



## Government's authority to provide protection of the victim of forest and land fire



Dielasy Budiarti <sup>(a)\*</sup> Sudarsono <sup>(b)</sup> Bambang Sugiri <sup>(c)</sup> Abdul Rachmad Budiono <sup>(d)</sup>

<sup>(a,b,c)</sup> Faculty of Law, Brawijaya University, Veteran Street no. 1 Post code: 65125, Malang City, Indonesia

### ARTICLE INFO

#### Article history:

Received 18 June 2021

Received in rev. form 25 July 2021

Accepted 28 July 2021

#### Keywords:

Authority, Government, Victims,  
Forest and Land Fires.

#### JEL Classification:

K15, K32, K38

### ABSTRACT

*Forest and land fires often occur in Indonesia. The effects of fires are far-reaching, and have significant impacts on the environment, economy, heritage and social structure of rural areas, as well as nearby cities and neighboring countries. Often the community is the victim of forest and land fires. The community expects benefits in the implementation of law enforcement. However, based on the ideals and objectives of the law, there is not a single legal umbrella or legislation that accommodates the interests of victims of forest and land fires. The purpose of this study is to find out how the government's authority in providing protection to the rights of people who are victims of forest and land fires. This research is a normative legal research with a statutory approach, a comparative approach and a historical approach. The legal materials used are primary, secondary, and tertiary with the technique of analyzing legal materials using Systematic, Grammatical, Extensive and Historical interpretation methods. The results of the study indicate that the government's authority in providing protection for the rights of the victims of forest and land fires is to provide preventive legal protection in the form of laws and regulations made based on the authority of the government as a legislator.*

© 2021 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

## Introduction

Forest fires are increasingly attracting international attention as an environmental and economic issue, particularly after the 1997/98 El Niño (ENSO) disaster that scorched 25 million hectares of forest land worldwide (FAO 2001; Rowell and Moore 2001). In Indonesia, forest and land fires continue to occur, especially in Sumatra, Riau and Kalimantan. In 2015, the Ministry of Environment and Forestry noted that there were at least 95 hotspots as sources of haze in Sumatra and 61 hotspots in Kalimantan. The spread of smog due to forest and land fires that occurred covered the areas of South Sumatra, Jambi, Riau, West Kalimantan, Central Kalimantan and South Kalimantan. At least 22.6 million people became victims in Sumatra and 3 million people in Kalimantan were victims of smoke caused by the forest and land fires.

Forest and land fires are partly due to natural factors, usually occurring during the dry season when the weather is very hot. However, in some cases, local people also set fires to protest the expropriation of their land by oil palm companies. The level of community income is relatively low, so they are forced to choose an easy, cheap and fast alternative for land clearing. Lack of law enforcement against companies that violate land clearing regulations, natural factors such as lightning strikes, lahars from volcanic eruptions and others. Environmental crimes or crimes are contained in various laws and regulations. Therefore, the accuracy of law enforcers, especially investigators, public prosecutors and judges is very much needed in finding laws and regulations relating to environmental crimes in various kinds of laws and regulations. In other words, which laws and regulations will be used, depends on what resources the environmental crime was committed. Forest and land fires cause harm to the community, so people are called victims (Chaerudin & Fadilah, 2004).

\* Corresponding author. ORCID ID: 0000-0002-0693-6913

Indonesia as a state of law (Rechtsstaat) in principle aims to enforce legal protection (iustitia protectiva). Law and legal ideals (Rechtidee) as a cultural embodiment. The embodiment of human culture and civilization upright thanks to the legal system, legal goals and legal ideals (Rechtidee) enforced in justice that displays the image of morals and virtues are cultural and civilizational phenomena. However, in reality, there is no single legal umbrella or statutory regulation that accommodates the interests of victims of forest and land fires (Satmaidi, 2011).

Along with the increase in the function of social control, the victim should actually get compensation for what he experienced and replace everything that might be caused by the incident as the concept of compensation contains 2 (two) benefits to meet material losses and all costs incurred are emotional satisfaction. victim. The aim of redress is to promote justice, and the well-being of those who are victims. So far, there is a set of regulations governing the protection of victims, namely Law Number 13 of 2006 concerning the Protection of Witnesses and Victims providing protection and assistance to witnesses and victims. The protection in question is in the form of actions that provide shelter or protection for someone in need so that they feel safe against threats around them.

Then there is also Law No. 23 of 2004 concerning the elimination of domestic violence. Victims are people who experience violence and/or threats of violence within the scope of the household whose rights have begun to be considered. Apart from that, there is also Law no. 27 of 2004 concerning the Truth and Reconciliation Commission which defines Victims as individuals or groups of people who experience physical, mental, or emotional suffering. Economic loss or experiencing service, reduction or deprivation of their basic rights, as a result of serious human rights violations, including the victim being the heir (Mansur dan Gultom, 2007). In addition, there is also Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Victims and Witnesses of Serious Human Rights Violations, which has been able to define the definition of victim as referred to as Victim is an individual or group of people experiencing suffering as a result of human rights violations committed that require physical and mental protection from threats, disturbances, terror, and violence from any party. As for the forest and land fires themselves, it seems as if no one cares that in the event of forest and land burning there are rights that are violated, constitutional rights in our Constitution as stated in the 1945 Constitution Article 28 H Paragraph 1, states that, everyone has the right to live in prosperity and birth. and spiritual, to live and get a good and healthy living environment and get health services.

The fact revealed that Greenpeace noted that there were 11 companies found guilty in court of destroying and burning concession lands intentionally. The company that was sentenced to the highest amount of compensation was PT Merbau Pelalawan Lestari, which was Rp. 16.2 trillion. There are also PT National Sago Prima (Rp 1.07 trillion) and PT Bumi Mekar Hijau (Rp 78 billion). Bumi Mekar Hijau is said to be working with the Sinar Mas group. the question of the researcher is whether the money is typical of the state and is used or channeled back to the people and how to the people who are victims directly, what they get, how to get treatment and how for all the losses they experience, this does not reflect the value of justice for the victim. Every legal norm naturally contains the need for the rights and obligations of legal subjects in legal traffic. Basic legal norms, of course, contain the formulation of rights and obligations which are also basic and fundamental. Therefore, academically, in fact the issue of human rights and obligations is related to the conception that must exist in the balance of the concept of law and justice.

In every legal relationship, there are parallel and cross dimensions of rights and obligations. Power that is organized into and through state organs, often proves to give birth to oppression. Therefore, the history of mankind bequeathed the idea of protecting and respecting human rights. In respect of human rights it is also known as the theory of loss, namely the theory that was born as the embodiment of responsibility because of his mistakes towards other people, the perpetrator is burdened with the obligation to provide compensation. Based on the description, this study aims to determine, analyze, and formulate the government's authority in providing protection for the rights of the people affected by forest and land fires.

The type of research used in this study is normative legal research, which is a research in the form of an inventory of the applicable legislation, to seek the principles of the legislation, so this research seeks to make legal findings that are in accordance with a particular case (Nasution, 2008). This normative legal research includes:

- a. Research on legal principles;
- b. Research on legal systematics;
- c. Research on vertical and horizontal synchronization;
- d. Comparative law; and legal history.

The research approaches in this study include the statute approach, the comparative approach and the historical approach. The statutory approach requires researchers to understand the hierarchy and the principles of legislation. Comparative approach is an activity to compare the law of a country with the law of another country or the law of a certain time with the law of another time (Dantes, 2012). In this study, a comparison is made between the telecommunications law in Indonesia and the telecommunications law in a foreign country and the comparison between the applicable telecommunications law and the telecommunications law that was previously enforced as Indonesian law. The historical approach is used in legal research within the framework of tracking the history of legal institutions from the previous period (Marzuki, 2011). This approach is very helpful for researchers in understanding the philosophy of the rule of law over time. In addition, researchers can also understand the changes and developments in the philosophy that underlies the rule of law.

The legal materials used are Primary Legal Materials which include the 1945 Constitution, laws and ministerial regulations relating to the environment, forestry, forest and land damage. Secondary legal materials include data on fire reports in Indonesia, court decisions, scientific works. Tertiary legal materials include the Big Indonesian Language Dictionary (KBBI), Legal Dictionary, Wikipedia or encyclopedia, news in online media / websites, news in print and or electronic mass media.

The technique of searching for legal materials is carried out by literature studies and internet searching as well as by conducting study interviews with competent resource persons. Legal Material Analysis Techniques are carried out using Systematic, Grammatical, Extensive and Historical interpretation methods. Systematic Interpretation is the process of linking the articles in the law as well as in other related regulations in order to find consistency and harmony with one another. Grammatical interpretation is the interpretation of norms in legislation based on general language rules (Efendi and Ibrahim, 2016). Extensive interpretation is an interpretation that is developed according to the dynamics contained in the object under study. Historical interpretation is an interpretation based on the historical background that underlies the birth of a law (Diantha, 2016).

## **Government Authority to Provide Legal Protection**

The theory of authority used in this study as a middle theory aims to analyze the regulation of government authority in providing legal protection for people's rights. First, providing legal protection for the rights of forest fire victims, and second, providing legal protection for the rights of land fire victims. Authority or authority has an important position in constitutional law and administrative law.

Stroink and Steenbeek (1985) stated: "Het begripbevoegheid is dan ook een kernbegrip in het staats-en administratief recht." From this statement, it can be understood that the core concept of Constitutional Law and Administrative Law is authority. The term authority or authority is equated with authority in English and "Bevoegdheid" in Dutch. According to P. De Haan, et.al., "administrative law has a normative function, an instrument function, and a guarantee function". The normative function is related to the norms of governing power, the instrumental function is related to the determination of the instruments used by the government to exercise the governing power, and the guarantee function that the instruments used must guarantee legal protection for the people. As a public law concept, authority has 3 (three) components, namely influence, legal basis, and legal conformity. The Influence component is intended to control the behavior of legal subjects. The basic component of law means that every authority has a legal basis. The purpose of conformity is that all types of authority have general standards and specific standards.

A different opinion on authority was put forward by Manan (2002) who stated that "authority in the language of law is not the same as power. Power only describes the right to do or not do, while authority in law means rights and obligations. As stated by Tonnaer, when viewed from its nature, government authority can be divided into expressimplied, facultative, and vrij bestuur. Governmental authority that is expressimplied is an authority that has clear aims and objectives, is bound at a certain time and obeys written and unwritten laws, its contents can be general in nature and can also be individual and concrete.. Governmental authority is facultative, which is an authority whose initial provisions determine the time and under what circumstances an authority can be used. Meanwhile, government authority that is vrij bestuur is an authority whose basic regulations provide a loose scope for state administrative officials to use the authority they have. According to H.D. Van Wijk and Willen Konijnenbelt in Lukman (2012), that there are 3 (three) models of delegation of authority. First, the attribution authority obtained is original from the formation of laws in a material sense. In this model, the giver and recipient of authority can create new authority. In addition, existing powers can be expanded.

The recipient of the authority is responsible both internally and externally for the implementation of the authority distributed to him. Internal accountability is manifested in the form of reports on the implementation of power, while accountability from the external aspect is accountability to third parties if in exercising power causes suffering or loss to other parties. The recipient of the authority is responsible for all negative consequences caused by exercising power.

The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which are basically an agreement of the community to regulate behavioral relations between community members and between individuals and the government which are considered to represent the interests of the community. According to Rahardjo (1993), legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Furthermore, according to Hadjon (1994) that legal protection for the people is a preventive and responsive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes from occurring, including their handling in the judiciary. Meanwhile, according to Lili Rasjidi and I.B Wisa Putra that the law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory.

From the descriptions of the experts above, it provides an understanding that legal protection is a description of the workings of legal functions to realize legal goals, namely justice, expediency and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, whether it is preventive in nature or in a repressive form, both written and unwritten in the context of enforcing legal regulations. Legal protection is a protection given to legal subjects, namely individuals or legal entities in the form of devices that are both preventive and repressive, both oral and written. Legal protection is an action or effort to protect the

community from arbitrary actions by the authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings (Setiono, 2004).

In addition, legal certainty becomes increasingly important when it is associated with state teachings based on law. It has become a classic in the science of written law that guarantees legal certainty more than unwritten law. Philipus M. Hadjon, in his view that places legal protection as something that allows a person to exercise and defend his rights determined by law and in relation to government action as a central point, Bahagijo and Triwibowo (2006), suggest that there are 2 (two) kinds of Legal protection for the people, namely: "Preventive legal protection In preventive legal protection, the people are given the opportunity to submit objections or opinions before a government decision gets a definitive form. Thus, preventive protection aims to prevent disputes from occurring. Whereas repressive legal protection In repressive legal protection, the people are given the opportunity to file objections after the consequences of a definitive government decision in the sense that repressive protection is problem solving".

## **Forms of Legal Protection Provided by the Government**

As a result of forest and land fires in Indonesia, millions of people were recorded as victims of the 1997/1998 forest fires. Recorded during September-November 1997 in eight provinces in Kalimantan and Sumatra as a result of these forest fires caused 527 deaths, and more than 1.5 million people suffered from respiratory diseases. The estimated loss suffered by Indonesia in terms of medical costs is Rp. 737.5 billion. These forest and land fires also took a toll on the economy by losing several economic potentials, especially in the forestry and agriculture sectors. Economic losses in the forestry sector due to the 1997/1998 fires amounted to Rp. 2.4 trillion for eight peatland provinces in Kalimantan and Sumatra. Meanwhile, in the agricultural sector, the loss reached Rp. 718 billion.

First, due to this forest fire, a person's right to get clean air to support his life cannot be fulfilled. In addition, due to the smog, more than 7 million Indonesians are hampered in carrying out their daily activities due to transportation delays and inadequate working conditions. Second, in the education sector, this event has hampered teaching and learning activities. Schools were closed for several days due to concerns from the school regarding the health of their students. In this case, the children's right to education was violated as a result of the forest fires, besides their health was threatened due to unsuitable environmental conditions. The subsequent consequences of these forest fires indirectly affect people's access to water around the location of the forest and land fires. Fourth, apart from the reduced access of the population to water, the population is faced with other dangers. As a result of soil sedimentation, the greater the potential for erosion that occurs on the land.

The activities of large agricultural and plantation companies that cause forest fires do not seem to pay attention to the condition of the environment and humans who are sacrificed for economic gain. On the other hand, the government feels unequal in treating its citizens. In this forest fire incident, it seemed as if the victims were divided into two types, namely ordinary people and entrepreneurs managing large farms and plantations. The government is not serious enough to minimize let alone take action against the perpetrators of arson, especially from the big business circles. The news that developed was mostly appeals and warnings that tended to be harsh to "ordinary people" not to burn land in their agricultural activities. For large companies, the actions given tend to be administrative actions in the form of warnings. In the case of the 1997/98 forest fires, there were no companies that were sentenced for their actions that resulted in this national disaster. On the other hand, the Government's inequality is seen in the process of policy formation in the fields of forestry management, plantations and fire disaster management. In fact, since the forest fire disaster that occurred in 1997/1998, various studies and studies have been carried out. Even a number of aids from UNDP in 1998 which have produced a Fire Disaster Management Action Plan do not seem to be able to be utilized. The Faculty of Forestry of IPB together with the Ministry of Forestry and ITTO also produced 14 policy drafts that produced operational policy recommendations which, once again, have not yet been adopted into government policies.

This is due to the recommendation that has consequences that are quite severe for large entrepreneurs. The existing legislation is deemed unable to overcome the problem of preventing and overcoming these forest fires. Forestry Law No. 41/1999 is deemed no longer adequate for fire prevention efforts. For example, the prohibition on burning forest contained in the Forestry Law can be countered for special purposes as long as it gets permission from the competent authority. This is different from the treatment of the Government of Malaysia as a victim of this incident which enforces a strict policy (without exception) regarding the prohibition of land clearing by burning and imposes a fine of 500,000 ringgit and or 5 years in prison for both the owner and the cultivator of the land.

Likewise with PP Number 6/99 concerning Forest Concession and Collection of Forest Products in Production Forests where none of the references mention the problem of preventing forest fires in the context of forest exploitation. Even Law Number 23/97 concerning Environmental Management, together with Law Number 41/99 also did not provide a specific mandate at all to develop a Government Regulation on forest fires at that time which should have existed considering that there had been previous major forest fires in Indonesia.

## **Regulation of Environmental Rights in Indonesia as Preventive Legal Protection provided by the Government**

The regulation on environmental rights which includes the basic human right to health in Indonesia can be seen further in the constitution and other products of legislation. Articles that discuss the right to health in the 1945 Constitution are as follows: Article

27 paragraph (3), Article 28, Article 28C paragraph (1), Article 28H paragraph (1), Article 34 paragraph (3) . As for Law Number 23 of 1997 concerning Environmental Management, it contains the right to health in Article 5 paragraph (1): "Everyone has the same right to a good and healthy environment." Constitutionally, subjective rights as stated in the article can be related to the general rights contained in the fourth paragraph of the Preamble to the 1945 Constitution which states: "...to form an Indonesian State Government that protects the entire Indonesian nation...", and is also related to the state's right of control over the earth and water and wealth. nature contained in it for the greatest prosperity of the people. Not only that, Law Number 39 of 1999 concerning Human Rights also states the same thing in Article 3 which reads: "Everyone has the same right to a good and healthy environment."

Judging from the results of the search for regulations, both international and national, the protection of environmental rights in Indonesia has met various standards expected by international law. In fact, in the Indonesian constitution, it has been stipulated that the Government of Indonesia protects the entire Indonesian nation as well as the earth, water and natural resources in it, which incidentally is the essence of the protection provided in environmental rights. However, from the two case studies studied, there is a clear gap between the existing regulations and the protection provided in the field, especially for the three basic rights: the right to be free from hunger, the right to security and the right to health. How victims of the impact of environmental damage are still excluded from the interests of industry or groups that have stronger bargaining power, and how the government is still unable to participate in fighting for these three basic rights of victims to be fulfilled properly, in accordance with the mandate of the constitution of the Republic of Indonesia or environmental rights in law. international.

## **Factors Affecting Forest Fires in Indonesia and the Impact of Forest Fires in Indonesia**

The factors that cause fires in Indonesia are caused by several factors, including,

### **Climate Change Factor**

In general, Indonesia has a relatively regular dry season and rainy season. This cycle is sometimes interrupted because it comes faster and ends later than usual. Thus, climate change and the impacts of climate change cannot be anticipated or minimized.

### **Biomass Properties Factor**

There are types of plants that are fire-resistant and some are easier to burn because of the resin/resin content. The distribution of these species is classified and some are not, so that there are forest stands that are completely burned and some are relatively intact even though the fire has scorched the litter and species that are not fire resistant.

### **Habitat Factor**

The diversity of habitat types is actually very irregular, affecting the level of ease/difficulty of the habitat in stopping or allowing the spread of fire. There are forest types that have died of drought before burning. This type of forest will obviously prevent the spread of forest fires. There are also types of forest that are flammable due to their organic matter content. Peatlands that are dry due to drought become highly flammable. Also forest types that contain layers of coal protruding from the ground, such as those in East Kalimantan, are highly flammable. In both types of forests that contain organic matter, fire can spread over the ground. If in peatland fires can be extinguished by heavy rains that fall continuously for a certain period of time, fires in coal seams are more permanent and cannot be extinguished by rain.

### **Human Factor**

The occurrence of forest fires that are routine and continues to spread in Indonesia lately is at least influenced by two important things. First, that Indonesia has excessive coal deposits in almost every tropical forest in the archipelago, which will easily give rise to new hotspots every year. Second, the behavior of cultivators who are accustomed to the method of burning the land first in order to open new land and increase soil fertility (Bram, 2007). If natural conditions allow for the ignition of fires and the spread of potentially flammable materials, from this it can be distinguished three types of forest fires, namely (Sumardi and Widyawati, 2004): Surface fires burn materials that are scattered on the ground. forest floor surfaces, such as litter, fallen dead branches and twigs and undergrowth. Ground fires occur in soil types that have a thick layer of organic matter, such as peat. Crown fires are fires that can occur on the forest floor with a thick and dry understorey layer. Often added a lot of leftover felling wood or other dead material.

The impact of the occurrence of forest fires in Indonesia, among others,

- i. Impact on Social and Culture, namely the disruption of daily activities. The presence of smoke disturbances automatically also interferes with daily human activities and disrupts health. From a health point of view, the biomass smoke emitted by forest fires contains various hazardous components.
- ii. Impacts on Public Health include, causing eye and skin irritation, exacerbating asthma and other chronic lung diseases, Smog can cause local/local irritation of the mucous membranes in the nose, mouth and throat which are directly exposed to forest fire smoke, and cause allergic reactions. allergies, inflammation and possibly infection, starting with Respiratory Tract Infections (ARI) and if severe can reach pneumonia, Pollutants in forest fire smoke that fall to the earth's surface may also be a source of pollutants in unprotected clean water and food facilities. If then contaminated water and food are consumed it can cause digestive disorders and others,

- iii. Impacts on Economic Activities include the loss of a number of community livelihoods in and around the forest and an increase in the number of pests.

## **The Government's Role in Dealing with Forest Fires**

### **In the Perspective of National Law**

The following are policies that can be carried out by the Indonesian government in overcoming the problem of forest fires and haze, namely: first is the status quo policy, the status quo policy on forest fires in Indonesia where the Government tries to maintain a conducive situation with the laws and regulations governing forest fires in Indonesia. forest conservation. Several policies implemented by the Government of Indonesia in order to prevent forest fires and forest management:

- i. Law of the Republic of Indonesia No. 41 of 1999 concerning Forestry, based on Article 78 paragraph 3 where the perpetrator can be sentenced to a maximum of 15 years and a maximum fine of five billion rupiah (Rp 5 billion).
- ii. Law of the Republic of Indonesia Number 18 of 2004 concerning Plantations, based on Article 49 paragraph 1 which states that if burning is done intentionally, it is punishable by a maximum imprisonment of three (3) years and a fine of three billion rupiah (Rp 3 billion).
- iii. The Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, based on Article 109 states that people who burn land are threatened with a maximum of ten (10) years and a maximum fine of ten billion rupiah (Rp 10 billion).
- iv. Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems, based on Article 40 paragraph 2 states that each perpetrator is threatened with a maximum of five (5) years in prison and a maximum fine of one hundred million rupiah (Rp 100,000,000).
- v. Law Number 45 of 2004 concerning Forest Protection, based on Article 42 that anyone who violates is threatened with five (5) years in prison and a maximum fine of ten billion rupiahs.

Second, policy modification is an alternative policy that modifies existing policies, either reducing or adding to existing policies, but not changing them entirely. Alternative policy modifications in the legal sector only add more comprehensive sanctions and countermeasures to it. Then in the implementation of the modification policy, it adds supervision to the existing law but is closely monitored. Next, the apparatus only carries out strict supervision and sanctions without replacing professional personnel. In granting land clearing permits, they still give Forest Concession Rights (HPH) permits but will revoke them if they burn forests.

Third, the new system policy offers new policies to deal with forest fires, as in the legal objective of the new policy offering a law prohibiting all types of land clearing, such as making a kind of presidential instruction as in illegal logging. So that the perpetrators of forest fires become a deterrent. The implementation of the new system strengthens both supervision, implementation and management from the bureaucracy to those concerned with forests. Furthermore, in the new system apparatus, it offers to recruit professional officers, as well as giving sanctions to what is unfair and giving rewards to those who excel.

Problems with facilities and infrastructure in forest fire prevention must provide new tools so that fires can be quickly dealt with. The new system policy has many advantages including the law standing firmly, permits tightened, clear implementation as well as strict sanctions and adequate infrastructure. With this, forest fires in Indonesia are quickly contained. However, this new system policy has several drawbacks, namely it requires a large budget and requires adaptation time for the stakeholders who run it. Efforts/follow-up steps that need to be taken by the Government in overcoming the problem of forest and land fires are (Sutrisno, 2011):

- i. Empowerment of indigenous peoples and institutions, especially those around forest areas;
- ii. Establish an area boundary and redelination by involving community leaders, traditional leaders, so that the boundaries of the area are fully recognized by the community;
- iii. Promote government programs in the use of forests by communities around protected forest areas which have yielded many positive results;
- iv. There needs to be a management pattern of protected forest areas and limited production forests which are buffer zones for national parks involving the community;
- v. Increasing land rehabilitation activities outside forest areas with an orientation towards efforts to improve community welfare in the future;
- vi. Increase community income with various patterns such as community forest pattern by implementing a system of cooperation between the government and the community;
- vii. Other activities whose aim is to improve the welfare of the community but take sides with aspects of preventing forest fires.

In connection with the description above, forest fires that cause many negative impacts, prevention and control should be carried out as soon as possible, because forests are natural resources that have the potential to support life processes, because the situation is getting worse due to the smoke haze of forest fires, it is advisable to further raise awareness of environmental sustainability. The negative impact that results in a lot of losses for Indonesia and neighboring countries, should be a reference for the Indonesian government to further increase supervision in terms of forest management, both by providing more severe sanctions for forest arsonists and taking stricter action for those involved.

### **In the Perspective of International Law**

Efforts to tackle transboundary haze pollution are a form of environmental cooperation that has been quite intensively implemented in ASEAN in recent years. At the initiative of the Government of Indonesia, the establishment of a special forum at the Minister of Environment level for the issue of transboundary haze pollution has been initiated. Malaysia, Singapore and Thailand (Didin dan Damanhuri, 2006).

The five countries agreed to hold regular meetings three times a year, in order to intensively monitor the condition of smoke pollution and determine countermeasures. The forum which was formed based on Indonesia's initiative was actually to show Indonesia's existence, to show Indonesia's role in the eyes of the international community as a haze-producing country and to show an accountability from Indonesia in the eyes of international law. In its development, the special forum produced a Plan of Action in Dealing with Transboundary Haze Pollution in the Region of Southeast Asia, which includes the following aspects:

- i. Prevention, monitoring and law enforcement;
- ii. Sustainable peatland management;
- iii. outages and emergency response;
- iv. Early warning and monitoring;
- v. Regional and international cooperation and assistance.

The implementation of the Plan Of Actions (PoA), which is a joint effort in preventing transboundary haze pollution in the ASEAN environment, is starting to show a fairly positive development. At the 3rd (third) meeting of the Ministerial Steering Committee on Transboundary Haze Pollution (MSC) in Jambi in June 2007, among others, it was reported that throughout 2006/2007, ASEAN's cooperation in the environmental field has been formally started since 1978, marked by with the establishment of the ASEAN Experts Group on the Environment (AEGE) under the Committee on Science and Technology (COST). The establishment of the forum is intended to strengthen the cooperation that has been initiated since 1971 through the Permanent Committee on Science and Technology. At that time, AEGE was given the mandate to prepare the ASEAN Environment Program (ASEP), which is a program of activities by ASEAN in the environmental field.

The ASEAN Agreement on the Conservation of Nature and Natural Resources 1985 (ASEAN ACNN), is a testament to the results of ASEAN's attention taking the case of the forest fires that occurred in 1985. Although ASEAN ACNN is a framework for ASEAN cooperation in the field of nature and resource conservation In general, the agreement also contains the obligations of ASEAN countries to prevent forest fires. In 1990 the ASEAN Senior Officials on the Environment (ASOEN) was formed in accordance with the growing development and expansion of environmental cooperation in the ASEAN region. ASOEN has six working groups, namely:

- i. Handling of transboundary pollution;
- ii. Nature conservation;
- iii. Marine environment;
- iv. Management of the environment;
- v. Environmental economics;
- vi. Information on the environment, related to increasing knowledge and public awareness of the community.

The formal consultation mechanism used by ASEAN countries to discuss environmental issues is not only limited to ASOEN but also the ASEAN Ministerial Meeting on Environment (AMME). Every pillar of the ASEAN Community has discussed the life-saving agenda. The role of the Government of Indonesia in dealing with the haze caused by forest fires which is reviewed from the perspective of international law can be seen from the issuance of the Presidential Instruction of the Republic of Indonesia Number 16 of 2011 concerning Improving the Control of Forest and Land Fires which divides the tasks of each government in Indonesia and President Susilo Bambang Yudhoyono's attempt to apologize directly to countries affected by forest fires. This means that disputes that occur between Indonesia and Singapore and Malaysia do not need to be brought to the international court, they can be resolved by bilateral negotiations, and ASEAN countries' cooperation in controlling air pollution due to forest fires can refer to the

implementation of cooperation between ASEAN members. The negative impact that results in a lot of losses for Indonesia and neighboring countries, should be a reference for the Indonesian government to further improve supervision in terms of forest management, both by providing more severe sanctions for forest fire violators and taking stricter action for those involved.

### **Enforcement of the Criminal Law of Forest and Land Burning**

Law enforcement is part of the legal system that cannot be separated from legal substance and legal culture. Based on Lawrence Friedman's legal theory which explains that the ideal legal system is a good correlation between substance, structure, and culture (Sunarso, 2005). Looking at the realm of application of criminal law enforcement against perpetrators of forest and land fires (forest and land fires) in Riau Province, from the data obtained that from 2014 to 2016 there were 227 cases of forest and land burning in Riau Province consisting of individuals and corporation. During the period from 2014 to 2016 not all cases of forest and land burning were followed up to the courts, but there was also a termination of case investigations. 90% (ninety percent) of cases of forest and land burning carried out by individuals (communities) are more dominant in legal action until the court's domain and in contrast to cases of forest and land burning by corporations, only 2 (two) corporations have arrived in court and have a fixed sentence while the others are subject to termination of investigation. The details of the cases that have been terminated are as follows:

#### **Limited Liability Company PT. Bina Duta Laksana (HTI)**

The reasons for the termination of the investigation by the Riau Police: first, the burned area of 299.4 hectares was controlled by the community and planted with oil palm. Second, the company already has a team of firefighters and fulfills the facilities and infrastructure. Third, Forest and Land Fire Experts have explained that the fires were intended for land clearing for the purpose of planting oil palm, but the Riau Police did not find any evidence that it was intentional because PT Bina Duta Laksana was not engaged in the plantation sector.

#### **Limited Liability Company PT. Perawang Sukses Perkasa Industri**

Reasons for Termination of Investigation by the Riau Police: First, the 4.2 ha burned area is an area controlled by the community that has been planted with rubber. Second, the Riau Police conducted mediation but to no avail. Third, PT Perawang Sukses Perkasa Industri already has a Data Jikalauhari fire team and fulfills the facilities and infrastructure. Fourth, the criminal expert explained that the company has no responsibility because it is controlled by the community.

#### **Limited Liability Company PT. Parawira (Palm)**

The reasons for the termination of the Riau Police's investigation were firstly, the burned area was 308 ha and the fire originated from PT Langgam Inti Hibrido, which is adjacent. Second, PT Parawira has completed the sarpras, it cannot be punished because it complies with the rules according to expert alvi syahrin. Third, forest and land fire experts stated that PT Parawira could not be held accountable, because PT Parawira did not benefit from having employees burn.

After the forest and land fires occurred in 2014, the ministry of forestry, together with the ministry of environment, UKP4 and BP REDD+ conducted an audit process on forest and land fire prevention to every corporation in Riau Province. The results of the audit showed that several corporations failed the audit. In order to support the process of handling forest and land fires in Riau province, a forest and land fire task force was formed consisting of the Indonesian national army, the Indonesian air force, the Riau regional police, the regional disaster management agency, the meteorological, climatological and humanitarian agency, geophysics with a total of 1,120 personnel. The process carried out on forest and land fires is to see where the hotspots or hotspots are located. The existence of the hotspot determines the location of the fire so that the process of handling forest and land fire cases, both extinguishing, preventing, and even arresting perpetrators can be carried out.

Criminal law enforcement carried out by law enforcement, sometimes there are factors that are difficult or hinder law enforcement. These factors are: legal provisions, talking about the legal provisions governing the prohibition of forest and land burning, then there are three very clear laws and regulations in the application of forest and land arsonists. Law Number 41 of 1999 concerning Forestry In Law 41 of 1999 there are several provisions in Article 49 that Business Holders are responsible for forest fires and Article 50 paragraph 3 letter d prohibits forest burning. In the forestry sector, there are provisions that prohibit anyone from burning, including throwing away objects such as cigarette butts that are still lit, which can result in fires (Kim, 2013).

Law Number 32 of 2009 concerning Environmental Protection and Management. In Law 32 of 2009 there are several provisions that prohibit forest and land burning, contained in Article 21 paragraph 3 letter c Elucidation of environmental quality standards, in Article 69 paragraph 1 letter H concerning prohibitions, in Article 98 article 99 concerning material and in Article 116, Article 117 concerning formill offenses. Article 69 paragraph (1) letter h states that it is prohibited to clear land by burning. However, in the explanation in paragraph (2) there is an exception that allows burning as a method of land clearing on the condition that it must be in a manner based on local wisdom procedures such as making a barrier to prevent fire from traveling outside the burned land area and only covering an area of land that is effective. can be supervised by the owner of the declared land area of maximum 2 hectares.

Law Number 39 of 2014 concerning Plantations, In Law 39 of 2014 there are several provisions that prohibit forest and land burning, as contained in Article 56 prohibiting land clearing by burning, in Article 67 the obligation to complete advice and infrastructure to



prevent fire and Article 108 is a criminal threat. In the plantation sector, in substance, fire prevention is implemented, namely: every plantation business license holder is prohibited from opening and/or cultivating land by burning.

The application of these laws and regulations is very sharp downwards and blunt upwards, as evidenced by the handling of cases at a vulnerable time in 2014-2016 the application of sanctions against individuals is very easy to do by using Law Number 32 of 2009 and Law Number 39 of 2014, such as the decision Number 44/Pid.Sus.Lh/2016/Pt.Pbr, in which Daswan Alias Wan Bin Narto was convicted in the first instance court under Article 108 of Law 39 of 2014, and on appeal the decision was also upheld. Meanwhile, try to compare it with the handling of cases of forest and land burning by corporations, such as the case of PT NSP which was declared acquitted in the first instance court.

Handling forest and land fires is categorized as a difficult case because in determining whether forest and land fires have occurred, investigators not only see with the naked eye that forest and land fires have occurred, but also require a statement from an expert regarding the quality of the damage to the area. Currently, to test what happened to the land damage, it can only be done at the Bogor Agricultural University laboratory, so that in conducting the investigation process the funds required are very different from the handling of cases. Therefore, one way to optimize the handling of cases in the Riau regional police is to increase the status from B to Polda A status. In accordance with the Decree of the Chief of the Indonesian National Police (Kapolri) General Tito Karnavian number Kep.1128/X/2016 dated 28 October 2016 regarding the improvement of the Riau Police typology. Thus, with the increase in the level of the Riau regional police, the consequences for personnel and equipment will be different from before. There are additions and also strengthening of the budget side. there is strengthening of facilities and infrastructure including equipment. In its status as type A, the Riau Police will also be given additional supporting facilities and infrastructure. In addition to the addition of hundreds of personnel. Second, the next obstacle is the length of laboratory test results on forest and land fire soil samples. The results of the laboratory can state whether or not there will be damage to the land.

The results of this laboratory are the first step in determining whether a forest and land burning case is continued or not. In testing this soil sample, the police cannot do it themselves because they do not have their own laboratory, competent human resources in testing the sample, so this is an obstacle experienced by the Riau regional police. Third, the geographical conditions of forest and land fires are difficult to reach. In forest and land fires, the location of the fire is far from the village, located in the forest, or even on an island where to get to the location you have to travel for hours and use different transportation such as ships. With these difficult conditions, the police are sometimes constrained by delays in conducting investigations and investigating the perpetrators of the arson. Fourth, the limitations of environmentalists. In handling forest and land fire cases, expert testimony is very decisive in this case, because in forest and land fires scientific identification is very necessary, because investigators from the police do not yet have the expertise or ability to be able to test these samples. Currently, experts who are often used to testify in cases of forest and land fires only come from the Bogor Agricultural Institute, while others are rarely used. With the lack of experts, it presents an obstacle for investigators in solving this case. Fifth, the empowerment is not yet optimal to care about the haze disaster. Sixth, there is no integrated handling yet. At this time, the handling is still like standing alone, between the Service, the Police, the prosecutor's office running alone. So that there is a difference in understanding of cases of forest and land burning and results in weak coordination between law enforcers. Seventh, there is no regulation regarding infrastructure that must be owned by corporations for fire prevention. Eighth, the constraints of human resources and the professionalism of law enforcement. In carrying out law enforcement against the perpetrators of forest and land burning, the ability and understanding of investigators will determine the sustainability of the handling of cases of forest and land burning.

In handling cases of forest and land fires in Riau province, there is often an operation against corporations. This professionalism in handling cases against corporations has the unwillingness and courage to harass corporations when burning forests and land, seen from the cases of forest and land fires from 2014-2016 the termination of investigations against 15 corporations. who was found guilty of burning forest and land, then the reason for stopping the investigation of the case against the forest and land burning corporation is actually almost the same reason as the termination of the illegal logging case that occurred in the province of Riau. Therefore, the lack of investigators may be an obstacle in the investigation but the professionalism of an investigator becomes more important than the large number but does not give meaning. Prosecutor's Office, First, Lack of human resources. The problem that becomes an obstacle for prosecutors is the lack of prosecutors who have environmental certification (environmental expertise). In handling forest and land fire cases, it is very different from handling other cases, because in forest and land fires expertise is needed on the environment in order to provide conformity to the problems experienced.

Not all law enforcers have the same thought on the perpetrators of forest and land burning by corporations, there is still debate over whether to apply Article 98 and Article 99 of Law 32 of 2009 concerning PPLH. Currently, there are only two people in the Riau High Court who are experts in forest and land fires. The existence of human resources is an obstacle in carrying out law enforcement so that it is not effective and efficient in resolving all cases of forest and land fires in Riau province. In handling forest and land fire cases, the professionalism of a prosecutor will determine the success of ensnaring the perpetrators of forest and land fires, especially corporations.

Second, there is still a lack of legal experts. What is meant by legal experts are experts who are directly appointed by the ministry of environment and forestry. At this time, when forest and land fires occur, the expert is a land expert and definitely Mr. Bambang Heru from the Bogor Agricultural Institute, while the prosecutor's explanation that there are no experts in Riau alone, so that when the

expert is unable to do so, it will hinder the law enforcement process by the prosecutor. Third, investigators have not been involved from the start (there is no integrated law enforcement). Syafril explained that from the beginning of the investigation, the prosecutor was never involved in optimizing law enforcement, so that when the case was transferred to the court, there were still things that needed to be completed, sometimes it was also difficult to understand if it was not explored from the start. Fourth, the use of tools that are not yet Indonesian national standards. A prosecutor who was not involved from the start in handling this case sometimes had problems in his evidence because the expert was still using his tactical tools such as taking soil samples using a paralon. As a result, the prosecutor's demands are difficult to prove because the taking using the paralon is suspected to be the quality of the land, so the results are questioned by legal counsel. In an effort to manage forests and land so that forest destruction does not occur, a policy must be taken so that forest and land burning in Riau province can be minimized. If we use a legal policy, the policy consists of a penal policy and a non-penal policy. In carrying out law enforcement, it must be in line between non-penal and penal, so that it can minimize the impact of forest and land damage. In the end, the desired goal is achieved. Therefore, the actions or efforts that must be taken by law enforcement in suppressing the perpetrators of forest and land burning are: First, Optimizing and prioritizing the enforcement of criminal law against corporations. The reason the authors offer this is based on what law enforcement has done in the last two years, there has been a reduction in hotspots in Riau province, especially in concession areas. Law enforcement carried out by the Riau Police, KLHK has a deterrent impact on the community and has an effect on some corporations that subscribe to land forest fires.

In line with what is the goal of criminal law enforcement to provide a deterrent effect and so that others do not participate in the act. The application of criminal law when using Law 32 of 2009 concerning PPLH, the sanctions applied are not only criminal threats, but also fines that must be borne by each corporation. If only the application of civil or administrative sanctions against corporations in the province according to the compilers does not provide a deterrent effect, so they will continue to burn forest and land in their concession. Second, reviewing all licensing actions in the plantation and forest sector in the Riau province. By doing a review of all these permits, it will be able to organize and anticipate the lack of advice and infrastructure for preventing forest and land fires, and it can be seen whether the feasibility of using peat locations for each corporation can still be allowed or not. Third, conduct socialization through a religious approach. The religious approach that the authors offer sees that the majority of the people of Riau Province are Malay and Minang ethnic who are Muslim, so using a religious approach can provide a solution that can be accepted by people from all walks of life as enlightenment for the whole community so that do not burn forests and land to clear land. The approach that according to the authors is very suitable to be applied is the Friday Khutbah and routine recitations that are often held in every mosque in Riau Province. Fourth, people switch plantations from oil palm. Providing understanding to the community to change the pattern of planting that always grows oil palm into chili, rambutan and other plantations can provide a long-term prevention and at the same time foster understanding of the dangers of forest and land fires In addition, the compilers offered this because of the support from the Ministry of Environment and Forestry who was ready to help provide seeds, guiding residents if they really wanted to try switching from oil palm. Provide opportunities for the community to apply local wisdom that does not have an impact on forest and land fires.

Everything that has been done cannot be separated from the support of several non-governmental organizations that provide continuous assistance. Fifth, it is necessary to establish a supervisory body for companies in Riau. The reason that gives this is, seeing from the many occurrences of forest and land fires in Riau Province, starting with the issuance of permits by the regional or central government, in this case the Ministry of the environment and forestry. The existence of a supervisory agency can make corporations be careful in carrying out corporate activities on forests and land. So that prevention and control can be achieved quickly. Sixth, prioritizing a persuasive approach to individuals The persuasive approach that the authors want here in handling forest and land fires is that the handling process by the relevant agency or police can do: summon the perpetrators of forest and land fires, explain what he has done, and make a letter of agreement so as not to repeat the act again, and coaching and mentoring the community. With this effort, it is hoped that there will be an awareness of the community in general and specifically the perpetrators of forest and land burning so that it can form a community that cares about preventing forest and land fires.

## **Conclusion**

The government's authority in providing protection for the rights of communities affected by forest and land fires is to provide preventive legal protection in the form of laws and regulations based on the authority of the government as a legislator. These laws and regulations correspond to the functions of state institutions with legal subjects in the form of individuals (communities) in order to fulfill the rights and obligations of these individuals as victims of forest and land fires.

The government should prioritize the enforcement of criminal law against corporations that burn forest and land, not just the application of civil or administrative law. Meanwhile, the community can try to be persuasive in a non-penal manner, so that the corporation and the community (farmers) are appropriate and create a deterrent effect not to do the act again The government also needs to improve coordination that runs better between the authorities in handling forest and land fires, so that a complete indictment can be carried out against all corporations that are indicated to be disobedient so as to prevent rogue corporations from clearing land for the benefit of they burn forests and land.

The community must report if they know that there are actors who will or have done forest and land fires, this is intended to prevent or minimize the occurrence of forest and land fires that cause many negative impacts, prevention and control should be carried out as soon as possible, because forests are natural resources which has the potential to support life processes, because the situation is

getting worse as a result of the smoke haze of forest fires, it is advisable to further increase awareness of environmental sustainability. Reports on burning and potential adverse effects that cause harm to Indonesia and neighboring countries, can be used as a reference for further increasing supervision in terms of forest management, both by providing tougher sanctions for forest fire violators and taking stricter action for those who commit crimes. get involved.

## References

- Bahagijo, B. and Triwibowo, D. (2006). Memahami Negara Kesejahteraan: Beberapa catatan Bagi Indonesia. *Jurnal Politika*, 2(3).
- Bram, B. (2007). *Penanganan Kabut Asap Masih Setengah Hati*. Jakarta, Media Indonesia.
- Chaerudin & Fadilah, S. (2004). *Korban Kejahatan Dalam Perspektif Viktimologi Dan Hukum Pidana Islam*. Jakarta, Ghalia Press.
- Dantes, N. (2012). *Metode Penelitian Interdisipliner*. Jogjakarta, Andy Publisher.
- Diantha, I M. P. (2015). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Denpasar, Kencana Prenadamedia Group.
- Didin, S. and Damanhuri. (2006). Model Negara Kesejahteraan dan Prospeknya di Indonesia. *Jurnal Politika*, 2(3).
- Efendi, J. and Ibrahim, J. (2016). *Metode Penelitian Hukum Normatif dan Empiris*. Depok, Prenadamedia Group.
- Hadjon, P.M. (1994). Fungsi Normatif Hukum Administrasi Dalam Mewujudkan Pemerintahan Yang Bersih. Pidato Peresmian Penerimaan Jabatan Guru Besar dalam Ilmu Hukum pada Fakultas Hukum Universitas Airlangga. 10 Oktober 1994.
- Kim, S.W. (2013). Kebijakan Hukum Pidana dalam Penegakan Hukum Lingkungan Hidup. *Jurnal Dinamika Hukum*, 13(3), 415-427. DOI: <http://dx.doi.org/10.20884/1.jdh.2013.13.3.247>
- Lukman, M. (2012). Eksistensi Peraturan Kebijakan dalam Bidang Perencanaan Pelaksanaan Rencana Pembangunan di Daerah serta Dampaknya terhadap Pembangunan Materi hukum Tertulis Nasional. Bandung, Universitas Padjajaran.
- Manan, B. (2002). *Hukum Adminisitrasi Negara*. Yogyakarta, UII Press.
- Mansur, D.M.A. & Gultom, A. (2007). *Urgensi perlindungan korban kejahatan antara norma dan realitas*. Jakarta, PT Raja Grafindo Persada.
- Marzuki, P.M. (2011). *Penelitian Hukum*. Edisi Revisi, Jakarta, Prenadamedia Group.
- Nasution, B.J. (2008). *Metode Penelitian Ilmu Hukum*. Bandung, Mandar Maju.
- Rahardjo, S. (1993). Penyelenggaraan Keadilan Dalam Masyarakat Yang Sedang Berubah, *Jurnal Masalah Hukum*, edisi tahun 1993.
- Satmaidi, E. (2011). Politik Hukum Pengelolaan Lingkungan Hidup Di Indonesia Setelah Perubahan Undang-Undang Dasar 1945. *Jurnal Konstitusi*, 4(1).
- Setiono, (2004). *Rule Of Law (supremasi hukum)*. Surakarta, Universitas Sebelas Maret.
- Stroink, F.A.M., and Steenbeek, J.G. (1985). *Inleiding in het Staats-en Administratief Recht*. Den Rijn : Samson H.D. Tjeenk Willink.
- Sumardi dan Widyawati, S.M. (2004). *Dasar-Dasar Perlindungan Hutan*. Yogyakarta, Badan Penerbit dan Publikasi Gajah Mada University Press Publishing.
- Sunarso, S. (2005). *Wawasan Penegakan Hukum Di Indonesia*, Penerbit Perseroan Terbatas. Bandung, PT. Cintra Aditya Bakhti.
- Sutrisno. (2011). Politik Hukum Perlindungan dan Pengelolaan Lingkungan Hidup. *Jurnal Hukum*, 3(8), 444-464. DOI: <https://doi.org/10.20885/iustum.vol18.iss3.art8>

**Publisher's Note:** SSBFNET stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



© 2021 by the authors. Licensee SSBFNET, Istanbul, Turkey. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).

*International Journal of Research in Business and Social Science* (2147-4478) by SSBFNET is licensed under a Creative Commons Attribution 4.0 International License.