

Judgement without Sanction on Corporation's Forest Burning; Judges and the Principle of In Dubio Pro Natura

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Abstract

This study aims to analyze judges' decisions related to forest fire cases. More specifically, it seeks to analyze the judges' reasoning based on the principles of justice, legal certainty, and public interest, as well as the application of the principle of in dubio pro natura in environmental damage cases. Forest and land burning for plantation purposes continues to increase, and legal efforts and law enforcement face numerous obstacles in terms of evidence. As a result, many forest and land burning cases go unpunished. The decision No. 233/Pid.b/Lb. 2020/Pn.Pbu and the cassation decision No. 3840 K/Pid.Sus.Lb/2021 acquitted the defendant PT S of liability for the forest and land fire incident. To analyze this case, the study uses Gustav Radbruch's theory of the purpose of law, which includes justice, legal certainty, and utility. The decisions of the first-instance court and the cassation court failed to adequately consider the principles of justice and utility, particularly regarding environmental protection. Although the principle of "in dubio pro natura" was applied, the judges' decision relied more on the logic of legal certainty, which only determines the decision based on evidence presented in court rather than the actual facts on the ground where the forest fire occurred. The principle of precaution was ignored by the defendant and overlooked by the judges.

Keywords: *Judgement; Forest Burning; In Dubio Pro Natura Principle.*

Introduction

The 1945 Constitution of the Republic of Indonesia explicitly states that the right to a good and healthy environment is a fundamental right of all Indonesian citizens. This provision is enshrined in Article 28H of the 1945 Constitution, which states that every person has the right to live and reside in prosperity, both physically and mentally, and to have a good and healthy environment, and the right to access health services. This demonstrates that the environment is essential for human life. The right to a healthy



environment forms the basis for other laws and regulations, such as the 1945 Constitution and Law No. 32 of 2009 on Environmental Protection and Management. In utilizing the environment in the form of forests and land, it must be in accordance with Article 33, paragraph (3) of the 1945 Constitution, which states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This regulation emphasizes that access to a good and healthy environment is an Indonesian citizen's fundamental and constitutional right. It also emphasizes that Indonesia's environmental wealth is the people's property for prosperity. However, economic prosperity is often prioritized, sacrificing environmental protection and community values.

Indonesia has fundamental laws governing environmental issues, namely the Criminal Code, Law No. 32 of 2009 on Environmental Protection and Management, Law No. 41 of 1999 on Forestry, and Law No. 39 of 2014 on Plantations. These four laws regulating the environment have sought to enforce environmental law by incorporating criminal provisions with strict sanctions as a last resort or as a means to preserve the existing environment. However, issues have arisen regarding conflicts of norms within these four environmental laws, particularly those regulating forest and land burning, namely Article 69(2) of Law No. 32 of 2009 on Environmental Protection and Management, Article 187 of the Criminal Code, Article 56(1) of Law of the Republic of Indonesia No. 39 of 2014 on Plantations, and Article 50(d) of Law of the Republic of Indonesia No. 41 of 1999 on Forestry, which explicitly prohibit forest burning without any exceptions.¹

The development of environmental protection in national and international policies aimed at protecting humans from environmental damage has led to the emergence of *the precautionary principle*, which has been adopted from various conventions as a form of sustainable development principle. This principle is enshrined in the Rio de Janeiro Declaration of 1992 *United Nations Conference on Environment and Development*, which is contained in the 5th principle.² It states that to protect the environment, a precautionary approach must be widely applied by countries according to their capabilities. If there is a serious or irreversible threat of environmental damage, the lack of scientific certainty should not be used to delay efforts to

¹ Karli H Kalianda et al., "PEMBAKARAN HUTAN DAN LAHAN: STUDI PUTUSAN HAKIM PENGADILAN NEGERI PANGKALANBUN NOMOR: 233/PID. B/LH/2020/PNPBU," *DE JURE Critical Laws Journal* 3, no. 2 (2022): 84–97.

² MRAG Wibisana, "Law and Economic Analysis of the Precautionary Principle," *Maastricht University, Disertasi*, 2008.

prevent environmental degradation.³

Indonesia's forests are lush and dense natural forests, including those in the eastern, central, and western regions. The destruction of these forests has worsened due to land clearing for oil palm plantations using traditional methods involving the burning of forests and land, resulting in severe forest and land degradation in Indonesia. Forest damage can occur when *forests are burned or land clearing* is carried out.⁴ This burning is done because the community believes the burning process does not require a long time, is relatively cheaper, and yields more satisfying results than legal land clearing methods.

One of the challenges in enforcing the law against forest and land burning crimes is the difficulty in proving the act of burning, leading to court rulings that are often lenient, and in some cases, the acquittal of the perpetrators. For example, in Decision Number 233/Pid.B/LH/2020/PNPBU, the panel of judges in the trial acquitted the corporate defendant PT S, which was far from the demands of the public prosecutor. The alternative charge from the Public Prosecutor was that the corporate defendant PT S, represented by its management, was proven to have intentionally or negligently committed acts that resulted in the exceeding of air quality standards, ambient quality standards, water quality standards, seawater quality standards, or environmental damage criteria. As stipulated in Article 98(1) in conjunction with Article 99(1) in conjunction with Article 116(1) in conjunction with Article 119(c) of Law No. 32 of 2009 on the Protection and Management of the Environment. A fine of IDR 2,000,000,000.00 (Two billion rupiah) and an additional fine of IDR 935,735,340,000.00 (Nine hundred thirty-five billion seven hundred thirty-five million three hundred forty thousand rupiah) for the rehabilitation or reforestation of the forest and the restoration of the land damaged by the fire covering an area of 2,600 hectares located in the Palm Oil Plantation Concession Area of PT S in Central Kalimantan.

In its consideration, the court ruled to acquit the defendant in Decision No. 233/Pid.B/Lh/2020/Pn.Pbu that PT S, in the case of forest and land fires, was not proven guilty of committing the criminal offense of forest and land burning as alleged in the first and second alternative charges by the public prosecutor, based on the facts presented in court, as evidenced by the evidence submitted and the testimonies of witnesses and expert witnesses. In one of its considerations, the court stated that at the time of the fire, which

³ David Freestone, "THE ROAD FROM RIO: INTERNATIONAL ENVIRONMENTAL LAW AFTER THE EARTH SUMMIT," *Journal of Environmental Law* 6, no. 2 (1994): 193–218, <https://doi.org/10.1093/jel/6.2.193>.

⁴ Miswar Pasai, "Dampak Kebakaran Hutan Dan Penegakan Hukum," *Jurnal Pablawan* 3, no. 1 (2020): 36–46.

occurred outside the company's area, strong winds were blowing from the southeast, causing the fire to spread toward PT S's land, making it impossible for the company's firefighting team to control the spreading flames. Furthermore, the panel of judges declared that PT S was a victim because the fire originated outside the company's area.

Based on the above, after the Panel of Judges of the District Court of Pangkalan Bun acquitted the defendant PT S in the forest and land fire case, the public prosecutor appealed to the Supreme Court (MA). On November 8, 2021, the Supreme Court issued Cassation Decision No. 3840 K/Pid.Sus.Lh/2021, rejecting the cassation appeal. In light of this, the author is interested in further researching the Panel of Judges' decision regarding forest and land burning by a corporation.

Several articles have discussed the resolution of forest burning litigation by companies. One of them is titled "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation" by Wibisana. This article examines several misinterpretations of strict liability in forest fire litigation, where liability rules are considered part of the rules governing liability for unlawful acts, and as liability rules arising from the application of the principle of due care in fault-based liability rules.⁵ Arifin et al. explore critical questions about whether the environment should be prioritized in situations of uncertainty, summarized in the Latin phrase "In Dubio Pro Natura" (In Doubt, For Nature) in a more general context than in a court ruling.⁶ Triana et al. explore a study of judicial decisions that consider the principle of In Dubio Pro Natura in determining strict liability against corporations engaged in land clearing through forest burning. This decision also demonstrates the progressive nature of judicial decisions.⁷

This article, however, discusses a judicial decision in which the judge appeared to disregard the principle of In Dubio Pro Natura in Decision No. 233/Pid.B/LH/2020/PNPBU. The decision acquitted the defendant PT S of liability for the forest and land fire incident. Therefore, this article explores the basis of the judge's considerations in Decision No. 233/Pid.B/Lh/2020/Pn.Pbu and Supreme Court Decision No. 3840 K/Pid.Sus.Lh/2021, as well as whether the decisions have fulfilled the values

⁵ Andri G. Wibisana, "The Many Faces of Strict Liability in Indonesia's Wildfire Litigation," *Review of European, Comparative & International Environmental Law* 28, no. 2 (July 22, 2019): 185–96, <https://doi.org/10.1111/reel.12284>.

⁶ Ridwan Arifin and Siti Hafsyah Idris, "In Dubio Pro Natura: In Doubt, Should the Environment Be a Priority? A Discourse of Environmental Justice in Indonesia," *Jambe Law Journal* 6, no. 2 (December 4, 2023): 143–84, <https://doi.org/10.22437/jlj.6.2.143-184>.

⁷ Nita Triana, Ade Tuti Turistiati, and Lincoln Monk, "Progressivity of Judges in Using The Principle of Strict Liability as A Legal Reasoning in Forest Fire Cases," *Varia Justicia* 19, no. 2 (2023): 116–33.

of certainty, justice, and utility in the *In Dubio Pro Natura* principle.

To address these issues, this study employs normative legal research using a normative legal approach. The theory used is *Gustav Radbruch's* theory regarding the purpose of law, which places the principles of justice, legal certainty, and utility as the main pillars in assessing the goodness of a legal norm.⁸ This theory is used to analyze Judgement No. 233/Pid.B/LH/2020/PNPBU, which will assess whether the judgement reflects the values of justice, legal certainty, and utility for society and the environment.

Discussion

Judicial Considerations and *In Dubio Pro Natura* in Forest Fire Case Rulings

Judges must pay close attention to Article 197 of the Criminal Procedure Code when formulating a judgement. This is so that judges make judgements carefully and thoroughly to fulfil the principles of justice and legal certainty. Judges who decide on environmental cases must have an environmental judge certification. This aims to enhance the effectiveness of handling environmental cases in court. In environmental cases, if the panel of judges doubts the evidence, the judge prioritizes environmental protection (*In Dubio Pro Natura*).

In analyzing the public prosecutor's indictment, the panel of judges uses the analytical tool of the theory of unlawful acts, which has two characteristics: formal and material. Formal refers to rules governing the acts committed, while material does not regulate the acts themselves but rather the consequences of the acts committed.

The provisions forming the public prosecutor's indictment are explained in Law No. 32 of 2009 on the Protection and Management of the Environment and Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management. In its considerations, the panel of judges evaluates the elements of the public prosecutor's indictment in the form of an alternative indictment.

For each charge, the judge provided the following considerations: First, the first alternative charge, Article 98(1) in conjunction with Article 116(1)(a) in conjunction with Article 119(c), which states: 1) Every person, where "every person" refers to the legal subject of the criminal act, whether an individual or a corporation. In this case, the defendant is the corporation PT S, as charged by the prosecutor. 2) Intentionally committing an act that

⁸ E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (December 30, 2022): 453–80, <https://doi.org/10.22437/ujh.5.2.453-480>; Gustav Radbruch, *Rechtsphilosophie* (Leipzig: Verlag von Quelle & Meyer, 1932).

exceeds the ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria.⁹

Explanation: a) The term "intentionally" (opzet) refers to the deliberate intention to cause an event with a specific purpose; b) The court further considered, based on, that the prosecution's charges regarding the fire at the palm oil plantation owned by the defendant PT S, concerning the defendant's handling of the fire, resulted in the exceeding of the criteria for ambient air quality, water, and seawater, as well as other environmental damage; c) The court considered that the fire that occurred on August 21, 2019, originated from the TNTP area and spread to the defendant's plantation land in Block 41 due to strong winds from the southeast. PT S had made maximum efforts to take preventive measures and extinguish the fire. The court ruled that the defendant PT S was a victim and there was no intentional act in the fire incident; d) The court considered whether the fire incident resulted in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, and environmental damage criteria; e) In its consideration, the expert from the prosecution took samples at the fire site on September 14, 2019, which were analyzed at the ICBB Laboratory, resulting in soil damage and increased soil pH due to the fire; f) Subsequently, the panel of judges, along with the public prosecutor, the defendant's legal counsel, and the expert, conducted measurements at the former fire site on January 22, 2021, using a WTW 3310 device. The measurements showed that the soil pH had returned to normal. The court concluded that no intentional act or environmental damage resulted from the fire incident. Therefore, the corporate defendant PT S was found not guilty of committing the criminal offense as charged in the first alternative count by the public prosecutor.

Secondly, the Second Alternative Charge, Article 99(1) in conjunction with Article 116(1)(a) and Article 119(c), which states: 1) Any person, where the term "any person" refers to the legal subject of the criminal act, whether an individual or a corporation. In this case, the corporation is PT S. 2) Negligence resulting in exceeding ambient air quality standards, water quality standards, seawater quality standards, and environmental damage criteria. 3) The court considers that the evidence in the form of facilities and infrastructure owned by the defendant was by standard operating procedures (SOP) and sufficient for fire extinguishing, prevention, and mitigation. 4) Regarding the spread of the fire, the court considered that, based on the facts presented in court, the incident occurred during the dry season, and there was dry peatland, making it highly prone to fires, coupled with winds blowing from the southeast. The court concluded that the fire was a natural disaster

⁹ Pengadilan Negeri Pangkalan Bun, "Putusan Nomor 233/Pib.B/Lh/2020/PnPbu" (2020).

or force majeure, as it could not be prevented by human means and thus constitutes a legal exception to liability for the consequences. Based on these events, the court concluded that the elements of the second alternative charge were unmet, and the defendant was found not guilty and acquitted of that charge. 5) Thus, the court's considerations regarding the first and second charges brought by the prosecutor could not be proven, and the court ruled that the defendant must be acquitted of all charges.

After the corporate defendant was acquitted in the first-instance court, the public prosecutor filed an appeal with the Supreme Court (MA) against the judgement of the District Court of Pangkalan Bun No. 233/Pid.B/Lh/2020/Pn.Pbu, with the appeal petition No. 9/Akta.PID.B/LH2021 issued by the Clerk of the District Court of Pangkalan Bun. The grounds for the appeal filed by the public prosecutor were that the panel of judges in Judgement No. 233/Pid.B/Lh/2020/PnPbu had erred in the application of the law regarding proof, as provided in Article 253(1)(a) of Law No. 8 of 1981 on the Criminal Procedure Code, which states whether the legal provisions were not applied or were misapplied.

The Supreme Court's Considerations on the Prosecutor's Grounds for Appeal

That the judgement *of the trial court* in Case No. 233/Pid.B/Lh/2020/PnPbu found the defendant, a corporation named PT S, not guilty of intentionally or negligently committing the acts alleged in the first and second alternative charges by the public prosecutor in connection with the forest and land fire incident in the Apl oil palm plantation owned by the defendant. In its considerations, the Supreme Court judge noted that *the lower court's* decision stated that at the location of the forest and land fire, a strong wind blew from the southeast, causing the fire to reignite and making it difficult for the firefighting team to extinguish it. Therefore, the forest and land fire was deemed a natural disaster or *force majeure*, constituting a *legal* exception to causation. According to *the Supreme Court judge*, this reasoning was appropriate.¹⁰

Furthermore, regarding the prevention of fires, the defendant had prepared fire control facilities and other supporting infrastructure, such as structured personnel, so that PT S had made maximum efforts when the fire occurred. In the Supreme Court's consideration, the grounds for cassation raised by the appellant cannot be upheld, and the decision *of the trial court*, Judgement No. 233/Pid.B/Lh/2020/PnPbu, was correct in the application of the law and consistent with the factual findings in court. Therefore, under

¹⁰ Mahkamah Agung Republik Indonesia, "Putusan Kasasi Mahkamah Agung Republik Indonesia Nomor 3840K/Pid .Sus.Lh/ 2021" (2021).

Article 254 of Law No. 8 on Criminal Procedure, the appellant's cassation appeal is dismissed.

Dissenting Opinion

The public prosecutor's appeal is justified regarding the error in the evidence presented in Decision No. 233/Pid.B/Lh/2020/PnPbu, as the factual findings in court were based on 74 expert opinions from the defendant, which lacked adequate means such as an early warning system, early detection, communication systems as required by Article 14(2) of Government Regulation No. 4 of 2001, as well as scientific evidence (*scientific evidence*) supported by expert opinions and meeting the qualifications of Minister of Environment Regulation No. 7 of 2014, and the results of accredited laboratory testing of samples. Therefore, the evidence is authentic and valid. As such, this satisfies the elements of Article 99(1) in conjunction with Article 116(1)(a) and Article 119(c) of Law No. 32 of 2009, as per the second alternative charge by the public prosecutor.

The public prosecutor filed an appeal for cassation because *the trial court's* decision was erroneous in applying the law. Based on the facts presented in court regarding the case, the defendant was proven to have fulfilled the elements of the second charge. Therefore, the defendant was found guilty of committing a criminal offense due to "negligence resulting in exceeding the standard criteria for environmental damage."

The Basis for the Judge's Consideration between *In Dubio Pro Reo* and *In Dubio Pro Natura*

Judicial reasoning is important in determining the value of a judicial decision that contains legal certainty and justice to benefit the parties concerned. Therefore, judicial reasoning must be adequately approached, carefully, and thoroughly. The purpose of this study is not to justify whether PT S, the *fact-finding judge's* decision, and the final appellate court's decision are correct or incorrect. Instead, the objective is to examine the basis of the judge's considerations and whether the decision meets the values of justice, certainty, and utility in enforcing environmental law. In the judge's consideration in environmental cases, if there is no technology or science capable of proving the impact on environmental damage, then *the precautionary principle* or principle of caution must be adopted, and the principle of *in dubio pro natura* must be applied in the judge's consideration policy. In environmental cases, judges must have environmental judge certification when issuing decisions. By KMA No. 134/KMA/SK/IX/2011, which states that environmental cases must be adjudicated by judges with environmental certification appointed by the Supreme Court, the importance of the status of judges with environmental certification in cases of environmental damage is

aimed at enhancing effectiveness in handling environmental cases in court. In environmental cases, if the panel of judges doubts the evidence, the judge prioritizes environmental protection per the principle of "*in dubio pro natura*." In this case, during the court proceedings, one of the judges on the panel in the case of the District Court of Pangkalan Bun had already obtained environmental judge certification.

Considering the facts presented in the trial, in the decision of the *trial court (judex facti)* No. 233/Pid.B/Lh/2020/PnPbu and the appeal (kasasi) No. 3840 K/Pid.Sus.Lh/2021, the panel of judges tended to favor the defendant by disregarding several facts in their considerations. In the decision, the judge stated that the defendant was the victim, thus adopting the principle of "*in dubio pro reo*," which means that if a judge doubts a matter, the judge should grant leniency to the defendant. Applying the principle of *in dubio pro reo* is used when, based on the evidence, the judge has doubts. Article 183 of the Criminal Procedure Code applies, which prohibits the judge from imposing a criminal penalty if there are at least two pieces of evidence. If the judge does not have certainty, then the judge is not permitted to impose a criminal penalty on the defendant.

Implementing the principle of *in dubio pro reo* in environmental cases is inappropriate, as it conflicts with the principle of *in dubio pro natura*. In environmental cases, the court must prioritize the principle of *in dubio pro natura*,¹¹ to ensure the quality of the environment and legal certainty that protects everyone's right to a good and healthy environment by the principles contained in Law No. 32 of 2009 on the protection and management of the environment.

The principle of *in dubio pro natura* is derived from the *precautionary principle* or principle of caution, as enshrined in the Rio Declaration of 1992 and contained in SKK MA No. 36/KMA/MA/SK/II/2013 on Guidelines for Handling Environmental Cases, which states that every country must apply the principle of caution according to its capabilities, if environmental damage occurs due to the absence of scientific evidence, this cannot be used as a reason to delay efforts to prevent environmental damage. In considering preventive and pollution control measures, as outlined earlier, judges must assess the situation and conditions to determine whether scientific evidence is based on reliable and scientifically validated methodologies, particularly regarding uncertainties in scientific knowledge regarding the potential impacts of environmental damage. It is under these circumstances that judges must apply the precautionary principle.

¹¹ Mr. Imamulhadi, "PERKEMBANGAN PRINSIP STRICT LIABILITY DAN PRECAUTIONARY DALAM PENYELESAIAN SENGKETA LINGKUNGAN HIDUP DI PENGADILAN," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 25, no. 3 (March 31, 2014): 416, <https://doi.org/10.22146/jmh.16070>.

The Aspect of the Principle of Justice in Environmental Court Decisions

The utilization of natural resources must take into account environmental sustainability. This is often overlooked by humans, who sometimes cannot control their desire to exploit natural resources. This frequently occurs in Indonesia, under the pretext of economic growth and development, where business activities are carried out without considering the environment, resulting in ongoing environmental degradation. The natural resources possessed by Indonesia also represent a significant responsibility to protect the environment as part of the global ecosystem. The quality of the environment in Indonesia not only affects Indonesia itself but also the entire ecosystem.

Indonesia's forests are often referred to as the lungs of the world, providing oxygen for the survival of living things that produce oxygen for humans and other living things. Forests are natural resources that play an important role in all aspects of life, including the economy, society, culture, and the environment. Caring for forests and the environment is a shared responsibility.¹² However, forest areas have decreased over time, leading to the extinction of various species and ecosystem damage. The greenhouse gas effect also causes this. The most common environmental issues are forest and land degradation due to land conversion into plantations, including oil palm plantations.¹³ Oil palm plays a strategic role as a foreign exchange earner for the country; however, oil palm plantations also have negative impacts, such as causing deforestation or a decrease in forest area in Indonesia. Almost every year, Indonesia faces forest fires that seriously impact education, transportation, health, the economy, and the environment. Forests play a critical role in maintaining the human environment. Forest fires damage the environment, disrupt ecological balance, and threaten human safety.¹⁴ Numerous environmental criminal cases are brought to court with court rulings that are lenient toward environmental destroyers. One of the obstacles in enforcing the law against forest and land burning crimes is the difficulty of proving forest and land burning, resulting in court rulings

¹² Rifqiya Hidayatul Mufidah, "Diskursus Pemikiran Fikih Lingkungan Ali Yafie Dan Mujiono Abdillah," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 5, no. 1 (June 30, 2016), <https://doi.org/10.14421/sh.v5i1.1998>.

¹³ Herpita Wahyuni and Suranto Suranto, "Dampak Deforestasi Hutan Skala Besar Terhadap Pemanasan Global Di Indonesia," *JiIP: Jurnal Ilmiah Ilmu Pemerintahan* 6, no. 1 (March 25, 2021): 148–62, <https://doi.org/10.14710/jiip.v6i1.10083>.

¹⁴ Yee Jian Chew et al., "A Review of Forest Fire Combating Efforts, Challenges and Future Directions in Peninsular Malaysia, Sabah, and Sarawak," *Forests* 13, no. 9 (September 1, 2022): 1405, <https://doi.org/10.3390/f13091405>.

that are often lenient, and even acquittal of the perpetrators.¹⁵ This also applies to Judgement No. 233/Pid.B/LH/2020/PNPBU, where the panel of judges in the trial acquitted the corporate defendant PT S, which was far from the prosecution's demands, and the Supreme Court rejected the appeal in its decision No. 3840 K/Pid. Sus.Lh/2021.

As stated by Gustav Radbruch, the purpose of law must not be separated from the elements of justice, certainty, and utility. The existence of law referred to here encompasses both passive law (statutory regulations) and active law (judges in court). Humans can exercise control as desired but must remain within the bounds of legal norms. Humans are also part of living beings, and human beings' divine nature carries the responsibility to protect the environment, so that other living beings also participate in protecting the environment, because there is a life cycle in the food chain where they protect each other with their rights and obligations in managing the environment.¹⁶

Judicial decisions that reflect justice are not easy to use as a benchmark for the parties involved in a case. Because what is fair for one party may not be fair for another.¹⁷ The judge must uphold the truth by the principles stated at the beginning of the decision, namely, "In the Name of Justice Based on the Oneness of God." The justice referred to in the judge's decision is justice that does not favor one party over another. In rendering a decision, the judge must comply with existing regulations so that the decision is based on justice and the interests of society. Based on the decision of the District Court of Pangkalan Bun No. 233/Pid.B/Lh/2020/Pn.Pbu and the Supreme Court Decision No. 3840 K/Pid.Sus.Lh/2021, which acquitted the defendant and rejected the cassation appeal, freeing the corporate defendant from liability for the forest and land fire incident in Central Kalimantan. According to the researcher, the judges' decision did not meet the elements of justice, particularly justice for protecting the environment. The fire on the land of the corporate defendant PT S caused environmental damage and pollution that could disrupt community activities and even affect neighboring countries such as Malaysia, Singapore, and Brunei Darussalam.

¹⁵ Popi Tuhulele Tuhulele, "Kebakaran Hutan Di Indonesia Dan Proses Penegakan Hukumnya Sebagai Komitmen Dalam Mengatasi Dampak Perubahan Iklim," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, no. 2 (November 30, 2014), <https://doi.org/10.14421/sh.v3i2.1973>.

¹⁶ Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan," *MAZAHIB* 15, no. 1 (December 15, 2016), <https://doi.org/10.21093/mj.v15i1.590>.

¹⁷ DEWI ATIQA, "Peran Hakim Dalam Mewujudkan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Putusan," *Pengadilan Agama Purwodadi*, 2023, <https://pa-purwodadi.go.id/index.php/26-halaman-depan/artikel/358-peran-hakim-dalam-mewujudkan-asas-keadilan-kepastian-hukum-dan-kemanfaatan-putusan>.

The failure of the judicial institution to resolve environmental criminal cases stems from judges' limited understanding and application of the law, which is confined to legal formalities and procedures.¹⁸ Judicial decisions that fail to meet environmental justice contribute to the ineffectiveness of environmental law enforcement in Indonesia. Judges have not optimally utilized legal principles that hold a higher position and the law within society when examining and deciding cases of environmental damage.¹⁹ Judges play a crucial role in achieving justice for the environment and environmental protection. The limitations of judges in environmental competence significantly impact the character of their decisions. To ensure justice for environmental protection, the Supreme Court of the Republic of Indonesia issued Supreme Court Decision No. 134/KMA/SK/IX/2011 on Environmental Judge Certification.

In one court case, one of the Pangkalan Bun District Court judges was certified as an environmental judge. According to the researcher's interview with the Pangkalan Bun District Court judge, judges need to be certified in environmental matters in environmental cases in the judiciary to improve effectiveness in handling environmental cases. In environmental cases, if the panel of judges has doubts about the evidence, the judge prioritizes environmental protection, which is referred to as *the principle of In Dubio Pro Natura*. This principle stems from the principle of caution based on Law No. 32 of 2009 concerning Environmental Protection and Management and Principle 15 of the Rio Declaration.

Many environmental cases are won by environmental destroyers or businesses, such as the case of PT S. The law, which is meant to uphold justice, is often easily undermined by greed. The law does not merely examine justice; it should produce justice, even a new form: justice for the environment (*ecology*) and future generations (*intergenerational justice*).²⁰ Suppose environmental law enforcement is carried out to its fullest extent. In that case, environmental justice will be achieved for the community, where the community will obtain its rights to a good and healthy environment by the mandate of the 1945 Constitution of the Republic of Indonesia.

¹⁸ Mahrus Ali, "Pola Pemberatan Ancaman Pidana Berbasis Konservasi Lingkungan Hidup: Kajian Atas Undang-Undang Di Bidang Lingkungan Hidup," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 2 (January 28, 2020), <https://doi.org/10.14421/sh.v1i2.1887>.

¹⁹ Absori, *Hukum Penyelesaian Sengketa Lingkungan Hidup, Sebuah Model Penyelesaian Sengketa Lingkungan Hidup Dengan Pendekatan Partisipasi* (Surakarta: Muhammadiyah University Press, 2009).

²⁰ Muhammad Rustamaji and Bambang Santoso, "SUMBER DAYA LAUT INDONESIA DALAM KANCAH MASYARAKAT EKONOMI ASEAN, ANTARA JEBAKAN REIFIKASI DAN DEEP ECOLOGY," *Jurnal Media Hukum* 21, no. 1 SE-Articles (June 30, 2014): 13, <https://doi.org/10.18196/jmh.v21i1.1164>.

Legal Certainty in Judicial Decisions Related to Environmental Law Enforcement

The enforcement of environmental law still faces challenges in the area of evidence. This is because proving environmental damage requires significant human resources and advanced technology, and resolving environmental cases is complex, costly, and time-consuming. Furthermore, legal issues often arise when addressing environmental damage not adequately addressed by existing laws or regulations. This is because evidence in environmental cases is often characterized by its unique nature, namely: the cause of environmental damage does not originate from a single source but from various sources, involves other disciplines, requires the involvement of experts outside the legal field as experts, and the impact of environmental damage does not occur immediately but gradually and causes significant effects. In other words, legal enforcement must be carried out if a legal entity violates legal provisions that result in environmental damage. Three key elements form the basis for legal enforcement. *First*, justice (*gerechtigheit*): The law must be enforced fairly, although it is not identical to justice. *Second*, utility (*zweckmassigkeit*): Law is used to meet human needs and must have utility and practical value for society. *Third*, legal certainty (*rechtssicherheit*) allows legal subjects to obtain concrete and clear legal protection.²¹

Judges are expected to adopt a progressive approach in handling environmental damage cases, given that environmental cases are complex and often involve scientific evidence (*scientific expertise*). Environmental cases have distinct characteristics from other cases, as they involve natural resources and other parties. For example, in the case of Decision No. 233/Pid.B/Lh/2020/Pn.Pbu and the Supreme Court Decision No. 3840 K/Pid.Sus.Lh/2021 sparked controversy among the scientific community and affected communities, as the decision acquitted the corporate defendant in a non-criminal forest and land burning case. The Supreme Court has sought to prioritize enforcing environmental law by issuing Supreme Court Chairman's Decision No. 134/KMA/SK/IX/2011 on Environmental Judge Certification, aimed at enhancing the effectiveness of judges in environmental damage cases. However, to date, the implementation of certified environmental judges in handling environmental criminal cases has not been optimal, as exemplified by Decision No. 233/Pid.B/Lh/2020/Pn.Pbu and Supreme Court Decision No. 3840 K/Pid.Sus.Lh/2021, despite the fact that one of the judges involved in these decisions was already certified as an environmental judge. Based on these

²¹ Wahyu Nugroho, "Urgensi Penegakan Hukum Lingkungan Dalam Menjaga Harmonisasi Ekologi Di Indonesia," in *Kepemimpinan Manajemen Lingkungan Yang Berkelanjutan Dan Ramah Lingkungan* (Purbalingga: Eureka Media Aksara, 2024), 76.

rulings, when linked to the principle of legal certainty, the researcher argues that they do not meet the standards of legal certainty, particularly regarding environmental protection. Environmental judge certification aims to provide legal certainty and enforce environmental law.

Judgements that prioritize justice, protection, and sustainability of the environment are expected to be rendered by judges with expertise in environmental matters or certified environmental judges. However, if the opposite occurs, this raises concerns, as environmental court judgements often tend to be overridden by economic and development interests. Based on judgement 233/Pid.B/Lh/2020/Pn.Pbu, the corporate defendant PT S was not proven to have intentionally or negligently caused forest and land fires, so the defendant was acquitted of responsibility for the fire. The panel of judges considered the defendant to be a victim because the fire was a natural disaster. This judgement contradicts Article 2(f) of Law No. 32 of 2009 on Environmental Protection and Management regarding the principle of precaution, which gives rise to the principle of *in dubio pro natura*. It also contradicts Article 49 of Law No. 41 of 1999 on Forestry, which states that business owners or holders of business permits are responsible for forest and land fires within their operational areas.

Based on the above, the rules of legal certainty logic use *indoctrinarian* logic, as the judge in the judgement determined the rules based on factual data and experience. Judges in legal reasoning, legal logic, and legal argumentation are necessary to understand the law from a perspective, to strive to discover, reveal, test, verify, and justify assumptions or meanings hidden within existing legal regulations or provisions based on the judge's reasoning ability.

When adjudicating a case brought by a seeker of justice to enforce the law, judges must explore, follow, and understand the laws applicable in society. In enforcing the law, judges must understand legal developments and appreciate the spirit of society. In such circumstances, judges must be able to think logically and creatively to determine the action to be taken in their judgements. Judges play a crucial role in resolving cases as the most important party in the judicial process. In environmental matters, judges play a significant role in ensuring legal certainty for environmental protection, to achieve justice for the community in obtaining a good and healthy environment, as mandated by the 1945 Constitution of the Republic of Indonesia and Law No. 32 of 2009 on the Protection and Management of the Environment.

The Aspect of Utility in Judicial Judgements for Environmental Protection

A judge's decision reflects utility when the judge applies the law in a

way that provides tangible benefits to the parties involved. Judicial judgements constitute law that creates balance in society. When formulating judgements, judges use reason in their considerations, weighing when judgements should be used for justice and when they should be used for legal certainty. Fundamentally, the principle of benefit lies between justice and legal certainty. The emphasis on the principle of benefit tends to be more economically oriented. The underlying principle is that law is for society or the general public; therefore, the purpose of life must be beneficial to humanity.²²

Law enforcement officials are the implementers of laws and regulations. The public has high hopes for the creation of legal aspects that have a purpose for the benefit of the public. However, this has not yet been fully realized.²³ Law enforcement officials in Indonesia's positive legal system prioritize legal certainty. When linked to the existence of the constitution, protecting the environment is a component that should be well-maintained. Various consequences of environmental degradation are evident from the weakening of environmental law enforcement and government oversight, as well as from regulations and legislation. Forest exploitation tends to be justified by arguments related to the community, forests, and land for housing, oil palm plantations, mining, and other interests. Based on the court ruling No. 233/Pid.B/Lh/2020/Pn.Pbu and the Supreme Court ruling No. 3840 K/Pid.Sus.Lh/2021, which acquitted a corporation of charges related to a forest fire that caused environmental damage. These rulings reflect that economic and environmental interests, as well as the interests of the community, have been sacrificed to protect corporate interests. Environmental regulations are integrated with detailed provisions on administrative, civil, and criminal sanctions. However, the legal framework has not been explicitly established to reflect the hopes and aspirations of the community, thereby becoming a weakness in enforcing environmental law.

According to researchers, the judge's decision did not meet the value of benefit, particularly the benefit for environmental protection and the community. The judgement sets a bad precedent for the enforcement of environmental law and has the potential to be used as jurisprudence for similar companies in the future. An ideal judge's decision must meet the values of justice, certainty, and benefit. However, in every court judgement, there is sometimes a particular emphasis on one of these elements. This does not mean that the court decision ignores the other related values. These three values are closely interrelated to ensure that the law guides behavior in all

²² Amir Ilyas and Muhammad Nursal, "Kumpulan Asas-Asas Hukum," *Jakarta: Rajawali Pers*, 2016.

²³ Sagama, "Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan."

legal actions. However, when these three values are applied to reality, there is often a conflict between justice and legal certainty, or between legal certainty and utility.

Conclusion

In the judgement No. 233/Pid.B/Lh/2020/Pn.Pbu and the Cassation Decision No. 3840 K/Pid.Sus.Lh/2021, the corporate defendant PT S was not proven guilty of the crime of forest and land burning as charged by the public prosecutor. Therefore, the defendant is acquitted of all charges and liability for the fire incident. Based on the facts presented in court, the judge applied the principle of *"in dubio pro reo"* in an environmental case, rather than the principle of *"in dubio pro natura."* This is not relevant to the mandate of Law No. 32 of 2009 on the Protection and Management of the Environment, which states that in environmental cases, in order to ensure sound environmental quality, the principle of *in dubio pro natura* should be given priority because it better guarantees legal certainty and protects the right of every human being to a healthy environment.

When viewed from the values of justice, certainty, and utility implicitly reflected in the principle of *in dubio pro natura*, particularly for environmental protection, the judgements of the first-instance court and the Supreme Court prioritize legal certainty while neglecting justice and utility as reflected in the principle of caution within the principle of *in dubio pro natura*, particularly for environmental protection. In the judgement, the judges relied more on the logic of legal certainty, which determines the judgement based on facts, data, and experience. Thus, the judges concluded that PT S was not proven guilty in the forest fire case; instead, PT S was deemed the victim and therefore acquitted and exempted from punishment.

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