



Enforcement of Criminal Law Against Environmental Damage Due to Forest Fires

Martini

Faculty of Law Muhammadiyah Palembang, Indonesia

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Abstract

The type of research used in this research is normative legal research. There must be a common principle regarding the environment, especially in criminal acts concerning pollution and environmental destruction. This common perception is very important, especially for the ranks of the legal apparatus. The goal is to lead to an integrated criminal justice system. In its implementation, the legal function in the law enforcement process doesn't go well, so there is often an overlap between legal norms and applicable legal actions. This must be supported by harmonization of law in that the principle in enforcing environmental law is that there must be equality of principles regarding the environment, especially in criminal acts regarding pollution and environmental destruction.

Keywords: *Criminal Law; Forest; Enforcement*

Introduction

Crimes in the environmental field, especially smoke haze pollution caused by forest burning by companies or corporations, are forms of crime that can cause enormous damage and losses and have broad impacts. This crime is usually committed by a group of people in this case are entrepreneurs with high social status. The crimes committed by the honorable people above will continue to grow in Indonesia for several reasons. According to Muladi (Sanjaya et al., 2020), along with increasing mobility both vertically and horizontally, the increasingly complex attitude of materialism and technological advances.

Environmental law is indeed different from other types of law because this legal study is in three legal areas, namely administrative (civil and criminal). This wide choice of law on the one hand creates flexibility, but also creates difficulties for law enforcement and justice seekers (justiabellen). The difficulty that can occur is that in each case a choice must be made on which aspects of the administrative aspects, whether criminal, civil or administrative, are the most effective means of enforcing environmental law. (Rembet, 2020)

There are many regulations governing environmental management but most of them just ignore them. This is due to law enforcement and low awareness of the people themselves. There is a dysfunction of components such as society, entrepreneurs, and government. They don't perform their role properly so that there are still many problems of illegal burning of forests and land in Indonesia. Therefore, it takes

the cooperation of the various components (multi-stakeholders) in an effort to preserve and protect the environment so that there are no more violations such as forest fires and so on.

The regulation of environmental crimes according to Law No. 32 of 2009 concerning Environmental Protection and Management is none other than the occurrence of losses to environmental aspects. The party who suffers a loss from a crime is called a victim of a crime who needs protection for the loss he has suffered.(Topan, 2009) Considering the impact caused by the smog due to forest fires that threaten the health and economic stability of the community as well as the image of the Indonesian nation and government in the eyes of the international community, in this case the government should be able to take firm action on violations committed by entrepreneurs, not only in the form of administrative sanctions such as revocation of business licenses, but also entrepreneurs (corporations) must be resolved in court because the activities of corporations that carry out forest fires are classified as environmental crimes.

Research Methods

The type of research used in this research is normative legal research. (F. Ardiyanto et al., 2020)

Results and Discussion

Legal Functions in the Environmental Law Enforcement Process Disproportionately

There are two main structural obstacles that have resulted in the non-functioning of environmental law enforcement in Indonesia, namely the still dominant thinking among policy makers that contradicts development and the environment, and *good governance* has not yet been fully created that realizes effective environmental law enforcement.(Husein, 2009)

Harmonization of development and the environment(Dkk, 2016) in the format of a sustainable development paradigm that is reflected in international, state and government documents such as the Rio declaration, Outlines of State Policy, National Agenda 21, has not been properly understood by the majority of decision makers at the government level. central and local governments.(Ma'ruf, 2019) Thoughts that are contrary to development and the environment greatly affect the pattern of government action that functions to regulate and supervise all development activities that have an impact on the environment.

The principle thing in enforcing environmental law is that there must be equality of principles regarding the environment, especially in criminal acts regarding environmental pollution and destruction.(Earnhart & Friesen, 2021) This common perception is very important, especially for the ranks of the legal apparatus. The essence is that they share the view that law enforcement is to suppress the swelling of more pollution and environmental destruction which will hinder the course of development and will directly harm the community. This common perception leads to an *integrated criminal justice system* and environmental law which aims to avoid the working mechanism of law enforcement officers as if they are separated by sector-oriented institutions.(Evita & Rachmawati Nur Ariyanti, 2018)

For example, investigators who are oriented towards the investigation without caring about how the next case process will be. Synonym with Public Prosecutor without wanting to prove the case that has been delegated to the Court and only having a narrow view on the scope of his duties.(Eilstrup-Sangiovanni & Sharman, 2021) To improve the implementation of an integrated criminal justice system, professionalism and good cooperation between the subsystems, namely the Police, Prosecutors and

Courts, and the community are needed. The impression that there are divisions that make each law enforcement agency feel as if it has its own set of tasks should be removed. The authority possessed by each agency doesn't mean that law enforcement operates independently, but law enforcement must be carried out together to support each other in an integrated manner. This is an effective measure to provide a deterrent effect for perpetrators of environmental and forestry crimes, particularly "forest and land fires".

Disharmonization of Legal Substances in Environmental Law Regulations

In Indonesia, there are several laws and regulations governing land clearing by burning. In these conditions, it is important to remember the laws that state explicitly regarding violations of land clearing by burning. These provisions are contained in various regulations such as Law No. 41 of 1999 on Forestry, Law 32/2009 on Environmental Protection and Management and Law 39/2014 on Plantations.

The Forestry Law states that forest burning is a violation of the law which is punishable by criminal sanctions and fines. Article 78 Paragraph 3 of Law 41/1999 stipulates that intentional forest burning is subject to a maximum penalty of 15 years and a maximum fine of Rp. 5 billion. Whereas in Paragraph 4 of the article states that violators due to their negligence are threatened with 15 years in prison with a maximum fine of Rp. 1.5 billion.

Furthermore, the Law on Environmental Protection and Management also states that clearing land by burning forest is expressly a violation. The prohibition is regulated in Article 69 paragraph (2) letter h of the Law on Environmental Protection and Management which states "everyone is prohibited from carrying out the act of clearing land by burning". Paragraph 2 explains the provisions as referred to in paragraph (1) letter h paying serious attention to local wisdom in their respective regions. The local wisdom in question is burning land with a maximum land area of 2 hectares per family head to be planted with local varieties and surrounded by firebreaks to prevent the spread of fire to the surrounding area, so that land clearing by burning is allowed with certain conditions. Sanctions for perpetrators of land burning in accordance with Article 108 of the Law on Environmental Protection and Management are punishable by imprisonment for a minimum of three years and a maximum of 10 years and a fine of between Rp. 3-10 billion. (S. Y. Ardiyanto & Hidayat, 2021)

The Plantation Law also regulates the prohibition of clearing land by burning. The prohibition is stated in Article 56 paragraph 1. Meanwhile, sanctions for business actors who violate these rules are threatened with Article 108 of the Plantation Law which states "every Plantation Business Actor who clears and/or cultivates land by burning as referred to in Article 56 paragraph (1) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00(ten billion rupiah)".(Hafif, 2021) Furthermore, the government in order to optimize integrated law enforcement in the crime of forest and land fires and as an integrated effort to build a synergistic commitment and as a responsive and proactive step in environmental law enforcement as mandated in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management and the Constitutional Court Decision Number 18/PUU-XII/2014, the government issued a Joint Decree on Integrated Law Enforcement for the Crime of Forest and/or Land Fires on May 6, 2021 at the National Police Headquarters, Jakarta.(Pemerintah Terbitkan SKB Untuk Optimalkan Penegakan Hukum Terpadu Tindak Pidana Karhutla - Kementerian LHK, n.d.)

This Joint Decree is a joint regulation and a proactive step in environmental law enforcement as mandated in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management and Constitutional Court Decision Number 18/PUU-XII/2014. This Joint Decree is signed by the Minister of Environment and Forestry, the Chief of the Indonesian National Police and the Attorney General of the Republic of Indonesia. Even the President issued Presidential Instruction Number 3 of 2020 concerning Forest and Land Fire Management by President Jokowi as the basis for taking various steps at various levels of work operations, from the policy level to the site/field level.

Conclusion

There must be a common principle regarding the environment, especially in criminal acts concerning pollution and environmental destruction. This common perception is very important, especially for the ranks of the legal apparatus. The goal is to lead to an integrated criminal justice system. In its implementation, the legal function in the law enforcement process doesn't go well, so there is often an overlap between legal norms and applicable legal actions. This must be supported by harmonization of law in that the principle in enforcing environmental law is that there must be equality of principles regarding the environment, especially in criminal acts regarding pollution and environmental destruction.

Develop a system of compensation and restitution, in which the state participates in providing restitution and compensation to victims of smoke resulting from forest and land burning as a form of state responsibility in protecting the human rights of its citizens. This is the government in order to optimize integrated law enforcement in forest and land fire crimes and as an integrated effort to build a synergistic commitment and as a responsive and proactive step in environmental law enforcement as mandated in Article 95 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management and Constitutional Court Decision Number 18/PUU-XII/2014, the government issued a Joint Decree on Integrated Law Enforcement for Forest and/or Land Fires on May 6, 2021 at the National Police Headquarters, Jakarta.

The need for integrated law enforcement against forest and land fires which means involving multiple parties. Therefore, the problem of forest and land fires does not only concern one area of law, such as from the Police, but also relates to administrative law, it can also be related to civil law, all of which must have law enforcement. In the end, it is necessary to work together from various multi-stakeholders in an effort to preserve the environment and provide community welfare, especially the issue of forest and land fires. Not only prevention and control aspects are a strategy in handling forest and land fires.

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