

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)



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ABSTRACT: Law enforcement carried out by law enforcement officials in the criminal justice system is one of the efforts that can protect the community from various forms of criminal acts that violate protect the public from various forms of criminal acts that violate the provisions of the regulations that have been made. Related to law enforcement against the perpetrators of plantation land clearing by burning which often occurs in Indonesia, especially Riau Province, then the police have a very important role in terms of enforcing the law so as to create equitable law enforcement.

The results of research on Environmental Law Enforcement in relation to with Criminal Law, namely related to Legal Substance in Article 69 paragraph (1) letter H of Law Number 32 of 2009 concerning Protection and Management of the Environment regarding the prohibition of land clearing. Management of the Environment regarding the prohibition of land clearing by burning and actions against the perpetrators to enforce the law. And Environmental law enforcement in Indonesia is affected by 3 (three) aspects, namely Legal Products, Legal Systems and Political Risks that are always changing changes.

The conclusion of law enforcement is not allowed to burn land for any reason, especially for plantation land, be it individual or corporate plantations. Individual or corporate plantation land, the legal basis for this prohibition is found in the Criminal Code. the prohibition is contained in the Criminal Code (KUHP) Article 187, Law No. 41 of 1999 concerning Forestry, Law No. 32 of 2009 concerning Protection and Management of the Environment (UUPPLH), Law number 39 Year 2014 About Plantation.

KEYWORDS: Law Enforcement and Concerning Forestry

I. INTRODUCTION

One of the problems that occur in Indonesia is forest and land fires (KARHUTLA), especially in the islands of Sumatra and Kalimantan. Forest and land fires in Indonesia are a routine problem that occurs every year, especially during the dry season. The impact of forest and land fires is smoke pollution that makes the air unclean. Smoke pollution resulting from forest and land fires has caused losses to the community, and has an impact on several countries in the Southeast Asian region adjacent to Indonesia, namely: Singapore, Malaysia, and Brunei Darussalam.

Forest and land fires in Indonesia are very strategic because of the large number of forests and most of them are located on peat soils which have the potential to cause smoke. Forest and land fires are generally caused by humans (99%), when they prepare land for cultivation, agriculture and plantations by burning; a method that is easy, cheap and fast.

Based on the Law of the Republic of Indonesia Number 4 of 1982 concerning Basic Provisions for Environmental Management, Article 5 paragraph (2) reads: Everyone is obliged to maintain the environment and prevent and overcome its damage and pollution. Article 7 paragraph (1) reads: Every person who runs a business field is obliged to maintain the preservation of the ability of a harmonious and balanced environment to support sustainable development.

According to the author, in addition to Police Investigators who can conduct investigations and investigations into environmental crimes. Civil Servant Investigators (PPNS) and the Prosecutor's Office can also conduct Investigations and Investigations in law enforcement against environmental crimes. However, Police Investigators, Civil Servant Investigators, and the Prosecutor's Office cooperate/coordinate with each other in carrying out law enforcement within the scope of environmental crimes that have been stated in the Constitutional Court Decision Number 18/PUU-XII/2014, in which in the decision Police Investigators, Civil Servant Investigators, and the Prosecutor's Office are formed under the Minister of Environment.

The author raises the subject matter of forest and land fire crimes which emphasizes the settlement of cases of forest and land fire crimes within the scope of the Police Investigator. According to Article 1 point 4 of the Criminal Procedure Code in conjunction

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)

with Article 1 point 8 of the Law of the Republic of Indonesia No.2 of 2002 concerning the Indonesian National Police, what is meant by Investigator is "Officials of the Indonesian National Police authorized by law to conduct investigations", while according to Article 4 of the Criminal Procedure Code, "Investigators are every official of the Indonesian National Police". (Riadi Asra Rahmad, 2019)

As a result of globalization, the people and countries of the world have become one, fundamental changes occur very quickly (revolutionary), accompanied by open relations between nations and countries, which have no boundaries of power, markets, use of technology, flow of goods and services, and human knowledge. Changes in one region can determine changes in other regions globally. Norms, orders, ties that are global infiltrate and dominate all local complexities and diversity, ethnic-national identities, giving birth to uniformity, which of course results in imbalances between countries, communities of power and control of various resources. (Yudi Krismen, 2014)

In this research, the author examines forest and land fires in the Meranti Islands Regency. There are many violations of criminal acts of forest and land fires. What becomes frequent violations of criminal acts of forest and land fires because of the archipelago which is a frequent occurrence of forest and land fires, and the difficulty of access to transportation to extinguish forest and land fires in the Meranti Islands Regency.

Based on these facts, this research is conducted to find out the importance of implementing the problems that have been mentioned so that there is no confusion in the discussion, so the author limits the problem with the formulation of the problem. How is law enforcement against criminal acts of forest and land fires in the jurisdiction of the Meranti Islands Police. What are the constraints in law enforcement against criminal acts of forest and land fires in the jurisdiction of the Meranti Islands Police.

II. METHOD

This research is sociological research, which is research conducted by tracing and analyzing directly or surveying directly to its location/observational research (Singarimbun, 1989, p. 4). Judging this research is descriptive in nature taken from Primary Data Sources by conducting interviews (Ashoma, 2013, p. 95) and secondary data and reviewing directly into the field by processing data from primary legal materials, secondary legal materials and tertiary legal materials.

III. LITERATURE REVIEW

A. Theory of the rule of law

The term state of law is a translation of the term "rechtsstaat". Another term used in the Indonesian legal realm is the rule of law, which is also used to mean "state of law". Djokosoetono says that "democratic rule of law is actually a wrong term, because if we omit democratische rechtsstaat, what is important and primair is rechtsstaat." (Djokosoetono, 2006)

In Hadjon's opinion, the two terminologies, namely rechtsstaat and the rule of law, are supported by different legal system backgrounds. The term Rechtsstaat is the fruit of thought to oppose absolutism, which is revolutionary in nature and rests on a continental legal system called civil law. In contrast, the rule of law developed evolutionarily, based on the common law legal system. However, the difference between the two is now no longer disputed, because it leads to the same target, namely the protection of human rights. (Hadjon, 1987)

In modern times, the concept of the rule of law in Continental Europe was developed by, among others, Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others using the German term "rechtsstaat". Meanwhile, in the Anglo-American tradition, the concept of the rule of law was developed through the pioneering work of A.V. Dicey with the term "The Rule of Law". According to Julius Stahl, the concept of the rule of law, which he calls "rechtsstaat", includes four important elements, namely: Protection of human rights; Division of power; Government by law; State administrative court.

Meanwhile, A.V. Dicey outlines three important characteristics in every state of law which he calls "The Rule of Law", namely: Supremacy of Law; Equality Before the Law; Due Process of Law.

The four principles of "rechtsstaat" developed by Julius Stahl above can basically be combined with the three principles of the "Rule of Law" developed by A.V. Dicey to mark the characteristics of a modern state of law today. In fact, by "The International Commission of Jurists", the principles of the rule of law are added to the principle of a free and impartial judiciary (independence and impartiality of judiciary), which today is increasingly felt to be absolutely necessary in every democratic country. The principles that are considered important characteristics of the rule of law according to the International Commission of Jurists are: The state must be subject to the law; The government respects the rights of individuals; A free and impartial judiciary.

B. Law Enforcement Theory

Law Enforcement is the process of making efforts to uphold or function legal norms in reality as a guide to behavior in legal relations in the life of society and the state.

Satjipto Raharjo argues that law enforcement is not a definite action, namely enforcing a definite action by applying the law to an event, which can be likened to drawing a straight line between two points. (Sajipto Raharjo, 2009)

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)

In enforcing this law, there are 3 things that must be considered, namely legal certainty, expediency, and justice. Legal certainty: The law must be implemented and enforced, everyone wants the law to be enforced against concrete events that occur, how the law is, that is what must be applied to every event that occurs. So basically there is no deviation. However, the law must be enforced, to the point that there is a saying "even if it is doomsday tomorrow, the law must still be enforced". This is what legal certainty is all about. With legal certainty, order in society is achieved. Expediency: Implementation and enforcement of the law must also pay attention to its usefulness and usefulness for the community. Because the law is precisely made for the benefit of society (humans). Therefore, the implementation and enforcement of the law must provide benefits in society. Do not let it happen implementation and enforcement of the law to the detriment of society, which in turn causes unrest. Justice: Soerjono Soekanto said that justice is essentially based on 2 things: first, the principle of equality, where everyone gets the same part. Second, it is based on needs. So as to produce comparability which is usually applied in the field of law. (Soekanto, 2006)

V. DISCUSSION

A. Law Enforcement against Criminal Acts of Forest and Land Fires

Factors that greatly affect the effectiveness of environmental law enforcement, must be considered the concept of the operation of law in society put forward by William J Chamblins and Robert B Seidman, that the operation of law in society is strongly influenced by all other societal and personal forces (all provisions of individuals and society) which cover the entire process. What is meant is that the stages of formulation, application and execution are strongly influenced by factors that exist outside the law, such as economic, political, cultural, educational, interests, power and all the forces of individuals and society that exist outside the process. (Syahrul Machmud, 2012, Page 163)

Chambliss and Seidman's theory states that the role of social forces does not only affect the people as targets regulated by law, but also legal institutions, such as law-making institutions, law-implementing institutions and law-executing institutions. (Syahrul Machmud, 2012, Page 164)

Law enforcement of criminal acts of environmental destruction due to arson that can cause pollution and damage to forest habitats and ecosystems can be divided into material and formal offenses, material offenses are actually aimed at the consequences of the act of pollution and or destruction, namely pollution or damage to the environment. Proving whether the defendant has polluted or damaged the environment is the burden of the public prosecutor. This proof is closely related to scientific evidence where the role of expert witnesses and laboratories determines whether the environment is polluted or damaged.

Material offense is a type of criminal act that does not depend on administrative law (independent), or known as administrative independent crimes. Based on the concept of administrative independent crimes, an act can be categorized as a criminal act without having to see whether or not there is an administrative violation.

The formal offense actually emphasizes more on preventive efforts so that environmental pollution and or destruction can be prevented early. In environmental issues, it is not better to do prevention than recovery efforts, thus this formal offense is actually a supervisory effort or control effort provided by the law so that the environment is not already polluted and or damaged.

Forest fires (vegetation fire, or bush fire) is a fire that occurs in the wild, but can also destroy nearby houses and farmland. Common causes include lightning, human carelessness, and arson. The dry season and prevention of small forest fires are the main causes of large forest fires.

In terms of law enforcement against criminal acts of land clearing by burning often occurs in Indonesia, especially in Riau Province where the majority of people there make plantations their livelihood, one of the mainstays of plantation commodities in Riau Province which many people are engaged in is oil palm plantations.

Riau Province which makes oil palm as the main commodity in improving the community's economy, in terms of supporting the economic life of the community being an oil palm farmer is very helpful in improving the economy to the middle to upper level, because based on the soil culture in Riau Province the average is peat soil so plants that can live on peatlands in general are oil palm because the bigger the oil palm plant, the more it absorbs water, unlike rubber plants and so on which are difficult to live on peatlands.

The reason why the community clears land by burning is because of the cheaper cost and the short time it takes to plant compared to the more expensive cost during the process of cutting, felling and chopping, which becomes a weakness and fear of the community when there is a dry season the trees that have been uprooted and chopped are prone to burning after the oil palm plants have grown large so why do people clear land by burning apart from the low cost because of the fear of fires in the future due to leaf litter, branches of trees that have dried on fire, because previously they were not burned first.

Forest fires are free-flowing fires in unplanned areas that consume natural fuels from the forest. It is an event where fire consumes vegetated material that occurs within a forest area and spreads freely and uncontrollably, while land fires occur in non-forest areas.

The causes of forest fires can occur from a number of factors, such as human negligence, the arrival of the dry season, or the availability of fuel. The cause of forest fires is explained by various factors, such as natural events like lightning. Lightning that strikes dry leaves or dry logs can cause fires. Dry leaves or stems around them cause the fire to spread faster. Natural events due to

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)

large winds that cause friction of dry leaves will cause sparks. Sparks will lead to forest fires. During the dry season, the wind tends to be bigger so forests in Indonesia often experience fires. Forest fires are caused by human actions such as carelessness. Carelessness such as making a campfire and then forgetting to put out the embers will cause forest fires.

Therefore, don't forget to turn off the campfire and the embers. Forest fires are caused by humans deliberately burning forests. There are many crimes committed by people who intentionally burn forests to clear land for farming. However, the forest fires are getting wider and uncontrollable, resulting in large forest fires.

In Article 1 point 32 of Law Number 32 of 2009 concerning the environment, it is formulated that what is meant by every person in this law is an individual or business entity, both incorporated and unincorporated. This means that if there is a company that violates this law, it can be held criminally responsible. Furthermore, this concept is also regulated in Article 88 of Law Number 32 of 2009 concerning environmental protection and management which stipulates: "every person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or which pose a serious threat to the environment is absolutely responsible for the losses incurred without the need to prove the element of fault.

In 2017-2019 there were cases of Forest and Land Fires (KARHUTLA) in the Meranti Islands Regency. Data available at the Meranti Islands Police reached approximately 40 cases of criminal acts of forest and land fires in the Meranti Islands Regency. The area of forest and land fires in the Meranti Islands district is in the Rangsang sub-district, in the West High Cliff sub-district, and in the Rangsang Coastal sub-district. In the sub-district of Rangsang, there are 17 cases that are currently still at the investigation stage (Lidik) and 3 cases that are already at the investigation / P-21 (Sidik) stage, in the sub-district of Tebing Tinggi Barat there are 11 cases that are still at the investigation stage (Lidik), and in the sub-district of Rangsang Pesisir there are 9 cases that are still at the investigation stage (Lidik).

Data on forest and land fires in the Meranti Islands Police Legal Area 2017-2019:

Kecamatan Rangsang		17 Kasus Lidik (Tahap Penyelidikan) 3 Kasus Sidik (Tahap Penyidikan/P-21)
Kecamatan Tebing Tinggi		11 Kasus Lidik (Tahap Penyelidikan)
Kecamatan Rangsang Pesisir		9 Kasus Lidik (Tahap Penyelidikan).
Tahap Penyelidikan	Tahap Penyidikan	Total
37 Kasus	3 Kasus	40 Kasus

Source: TipidTer Reskrim Polres Kepulauan Meranti

B. Obstacles in Law Enforcement against Perpetrators of Forest and Land Fires in the Meranti Islands Police Legal Area

Various cases of environmental dispute resolution from the first time the environmental law was enacted until now have not shown encouraging results. Several factors that become obstacles to environmental law enforcement in Indonesia according to Koesnadi Hardjosoematri are (Koesnadi Hardjosoematri. 2005): Inadequate popularization of laws and regulations relating to the environment so that people do not know their rights and obligations; Law enforcement officials, which include, officials authorized to grant permits, police, prosecutors, judges, and lawyers / legal consultants are less responsive to the development of environmental law; Some provisions of environmental laws, especially those relating to law enforcement, lack clear elaboration.

a. Means of Law: In this case it needs to be emphasized that the law is only a means. Therefore, if the law is good, good advice will be available. In order for the good to be carried out in reality, the existing means need to be applied and used as well as possible. In this case, the real implementation of goodness depends on the will and real actions of humans that can be supported by the law. A good law does not guarantee that the good will really be implemented, without humans being willing and able to implement it thoroughly. Therefore, for the success of good regulatory procedures, besides the need to formulate good laws, it is necessary to implement them in reality.

b. Law Enforcement Apparatus: In this case it will be related to the quantity and quality aspects of law enforcement. Quantity relates to the number or completeness of existing law enforcement officers. While the quality relates to the ability and proficiency (professionalism) of law enforcement officers in handling environmental cases. Lack of both quantity and quality of law enforcement officers will greatly affect the effectiveness of environmental law enforcement. Law enforcement officers both in the preventive and repressive sense in handling cases of environmental pollution or destruction, besides being very limited in number, are also limited in their abilities. At present, government officials in charge of various agencies, such as in various Departments, local governments

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)

can only carry out preventive tasks, such as monitoring, guidance, and warnings. When violations of the environment occur, they do not take legal action.

c. **Facilities and Means:** Facilities and Means are tools to achieve the objectives of environmental law enforcement. The absence or limitation of facilities and other supporting facilities will greatly affect the success of environmental law enforcement. Facilities and means are needed because handling environmental cases will involve various sophisticated technological devices (laboratory equipment) which for the sake of its operation requires experts and quite expensive costs. The unavailability of several adequate laboratories causes the evidence submitted by the parties in each laboratory to show different results so that if used as evidence in court. Judges often feel hesitant in imposing punitive sanctions.

d. **Public consciousness of the environment:** The indicator of public legal awareness lies in compliance with legal provisions. Compliance and obedience to the provisions of environmental law indicate the effectiveness of environmental law in society. According to Otto Soemarwoto, humans integrate continuously with their environment where in that interaction, they observe the environment and gain experience. From his observations and experiences, he has a certain picture of his environment which is called an environmental image.

e. **Social, political and cultural factors:** Social, political and cultural factors will determine the success of environmental management and environmental law enforcement. In relation to social, political and cultural factors, according to Munadjat Danusastro, the causes of environmental problems can be categorized in 4 or the four P, namely poverty (poverty), population (population), dirt or damage (pollution), and policy (policy). In this regard, the most influential factors are poverty and population explosion. These two factors occupy the most central ranking and then cause unhealthy complications in the environment.

f. **Inquiry and Investigation Phase:** Environmental awareness and insight of the community and officials who do not have the ability to understand the nature, urgency of a clean, healthy environment with a carrying capacity that ensures the implementation of sustainable development. This causes law enforcement officers to be less sensitive to environmental pollution or destruction; Inadequate technical capabilities of the apparatus can lead to hesitation and delay in action; Difficulty in obtaining accurate data and facts relevant to evidence; The view that foreign industrial power should not be affected by increased production costs because they have to make waste treatment equipment; The quiet or shy attitude that is still inherent in the culture of Indonesian society so that when rights are violated, including the environment, they are silent, not disputing or suing in court; The many opportunities for employers to deter or complicate research and inspection; Infrastructure and facilities are still limited, including technical and cost as well as personnel capabilities; Frequent interference by third parties using influence and power; Lack of confidentiality guarantees.

CONCLUSIONS

Based on the data and facts in relation to the case of forest and land fires in Indonesia, Riau Province can be concluded that, Fire causes losses in people's lives from various aspects of life, such as social, economic, disease, environment, culture and even political relations with neighboring countries such as Malaysia and Singapore. Law Enforcement has been carried out to create a prosperous community life. Enforcement of environmental criminal law is carried out by investigators from the police. In this case, what really plays a role is the police who carry out enforcement by reviewing the location of the crime scene and conducting investigations. After the investigation is carried out, the police determine the suspect with the provisions of the applicable law.

SUGGESTIONS

In order to prevent forest fires from occurring every year, the Indonesian government must make strict regulations that must be implemented by companies (PT), individuals, groups, corporations and so on. In order to avoid various losses in the plantation and forestry sector, the local and central governments must have one vision and one goal in anticipating forest fires and be able to enforce the law without further ado. Law enforcement must be firm, and generally applicable, and should not be selective in law enforcement. The principle of equality before the law, must be implemented, if we want the problem of forest and land fires to be resolved properly.

REFERENCES

Book and Journal Article

- 1) Ashoma, Metode Penelitian Hukum, Jakarta: Rineka Cipta, 2013.
- 2) Djokosoetono, Hukum Tata Negara, dihimpun oleh Harun Alrasid Edisi Revisi. Jakarta: Ind-Hill Co, 2006.
- 3) Koesnadi Hardjasoemantri, Hukum Tata Lingkungan. Yogyakarta: Gadjah Mada University Press, 2005.

Law Enforcement against Criminal Acts of Forest and Land Fires in Indonesia (A Case Study of the Meranti Islands Police Jurisdiction)

- 4) Philipus M.Hadjon, *Perlindungan Hukum Bagi Rakyat (Sebuah Studi Tentang Prinsip-prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara)*. Surabaya: Bina Ilmu, 1987.
- 5) Riadi Asra Rahmad, *Hukum Acara Pidana*. Depok: PT Raja Grafindo Persada, 2019.
- 6) Satjipto Rahardjo, *Penegakan Hukum*. Yogyakarta: Genta Publishing, Yogyakarta, 2009.
- 7) Singarimbun, *Metode Penelitian Survei*, Jakarta: LP3ES, 1989.
- 8) Soerjono Soekanto, *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2006.
- 9) Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia*. Yogyakarta: Graha Ilmu, 2012.
- 10) Yudi Krismen, *Pertanggungjawaban Pidana Korporasi dalam Kejahatan Ekonomi*, *Jurnal Ilmu Hukum*, 2014, Volume 4 No.1, hal 134.

Constitution

- 1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- 2) Putusan Mahkamah Konstitusi Republik Indonesia Nomor 18/PUU-XII/2014
- 3) Undang-Undang Republik Indonesia No. 4 Tahun 1982 Tentang Ketentuan-Ketentuan Pokok Pengelolaan Lingkungan Hidup
- 4) Undang-Undang Republik Indonesia No.2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia
- 5) Undang-Undang Republik Indonesia No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup
- 6) Kitab Undang-Undang Hukum Acara Pidana Republik Indonesia (KUHAP) Pasal 1 angka 4

Website

- 1) <https://nasional.kompas.com/read/2019/09/23/17522721/hampir-satu-juta-orang-menderita-isp-a-akibat-kebakaran-hutan-danlahan>



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