losses and causality of both but sufficient with the fact of environmental damage that is located in the power of the defendant so the allegation that arises is presumption by factuality with a form of responsibility to compensate absolutely (absolutely compentation liability).

Keywords

Doctrine, res ipsa loquitur, environmental

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Introduction

An environment is a form of the almighty God's mercy to all living creatures and becomes space for life to benefit humans. Recognition of the important role of the environment is recognized by the Republic of Indonesia's constitution, strictly regulating citizens' rights to a healthy environment. No one party for any reason and any conditions can reduce these rights. Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (2nd amendment) stated, "everyone has the right to live in physical and mental well-being, to live and get a good and healthy living environment and the right to obtain health services" The provisions in Article 28 H paragraph (1) give a clear signal to the state to provide protection and fulfillment of citizens' rights to the environment both physically and socially because this is an inseparable part of the essence and existence of humans. Based on this article and strengthened by Article 28 of the Charter of Human Rights (Universal Declaration of Human Rights), the right to have a good and healthy environment is a fundamental constitutional right (Suparto Wijoyo, 2009).

The human rights to have a healthy environment, both physically and socially, are regulated through Article 65 paragraph (1) to paragraph (5) of Act No. 32 the year of 2009 on Protection and Management of the Environment (State Gazette of the Republic of Indonesia The Year of 2009 Number 140, Supplement to State Gazette of the Republic of Indonesia Number 5059), hereinafter abbreviated as Act of PPLH. This regulation shows the importance of the environmental element in supporting human rights, which makes these rights not be reduced under any circumstances and reasons that are termed as non-derogable. Pollution, ecosystem damage, natural resources scarcity, natural disasters, horizontal conflicts, refuge, social epidemics, social conflicts, destruction of local systems, biological changes, decreased quality of life, the emergence of social diseases are the many realities shown by the impact of development and progress which is not accompanied by responsibility and this is a form of human rights neglect nowadays Due to the fact of there is no sense of human responsibility in managing the environment properly, it, then, creates various problems lead to environmental disputes (Majda El Muhtaj, 2004).

Article 1 point 2 of the Act of PPLH has regulated environmental management mechanisms starting from planning, monitoring, supervising, controlling, restoring, and law enforcement if some is breaking the mechanism. One of the legal instruments regulated in the Act of PPLH is a civil law instrument besides criminal and administrative law instruments. Substantially, the Act of PPLH has regulated and provided content on the fulfillment of civil rights for individuals, groups, and/or other civil legal entities with legal consequences if an action causes harm to one party; one of the law enforcement instruments used is civil law instrument. The legal consequences in question include, among others, giving the injured party the right to file a lawsuit to obtain compensation and/or remedy for the damage and/or loss caused.

Liability in environmental law is a condition in which a person or a civil legal entity has an obligation to be responsible by paying compensation and/or taking action as a result of an act that caused losses to other parties, either individually or collectively. It led to the link between accountability in the environment and the burden of proof. Proofing is presenting legal evidence by the parties in a dispute (Siti Sundari Rangkuti, 1987).

Evidence aims to build legal standing between the two parties concerning their right, so that truth with the value of certainty, justice, and legal benefit is obtained. In the proofing process, the parties provide sufficient grounds for the judge to make a decision. In the judicial process, the judge has the authority and duty to accept and examine the basis for filing a lawsuit by the plaintiff and the relationship between the grounds of the claim and the losses incurred and must be proven by each party. The proving process is needed to give judges confidence in making decisions based on the truth of the relationship between arguments and the evidence submitted in a dispute. The evidence submitted and received is still limited to the evidence stipulated in the procedural law; it has not been updated, so that the judges are still adhering to the old system and have not made any legal breakthroughs through the acceptance of new proof beyond those regulated in the civil procedural law, However, it does not mean the entire case process is still using conventional evidence.

Environmental management has been clearly regulated in Act No. 32, the year 2009, and its implementing regulations that provide clear norms on the rights and obligations of a business actor or a person in carrying out their activities. Causes-loss environmental pollution and or damage become the basis for a person or group to file a lawsuit in the proofing process, either by using a reversal of the proving burden or without reversing the proving burden, the plaintiff faces the difficulty of accessing the defendant's evidence of guilt or the difficulty of proving the harm he has experienced scientifically since presenting scientific evidence requires a complicated process and high cost. There are visible facts that sufficiently prove a need to develop thought in the settlement of environmental disputes where the losses incurred in this particular situation. There is a connection between these facts and the losses that occurred. There is no other cause besides the actions of the defendant (Siti Sundari Rangkuti, 1987).

The proving mechanism using civil procedural law or using the doctrine of strict liability basically does not provide convenience to victims of the environment because they still have to prove guilt for their losses. On the other hand, they have to accept being defeated due to the plaintiff's inability to prove his innocence or that he did not cause the loss. The difficulty faced in the proofing process of environmental cases is needed to be further scrutinized and studied because the proofing process in handling environmental cases is closely related to efforts to create a sense of justice, benefit, and legal certainty. The application of the Res Ipsa Loquitur doctrine is an effort to prevent injustice when the victim of an unlawful act has to bear the loss caused by another party by himself. Still, the victims do not know exactly what happened because there is

no power, authority, and access to the tools or events that occurred to be difficult for them to prove illegal acts toward them (Alexandra Indriyanti Dewi, 2012).

The enactment and or application of the Res Ipsa Loquitur doctrine has a special impact on acts against the law (Article 1365 BW) with multiple perpetrators or one of many people, the exact person of which is unknown the victim. The rule of law, which is generally accepted, is that the victims of an illegal act (Article 1365 BW) must prove who among the many people actually committed illegal acts. By law, they are liable to provide compensation. Case in point: 'a victim suffered an accident due to the explosion of a drink bottle he had just bought. The Res Ipsa Loquitur doctrine is suitable to be implemented so that either the seller, agent, or producer can be held responsible for the incident, without the victim's need to prove who among them was actually guilty (Alexandra Indriyanti Dewi, 2012).

Research Methods

This research is a normative juridical descriptive-analytical research. The data was collected through library research and field research, and the library research stage was carried out to find secondary data using primary, secondary and tertiary legal materials. In this stage, a literature review is also carried out on several laws and regulations in several countries that are relevant to the problems studied.

Discussion

1. Purpose of Law Theory

Law has goals to be achieved or referred to as legal objectives. The purpose of the law is a direction or target realized by using law as a tool or instrument to regulate order and behavior in society (Thomas E. Davitt, 2012). The primary and first objective of the law is social order. The need for social order is a fundamental condition of an orderly human society. Apart from that, another goal of the law is to achieve different content and size of justice according to society and its era (M. Hadin Muhjad et al., 2006). The discussion of legal objectives is basically closely related to the philosophy of liability in environmental dispute resolution. The philosophy of accountability will discuss three aspects, namely ontology, epistemology, and axiology, so it is necessary to describe the theory of which sees three legal objectives. It is justice, benefit, and legal certainty.

a. Justice

Justice, according to Aristotle, is the feasibility of human action. Feasibility is defined as the midpoint between the two extremes of being too much and too little. If the two people have the same predetermined size, they will receive an unequal share, whereas a violation of that proportion means injustice. Types of Justice, according to Aristotle, are as follows (Tanya L Bernard, Simanjuntak N Yoan, and Hage Y. Markus, 2006):

1) Distributive justice. It is justice related to the distribution of services and prosperity according to work and abilities;

2) Commutative justice. It is justice related to equality received by everyone regardless of individual merits;

3) Natural justice is justice that comes from natural law;

4) Conventional justice. It is justice that binds citizens because justice is decreed through power.

John Rawls proposes another justice point of view as he described the theory of justice as fairness. It is a theory of justice that generalizes and leads to a higher abstraction of a social contract's traditional concept. The main point of justice is society's basic structure, more precisely, how society's main institutions regulate basic rights and obligations and determine the distribution of welfare from social cooperation. The result is extreme, and it appeared from the start as a starting point. Concretely, the influence of society's basic structure is tremendous to determine how justice is (John Rawls, 2006).

John Rawls said when we find formal justice, the rule of law, and respecting society's legitimate hopes as constitutional rights as part of a just political constitution in a social contract, we will find substantive justice. In short, justice in the view of John Rawls is justice in the sense of fairness while still distinguishing between justice and fairness. To know and discover the existence of fairness and justice, according to Rawls, first, we need to look at the basic structure of society. From a certain basic structure, certain public rules will also be generated. If the basic structure is a just political constitution and a just system of institutions, then justice as fairness will probably be achieved (John Rawls, 2006).

b. Law Certainty

The formation of law is built on the main principle to create a clarity of the law, and it is the certainty of law. The basis of law is the heart of the law so that with the certainty of law, then, a law will gain concrete power (Satjipto Rahardjo, 2012). This is in line with Van Apeldorn's (Sudikno Mertokusumo, 1993) view that the law's certainty has two aspects: the law's determination in terms of concrete and legal security. This means the justice seeker knows what is legal in a particular case before initiating matters and protecting the justice seeker.

Kelsen, as quoted by Peter Mahmud Marzuki, argued that law is a system of norms. Norms are statements that mainly emphasize what should be or das sollen and das sollen are stated in a statutory regulation, which then becomes a guide for humans to behave and at the same time a guide for the state to impose sanctions for violating established rules (Peter Mahmud Marzuki, 2008).

c. Benefit

Friedrich Karl von Savigny is a pioneer of the historical school of thought, which gave a concept that law will not have validity and/or cannot be universally applied because every society builds its own legal environment, manners, customs, and unique language. Starting from this view, Eugen Ehrlich argued that good law is in line with society's values. This thinking directly points to the importance of living law values in forming law and legal orientation (Widodo Dwi Putro, 2011).

The next view is from Roscoe Pound (Widodo Dwi Putro, 2011). Law is a social engineering or social control in society, as he argued, aims to fulfill social and individual needs for justice ideals. Therefore, the study of law must see the real social effects caused by the operation of legal institutions and doctrines. The legislation is made not solely for the makers' consideration and desire but also for a sociological study when preparations are made. Law must be seen in its social context to contain various human and social dimensions fully into it.

Jeremy Bentham terms usefulness or benefit as happiness (happiness). In this case, the usefulness of the law depends on its ability to give happiness to people (Widodo Dwi Putro, 2011). This view then underlies Soni Keraf (Sony Keraf, 2010) to argue that an action chosen will ultimately be good if the action has good consequences and emphasizes the practical use for individuals as many as possible.

2. Proofing Theory

The law of proofing process in civil procedural law occupies a crucial place. Procedural law or formal law aims to maintain the material law. So, formally, the law of evidentiary regulates how to provide evidence as contained in the RBg and HIR, while materially, the law of evidentiary regulates the acceptance of proofs with certain evidence at the court and its strength in the proofing process. In responding to answers before the court, the parties can state some events or incidents used as a basis for affirming their civil rights or for denying the civil rights of other parties. Of course, these incidents are not sufficient either in written or spoken but must be accompanied by legal evidence to ascertain the truth. In other words, these incidents must be accompanied by juridical evidence (Retnowulan Sutantio dan Iskandar Oeripkartawinata, 1983).

Based on the explanation above, the parties must submit their evidence to confirm their arguments or assist the other party's arguments in the proofing process. In the author's point of view, the proof is an instrument as the basis for consideration or a ratio decidendi used by judges to arrive at a conclusion that will serve as a decision.

3. Legal Protection Theory

In the beginning, the theory of legal protection stems from the theory of natural law pioneered by Plato. Natural law theory stated that law comes from God so that it is universal and eternal, so law and morals cannot be separated. This is as quoted by

Satjipto Rahardjo (Satjipto Rahardjo, 2000). Satjipto Rahardjo also stated that law functions to integrate and coordinate various interests in society by limiting these interests because, in traffic of interests, protection of these interests can only be done by limiting interests on the other side (Satjipto Rahardjo, 2000). Rescue Pound argued that there are three categories of interests protected by law, it is public interests, social interests, and private interests.

Marzuki quoted Ronald Dworkin as saying that rights are not what is formulated but the formulation's underlying value. The essence of rights gives rise to the theory of interest and the theory of will, as put forward by Jeremy Bentham and Von Jhering by placing rights as interests protected by law. There are three elements in the right; it is protection, recognition, and will (Peter Mahmud Marzuki, 2006). Rights are the power given by law to a person and closely related to rights and obligations, the right to pair with obligations. If a person has rights, then his partner is the existence of obligations to others (Agus Yudha Hernoko, 2008).

Peter Mahmud Marzuki argued that rights are inherent in humans by nature. Because of this right, the law is needed to maintain the continuity of the existence of rights in social life patterns, and due to the right, the law was created. The state does not create these interests because these interests already exist in social life, and the state only chooses which ones to protect (Peter Mahmud Marzuki, 2006).

4. Concept of Doctrine

The word "doctrine" in legal science is termed as sientia iuris, reshtswissenschaft, rechtsdogmatik, doctrine of law, legal dogmatic (Aleksander Peczenik, 2003). As briefly stated by Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2014), the doctrine results from jurisprudence study, as stated in legal writings (treatises). Ishaq (Ishaq, 2008) put forward the next view related to the term of doctrine. It is a teaching that becomes a place for judges to find the law. David Pieterz De Vries as quoted by Peter De Cruz argued that the term doctrine had long been used in French law since the 19th century, which was defined as a collection of opinions on various legal issues expressed in books and articles and used to collectively characterize the people involved in analysis, synthesis, and evaluation of material sources of law, members of the profession in the field of law who pay special attention to scientific works and have a reputation as an authority. So, the doctrine is like jurisprudence and therefore is best translated as the opinion of legal writers/scientists or the writings of legal scientists (Peter De Cruz, 2010).

Doctrine is also defined as the analytical study of law or doctrinal study of the law's science. The legal doctrine is sometimes called legal dogmatics. These two terms are commonly found in civil law, and meanwhile, in anglo-American, the terms legal doctrine and legal dogmatics are not very well known (Bernard Arief Sidharta, 1999). Sudikno Mertokusumo argued that doctrine is the opinion of legal scholars becoming sources of law, where judges find their laws (Sudikno Mertokusumo, 1996). The differences between civil law and common law in the regulation and application of law

do have many differences; however, the two are close to one another. The boundary between the two was not significant. Countries in the common law system have adopted many of the principles inherent in civil-law countries. It was stated by Jack Beatson and Daniel Friedman as followed by Simamora (Yohanes Sogar Simamora, 2009).

5. Res Ipsa Loquitur

The term Res Ipsa Loquitur doctrine is defined as the thing speaks for itself, and literally, the thing speaks for itself is a thing that speaks. The acts against the law Civil law place "this doctrine" as a doctrine that is only relevant and applicable to cases of illegal acts in the form of negligence and does not apply to "deliberate" (Yannes Simanulang, 2012).

The Res Ipsa Loquitur doctrine in civil law is a doctrine that helps the victim (plaintiff) in proving his case. The evidentiary mechanism in civil law determines that the party filing a lawsuit has the burden of proving the perpetrator's guilt, whether it was negligence or deliberate action. However, the proofing mechanism frequently gives the victim difficulties to prove that there is an offender that causes an act to be detrimental to the victim (Yannes Simanulang, 2012).

In the Black Law's Dictionary, it is said that:

> "Res ipsa loquitur is an appropriate form of circumstantial evidence enabling the plaintiff in particular cases to establish the defendant›s likely negligence. Hence the res ipsa loquitur doctrine, properly applied, does not entail any covert form of strict liability ... The doctrine implies that the court does not know and cannot find out what actually happened in the individual case. Instead, the finding of likely negligence is derived from knowledge of the causes of the type or category of accidents involved" (Bryan A. Garner, 2009).

Res Ipsa Loquitur, based on the definition above, is the right form of circumstantial evidence allowing the plaintiff in certain cases to determine the possibility of the defendant's negligence. Therefore, the Res Ipsa Loquitur doctrine, suppose to be properly implemented, does not require a strict accountability form. The doctrine implies that courts do not know and cannot find out what actually happened in individual cases. Instead, the findings of possible negligence come from knowledge of the causes of the types or categories of the accidents.

In the doctrine of Res Ipsa Loquitur, the victim does not need to prove the element of guilt from the perpetrator. Still, simply he can show the facts that occurred and draw his own conclusion that the perpetrator is most likely to act against the law, even without showing how the perpetrator did the illegal acts (Hiariej Eddy O.S, 2012).

The doctrine of Res Ipsa Loquitur is basically a fragile presumption by the presence of evidence or rebuttable presumption so that if the perpetrator can prove otherwise, then the perpetrator is considered negligent based on the facts without having to prove the

element of error but enough with the fact of victim's loss where the loss is in full control of the perpetrator, and the absence of such an act of error or omission, the loss will not arise (Hiariej Eddy O.S, 2012).

The application of the Res Ipsa Loquitur doctrine led to initial allegations of error. It is simply by disclosing a result and facts that give rise to that result; the law assumes that the party suspected of committing an illegal act (Article 1365 BW) is deemed to have committed a mistake, without the victim needs to prove the mistake (Priyatna Abdulrasyid, 2002).

The Res Ipsa Loquitur doctrine aims to achieve justice, where the victim of illegal activity in certain cases is complicated to prove an element of negligence, especially if the evidence of an illegal act has good access to the perpetrator or under the control of the perpetrator, but it is difficult to victim to access, therefore it is unfair if the victim must bear the consequences of the act which is actually the negligence of the other party.

6. Environmental Disputes

The concept of environmental disputes according to the Act of PPLH Article 1 point 25 is "disputes between two or more parties arise from activities that have the potential and/or have an impact on the environment." Priyatna Abdulrasyid (Priyatna Abdulrasyid, 2002). Argued, in any dispute, one party may be the right party, it may also have elements of legal rights, one party may be right on one issue, and the other party is right in the other, or both claims are basically beneficial for both, or one party may be legally right, but the other may be morally right.

In the above view, it is not mentioned about the matter since, in the author's point of view, the next stage of the dispute is the emergence of the case, which is a situation where the disputing parties choose the court to resolve the issue between them. If it is seen from the beginning of the problem, then the problem starts with the conflict, then becomes a dispute, and finally becomes a matter. If a problem or conflict occurs between a group of people, then in the author's point of view, it is referred to as social conflict, which can then become a dispute and/or matter.

About the definition of environmental disputes, as said by Suparto Wijoyo, the format regarding environmental disputes regulated and confirmed in the Act of PPLH is a concrete result of the facts of pollution and environmental destruction. It implies if there is no environmental pollution and destruction, there will be no environmental disputes. This is what causes environmental pollution and destruction to become a conditio sinequa non for the occurrence of an environmental dispute (Suparto Wijoyo, 2009).

The emergence of the Res Ipsa Loquitur doctrine was an answer to the plaintiffs' difficulty in proving the perpetrator's guilt, whether it was done by negligence or deliberately because the evidence generally rests with the defendant. In applying the Res Ipsa Loquitur doctrine, the defendant has the burden to prove that the losses

incurred were caused by the plaintiff's contribution or by other parties. In applying the Res Ipsa Loquitur doctrine, the defendant has the burden to prove that the losses that occurred were caused by the plaintiff's contribution or by other parties.

Conclusion

The application of the Res Ipsa Loquitur doctrine through absolutely compensation liability requires clear regulations in acts so it can provide legal confirmation and certainty and avoid unfairness in its application by providing regulations on the requirements for its enforcement that is applied only to environmental damage other than what is regulated in Article 88 of the Act of PPLH, environmental damage occured on a small scale, and difficult to prove environmental disputes.

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