

Legal Protection For Environmental Damage As Result Of Forest And Land Fires In Indonesia

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Abstract

The aims of the research are to determine the essence of environmental damage and losses due to a forest and land fire. The type of study is a normative or doctrinal research supported by empirical data. The results of the research indicated that the environmental loss arising from environmental damage and/or pollution does not constitute a loss of private property owned by an individual (person), so juridically the right to sue for environmental damages is equated with the persons with rights and obligations of other legal subjects (human/legal entity). Compensation for environmental losses due to forest and land fires in Indonesia is carried out through the government's legal right. However, the environmental law has given authority to the government agencies responsible for carrying out public legal actions and at the same time the authority to enforce civil law, which is in the field of Private Law; The Attorney General's authority in submitting a claim for environmental compensation is carried out based on the existence of a special power of attorney from the government agency responsible for the environment. Law enforcement in the field of civil law, can be made arrangements to provide direct authority (attributive) to the prosecutor's institution to be able to make a claim for compensation for environmental damage caused by forest and land fires in Indonesia.

Keywords: Attorney General, Environmental Law, Forest Fire, Land Fire

1. INTRODUCTION

Indonesia places the right for citizens as a constitutional right to get a good and healthy environment. Article 28 H paragraph (1) of the 1945 Constitution affirms that every person has the right to live in physical and spiritual prosperity, to live and to have a good and healthy environment and to have health services. Therefore, the right of citizens to get a good and healthy environment is a human right for every Indonesian citizen and even human right that must be protected by the constitution.

In improve citizen's welfare through the development sector; the objectives of environmentally friendly development enabling people natural resources utilizer do not

damage the environment. For this reason, in natural resource management needs to consider environmental conditions so that its ecosystem is undisturbed.¹ Sustainable development is intended to maintain a balance between the interests of development and the environmental preservation, so that natural resources can still be utilized for development and the interests of future generations.

In the view of an ecosystem as a functional element in it contains organisms and the abiotic environment that influence one another. Interaction as one of the rules in ecosystems where the elements in an environment affect and reciprocal one another, it can be the biotic elements themselves, biotic and biotic, and/or abiotic and other abiotic.

In a theoretical perspective, the environment is seen as an absolute part of human life itself.² Therefore, in their lives the human must protect and secure the environment so that it can be done regularly and surely and can be followed and obeyed by all parties. Protection and security need to be contained in the form of legal regulations, so that a law will be issued nature interest-oriented law.³ Laws that govern environmental aspects must be seen as a system. A legal system as argued by Sunaryati Hartono consists of environmental legal subsystems. The environmental legal subsystem consists of principles, rules and also institutions and processes to realize into reality.⁴

The cause of pollution and/or environmental damage is an activity and related with that then any activities is prohibited from having an impact on environmental pollution and damage. If an activity causes and results in environmental pollution and damage, the State has the responsibility for this, the State through the government namely the government agency and regional government responsible for the environment, can take action in the form of environmental civil law enforcement to sue for indemnity of environmental losses caused by pollution and/or environmental damage by legal subjects as activities actor.

In Indonesia, one of the causes of pollution and environmental damage is forest and land fires. In 2015, economic losses from forest and land fires were the highest as long as history. Economic losses due to forest and land fires that year reached 221 trillion rupiah; even those did not include the calculation of losses from impacts on health and education.⁵ This figure is more than double the economic loss due to the earthquake and tsunami that occurred in Aceh in 2004.⁶ Law enforcement against forest and land fires can be done through several measures i.e. criminal, civil and administrative, from the three measures, criminal law are used as measure that are often used by the government in cases of forest and land fires, while for civil law enforcement in cases forest and land fires there are several court decisions that have been produced. The court decision in the civil law related with forest fire that was considered successful was the decision of District Court (PN) of Meulaboh No. 12/PDT.G/2012/PN.MBO between the Minister of Environment (Plaintiff) against PT. Kalista

¹ Maret Priyatna, *Pembaruan dan Harmonisasi Peraturan Perundang-undangan Bidang Lingkungan dan Penataan Ruang Menuju Pembangunan Berkelanjutan*, Hasanuddin Law Review (Halrev) Volume 1 Issue 3, December 2015.

² Syahrul Machmud, *Problematika Penerapan Delik Formil Dalam Perspektif Penegakan Hukum Pidana Lingkungan di Indonesia*, Mandar Maju, 2012, p. 62.

³ Munadjat Danusaputro, *Hukum Lingkungan Buku I*, dalam Syahrul Machmud, *Problematika Penerapan Delik Formil Dalam Perspektif Penegakan Hukum Pidana Lingkungan di Indonesia*, Mandar Maju, 2012, p.62.

⁴ *Op Cit.* Maret Priyantna.

⁵ Fajri Faddhillah, *Tanggungjawab Renteng Dalam Perkara Perdata Pencemaran Udara Dari Kebakaran Hutan dan Lahan*, Jurnal Hukum Lingkungan Indonesia, *Indonesian Center for Environmental Law*, Volume 3-Issue-1, July 2016, p. 52.

⁶ *Ibid*, p 52

Alam (Defendant).⁷

Data shows that 2.6 million hectares of forest and land were fired between June and October 2015,⁸ equivalent to the size of four and a half times the Bali's island. The fires caused by human activity are more than 100.000 fires⁹ to prepare agricultural land and to obtain cheap land. By not implementing a controlled fire pattern or adequate law enforcement, out of control, driven by drought and exacerbated by Elnino's effect. These broad economic and environmental losses recur every year, only a few hundred businesses and several thousand farmers benefit from land speculation and plantation practices.¹⁰

To sue indemnity for the amount of loss suffered must first be proven that the losses was ascertained as a result of an act against the law, in other words there is a causal relationship between the loss and an act against the law. This relationship becomes a central issue in law regarding acts against the law because its function is to determine whether a defendant must be legally responsible for actions that cause harm to others. Causal relationship is a factor that links the loss of a person with the actions of others.¹¹

Based on the frequency, forest and land fires occur repeatedly every year, according to the National Reports that the peak of the biggest forest and land fires in Indonesia occurred in 2015 which caused huge losses to the wealth of country. Not only that, until now after 2015 forest and land fires still occur regularly every year. Forest and land fires cause environmental damage and result in environmental losses, environmental losses due to forest and land fires based on several court decisions that have legal force and the value of environmental losses is relatively very large and fantastic. This huge loss when connected with efforts to sue indemnity through a civil suit to the court as explained previously is certainly not optimal even still very minimal.

At the practical level, efforts to return environmental losses due to forest and land fires are still very minimal, so there are still environmental losses due to environmental damage caused by forest and land fires that have not been returned to the State, besides the reality of forest and land fires in Indonesia still happens from year to year. Therefore, a comprehensive and holistic effort is needed to ensure the realization of the right to a good and healthy environment as a constitutional right.

2. METHOD OF RESEARCH

The research is a normative legal research using *Statute, Case, Comparative* and *Conceptual* approaches. Normative or doctrinal legal research that will examine and analyze norms and doctrines and theories in order to address legal issues or problems encountered.

Losses due to environmental damage as result of forest and land fires

Forest fires always leave negative impacts on ecosystems both on humans, animals and plants.

⁷ *Ibid*, p 54

⁸ The Ministry of Environment and Forestry at the Forum Meeting of Data Communitation and Disaster Information in Jakarta on 10 November 2015.

⁹ Database of Global Fire Emission: <http://www.globalfiredata.org/index.html>

¹⁰ Losses due to Forest Fires, An Analysis of Economic Impacts of Fire Crises in 2015. Laporan Pengetahuan Lanskap Berkelanjutan Indonesia :1. The Word Bank, Gedung Bursa Efek Indonesia Menara 2, Lantai 12 Jl. Jenderal Sudirman Kav. 52-53, Jakarta 12190.

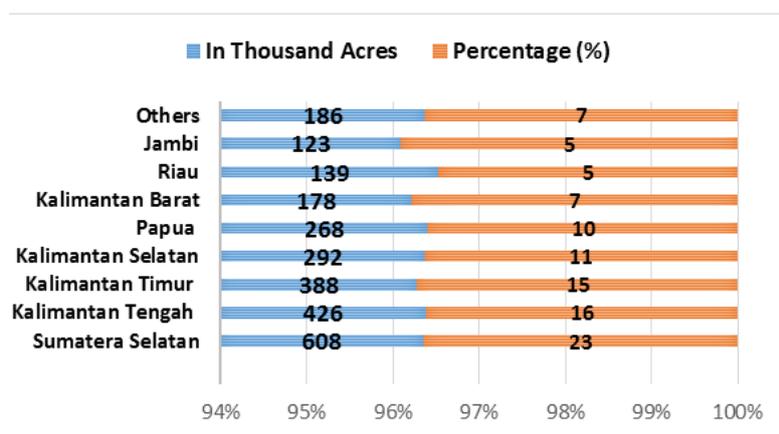
¹¹ Munir Fuady, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Penerbit Citra Aditya Bakti, Bandung 2003, p. 112.

This impact is detrimental overall from health, economy, transportation and other activities. Impacts caused by forest fires includes spreading carbon dioxide gas emissions to the atmosphere; killing of wild animals and the destruction of plants by fire, trapped smoke or habitat destruction. It can also cause many endemic species in an area to become extinct before they can be recognized; causing flooding for several weeks during the rainy season and drought in the dry season; the drought can cause obstruction of transportation routes through rivers and cause famine in remote areas; an increasing number of sufferers of upper respiratory tract infections and lung cancer. This smoke pollution can also make TB or asthma sufferer worse; the smoke causes disruption in various aspects of people lives. Activities can be totally paralyzed due to forest fires by restricted visibility.¹²

Forest fires cause various damages. The loss of native wildlife habitat, smog, respiratory diseases, and even damage to settlements around the forest can damage the ecosystem of living things. The importance of forests for the balance of ecosystems makes the cause of forest fires to be minimized as possible. The cause of forest fires can indeed arise from natural conditions. According to an official release by the National Disaster Management Agency (BNPB – *Badan Nasional Penanggulangan Bencana*) of Indonesia on March 4, 2019, the cause of forest and land fires in Indonesia is 99% human activity and 1% is natural. Based on the monitoring of the Ministry of Environment and Forestry, in 2018 the total area of forest and land fires in all regions of Indonesia reaches 510.564.21 Ha. The broadest fire occurred in South Kalimantan with a total land area of 98.637.99 Ha.¹³

These economic and environmental losses recur every year, only a few hundred businesses and several thousand farmers benefit from land speculation and plantation practices.¹⁴ The fire has long been an Indonesian agricultural tool and unofficially the process of fire also plays an important role in land clearing, the area of land fired by province in June - October 2015.¹⁵

Chart 1. Data on the area of land fired by province in Indonesia



¹² <https://m.liputan6.com/hot/read/4014066/penyebab-kebakaran-hutan-dan-dampaknya-bagi-ekosistem>, accessed on Friday on 13 September 2019.

¹³ *Ibid*

¹⁴ Losses due to Forest Fires, An Analysis of Economic Impacts of Fire Crises in 2015. Laporan Pengetahuan Lanskap Berkelanjutan Indonesia :1. The World Bank, Gedung Bursa Efek Indonesia Menara 2, Lantai 12 Jl. Jenderal Sudirman Kav. 52-53, Jakarta 12190.

¹⁵ *Ibid*

Environmental damage and pollution occur due to human activities in doing a business and/or activity, such environmental damage including those caused by forest and land fires resulting in environmental losses must have a solution to be resolved legally, instruments of environmental civil law enforcement are one of the efforts to demand indemnity and environmental restoration in order to hold the perpetrators of destruction and pollution to account. If the environmental losses incurred are not demanded for indemnity and recovery, it will result in the loss and depletion of natural resources for sustainable development for the welfare of the people both for present and future generations.

The government has the authority and responsibility in environmental management, the authority of the government is constitutionally regulated in the provision of Article 33 paragraph (3) and (4) of the 1945 Constitution of the Republic of Indonesia.¹⁶ The provisions of Article 33 paragraph (3) of the 1945 Constitution are the basis for the State to control Natural Resources. The control of the State has a sense that the State is the manager and not owner. As a manager, the State is responsible for regulating and managing natural resources for the prosperity of the people. Meanwhile, the provisions of Article 33 paragraph (4) of the 1945 Constitution are the basis for the State administrators so that the State economic activities do not cause environmental damage or pollution.¹⁷ Implementation of the provisions of Article 33 paragraphs (3) and (4) of the 1945 Constitution is the stipulation of the duties and authorities of the central and regional governments in the management and protection of the environment and natural resources.

To obtain environmental indemnity due to environmental damage through liability based on acts against the law based on Article 1365 of the Civil Code, there are also arrangements for civil liability based on strict liability. The principle of strict liability develops in practice to address the limitations of the doctrine of liability based on fault.¹⁸ Liability based on fault constitutes an obligation which is incurred to the plaintiff to prove it, at the practical level in court it is often that the plaintiff has difficulty proving an act against the law. *Strict liability* is a doctrine of civil liability which states that liability arises instantaneously without being based on the existence of fault (*liability without fault*). The doctrine of strict liability is the liabilities of people who carry out a type of activity that can be classified as *extrahazardous* or *ultrahazardous* or *abnormally dangerous*. They are obliged to bear all losses incurred, even though have acted very carefully to prevent the danger or loss, even if done intentionally.¹⁹

In strict liability, the plaintiff is only incurred by proving the existence of a loss and the causal relationship between the loss suffered and the defendant's actions or activities. While, the defendant is sued to proves the existence of a forgiving reason. Thus, it can be concluded

¹⁶ Article 33 paragraph (3) states that the earth, water and the natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people". Article 33 Paragraph (4) of the 1945 Constitution states that the national economy shall be implemented based on economic democracy with the principles of justice, togetherness, being equitable, sustainable, environmentally sound, independent, and by maintaining a balance of progress and national economic unity.

¹⁷ Muhammad Akib, *Hukum Lingkungan Perspektif Global dan Nasional Edisi Revisi*, RajaGrafindo Persada, Jakarta Maret 2016, p. 93.

¹⁸ Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia Penegakan Berdasarkan Hukum Administrasi, Hukum Perdata dan Hukum Pidana menurut Undang-Undang No. 32 Tahun 2009*, Graha Ilmu, 2012, p. 209.

¹⁹ Syahrul Machmud, *Ibid.*, p. 209.

that there is no transfer of evidence from the plaintiff to the defendant, in other words there is no inverse proof in the doctrine of strict liability.²⁰ In general, strict liability as a model of legal liability does not need to prove the existence of intentional or negligence elements (liability without fault). Strict liability in various countries is applied both in criminal and civil cases. In the Indonesian environmental legal system, its implementation is only used in civil cases, namely as a special form of *lex specialis* as regulated in Article 88 of UUPPLH.²¹ Actually, strict liability is not the concept of reverse proof (there is no transfer of the proof). According to the Decree of the Supreme Court of the Republic of Indonesia No. 36 of 2012 providing guidelines for strict liability lawsuits must be stated clearly in the lawsuit or at least requested in the *petitum* that the proof by means of strict liability.

The right to sue of government agencies (central and regional governments) in filing a lawsuit is based on the doctrine of “*government legal interests*”, where the interests will arise when the achievement of duties and authorities is impaired, namely to realize the objectives of environmental protection and management.²² The authority and the right to sue for indemnity and environmental restoration granted by the law to the Government places the government possess a legal standing as litigant party in the indemnity suit over the environmental in the court. To file a lawsuit to the court as basis of its legal standing, the government can do it alone and/or by giving power of attorney to lawyers. In addition, the Government can also provide power of attorney to the prosecutor; the legal basis of the prosecutor can receive power in law enforcement in the field of civil law because besides having the authority in the field of prosecution of criminal acts, they also have duties and authority in the Civil and State Administration fields.

In association with the environmental protection and management, the regulation of civil liability both liability on the basis of fault or an act against the law as stipulated in Article 1365 of the Civil Code, as well as liability without fault or known as strict liability, each has position to be applied as a basis for environmental indemnity suit. The basis of a suit for liability is due to fault (an act against the law),²³ whereas the suit for liability without fault/strict liability.²⁴

Based on the provisions concerning prevention and control of forest or land fires, it can be concluded that: *the first*, forest/land burning is a prohibited act and also a criminal offense. *The second*, permit holders have legal obligations and liabilities to prevent forest or land fires in their area. *The third*, permit holders have obligations and liabilities to address and restore the environment if a fire breaks out in their area. The existence of these legal liabilities and

²⁰ Sodikin, *Penegakan Hukum Lingkungan Tinjauan atas Undang-Undang Nomor 23 Tahun 1997* Penerbit Djambatan, Edisi Revisi, p. 69.

²¹ Article 88 UUPPLH: Everyone whose actions, businesses and/or activities use B3, produce and/or manage B3 waste, and/or pose a serious threat to the environment is solely responsible for losses that occur without the need to prove the element of fault.

²² Rumesten, R.S., Febrian, F., Helmanida, H., & Ngadino, A. (2019). Community Participation Arrangements to Prevent Illegal Drilling. *Hasanuddin Law Review*, 4(3), 348-355. doi: <http://dx.doi.org/10.20956/halrev.v4i3.1291>

²³ Article 87 paragraph (1) of PPLH: Everyone responsible for a business and/or activity that commits an illegal act in the form of environmental pollution and/or damage that causes harm to others or the environment is obliged to pay compensation and/or take certain actions.

²⁴ Article 88 of PPLH: Everyone whose actions, businesses and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment is responsible for the multitude of losses incurred without the need to prove the element of fault.

obligations, a permit holder cannot evade from the liabilities by stating, for example, that a fire was conducted by someone outside the permit holder's work area. In Indonesia, legal construction does not allow for excuses like this, because the obligation to prevent forest or land fires, as well as the prevention and restoration of the environment due to the fire is attached to the business permit or management authority granted.²⁵

Losses due to forest and land fire and burning are very large both for human life and for other living things. The most pathetic thing is the emergence of victims due to the fire both directly and indirectly, as well as the loss of germplasm and the disappearance of plant and animal species (wild animals) that are unlikely to back again.²⁶ Fires or burning of forests and land cause various adverse effects on land resources and ecosystems where this has been proven by various studies. Restoring to its original form (*recovery*) in addition will require a very long time also will not back to normal. Damage to natural resources is not merely biophysical destruction, but rather an economic problem, because the economic values of natural resources may be lost or may even be irreversible. The impact of forest and land fires on flora and fauna becomes more important and significant when the victims are classified as scarce and protected species, therefore it is very natural for the burners to be held responsible, including indemnity for damages resulting from them and making as a means to do not do it again.²⁷

Based on the results of the assessment, can be identified the common impact of forest and land fires. Each of these impacts is determined losses assessment method of resources and the environment (negative externalities), in which not all of these impacts can be assessed due to data limitations, but in general can be submitted its calculation formula.²⁸ As known that not all environmental elements damaged by fire can be recovered as before (tend to be irreversible) and not all of the damaged can be recovered because technological limitations or due to incompatibility with forms of land use.²⁹

For damage that can be recovered and available technology that can be used (*applied technology*), the recovery costs will be calculated and for reversible and irreversible damages but there is no effective technology (cannot to restore to the conditions which is relatively similar as the original condition) and is illogical to be implemented, then there will be no cost to restore the environment. However, ineffective and not operational technology (*pseudo technology*, because it will not be implemented only as a cost calculation approach), it will be calculated as the value of environmental damage by the method of replacement, rehabilitation or substitution costs and can be put as recovery costs.³⁰

The Right of Government Lawsuit for Environmental Losses

The key to the success of the environmental lawsuit is the ability of plaintiff to prove the four elements above as the basis for the lawsuit. Certainly, it is not easy for the plaintiff, because it is related to scientific evidence. As a person who is lay in the legal and technical environment,

²⁵ Laode M. Syarif, Andri Wibisana, *Hukum Lingkungan Teori, Legislasi Dan Studi Kasus*, Raja Grafindo Persada, Jakarta, 2010, p. 420.

²⁶ Bambang Hero Saharjo., *Op.Cit.* p. 7

²⁷ Bambang Hero Saharjo., *Op.Cit.* p. 7

²⁸ Darusman, D., *Pembenahan Kehutanan Indonesia. Dokumentasi Kronologis Tulisan 1986-2002*. Lab Politik Ekonomi dan Sosial Kehutanan, Fakultas Kehutanan, Institut Pertanian Bogor, 2002

²⁹ Ina Lidiawati, *OpCit*, p. 6.

³⁰ Bahruni, *Penilaian Sumberdaya Hutan dan Lingkungan*. Fakultas Kehutanan, Institut Pertanian Bogor, 1999.

it is difficult in proving, especially the element of causality between unlawful acts in the form of pollution and/or environmental damage with losses to others or the environment. Research by the Van Vollenhoven Institute, Leiden University and Bappenas shows that from 23 cases that were finally identified, only 13% were won by the plaintiff (victims of pollution/destruction), while another 87% were lost in the court, both for procedural and substantive reasons.³¹

In addition to adhere to lawsuit liability based on faults, UUPPLH also enforces strict liability for activities that use hazardous and toxic materials or produce and/or manage hazardous and toxic waste and/or that cases a serious threat to the environment.³² Basically, the most difficult proof is not to prove the presence or not of perpetrator's fault, but to prove causality between the act and sufferer's losses.³³

Jimly Assiddiqie³⁴ said that in the concept of *ecocracy*, the natural environments as well as humans are also considered to have their own autonomy and level. If in a democracy every human being called the people is considered to be the holder of the highest sovereignty or power, then the natural environment is also seen to have its own human rights and hold its own sovereignty like humans. In this relationship, the environment or ecosystem can be seen as a separate subject of sovereignty. If so far we have known the doctrines of theocracy, monarchy, democracy, nomocracy, then we can associate the concept of environmental sovereignty with the term *ecocracy* or ecological sovereignty.³⁵

In addition to human as people, the environment can also be the holder of their own rights and powers. The rights and powers of the environment are as high as those of the people. In other words, it can be a subject of its own sovereignty. Because if the highest power in the hands of the people is called democracy or people sovereignty, then the highest power in the environment can be called *ecocracy* or environmental sovereignty.³⁶

If follow the idea of Skolimowski, then *ecocracy* can be said to be a “*continuing development*” of democracy because it involves the whole of nature in a better life dynamic. Conceptually, the *ecocracy* is more complex than ecological democracy, or an ecology-oriented democracy because in ecological democracy still emphasizes the human. Anthropocentrism bias is still very obvious. Therefore, for Skolimowski the term *ecocracy* is more appropriate than eco-democracy or ecological democracy. In Skolimowski's formulation, *ecocracy* is “*recognition of the forces of nature and life itself, which means observing the limitations of nature, designing with nature rather than against nature, creating ecologically sustainable systems, respecting nature not sustainable pillaging of nature.*”³⁷

Considering the increasingly obvious environmental damage as the fruit of market capitalism which tends to view nature as a factor of production and economic assets, the application of the idea of environmental sovereignty together with the people and law sovereignties within the framework of the State is absolutely necessary. What needs to be explored more deeply is how to operate in State life? Whether mainstreaming environmental considerations in public

³¹ Muhammad Akib, *Loc.Cit.*, p. 233.

³² UU PPLH, Article 88

³³ Takdir Rahmadi, *Loc.Cit.* pp. 273-274.

³⁴ Jimly Assiddiqie, *Gagasan Kedaulatan Lingkungan Demokrasi Versus Ekokrasi*, 2009. p. 17.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Skolimowski, Dalam Al Andang L. Binawan, *Jalan Terjal Ekokrasi*, Jurnal Hukum Lingkungan Indonesia, Vol. 1 Issue 1, Januari 2014, Indonesian Center for Environmental Law. p. 9

policy? Whether personifying the environment similar to that of people who have legal and constitutional rights guaranteed in the constitution? Can we then call all of that as an expression of “environmental democracy”?³⁸

Based on several theories and ideas put forward by some experts on the concept or view of the ecocracy, it can be said that the environment is a legal subject that has the right to get legal protection, therefore if the environment suffers losses, as a legal subject the environment can demand indemnity and recovery. The form of environmental law protection is by giving legal sanctions to those responsible for businesses and/or activities that have conducted environmental pollution and damage as regulated in Article 87 paragraph (1) of the PPLH laws which states “every person who has responsible for a business and/or activity that violating the law in the form of pollution and/or environmental damage that causes harm to others or the environment is obliged to pay compensation and/or take certain actions”.

The formulation of Article 87 paragraph (1) of the PPLH laws contains elements related to legal subjects who suffer losses due to polluted and damaged environment, namely losses suffered by others and by the environment itself, thus it can be understood that other than people as a legal subject, the environment itself is also a legal subject entitled to obtain compensation due to pollution and/or environmental damage carried out by the person in charge of the business and/or activity.

The environment as a legal subject cannot be equated with humans because it cannot speak and act as human being, therefore the environmental rights to suit environmental indemnity due to pollution and/or environmental damage are represented by the State, this is as the principle contained in the PPLH laws, namely the principle of State responsibility, the consequences of the principle of State responsibility, the government can take legal actions to represent environmental interests, it is regulated in Article 90 paragraph (1) of the UUPPLH which states that the agency responsible for the environment is government agencies and regional governments responsible for the environment.

As comparison, China has made great progress towards protecting the environment. One of the developments in environmental law carried out by China is a pilot program conducted by the *Supreme People’s Procuratorate* (SPP). This program allows the prosecutor to settle legal disputes (*litigation*) to the court in the public interest in cases of pollution, food safety, and other hazards in the public interest. At court, the prosecutor office can ask for a recovery in a civil case such as stopping damage, removing obstacles and hazards, restoring environmental conditions to the original condition, and indemnity suit.³⁹

During two years of experiment, the prosecutor officer has carried out more than 2.000 legal cases in the public interest in areas such as ecosystem and environmental protection, natural resources, food and medicine security, and the right to use State-owned land. The pilot program resulted in the revision of two basic codes in China (Civil Procedure and Administrative Procedure Laws) in June 2017, where the prosecutor’s right to carry out law enforcement in litigation became an official authority. In July 2018, President Xi Jinping supported the establishment of a special prosecutors department to handle cases in court

³⁸ Jurnal Hukum Lingkungan Indonesia, Vol. 1 Issue 1, Januari 2014, *Pengantar Redaksi, Adakah Demokrasi Lingkungan?*, Indonesian Center for Environmental Law. p. vi.

³⁹ <http://www.dandreapartners.com/the-role-of-public-interest-litigation-in-enforcing-environmental-law-in-china/> accessed on Wednesday 18 September 2019, 12.43. Wib

(litigation) for the public interest. Between January and November 2018, court proceedings in the public interest handled by prosecutors more than 89.000, of which around 55% were environmental lawsuits.

Another advantage of lawsuits in the public interest made by prosecutors is the high level of success of the pre-litigation process. Before the prosecutor office can file a case in the public interest in court, prosecutors must first send a “*warning notice*” to a government agency, remind the agency to fulfill its legal obligations and improve the situation.

3. CONCLUSION

In a perspective of environment, the legal interest to sue (*standing*) is not only limited by the interests of losses which are usually individual and direct as in the case of civil disputes in general, but also includes broader interests. By the characteristics of the lawsuit, the legal subject of plaintiff in in the case of environmental field varies depending on what lawsuit will be made. The type of lawsuit to be taken will determine who is legal subject can sue. Determining who has the right to sue and who should be defendants is very important in the process of civil litigation to avoid decisions of judge that do not accept suit due to party fault (*niet onvankelijk verklaard/NO*) that often occur. Not all environmental elements damaged by fire can be recovered as before (tend irreversible) and not all that damaged can be recovered because technological limitations or incompatibility with forms of land use.

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