

RESEARCH ARTICLE

FOREST FIRES AND LAW ENFORCEMENT: THE CAPTURE OF INDONESIAN CONTEMPORARY CONDITION

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ABSTRACT

Forest is an invaluable natural resource because it contains biodiversity such as timber and non-timber forest products, water control, flood and erosion prevention and soil fertility, protection of biological nature for the benefit of science, culture, recreation, tourism and so on. however, recently forests in Indonesia are experiencing degradation in the form of forest fires. The government has also issued several regulations related to forest destruction. Among others, Law No. 41/1999 on Forestry. Article 49 of the Forestry Law states that rights or permit holders are responsible for forest fires in their working areas. However, unfortunately the law does not explain the criminal provisions regarding Article 49.

Keywords: *Forest Fire; Forestry Law; UUPPLH; Law Enforcement*

TABLE OF CONTENTS

ABSTRACT	39
TABLE OF CONTENTS	39
INTRODUCTION	39
METHOD	41
FOREST PROTECTION IN INDONESIAN LEGAL SYSTEM	42
I. FOREST PROTECTION UNDER LAW NUMBER 41 OF 1999	42
II. LEGAL ACTION AGAINST PERPETRATORS OF FOREST BURNING IN INDONESIA ACCORDING TO THE FORESTRY LAW AND THE LAW ON ENVIRONMENTAL PROTECTION AND MANAGEMENT	44
CONCLUSION	48
REFERENCES	48

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia states that a good and healthy environment is a human right and constitutional right for every Indonesian citizen. Therefore, the State, government and all stakeholders are obliged to protect and manage the environment in implementing sustainable development so that the Indonesian environment can continue to be the source and life support for the Indonesian people and other living creatures.

A good and healthy environment is very important in supporting human survival. In addition to everyone having the right to a good and healthy environment, they also have the obligation to protect and manage the environment. A good and healthy living environment is not only a right, but within it must also have the responsibility to protect and protect and manage or preserve it so that it is getting better and healthier every day and in it a good and healthy society is also created. Therefore, it is clear that the environment is an important thing that should be maintained, protected, managed and preserved, one of which is the forest (Sri, 2012: 15).

Forest is an invaluable natural resource because it contains biological diversity such as timber and non-timber forest products, water management, flood and erosion prevention as well as soil fertility, protection of biological nature for the benefit of science, culture, recreation, tourism and so on. The importance of these resources is increasing because forests are a source of livelihood for many people. Law Number 41 of 1999 concerning Forestry, is contained in Article 1 point 2 which reads:

"Forest is a unified system in the form of a stretch of land containing biological natural resources dominated by trees in their natural environment, which cannot be separated from one another".

However, recently forests in Indonesia have been degraded in the form of forest fires. Forest fires are a form of disturbance that is increasingly occurring. The negative impacts caused by forest fires are quite large, including ecological damage, decreased biodiversity, decreased economic value of forests and land productivity, micro and global climate change, and the smoke disrupts public health and disrupts transportation both land, river, lake, sea, and air. More than three months of smog hit nearly two-thirds of Indonesia's territory due to land and forest fires that occurred in parts of Sumatra and Kalimantan.

The haze disaster has damaged the air quality to become unhealthy and even dangerous. As a result of this haze disaster, the impact was not only felt in the territory of Indonesia, but also the impact was also felt by neighboring countries such as Singapore, Malaysia, and Brunei Darussalam. Of course, the problem of this haze disaster is a serious disaster, so it needs serious handling as well in terms of stopping the smog disaster and in terms of law enforcement.

Companies that should have had a positive impact on society and the state have turned into actors that directly or indirectly harm society and the state. In addition to their negative impacts on forest ecosystem functions, forest and land fires have caused loss of lives, property, health problems, and further affected national and regional economies. Another negative impact is the effect of forest fires on increasing global warming.

In other words, law enforcement against perpetrators of forest and land fires is very necessary, in addition to providing a deterrent effect on perpetrators as well as to compensate for any losses that arise from burning forests and land. The PPLH Law recognizes three law enforcement mechanisms against perpetrators of pollution and environmental destruction, namely the administrative sanctions approach, the civil sanctions approach and the criminal sanctions approach. However, so far, law enforcement using the Forestry Law, the Plantation Law and also the most common with the PPLH Law, apart from not giving a deterrent effect nor fulfilling a sense of justice. For further discussion, the discussion section will discuss how to take legal action against perpetrators of land and forest fires using the approach of the Forestry Law, the Plantation Law and the PPLH Law (Irwandi, 2016: 9).

METHOD

The type of research in this writing is Normative (literature) which comes from statutory regulations, books, official documents, and research results which are solely

used to obtain complete data as the basis for writing this scientific paper. This research is descriptive analytical, which reveals the laws and regulations relating to legal theories as the object of research. The data collection technique is done by means of library research (Library Research). This method is carried out by conducting research on various sources of written reading from scholars such as theoretical books on law as well as lecture materials and laws and regulations regarding abortion by rape victims. In addition, in this writing is via the internet, then Indonesian, legal dictionaries and encyclopedias.

FOREST PROTECTION IN INDONESIAN LEGAL SYSTEM

I. FOREST PROTECTION UNDER LAW NUMBER 41 OF 1999

In articles 46 and 47 of Law No. 41 of 1999 explained that the implementation of forest protection and nature conservation aims to protect forests, forest areas and their environment, so that the protection function, conservation function, and production function can be achieved optimally and sustainably. Protection of forests and forest areas is an effort to:

- a. Prevent and limit the destruction of forests, forest areas and forest products caused by human actions, livestock, fires, natural forces, pests and diseases.
- b. maintain and protect the rights of the state, communities and individuals over forests, forest areas, forest products, investments and instruments related to forest management.

The prohibition against forest destruction is listed in article 50:

- a. Everyone is prohibited from destroying forest protection infrastructure and facilities.
- b. Everyone who is granted an area utilization business permit, environmental service utilization business permit, timber and non-timber forest product utilization business permit, and timber and non-timber forest product collection permit, is prohibited from engaging in activities that cause forest damage.
- c. Everyone is prohibited from:
 1. Working and or using and or occupying forest areas illegally.
 2. Exploring forest areas.
 3. Logging trees in forest areas with a radius or distance of up to:
 - a) 500 (five hundred) meters from the edge of a reservoir or lake.
 - b) 200 (two hundred) meters from the edge of the springs and either side of the river in a swamp area.
 - c) 100 (one hundred) meters from either side of the river bank.
 - d) 50 (fifty) meters from the left and right of the river bank.
 - e) 2 (two) times the depth of the ravine from the edge of the ravine.

- f) 130 (one hundred and thirty) times the difference between the highest and lowest tides from the shore.
- 4. Burn down the forest.
- 5. Cut trees or harvest or collect forest products in the forest without having the right or permission from an authorized official.
- 6. Receiving, buying or selling, accepting exchange, receiving custody, keeping or possessing forest products which are known or reasonably suspected to have originated from forest areas that were illegally taken or collected.
- 7. Conducting general investigation or exploration or exploitation of mining materials in forest areas, without the Minister's permission.
- 8. Transporting, controlling, or owning forest products which are not accompanied by a certificate of legality of forest products.
- 9. Herding livestock in forest areas not specifically designated for this purpose by an authorized official.
- 10. Carrying heavy equipment and or other tools that are customary or reasonably suspected to be used to transport forest products in forest areas, without the permission of the authorized official.
- 11. Bringing tools commonly used to cut, cut, or chop trees in forest areas without the permission of the authorized official.
- 12. Dispose of objects that can cause fire and damage and endanger the existence or sustainability of forest functions into the forest area.
- 13. Remove, carry, and transport wild plants and animals that are not protected by law originating from forest areas without the permission of the authorized official.
- d. Provisions regarding removing, carrying and or transporting protected plants and or animals shall be regulated in accordance with the prevailing laws and regulations.

In order to guarantee the implementation of forest protection, certain forestry officials in accordance with the nature of their work are given special police powers, namely:

- a. Conducting patrols / tracing in the forest area or its jurisdiction;
- b. Checking documents or documents relating to the transportation of forest products within the forest area or its jurisdiction;
- c. Receive reports of criminal acts involving forests, forest areas and forest products;
- d. Looking for information and evidence of the occurrence of a criminal act concerning forests, forest areas and forest products;
- e. In the case of being caught red-handed, it is obligatory to arrest the suspect to be submitted to the authorities; and
- f. Making reports and signing reports on the occurrence of criminal acts relating to forests, forest areas and forest products.

II. LEGAL ACTION AGAINST PERPETRATORS OF FOREST BURNING IN INDONESIA ACCORDING TO THE FORESTRY LAW AND THE LAW ON ENVIRONMENTAL PROTECTION AND MANAGEMENT

Article 1 paragraph (1) of the PPLH Law states that the environment is a spatial unit with all objects, forces, conditions, and living things including humans and their behavior that affect nature itself, the continuity of life and the welfare of humans and other living creatures. Therefore, the assumption that humans are the most powerful creatures is not true.

The case of forest and land fires is proof that humans are the main actor contributing to the damage to nature that threatens the survival of life. The increasing need due to the increasing number of human population will have an impact on the efforts to have personal ownership, especially regarding the needs of the community at large. The issuance of permits for the management and use of forests and land is an economic step in order to meet the needs of many communities carried out by corporations. However, in the process of forest management and utilization starting from the pre-licensing stage, when the permit has been issued and after the permit's validity period has expired, clear boundaries are given (Arief, 2019: 11).

These limits are provided through the prevailing laws and regulations in order to minimize all forms of threats and risks to environmental pollution and destruction in order to maintain the sustainability of life and the ecosystem. However, the fact cannot be denied when the haze disaster that hit Indonesia, especially in Sumatra and Kalimantan, was contributed by large companies. With an area exposed to a vast haze disaster that exceeds national borders, of course it takes a concrete effort to end the haze disaster caused by burning land and forests. One of them is by conducting criminal law enforcement against perpetrators of forest and land burning, both individuals and companies.

As an authorized institution, the police have carried out legal proceedings against individuals and companies that perpetrate forest burning. The police action at least has shown that there is an effort to enforce the law against the perpetrators of forest and land burning. The question then arises what legal instrument will be used in prosecuting the perpetrators of forest burning when there are two laws regulating? For further information, it can be seen how the criminal provisions for perpetrators of forest and land burning are in accordance with these two laws (Hero, 2018: 5):

a. Law Number 41 of 1999 concerning Forestry

Article 49 of the Forestry Law states that rights or permit holders are responsible for forest fires in their working areas. And Article 50 paragraph (3) letter d states that everyone is prohibited from burning the forest. But

unfortunately, the law does not explain the criminal provisions regarding Article 49. The criminal provisions as regulated in Article 50 paragraph (3) letter d are regulated in Article 78 paragraph (3) which states whoever deliberately violates the provisions referred to in Article 50 paragraph (3) letter d, is punishable by a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Meanwhile, if the perpetrator is a business entity, Article 50 paragraph (14) states that the criminal act as referred to in Article 50 paragraph (1), paragraph (2), and paragraph (3) is committed by and or on behalf of a legal entity or business entity. , the charges and criminal sanctions imposed on the management, either individually or collectively, are subject to punishment in accordance with the respective penalties plus 1/3 (one third) of the sentence imposed.

- b. Law No. 32 of 2009 concerning Environmental Protection and Management Referring to the explanation of Article 21 paragraph (3) letter c of the PPLH Law, it states that what is meant by "environmental damage related to forest and / or land fires" is the effect of changes to the environment in the form of environmental damage and / or pollution related to forest and / or land fires caused by a business and / or activity.

Although the PPLH Law specifically contains articles on burning land in Article 108 which is as follows:

Article 108

Anyone who burns the land as referred to in Article 69 paragraph (1) letter h, shall be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiah).

However, if the explanation of Article 21 paragraph (3) letter c is used, then the perpetrators of forest and land burning can use Article 98 and Article 99 which are as follows:

Article 98

Anyone who deliberately commits an act which results in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria, will be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years. and a fine of at least Rp.

3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

If the act as referred to in paragraph (1) results in a person being injured and / or a danger to human health, the punishment shall be imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000.00 (four billion rupiah) and a maximum of Rp 12,000,000,000.00 (twelve billion rupiah).

If the act as referred to in paragraph (1) results in a serious injury or death, the person shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000.00 (five billion rupiahs).) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).

Article 99

Anyone who due to their negligence results in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a maximum fine. a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).

If the act as referred to in paragraph (1) results in a person being injured and / or a danger to human health, the punishment shall be imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least IDR 2,000,000,000.00 (two). billion rupiah) and a maximum of Rp. 6,000,000,000.00 (six billion rupiah).

If the act as referred to in paragraph (1) results in a person being seriously injured or dead, the person shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 9,000,000,000.00 (nine billion rupiah).

Meanwhile, if the perpetrator is a business entity or is related to work in a business entity it is regulated in Article 116 to Article 119 which is as follows:

Article 116

If an environmental crime is committed by, for, or on behalf of a business entity, the criminal charges and criminal sanctions are imposed on: the business entity; and / or the person giving the order to commit the criminal act or the person acting as the activity leader in the criminal act. (2) If the environmental crime as referred to in paragraph (1) is committed by a person, who is based on a work relationship or based on other relationships acting within the scope of work of a business entity, the criminal sanction is imposed on the person who gave the order or leader in the criminal act regardless of the criminal act being committed alone or together.

Article 117

If a criminal charge is filed against the order giver or the leader of the criminal act as referred to in Article 116 paragraph (1) letter b, the punishment imposed is in the form of imprisonment and a fine heavier by one third.

Article 118

For criminal acts as referred to in Article 116 paragraph (1) letter a, criminal sanctions are imposed on the business entity represented by the management authorized to represent inside and outside the court in accordance with the statutory regulations as functional actors.

Article 119

In addition to the crimes referred to in this Law, business entities may be subject to additional penalties or disciplinary measures in the form of:

- a) Deprivation of profits from a criminal act;
- b) The closure of all or part of the place of business and / or activity;
- c) Correction due to criminal acts;
- d) Obligation to do what was neglected without rights; and/or

- e) Placement of the company under supervision for a maximum of 3 (three) years.

The concept of a cause-and-effect relationship in criminal law is a form of proof whether it is true that a certain action is categorized as a criminal act, either causing harm (material offense) or not causing harm (formal offense). The three laws only adhere to the teaching against material law where there is a crime when there has been a loss. This teaching is not only an obstacle in ensnaring the perpetrator because there is only a crime when an error occurs (material offense). Whereas the impact of forest and land fires is massive and crosses national borders (Fachmi. 2014: 17).

CONCLUSION

Protection of forests and forest areas is an effort to prevent and limit the destruction of forests, forest areas and forest products caused by human actions, livestock, fires, natural forces, pests and diseases. The haze disaster that hit Indonesia beyond national borders, especially in the Sumatra and Kalimantan regions, was contributed by large companies. The case of forest and land fires is proof that humans are the main actor contributing to the damage to nature that threatens the survival of life. Authors suggest that forest protection aims to obtain optimal benefits for the welfare of the entire community in an equitable manner while maintaining its sustainability. For this reason, harmony is needed between the government and the people in preserving the forest. Forestry officers and the police carry out their respective duties in accordance with the law. The community must also participate in supporting and taking actions in efforts to protect forests. Most of the forest fires that occur in Indonesia are the act of large companies and corporations. For this reason, the authorized government must be firm and immediately impose criminal sanctions against the corporation concerned.

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QUOTE

Humanity should not remain insensitive to the forest fire or wildfire every year. Unless we act, the loss of biodiversity and extinction of herbs, birds and animals and the pains of the trees, birds, animals and the poor is also alarming signal for the extinction of humanity itself.

Amit Ray, Nuclear Weapons Free World Peace on the Earth