

Criminal Liability for Forest Burning in Indonesia

Hasudungan Sinaga

Universitas Tama Jagakarsa, Indonesia

Email: hassinaga@gmail.com

Keywords:

forest burning, deforestation, criminal liability

ABSTRACT

Degradation of the forest environment has a huge negative effect on the environment, economy, institutions, as well as society, especially in terms of accessibility of forest resources and biodiversity. Forest and land fires ("Karhutla") in Indonesia have increased drastically this year during the dry season, according to the non-profit organization Madani Sustainable. Based on their monitoring findings, an area of 152,678 hectares is an indicative area for land fires and forest and land fires in Indonesia in August 2023 alone. This study aims to determine criminal liability for forest burning in Indonesia. This research uses normative legal methods which are supported by literature reviews from various scientific journal sources published in 2019-2023. The research results show that criminal liability has been regulated in Article 108 of Law Number 32 of 2009 concerning Environmental Management.

INTRODUCTION

For the central and regional governments affected by forest and land fires, especially those that occur on peatlands, this is a major disaster. This is because the effects of this condition have polluted many surrounding areas and even brought smoke to Singapore and Malaysia. This causes neighboring countries to be irritated by the fire disasters that often hit Indonesia. Apart from being disturbed by the thick smoke, this condition also has an impact on public health which is getting worse due to upper respiratory tract infections, eye problems, and even disruption of the teaching and learning process at school and daily work. Fires have destroyed forest and non-forest areas, especially peat ecosystems (Rusdyani, 2023).

Research from Aziz et al., (2018) shows that forest degradation has severe effects on the environment, economy, institutions and society, especially in terms of accessibility of forest resources and biodiversity. A number of causes, including illegal logging, forest fires, weak security in implementing the forest area management permit system, as well as the conversion of forest areas into plantations and residential areas, have also contributed to the rate of destruction that continues to occur. Development interests that are not related to forestry have, among other things, caused loss and destruction of forest resources. People's living conditions have declined as a result of the exploitative and increasingly commercial use of natural resources, especially for those living in and around forest areas, where poverty is increasing. The rate of forest degradation has continued to increase in the last few decades due to misunderstandings surrounding the concept of forest management.

In 2019, global warming was influenced by sporadic or even extreme weather, which had a significant impact on environmental conditions due to forest and land fire disasters. An area of 2.6

million hectares of land was affected by the forest and land fires that hit Indonesia between 2015 and 2019, of which 1.6 million hectares were burned. Indonesia experienced forest and land fires covering 1.15 million hectares (70%) on mineral land and 0.49 million hectares (30%) on peat land in 2019 as a consequence of the identification of widespread forest and land fires. The provinces with the highest number of forest and land fires based on their distribution are Central Kalimantan Province (317,749 hectares) and South Sumatra Province (336,798 hectares) (Azhari, 2021).

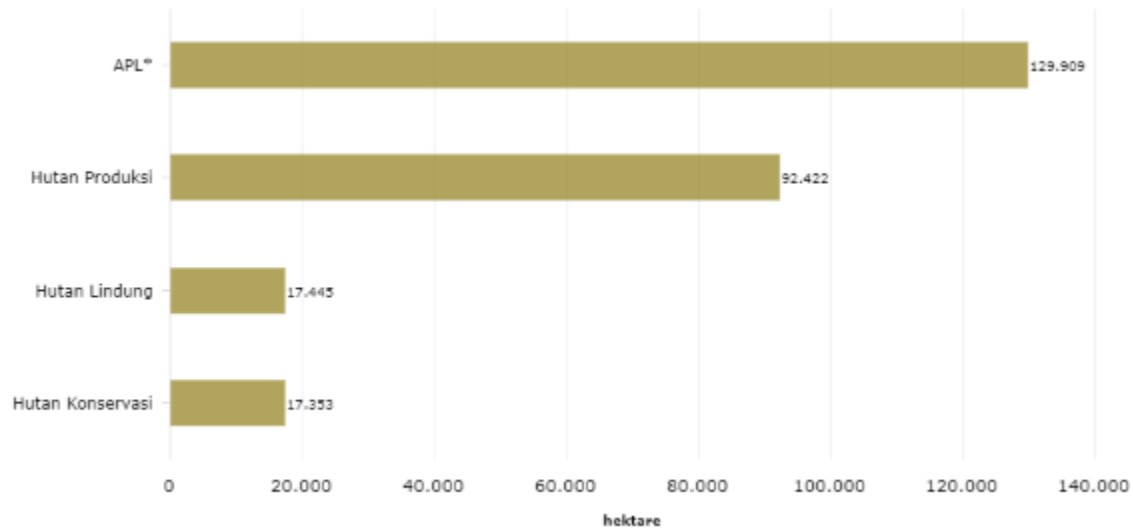


Figure 1. Area of Forest Fires in Indonesia (January-August 2023)

Source: (Ahdiat, 2023)

Forest and land fires ("Karhutla") in Indonesia have increased significantly this year during the dry season, according to the non-profit organization Madani Sustainable. Based on their monitoring findings, an area of 152,678 hectares is an indicative area for land fires and forest and land fires in Indonesia in August 2023 alone. This number has doubled compared to the previous month. The total area of the national forest and land fires indicative area when compiled has exceeded 250,000 hectares in the period January–August 2023. This number exceeds the area of forest and land fires throughout the previous year. Madani Lestari also found that Production Forests and Other Use Areas had the highest proportion of indications of forest and land fires in the period January to August 2023. Furthermore, Production Forests and Other Use Areas is an area designated for development that is not related to forestry which is not within state forests. Then, Production Forest aims to produce forest products for the needs of the general public as well as for development, industry and export. Based on Madani Lestari statistics, the indicative area of land and forest fires in the Production Forests and Other Use Areas sectors nationally in January–August 2023 was 129,099 hectares, while in Production Forests it was 92,422 hectares. However, as depicted in the graph, the area of fires in Protected Forests and Conservation Forests tends to be smaller. (Ahdiat, 2023) This research aims to examine Criminal Liability for Forest Burning in Indonesia.

METHOD

This study uses normative legal methods which are supported by literature reviews from various scientific journal sources published in 2019-2023. The legal research materials obtained will be collected, categorized for each variable, and then carried out qualitative analysis. The statutory approach and conceptual approach are analytical approaches used in legal texts.

RESULTS

The research on forest burning crimes provides valuable insights into the challenges and implications of enforcing laws related to these offenses. One study conducted by Mulkan and Aprita (2022) in South Sumatra, utilizing a normative juridical approach, reveals that legal handling of such crimes faces considerable obstacles. Factors like difficult-to-reach locations, flammable peatlands, and the complexities of gathering evidence contribute to the ineffective enforcement of regulations. This underscores the urgent need for more robust strategies to combat forest burning in the region.

Another research effort by Hidayat (2022) explores law enforcement against perpetrators of criminal acts causing forest and land fires in the Barisan Wildlife Conservation Forest Area. Employing an analytical descriptive method, the study proposes grouping perpetrators based on their roles for more effective legal accountability. The application of multiple forestry laws ensures comprehensive charges against these individuals, aiming to enhance deterrence and accountability.

A conceptual approach is taken by Pratama et al. (2022), who analyze forest burning as an environmental crime from a human rights perspective. The study emphasizes the violation of individuals' rights to a healthy environment due to forest burning. It calls for decisive governmental action against perpetrators and emphasizes the importance of supporting those affected by these environmental disasters.

In a juridical analysis, Achamadi Abby and Junadi (2021) discuss the concept of liability based on the principle of vicarious liability in forest and land fire crimes. The study highlights the criminal responsibility of corporations involved in unlawful acts leading to forest fires. It also emphasizes the accountability of rights or permit holders for incidents within their operational areas.

Wardhany's research (2022), adopting a normative law perspective, focuses on corporate criminal liability in forest fires causing environmental damage. The study underscores the detrimental impacts of forest fires on the environment, including effects on food crops, public health, and global climate. It highlights the need for corporations, as legal entities, to bear criminal responsibility for such environmental harm.

Johar (2020) contributes to the discussion by emphasizing the criminality of forest burning in Riau Province, drawing on an Islamic law perspective. The study points to existing laws and suggests collaborative efforts between the government, police, and religious figures for public education and awareness, ultimately reducing the likelihood of forest fires.

Lastly, Johara et al. (2022) approach the issue from a sociological law perspective, exploring criminal liability for environmental pollution and damage due to forest and land burning in Riau Province. The study identifies obstacles in holding companies accountable, including legal challenges in court and complexities in determining responsibility for criminal acts committed by involved companies. These findings collectively shed light on the multifaceted challenges and potential solutions in addressing forest burning crimes.

DISCUSSION

Forest Burning in Indonesia

The terms fire and burning have different connotations. Fire is characterized as an unintentional act, but arson is considered an intentional act. Which combustion can cause a fire? Because forest fires and burning are not the same thing, misinformation regarding their impact often occurs. (Purba & Siburian, 2023). The problem of deforestation in Indonesia not only impacts its own country but also ASEAN countries due to smog and air pollution. Cooperation between ASEAN countries needs to be carried out to control forest fires. It can be said that air pollution is a global problem that affects everyone's business and is a problem that continues to be faced by big cities throughout the world, both developed and developing countries (Sihombing, 2022).

In theory, entire forest areas can be used for various reasons. However, to gain full benefit from forests, we must consider their specificities and levels of vulnerability. Another technique worth considering is not to change the primary function until extensive research is complete. Forest exploitation must be consistent with the main dynamic functions of forests, namely conservation,

protection and production. Apart from that, forests must also be used synergistically to maintain the quality of the area. Even though production forest conversion is not prohibited by law (Law Number 41 of 1999), it is an obligation (Guntara, 2021).

Environmental problems that occur in Indonesia which are repeated every year are cases of forestry and land burning, where accusations of failure to save the environment are part of the government's failure to act in a very reasonable manner. Isn't environmental management the responsibility of the government? Isn't the government also able to "criminalize" as well as "equalize" these irresponsible takers of environmental resources? Looking at the role of government, it cannot be denied that environmental law is a unique combination of administrative law (*administrative law*), criminal law and also civil law (Roza, 2020).

The Impact of Forest Burning in Indonesia

In general, there are two main causes of forest fires: (1) natural causes, such as hot weather or temperatures that cause drought, which ultimately causes forests to burn, and (2) human causes, such as deliberate burning of forests, namely forests that will be used as plantations. For example, oil palm plantations have replaced several forests in Kalimantan and Sumatra. In general, organized community groups, whether corporate or non-corporate, legal or non-legal entities, have carried out forest burning, not individuals. This is due to the fact that burning is the simplest way to clear land, even though there are potential detrimental impacts. (Pratama et al., 2022)

According to Dr. Suwondo, MS, as Coordinator of the Center for Environmental Studies at Riau University, losses due to forest and land fires reached IDR 50 trillion, which came from disruption to the trade, service, culinary, plantation sectors and time delays. Losses from aviation activities. Apart from that, there are immaterial losses that are difficult to measure, such as child and infant deaths, widespread ISPA attacks, the potential for lung disease in the future, and other undetected impacts. However, despite causing both material and immaterial losses due to forest and land fires, legal entities involved in forest and land fire activities in Riau have not fully touched and reached out to related intellectuals and corporate actors. The dynamics of law enforcement regarding public reports against corporations is very complicated, as proven in 2016, after the devastating fire in 2015, the Riau Regional Police issued a letter of termination of investigation (SP3) against 15 of the 18 companies whose concessions were suspected to have been burned (Ridwan, 2020).

Forest and land fires are a tragedy that has a wide impact and causes losses not only in Indonesia but also in neighboring countries. This can be seen from the protests of neighboring countries such as Singapore, Malaysia and Brunei Darussalam against the thick smoke and haze caused by burning of forests and land which has an impact on public health and transportation networks. (Johara et al., 2022). Moreover, forest and land fires have become a global disaster with enormous consequences and losses, the impact of which was not only felt by the people of Indonesia but also neighboring countries. Objections have been expressed in neighboring countries such as Singapore, Malaysia and Brunei Darussalam to highlight the problem of thick smoke and haze produced by forest and land fires, which have a detrimental impact on public health and transportation networks.

Regulations against Forest Burning

Forest burning is a fast and cheap method of clearing land, so burning is considered the easiest and most profitable step for interested parties such as corporations or companies. This action often triggers massive forest fires which have a negative impact on the surrounding environment, many companies continue to carry out this practice even though the consequences are very dangerous. Therefore, it is very possible to hold corporations criminally responsible in situations like this. The aim is to provide significant influence to the board of directors on how to improve company management as much as possible to ensure that the company complies with its obligations. (Pratama et al., 2022)

The element of intention or negligence is often found in the formulation of environmental crimes in environmental legislation. Criminal liability in environmental laws and regulations adheres

to the definition of liability based on fault by including the factors of intent and negligence. As a result, it follows the concept of error or error principle. (Johara et al., 2022)

In criminal law, the principle of responsibility states that individuals will not be subject to sanctions if there is no error. Because the Criminal Code is the basis for the implementation of criminal law in Indonesia, all applicable provisions in the Criminal Code immediately apply to all criminal regulations that are outside the scope of the Criminal Code. Law Number 32 of 2009 concerning Environmental Conservation and Management is one of the laws and regulations that has criminal implications. The criminal culpability system is automated and operates based on the concept of culpability. A legal entity or company is also considered to have committed an environmental crime if the environmental crime is committed by people who have a work relationship with the corporation or other relationship with the corporation and operate in the environment/atmosphere of the corporation.

Furthermore, provisions regarding the criminal act of burning land are regulated in Article 108 of Law Number 32 of 2009 concerning Environmental Management which states that individuals who deliberately burn land in accordance with the provisions in Article 69 paragraph (1) letter h will receive a prison sentence. a minimum of three years and a maximum of ten years and a fine of at least IDR 3 billion and a maximum of IDR 10 billion.

Although the burden of criminal law does not require its application to exceed its limits, it is important to be aware of the limitations inherent in its application, such as the principles of legality and error. Criminal law has a significant role in law enforcement actions against polluters and destroyers of forests as the lungs of the world (Yusyanti, 2019). Furthermore, the state's responsibility is to ensure the preservation of a healthy forest environment to support the lives of citizens. Thus, definite legal action is needed for anyone who has violated environmental protection provisions which are the cause of forest fires. This legal method is quite feasible because the act of burning forests to clear land is regulated by law as an environmental crime.

Finally, the government's role is to carry out effective recovery efforts, including providing compensation to affected communities. Effective remedies are needed to compensate the state for violations of society's need to live a decent and healthy life. If we refer to Law Number 26 of 2000 concerning Human Rights Courts, the term compensation itself means "compensation for losses provided by the state because the perpetrator is unable to provide full compensation for the losses for which he is responsible."

CONCLUSION

From the results of the explanation that has been discussed, it can be concluded that the problem of deforestation in Indonesia not only impacts its own country but also ASEAN countries due to smog and air pollution. In general, there are two main causes of forest fires: (1) natural causes, such as hot weather or temperatures that cause drought, which ultimately cause forests to burn, and (2) human causes, such as intentional forest burning. Forest and land burning is a disaster that has a wide impact, and losses are not only experienced by Indonesia, but also by neighboring countries such as Singapore, Malaysia and Brunei Darussalam.

Law Number 32 of 2009 concerning Environmental Conservation and Management is one of the laws and regulations that has criminal implications. Provisions regarding the criminal act of burning land are regulated in Article 108 of Law Number 32 of 2009 concerning Environmental Management which states that individuals who deliberately burn land in accordance with the provisions in Article 69 paragraph (1) letter h will receive a minimum prison sentence of three years and a maximum of ten years and a fine of at least IDR 3 billion and a maximum of IDR 10 billion.

REFERENCES

Achamadi Abby, F., & Junadi, A. (2021). The Concept of Liability Based on the Vicarious Liability Principle in Forest and Land Fire Crimes. *Journal of Citizenship Education*, 11(1), 97–106.

- Ahdiat, A. (2023). *Forest Fires Increase, Majority in APL and Production Forests*. Data said. <https://databoks.katadata.co.id/datapublish/2023/09/05/kebakaran-hutan-meningkat-mayoritas-di-apl-dan-hutan-produk>
- Azhari, T. (2021). Criminal Liability Committed by Corporations for Environmental Damage as a Result of Forest and Land Fires (Case Study Case Number 59/PID). B/LH/2020/PN. RGT). *International Journal of Social Science and Human Research*, 04(12), 3814–3830. <https://doi.org/10.47191/ijsshr/v4-i12-50>
- Aziz, A., Syahrin, A., Din, M., & Rasyid, M. N. (2018). Corporate Criminal Responsibility in The Criminal Offense Of Burning Land, Forests Or Plantation. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 23(8), 48–56. <https://doi.org/10.9790/0837-2308044856>
- Guntara, D. (2021). Criminal Liability against Business Entities Committing Forest Burning in the Perspective of the Development of Environmental Criminal Law. *International Journal of Arts and Humanities Studies*, 1(1), 129–132. <https://doi.org/10.32996/ijahs.2021.1.1.19>
- Hidayat, R. (2022). Law Enforcement against Perpetrators of Criminal Acts who Jointly Cause Forest and Land Fires in the Barisan Wildlife Reserve Conservation Forest Area (Police Report Number: Lp/246/B/Ix/2019/Polres Solok Kota). *UNES Journal of Swara Justisia*, 6(3), 239. <https://doi.org/10.31933/ujsj.v6i3.266>
- Johar, O. A. (2020). The Crime of Forest Burning in Riau Province According to an Islamic Law Perspective. *Mizan: Journal of Islamic Law*, 4(2), 161. <https://doi.org/10.32507/mizan.v4i2.802>
- Johara, O. A., Daeng, M. Y., & Tri, N. M. (2022). Criminal Liability for Environmental Pollution and Damage Due to Forest and Land Burning in Riau Province. *Respublica Law Journal, Faculty of Law, Lancang Kuning University*, 21(2). <http://journal.unilak.ac.id/index.php/Respublica/article/view/10150%0Ahttps://journal.unilak.ac.id/index.php/Respublica/article/download/10150/3989>
- Mulkan, H., & Aprita, S. (2022). Law Enforcement System for Forest Burning Crimes in South Sumatra. *Batanghari University Jambi Scientific Journal*, 22(3), 1496. <https://doi.org/10.33087/jiubj.v22i3.2425>
- Pratama, S. M., Mutiara Putri, M., & Hafiz, M. (2022). Forest Burning as an Environmental Crime: Analysis from a Human Rights Perspective. *Journal of Legal Analysis*, 5(1), 1–13. <https://doi.org/10.38043/jah.v5i1.3157>
- Purba, I. H., & Siburian, S. M. P. (2023). Criminal Law Policy in the Crime of Forest Burning Study in Pelalawan Regency, Riau Province. *Rectum Journal*, 5(1), 1081–1095.
- Ridwan, M. (2020). *The Dynamics of Corporate Criminal Liability in Riau Province as a Result of Forest and Land Fires*. 442(Ramlas 2019), 48–51. <https://doi.org/10.2991/assehr.k.200529.265>
- Roza, I. . (2020). Implementation of Strict Liability in The Settlement of Environmental Disputes Related to Land and Forest Burning in Indonesia. *Proceeding Social Science*.
- Rusdyani, A. (2023). *Determination of Criminal Liability of Enterprises in Forest Fires under the Principle of Strict Responsibility*. 6(04), 141–148.
- Sihombing, L. A. (2022). LAW ENFORCEMENT OF CORPORATE CRIME IN FOREST FIRE IN. *Infokum Journal*, 10(5), 1472–1476.
- Wardhany, N. E. F. (2022). Corporate Criminal Liability in Forest Fires That Cause Environmental Damage. *Legality: A Law Journal*, 14(1), 177. <https://doi.org/10.33087/legalitas.v14i1.326>
- Yusyanti, D. (2019). The crime of burning forests and land by corporations to open plantation businesses. *Journal of De Jure Legal Research*, 19(4), 455. <https://doi.org/10.30641/dejure.2019.v19.455-478>

Copyright holder:

Hasudungan Sinaga (2023)

First publication right:

This article is licensed under:

