

Analisis Pertanggungjawaban Perdata terhadap Pelaku Pencemaran Lingkungan Hidup dalam Hal Terdapat Ketidakpastian Kausalitas: Studi Kasus Pencemaran Sungai Citarum = Analysis of Tort Liability against Environmental Polluters in the Case of Uncertain Causation: A Case Study of Citarum River Pollution

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Abstrak

Pencemaran di Sungai Citarum telah terjadi selama bertahun-tahun sehingga mendapatkan gelar sungai paling tercemar di dunia. Tidak hanya merusak lingkungan hidup, pencemaran yang terjadi di Sungai Citarum pun telah menimbulkan kerugian bagi masyarakat yang tinggal di sepanjang Sungai Citarum. Kerugian tersebut antara lain ialah kerugian akan kesehatan dan juga kehilangan sumber air bersih. Namun demikian, selama ini belum pernah ada gugatan yang diajukan untuk memberikan masyarakat di Sungai Citarum ganti rugi atas penderitaan yang mereka alami. Selain itu, pabrik-pabrik di Sungai Citarum pun seolah tidak pernah bertanggungjawab atas kerugian yang masyarakat alami. Ketiadaan gugatan semacam ini diakibatkan oleh adanya permasalahan kausalitas dalam kasus pencemaran Sungai Citarum, yakni ketidakpastian kausalitas. Ketidakpastian kausalitas ini diakibatkan oleh dua hal, yakni ketidakpastian tergugat dan ketidakpastian penyebab kerugian. Ketidakpastian tergugat terjadi sebab terlampau banyak industri yang berdiri di Sungai Citarum, dan ketidakpastian penyebab terjadi sebab terlampau banyaknya sumber pencemar yang ada di Sungai Citarum. Skripsi ini hendak menjawab permasalahan ketidakpastian kausalitas tersebut dengan perkembangan doktrin tort yang ada di luar negeri. Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan pendekatan analisis deskriptif. Penelitian ini menuai hasil yang cukup memuaskan di mana doktrin market share liability dapat menjadi solusi atas permasalahan kausalitas yang dihadapi kasus pencemaran Sungai Citarum dengan penyesuaian-penyesuaian pada hukum acara perdata yang berlaku di Indonesia. Namun demikian, terdapat tantangan-tantangan seperti dibutuhkannya aktivisme yudisial oleh hakim dan penelitian secara saintifik terhadap pencemaran Sungai Citarum, untuk dapat menerapkan doktrin market share liability di Indonesia guna membuktikan kausalitas kerugian terhadap pencemaran yang terjadi.

.....Citarum River has been polluted for many years and has earned it the title of the most polluted river in the world. Not only destroying the environment, the pollution that occurs in the Citarum River has also caused losses to the people living along the Citarum River. These losses include the loss of health and also the loss of clean water sources. However, so far there has never been a lawsuit filed to provide the people in the Citarum River with compensation for the suffering they have experienced. In addition, it seems that the factories in the Citarum River have never been responsible for the losses suffered by the community. The absence of such a lawsuit is caused by a causality problem in the Citarum River pollution case, namely the uncertainty of causation. The uncertainty of causation is caused by two things, namely the uncertainty of the defendant and the uncertainty of the cause of the loss. The defendant's indeterminacy occurred because there were too many industries that stood on the Citarum River, and the causative indeterminacy occurred because there were too many sources of pollution in the Citarum River. This thesis aims to answer the uncertain causation problem with the development of the existing tort doctrine in other countries. The research method

used is normative juridical research with a descriptive analysis approach. This study reaped satisfactory results where the market share liability doctrine could be the solution to the causality problem faced by the Citarum River pollution case with adjustments to the civil procedural law applicable in Indonesia. However, there are challenges such as the need for judicial activism by judges and scientific research on Citarum River pollution, in order to be able to apply the market share liability doctrine in Indonesia to prove the causality of losses to pollution.