

# The Responsibilities of Wahana Lestari Investama's Limited Business Actors against Environmental Pollution in Sawai Village, Central Maluku Regency

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In the case of the environmental destruction that occurred in Sawai Village, Central Maluku Regency, if Article 87 paragraph (1) UUPPLH is used, the perpetrators of the environmental destruction that occurred in North Seram, Central Maluku Regency by Wahana Lestari Investama Limited Company, are in fulfillment of the following elements: a. committed an illegal act; b. resulting in environmental pollution and / or damage; c. cause harm to others or the environment; and d. there are the business and/or activity responsible. Furthermore, in order to fulfil claims for compensation under civil law, Article 1365 of the Civil Code requires the existence of unlawful elements, which include: (a) the act is against the law; (b) the act is based on mistakes; (c) as a result of the correction incurred losses; and (d) there is a causal relationship between actions and losses. Article 1365 of the Civil Code is indeed protecting the rights of a person, because the losses he experiences due to the actions of others cause such losses. Thus, it is assumed that unlawful acts imply the existence of rights and obligations when a person commits an act, either wrongfully or in negligence, and the consequences of the act causes harm to others. Acts against the law based on errors that appear from this case are: (a) the existence of mining actions carried out without permission, both from the community's customary rights voters and the local Regional Government, so that the act is considered illegal, because it is contrary to community rights, and (b) the act which is unlawful, is done in error,

because they do know the consequences of the act of mining is harming other parties.

**Key words:** *Responsibility, Business Actors, Limited Liability Companies, Environmental Pollution.*

## Introduction

A good and healthy environment is a human right and constitutional right for every citizen of Indonesia. The regulation of Article 28H paragraph (1) and Article 33 paragraph (3) and (4) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) is the basic norm in the protection and management of natural resources in Indonesia. Article 28H paragraph (1) states (La Ode Angga, E. Baadilla, Barzah Latupono, H. Z. Wadjo & Muchtar Anshary Hamid Labetubun, 2020): "Everyone has the right to live in prosperity physically and mentally, to live and to get a good and healthy living environment and the right to obtain health services".

Article 33 paragraph (3) & (4) of the 1945 Constitution of the Republic of Indonesia states: (3) "The earth and water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people;" (4) "the national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, and sustainable, environmentally friendly, independent and by maintaining a balance of progress and national economic unity."

Therefore, the State as represented by the Government, and all stakeholders are obliged to carry out environmental protection and management in the implementation of sustainable development so that the environment in Indonesia can be a source and support of life for the people of Indonesia and other living creatures.

A good and healthy environment is a very important thing in supporting human survival. In addition to everyone's right to a good and healthy environment, they also have the obligation to carry out environmental protection and management. As explained above, a good and healthy environment is not only a right, but also entails the responsibility to maintain and protect and manage or preserve it so that it is gets better and healthier as well as society. In connection with the above, environmental protection and management is an effort of humans to interact with the environment in order to maintain life achieving prosperity and environmental sustainability (Helmi, 2012).

Environmental protection and management is a systematic and integrated effort undertaken to preserve environmental functions and prevent environmental pollution and / or damage which includes planning, utilization, control, maintenance, supervision and law enforcement (Article

1 paragraph (2) of the Law Law No. 32/2009 concerning Environmental Protection and Management abbreviated as UUPPLH-2009, Statute Book of the Republic of Indonesia No. 140/2009 Supplement to Statute Book of the Republic of Indonesia No. 5059).

Environmental protection and management are carried out in an integrated manner covering all areas of the environment for the sustainable functioning of the environment. In an effort to protect and manage the environment, the development of a sustainable environment to achieve the welfare of the people is inseparable. Article 1 paragraph (3) of the UUPPLH states: "Sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure environmental integrity and the safety, capability, welfare and quality of life of present and future generations".

For that reason, in every development, it certainly cannot be separated from the name of the intervention of the company or corporation. The corporation or company is a business entity or legal entity that in its production process is directly related to the environment. For this reason, the production process can result in environmental pollution and damage. Therefore, pollution and destruction of the environment are detrimental to the people who live around them. The facts prove that environmental damage done by companies often occurs, as happened in North Seram by a Limited Liability Company. Wahana Lestari Investama on Environmental Pollution in the Village of Sawai, Central Maluku Regency must be responsible in the disposal of waste that occurs on the coast or sea environment of the Sawai Village (La Ode Angga, E. Baadilla, Barzah Latupono, HZ Wadjo & Muchtar Anshary Hamid Labetubun, 2020).

Wahana Lestari Investama in running the shrimp livestock business in Sawai Village, Central Maluku Regency must be responsible. Wahana Lestari Investama is alleged to have done damage and / or environmental pollution in the village of Sawai, which resulted in losses experienced both in the environment and the people living around these activities. Wahana Lestari Investama must be responsible both for environmental damage and losses suffered by the community. Relating to the case above, Article 1365 of the Civil Code (KHPperdata) states: "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to replace the loss".

Acts against the law are contained in Law No. 32 of 2009 concerning Environmental Protection and Management, abbreviated as UUPPLH-2009, which is regulated in Article 87 paragraph (1). It states: Every person in charge of a business and / or activity that commits an illegal act in the form of environmental damage and / or damage that causes harm to others or the environment must pay compensation and / or take certain actions. Of course, every act that is detrimental to others must be accounted for by the perpetrators of such pollution and environmental destruction. Perpetrators of pollution and environmental destruction are not only subject to administrative sanctions, criminal sanctions, but also civil sanctions. In this study,

the writer will review Legal Responsibility in the Case of Environmental Pollution and Damage due to environmental pollution carried out by the Wahana Lestari Investama Limited Company for the Environment in the Village of Sawai, Central Maluku Regency.

The gap that occurs in the writing of this proposal is that Article 87 paragraph (1) of the UUPPLH and Article 1365 of the Civil Code has been violated by the Wahana Lestari Investama Limited Company Against Environmental Damage in the Village of Sawai, Central Maluku Regency. Based on the background information above, the problems to be examined and analysed are as follows: "What are the responsibilities of the Wahana Lestari Investama Limited Liability Company for Environmental Pollution in Sawai Village, Central Maluku Regency?"

## **Literature Review**

### ***Theoretical Framework***

The theoretical framework that will be used as a fundamental foundation (blade of analysis) in answering the problem involves: a. The State of Welfare Law (Welfare State), as the Grand Theory, b. Green Political Theory and Green Kostitus as Applied Theory.

### ***The State of Welfare Law (Welfare State)***

The use of welfare state theory as a Grand Theory clarifies the extent to which the state is involved in the actions of business actors in the form of the Wahana Lestari Investama Limited Company, which has carried out Environmental Pollution in Sawai Village, Central Maluku Regency. The state must be present to protect the public from environmental pollution. In the theory of the welfare state, because the task of the state or the government or regional government in carrying out public interests is very broad, the possibility of violating the interests of the people by the state apparatus also becomes very broad.

According to John Locke, state power based on law is divided into legislative, executive and federative powers. The state must also contain 4 (four) elements, which are as follows (Helmi, 2012).

1. The state aims to guarantee the human rights of citizens.
2. The organiser of the state is based on law.
3. The separation of state power is in the public interest.
4. The power of legislators depends on the interests of the people.

John Locke's view above influences Montesquieu, the function of the rule of law must be separated in three powers of state institutions, namely the legislative, executive and judiciary.

The position of these three powers is balanced, and one may not be higher than the other. (Helmi, 2012).

"A state of law (*rechtsstaat*) is a state which places the law as the basis of its power and administers that power in all its forms carried out under the rule of law". While the concept of the welfare state according to Bagir Manan is: "The state or government is not solely the guardian of security or public order, but the main bearer of responsibility for realising social justice, public welfare for the greatest prosperity of the people" (Bagir Manan, 1996).

The birth of the theory of the welfare state is a reaction to the failure of the concept of the classical rule of law and the socialist rule of law. Both concepts and types of rule of law have a basis and form of state control over different economic resources. Theoretically the difference is motivated and influenced by the ideology or understandings adopted. In the classical liberal state, the law is influenced by the understanding of liberalism or the classic state law, while the socialist state law is influenced by the understanding of Marxism (Abrar Saleng, 2004). For countries that adhere to a welfare state such as Indonesia, all are based on the people's welfare which is rooted in Pancasila and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

### ***Green Political Theory and Green Constitution***

The next use of theory in this study is the Green Political Theory and the Green Constitution as the Middle Range Theory. The use of this theory is in line with the use of welfare state theory and synergises with the core issues that will be examined in this study. Green Political Theory and Green Constitution are used in this study with the understanding that, currently, the Republic of Indonesia has adopted green politics and the green constitution can be seen in Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution. The use of Green Political Theory and Green Constitution will be used to analyse the problem of this research, specifically how sensitive the state or legal entity is in carrying out the mandate of Article 28H of the constitution.

### ***Green Political Theory***

The green political movement in Indonesia begins with awareness and is driven by the national conditions of the Indonesian nation where various environmental damage occurs due to development that is too growth oriented and exploitative development strategies that threaten environmental sustainability. According to Emir Salim, the essence of development is to strive for the sustainability of life. For the sustainability of life, sustainable development has several prerequisites: first, reaching a long-term perspective beyond one or two generations so development activities need to consider long-term impacts. Second, realising the enactment of

interdependency relationships between natural, social and man-made actors. Natural actors exist in ecosystems, social actors exist in social systems, and man-made actors in economic systems. Third, meeting the needs of humans and society today without reducing the ability of future generations to meet their needs. Fourth, development is carried out using natural resources as economically as possible, waste-pollution as low as possible, spaces as narrow as possible, energy renewed as much as possible, non-renewable energy as clean as possible, and with environmental, social, cultural-political and economic benefits as high as possible. Fifth, development is directed at eradicating poverty, balancing fair social quality and the high quality of social, environmental and economic life (Emil Salim, 2003).

Green Political Theory is specifically taken from the fact that humans are part of nature, which has implications for green politics. Thus, humans are not only seen as rational individuals as in the view of liberalism or as social beings such as the view of socialism, but as natural beings, and further as political animals. It is necessary to distinguish between green politics and environmentalism. Environmentalism accepts existing frameworks in political, social, economic and normative structures in the world of politics and tries to fix environmental problems with these existing structures. Contrastingly, Green Politics considers the structure as the main basis for the emergence of an environmental crisis. Therefore, they argue that the structure needs change.

According to Nicholas Low & Brendan Gleeson (Nicholas Low & Brendan Gleeson, 2009): "Green politics examines the moral response that must be given by the world today to the ecological crisis if what is desired is a real change in society and the global economy in support of ecological integrity."

### ***Green Constitutional Theory***

The term "green constitution" in the dynamics of Indonesian constitution both at the practical and academic level, cannot be denied as a new phenomenon for those who do not know it yet. Even the state administration law scholars themselves have never heard of the term "green constitution". Historically, the term "green constitution" first appeared in Indonesia through members of the Constitutional Court (MK) in 2008 when visiting the leadership of the Regional Representative Council (DPD) around August 2008. The discourse on "green constitution" was first conceived by Achmad Sodiki, in response to the idea of a possible change in the fifth 1945 Constitution, which expressed the importance of studying it first, including the possibility of adopting the idea of "green constitution" in the amendments to the 1945 Constitution (Jimly Asshiddiqie, 2009).

On the other hand, that awareness of the importance of ecological issues continues to develop, so that finally humanity discovers the fact that our ecosystem is not local, but also global. This

is what happens with the phenomenon of global climate change (global climate change). Environmental issues become so important because they are directly related to the sustainability of the lives of people in the world. All nations need to unite and agree to jointly participate in controlling global climate change.

## **Research Method**

The research that will be carried out is on "normative law" (Soejono Soekanto, and Sri Mamudji, 2004). The first step is to conduct normative research based on primary, secondary and tertiary legal materials that list the regulations relating to the environment, the Civil Code, and limited company law. The research aims to find a clear legal basis in placing this issue in the perspective of civil law. This research uses several approaches: the statutory approach (Theory Hutchinson, 2002) and the conceptual approach (conceptual approach) (Peter Mahmud Marzuki, 2008). With this approach, researchers can obtain information on various aspects of the issue under study to get the answer. The statutory approach, and conceptual approach, examines all legal rules, legal concepts or doctrines, and legal principles related to Legal Liability in the Case of Environmental Pollution and Damage Due to Environmental Damage in Sawai Village, Maluku Regency by Business Actors of Wahana Lestari Limited Liability Company Investama Based on Law Number 32 Year 2009.

## **Results and Discussion**

### ***Civil Responsibility in the Case of Environmental Pollution***

Article 1233 of the Civil Code also confirms that an engagement can be born from agreements and laws. It is said to be born and sourced from the agreement, because it is desired by the parties, while born because of the law because the will of lawmakers and outside the wishes of the parties (Subekti, 2001). Associated with the liability, it is assumed that the definition of liability itself is a new term that is developed with the intention of holding someone to account for his negligence so as to cause harm to other parties, especially claims against civil rights that occur in the field of civil law.

Rossa Agustinam (Rossa Agustina, et al, 2012) explains the forms of accountability in civil law can be grouped into two parts, contractual accountability and accountability for acts against the law. The difference between contractual responsibility and legal liability is whether or not there is an agreement in the legal relationship. If there is an agreement, the responsibility is contractual. Meanwhile, if there is no agreement, but there is one party that harms the other party, the injured party can sue the party responsible on the basis of unlawful acts.

It can be argued that the litigation was related to a lawsuit in the field of civil law, where certain parties (defendants) were asked to bear the claims of other parties. The claim occurred as a consequence of the reaction to the loss suffered by another party (the plaintiff).

From these assumptions, it is clear that in the litigation there are two parties, one of which is responsible for the loss caused to the other party. Thus, several key elements can be identified, namely:

1. There is a loss suffered by the plaintiff. This loss is the cause of the claim caused by the party that feels disadvantaged;
2. The actions of a person (defendant) causes loss;
3. There is a lawsuit from the injured party. The claim requires that the loss is suffered by the defendant.

In line with the above thought, Moegni (Moegni Djojodirjo, 1979) also put forward the term accountability to describe the existence of liability. If a person is responsible for acting against the law, the perpetrator must be responsible for his actions. Because of the accountability, the perpetrator must bear responsibility and answer for his actions in the lawsuit filed before the court by the sufferer.

In civil law, it is recognised if the person does an act that is not permitted by law, most of the acts referred to are acts which in the Civil Code are called illegal acts (*onrechtmatige daad*), there is liability. The development of civil law recognises several types of accountability, namely:

### ***Contractual Liability***

This type of accountability arises because of broken promises, i.e. the implementation of an obligation (achievement) or the fulfillment of another party's rights as a result of a contractual relationship. This type of accountability is an obligation that is not based on a contractual obligation, but on an illegal act (*onrechtmatige daad*). Therefore, understanding against the law is not only limited to actions that are contrary to the law, both against one's own legal obligations and legal obligations of others, but also against morality and the life of another person or object. others (Verdict of Hogeraad, 31 January 1919).

The concept of liability in tort is derived from the Napoleonic Civil Code Art.1382, namely, "Everyone [who] causes damage through his own behavior must provide compensation, if at least the victim can prove a causal relationship between the fault and damage". This concept is in line with Article 1365 of the Civil Code that: "Every act that violates the law that brings

harm to others, obliges the person who caused the loss due to his mistake to compensate for the loss".

### ***Strict Liability***

This type of liability is often referred to as a liability without fault since a person must be held responsible even if he does not make any mistakes, whether intentional, recklessness or through negligence. Such liability usually applies to products sold or articles of commerce, where producers must pay compensation for the catastrophe resulting from the product they produce, unless the producer has warned of the possibility of such risk. In its development, this strict liability is also known as the principle of absolute liability (no-fault liability or liability without fault), which in the library is known as the principle of responsibility without the need to prove the existence of errors.

The development of strict liability towards responsibility based on error is influenced by the following factors: a. Moral Philosophy or moral reasons derived from religious teachings that developed at that time. This reasoning then encourages the acknowledgment of moral error as an appropriate basis for determining the criteria of acts against the law. b. Development among the public that negligence can also be a factor that determines the occurrence of losses to other parties, in addition to the element of intent. Here it is implied that in the beginning strict liability only recognises mistakes in the form of intent.

### ***Vicarious Liability***

This type of accountability arises due to mistakes made by subordinates (subordinate). This type of responsibility is an extension and deepening of the regulative principle of judicial and moral aspects, that is, in certain cases a person's responsibilities are deemed to be extended to the actions of his subordinates who commit acts for him or within the limits of his orders.

From the above explanation it becomes clear that in terms of its forms, there are two forms of accountability, namely the liability for damages due to default, and the liability for damages due to unlawful acts as emphasised by Rosa Agustina above. Thus, civil liability aims to obtain compensation for losses suffered, in addition to preventing things that are not desirable. The basis for demanding liability that is deemed to have harmed others regarding illegal acts or default gives the injured person the right to receive compensation from other parties who have obligations to those who suffer losses.

### ***Liability Based on Error***

The issue of litigation is one of the most important problems in resolving disputes between two parties, including civil disputes in the environmental field. In such circumstances, sometimes various discussions have confused the meaning of responsibility and accountability. With regard to such matters, it is recognised that the use of the term responsibility is different by various experts based on their respective reasons and arguments. According to Yudha Hernoko (A. Yudha Hernoko, 2012/2013), the respondent can be explained by understanding the terms "liability" or "aansprakelijkheid". According to him, each has a concept, definition and boundaries. Errors or risks occur because of losses, resulting in compensation. He stressed that "loss" is inversely proportional to "compensation". Thus, loss coupled with errors or risks will result in compensation. "Losses" itself is a reduction in the assets of one party (the injured party), which is caused by an act that violates the norm (either due to default or breaking the law) by another party (the adverse party), while "compensation is an effort to recover losses." Therefore, it is stressed that compensation consists of several factors, namely:

- (a) real losses suffered;
- (b) the benefits that should be obtained; and
- (c) other legal actions.

“Onrechtmatige daad” or unlawful acts are regulated in Article 1365 of the Civil Code, which states: "Every act that violates the law that brings harm to another person, obliges the person who because of his mistake to issue the loss, compensates for the loss". If carefully understood in this formulation, the actual meaning of the formulation of Article 1365 of the Civil Code is to protect the rights of a person because of the losses he experiences due to the actions of others that cause such losses. In this case, it is assumed that the law in acts against the law here presupposes the rights and obligations when someone commits an act of wrongdoing or negligence or also injures another person, and as a result of the act causes harm to others.

Noting the formulation of Article 1365 of the Civil Code, it can be said that the norm in this article is unique, unlike the provisions of other articles. The reason is that the formulation is more the norm structure than the substance of the complete legal provisions. Therefore, the substance of the provisions of Article 1365 of the Civil Code always requires materialisation outside the Civil Code, which determines that any unlawful act that causes harm to others, obliges the person who commits the act to replace the loss.

According to Rosa Agustina (Rossa Agustina, et al, 2012), understanding against the law initially contained a narrow understanding as the influence of the teachings of legalism. The understanding adopted is that acts against the law are acts that are contrary to legal rights and obligations according to the law. In other words, the act against the law (onrechtmatige daad)

is the same as the act against the law (onwetmatigedaad). This view is in line with that adopted by Arrest Hoge Raad 6 January 1905 in the case of Singer Naaimachine. Hoge Raad. It is said that the act of trafficking is not an act against the law, because not every action in the business world that is contrary to the manner in society is considered as an act against the law. From this explanation, and by looking at the provisions of Article 1356 of the Civil Code, it can be stated that the elements of onrechtmatige daad or acts against the law, are comprised of the following:

1. Acts that are against the law;
2. There must be an error;
3. There must be a loss incurred;
4. There is a causal relationship between deeds and losses.

Understanding such elements, it is assumed that article 1365 of the Civil Code does not provide a clear definition of the act of violating the law, only it is said, when a person suffers a loss due to an unlawful act committed by another person against him, so it is reasonable to submit a claim for compensation to the party who caused the loss.

Regarding the substance of Article 1365 of the Civil Code, the offender, because of his mistakes which cause harm to others, provides compensation as an obligation. This is certainly a consequence of statutory obligations. Thus, a person who causes harm to others due to an unlawful act he undertakes must be responsible for replacing the loss suffered, if the person who suffered a loss sues the offender against the law to the court.

In fulfilling the obligation to compensate the parties that experienced it, the perpetrators causing the loss must fulfil the requirements as regulated in Article 1365 of the Civil Code, namely:

1. The existence of acts against the law

The law does not provide an understanding of what is an act against the law, but it can be assumed that against the law can be interpreted narrowly, i.e. any actions that are contrary to the rights of others, arising from the law, or any actions that are contrary to the obligations of the perpetrator. In a broad sense, the notion of breaking the law is an act or omission, which is or is contrary to the legal obligations of the perpetrator himself or is contradictory, both with decency and with a cautious attitude that must be heeded in the intercourse of another person's life or object (Moegni Djojodirjo, 1979).

2. An Error

The element of error in Article 1365 of the Civil Code is that the perpetrators of acts against the law are only responsible for the damages they cause, if the actions and losses can be

accounted for. Here the terms of error cause consequences in the form of liability. In other words, without error a person cannot be liable. According to Rosa Agustina, the element of error in an action is not much different from the element of breaking the law (Rosa Agustina, 2012). This element emphasises the combination of the two elements above where the act (which includes intentional or negligence) fulfils the elements against the law. The element of error is used to state that a person is held responsible for adverse effects, which occur due to wrongdoing. Here the element of error in the act against the law needs to be understood correctly, because the basic responsibility is based on several elements, namely:

a. The element of intent

This element is considered to exist in an action, if the action is done with awareness. That is, the perpetrator is aware of his actions, including the consequences arising from these actions. Thus, the actions and consequences that occur are his will, because that is the goal to be achieved.

b. Error element

An act is categorised as negligence, if it meets the following conditions: Munir Fuady, 2002):

- 1) The existence of an action or not doing / ignoring an act that should be done;
- 2) There is a duty of caution;
- 3) The precautionary obligation is not implemented;
- 4) There are losses for others;
- 5) There is a causal relationship between an act or not doing an act with the harm caused.

c. There is no excuse for forgiveness

In some legal doctrines, the reasons for justification include "overmacht," forced defence (noodwer), statutory provisions (wettelijk voorschrift) and position orders (wettelijk bevel). Interestingly in the case of force, Article 1224 of the Civil Code and Article 1225 of the Civil Code require 3 elements to be fulfilled.

The responsibility of businesspeople of the Wahana Lestari Investama Limited Liability Company Against Environmental Pollution in the Sawai Village, Central Maluku Regency for the environmental pollution in Sawai Village, Central Maluku Regency, when viewed from a juridical perspective, can be qualified as an environmental causal conflict (Elisabeth Mewengkang 2004) . That is, environmental destruction determines the level of escalation and the existence of environmental disputes. In the UUPPLH, Article 1 number 25 defines, "Environmental disputes as disputes between two or more parties arising from activities that have the potential and / or have an impact on the environment".

In such a view, it can be understood that environmental disputes (environmental disputes) themselves are a "species" or "genus" of disputes that contain conflicts or controversies in the

environmental field, which are interpreted as a "a conflict or controversy; a conflict of claims or rights; an assertion of claims, or demands on one side, met by conflicting claims or allegations on the other" (Henry Campbell Black, Black's Law Dictionary, St. Paul, Minn, West Publishing Co., 1991). Disputes "themselves have English references as diverse as" dispute resolution", "conflict management: conflict resolution", "conflict intervention" and so on (Lutfi Yazid, 1999).

Generally, in a dispute, (La Ode Angga, 2019 including environmental disputes, it has been accepted that environmental disputes do not merely arise from disputes between the parties, but also disputes that are accompanied by a "claim" (claim). This is certainly reasonable because the claim is the primary attribute of the existence of a dispute (conflict), thus, the formulation of Article 1 number 25 UUPPLH, which only means an environmental dispute is merely a "dispute between two or more parties ..." without including a "claim". What is meant is reasonable, because the basic problem is, who are the actual parties to the conflict in the environmental dispute or, who is the subject of the environmental dispute, and what is in dispute (Cynthia Tuju. 2016).

UUUPPLH does not provide definitive answers on who is the subject of environmental disputes. However, by using the method of interpreting, or "interpretatie," in jurisprudence, at least it is assumed that the subjects of environmental disputes are "disputing parties" who feel disadvantaged as a result of environmental development whose damage impacts are felt by those who are harmed. From the explanation above, it is assumed that disputes or conflicts actually occur because there are certain parties who feel disturbed by other parties, so that they want to reclaim their rights or ask for their interests to be restored by those who caused the disturbance or damage. Thus, if you look at this assumption, there are actually 2 (two) main points that can be found in the conflict or dispute, namely (La Ode Angga, Hasan Suat, 2019):

- (a) there is a violation of the interests of others; and
- (b) there is a claim in the perspective of civil law known as the technical term, "lawsuit".

In a position of conflict or dispute, both parties are in a position of facing each other. Therefore, the two main points above are elements that are "cumulative" for the emergence of a dispute. In other words, if the disruption of the interests of other parties is not accompanied by demands, then a conflict is not considered to have occurred. Seen from the view of the community, this is injustice. Therefore, the dispute conflict will only occur, if the parties to the dispute are in the opposite position to defend their interests.

UUPPLH, Article 84 paragraph (1) through to paragraph (3) states that dispute resolution can be carried out through (a) court channels or outside (paragraph 1); (b) the choice of resolving environmental disputes is made voluntarily by the parties to the dispute (paragraph 2); and (c)

a lawsuit through the court can only be taken if the effort to settle a dispute outside the chosen court is declared unsuccessful by one or the parties to the dispute (paragraph 3). Specifically with regard to environmental disputes through litigation, the process includes, (a) compensation issues (Article 87); (b) absolute responsibility (Article 88); and (c) expiration for filing a lawsuit (Article 89). Affirmed in the UUPPLH, dispute resolution through the court can be carried out if the efforts to settle the dispute outside the chosen court are unsuccessful by one of the parties or the parties to the dispute. Therefore, expressly, the aspect of civil law in the case of environmental disputes is obtained through the obligation to pay compensation or certain actions as affirmed in Article 87 of the UUPLH:

- (1) Every person in charge of a business and / or activity that commits an illegal act in the form of pollution and / or environmental damage that causes harm to others or the environment must pay compensation and / or take certain actions.
- (2) Every person who transfers, changes the nature and form of business, and / or activities of a business entity that violates the law does not relinquish the legal responsibilities and / or obligations of the said business entity.
- (3) The court can determine forced payment of money on each day of delay in the implementation of court decisions.
- (4) The amount of forced money is decided based on laws and regulations.

Observing the provisions of Article 87 paragraph (1) of the UUPPLH, there are several elements, namely:

- a. Unlawful acts;
- b. The existence of pollution and or environmental damage;
- c. There are losses to other people or the environment;
- d. The existence of a responsible business and or activity.

Considering the above elements, it is concluded that the four elements actually constitute acts that are against the law based on mistakes and consequently cause doubts for other parties. These actions are specific in nature, namely the environmental field, unlike the act against the law based on the errors stated in Article 1365 of the Civil Code. Regarding this matter, it will be discussed in the next sub-chapter, bearing in mind that the offenders who commit acts against the law based on this error can be held liable.

According to the analysis of researchers based on both the Welfare Law State Theory as well as the Green Political Theory and the Green Constitution, in the case of environmental pollution in Sawai Village, Central Maluku Regency, which was caused by Wahana Lestari Investama's Limited Liability Business Actors, Wahana Lestari Investama and State Limited Liability Company Actors, the State represented by the Central Maluku Regency Government must be

responsible for saving the environment or waste that occurs from the shrimp processing industry that pollutes the sea, which is still the customary rights of the indigenous people of the Sawai Village. This form of legal accountability refers to the welfare state theory that the presence of the state and the intended limited company in it must be responsible to the people of the Sawai Village in accordance with the mandate of the Constitution, especially Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. If the case of environmental pollution in the Sawai Village when analysed through the theory of Green Politics and the Green Constitution, the Business Actors of the Wahana Lestari Investama Limited Company and the Central Maluku Regency Government must submit to Article 28H paragraph (1) of the 1945 Republic of Indonesia Constitution, that the Business Actors of the Wahana Lestari Investama Limited Liability Company and the Central Maluku Regency Government, as the operating license issuing from these activities, must pay close attention to the rights of the community in general and the Sawai Village Indigenous people to a good and healthy environment. A good and healthy environment is a human right of every Indonesian citizen. Compromising the right of Indonesian citizens to enjoy a good and healthy environment is a violation of human rights to obtain a good and healthy environment.

Business Actors of the Wahana Lestari Investama Limited Liability Company and the Central Maluku Regency government are responsible for environmental pollution in view of Article 1365 of the Regional Law HUH and Article 87 of the UUPPLH.

### **Closing**

From the case of environmental destruction that occurred in Sawai Village, Central Maluku Regency, if Article 87 paragraph (1) UUPPLH is used, the perpetrators of environmental destruction that occurred in North Seram, Central Maluku Regency by business actors of the Wahana Lestari Investama Limited Liability Company can be understood through the following:

- a. committed an illegal act;
- b. resulting in environmental pollution and / or damage;
- c. caused harm to others or the environment; and
- d. there are business and / or activity responsible.

Furthermore, in order to fulfil claims for compensation under civil law, Article 1365 of the Civil Code requires that there are elements of *onrechtmatige daad* or acts against the law, which include: (a) the act is against the law; (b) the act is based on mistakes; (c) as a result losses were incurred; and (d) there is a causal relationship between actions and losses.



Article 1365 of the Civil Code is indeed protecting the rights of a person, because of the losses he experiences due to the actions of others that cause such losses. Thus, it is assumed that unlawful acts imply the existence of rights and obligations when a person commits an act, either wrongfully or through negligence, and the consequences of the act results in harm to others. Acts against the law based on errors that appear from this case are: (a) the existence of mining actions carried out without permission, both from the community's customary rights voters and the local Regional Government, so that the act is considered illegal, because it is contrary to community rights, and (b) the act which is unlawful, is done in error, because they do know the consequences of the act of mining on other parties.



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