

The Perspective of Islamic Law on The Application of The Polluter Pays Principle in Indonesian Environmental Law

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Abstract: *The Perspective of Islamic Law on The Application of The Polluter Pays Principle in Indonesian Environmental Law.* This study discusses the implementation of the Polluter Pays Principle in Law Number 32 of 2009 regarding Environmental Management and Protection and relates it to Islamic Law. This research is normative juridical research, a study conducted to find legal rules, legal principles, and legal doctrine to address legal issues. This research finds that Law Number 32 of 2009 concerning environmental pollution and destruction contains the Polluter Pays Principle which is indicated by the affirmation that compensation does not only cover environmental restoration measures but also includes providing compensation to victims of pollution. The Law also regulates that responsibility for the perpetrators of pollution is instantaneous at the time of the occurrence of adverse action and not necessarily to be associated with an element of error. The application of this principle is under the Islamic law principles which explicitly state that environmental damage and pollution are included in actions prohibited by Allah. It's only that Islamic law does not specifically regulate the legal sanctions, but leaves it up to government policy (*ta'zir*).

Keywords: Polluter Pays Principle, Islam and the Environmental Law

Abstrak: *Perspektif Hukum Islam tentang Penerapan Prinsip Polluter Pays dalam Hukum Lingkungan Hidup Indonesia.* Penelitian ini membahas tentang penerapan prinsip ganti rugi sebagaimana diatur dalam Undang-undang Nomor 32 tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup dan mengaitkannya dengan Hukum Islam. Penelitian ini adalah penelitian yuridis normatif, yaitu suatu penelitian yang dilakukan untuk menemukan aturan hukum, prinsip hukum maupun doktrin hukum guna menjawab isu-isu hukum yang dihadapi. Penelitian ini menemukan bahwa Undang-Undang Nomor 32 Tahun 2009 telah menerapkan asas *Polluter Pays Principle* yang ini ditunjukkan dengan penegasan bahwa ganti rugi tidak hanya meliputi tindakan-tindakan pemulihan lingkungan tetapi juga termasuk memberikan ganti rugi kepada korban pencemaran. Selain daripada itu, Undang-undang menegaskan pula bahwa timbulnya tanggungjawab terhadap pelaku pencemaran adalah seketika pada saat terjadinya perbuatan yang merugikan dan tidak perlu dikaitkan dengan unsur kesalahan. Penerapan prinsip ini sesuai dengan prinsip hukum Islam yang secara tegas menyatakan bahwa perusakan dan pencemaran lingkungan termasuk dalam perbuatan-perbuatan yang dilarang oleh Allah. Hanya saja, hukum Islam tidak mengatur secara spesifik tentang sanksi hukumnya, melainkan diserahkan kepada kebijakan pemerintah (*ta'zir*).

Kata Kunci: Asas *Polluter Pays Principle*, Islam dan Lingkungan Hidup

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Introduction

Development in the fields of industry, transportation, housing, roads, ports, exploitation of natural resources, and various other activities has two potential impacts. On the one hand, it is very beneficial for some people, because it contributes to economic growth, opens job and business opportunities, while, on the other hand, it harms the environment and people who are adversely affected by these activities.

Given the very close relationship between economic development and the environment and humans, legal protection of human rights for a good and healthy environment must be placed in the context of legislation. In Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management is an Umbrella Act that will oversee the realization of sustainable development, namely development that considers the environment for current and future generations.

Law Number 32 of 2009 substantially recognizes that a good and healthy environment is a right that must be obtained by citizens. Therefore, as a basic rule in environmental management, Law No. 32 of 2009 in terms of legal norms, has stipulated the existence of environmental protection and management. This law states, in article 69, "that every person is prohibited from committing an act that causes pollution and or damage to the environment". At this point, the law emphasizes that anyone, especially the industry, must not do things that create profit and convenience for the industry, but cause bad impacts and losses to the surrounding environment.

In line with these laws, Islamic law has also regulated all the instruments of life in the Al-Qur'an and Hadith. In the series of surahs in the Qur'an and hadiths, there are many indications that Allah's mandate covers the obligations of humans to his fellow and also to the surrounding environment. It is repeatedly mentioned to humans that it is prohibited to do damage on this earth or from doing things that can harm other people.

Based on the prohibition against destruction and pollution, Law No.32 of 2009 regulates sanctions against perpetrators of environmental

destruction and pollution. Legal sanctions are very urgent in law because it is with the sanctions that law has the energy to be implemented.

Civil sanctions according to article 87 paragraph (1) of Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is stipulated as:¹

“Every person in charge of a business and/or activity committing an illegal act in the form of pollution and/or damage to the environment causing harm to other people or the environment is obliged to pay compensation and/or take certain actions.”

Based on the article, every person in charge of a business and/or activity (company/legal entity) that causes environmental pollution and/or damage is considered an act against the law. The person in charge of the business and/or activity has the responsibility to compensate for the losses incurred

Article 87 paragraph (1) of Law No.32 of 2009 contains a fundamental principle for the environment, namely the Polluter Pays Principle. This principle emphasizes that the externalities of environmental damage must be borne by the parties that cause it. From the community's point of view, the most efficient way is to force polluters (individuals, companies, or governments) to pay for all environmental damage caused by their activities.

From the above background, it is interesting to further examine the urgency of the polluter pays principle, especially whether or not the polluter pays principle has legal justification to be used as a basis for responsibility for cases of pollution, whether the Islamic law also has the same principle, how it is interpreted, and how to use it in supporting environmental protection and management.

In the Polluter pays principle, besides being obliged to pay compensation to sufferers (right of defense or *abwehrfunktion*), the polluter is also obliged to pay for an action to restore the environment (right of performance or *leistfunktion*). The difference between the two lies in who

¹ Undang Undang Negara Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup.

is suing. In this case, the polluter pays principle is not only understood as an economic instrument but begins to shift to the legal field.²

Previous Studies and Method

The analysis of the polluter pays principle is viewed from positive law, in the form of statutory regulations and legal doctrine, and Islamic law. The approach used in this research is juridical-normative, which is a process of finding legal rules, legal principles, and legal doctrines to address legal issues at hand³.

It worth noting that the topic discussed here is quite similar to several previous studies, namely:

1. Malvin Edi Darma & Ahmad Redi, in their article entitled *Application of the Polluter Pay Principle and Strict Liability for Forest Burning Perpetrators*. The article focused on implementing the polluter pays principle against forest burning perpetrators⁴
2. Adryan Adisaputra Tando and Theresia E.K. Hindriadita, in their article entitled *Actualization of Environmental Fund Management in Indonesia: Preventing Pollution Paying and Earmarking Principles Deviation, examining the problems of the issuance of Presidential Regulation No. 77/2018*. The work focuses on Management of Environmental Funds, in which several things relating to sources and allocations of environmental funding are reviewed to make sure that all the funds have been used rightly and do not deviate from the polluter pays principle⁵:
3. Ruqoyyah Habibatullah and Wahyudi Bakrie, in their article

² Philippe Sands, *Principles of International Environmental Law* (United Kingdom: Cambridge University Press, 2003), p. 281.

³ Peter Mahmud Marzuki, *Penelitian Hukum*, 9 (Jakarta: Kencana Prenada. Media Group, 2017), pp. 133–34.

⁴ Malvin Edi Darma and Ahmad Redi, 'Penerapan Asas Polluter Pay Principle dan Strict Liability terhadap Pelaku Pembakaran Hutan', *Jurnal Hukum Adigama*, 1.1 (2018), 1657–83 (pp. 1–27) <<https://doi.org/10.24912/adigama.v1i1.2236>>.

⁵ Adryan Adisaputra Tando and Theresia E. K. Hindriadita, 'Aktualisasi Pengelolaan Dana Lingkungan Hidup di Indonesia: Mencegah Penyimpangan Prinsip Pencemar Membayar dan Earmarking', *Jurnal Hukum Lingkungan Indonesia*, 5.2 (2019), 160–85 (pp. 160–85) <<https://doi.org/10.38011/jhli.v5i2.91>>.

entitled *Environmental Pollution in Islamic Fiqh and Law No. 32 of 2009 concerning Protection and Management of the Environment*⁶ This study analyzes the comparison of environmental pollution in Law Number 32 the Year 2009 with the existing rules in Islamic Fiqh.

Complementing the previous discussions, this research has its novelty in the form of an analysis of the urgency of the polluter pays principle as a basic principle for the normative rules of responsibility for polluters to protect the community and the environment from pollution.

Discussion and Result

Environmental Pollution

Development activities using technology that is not environmentally friendly, coupled with world population growth that encourages the maximum utilization of all-natural resources, are some of the factors that cause pollution, whether it is land, water, or air pollution. This pollution can threaten the life of related living things such as plants, animals, and especially humans. Law Number 32 of 2009 concerning environmental protection and management defines environmental pollution as the act of introducing living things, substances, energy, and/or other components into the environment by human activities so that they exceed the established environmental quality standards. Meanwhile, David Kemp's *The Environment Dictionary* explains that environmental pollution is the pollution of the physical and biological components of the earth's system or atmosphere in such a way as to disrupt environmental processes. Miguel Angel Santos explained that there are three general characteristics of environmental pollution. First, pollution knows no borders. "Pollution crosses the line." Second, most of the pollution cannot be removed by living organisms and therefore this pollution will persist in nature for many years. Third, pollution destroys living things in an area and their habitat, both in soil, air, and water.

⁶ Ruqoyyah Habibaturrahim and Wahyudi Bakrie, 'Pencemaran Lingkungan dalam Fiqih Islam dan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup', *Journal of Indonesian Comparative of Syari'ah Law*, 3.1 (2020), 59–72 (pp. 60–69) <<https://doi.org/10.21111/jicl.v3i1.4513>>.

Soil pollution is a condition in which man-made materials or chemicals enter and change the natural environment of the soil. The impact of soil pollution results in contaminated soil that is dangerous for living things, even soil can lose its fertility. Among the causes of soil pollution are mining activities that use toxic materials, human activities that use non-recyclable materials such as plastics which are then dumped into the ground, and the use of pest control and chemical fertilizers that are excessive in agricultural activities.

Air pollution occurs when various gases are released into the atmosphere beyond the natural ability of the environment to remove or absorb them. The most common types of gases found in polluted air are carbon monoxide (CO), nitrogen oxides, sulfur dioxide, and ozone. The direct impact of air pollution on humans can cause respiratory problems such as asthma, upper respiratory tract infections, and even lung cancer. The causes of air pollution are emissions or exhaust gases from motorized vehicles, emissions from power plants that use fossil energy sources, be it coal and diesel, emissions from factories, or it could be due to natural causes such as volcanoes. Water pollution occurs when harmful substances enter groundwater below the surface or into lakes, rivers, estuaries, and oceans, reducing water quality. The impact of water pollution is enormous. Starting from the destruction of the ecosystem to the depletion of clean water for consumption. The cause of water pollution is that industries dump various types of pollutants into their wastewater, such as heavy metals, organic toxins, oil, and solids. Without being treated, this waste is disposed of back into drains or rivers. In addition, excessive use of chemicals in agriculture, both for pest control and for fertilizers can also cause water pollution.

Pollution of land, air, and water not only harms the environment but also ultimately for humans. A bad environment interferes with the rights of others because a healthy environment is everyone's right.

Polluter Pays Principles in Positive Law

The principle of pollutants paying in positive law Legal principles are principles that form the basis of a legal system that is useful in the

making and application of laws. There are several opinions regarding what is called the principle of law or principle of law. Paul Scholten formulated the principle of law as a rationale that is contained in and behind the legal system, each of which is formulated in statutory regulations and judges' decisions, which, concerning individual provisions and decisions, can be viewed as descriptions. In this definition, it is clear that the role of the legal principle as a meta-rule against the rule of law is in the form of rules of behavior. In Scholten's understanding above, it can be further concluded that the principle of law contains a kind of its system, some of which are included in the legal system, but others remain outside the legal system.

According to Paul Scholten, the principle of law exists both in the legal system and behind it. In this case, Scholten's mind turned to a system of positive laws. The dual role of legal principles in the positive legal system is related to the nature of legal principles as a rule of judgment. Legal principles reveal the values that we must strive for, but only a part of which can be realized in positive law. As long as the value of the principle of law is manifested in a rule of law in a positive legal system, then the principle of law exists in that system.⁷

The Pollutant Paying Principle (PPP) provides direction in regulating environmental laws related to pollution events. This principle refers to the obligation or imposition of a polluter to pay for losses suffered by the victim. The polluter pays principle is a principle that is often stated in international declarations which later entered into international conventions and became the principle of international environmental law.

The first international instrument that explicitly refers to the statement of the polluter pays principle is the Organization for Economic Co-operation and Development (OECD) 1872,⁸ an international economic

⁷ Muhamad Muhdar, 'Eksistensi Polluter Pays Principle Dalam Pengaturan Hukum Lingkungan Di Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 21.1 (2009), 67–80 <<https://doi.org/10.22146/jmh.16247>>.

⁸ 'OECD Legal Instruments, *Recommendation of the Council on the Implementation of the Polluter-Pays Principle*. The Polluter-Pays Principle was adopted by the OECD Council in 1972 in its Recommendation on Guiding Principles Concerning International Economic Aspects of Environmental Policies as an economic principle for allocating the costs of pollution control.

organization founded by 34 countries in 1961, which aims to stimulate world economic development and trade. The agency supports the principle of pollutant payments to allocate pollution prevention costs and control measures to promote rational management of environmental resources and avoid diversion of international trade and investment.

The recommendation contains a definition of the polluter principle which obliges polluters to bear the costs necessary for the efforts of public officials to maintain environmental conditions in an acceptable condition or other words, the costs required to carry out such efforts are. efforts must reflect the prices of goods and services that have caused pollution during the production or consumption process.

Based on the obligations of polluters, the OECD provides guidelines on what Polluters must pay, namely:

First, Polluters must be burdened with the obligation to pay because of the pollution they cause. However, this solution is unsatisfactory, even dangerous because: 1) environmental restoration is meaningless if there is severe damage whose impact cannot be overcome with pure compensation, 2) damage recovery contains many difficulties, for example, long-term impacts and finding indirect impacts, 3) estimated cost of damage against the cost of recovery, 4) repair of damage is often economically futile; An ounce of prevention is worth a pound of cure.

Second, Polluters pay, by charging the costs of activities necessary to prevent pollution, in the form of incentive fees equivalent to the cost of cleaning up waste or simply setting criteria requiring preventive action. From the criteria put forward by the OECD, the polluter pays principle is not only preventive but also repressive measures for environmental law enforcement.

In the Polluter Pays Principle, polluters must pay compensation to

The 1974 Recommendation provides that the principle represents for the Adherents the basic principle for the allocation of costs for pollution prevention and control measures implemented by public authorities in the Adhering States. It further elaborates the circumstances in which government assistance would be considered compatible with the principle and recommends conditions to the granting of government assistance in bearing the costs of pollution control whether by means of subsidies, tax advantages or other measures.' <<https://legalinstruments.oecd.org/en/instruments/11>>.

sufferers (right of defense) and are also obliged to pay for environmental restoration to recover to normal (right of performance). For compensation for the sufferer, the person who is suing is the sufferer or community. The payment will be shared with the people affected by the pollution, while for the payment of environmental recovery costs, the prosecutor is suing on behalf of the state. The payment goes to the state treasury because the state has the capacity with the existing facilities to make efforts to restore the environment that has been damaged by the pollution.

In the case of compensation, to determine who has committed an act against the law according to the provisions of civil law, namely article 1243 and article 1365 of the Civil Code. The principle of Liability Based on Fault is regulated. In this article, the element of error determines responsibility, which means that if there is no evidence of an error there is no obligation to fulfill compensation. Concerning the evidence according to article 1865, it is stated that “whoever submits events on behalf of his/her right is obliged to prove these events, on the other hand, whoever submits events to deny the rights of others is obliged to prove these events⁹.”

The principle of liability based on fault is considered to provide obstacles to the realization of the polluter pays principle contained in the articles of the law on environmental protection and management, because it is burdensome for the party making the lawsuit, in the principle of liability based on fault to make compensation claims, the plaintiff must be able to prove an element of an error on the part of the defendant. The problems experienced by the plaintiff (community) are in addition to their weak position when compared to the position of the defendant (entrepreneur), who has sufficient knowledge, adequate funds, as well as difficulties in carrying out the obligation to prove the following: (1). The causal relationship is factual, that pollution or damage to the environment is the result of an event which is the responsibility of the defendant, which must be proven scientifically by expert witnesses so that

⁹ Emi Puasa Handayani, Zainal Arifin, and Saivol Virdaus, ‘Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia’, *ADHAPER: Jurnal Hukum Acara Perdata*, 4.2 (2019), 1-19–19 (p. 11) <<https://doi.org/10.36913/jhaper.v4i2.74>>.

the judge understands and gets confidence, (2). The causal relationship between the defendant's intentional or negligent action and the result of environmental pollution or damage, and (3). The result of pollution or damage to the environment causes real losses and can be calculated the number of losses.

Theoretically, the Pollutant Pays Principle is an economic policy in the context of allocating costs for pollution and environmental damage; but then it has implications for the development of international and national environmental law, namely in matters related to the issue of liability for compensation or with costs. environmental costs that must be borne by public officials.

In legislation, the emergence of environmental pollution may develop into environmental disputes if parties or the victims suffered from, feel aggrieved because of environmental pollution caused by an activity by anyone, whether intentionally or not. Apart from being required to pay compensation, polluters and/or destroyers of the environment can also be burdened by the judge to take certain legal actions, for example, orders to a. installing or repairing the waste treatment unit so that the waste conforms to the specified environmental quality standards; b. restoring environmental functions; and/or c. eliminate or destroy the causes of environmental pollution and/or damage.

Strict Liability to Support the Implementation of the Polluter Pays Principle

In Indonesia, the national legislation that regulates the principle of polluter pays is currently Law Number. 32 of 2009 concerning Protection and Management of the Environment. In this law, the provisions on responsibility for environmental pollution are regulated in Article 87 paragraph 1, which regulates the responsibility of the destroyer or polluter to pay compensation, Article 1 paragraph (25) of Law Number 32 the Year 2009 states that "Environmental disputes are disputes between two or more parties arising from activities that have the potential and/or have an impact on the environment".

Furthermore, article 87 paragraph (1) of Law no. 32 of 2009

concerning Environmental Protection and Management (UUPPLH) regulates that:

“Every person in charge of a business and/or activity committing an illegal act in the form of pollution and/or damage to the environment causing harm to other people or the environment is obliged to pay compensation and/or take certain actions.”

These provisions clearly show that Law Number 32 the Year 2009 contains the Polluter Pays Principle, namely the principle that punishes the polluters to pay for any losses they cause.

In the explanation of Article 87 paragraph 1, it is also stated that this paragraph is a realization of the principle that exists in environmental law which is also known as the Polluter pays principle.

Furthermore, Law Number 32 the Year 2009 applies a principle that further protects victims of pollution. This principle is known as the principle of absolute responsibility or Strick liability, the burden of proof is left to the defendant to prove his innocence.

The application of this principle is based on the consideration that the burden of proof should be left to the party who has the greatest ability to provide evidence in resolving a case. In Article 88 of Law number 32 of 2009, It is stated that: “Every person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment, are responsible for losses that occur without the need to prove the element of error”.

The elements in Article 88 refer to the main characteristic of strict liability, wherein the regulation there is a clause that stipulates that responsibility arises immediately at the time of the act, so there is no need to be associated with the element of error. Its use is a repressive element, asking companies that pollute and/or destroy the environment to fulfill their obligations to pay individual and environmental compensation, either through the court or outside the court following the pollution dispute resolution procedures stipulated by the Environmental Law.

So far, it is considered that the polluter pays principle using the principle of strict liability, namely polluters paying compensation due

to absolute responsibility, in out of court (non-litigation) settlement is considered more successful, it's just that the way to determine the value of losses due to pollution is more about determining the value of the lost victims of pollution (humans) without including the value of the environmental component. The weakness of determining the value of compensation by only determining the loss of the victim of pollution can also be seen from the dispute resolution mechanism chosen. The settlement with a civil (non-litigation) mechanism results in an agreement according to the objectives of the parties and not the goal of environmental protection.

Strict Liability and Unlawful Actions

In the elucidation of Article 88, it is explained that what is meant by absolute responsibility is "the element of error does not need to be proven by the plaintiff as the basis for paying compensation". Given the law, the need for proof is a special rule (*lex specialis*) rather than an act of breaking the law, this is because a general violation has a burden of proof for the plaintiff.

The difference between Unlawful Acts (PMH) and Absolute Responsibility (Strict Liability) in the context of environmental law enforcement is that Strict Liability is a concept of civil liability which does not require the defendant to be guilty but sufficient to cause harm to society. plaintiff. According to Andri, this concept is very simple. To sue with this concept, the plaintiff does not need to prove whether the company violated the law that causes environmental damage or not but simply see whether there has been environmental damage due to the company's operations. Whether the company is breaking the law or not is irrelevant and does not need to be proven.

Strict liability lawsuits are often mixed with lawsuits (PMH), even though these are two different things. In PMH's lawsuit, the plaintiff must first prove that the company has violated the law in running its business. After that, just look at the impact of environmental damage. This has happened in various environmental cases, the plaintiff stated that this type of lawsuit has a strict responsibility, but, in his petition,

the plaintiff asked the court to state that the defendant was proven to have committed an illegal act.

In practice, the application of Strict Liability in environmental law enforcement has not been very effective. This is because the Civil Procedure Law as a formal law to file claims for compensation for actions against the law of environmental pollution and destruction, still adheres to a system of proof based on heretical teachings. To prove the element of error, the proof system is applied based on the provisions of Article 1865 BW where the Plaintiff is obliged to prove his argument, which is impossible for the victim/plaintiff to do in a case of environmental pollution.

An example of this logical error occurred in the lawsuit case against PT Lapindo Brantas. In practice, both the plaintiff's lawyers and the judges used this mixed logic, so that in the end the law enforcers were stuck with technical company matters that were difficult to prove. Wibisana suggested that environmental cases that use strict obligations must be completely separated from actions against the law. "It could remain in one lawsuit. However, the main lawsuit speaks of strict liability, while its subsidiary uses unlawful action / PMH. This practice is often practiced in the United States."¹⁰

The emergence of accountability without questioning the defendants' mistakes has been quite a while. James Krier in his journal article stated: "The doctrine of strict liability for abnormal, dangerous activities can help in many cases of environmental damage, strict liability, of course, is more than just a doctrine load transfer, because it not only frees the plaintiff from the obligation to prove guilt but also closes the defendant to prove the abscess of error."¹¹ The message that Krier wants to convey is that the issue of environmental destruction is a dangerous activity. So that the strict liability doctrine becomes very important to apply.

¹⁰ Andri G. Wibisana, *Penegakan Hukum Lingkungan Melalui Pertanggungjawaban Perdata*" (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia., 2018), p. 76.

¹¹ James Krier and Richard B. Stewart, 'Using Economic Analysis in Teaching Environmental Law: The Example of Common Law Rules', *UCLA Journal of Environmental Law and Policy*, 1.1 (1980) <<https://escholarship.org/uc/item/3x11t1bg>>.

The terms and conditions of whether the teaching of strict liability can be applied or not, according to Kolosa and Mayer, include: “Extra-dangerous activities and dangerous animals can become an opportunity to assign strict responsibility. Activities should be such that there is no public use in the community and involve the risk of serious harm to people or goods that cannot be eliminated with careful use.¹² It is undeniable that the impact of environmental damage is a serious problem which is also a consideration why strict responsibility is a principle that must be applied. Considering the impact caused is very risky for the community, then this principle naturally exists in the framework of law enforcement in Indonesia, especially in terms of protection and management in the dimension of environmental law.

But on the other hand, the person in charge of a business and/or activity can be exempted from the obligation to pay compensation, if the person concerned can prove that environmental pollution or damage is caused by one of the following reasons: (1). The existence of a natural disaster or war, (2). Some situations are imposed beyond human ability, (3). There are actions of third parties that cause environmental pollution and or damage.

Ishak and Samah illustrate the actuality and benefits of the principle of strict responsibility for the success of the polluter pays principle in Malaysia. This principle is needed in connection with: a. The importance of guarantees to comply with certain rules necessary for the welfare of society. b. Evidence of wrongdoing is very difficult to obtain for violating provisions relating to public welfare. c. High level of social damage arising from this act.¹³

Departing from the various opinions above, it can be concluded that the Polluter Pays Principle, which is supported by the principle of strict responsibility, is a legal system that greatly benefits victims in holding

¹² Kolosa, Blair J. & Bernadine Meyer, *The American Legal System* (New Jersey: Prentice-Hall, 1978), p. 560; St Ulfah and others, ‘Strict Liability Principle In Environmental Legal System’, *Journal of Law, Policy and Globalization*, 71.0 (2018), 100–107 (p. 102).

¹³ Mohd Bakri Ishak and Mohd Armi Abu Samah, ‘Strict Liability versus Policy and Regulation for Environmental Protection and Agricultural Waste Management in Malaysia’, *Environment Asia*, 3.Special Issue (2010), 11–19 (pp. 11–19).

perpetrators accountable. This system is very appropriate because, in this era of modern technology, many people have become victims of the impacts of modernization, including environmental pollution. Because the legal system has not been modernized in such a way, many victims are disappointed. The most important factor here is the difficulty of the sufferer in collecting complete data to serve as evidence.

The Principle of Pollutants Pays in Islamic Law Perspective

Every creation in the universe is a sign of God, and humans have a responsibility to protect and sustain it. It is the duty of Muslims as custodians and stewards of Allah's creation to respect nature and preserve it with great care. Takwa in Islam is associated with respect for the nature around the environment which is the final creation of Allah SWT.

Natural resources must be distributed properly and fairly, and humans must not interfere with the prevailing natural value system. Environmental awareness, simplicity, and mutual love are important aspects of maintaining environmental balance and originate from three basic Islamic principles: tawhîd (unity), khalîfah (vice), and al-Akhirah (afterlife).

The Islamic view of the world of the environment that is holistic is based on the five objectives of shari'ah, namely protecting religion, life, reason, descent, and welfare. In addition, Islam's supreme guide, *al-tawhid* (oneness of God) underlines and demands a moral attitude and human behavior towards God and God's creation. Thus, humans are responsible for protecting and protecting the environment and natural surroundings.¹⁴

Ali Yafie puts forward the principle of environmental protection in the perspective of Islamic fiqh, among others.

First: Maintenance of the soul (*hifdh al nafs*). Life in the view of

¹⁴ Thiri Shwesin Aung, 'Islam and Environmental Protection: The Awareness of The Malaysian Muslim Community', *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, 21.2 (2016) <<https://journals.iium.edu.my/shajarah/index.php/shaj/article/view/409>>.

fiqh is noble and very valuable. Life is the basic human capital to fulfill its function and determine its value and dignity. Therefore, many Islamic teachings give warnings to humans to use these basic assets as carefully and as fully as possible.

Second: World life is not a goal. The life of the world is a means (*wasilah*) in achieving the pleasure of Allah SWT until the eternal hereafter.

Third: Production and consumption must comply with the standards of human needs (*hadd al kifayah*). Exploiting natural resources excessively (*israf*), greedy (*thama'*) and improperly (dangerous) is prohibited in Islamic teachings.

Fourth: upholding harmony and balance in nature (ecosystem). Disrupting and destroying an ecosystem is the same as destroying life.

Fifth: All beings are noble (*muhtaram*). Anyone is prohibited from exploiting or torturing all kinds of creatures that interfere with life. Even wild animals should not be killed as long as they do not attack and threaten someone's life.

Sixth: Humans are the managing agents of the universe (*mukallaf*) who will be held accountable for all their actions, both in this world and in the hereafter.

Ali Yafie also added that natural resources such as water, land, and air are very much considered by Islam for the preservation of all living things. It is even used as an important tool that determines the perfection of one's faith.¹⁵

The holistic Islamic environmental worldview is also based on five aims of the sharia which are protecting religion, life, mind, offspring, and prosperity. Moreover, the paramount guidance of Islam, al-tawhid (unity of God) underlines and demands a moral and behavioral attitude of the human being toward God and God's creations. Thus, human beings are accountable for sustaining and protecting the environment and natural surroundings

¹⁵ M.Ali Yafie, *Merintis Fiqh Lingkungan Hidup*, (Jakarta: Yayasan Amanah, 2006), pp. 163–88.

Ali Yafie puts forward the principles or principles for environmental protection in the perspective of Islamic fiqh. namely, among others.

First: Maintenance of body-body-honor (hifdh al nafs). Life in the view of fiqh is noble and very valuable. Life is the basic human capital to fulfill its function and determine its value and dignity. Therefore, Islamic teachings give many warnings to humans to use that basic capital as carefully and as fully as possible.

Second: World life is not a goal. The life of the world is a means (wasilah) in achieving the pleasure of Allah SWT to the eternal afterlife.

Third: Production and consumption must be following the standards of proper human needs (hadd al kifayah). Exploiting natural resources excessively (israf), greedy (thama'), and unnaturally is dangerous (forbidden).

Fourth: The harmony and balance of nature (ecosystem) is upheld. Disturbing and destroying ecosystems is the same as destroying life entirely.

Fifth: All beings are noble (muhtaram). Anyone is prohibited from exploiting or torturing all kinds of creatures that cause disturbed life. Even wild or wild animals are not allowed to be killed as long as they do not attack and threaten someone's life.

Sixth: Humans are agents of the management of the universe (mukallaf) will be held accountable for all their actions, both in this world and in the hereafter.

Ali Yafie also added that natural resources such as water, land, and air are very much considered by Islam (read fiqh) for the preservation of all living things. It is even used as an important tool that is very decisive for the perfection of one's faith.

Later, a progressive formula was created by Yusuf Qardlawi and Ali Yafie who made environmental care (*hifdz al-bi`ah / al-alam*) a part of *maqashid al-shari'ah al-dlaruriyat*. Because, if the environment is not maintained/damaged, then of course the danger will befall all the basic components of life, namely safety of the soul, harmony of religious communities, protection of wealth, descent and honor, and health of reason.¹⁶

¹⁶ Yusuf Qardhawi, *Islam Agama Ramah Lingkungan, Terj A. Hakim Shah, Dkk* (Jakarta: Pustaka al Kautsar, 2006), p. 224.

Environmental balance and sustainability is the key to prosperity. The stability of life requires balance and continuity in all fields, both material and related to the soul, thoughts, emotions, passions, and feelings of humans. Islam, through several verses of the Quran and hadith, demands a balance (al tawassuth) in this regard. Other Quranic verses: God has created this universe in harmony and balance. "We created all things in their time" (54:49).

Many verses of the Quran state that nature is a gift from God, especially for the benefit of mankind. Therefore, humans must protect this gift from harm and use it in the right way. "It is he who lowers water from the sky. With that. We produce the shoots of each plant, then we produce green plants from it, and from there, we bring out the seeds, one mount above the other in a dense row. From the dates, the palms came a bunch of dates hanging low, and there were vineyards, olives, and pomegranates, all alike but different. Watch their fruit as they grow and ripen! In all of this, there are signs for those who believe "(6:99). and in another surah, Allah says "Have they not considered how We bring rain to the barren land, and thereby produce plants from which their livestock and themselves eat? Don't they see? (32:27).

The existence of nature and everything in it is a unity that cannot be separated, everything is interrelated and complementary. The survival of one element in the universe is linked to the survival of the other elements. Therefore it is necessary to have a harmonious relationship between humans and their natural surroundings. Humans are not only required to give attention and affection to fellow humans, but also all creatures in this universe. The existence of mountains, seas, water, and plants that are part of the universe must be respected, by preserving and preserving them. Because the destruction of nature will also destroy human life itself.

In several verses, the Quran prohibits all forms of environmental destruction and excessive exploitation of nature. As; do not do damage on earth after repair (Hud (11): 85), pay attention to the consequences received by the previous people who did damage on earth (al-A'raf (7):

86), damage on earth due to human actions (ar-Rûm (30): 41) avoid the causes that cause damage (al-Baqarah (2): 11-12). Although nature was created so that humans can be used for their survival, humans are required to be wise in managing nature, not overdoing it and acting arbitrarily in exploiting it, resulting in damage and destruction.

The environmental damage that occurs is more or less caused by human attitudes that do not respect the environment. As a result of human greed in exploiting the natural environment, environmental damage and pollution arise. The Quran states in Surah Ar-Rûm (30): 41.

The definition of environmental pollution in Islamic Fiqh and Law no. 32 of 2009 concerning Environmental Protection and Management is likened to the word damage that causes loss. This is aimed at the principle of preserving the environment for the sake of realizing the welfare of the community without any party being harmed. Apart from that, its main purpose is to create benefits for all beings.

Human activities that cause environmental pollution, in Islamic Fiqh and also in Law no. 32/2009 concerning Environmental Protection and Management, is equally prohibited because it can endanger and disturb many parties and the environment. All these prohibitions are written in the Qur'an and hadith. Islam opposes the destruction of nature, such as cutting crops or killing unnecessary animals. On the other hand, Islam advocates planting trees and preserving animals. Cultivating the earth is considered piety and one of the goals of human creation. "For Thamud, We send their brother, Salih. He said, 'My people, worship God. You have no god but Him'. He is the one who made you out of the earth and made you inhabit it, so ask Him for forgiveness, and return to Him: My Lord is near and ready to answer" (11:61). *Istâ'mara* (inhabit) in this verse means asking you to cultivate the earth¹⁷

Concerning responsibility for the environment, M. Ali Yafie said that preserving the environment to maintain the existence of life until

¹⁷ Yusuf al-Qaradawi, *Ri'ayah Al-Bi'ah fi Syari'ah al-Islâm*, (Kairo: Dar as-Syuruq, 2001), p. 64.

the day of the destruction of the universe is *fardhu kifayah*. This means that all parties are responsible for environmental conservation, both individually and in groups. While nature is still polluted, we will all continue to sin.¹⁸

M. Ali Yafie, further stated that if there is pollution on this earth, the biggest sin is borne by the perpetrators of environmental destruction, then the government which has the power and legal authority, and finally the community is obliged to prevent, remind, maintain and set a good example in environmental Conservation. In this case, Ali Yafie added that *hifzh al-bi'ah* (preserving the environment) is a basic component of human life that must be fulfilled. According to him, *Maqâshid syari'ah* is no longer five known as *dharûriyât al-khams* but becomes six (*dharûriyât as-Sittah*).

This is in line with Law Number 32 of 2009 concerning Environmental Protection and Management as stipulated in Article 87. The first party responsible is environmental polluters or business owners and the person in charge is generally the government. Law does not directly determine the community as the party responsible for it. responsible for pollution, but the law regulates the participation of the community to protect the environment so that it remains good and healthy.

In Islamic Fiqh, perpetrators of environmental pollution are sentenced to *ta'zir* because Allah does not stipulate a punishment in the Qur'an or the hadith. Determination of the amount or level of punishment is entrusted to the judge with all his efforts in making decisions. The judge can decide the most appropriate sanctions for cases of destruction and pollution. This is in line with Law Number 32 of 2009 concerning Environmental Protection and Management, in which sanctions are classified into administrative, civil, and criminal penalties with different types of penalties. Even judges can decide on compensation penalties for polluters using the principle of strict liability.

¹⁸ M.Ali Yafie; see Haslinda Yusoff and others, 'Exploring the Environmental Reporting Practices of Islamic Banks: A Case of Malaysia and Indonesia', *Journal of Energy Technologies and Policy*, 3.11 (2013), 440–45 (p. 441).

Conclusion

1. The Pollutant Paying Principle, as stipulated in National Law Number 32 the Year 2009 concerning Environmental Management and Protection, is placed as a guideline value in the rule of law. This principle provides a value, as in the articles contained in Law Number 32 of 2009, that environmental polluters and environmental destroyers must provide compensation in the form of environmental restoration (management rights), and include providing compensation to victims of polluters, both because it is proven that there is still pollution or activities that have the potential to pollute the environment.
2. In the civil aspect, the principle of strict responsibility helps to realize the polluter pays principle. In the clause of the Strict Liability Principle, there is a provision that the emergence of direct responsibility when an action occurs does not need to be associated with an element of error. This principle has a weakness if it is applied in a non-litigation civil mechanism because it will lead to an agreement under the objectives of the parties and not the goal of environmental protection. Another weakness in the civil mechanism is the civil procedural law, as formal law stipulates that the plaintiff to file a compensation claim must prove that there was an illegal act, which in the case of environmental pollution is a system of proof based on heretical teachings.
3. Environmental pollution according to Islamic law is an act prohibited by Allah because it is an act that damages the environment and harms others. The provisions of environmental pollution in Islamic Fiqh are not specifically explained but are interpreted as damage and loss. Allah's orders to protect the environment from contamination and prohibition of activities that cause pollution are stated in the Qur'an and Hadith. The polluter pays principle in Islam is shown by the provision that the main responsibility is the perpetrator of environmental destruction, then the government which has the power and legal authority, and finally human society as the general responsibility for pollution. environmental maintenance. Sanctions

given to the perpetrators of defamation are in the form of ta'zir, where the sentence and levels are returned to the judge whose purpose is to educate and give deterrence to the perpetrator

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