



## Optimizing Civil Procedural Law in Environmental Cases Related to Peatland Burning: Legal Approaches for Sustainable Peatland Management

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**Abstract.** Burning peatland has serious implications for the environment, and legal efforts are crucial in addressing this issue. However, the dimension of civil procedural law applied in environmental cases in Indonesia, especially those related to peatland burning, has not fully supported recovery efforts aligned with sustainable development goals. This research explores the dimension of civil procedural law in the context of handling environmental cases, particularly those related to peatland burning. The primary focus of this study is on the stages of civil procedural law involving initial examination, the examination process in terms of evidence presentation, the judge's decision, and decision enforcement or execution. This research recommends optimizing the application of civil procedural law by developing policies in the examination stages. Improving regulations and guidelines in the evidence presentation stage can be a solution to overcome these challenges, allowing judges to make more accurate decisions based on relevant facts and evidence. In dealing with unpredictable risks, especially those related to industrial activities, this research also advocates for reconsideration of the fault-based liability doctrine. Additionally, the study identifies the need to consider more absolute strict liability in the environmental context. This principle can be adopted to address peatland burners by applying liability without fault. Optimization efforts in the examination stage, consideration of the liability doctrine, and the application of the principle of strict liability are expected to enhance the effectiveness of the legal handling of environmental cases, achieve better recovery, and support sustainable development goals.

**Keywords:** Peatland burning, Civil procedural law, Environmental cases, Sustainable development, Liability without fault



**Abstrak.** Pembakaran lahan gambut memiliki dampak serius bagi lingkungan, dan upaya hukum sangat penting dalam menangani masalah ini. Namun, dimensi hukum acara perdata yang diterapkan dalam kasus lingkungan, khususnya yang terkait dengan pembakaran lahan gambut, belum sepenuhnya mendukung upaya pemulihan yang sejalan dengan tujuan pembangunan berkelanjutan. Penelitian ini mengeksplorasi dimensi hukum acara perdata dalam konteks penanganan kasus lingkungan, terutama yang terkait dengan pembakaran lahan gambut. Fokus utama dari studi ini adalah pada tahapan hukum acara perdata yang melibatkan pemeriksaan awal, proses pemeriksaan (penyajian bukti), keputusan hakim, dan pelaksanaan keputusan (eksekusi). Penelitian ini merekomendasikan optimalisasi penerapan hukum acara perdata dengan mengembangkan kebijakan pada tahap pemeriksaan. Peningkatan regulasi dan pedoman dalam tahap penyajian bukti dapat menjadi solusi untuk mengatasi tantangan ini, memungkinkan hakim membuat keputusan yang lebih akurat berdasarkan fakta dan bukti yang relevan. Dalam menghadapi risiko yang tidak dapat diprediksi, khususnya terkait dengan kegiatan industri, penelitian ini juga mendukung untuk mempertimbangkan kembali doktrin tanggung jawab berdasarkan kesalahan. Selain itu, studi ini mengidentifikasi kebutuhan untuk mempertimbangkan tanggung jawab mutlak yang lebih besar dalam konteks lingkungan. Prinsip ini dapat diadopsi untuk menangani pembakar lahan gambut dengan menerapkan tanggung jawab tanpa kesalahan. Upaya optimalisasi pada tahap pemeriksaan, pertimbangan doktrin tanggung jawab, dan penerapan prinsip tanggung jawab mutlak diharapkan dapat meningkatkan efektivitas penanganan hukum kasus lingkungan, mencapai pemulihan yang lebih baik, dan mendukung tujuan pembangunan berkelanjutan.

**Kata kunci:** Pembakaran lahan gambut, Hukum acara perdata, Kasus lingkungan hidup, Pembangunan berkelanjutan, Liability without fault

## 1. Introduction

Civil procedural law acts as a formal framework that regulates the dispute resolution process in the civil sector. This includes procedures for enforcing civil material law, providing guidelines for judges and related parties in filing claims, examining cases, and implementing decisions.<sup>1</sup> Execution is an ongoing step in the civil procedural legal process, regulated by regulations such as the *Herzien Inlandsch Reglement* (HIR) or *Rechtreglement voor de Buitengewesten* (RBg).<sup>2</sup> The importance of execution is seen in the need to enforce judgments by force when the losing party does not comply with the judgment voluntarily. Delays or failures in implementing decisions can harm justice seekers, in accordance with the principle that “justice delayed is justice denied”, where justice given late or delayed is the same as no or denied justice.<sup>3</sup> Discourse arises when a court decision involves an order to cease a certain action, adding complexity in its implementation after obtaining legal force. The practice of environmental recovery post peatland burning faces challenges in executing legally binding decisions. In court rulings related to peatland burning, few grant claims for the restoration of damaged land. Ironically, none of these decisions have been successfully executed by the local district courts. This is due to the efforts of the defendants to evade restoration responsibilities, including through legal actions outside the framework of civil procedural law and accepted by the courts. Furthermore, when execution fails to be carried out, even after the decision has obtained legal force, new issues arise in practice.<sup>4</sup>

Implementation of the law against perpetrators of environmental destruction and/or pollutants faces serious challenges, especially with the risk of canceling decisions that have obtained permanent legal force by the district court.<sup>5</sup> This creates uncertainty regarding justice, legal certainty, and the goal of maintaining a good environment. The gap between the aspiration to enforce environmental law effectively (*das sollen*) and the reality of its implementation in the field (*das sein*) is becoming very apparent. Facing this situation, orders for the implementation of

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<sup>1</sup> Lonna Yohanes Lengkong, “Keterangan Ahli Sebagai Alat Bukti dalam Penyelesaian Sengketa Perdata,” *to-ra* 6, no. 3 (2020): 319.

<sup>2</sup> Mohammad Naefi and Dian Latifiani, “Akibat Hukum Putusan Gugatan Sederhana Tidak Dijalankan bagi Para Pihak,” *Pandecta Research Law Journal* 16, no. 2 (2021): 337.

<sup>3</sup> Alessandro Melcarne and Giovanni B. Ramello, “Is justice delayed justice denied? An empirical approach,” *International Review of Law and Economics* 65 (2021): 1.

<sup>4</sup> Sayed Faisal, “Analisis Yuridis Perbuatan Melawan Hukum Pemerintah Terhadap Putusan Pengadilan Yang Berkekuatan Hukum Tetap Ditinjau Dari Hukum Administrasi Negara (Studiputusan Nomor: 968. K/Pdt/1990),” *SOSEK: Jurnal Sosial dan Ekonomi* 1, no. 2 (2020): 100.

<sup>5</sup> Andri G. Wibisana and Savitri Nur Setyorini, “Peatland Protection in Indonesia: Toward the Right Direction?,” *Climate Change Research, Policy and Actions in Indonesia: Science, Adaptation and Mitigation* (2021): 304.

recovery need to be supported by clear and firm regulations in the examination process at court hearings.<sup>6</sup> The aim is to prevent the condition of peatlands damaged by burning from worsening as a result of inconsistent legal policies. This should be in line with the legal principle which states that justice delayed is the same as injustice (justice delayed is justice denied). Thus, legal measures must be directed at more efficient and effective regulations to protect the environment.<sup>7</sup>

Land restoration aims to support land functions as the main goal of sustainable development in an environmental context. This goal involves reusing land as a plantation and/or agricultural area, not only for the current generation but also for future generations.<sup>8</sup> The main obstacle faced was the difficulty in carrying out the execution of land restoration, which prompted the author to carry out research on legal politics in regulating the trial process for environmental civil cases related to the impact of peatland burning. This research is based on the desire to support the achievement of sustainable development goals, with a focus on efforts to accelerate the recovery of peatlands damaged by fire. This is considered an implementation of the principle of state responsibility regulated in Law No. 32 of 2009 concerning Environmental Protection and Management.<sup>9</sup> This research explores regulations in the examination of environmental civil cases in court, which are linked to sustainable development goals. The importance of this research lies in preventing major losses that could be experienced by society and/or the government, as well as in efforts to prevent similar incidents from recurring in the future. Thus, this research contributes to the development of more effective legal mechanisms in dealing with the impacts of peatland burning, in line with the principles of sustainable development.

## 2. Research Methods

This research employs a normative research method supported by empirical data. The normative research method is an approach to writing that refers to the normative characteristics of legal science. In the context of legal application, this research faces issues such as legal interpretation, legal voids (*leemten in het recht*),

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<sup>6</sup> Djamaludin Owin Jamasy, "Empowerment based peatland ecosystem conservation for fire control and environmental conservation," *Ecology, Environment and Conservation* 27, no. 1 (2021): 463.

<sup>7</sup> Saritha Kittie Uda, Greetje Schouten, and Lars Hein, "The institutional fit of peatland governance in Indonesia," *Land use policy* 99 (2020): 1.

<sup>8</sup> Savitri Nur Setyorini and Emir Falah Azhari, "Risk Sharing Agreement: Sebuah Ide Awal Mengenai Bentuk Alternatif Pendanaan Pemulihan Kerusakan Lahan Gambut Akibat Kebakaran Hutan dan/atau Lahan di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 6, no. 2 (2020): 210.

<sup>9</sup> Hakim Fadhilah et al., "Implementasi Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup Terhadap Kebersihan Lingkungan Masyarakat," *Cross-border* 5, no. 2 (2022): 1190.

antinomies, and vague norms (*vage normen*). An interdisciplinary scientific approach is also applied, combining various disciplines to reach scientific conclusions that can be used in execution implementation. Additionally, this research uses a case approach. Literature studies are conducted to collect secondary legal materials, including primary and secondary materials. Primary legal materials involve empirical data obtained in the field, including interview results. Secondary legal materials consist of various sources, such as fundamental norms in the Preamble of the 1945 Constitution, fundamental regulations in the Body of the 1945 Constitution, legislation, Law No. 32 of 2009 concerning Environmental Protection and Management, civil procedural law (HIR or RBG), civil law (*Burgerlijk Wetboek*), as well as judgments and rulings from various levels of the judiciary. Secondary legal materials provide explanations for primary and secondary legal materials, such as draft legislation, research results, and scholarly works in the legal field. Moreover, tertiary legal materials, such as dictionaries and encyclopedias, are used as guides and explanations for primary and secondary legal materials. These sources are obtained from university libraries, national libraries, and international and national scientific journals.

### 3. Results and Discussion

#### 3.1. Judicial Practices Related to Peatland Burning

In connection with the burning of peatlands by corporations, it is important to immediately restore land that has experienced damage or pollution. Delays in recovery can result in greater impacts and increasing losses, both in terms of ecology and the costs of restoring damaged land.<sup>10</sup> Even after the Court issues a decision that has permanent legal force, the losing party has the right to file ordinary legal remedies such as appeal and cassation. However, after all ordinary legal action processes have been completed, and the cassation decision has obtained permanent legal force, land restoration should be carried out as quickly as possible. The challenge arises when the losing party uses extraordinary legal measures, such as judicial review, after the cassation decision has permanent legal force.<sup>11</sup> Although Article 66 paragraph (2) of Law No. 14 of 1985 concerning the Supreme Court states that a Judicial Review cannot postpone the execution of a cassation decision that has obtained legal force, in reality, none of the eight decisions in question have been executed. This raises the perception that extraordinary legal remedies, such as judicial review, are used as unclear and non-

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<sup>10</sup> Erham Amin, "Problematika Penyidikan Tindak Pidana Kebakaran Hutan Dan Lahan Dalam Sistem Peradilan Pidana di Indonesia," *Al-Adl: Jurnal Hukum* 12, no. 2 (2020): 241.

<sup>11</sup> Adensi Timomor and Theodorus Pangalila, "Legal Analysis Regarding Reviews Even If A Court's Decision Has Permanent Legal Force," *Technium Social Sciences Journal* 44 (2023): 740.

exceptional reasons, without presenting new evidence as stipulated in Article 67 letter b of Law No. 14 of 1985 concerning the Supreme Court. Thus, this condition creates obstacles in implementing the execution of decisions that should be final.<sup>12</sup>

Article 28 H paragraph (1) of the second amendment to the 1945 Constitution of the Republic of Indonesia confirms that a good and healthy living environment is a human right and constitutional right for all Indonesian citizens.<sup>13</sup> Therefore, the state, government and all stakeholders have an obligation to carry out environmental protection and management in the context of sustainable development. The aim is that the Indonesian environment can continue to be a source and support of life for the Indonesian people and other living creatures. In line with the principle of the human rights of every individual to obtain a good and healthy living environment, which is an integral part of the protection of the entire ecosystem, the Government of the Republic of Indonesia together with the House of Representatives of the Republic of Indonesia approved and enacted Law No. 32 of 2009 concerning Protection and Environmental Management.<sup>14</sup> This step was taken to ensure legal certainty and provide effective protection for everyone's rights to a good and healthy environment, as an integral part of efforts to protect the ecosystem as a whole.

Civil environmental law specifically regulates protection for victims of environmental damage and/or pollution caused by the actions of polluters, which results in losses for the victims.<sup>15</sup> The party who suffers has the right to file a lawsuit for compensation against the polluter. This legal remedy allows environmental lawsuits to obtain compensation for environmental losses and/or costs. In the realm of civil environmental law, lawsuits specifically regulate legal protection for victims who experience environmental damage and/or pollution due to the actions of polluters.<sup>16</sup> Land clearing by burning carried out by plantation companies to obtain clean land, such as for planting oil palm, can have detrimental impacts on the environment and ecosystem sustainability.<sup>17</sup> Without considering

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<sup>12</sup> Dian Agung Wicaksono and Faiz Rahman, "Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia," *Constitutional Review* 8, no. 2 (2022): 264.

<sup>13</sup> Evyta Rosiyanti Ramadhani and Savira Anggraeni, "The Uncertainty of the Right to Health in Indonesia during Covid-19 Pandemic," *Journal of Southeast Asian Human Rights* 6, no. 1 (2022): 57.

<sup>14</sup> Fadhilah et al., "Implementasi Undang-Undang Nomor 32 Tahun 2009," 1192.

<sup>15</sup> Prisca Listiningrum, "Transboundary civil litigation for victims of Southeast Asian Haze pollution: access to justice and the non-discrimination principle," *Transnational Environmental Law* 8, no. 1 (2019): 122.

<sup>16</sup> Ariane Dilay, Alan P. Diduck, and Kirit Patel, "Environmental justice in India: a case study of environmental impact assessment, community engagement and public interest litigation," *Impact Assessment and Project Appraisal* 38, no. 1 (2020): 16.

<sup>17</sup> Diana Yusyanti, "Tindak Pidana Pembakaran Hutan dan Lahan Oleh Korporasi Untuk Membuka Usaha Perkebunan," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 458.

environmental impacts, can be considered deliberate and systematic actions, especially when involving large areas of land and specific locations. Therefore, the element of intention is the main factor influencing the occurrence of land fires which cannot be ignored.<sup>18</sup>

Article 2 letter j of the Environmental Protection and Management Law stipulates the polluter pays principle as the basis for implementing environmental protection and management. This means that every person responsible whose business or activities cause environmental pollution or damage is obliged to bear the costs of environmental restoration.<sup>19</sup> The process of restoring environmental functions can be carried out in various ways, such as stopping sources of pollution, cleaning polluting elements, carrying out remediation, rehabilitation, restoration, or other methods that are in line with developments in science and technology. Article 88 of the Law establishes the principle of absolute responsibility (strict liability) for businesses and/or actions that pose a serious threat to the environment, without the need to prove an element of fault.<sup>20</sup> This article stipulates that proving the element of fault is not required for the plaintiff in a lawsuit involving environmental damage. In the context of civil lawsuits related to environmental cases, the filing of a lawsuit can be done by referring to Article 1365 of the Civil Code. This article states that any act that violates the law and causes harm to others requires the wrongdoer to compensate for the damage. The scope of unlawful acts in this article includes violations of written and unwritten laws. The amount of compensation that can be imposed on polluters or environmental destroyers can be regulated up to a certain limit, reflecting a proportional and fair approach in handling environmental cases.<sup>21</sup>

Environmental destruction and/or pollution caused by the entry or inclusion of living creatures, substances, energy, and/or other components into the environment by human activities can exceed the established environmental quality standards. Direct and/or indirect changes to the physical, chemical and/or biological properties of the environment that exceed quality standard criteria for environmental damage can also occur.<sup>22</sup> Therefore, both environmental pollution and destruction that occurs on land, rivers/sea, or air must be held accountable by

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<sup>18</sup> Wibisana and Setyorini, "Peatland Protection in Indonesia," 308.

<sup>19</sup> Mahrus Ali et al., "Protecting Environment through Criminal Sanction Aggravation," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 127.

<sup>20</sup> Andri G. Wibisana, "The many faces of strict liability in Indonesia's wildfire litigation," *Review of European, Comparative & International Environmental Law* 28, no. 2 (2019): 186.

<sup>21</sup> Yenny Widowaty, Berliant Pratiwi, and Izzy Al Kautsar, "Hak Gugat Pemerintah terhadap Perbuatan Melawan Hukum di Bidang Lingkungan Hidup," *Diversi: Jurnal Hukum* 8, no. 1 (2022): 191.

<sup>22</sup> Hasbi Assidiq, Siti Nurhaliza Bachril, and Nurul Habaib Al-Mukarramah, "Analisis Putusan Pemulihan Lahan Gambut Akibat Aktivitas Pembakaran PT. Kalista Alam di Kawasan Ekosistem Leuser," *Jurist-Diction* 5, no. 3 (2022): 917.



polluters and/or environmental destroyers. In the context of carrying out a legal decision (execution), one of the penalties that can be applied is the payment of a fine for state losses arising from the action.<sup>23</sup> Although an appeal does not eliminate the obligation to pay fines, it is feared that an appeal could result in the loss of evidence, such as a transfer of company ownership or resignation from the company management. To prevent undesirable events and maximize legal efforts, it is necessary to save evidence that has the potential to be lost, such as by blocking all company assets. The blocking of company shares or assets is carried out to cover state losses arising from forest and land fires.<sup>24</sup>

### 3.2. Regulations for the Execution of Decisions in Environmental Civil Cases

The decision execution process will be carried out if the defendant, who is the losing party, is not willing to carry out the decision voluntarily. The definitive time for execution begins once the anniversary date (*aanmaning*) is exceeded.<sup>25</sup> Even though Article 196 HIR or Article 207 RBg states that the right to carry out decisions voluntarily expires after the warning date has passed, this is not absolute. There is a possibility for the defendant to carry out the decision voluntarily as long as the execution has not been carried out, even though the warning period has passed. The District Court has the authority to carry out executions after the *aanmaning* date has passed.<sup>26</sup> However, giving the defendant the opportunity to carry out the decision voluntarily, even though the warning date has passed, is considered reasonable. Executing the decision voluntarily frees the defendant from execution costs. After a warning from the district court, a writ of execution was issued, containing an order to carry out the execution.<sup>27</sup> This letter can be issued by the Chairman of the District Court, especially if the defendant does not comply with the warning summons without a valid reason. An execution order can be issued by the Chairman of the District Court without a warning period, especially if the defendant does not comply with the warning summons. Even if the warning

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<sup>23</sup> Nursila Amanda, Fitrisia Ananda, and Hati Madan, "Revitalisasi degradasi lahan gambut pasca kebakaran hutan di Provinsi Riau," *Prosiding Ilmu Sosial dan Ilmu Politik (PISIP)* 2, no. 1 (2022): 173.

<sup>24</sup> Mukhammad Fatkhullah, Iwed Mulyani, and Bambang Imawan, "Strategi pengembangan masyarakat petani lahan gambut melalui program tanggung jawab sosial perusahaan: Analisis pendekatan penghidupan berkelanjutan," *Journal of Social Development Studies* 2, no. 2 (2021): 16.

<sup>25</sup> Muhammad Fadhilah, "Tinjauan Hukum Pelaksanaan Eksekusi Riil dalam Putusan Peradilan Perdata," *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 1 (2021): 881.

<sup>26</sup> Warsito Kasim, "Analisis Hukum Pelaksanaan Eksekusi dalam Perkara Perdata yang telah Berkekuatan Hukum Tetap," *Jurnal Perencanaan & Pengembangan Ekonomi* 3 (2020): 52.

<sup>27</sup> Sholihin Halafah et al., "Efektivitas Eksekusi Putusan Perkara Perdata Yang Telah Berkekuatan Hukum Tetap di Pengadilan Negeri Sunggumina," *Journal of Lex Generalis (JLG)* 1, no. 1 (2020): 148.



summons is fulfilled but the decision is not carried out during the warning period, the Chairman of the District Court can issue a decree with an order to the clerk or bailiff to carry out the execution in accordance with the decision.<sup>28</sup>

An order from the Chairman of the District Court, which is referred to as a stipulation of execution order, has an important role in ensuring the authentication of the order to carry out the execution. This letter is a guarantee of the authenticity of the order, both in relation to the party carrying out the execution such as the clerk or bailiff, as well as to the defendant (the losing party).<sup>29</sup> Without a decree, the defendant can refuse the execution carried out by the clerk or bailiff. The clarity of executions is often hampered by the absence of official reports or due to inconsistencies in explaining the actual events when the execution took place. The importance of the execution decree is also reflected in the provisions of Article 197 paragraph (5) HIR and Article 209 paragraph (4) RBg, which confirm that the official carrying out the execution is obliged to make a report of the execution. Without an execution report, the execution is considered invalid.<sup>30</sup> Therefore, the formal validity of an execution can only be proven by the existence of an execution report. In the context of a normal execution, the process includes *aanmaning*, determination, and minutes of execution, especially applicable to defendants who do not carry out decisions voluntarily. However, in cases of environmental civil disputes such as peatland burning, the object of execution in the form of burned peatland requires special handling. This is necessary so that the execution does not cause victims, either from the plaintiff or the defendant. Therefore, a special approach is needed in handling environmental civil dispute cases, especially those related to peatland burning.<sup>31</sup>

Execution arrangements are a series of steps that must be arranged both before and after the execution is carried out in the field, especially in the context of peatland executions. The unique characteristics of peatlands, which are very different from mineral soils, require extra vigilance because they are susceptible to fire and prone to subsidence. Therefore, guidance and involvement of fire experts and forestry experts is needed to carry out the execution safely. Article 3 Law no. 32 of 2009 concerning Environmental Protection and Management sets the objectives of environmental protection and management, including protecting

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<sup>28</sup> Sulistyani Eka Lestari and Hardianto Djanggih, "Urgensi hukum perizinan dan penegakannya sebagai sarana pencegahan pencemaran lingkungan hidup," *Masalah-Masalah Hukum* 48, no. 2 (2019): 148.

<sup>29</sup> Andri G. Wibisana, Michael G. Faure, and Raisya Majory, "Error in Personam: Confusion in Indonesia's environmental corporate criminal liability," *Criminal Law Forum* 32, (2021): 248.

<sup>30</sup> Ana Tasia Pase, Sandi Aprianto, and M. Vikriawan, "Juridical Analysis of Land Execution at the Argamamur District Court according to the Land Law," *Jurnal Hukum Sebasen* 7, no. 1 (2021): 25.

<sup>31</sup> Assidiq, Bachril, and Al-Mukarramah, "Analisis Putusan Pemulihan Lahan Gambut," 920.

Indonesian territory from environmental pollution and/or damage.<sup>32</sup> Apart from that, this law aims to guarantee human safety, health and life; protect the survival of living creatures and the preservation of ecosystems; maintain environmental functions; achieve environmental harmony, harmony and balance; guarantee justice for present and future generations; and fulfill and protect the right to the environment as part of human rights.<sup>33</sup> Thus, it is important to ensure that the steps taken are in line with environmental protection objectives and take into account the unique characteristics of peatlands to prevent negative impacts on the ecosystem and humans.

The Principles of Sustainable Development, which emphasize ecodevelopment strategies, mandate that society and ecosystems in an area must experience mutual growth to achieve higher productivity and meet needs, in line with sustainable development strategies from an ecological and social perspective.<sup>34</sup> This perspective emerges in response to the realization that development without considering the biological systems supporting economic growth will not yield long-term benefits. This theory emphasizes the importance of understanding and preserving the balance of ecosystems. In the implementation of Sustainable Development Principles, environmental protection becomes crucial to support human life.<sup>35</sup> Therefore, the management and development of resources should be directed towards maintaining the existence and balance of nature through sustainable protection and rehabilitation efforts. The recovery of damaged or polluted environments becomes a crucial aspect, where the procedures for recovery are clearly regulated. Article 54 of the Environmental Protection and Management Law emphasizes that every individual causing pollution or environmental damage has an obligation to restore the functions of the environment.<sup>36</sup> The recovery process includes stopping the source of pollution, cleaning up polluting elements, remediation, rehabilitation, restoration, and/or

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<sup>32</sup> Muhammad Fahrudin, "Penegakan hukum lingkungan di indonesia dalam perspektif Undang-Undang Nomor 32 Tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup," *Veritas* 5, no. 2 (2019): 83.

<sup>33</sup> Dinah Shelton, "Human rights, environmental rights, and the right to environment," in *Environmental rights*, ed. Steve Vanderheiden (London: Routledge, 2017), 510. See also, Susana Borràs, "New transitions from human rights to the environment to the rights of nature," *Transnational Environmental Law* 5, no. 1 (2016): 114; Gilbert, Jérémie. "The rights of nature, indigenous peoples and international human rights law: From dichotomies to synergies," *Journal of Human Rights and the Environment* 13, no. 2 (2022): 399.

<sup>34</sup> N. P. Hariram et al., "Sustainalism: An Integrated Socio-Economic-Environmental Model to Address Sustainable Development and Sustainability," *Sustainability* 15, no. 13 (2023): 10682.

<sup>35</sup> Justice Mensah, "Sustainable development: Meaning, history, principles, pillars, and implications for human action: Literature review," *Cogent social sciences* 5, no. 1 (2019): 1653531.

<sup>36</sup> Yahman and Azis Setyagama, "Government policy in regulating the environment for development of sustainable environment in Indonesia," *Environment, Development and Sustainability* 25, no. 11 (2023): 12829.

other methods in accordance with developments in science and technology. Further details regarding the procedures for this recovery are regulated through Government Regulations.

In determining whether peatlands have been damaged by burning, whether by individuals or companies, the judge's decision must be based on considerations that include the opinions of peatland fire experts. By involving peatland fire experts, the judge's decision can be accompanied by adequate scientific considerations.<sup>37</sup> This becomes crucial so that in the judge's decision, there is legal consideration that takes into account the actual impact of peatland burning. The importance of involving peatland fire experts in the judge's decision is to ensure that the decision is based on strong scientific foundations. Thus, it is expected that damaged peatlands can be restored according to scientific standards, such as through the processes of remediation, rehabilitation, or restoration, as regulated in Article 54 paragraph (2), letters c, d, and e of the Environmental Protection and Management Law.<sup>38</sup> Currently, no other alternatives for land recovery have been found, so it is necessary to wait for Implementation Guidelines and technical aspects in the field that will be regulated in Government Regulations. Land recovery methods such as remediation, rehabilitation, and restoration are expected to restore the functions of land damaged by burning. Article 87 paragraph (1) of the Environmental Protection and Management Law emphasizes that those responsible for businesses and/or activities that commit illegal acts such as environmental pollution and/or destruction must pay compensation and/or take specific actions. The polluter pays principle is implemented in the realization of environmental law. If the judge orders the defendant to recover the land damaged by burning, supervision of the implementation of this recovery is required to ensure compliance with the judge's decision.<sup>39</sup>

### **3.3. Permanence in the Execution of Environmental Case Decisions: Legal Force and Implications**

Law is a system of order that aims to create peace in society by prohibiting the use of coercive force in social interactions. Law cannot be equated with the use of ordinary power, but is an organized force used by certain individuals under certain conditions in human relations.<sup>40</sup> The main function of law is to regulate and

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<sup>37</sup> Syerra Felia and Fani Budi Kartika, "Tindak Pidana Illegal Logging Ditinjau Dari Perspektif Undang-Undang No 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Lex Justitia* 1, no. 2 (2020): 187.

<sup>38</sup> Masdari Tasmin and Mahyuddin Mahyuddin, "Eksistensi Hukum Pidana dalam Undang-Undang tentang Perlindungan dan Pengelolaan Lingkungan Hidup," *Banua Law Review* 2, no. 1 (2020): 47.

<sup>39</sup> Widowaty, Pratiwi, and Al Kautsar, "Hak Gugat Pemerintah," 193.

<sup>40</sup> Kasim, "Analisis Hukum Pelaksanaan," 56.

reconcile society, make the use of coercive force a community monopoly, and prevent anarchism that can arise due to the use of force without rules. The Ministry of Environment has responsibility for the behavior of corporations involved in land clearing practices using burning.<sup>41</sup> To enforce the law, the Directorate General of Law Enforcement (*Ditjen Gakkum*) plays a role in prosecuting corporations involved in burning peatlands.<sup>42</sup> This step was taken to enforce the rule of law and provide sanctions for environmental violations, thereby creating a legal order that functions as a tool to prevent anarchism and uphold social justice.<sup>43</sup>

The plaintiff's main claim in an environmental dispute or lawsuit is based on the basis of the unlawful act claim which is regulated in Article 1365 of the Civil Code. This article states that every act that violates the law and causes harm to other people requires the perpetrator of the act to compensate for the loss.<sup>44</sup> The unlawful act elements contained in this article include unlawful acts, losses incurred, and the obligation to compensate for losses due to mistakes made.

#### 1. Unlawful act

Unlawful acts indicate an action or behavior by the perpetrator that violates or opposes the law. Initially, the concept of legal violations was interpreted narrowly, limited to written law, namely statutes. In this view, a person or legal entity can only be sued if they violate written law, such as a statute. However, since 1919, the Dutch Supreme Court's decision in the Cohen-Lindenbaum Arrest Case (H.R 31 January 1919) has expanded the definition of unlawful acts, not only limited to violations of written law, but also includes unwritten law. The expansion of the concept includes several criteria, namely:

- (a) Violates the Law, which means the act clearly violates the law.
- (b) Violates another person's subjective rights, which means that the action violates another person's rights guaranteed by law, including personal rights, freedom, property rights, honor, good name or other individual rights.
- (c) Contrary to the perpetrator's legal obligations, which include both written and unwritten legal obligations, including public law.
- (d) Contrary to decency, namely moral rules (Article 1335 in conjunction with Article 1337 of the Civil Code).
- (e) Contrary to the appropriate attitude of caution in society, which is based on unwritten and relative laws.

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<sup>41</sup> Timomor and Pangalila, "Legal Analysis," 742.

<sup>42</sup> Laely Nurhidayah and Shawkat Alam, "The forest and its biodiversity: Assessing the adequacy of biodiversity protection laws in Indonesia," *Asia Pacific Journal of Environmental Law* 23, no. 2 (2020): 179.

<sup>43</sup> M. Zaid et al., "The Sanctions on Environmental Performances: An Assessment of Indonesia and Brazil Practice," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 237.

<sup>44</sup> Yusyanti, "Tindak Pidana Pembakaran," 461.

Thus, the concept of unlawful acts covers various aspects, including violations of the law, subjective rights, legal obligations, morality and precautionary attitudes in society.

## 2. Error

Errors can occur in two forms, namely intentionally and negligently. Intentionality refers to actions performed with full awareness of the harmful consequences to others, where the perpetrator is normally aware of the negative impact of their actions. Meanwhile, negligence occurs when someone takes action without paying attention to what should be done, lacks caution, or is less careful, resulting in harm to others. Nevertheless, there are certain situations where the element of fault can be negated. For example, in a state of necessity (*overmacht*) or if the perpetrator is not in a sound state of mind. A state of necessity refers to a situation where someone is forced to take action due to extreme pressure or threat, leaving them with no other option. Meanwhile, if the perpetrator is not of sound mind, this can eliminate the element of fault due to the mental condition that prevents them from understanding the consequences of their actions.

## 3. Causality relationship

In the legal context, there is a principle which states that there must be a causal relationship between the actions carried out and the losses incurred. In other words, there is a direct link between the perpetrator's actions and the impact they cause. The losses that occur can be caused directly by unlawful acts committed by the perpetrator. Thus, the loss would not have occurred if the perpetrator had not committed an unlawful act.

## 4. Losses

The impact of the perpetrator's actions must cause losses which can be divided into two types, namely material losses and immaterial losses. Material losses include financial aspects, such as losses due to car collisions, loss of potential profits, additional costs, and other factors that can be measured materially. On the other hand, immaterial losses involve non-financial aspects, such as fear, disappointment, regret, emotional impact, physical or mental suffering, and loss of enthusiasm for life. In practice, to measure immaterial losses, it is often interpreted in monetary terms as an appropriate form of compensation.

The Principle of Unlawful Acts requires the plaintiff to prove the perpetrator's guilt. However, relying on the element of error in the context of rapid scientific and technological developments often creates difficulties in predicting risks that may arise from an industrial activity. In enforcing environmental law through the courts, the doctrine of liability without fault often faces obstacles, especially

because of the important requirements that must be met regarding the element of intent (negligence) or error.<sup>45</sup> Thus, if the defendant (polluter) succeeds in proving that he was careful even though he caused harm, then he can be freed from legal responsibility.

Apart from that, in civil law, the principle of absolute responsibility is a type of civil liability which is used as a legal instrument to obtain compensation and environmental restoration costs due to environmental pollution and/or destruction. There are two types of civil liability, namely liability which requires proof of the element of fault that caused the loss, and absolute or strict liability, where liability and compensation arise without having to prove the element of fault, directly after the act is committed.<sup>46</sup> The aim of implementing the principle of absolute responsibility is to fulfill a sense of justice, accommodate the complexity of technological developments in natural resources and the environment, and encourage high-risk business entities to internalize the social costs that may arise as a result of their activities. Strict liability is a type of civil liability that does not depend on the defendant's fault. This principle states that the element of fault does not need to be proven, and the burden of proof is placed on the defendant who must prove that he really did not pollute and/or damage the environment.<sup>47</sup> Therefore, to determine the scope of strict liability, it is necessary to consider the level of risk, the level of danger, the level of feasibility of prevention efforts, and consider the risks and benefits of activities adequately so that the benefits obtained are greater than the costs of preventing dangers that may arise.

Strict liability is a concept of civil liability that does not require that there is any fault on the part of the defendant, but that it has caused harm to the plaintiff. To file a lawsuit using the principle of strict liability, the plaintiff does not need to prove whether the company violated the law and caused environmental damage or not.<sup>48</sup> Article 88 Law no. 32 of 2009 concerning Environmental Protection and Management explains that every perpetrator of environmental damage and/or pollution is absolutely responsible for the environmental damage and/or pollution committed, so that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. Article 88 of the Law is *lex specialis* in

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<sup>45</sup> Deviana Yuanitasari, Hazar Kusmayanti, and Agus Suwandono, "A comparison study of strict liability principles implementation for the product liability within Indonesian consumer protection law between Indonesia and United States of America law," *Cogent Social Sciences* 9, no. 2 (2023): 2246748.

<sup>46</sup> Fatkhullah, Mulyani, and Imawan, "Strategi pengembangan masyarakat," 21.

<sup>47</sup> Riadhi Alhayyan and Jelly Leviza, "Peranan Dan Kewenangan Pemerintah Provinsi Sumatera Utara Terkait Penerapan Asas Tanggung Jawab Mutlak (Strict Liability) Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Hukum Samudra Keadilan* 15, no. 2 (2020): 229.

<sup>48</sup> Muhammad Syaiful Anwar and Rafiqah Sari, "Penegakan Hukum Lingkungan Berbasis Asas Tanggung Jawab Negara di Indonesia," *PROGRESIF: Jurnal Hukum* 15, no. 1 (2021): 115.



lawsuits for unlawful acts in general, determining that perpetrator of environmental damage and/or pollution are obliged to pay compensation without requiring proof of fault.<sup>49</sup> The amount of compensation that can be charged to environmental polluters and/or destroyers can be determined up to a certain limit, and the Law requires corporations to have insurance with sufficient value to cover the burden of compensation if they are caught in a claim or lawsuit based on strict liability. This provides incentives for corporations to be careful in managing the environment in accordance with applicable preventive regulations. The minimum assets required for corporations that move and have direct contact with the environment can be a preventive step in maintaining the sustainability of their business without harming the environment.<sup>50</sup>

### **3.4. Preventive and Law Enforcement Measures for Peatland Burning**

The government has implemented various measures to deal with and prevent peatland burning, which is known as an activity that can cause serious impacts on the environment. Peatland burning is often related to agricultural practices, plantations, and other activities, which can result in air pollution, ecosystem damage, and harm the health of humans and other living creatures. Among them are the steps taken by the government to intensify law enforcement against perpetrators of peatland burning.<sup>51</sup> This involves efforts by law enforcement officials, including the police, to identify, arrest, and prosecute individuals or companies involved in the practice of arson. Apart from that, the government also applies sanctions and fines as a form of punishment for environmental violations. The Indonesian government's steps include strict regulations, land restoration, the establishment of a Peat Restoration Agency (*Badan Restorasi Gambut*/BRG), intensive outreach, and collaboration with local governments and communities. This effort is carried out with the main aim of maintaining the sustainability of peatlands, preventing burning, and restoring affected ecosystems.<sup>52</sup>

As a strategic step in overcoming the problem of peatland burning, the Indonesian Government has taken concrete action, namely by revising and issuing regulations aimed at providing protection and ensuring the sustainability of peatlands. This regulation includes stricter provisions regarding permits for peat

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<sup>49</sup> Malvin Edi Darma and Ahmad Redi, "Penerapan Asas Polluter Pay Principle Dan Strict Liability Terhadap Pelaku Pembakaran Hutan," *Jurnal Hukum Adigama* 1, no. 1 (2018): 1658.

<sup>50</sup> Fahmi Arif Zakaria, "Peningkatan Peran Serta Masyarakat Dalam Pengelolaan Lingkungan Hidup (Di Bendungan Ir. Sutami Kabupaten Malang)," *Jurnal Panorama Hukum* 1, no. 1 (2016): 16.

<sup>51</sup> Ida Aju Pradnja Resosudarmo, Luca Tacconi, and Efendi Agus Waluyo, "Enforcement and compliance with the no-burning policy on villagers in Indonesia," *Forest Policy and Economics* 151 (2023): 102968.

<sup>52</sup> Eva Fauziyah Sanudin et al., "Role of actors in promoting sustainable peatland management in Kubu Raya Regency, West Kalimantan, Indonesia," *Open Agriculture* 8, no. 1 (2023): 20220198.

land use, with the main aim of preventing burning practices that can harm the environment. The government also encourages peatland restoration activities by involving permit holders.<sup>53</sup> Permit holders are given guidance and encouragement to proactively engage in recovery efforts in work areas located in peat areas. Peatland restoration is a top priority to restore peat ecosystems that have been degraded due to burning. By involving permit holders in this process, it is hoped that active involvement can be created in the maintenance and restoration of negatively impacted peatlands.<sup>54</sup>

BRG is an Indonesian government initiative whose main objective is to accelerate the restoration process of damaged peatlands. In carrying out its duties, BRG acts as a coordinating institution that manages recovery efforts in seven provinces that have been seriously affected by burning and other activities.<sup>55</sup> By focusing on ecosystem restoration, BRG creates close synergy between government, companies and communities, forming cross-sector collaboration to achieve common goals in peatland restoration. BRG not only carries out a coordinating role, but also actively participates in providing guidance and technical support to stakeholders at the local level. These steps involve increasing public awareness, involving companies in peatland restoration, and implementing regulations and policies that support restoration efforts. BRG is not only a management institution, but also a catalyst for collaboration between stakeholders in order to maintain and restore peatland ecosystems in Indonesia.<sup>56</sup>

The Indonesian government has taken strategic steps by implementing massive outreach and education programs for the community in an effort to overcome the dangers of peatland burning. This program is designed to increase public awareness of the serious consequences caused by the practice of burning peatlands. Through outreach campaigns, the government is trying to convey information about the negative impacts of burning peatlands on the environment, human health and ecosystem sustainability.<sup>57</sup> Socialization also aims to provide in-depth understanding to the community about sustainable practices in utilizing peatlands, promote environmentally friendly farming and plantation methods, and encourage the active participation of the community in preserving the peatland ecosystem.

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<sup>53</sup> Benjamin John Wiesner and Paul Dargusch, "The Social License to Restore—Perspectives on Community Involvement in Indonesian Peatland Restoration," *Land* 11, no. 7 (2022): 1038.

<sup>54</sup> Mark E. Harrison et al. "Tropical forest and peatland conservation in Indonesia: Challenges and directions," *People and Nature* 2, no. 1 (2020): 4; Caroline Ward et al., "Smallholder perceptions of land restoration activities: rewetting tropical peatland oil palm areas in Sumatra, Indonesia," *Regional Environmental Change* 21 (2021): 7.

<sup>55</sup> Tri Wira Yuwati, et al., "Restoration of degraded tropical peatland in Indonesia: A review," *Land* 10, no. 11 (2021): 1.

<sup>56</sup> Rizky Januar, Eli Nur Nirmala Sari, and Surahman Putra, "Dynamics of local governance: The case of peatland restoration in Central Kalimantan, Indonesia," *Land Use Policy* 102 (2021): 2.

<sup>57</sup> Wibisana and Setyorini, "Peatland Protection in Indonesia," 313.

Additionally, socialization efforts emphasize the role of the community in monitoring its surrounding environment. The government strives to create active community involvement as “guardians” of peatlands to report potential fires, violations, or practices harmful to the environment. By directly involving the community, it is hoped that a culture of environmental care at the local level will be formed, positively impacting the prevention of damaging peatland burning practices.<sup>58</sup>

Restoring the peat ecosystem is a collaborative agenda that involves the active role of the Regional Government and the participation of local communities. The Indonesian government plays a central role in facilitating cooperation between regional governments, companies and communities to jointly carry out restoration efforts for peat ecosystems affected by burning practices.<sup>59</sup> This collaboration creates synergy between relevant parties, integrating local knowledge with national policies to ensure effective and sustainable recovery. Regional Government plays a role in coordinating recovery initiatives at the local level, ensuring the implementation of peat ecosystem restoration policies in accordance with local conditions.<sup>60</sup> In addition, local governments also function as supervisors to ensure community involvement and active participation in recovery activities. The participation of local communities is very important, as they have valuable traditional knowledge about peat ecosystems and can provide deep insight into the restoration process. By involving the Regional Government and the community directly, it is hoped that peat ecosystem restoration efforts can be more focused, sustainable, and have a greater positive impact on the environment and sustainability of the local area.<sup>61</sup>

#### 4. Conclusion

The dimension of civil procedural law is an integral part of the environmental case handling process, especially those related to peatland burning cases. The stages in this process, such as initial examination, mediation efforts, examination process, and implementation of decisions, play a crucial role in achieving justice and environmental recovery. However, in the context of burned peatland cases, there

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<sup>58</sup> Alhayyan and Leviza, “Peranan Dan Kewenangan,” 232.

<sup>59</sup> Erlis Saputra, “Beyond fires and deforestation: Tackling land subsidence in peatland areas, a case study from Riau, Indonesia,” *Land* 8, no. 5 (2019): 76.

<sup>60</sup> Rachmad Safa’at et al., “Legal Implications Regulation of Citizens’s Rights and Government Obligations in Managing Natural Resources and the Environment in the 1945 Constitution of the Republic of Indonesia,” *International Journal of Multicultural and Multireligious Understanding* 9, no. 3 (2022): 616.

<sup>61</sup> Fatkhullah, Mulyani, and Imawan, “Strategi pengembangan masyarakat,” 25.

are challenges that need to be overcome for land recovery to align with sustainable development goals. In its implementation, the civil procedural law process in the environmental court has not been fully optimized to support recovery efforts in line with the principles of sustainable development. Therefore, there is a need for policy development in the examination stages of environmental cases. These efforts could include enhancing the role of mediation to achieve more proactive settlement agreements, using scientific evidence and credible environmental experts in the proofing process, and making judicial decisions that consider ecological recovery and sustainability aspects. Optimization of the civil procedural law dimension can be a more effective instrument in handling environmental cases, especially related to peatland burning.

This research reveals a series of steps and efforts taken by the Indonesian government to address the issue of peatland burning. As a starting point, the government revised and issued regulations aimed at providing protection and ensuring the sustainability of peatlands. These regulations include stricter provisions related to peatland utilization permits, as a preventive measure to prevent environmentally harmful burning practices. The effort to recover peatlands also becomes the main focus in addressing this issue. The government actively encourages and guides permit holders to engage in the recovery of working areas in peatland regions. This process is directed at restoring the degraded peatland ecosystem due to burning. Furthermore, the establishment of the Peatland Restoration Agency (*Badan Restorasi Gambut* or BRG) is a concrete step by the government to expedite the restoration process of damaged peatlands. The formation of the BRG is an institution that plays a crucial role in coordinating recovery efforts, creating synergy between the government, companies, and the community to achieve ecosystem restoration goals.

Massive socialization and education are integral parts of this initiative, aiming to increase public awareness of the negative impacts caused by peatland burning. By building a better understanding among the public, it is hoped that stronger support will be created to involve all layers of society in environmental recovery efforts. Active collaboration with regional governments and local communities is a key element in achieving the success of peatland ecosystem recovery. This collaboration rallies support and participation at the local level, where regional governments and communities have a deeper understanding of local conditions. Through this approach, the government can build more effective and region-specific solutions. These steps reflect the government's commitment to addressing environmental challenges with an integrated approach, involving all stakeholders to achieve sustainable peatland ecosystem recovery.

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