

State's Responsibility for Law Enforcement over Forest Fires in Indonesia (A Case Study on Forest Fires in Riau and Kalimantan)

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Abstract—In 2018, both Riau and Kalimantan account for the highest number of forest fire incidences in Indonesia. This massively has impacts on society, environment, and economy. Arson done by big companies seems to be one of the contributing factors for the sake of economy. This research is aimed to analyse the state's responsibility for law enforcement over incidence of arson by companies due to economic reasons. Socio-legal research method is involved in this research with statute, conceptual, and case approach. The research result reveals that the government has at least issued 4 laws to give sanctions to any companies involved in the arson, involving the Law of Forestry, Plantation, Environmental Protection and Management, and Criminal Code. Moreover, the state is responsible for playing a main role in doing preventive and repressive actions towards the corporate that infringe the law, in which the preventive action involves forming the system responsible for control on forest fire which takes the participation of society. Repressive action, however, could be performed by synchronisation, harmonisation, and enforcement of laws and enquiries, forming a special court dealing with forest fire criminal act, and improvement of the regional government's and law enforcers' commitment. It is compulsory for the government to detain parties intentionally involved in forest arson.

Keywords—state's responsibility; law enforcement; forest fire

I. INTRODUCTION

Sutopo Purwo, the Head of Information and Data Centre and a Public Relation of National Disaster Management Body (further stated as BNPB) stated that 99.9% of forest fires were caused by arson for the sake of agricultural space (Retaduari, 2015). According to data issued by BNPB, in 2018, Riau with 18 incidences and Kalimantan 10 incidences are the two areas with the highest rate of incidences of forest fire in Indonesia (see Table 1)

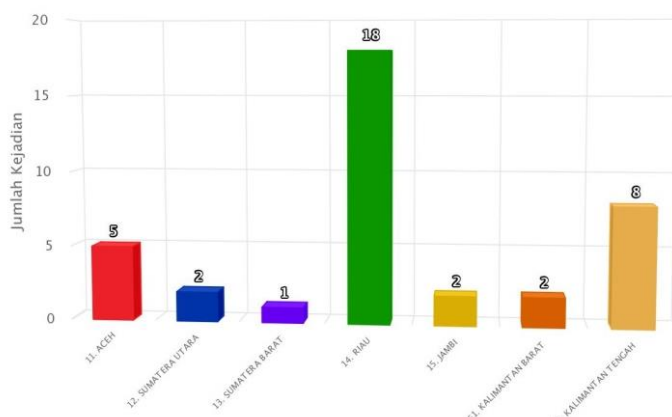


Fig. 1. The Rate of Incidences of Forest Fire in Indonesia, source: BNPB, <http://bnpb.cloud/dibi/laporan4>

The forest fire has widely affected the societies, environment, and economy. In a social aspect, the forest fire has caused the thick smoke in the air harming people's health, air traffic, water and land transportation. Moreover, the damage is extended to agricultural lands, causing the

decrease in agricultural products (Cahyono, Warsito, Andayani, & Dwidjono, 2015: 104).

Forest fire also contributes to carbon emission released into the atmosphere. According to Global Fire Emissions Database (GFED), in 2015, forest fire was predicted to contribute about 1,750 million metric tons, equal to carbon dioxide (MtCO_{2e}) to global emission. In comparison, according to National Communication 2 from United Nations Framework Convention on Climate Change, Indonesia has estimated that there was 1,800 MtCO_{2e} annually and nationally (World Bank, 2016: 4). More seriously, it has also caused damage to flora and fauna habitat and ecology, has caused degradation to watershed, and so forth (Lisdiyono, 2015: 37).

The economic loss due to the forest and land fires in 2015 is predicted to have reached IDR 221 trillions (USD 16.1 billions). According to the report of World Bank, the Ministry of Forestry and Environment of Indonesia suggests that from June to October, forest fires have damaged 2.6 million hectares of forest with the intensity of more than 100,000 of forest fire incidence (World Bank, 2016: 1).

Efforts to control the forest and peat fires have been done by the public authorities by deploying fire fighters of Manggala Agni from the Department of Forestry along with other bodies from the society. However, this approach is not regarded effective due to the following several factors (World Bank, 2012: 2):

- Weak law
- Bad accountability of the state (and constituent)
- Bad policy at large scale in terms of commercial activities
- Log price and high transport cost causing the change in income
- Weak legal framework to protect poor land users

f. Corruption and figure of political elites

To tackle the issue regarding the system that is not optimal yet, the participation of central and regional government is highly required in order to stop and take action regarding the forest fires intentionally done by companies. Looking at the issue mentioned earlier, this research is aimed to analyse and optimise the state's responsibility to enforce law to companies that intentionally set fire to forests, especially those located in the Province of Riau and Kalimantan. Moreover, the research result is expected to serve as a reference on which policy to tackle forest fire issue is based.

II. RESEARCH METHOD

This research was based on normative legal research using a statute approach, conceptual approach, and case approach. Data within the paper is based on authoritative legal resources, namely, the Constitution, Laws, and Regulations, and other legal resources, such as books, journals, and previous research reports. The chosen case study was conducted in Riau Province and Kalimantan Island, because those areas are the most the highest rate of incidences of forest fire in Indonesia. Thus, the literature used are primarily local resources.

III. RESULT AND DISCUSSION

A. Management of Legislation Regarding Measures Taken as Response to Forest Arson Done by Companies

Principally, the government has issued several laws to take action in response to the forest arson done by companies, in which the regulation is found in the following laws:

1) Law Number 41 of 1999 on Forestry

Article 78 Paragraph (14) of Law on Forestry regulates forest arson done by corporate, stating:

"Criminal actions as referred to in Article 50 Paragraph (1), Paragraph (2), and Paragraph (3), if committed by and/or on behalf of a legal or business entity, the prosecution and criminal sanctions shall be imposed on the board of management thereof, either individually or jointly, who shall be subject to punishment in accordance with respective criminal sanction with an addition of 1/3 (one thirds) of the imposed sanctions"

2) Law Number 18 of 2004 on Plantation

Article 48 Paragraph (1) of Law on Plantation states "whoever intentionally opens and/or cultivate a land by setting fire which pollutes and causes damage to environmental system as referred to in Article 26, shall be sentenced to maximum of 10 (ten) year imprisonment or be fined Rp. 10,000,000,000.00 (ten billion rupiahs)". Article 48 Paragraph (2) states that if the criminal act as referred to in Paragraph (1) causes death or serious injury, the criminal shall be sentenced to maximum of 15 (fifteen years) imprisonment and be fined Rp.

15,000,000,000.00 (fifteen billion rupiahs). Article 48 regulates the criminal provision regarding land arson done intentionally.

Article 49 Paragraph (1) states that whoever, due to negligence, opens and/or cultivate a land by setting fire which pollutes and causes damage to ecosystems as referred to in Article 26, shall be sentenced to maximum of 3 (three) year imprisonment and fined Rp. 3,000,000,000.00 (three billion rupiahs), while Paragraph (2) states that if the criminal act as referred to in Paragraph (1) causes death or serious injury, the perpetrator is subject to maximum of 5 year imprisonment and be fined Rp. 5,000,000,000.00 (five billion rupiahs).

3) Law Number 32 of 2009 on Environmental Protection and Management

Article 21 Paragraph (3) letter c of Law on Environment Protection and Management states: "environmental damage caused by forest fire and/or land fire" is an impact of environmental change that involves damage and/or environmental pollution that is related to forest fire and/or land fire which is caused by an effort and/or an activity.

Article 21 Paragraph (3) letter c explicitly mentions that an activity or an effort done by a human being can cause damage to the environment, not to mention forest fire. As a consequence, the Law of Environmental Protection and Management (UU PPLH) also regulates sanctions imposed on business entities (as related to its work or activities) that is damaging to the environment. Related Articles are presented as follows:

Article 116

1. If a criminal act damaging the environment is done by, for, or on behalf of business entities, criminal sanctions shall be imposed on:
 - a. Business entities; and/or
 - b. An individual who gives order to commit the crime or anyone who serves as a leader of the crime.
2. If the criminal act that damages environment as referred to in Paragraph (1) is committed by a person, who has work relationship or another form of relationship that works in a business entity, criminal sanctions shall be imposed on a person who gives an order or the leader of the crime either the crime is committed individually or jointly.

Article 117

If the criminal sanction is imposed on the person who orders in or leads the offense as referred to in Article 116, Paragraph (1) letter b, the sanction shall be imposed in the form of imprisonment and fine with an addition of one thirds of sanction.

Article 118

Regarding criminal act as referred to in Article 116 Paragraph (1) letter a, criminal sanction shall be

imposed on a business entity which is represented by a person in charge or authorised in and outside the court according to the Legislation that holds a functional system.

Article 119

Apart from criminal the act as referred to in this Law, a business entity shall be imposed with additional sanction or act of code of conduct as follows:

- a. Confiscating profit obtained due to criminal act;
- b. Entirely or partially terminating business entity and/or activities;
- c. Recovery of what is caused by criminal act;
- d. Obligation to execute what has been neglected due to no appropriate right; and/or
- e. Placement of a company under guardianship for at least 3 (three) years.

4) Criminal Code (KUHP)

The articles regulating sanctions imposed on forest arsonists involves Article 187 and Article 189 of Criminal Code (KUHP)

Article 187 of Criminal Code

Any person who deliberately sets fire, causes an explosion, or causes a flood, shall be punished:

- 1st, by a maximum imprisonment of twelve years if thereby general danger to property is feared
- 2ndly, by a maximum imprisonment of fifteen years if thereby danger of life for another is feared;
- 3rd-ly, by life imprisonment or a maximum temporary imprisonment of twenty years if thereby danger of life for another is feared and the act results in the death of someone.

Article 189 of Criminal Code

Any person who deliberately at the moment or in prospect of a fire unlawfully hides or makes useless tools or means of fire extinction, or in a certain manner hinders or obstructs the extinction of fire, shall be punished by a maximum imprisonment of seven years.

B. State's Responsibility to Enforce Law for Companies Which Set Fire to the Forest Intentionally

Article 28H Paragraph (1) of The 1945 Constitution of The Republic of Indonesia implies that every person is subject to living in a healthy and good environment. With this statement from the Constitution, it is understood that a state is responsible to conduct preventive action and enforce law assertively for companies involved in forest arson.

According to data released by Indonesian Forum of Environment (Walhi), it is suggested that the majority of smog comes from land and forest fire sitting in the area on which development of companies is allowed (Anti-Corruption Clearing House, n.d.). It is essential that the government set particular preventive or repressive strategies in terms of taking measures in response to forest arson.

1) Preventive Management

Preventive measure is the key to preventing forest fire which potentially causes major loss. Therefore, forest fire security and control system needs to be established, involving the participation of people.

In 2015, the Ministry of Environment and Forestry launched an application that detects forest fire at early stage called Sipongi. The application works the way in which the satellite captures temperature and fire extent which is then reported to information centre displayed on a web. In this condition, people could directly monitor forest fire (Tempo, 2015). However, for those living in remote area such as in Riau and Kalimantan, Internet access can be a problem and there are only a few who are Internet literate. As a consequence, detection system of early stage forest fire is perceived to be less effective, as it can only be monitored through a website. When a forest fire takes place, only call centre or SMS centre is reachable, meaning that people are not actively involved.

This is under the responsibility of the state, as to how to establish an organisation at the area of forests to effectively monitor and quickly respond forest fire. The movement to save the forest that involves society living in the forest area that is susceptible to fire is expected to anticipate the fire even before the fire takes place. Some measurements can be assessed that include (oxfordshire, 2005: 6):

- a) Perimeter protection
- b) Access control.
- c) The detection of intruders.
- d) Security lighting.
- e) CCTV systems.
- f) Staff relations.
- g) Awareness of activities of pressure groups who could target the premises.

Especially for the awareness of activities of pressure groups who could target the premises, people around the forest area should be trained regarding patterns of criminal acts generally committed by companies which deliberately set fire to the forests. Moreover, the government should also provide simple facilities or infrastructures where people are encouraged to use the facilities to stop the fire from extending further before taken over by a professional.

2) Repressive Management

In terms of repressive measures, the concept of criminal law enforcement regulated in the Law on Forestry, Law on Plantation, Law on Environmental Protection and Management, and Criminal Law is determining. Cause and effect concept of criminal law is evidence over whether an act shall be categorised into a criminal act either the act causes loss (material offense) or causes no loss (formal offense). The three laws only refer to acts that are against the law in which loss is perceivable. This hinders sanction imposition, for the sanction can be given when wrongdoing is proven (material offense), despite the fact that forest and land fire is massive and crosses state borders.

Furthermore, there is no synchrony between law enforcement regarding criminal act damaging environment and criminal provision in the Law regarding environment related to incidence of forest and land fire in terms of either the non-synchrony of sanction management or of the process of law enforcement (Amanda, n.d.).

In addition, the issuance of an order of cessation of enquiry is done indecisively to 15 companies as suspects of forest and land arson in Riau in July 2015. This issue was responded by the Head of Forest Watch Indonesia, suggesting that the policy regarding this needs to be brought under review (Bayu, 2016).

Therefore, law reinforcement needs to comprehensively exist in all aspects:

1. Synchronise, harmonise, and reinforce legislation
These make three important aspects. So far, Law on Forestry, Plantation, Environmental Protection and Management, and Criminal Law provide different regulations of sanctions. As a result, synchronisation, harmonisation, and law enforcement regarding environmental criminal acts and other aspects are required, all of which serve as the foundation of law enforcement.
2. Enquiry reinforcement to especially find evidence
Despite the fact that the Ministry of Environment and Forestry has issued a Decree Number 367 of 2015 on Officer Unit for National Control, Emergency Operation of Forest/land Fire Handling responsible to clarify infringement of license that causes forest and land fire. However, this is still the first stage of measures. Police is expected to play an important role in enforcing the law. All commissaries and directors involved in the forest arson shall be punishable by law.
3. Establishment of a special court handling the case of forestry-related criminal acts
Since forestry-related criminal act is categorised into extraordinary crime, it then requires extraordinary measures regarding this issue by establishing special court to handle the forestry-related cases.
4. Improvement of commitment of regional government and law enforcers
Commitment improvement by the regional government can be realised by providing adequate budget both to provide procurement and to increase the awareness of the society in terms of handling forest and land fire. Furthermore, every institution which is involved in forest fires should co-operate, while at operational level, the set plan should be executed by leaving ego-sectoral aspect.

IV. CONCLUSION

Forest arson done by companies in Riau and Kalimantan reaches its peak in 2018. The government has at least issued 4 laws to give sanctions to any companies involved in the arson, involving the Law of Forestry, Plantation, Environmental Protection and Management, and Criminal Code. However, the four Laws have not been effectively implemented. As a result, other preventive and repressive strategies are required. The preventive action could be realised by forming a system which monitors forest fires that also takes the participation of people living in the area, while the repressive measure could be done through synchronisation, harmonisation, and enforcement of laws and enquiries, forming a special court dealing with forest fire criminal act, and improvement of the regional government's and law enforcers' commitment.

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