

International Journal of Judicial Law

Environmental criminal action on forest and land burning in Pontianak City

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Article Info

ISSN (online): 2583-6536

Volume: 02

Issue: 01

January-February 2023

Received: 02-01-2023;

Accepted: 19-01-2023

Page No: 01-03

Abstract

The crime of the forest and land was burning that occurred in Indonesia, especially in the city of Pontianak is an environmental crime that is very worrying and requires firm action from the government. Criminal sanctions against perpetrators of a forest and land fires are regulated in the Criminal Code, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 39 of 2014 concerning Plantations and regulation of the Minister of the Environment Number 10 of 2010 concerning Pollution Prevention Mechanisms and/or the environmental Damage Related to the forest and/or Land Fires. There is a contradiction between article 187 of the Criminal Code and Article 56 paragraph (1) of the Plantation Law which clearly prohibits forest burning and article 69 paragraph (2) of the Law on Environmental Protection and Management. The purpose of this paper is to discuss environmental crimes by burning a forest and land, to examine the problem of conflict norms in the crime of the forest and land burning using normative research methods through a statutory approach, so as to find a solution to the conflict of norms.

DOI: <https://doi.org/10.54660/IJL.2023.2.1.01-03>

Keywords: sanctions, burning, a forest, land, Pontianak

Introduction

Indonesia today, especially the city of Pontianak, is facing very worrying environmental problems and the number of environmental crimes that occur has resulted in increasingly worrying environmental conditions. Pontianak is one of the cities with an increasingly worrying problem of land fires. Forests are one of the natural resources and are a buffer for the community, therefore forest sustainability must be maintained and maintained optimally ^[1].

Land fires can occur if there is heat, air, and fuel, climatic factors only partially occur if there is no cause and effect of an environmental crime that is common in Indonesia, especially in Pontianak ^[2]. The land can be in the form of a peat swamp which is very prone to fire, the method of burning is cheaper and the results obtained are quite satisfactory compared to the method of land clearing which is regulated by law. As a result, the arsonists, both individuals, and groups, prefer to burn the land as a prelude to further seeding.

Farming communities wherein clearing land for agriculture always burn because it has become a hereditary habit, because when land that can no longer be productive, it makes it easier to cultivate crops and farming communities assume that when land that cannot be productive is burned the land will be fertile. Knowledge of rural communities in forest management for agriculture is heavily influenced by cultural elements and religious values that guide the community in managing forests. Many rural communities do not know the rules of national law, so clearing forests and land for agriculture will be in conflict with the laws and customs of the local community ^[3].

Land fires are still burning every year in Indonesia, especially in Pontianak due to a lack of public awareness and concern so

1. Marwan Efendy, 2004, Aspek Pidana Penyalahgunaan Sumber Daya Kehutanan Terkait Dengan Otonomi Daerah, Disampaikan Dalam Seminar "Keberadaan Sumber Daya Hutan Berdasarkan UU No.32 Tahun 2004, Jakarta, 7 Desember 2004

2. Qadriyatun SN. 2014. Kajian Singkat Terhadap Isu-isu Terkini Kebijakan Penanganan Kebakaran Hutan dan Lahan. Info Singkat Kesejahteraan Sosial 6(6):9-12

3. Suryanto, Unna Chokkalingan dan Prianto Wibowo, 2004, Kebakaran di Lahan Rawa/Gambut di Sumatera Masalah dan Solusi, Center for Internasional Forestry Research, Jakarta, hlm 3

that cases of forest and land fires in the city of Pontianak are still high inactivity.

Destruction of forests in Indonesia is a country that carries out the largest forest destruction, one of which is forest and land burning. Because the community lacks awareness and concern in conserving forests, there are still many cases of forest and land burning in Indonesia, especially in the city of Pontianak. This forest and land burning is an example of an environmental cause that is very worrying and requires strong government and community involvement to prevent forest and land fires in the city of Pontianak.

Indonesia basically has laws that regulate environmental issues, namely the Criminal Code (KUHP), Law Number 32 of 2009 concerning Environmental Protection and Management, and Law 39 of 2014 concerning Plantations and the Minister of Environment Regulation Life Number 10 of 2010. Environmental law has enforced the law with rules that can lead to criminal acts with the threat of severe punishment as a last resort to maintain and preserve the existing environment.

Problem Formulation

1. How is the crime of forest and land burning regulated in Indonesian laws and regulations?
2. What are the conflicting rules between Indonesian laws and regulations governing forest and land burning?

Purpose

The aim is to explain the regulation and criminal sanctions against the crime of burning forest and land as an environmental crime and to find out the resolution of conflicts of norms in forest and land fires.

Discussion

A. Application of Criminal Sanctions for Land Burners in Indonesia

Forest and land burning is a criminal act of crime because the act has a harmful and detrimental impact on many people, and has fulfilled the elements of a criminal act so that there are sanctions for the perpetrators^[4]. Because by law this criminal sanction is aimed at enforcing environmental norms, this criminal sanction appears as a reaction to the enforcement of disobedience to environmental norms.

The existence of laws and regulations is needed to regulate criminal acts in forest and land burning. The laws and regulations that have the task of regulating, preventing, and tackling Forest and Land Burning are also regulated in various laws and regulations, namely: the Criminal Code, Law Number 32 of 2009 concerning Environmental Protection and Management, Law No. Law Number 41 of 1999 concerning Forestry and Law Number 39 of 2014 concerning Plantations.

Article 187 of the Criminal Code "Whoever intentionally burns, causes eruptions or causes flooding, is punished with imprisonment for a maximum of twelve (12) years, fifteen (15) years, up to life imprisonment or for a certain period of time. a maximum of twenty (20) years, so that this article can be used to ensnare the perpetrators of forest and land burning. Article 69 paragraph (1) of Law Number 32 of 2009 concerning Environmental Management also regulates the

prohibition of opening by burning. In this article, it can threaten local communities to open agricultural land or residences by burning. Fortunately, in paragraph (2) of Article 69 of Law Number 32 of 2009 concerning Environmental Management, it still regulates local wisdom for the surrounding community by opening agricultural land or a place of residence that cannot exceed 2 hectares based on the Regulation of the Minister of the Environment Number 10 In 2010 with the provision that a small ditch is made on the edge as a land boundary to prevent the fire from spreading or spreading to other areas.

The government has also issued a regulation on sanctions that will be applied to the perpetrators of forest and land burning as a form of criminal responsibility in which the perpetrators of arson must be held accountable for their actions, as follows:

- a. The law on environmental protection and environmental management is in accordance with Article 98 which provides sanctions due to the forest and land burning. This article shows the existence of material crimes that emphasize the consequences of intentional forest and land fires.
- b. In Article 108 regarding the parties who burn land as referred to in Article 69 paragraph, 1 letter has stated in the Law on Environmental Protection and Management
- c. Articles 116 to 119 of the Environmental Protection and Management Law, which regulates the imposition of criminal charges against companies and explains which parts of a company can be prosecuted or held accountable, as well as additional penalties that can be imposed.
- d. Article 108 of the Plantation Law, which describes plantation entrepreneurs who will clear and/or cultivate the land by burning, as referred to in Article 56 paragraph 1).

Sentencing is closely related to the problem of criminal liability as a form of criminal law enforcement, wherein environmental crimes a double-track system is applied, namely the perpetrators of forest and land burning can be subject to imprisonment and fines that are cumulative and not cumulative. Alternative. Those who commit crimes of forest and land burning can be subject to fines and imprisonment. In addition, the responsibility for this crime can be seen from the element of whether there was negligence or intentional^[5]. In material or formal offenses a criminal act must have evidence before imposing sanctions, either intentionally or by negligence. The law considers that everything that is included as an element in the formulation of an offense must be proven according to the criminal procedure law, as well as forest and land burning must be proven in court^[6].

Based on various laws and regulations governing forest and land burning, it seems that the subject of this crime is an individual or a legal entity or company so that in the case of forest and land burning it is an environmental crime company. Companies (groups) as perpetrators of environmental crimes who are then prosecuted. Regarding corporate responsibility in proving fault is a complex

4. Nur Rochati, R.B. Sularto, J. I. S. "Kajian Kriminologi Terkait Penegakan Hukum Pidana Terhadap Tindak Pidana Pembakaran Hutan dan Lahan di Provinsi Riau", *Diponegoro Law Journal, Universitas Diponegoro*, Vol.26, No.22, 2017, h.9

5. Supriadi, "Hukum Lingkungan di Indonesia: Sebuah Pengantar", Sinar Grafika, Jakarta, 2008, h. 300.

6. Nyoman Serikat Putra Jaya, "Kapita Selekta Hukum Pidana", Badan Penerbit Universitas Diponegoro, Semarang, 2005, h.239.

problem, the form of law violation, whether intentional or negligence committed by the corporation is a difficult and complex thing to prove^[7].

To apply the law and impose criminal penalties on people who burn forests and land, it is necessary to enforce the law, with various law enforcement agencies working together to avoid duplication in the application of the law able to deal with environmental crimes.

B. Conflicting Norms between Indonesian Laws and Regulations Relating to Forest and Land Burning.

Based on the formulation of the articles of legislation governing the environment, in particular forest and land burning, it was found that there was a conflict with Law Number 32 of 2009 concerning Environmental Management in Article 69 exception paragraph (1) which stipulates that not everyone can open the country by burning it. However, in paragraph (2), everyone is allowed to clear land by burning if provided that the burned land for each family head to be planted with varieties is at most 2 hectares and surrounded by firebreaks to prevent the fire from spreading to the area according to their respective local wisdom area.

The contents of the previous article are not in accordance with the articles of other laws and regulations, such as Article 187 of the Criminal Code, Article 56 Paragraph 1 of Law Number 39 of 2014 concerning Plantations, which absolutely do not allow private individuals and companies to burn forests and land as a way to develop new land so that the conflict of rules that arise must be resolved. There is legal certainty to punish the perpetrators according to criminal law. This regulatory conflict can be resolved by the principle of preference, which can be used as a reference to determine which rules are used to impose criminal penalties if there is a discrepancy between various laws and regulations.

The principle of preference consists of the principle of *lex superior derogat legi inferiori* (higher legal provisions take precedence over subsequent statutory regulations), the principle of *lex specialis derogat legi generalis* (more specific regulations take precedence over general regulations), the principle of *lex posteriori derogat legi priori* (laws. new laws replace previous laws) and the imposition of criminal penalties can be adapted to these principles to determine which laws and regulations can be used to resolve fires. Forest and land for production.

Closing

Conclusion

From the results of the analysis conducted by the author on the problems described above, it can be concluded that:

1. The government has issued a prohibition not to burn forests and land, namely Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 39 of 2014 concerning Plantations as well as regulated in the Criminal Code. In addition, the rules in the law also explain criminal sanctions for perpetrators of forest and land fires
2. Conflict of government regulations between the Criminal Code, namely Article 187 with Article 69 paragraph 2 of the Environmental Protection and Management Law, and Article 56 paragraph 1 of the Plantation Law which states that the highest law (*lex*

superior) and overrides the lowest law (*lex inferior*). Which is commonly known as the *Lex superior derogat legi inferior* principle.

Suggestion

1. The normative conflict between laws and regulations regarding land burning must be resolved immediately by using *Lex superior derogat legi inferior*, namely the legal principle which states that the law is higher (*lex superior*) and overrides the lower law (*lex inferior*) to create legal certainty for the people public.
2. Law enforcement for perpetrators of land burning requires cooperation between law enforcement officers and community participation to prevent further forest and land fire crimes

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7. Sukandar Husin, "Penegakan Hukum Lingkungan Indonesia", Sinar Grafika, Jakarta, 2009, h. 124