

## Menggugat asap: kajian aspek pembuktian kausalitas kabut asap dalam perkara kebakaran hutan dan lahan di Indonesia = Suing smoke: aspects study of proof of causation of haze in Indonesian forest fires

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### Abstrak

Kabut asap telah menjadi momok yang sangat merugikan banyak pihak. Kerugian materiil maupun immateriil yang diderita begitu masif dan timbul dalam waktu yang cukup lama. Menariknya belum pernah ada gugatan terhadap kerugian akibat kabut asap di pengadilan Indonesia. Alasannya sederhana, karena kausalitas kabut asap dengan kerugian yang dialami korban sulit dibuktikan apabila merujuk pada ketentuan hukum yang berlaku di Indonesia saat ini, termasuk dengan teori kausalitas yang dianut. Skripsi ini hendak menjawab pertanyaan sederhana, dengan perkembangan teori kausalitas dalam ilmu hukum apakah kerugian akibat kabut asap dapat dibuktikan di pengadilan? Metode penelitian yang digunakan adalah penelitian yuridis normatif dengan pendekatan konseptual dan pendekatan perbandingan. Penelitian ini menuai hasil yang cukup positif di mana terdapat doktrin market share liability yang dapat mengakomodir pembuktian kausalitas kabut asap, baik dari segi hukum materiil maupun segi hukum formil di Indonesia. Namun pada akhirnya tetap diperlukan keterbukaan dari hakim untuk membangun logika hukum berdasarkan nilai-nilai kebenaran dan keadilan, yang dalam pandangan penulis dapat diakomodir melalui penerapan doktrin market share liability untuk membuktikan kausalitas terhadap kerugian akibat kabut asap.

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Haze has become very detrimental scourge to many parties. Both material dan immaterial losses suffered are massive and arise in a long period of time. Interestingly, there has never been a lawsuit against haze in Indonesian courts. The reason is simply because proof of causation based on losses suffered by the victim from haze is very difficult to prove if one refer to laws recognized in Indonesia, including the embraced theory of causation. This undergraduate thesis wants to answer a simple question, with the development of theory of causation in jurisprudence, is it possible to prove causation based on losses from haze in courts The research method used in this thesis is a normative juridical research with conceptual approach and comparative approach. This research reaping positive results in which theory of market share liability could accommodate the proof of causation of haze, both in terms of material law and procedural law aspects recognized in Indonesia. In the end it still takes the open minded judge to build legal logic based on the value of justice and fairness, which in my point of view could be accomodated by applying market share liability doctrine as a proof of causation of loss from haze.