

CORPORATE CIVIL LIABILITY IN COMPENSATION FOR ENVIRONMENTAL AND FORESTRY DAMAGE DUE TO FOREST FIRES IN PADANG LAWAS REGENCY

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ABSTRACT

The increasing population has the potential to increase the need for land, on the other hand, faced with the fact that the land area does not increase. The easiest target to access is the forest area. This is what opens up opportunities for forest fires. The formulation of the problem in this thesis research is how the legal regulation of forest fires in Indonesia, how the law is enforced against perpetrators of forest fires in Padang Lawas Regency, what are the obstacles and efforts in overcoming criminal acts of forest fires in Padang Lawas Regency. The legal regulation of criminal acts of forest fires is regulated in Law No. 41 of 1999 concerning Forestry, Law No. 32 of 2009 concerning Environmental Protection and Management and Law No. 39 of 2014 concerning Plantations which states that managing forests and land by burning can be punished and if the act is carried out by and on behalf of a corporation then the corporation is responsible. Law enforcement against criminal acts of forest burning in Padang Lawas Regency is carried out in accordance with applicable laws and regulations by carrying out stages starting from receiving reports regarding forest and land fires.

1. Introduction

The goal of forests for the greatest possible prosperity of the people is achieved through optimizing various forest functions, including conservation, protection, and production, to achieve balanced and sustainable environmental, social, cultural, and economic benefits. Production forests are forest areas whose primary function is to produce forest products. Conservation forests are forest areas with specific characteristics, primarily preserving plant and animal diversity and their ecosystems. Protection forests are forest areas whose primary function is to protect life support systems, regulating seawater management and maintaining soil fertility. If forest functions are not functioning properly, the potential for natural disasters and environmental damage will be difficult to mitigate. On the other hand, increasing pressure on forest resources is unavoidable. This pressure has led to an increase in the amount of vacant land, with forest land being

converted to agricultural land. The exploration and exploitation of natural resources is often influenced by a paradigm that views resources as a source of income rather than capital.

As population growth increases, so will the need for land for housing, farming, and subsequently for other businesses as a source of livelihood. The closeness and dependence of communities living around forest areas on the forest itself triggers burning activities, even though environmental conservation aspects were initially prioritized. Consequently, the inevitable damage to forest resources disrupts the environmental balance, resulting in frequent erosion, flooding, drought, silting of rivers, reservoirs, and irrigation channels. Forest destruction has far-reaching impacts on environmental, economic, institutional, and socio-political aspects, particularly those related to the accessibility and biodiversity of forest resources.

The concept of natural resource conservation is essentially a manifestation of an awareness of the urgency of preserving environmental functions for the continuation of life. One relatively popular form of natural resource conservation is the national park. Its popularity is inextricably linked to the recreational safari tradition, first introduced by Western European civilization during the colonial era. This also forms the connotation of national parks (as the equivalent of the term "national park"), that national parks are areas useful for nothing more than enjoying the exotic beauty of nature and the worship of charismatic, endangered species. Essentially, all activities utilizing forest resources (within forest areas) can be considered burning. In this understanding, burning is nothing more than a manifestation of tenure practices. In the context of tenure practices, land ownership is a determining factor because it is related to land as the primary basis for cultivation (agriculture) to achieve the expected utilization of it.

From a conservation perspective, burning significantly influences the environmental carrying capacity and carrying capacity. Carrying capacity and carrying capacity within the context of conservation equate to maintaining the integrity of forest ecosystems, which are expected to provide ecological benefits. From a narrower perspective, as an effort aimed at preserving and protecting natural resources (forests), changes in land use (conversion) will result in threats to the potential of natural resources, especially biological ones. To anticipate, mitigate, overcome, and eradicate forest and forestry crimes, which are increasingly out of control and threaten forest sustainability, legislative policies related to forest crimes urgently need to be amended. With the shift in power from the New Order to the Reform era, forestry laws have emerged that are more progressive than previous ones.

This is demonstrated by the creation of forestry laws that address the weaknesses and obstacles to law enforcement during the New Order era, including the issuance of Law No. 41 of 1999 concerning Forestry in conjunction with Law No.

19 of 2004 concerning Amendments to Law No. 41 of 1999 concerning Forestry. The criminal provisions in Law No. 41 of 1999 are broader in scope and are considered to be a deterrent if criminal law enforcement is implemented, thereby ensuring the implementation of forest management in Indonesia. Various laws and regulations have mandated law enforcement as a response to concerns about forest destruction, but to date, there has been no improvement in law enforcement as a means of protecting and managing forests in Indonesia. The level of forest destruction in Indonesia continues unabated.

2. Research Method

This research is descriptive and analytical, meaning it describes, examines, explains, and analyzes the problems in the crime of forest burning, as it relates to laws and regulations, which are then analyzed. This research is a scientific activity based on specific methods, systems, and thinking aimed at studying a specific law through analysis. The analysis examines the legal aspects, both in terms of the provisions of applicable regulations concerning law enforcement regarding forest burning. The type of legal research used is normative juridical, supported by empirical juridical data. Normative juridical is "research that places norms as the object of research, both legal norms within laws and legal norms derived from laws." Also known as doctrinal legal research, this is "legal research that uses secondary data." Normative legal research is known as qualitative legal research. Empirical legal research involves conducting interviews.

The data collection tool used to gather the necessary supporting data is documentary studies, which are used to obtain secondary data by reading, studying, researching, identifying, and analyzing secondary data related to the research object. This secondary data is obtained by studying books, research results, and legal documents related to law enforcement against forest fires.

3. Research Results And Discussion

Forests are a form of life spread throughout the world. We can find them in both tropical and cold climates, in lowlands and mountains, on small islands and on large continents. A forest is a collection of plants, primarily trees or other woody plants, that occupy a significant area.

Indonesia's forests are one of the world's centers of biodiversity. Indonesia ranks third among the seven so-called Megadiverse Countries. The forestry sector has been instrumental in realizing socio-cultural integration, leading to regional integration, for decades. The problem is that over the past decade, the forestry sector's role in regional integration has become quite absurd. According to Law Number 41 of 1999 concerning Forestry, a forest is a unified ecosystem consisting

of expanses of land containing biological natural resources dominated by trees in a natural environment that is inseparable from one another. Forestry, on the other hand, is a management system related to forests, forest areas, and forest products, managed in an integrated manner.

Meanwhile, the definition of a forest area in Article 1 paragraph 3 of Law No. 41 of 1999 concerning Forestry explains that a forest area is a specific area designated by the government as a permanent forest area. From the definitions of forest and forest area as stated in the Forestry Law above, it can be concluded that the definition of forest is a physical or ecological one, namely an expanse of land/soil dominated by trees as a unified ecosystem. Meanwhile, the definition of a forest area is a juridical or legal status, namely a specific area or region designated and/or designated by the government to be maintained as a permanent forest, as defined in the Law. When viewed from its function, forest areas are divided into four: protected forests, production forests, nature reserve forests, and tourism forests.²⁴ The same thing regarding the legal status of forest areas is outlined in Minister of Forestry Regulation No. 50 of 2009 concerning the Affirmation of the Status and Function of Forest Areas. This regulation outlines the legal status of forest areas, namely protected forests, production forests, nature reserve forests, and tourism forests. In addition, it also contains information about the extent, boundaries, and location of forest areas.

One effort undertaken by the Ministry of Environment and Forestry (KLHK) is to establish forest management areas within forest management units (Law No. 41 of 1999, Article 17), better known as forest management units (FMUs). Hariadi Kartodihardjo et al. (2011) state that FMUs are a concept for forest management zones aimed at achieving optimal, sustainable, and equitable forest management in accordance with their primary functions and designations. To achieve this goal, FMUs are expected to serve as information centers regarding potential and threats to forest areas, changes in forest areas, and the socio-cultural conditions of communities within and around forests. In Dutch legal literature, policy is known as *pseudowetgeving*, *spiegelsrecht*, or *beleidsregel*. In German, it is called *verwaltungsvorschriften*. Meanwhile, quasi-legislation, pseudo-legislation, policy rules, policy, quasi-law, administrative quasi-legislation, administrative rules, tertiary legislation, tertiary rules, quasi-delegated legislation, sub-delegated legislation, or soft law are various terms used in English legal literature. The policies to be implemented will encompass law enforcement activities primarily aimed at improving order and legal certainty in society. To this end, the coordination system will be strengthened and the duties of law enforcement agencies harmonized. This will be achieved, among other things, by streamlining the functions, duties, powers, and authorities of law enforcement institutions according to their respective professional scopes and based on a sound

cooperative system. According to Wayne Lafavre in Soerjono Soekanto, law enforcement as a process is essentially the application of discretion involving making decisions that are not strictly regulated by legal rules, but have elements of personal judgment. Thus, discretion is essentially between law and morals (ethics in the narrow sense).

Regarding the responsibility of perpetrators of criminal acts of forest and/or land burning, so that they can be punished, the perpetrator must fulfill the elements as stated in Article 187 paragraph (1) in conjunction with Article 188 of the Criminal Code. To be able to declare a suspect who is accused of violating the prohibition stipulated in Article 187 paragraph (1) in conjunction with Article 188 of the Criminal Code proven to have intentionally committed the crime of forest and/or land burning, therefore the Padang Lawas Police as a law enforcement institution takes law enforcement steps in accordance with standard operating procedures and applicable laws and regulations. The application of Article 187 paragraph (1) in conjunction with Article 188 of the Criminal Code is an effort by the Indonesian National Police to enforce the law against the crime of forest and/or land burning (Karhutlah) where the perpetrators are individuals, not corporations. Many cases of forest and/or land fires are perpetrated by individuals clearing land for farming by using burning to make clearing easier. However, it is not uncommon for forest and/or land fires to be perpetrated by corporations operating in the plantation sector. The impact of these forest and/or land burning activities causes thick smoke, resulting in air pollution that can disrupt public activities and health. If environmental pollution and/or destruction occurs due to fire, criminal liability is regulated in Law Number 32 of 2009 concerning Environmental Protection and Management in Article 98 paragraph (1) and Article 99 paragraph (1). Article 98 paragraph (1) states that "Any person who intentionally commits an act that results in exceeding the ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, 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 Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah)."

Article 99 paragraph (1) states that "Any person who, due to negligence, results in exceeding the ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah)"

The form of criminal liability for corporations committing forest and land fires under Law Number 32 of 2009 concerning Environmental Protection and Management is contained in Article 116 paragraphs (1) and (2). The procedures

stipulated in Supreme Court Regulation No. 13 of 2016 begin with a summons if the defendant is a corporation. This article explains that a summons for trial can be served at the address of the corporation's domicile or the address where the corporation conducts its operations. If the address is unknown, the summons can be served through certain mechanisms. The form of criminal liability for corporations according to Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, Article 23 Paragraph (1) states that a judge can impose a penalty on a corporation or its management, or both the corporation and its management. Article (2) states that the judge will impose the sentence referred to in Article (1) based on the respective laws governing criminal penalties for corporations and/or their administrators. Article (3) states that the imposition of a sentence on a corporation and/or its administrators as referred to in Article (1) does not preclude the possibility of imposing a sentence on other perpetrators who, based on the provisions of the law, are proven guilty of the crime.

Article 25 of Supreme Court Regulation No. 13 of 2016 regulates the principal and/or additional penalties for corporations. The principal penalty imposed on corporations is a fine, while the additional penalties imposed on corporations are in accordance with the provisions of applicable laws and regulations. The purpose of forest management is not only to produce wood for carpentry, but also to utilize forest resources for all types of forest products that can be produced in various locations. The orientation of forest management has shifted from the interest of obtaining financial gain for companies to the interests and needs of the community, especially those residing in and around forests.

Unlike large-scale timber plantation management, which uses a company-class concept for a single forest area as a unit within a social forestry strategy, forest management varies according to the physical characteristics of the micro-region and social influences (management regimes), to maximize forest area productivity. Forest resource management, according to Decree of the Chairman of the Supervisory Board of Perum Perhutani No. 136/KPTS/DIR/2001, is a forest resource management system carried out jointly by Perum Perhutani and village communities, or Perum Perhutani and forest village communities, with stakeholders, with a spirit of sharing, so that the shared interest of achieving sustainable forest resource functions and benefits can be realized optimally and proportionally.

According to Law Number 23 of 2014 concerning Regional Government, forest management is a management policy system oriented toward collaboration between companies and local governments in building partnerships with forest village communities and stakeholders. This is based on the principles of shared learning, mutual trust, and mutual respect for each other's roles in the context of

forest resource management. This integration of economic, ecological, and social aspects is proportional, in accordance with the objectives of Law Number 41 of 1999 concerning Forestry. The forms of forest management activities carried out by Perum Perhutani and the Regional Government with forest village communities and stakeholders include sharing in land use or spatial planning, sharing in time use, and sharing in the use of natural resource products, based on the principles of mutual benefit, mutual reinforcement, and mutual support. Forms of forest resource management activities that can be managed collaboratively with communities include land-based activities (land-based) carried out within forest areas and can be developed outside forest areas by utilizing land or space through planting patterns adapted to regional characteristics. Cropping patterns that are appropriate to regional characteristics are those that can develop the diversity of forestry, agricultural, plantation, livestock, and fishery commodities while optimizing the function and benefits of natural resources.

4. Conclusion

Legal regulations regarding forest burning by corporations in Indonesia are regulated by Law No. 41 of 1999 concerning Forestry, Law No. 32 of 2009 concerning Environmental Protection and Management, and Law No. 39 of 2014 concerning Plantations. These laws stipulate that managing forests and land by burning is a criminal offense, and if the act is carried out on behalf of or for a corporation, the corporation is responsible. Civil liability for corporations that carry out forest burning in Padang Lawas Regency is carried out in accordance with applicable laws, starting with receiving reports of forest and land fires, conducting an investigation to determine whether there are elements of a criminal offense based on the report received, and then conducting an investigation to gather evidence and examine witnesses to identify suspects.

Obstacles in overcoming forest fires in Padang Lawas Regency are influenced by several factors including legal means, law enforcement officers, facilities and infrastructure, public awareness in environmental matters, and social factors. Efforts that have been made are to prevent forest and land fires by coordinating with the government and the community by issuing appeals to the community regarding sanctions for burning forests and land, socialization by Babinsa and Bhabinkamtibmas regarding the prohibition of burning forests, holding coordination meetings at the police, sub-district, and village levels to be ready to handle forest fires, completing facilities/tools to facilitate handling forest and land fires, and conducting land patrols.

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