



Challenges in Law Enforcement of Land and Forest Fires in West Kalimantan

Temmy Hastian¹, Yenny Aman Serah^{2*}, M.Fahmi Hazdan³

^{1,2,3} Faculty of Law, Universitas Panca Bhakti, Pontianak, Indonesia

Article Info

Article history:

Received 16 January, 2024

Revised 5 February, 2024

Accepted 4 April, 2024

Keywords:

Forest and Land Fires;
Enforcement of Environmental
Laws;
Legal Interpretation

ABSTRACT

This article explores the challenges faced by law enforcement against forest and land fires. Forest and land fires in West Kalimantan are environmental problems that often occur every year, especially during the dry season, and have an impact on various aspects of life in the community. Although the laws and regulations have regulated the imposition of sanctions on forest and land-burning perpetrators, as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management in Article 69 paragraph (1) letter h, in reality, there are still various interpretations. In its application. The problems revealed in this study are what factors influence the optimization of environmental law enforcement against the act of clearing land by burning. Through the normative juridical research method, it was revealed that the results of the study were still finding various interpretations of the prohibition on setting land clearing by burning, which is a factor that affects the non-optimal enforcement of environmental law due to land clearing by burning, especially perceptions of exceptions to the prohibition on setting up land clearing by burning, paying close attention to really local wisdom in their respective areas.

*Corresponding Author:

Yenny Aman Serah

Faculty of Law, Universitas Panca Bhakti, Pontianak, Indonesia

Email: yenny.upb@gmail.com

INTRODUCTION

Forest fires are a crucial environmental and forestry issue of local and global concern (1). Forest and land fires, especially on peatlands, tend to be an annual phenomenon. It is not only the scope of the fire area that extends to many provinces but also the severity of the smoke disaster caused by the fires and its impact on the health of citizens. The areas affected by the fires are forest areas and outside forest areas, especially in the peat ecosystem area (2).

The causal factors are human actions, climatic factors, the physical condition of the peat ecosystem, and a combination of these factors. The factor of human action in setting fires is indicated by the arrest of several responsible companies and community members by the police for allegedly setting fires. Climate change was also pointed out as a cause of the fires because it has led to an increase in the temperature of the air which is getting hotter. The destruction of peat ecosystems caused by business activities without taking into account the characteristics of peatlands is also a contributor to the fires (3).

Which factor is the most dominant will continue to be a never-ending debate due to the many social, economic, and political interests in the fire area. Regardless of the debate on causal factors and the involvement of certain groups, the human factor, which is equipped with the ability of knowledge and technology and given the responsibility to maintain nature, must be placed as the determining factor. Ecologically, preventive measures will not cause damage to natural resources and can even be aimed at maintaining the sustainability of the ecosystem function of the natural environment. If environmental ecosystems can be maintained through daily prevention mechanisms, the impact is very positive both for the natural environment and for the common good.

Law Number 32 of 2009 concerning Environmental Protection and Management in Article 69 paragraph (1) letter h explicitly regulates the prohibition of clearing land by burning, which is then strengthened by the provisions of Article 108 of the Law on Environmental Protection and Management which states; "Every person who burns land as referred to in Article 69 paragraph (1) letter h, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah)".

However, in reality, law enforcement is against the act of clearing land by burning as regulated in Article 108 Jo. Article 69 paragraph (1) letter h of Law Number 32 of 2009 concerning Environmental Protection and Management is still not running optimally, because behind this provision is the formulation of Article 69 paragraph (2) which stipulates "The provisions referred to in paragraph (1) letter h pay close attention to local wisdom in their respective regions", which is then interpreted as an exception article to the prohibition of clearing land by burning.

The problems studied in this paper are: "What factors influence the optimization of environmental law enforcement against land clearing by burning?"

METHOD

This research is descriptive analysis, which is "a study that seeks to describe the facts and data regarding duties and responsibilities, then compile, process and evaluate the data found so that a complete and comprehensive picture of the problem under study is obtained.

The research method is conducted in a normative juridical manner, which emphasizes the use of library data or secondary data in the form of primary legal materials, starting from the 1945 Constitution, Law Number 32 of 2009 concerning Protection and Management of the Environment, Law Number 39 of 2014 concerning Plantations, Regulation of the Minister of the Environment Number 10 of 2010 concerning Mechanisms for Preventing Pollution and/or Damage to the Environment relating to Forest and/or Land Fires, secondary legal materials in the form of journals, previous studies and relevant reference books. This method of approach is used considering that the problem under study revolves around legislation, namely the relationship between one regulation and another and its application in practice.

RESULTS AND DISCUSSION

Regulation on the Prohibition of Land Clearing by Burning

Forestry is a phenomenon. A public sector based on natural resource management and utilization, forestry is believed by all parties to be sustainable. Forests are also able to provide indirect benefits that are often priceless, including acting as a regulator of the water system to prevent flooding in the rainy season and the threat of drought in the dry season. The international community recognizes the existence of Indonesia's forest resources as one of the most important parts of the realization of the balance of the planet's ecosystem across generations through its function to absorb emissions of various toxic gases and pollutants that are the cause of the increasing greenhouse effect and the depletion of the ozone layer. Ironically, the phenomenon of forestry tends to always present a paradoxical reality. Forests that provide benefits in the form of large contributions to social and economic welfare are produced without considering forest sustainability. The success of forest exploitation is followed by many issues of damage to the forest.B(4,5)

Forest encroachment is the activity of clearing forests to own, control, and utilize forest products without seeing and paying attention to the main functions carried out by a forest area. Forest encroachment includes the activity of burning forests and land to be used as agricultural land or plantations, which uncontrolled burning activities can damage the surrounding environment.

Normatively, the regulation on the prohibition of clearing forests and land by burning is formulated in the provisions of Article 69 paragraph (1) letter h of Law Number 32 of 2009 concerning Environmental Protection and Management which expressly regulates "every person is prohibited from clearing land by burning".

Furthermore, criminal penalties for the act of clearing land by burning are regulated in the provisions of Article 108 of the Environmental Protection and Management Law which formulates: "Any person who commits land burning as referred to in Article 69 paragraph (1) letter h shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp3,000,000,000.00 (three billion rupiahs) and a maximum of Rp10,000,000,000.00 (ten billion).

In addition to Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH) which regulates the prohibition of clearing land by burning, there are also other laws and regulations, including Law Number 41 of 1999 concerning Forestry, where Article 50 paragraph (3) letter d regulates "Everyone is prohibited from burning forests" and if anyone is committing this violation, they can be subject to sanctions as formulated in the provisions of Article 78 paragraph (3) which formulates "Anyone who deliberately violates the provisions referred to in Article 50 paragraph (3) letter d shall be punished with imprisonment for a maximum of 15 years and a maximum fine of Rp. 1,500,000,000,-.

In addition, Law Number 39 of 2014 concerning Plantations also regulates the prohibition of clearing land by burning, as formulated in Article 56 paragraph (1) which stipulates "Every plantation business actor is prohibited from clearing or cultivating land by burning" Then Article 108 formulates the criminal penalty "Every Plantation Business Actor who clears and/or cultivates land by burning as referred to in Article 56 paragraph (1) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)."

A problem related to the regulation of the prohibition of clearing forests and land by burning is the regulation in Law Number 32 of 2009 concerning Environmental Protection and Management, especially in the provisions of Article 69 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management which formulates "The provisions referred to in paragraph (1) letter h pay close attention to local wisdom in each region". The Explanation of Article 69 paragraph (2) reads: "The local wisdom referred to in this provision is to burn land with a maximum land area of 2 hectares per family head to plant local varieties of plants and surrounded by firebreaks to prevent the spread of fire to the surrounding area".

The philosophical inclusion of the formulation of Article 69 paragraph (2) as an exception related to the prohibition of clearing land by burning, where the formulation of the article is based on the idea of understanding the fact that indigenous peoples have local wisdom by burning land to clear land when it is time to farm.

Both formulations of Article 69 paragraph (1) letter h and Article 69 paragraph (2) can be interpreted as formulations of articles that are substantively contradictory. Then through the Regulation of the Minister of Environment Number 10 of 2010 concerning Mechanisms for Preventing Pollution and/or Environmental Damage Associated with Forest and/or Land Fires, especially in Article 4, it formulates substantively related to the mechanism of efforts to prevent pollution and/or environmental damage related to forest and/or land fires.

However, if we observe the norms regulated in Article 4, it is related to customary law communities, which are defined as groups of people who have been living in certain geographical areas for generations due to ties to ancestral origins, a strong relationship with the environment, and a value system that determines economic, political, social and legal institutions. Furthermore, the customary law community is allowed to burn land with a maximum land area of 2 hectares per family head to plant local varieties through the mechanism as stipulated in Article 4, including; notifying the Village Head; Village Head submits notification to the agency that organizes government affairs in the field of environmental protection and management district/city; does not apply in conditions of below normal rainfall, long drought and/or dry climate (6).

Empirical Facts on Forest and Land Fires in West Kalimantan and Law Enforcement

Every year forest and land fires occur in Indonesia (7). Forest and land fires in West Kalimantan are a fact that often occur every year. The magnitude of the impact of these fires is not only due to the large area of forest and land that is burned but also because they occur in forests and peatlands.(6) Forest and peatland fires have different characteristics from forest and dryland fires(8). This characteristic is because forests and peatlands have different ecosystems from forests and drylands. Peat as quoted from the Central Kalimantan Project Consortium, 2008; is formed from organic materials, such as leaves, branches, stems, and roots of plants, which accumulate in environmental conditions that are waterlogged, have little oxygen, and high acidity, and are formed in a location over a long geological period. arranged in layers, forming an arrangement up to a dozen meters thick. Peatlands are generally very nutrient-poor agricultural land. Although very nutrient-poor, peat ecosystems are very important ecologically.

Peat is considered a wetland habitat that can absorb and store large amounts of carbon, thus preventing the escape of greenhouse gases into the earth's atmosphere which can have an impact on climate change. Peat also has a hydrological function that plays a role in regulating the flow and storage of water. Peat ecosystems are always inundated with water every year. Its high ability to absorb water makes peat swamps play an important role in preventing flooding and reducing flood hazards. Therefore, even though the top soil is dry, the bottom remains moist and even relatively wet. When forest and peatland fires occur, the flames will mix with the water vapor in the peat and produce a lot of smoke. Forest and peatland fires are much more difficult to deal with than forest and dryland fires. This is because the fire spreads not only to the vegetation above the surface of the peat but also to the deep layers of the peat soil, where it is difficult to detect its spread (2,3).

Wetlands International states that based on the available facts, almost all forest fires in Indonesia, 99.9%, are caused by human activities, whether intentional or unintentional, and there is no evidence of naturally occurring fires, except for 0.1% that are due to natural causes such as lightning, volcanic lava.(2,3)

Herry Purnomo, a researcher at the CIFOR Institute, says that many people profit greatly from fires. He found that land is often deliberately burned to claim ownership. This is what happened in Kalimantan. After the fires were extinguished, it was not long before the burnt land was filled with rows of oil palm trees. Thus we can say that what happened was forest and land burning. One of the purposes of forest and land

burning is to clear land for plantations. Land clearing by burning forests and land will minimize costs, be practical, and fast, and result in large open land.(3)

The reality in West Kalimantan is that forest and land fires occur throughout the year, especially during the dry season. Forest and land fires handled by the ranks of the Special Crimes Directorate of the West Kalimantan Regional Police, in the 2021-2023 period, tended not to continue into the law enforcement process, because the case was submitted by village officials to be subject to administrative sanctions. This shows that handling cases of forest and land burning is not an easy thing to do by law enforcement officials. The results of the interviews revealed that one of the obstacles faced in law enforcement of forest and land fire cases is the interpretation of the provisions of the prohibition of clearing land by burning, especially in perceiving the provisions of Article 69 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management, which means that everyone is allowed to clear land by burning with a land area not exceeding 2 hectares. This is the reality, where empirical facts reveal that most of the suspects handled by law enforcement officials with allegations of burning forests and land are individuals, and most of them think that burning land for planting with a land area of no more than 2 hectares is allowed. Whereas listening to the provisions of Article 4 of the Minister of Environment Regulation Number 10 of 2010 concerning Mechanisms for Preventing Pollution and/or Environmental Damage related to Forest and/or Land Fires that burn land with local wisdom must also meet certain requirements.

Optimizing Law Enforcement against Acts of Land Clearing by Burning

Law Enforcement is the activity of harmonizing the relationships of values outlined in the rules of rules or views of steady judgment and attitudes not as a series of final stage value elaboration to create social engineering, maintain and maintain social control of peaceful living.(9-11)

Conceptually, law enforcement is an activity of harmonizing the relationship of values that are spelled out in stable rules and attitudes of action as a series of final stage value elaboration. to create, maintain, and maintain peace of loving relationships (11).

In essence, the purpose of law enforcement is to realize what the law wants to achieve. Teguh Prasetyo said that the purpose of the law is to achieve balance so that the relationship caused by the interests of society does not cause chaos. The purpose of the law is as revealed by Gustav Radbruch to achieve legal certainty, justice, and usability (12).

Law enforcement is aimed at improving order and legal certainty in society. This is done, among others, by putting in order the functions, duties, and authorities of the institutions in charge of enforcing the law according to the proportions of their respective scopes, and based on a system of good cooperation and support for the goals to be achieved (13,14).

Law enforcement according to Satjipto Rahardjo, is a process to realize legal desires into reality. The legal desires referred to here are the thoughts of the lawmaking body formulated in the legal regulations. The formulation of law-making thoughts as outlined in the rule of law, also determines how law enforcement is carried out. Thus, in turn, the law enforcement process culminates in its implementation by law enforcement officials themselves. From this situation, in an extreme tone, it can be said that the success or failure of law enforcers in carrying out their duties has started since the legal regulations that must be carried out were made (15).

Meanwhile, Lawrence M. Friedman sees that the success of law enforcement always requires the functioning of all components of the legal system. The legal system in Friedman's view consists of three components, namely the legal structure component, the legal substance component, and the legal culture component. The legal structure is the torso, framework, and eternal form of a system. The legal substance is the actual rules and norms used by institutions, reality, and forms of behavior of the actors observed in the system. The legal culture is the ideas, attitudes, beliefs, expectations, and opinions about the law. In his development, Friedman also added a fourth component, which he called the legal impact component.(13)

Law enforcement is strongly influenced by the circumstances and social interactions that occur in society and can be included in a society that maintains or develops a system of rights based on status, or a society with a sharp distinction between "the have" and "the have not", or a society that is in an authoritarian power environment, will place a different law enforcement system with an open and egalitarian society. In other words, true and fair law enforcement is determined by the will and participation of community members, not merely the desire of law enforcement actors (9,16).

Likewise, in the framework of law enforcement, the handling of forest and land burning cases in West Kalimantan is strongly influenced by social interactions and public perceptions related to the prohibition of land clearing by burning. Clearing land by burning is something that is expressly prohibited in the Law, namely regulated in Article 69 paragraph (1) letter h of the Law on Environmental Protection and Management which reads "every person is prohibited from carrying out the act of clearing land by burning", but the provisions for clearing land by burning pay close attention to local wisdom in each region. The local wisdom referred to in this provision is to burn land with a maximum land area of 2 hectares per head of household to plant local varieties and surrounded by firebreaks to prevent the spread of fire to surrounding

areas.

This means that clearing land by burning is allowed with certain requirements as formulated in Article 4 Paragraph (1) of the Regulation of the Minister of Environment Number 10 of 2010 concerning Mechanisms for Preventing Pollution and or Damage to the Environment Related to Forest and or Land Fires, some provisions contain the spirit of preventing forest and land fires, stating "Customary law communities that burn land with a maximum land area of 2 (two) hectares per family head to plant local varieties must notify the village head." However, land burning does not apply in conditions of below-normal rainfall, long drought, and/or dry climate. The act of clearing land by burning land that is not following the rules can be charged with Article 108 of Law No. 32 of 2009 concerning Environmental Protection and Management.

However, in reality, law enforcement encounters obstacles in handling it, because the public perception is guided by the explanation of Article 69 paragraph (2) of the Law on Environmental Protection and Management, that clearing land by burning is permitted as long as it does not exceed 2 hectares and as a form of local wisdom that has been carried out for generations when entering the planting season, namely the dry season, clearing land by burning is often done. After all, it is more efficient and low cost, without paying attention to the consequences of burning the land causing environmental problems. This interpretation of the provisions of Article 69 paragraph (2) of the Law on Environmental Protection and Management is a factor affecting the optimization of law enforcement, although the police have begun to take firm action against perpetrators of land burning in the dry season on peatlands, but the community still has the perception that this has been done for generations.

The reality is that the understanding of the people in West Kalimantan of Article 4 paragraph (3) of the Regulation of the Minister of Environment Number 10 of 2010 concerning Mechanisms for Preventing Pollution and or Environmental Damage relating to Forest and or Land Fires has not been effective, the community still considers the prohibition of land burning not a solution effort and limited technology and quality of resources that make people still burn to clear land.

CONCLUSION

Clearing land by burning is something that is expressly prohibited in the Law, which is regulated in Article 69 paragraph (1) letter h of the Law on Environmental Protection and Management which reads "every person is prohibited from carrying out the act of clearing land by burning" but the provisions for clearing land by burning pay close attention to the local wisdom in each region. The local wisdom referred to in this provision is to burn land with a maximum land area of 2 hectares per head of household to plant local varieties and surrounded by firebreaks to prevent the spread of fire to the surrounding area. This means that clearing land by burning is allowed under certain conditions. The act of clearing land by burning land that is not following the rules can be charged with Article 108 of Law No. 32 of 2009 concerning Environmental Protection and Management.

However, law enforcement against acts of forest and land burning in West Kalimantan has not been running optimally, where there are still cases that have not been handled due to the low level of public understanding of the provisions of Article 4 paragraph (3) of the Regulation of the Minister of Environment Number 10 of 2010 concerning Mechanisms for Preventing Pollution and or Environmental Damage relating to Forest and or Land Fires and the lack of apparatus that play a role in conducting socialization related to the provisions of preventing forest and land fires. Therefore, strategic steps are needed to expand public understanding of the importance of preserving environmental functions by not burning land in the dry season

REFERENCES

- Cahyono SA, Warsito SP, Andayani W, Darwanto DH. Faktor-Faktor Yang Mempengaruhi Kebakaran Hutan Di Indonesia Dan Implikasi Kebijakannya. *Sylva Lestari*. 2015;3(1):103–12.
- Pinem T. Kebakaran Hutan dan Lahan Gambut: Kajian Teologi Ekofeminisme. *Gema Teologika*. 2016;1(2):139.
- Zainal. Akar Permasalahan Kebakaran Hutan serta Solusi Dalam Penyelesaiannya (Studi di Provinsi Riau). *Prosiding Seminar Nasional Prodi Ilmu Pemerintahan, FISIP Unikom*. 2018;(December 2015).
- Budyatmojo W. Penegakkan Hukum Tindak Pidana Illegal Logging (Antara Harapan Dan Kenyataan). *Yustisia Jurnal Hukum*. 2013;2(2):91–100.
- Hutan P, Lahan DAN. Tindak pidana lingkungan hidup terhadap pembakaran hutan dan lahan. 2014;1–15.
- Rasyid F. Permasalahan dan Dampak Kebakaran Hutan Fachmi Rasyid A. *Pendahuluan. Jurnal Lingkar Widyaiswara*. 2014;(4):47.
- Setiawan F. Peran Guru dalam Menumbuhkembangkan Kesadaran Konstitusional di Daerah Tertinggal melalui Penghayatan Nilai-Nilai Luhur Pancasila. *JUPIIS: JURNAL PENDIDIKAN ILMU-ILMU SOSIAL*. 2020 Apr 30;12(1):178.
- Setiawan A. Kebijakan Penanganan Kebakaran Hutan dan Lahan di Indonesia. *Political Ecology*. 2018;VI(May):1–13.

- Moho H. Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Jurnal Warta*. 2019;13(1).
- Soekanto S. Kesadaran Hukum dan Kepatuhan Hukum.
- Muhammad Gazali Rahman. Penegakan Hukum di Indonesia. *Jurnal Al-Himayah* [Internet]. 2020;4(Vol. 4 No. 1 (2020): Al Himayah):142–59. Available from: <http://journal.iaingorontalo.ac.id/index.php/ah/article/view/1625>
- Roihanah R. Penegakan Hukum Ind_Harapan & Kenyataan.pdf. *Justitia Islamica*;
- Santoyo. Penegakan Hukum di Indonesia. *Jurnal Dinamika Hukum* [Internet]. 2008;8(3):199–204. Available from: <https://bit.ly/2FhMAKf>
- Susilo AB. PENEGAKAN HUKUM YANG BERKEADILAN DALAM PERSPEKTIF FILSAFAT HERMENEUTIKA HUKUM (Suatu Solusi Terhadap Problematika Penegakan Hukum Di Indonesia). *Jurnal Hukum dan Peradilan*. 2018;2(3):449.
- Akhmaddhian S. PENEGAKAN HUKUM LINGKUNGAN DAN PENGARUHNYA TERHADAP PERTUMBUHAN EKONOMI DI INDONESIA (Studi Kebakaran Hutan Tahun 2015). *UNIFIKASI : Jurnal Ilmu Hukum*. 2016;3(1):1–35.
- Zulfadli, Muhammad, Abdullah, Kasman, Fuad Nur. Penegakan Hukum Yang Responsif Dan Berkeadilan Sebagai Instrumen Perubahan Sosial Untuk Membentuk Karakter Bangsa. *Pendidikan Ilmu-Ilmu Sosial Membentuk Karakter Bangsa Dalam Rangka Daya Saing Global*. 2016;2:265–84.