

The Legal Opinion of Law Enforcement on the Field of Forest and Land Combustion in Riau Polda

Riadi Asra Rahmad^a, ^aFaculty of Law, Universitas Islam Riau, Indonesia, email: riadi_arahmad67@yahoo.com

The Riau Province Forest and Land Fire Task Force arrested 3 forest fire suspects in the Bukit Kesuma village area, located 81 kilometres into the Tesso Nilo National Park area in Riau. This is part of a total of 51 individual suspects and one corporate suspect (PT.SSS). A prohibition on the act of burning land, explicitly contained in Article 69, paragraph (1), letter h of Law Number 32 of 2009, concerns environmental protection and management. It reads, 'Everyone is prohibited from clearing land by burning.' Furthermore, in Article 108 of Law Number 32 of 2009, concerning environmental protection and management, 'Everyone who burns land, as referred to in Article 69, paragraph (1), letter h, shall be sentenced to a minimum imprisonment of 3 years and a maximum of 10 years with a fine of at least Rp.3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).' Until now, although the dangerous hazy conditions continue to occur in Riau Province, it apparently does not necessarily incur law enforcement, in the field of the environment, of perpetrators of forest and land burning. This is so especially in environmental criminal law enforcement, in accordance with the rule of law as the main task of the Indonesian National Police. Article 13 of Law Number 2 of 2002 concerns the role of the Indonesian National Police: maintaining public security and order, enforcing the law and providing protection and services to the public.

Key words: *legal opinion, criminal acts, forest and land burning.*

Introduction

Forests are natural resources occupy a very strategic position in national and state life. Around two-thirds of Indonesia's 191 million hectares of land are forest areas with diverse ecosystems. These range from lowland tropical forests and highland tropical forests to peat

swamp forests, water swamp forests and mangrove forests. The importance of these resources is increasing because forests are a source of livelihood for many people (Nandika, 2005). In Law Number 41 of 1999 concerning Forestry, Article 1, number 2 states, 'A forest is a unified system in the form of an expanse of land containing biological natural resources dominated by trees in their natural environment alliance, which cannot be separated from one another.' (Supriyadi, 2013).

The conditions that often occurs is not just a few incidents of forest and land fires that arise due to the element of deliberate burning. It is generally triggered because the perpetrators are concerned about economic aspects alone. They do not consider the ecological side that is more valuable. The haze disaster caused by forest and land fires in Riau Province has become a very worrying problem. This situation is on the annual agenda of the people of Riau Province. They have been exposed to smoke regularly for the last 17 years, namely since 1997. The smoke disaster in Riau Province is mainly carried out in the background by burning peatland, (Adhy, 2014). By now, the area of peatland covering Riau's mainland has been severely reduced. If the forest and peatland fires continue every year, within the next five years, Riau's natural forest area will play a role in regulating and maintaining the balance of the water system. The lowland swamp ecosystems and peat areas remaining will be <20% (Arifudin, 2014).

The utilisation and management of natural forests in various development sectors has resulted in Riau Province losing 565,197.8 hectares of natural forest cover in 3 years (from 2013-2016). Annual deforestation and degradation rates are 188 thousand hectares per year. This is the equivalent of the loss of 10 thousand futsal fields per day. As much as 73.5% of the destruction occurred in natural peat forests that should be protected. Now, the remaining natural forests in Riau Province only amount to 2,005,643.56 hectares or 22.5% of Riau's land area. The perpetrators do not consider the ecological side that is more valuable. So far, this deforestation has been aimed at opening land for oil palm plantations, palm oil mill management (PKS), industrial plantation forests (HTI), agricultural activities, transmigration and so forth (Widia, 2017). The impact of losses caused by smoke disasters resulting from forest and land fires has impacted hundreds of thousands of Riau people who suffer from respiratory infections (ISPA). It has also caused the paralysis of transportation systems on land, sea and air. This is due to disruption of visibility. It also causes disruption to the teaching and learning process due to the dismissal of schools. Air pollution is also experienced by neighbouring countries such as Malaysia and Singapore.

Until now, although the dangerous conditions of the haze continue to occur in Riau Province, it does not necessarily result in law enforcement in the field of the environment taking action against the perpetrators of forest and land burning. This is especially so in the enforcement of environmental criminal law. The regulation prohibiting land burning is expressly contained in



Article 69, paragraph (1), letter h of Law Number 32 of 2009. It concerns environmental protection and management: 'Everyone is prohibited from clearing land by burning.' Furthermore, Article 108 of Law Number 32 of 2009, also concerning environmental protection and management, confirms that 'Everyone who burns land, as referred to in Article 69, paragraph (1), letter h, shall be sentenced to a minimum imprisonment of 3 years and a maximum of 10 years with a fine of at least Rp.3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).'

The main tasks of the Indonesian National Police in Article 13 of Law Number 2 of 2002, concerning the Indonesian National Police, are maintaining public security and order, enforcing the law and providing protection and services to the public. The Riau Regional Police is the executor of the duties and authority of the National Police in the territory of the Riau Province, especially those handled by the Directorate of Special Criminal Investigation (Ditreskrimsus). The latter is the executor of the main tasks under the authority of Riau Regional Police in their function of carrying out investigations of specific criminal acts. These include criminal economic acts, corruption and certain criminal acts that occur in the Riau Police's jurisdiction. They have carried out repressive legal measures (prosecution) against cases of forest and land burning that often occur every year in Riau Province.

Based on data up to Thursday (19/9/2019), according to Riau Police Head of Public Relations, Commissioner Sunomb, 51 suspects have been established. One of them is a palm oil company known as PT. SSS located in Pelalawan district. As many as 30 cases are still under investigation. 16 cases are two stages, 4 cases are one stage and one case is P21. The area burned by the suspects covers 1,017,799 hectares (Kompas.Com).

The Deputy Chairman of the Commission IV of the Indonesian Parliament, Viva Yoga Mauladi, proposed to revise the law related to law enforcement regarding the perpetrators of forest and land burning (Karhutla). According to him, the perpetrators of forest fires were equivalent to terrorists (CNN Indonesia). In reality, criminal sanctions for unscrupulous intellectuals in the karhutla case are only paper tigers. They are toothless, inoperative perpetrators untouched by the law. They are granted impunity and become demigods. The state is defeated by them and the courts bend their knees without moving (CNN Indonesia).

Discussion

The implementation of criminal enforcement of forest burners and land burning by Polda Riau

The definition of law enforcement is an activity that harmonises the relationships of values that are interpreted in solid and manifesting rules and attitudes. The translation of the final stage values the creation and maintenance of peace of life relationships (CNN Indonesia).

Criminal law, in jurisprudence, is divided into general criminal law and special criminal law. This division is affirmed in Article 103 of the Criminal Code (KUHP), which states that 'The provisions in Chapters I through Chapter VIII of this book also apply to acts - acts which, by other statutory provisions, are threatened with criminal sanctions, unless otherwise stipulated by law.' Provisions of Article 63, paragraph (2) of the Criminal Code contain the principle of *lex specialis derogat legi generalis*. It is a legal principle that implies special rules override general rules. In connection with the above, one form of specific special legislation is law enforcement in the environmental field.

According to Suparni, environmental law enforcement is an effort to achieve compliance with regulations and requirements in general and individual legal provisions. This is done through supervision and application of administrative, civil and criminal sanctions (Ninieki, 2012). Here are some environmental law enforcement tools:

First, the means of Administrative Law Enforcement involves the UUPPLH. It contains four types of administrative legal sanctions, as stated in Article 76, paragraph (2): Administrative sanctions consist of: (1) a written warning; (2) government coercion, (3) the freezing of environmental permits; and (4) the revocation of environmental permits.

Second, the means of law enforcement involve civil law instruments that can be used in the event of an environmental dispute arising from allegations of pollution and/or environmental damage. Enforcement of environmental law through civil law can be pursued through two channels: (i) the court (in court or litigation) and (ii) the outside court (out court/settlement). This is commonly known as Alternative Dispute Resolution (ADR) or Mechanism Alternative Dispute Resolution (MAPS).

Third, criminal law enforcement facilities involve Law Number 32 of 2009, concerning environmental protection and management. Environmental criminal provisions are regulated in Articles 94 through 120. For forest fires, the criminal provisions are in Article 108, as stated in the introduction to this paper.

The function of criminal law is judged by experts as the ultimate law enforcement instrument (*ultimum remedium*). This is because other instruments are considered to be a means of protecting the environment (Supriadi, 2008).

According to Soerjono Soekanto, for law enforcement to run properly and perfectly, there are 5 factors that must be met:

- a. The legal factors themselves, which are made by the government in the hope of having a positive impact on law enforcement. These are carried out based on the laws and regulations, so as to achieve effective goals;

- b. Law enforcement factors, namely those who form and apply the law;
- c. Factors of facilities that support law enforcement. The certainty in the handling of a case always depends on the input of resources provided in crime handling programs.
- d. Community factors, namely the environment in which the law applies or is applied; and
- e. Cultural factors, namely work, creation and taste based on human initiative in the association of life (Soerjono, 2005).

Therefore, there are steps for environmental criminal law enforcement by the Directorate of Special Criminal Investigation of the Riau Regional Police Against Perpetrators of Forest and Land Burning. They are carried out by

1. Preventive measures (prevention):

Preventive action is a preventive measure of the Directorate of Special Criminal Investigation of the Riau Regional Police. In this case, it is carried out in various efforts:

- a. Dissemination activities' efforts prevent the occurrence of forest and land fires that often occur every year in Riau Province. The efforts of the Riau Regional Police are to carry out socialisation activities, which are activities carried out in the community and involve stakeholders. They provide materials for understanding or knowledge and information about the prohibition of the burning of forests and land. Dissemination activities, which are carried out by the Riau Regional Police in preventing forest and land fires, issue the Riau Regional Police Chief Notification (Kapolda Riau) Number: Mak/1/VI/2013. The latter concerns the prevention of forest and land fires. It also involves as the extinguishing of hotspots and information of the Police Chief Daerah Riau (Kapolda Riau) Number: Mak/1/III/2014 concerning the prohibition of burning forests and land.
- b. Conducting community care for fire concerned groups (MPA) is an activity for fostering community concerned with fire (MPA). It is aimed at areas that frequently experience forest and land fires (karhutla). The intention is for the community to be given an understanding of forest and land fire control (karhutla) in the context of prevention. Firefighting equipment and assistance is provided to areas prone to forest and land fires (karhutla). in addition, hazards arising from forest and land fires (karhutla) are handled. The Riau Provincial Environment Agency, the Riau Provincial Forestry Service and the Riau Province BPBD in collaboration with the Riau Regional Police jointly carry out the activities of fostering the Fire Concerned Community Group (MPA).

2. Repressive actions (repression):

Repressive action is an act of repression carried out by the Directorate of Special Criminal Investigation of the Riau Regional Police in terms of environmental criminal law enforcement against the crime of burning forests and land. In this case, it is carried out in various efforts, such as conducting investigations, arrests, detention and confiscation.

In the process of investigating environmental crimes, such as the case of forest and land fires, the investigator of Riau Sub Directorate IV in the Directorate of Criminal Investigation brought in experts on the environment. They included experts on land damage, forest fires, peat experts and environmental law experts. The nature and information given by each expert was according to their knowledge in the environmental field.

The law enforcement process was carried out by the Sub Directorate IV of the Directorate of Criminal Investigation of the Riau Regional Police. It handled 23 cases throughout 2018. 15 defendants were forced into SP3 because they were not proven to have committed a crime. In the author's opinion, these can be seen as successful law enforcement efforts against forest and land fires that occur every year in Riau Province. Ditreskrimsus Riau Regional Police is able to reduce the number of cases of forest and land fires that occur in the Riau Regional Police jurisdiction by carrying out strict and professional law enforcement when it comes to the perpetrators of forest and land burning.

Criminal law plays an important role in environmental law enforcement efforts. However, the burden placed on criminal law does not mean it has to exceed its capacity and the inherent limitations that are contained in the application of the criminal law. Examples of this include the principle of legality or the principle of error (Alvi, 2002).

Mas Achmad Santosa said that environmental enforcement must be seen as a tool (an end). The purpose of environmental law enforcement is to structure values of compliance that protect the carrying capacity of ecosystems and environmental functions. These values are generally formalised into laws and regulations (Mas, 2011). Therefore, environmental law enforcement can be interpreted as the use or application of instruments and sanctions in the field of administrative law, civil law and criminal law. It forces legal subjects to be targeted to comply with environmental legislation (Mas, 2011).

The criminal instrument is *ultimum remedium*. This means it is a last resort after administrative and civil sanctions are ineffective in environmental law enforcement. *Ultimum remedium* is a term involved in studying criminal law related to criminal and criminal purposes. It is a means of repairing and restoring the environment that has been damaged by criminal acts. *Ultimum remedium* means the most recent improvement used (the ultimate drug) (Mas, 2011).

In a general explanation of the Law on Environmental Protection and Management (UUPPLH) Number 32 of 2009, in number 6 it is stated that "Enforcement of environmental criminal law still considers the *ultimum remedium* principle, which requires the application of criminal law enforcement as a last resort after the application of administrative law

enforcement is considered unsuccessful. The application of the principle of *ultimum remedium* only applies to certain formal criminal acts, namely the criminal prosecution of violations of the quality standards for wastewater, emissions and disturbances. ‘With regard to violations of the formal offense, the role of administrative law must be prioritised and encouraged to solve environmental problems, after these efforts are ineffective, criminal law is utilised or optimised. But if the perpetrators' mistakes are relatively severe and/or due to their relatively large acts and/or their actions that cause public unrest, the criminal law is no longer an *ultimum remedium* but is already a *primum remedium* (prioritising the implementation of criminal law enforcement) in violations of material offenses to solve problems in the environmental field.’”

Closing

Conclusion

Based on the results of the writer’s discussion, the writer can draw the following conclusions:

The implementation of environmental criminal law enforcement, executed by the Directorate of Special Criminal Investigation of the Riau Regional Police against perpetrators of forest and land burning, is carried out in a preventive and repressive manner. It is preventively carried out by conducting socialisation and fostering the Fire Concerned Community Group (MPA). Repressively, the steps taken by the Directorate of Special Criminal Investigation of the Riau Regional Police include conducting an investigation as well as carrying out other forced action measures. These include arrest, detention, search and seizure of handling cases of forest and land fires. However, the implementation of law enforcement has not been running optimally. This is because there are still some obstacles in its implementation.

Suggestions

Based on the results of the discussion above, it is necessary for the writer to give advice to the Riau Regional Police, especially the Riau Regional Police Directorate General:

1. The framework of realising environmental criminal law enforcement is expected to always be consistent and always increase deficiencies in its function as a law enforcer, both preventive and repressive. This is so that the law enforcement measures against the perpetrators of forest and land burning can be handled optimally;
2. The overcoming of obstacles to environmental law enforcement involves the perpetrators of forest and land fires due to internal and external factors. The police is expected to improve work professionalism as well as the quality of the capability of members and investigative personnel. They are law enforcement officers in their duties and they are the authority in the field of investigation, especially in the environmental field. This will increase the quality of



members and investigating personnel that handle environmental cases. As a result, problems such as forest and land fires can be resolved optimally.

3. There should be an increase in preventive measures through socialisation activities in the community or businesses in the plantation sector. Besides that, there should be good coordination between the Directorate of Criminal Investigation of the Riau Regional Police and related agencies, as well as between stakeholders. This is expected to provide maximum efforts in prevention and law enforcement processes so that future forest and land fires do not happen again in Riau Province.



BIBLIOGRAPHY

- Adhy, P. (2014). Control and Prevention of Peatland Forest and Land Fire Control Perspectives from Ashaluddin Jalil, Haris Gunawan, and Arifudin (editor), Jerebu in Our Country, Riau Press University, Pekanbaru.
- Alvi, S. (2002). Principles and Enforcement of Environmental Criminal Law, Pustaka Bangsa Press, Medan.
- Arifudin, (2014). Questioning Social and Economic Community in Peatland Fire Areas "in Ashaluddin Jalil, Haris Gunawan, and Arifudin (editor), Jerebu in Our Country, Riau Press University, Pekanbaru.
- CNN Indonesia, National, DPR RI Revision of the Law, Align DeTeroris Karhutla Actors, accessed September 22 2019.
- Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.
- Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.
- Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.
- Kompas.Com, Riau Police Have Determined 53 Suspects Jarhutla.
- Law of the Republic of Indonesia Number 19 of 2004 concerning Forestry.
- Law of the Republic of Indonesia Number 32 Year 2009 Concerning Forestry Environmental Protection and Management.
- Mas, A. S. (2011). Good Governance and Environmental Law, ICEL, Jakarta.
- Nandika, D. (2005). Forests for National Resilience, Muhammadiyah University Press, Surakarta.



- Ninieck, S. (2012). Conservation, Management and Enforcement of Environmental Law, Sinar Grafika, Jakarta
- Soerjono, S. (2005). Factors Affecting Law Enforcement, PT Raja Grafindo, Jakarta.
- Supriadi, (2008). Environmental Law in Indonesia: An Introduction, Sinar Grafika, Jakarta.
- Supriyadi, B. E. (2013). Forestry Agrarian Law: Land Legal Aspects in State Forest Management, Rajawali Press, Jakarta.
- Takdir, R. (2012). Environmental Law in Indonesia, PT Raja Grafindo Persada, Jakarta.
- Widia, E. (2017). Responsibility for Environmental Pollution and Damage Due to Forest Fire Seen From a Legal Perspective, Article in the Journal of Legal Studies, Faculty of Law, University of Riau, Vol II, No. February 1, 2017.