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## *Juridical Analysis in Environmental Law Enforcement Efforts Against Forest Destruction*

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### KEYWORDS

Forest, fires, forest, law, enforcement

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### ABSTRACT

In this article, the author will discuss the application of criminal/administrative sanctions for Environmental Law Enforcement against Forest Damage, using a normative juridical approach. In 2015, the Ministry of Environment and Forestry recorded at least 95 hotspots of the source of haze in Sumatra and 61 hotspots in Kalimantan. The spread of haze caused by 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 were affected in Sumatra and 3 million people in Kalimantan were victims of the forest and land fires. The source of the fire is still not well understood, but the fire spots are spread and not influenced by differences in land types (Steenis and Fogarty 2001). This indicates that forest fires occur at the same level. This is the basis for the author to discuss the effectiveness of law enforcement for forest destroyers.

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### INTRODUCTION

The environment bestowed by God Almighty to the people and nation of Indonesia is His gift and mercy that must be preserved and developed in order to remain a source and support of life for the people and nation of Indonesia and other living beings and for the survival and improvement of the quality of life itself. Today the amount of quality natural resources in the World is decreasing. This will certainly greatly affect humans who still depend on natural resources. Humans will use at least 50 percent more of the natural resources provided by the Earth, even this will continue very quickly until 2030, while the Earth takes 1.5 years to be able to produce and replenish resources that have been depleted within one year. Growing human demands on natural resources can place tremendous pressure on biodiversity that threatens security, health, equity, and well-being.

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Every living thing, be it animals and plants, especially humans, really needs a healthy living environment to still be able to maintain and sustain life. So important and meaningful is a good and healthy living environment to support this life, the state also regulates the right of everyone to get a good and healthy living environment. In the 1945 Constitution Article "Everyone has the right to live a prosperous life physically and mentally, to reside, and to have a good and healthy living environment and the right to health services". Given the importance of the existence of a healthy living environment and the rights of every community (citizen), for that the State is obliged to be able to provide a healthy living environment for all people. Thus, the state should be able to maintain and preserve the environment for the sustainability of sustainable development. With the rapid development in all sectors and the rapid development of technology, humans in meeting their needs began to forget aspects of environmental sustainability. Technological development and development, whether we realize it or not, besides having a positive impact, also have a negative impact. The negative impact seen from the naked eye is the amount of environmental damage caused by the indiscriminate exploitation of natural resources and development that does not pay attention to aspects of environmental sustainability.

Forests have an important role for the lives of all living things. Forests in Indonesia not only consist of natural forests, but there are also artificial forests that are used for the benefit of the timber industry such as Acacia forests, Sengon forests and so on. Indonesia used to be known as the lungs of the world, but now the nickname is only a sweet memory that is not returned to the struggle for its sustainability both by the community and the Government as an authorized institution that has the authority to maintain and preserve natural conditions. Humans need support in living life. Therefore, people can obtain products such as food, medicine, wood for buildings and firewood and also enjoy the benefits of the influence of forests, namely microclimate and prevent erosion and maintain soil fertility, store water, provide fresh air and various other benefits.

Modern times like now, the use of forests in the field of tourism began to be intensified both by local communities and by local governments. The use of this forest is used to support the economy in the region as well as a tangible form of the community and local government that synergize to always protect and preserve forests for the survival of life in the future. Tourism management with the concept of forestry is one of the incomes that can support the State treasury in general and regions in particular. One of the efforts to get local native income can certainly increase the welfare of the community around the forest. But besides that, it is also very necessary to weigh and pay attention to the impact and environmental conditions where tourism stands, so that the existing natural conditions can be maintained sustainably, and become a tourist attraction that considers sustainable development.

On the other hand, the development of industries is inevitable in order to increase production and increase employment. However, industry can also cause environmental pollution. In addition, as a result of population density pressures and from poverty problems have encouraged residents in some parts of the State territory to use forest areas that should be protected for agricultural activities or for other activities.

Experience shows the importance of forests and forestry for the environment as well as the existence and sustainability of the Indonesian nation and mankind, including:

1. Forests and forestry are life support systems. A good or normal water system will support all sectors of the economy, both the agriculture, fisheries, livestock, as well as various manufacturing industries and service industries. A good and stable climate will maintain and increase the productivity of all sectors. Conversely, if forests are damaged, what will happen are various disasters: floods, erosion, landslides, droughts, and global warming that will reduce productivity and the emergence of various outbreaks of human, plant and animal diseases.
2. In the economic sector, forestry excels in building the Indonesian nation:

- a. Forestry can be the second largest foreign exchange earner after petroleum, reaching approximately \$ 7 billion<sup>1</sup>. With Indonesia turning into a petroleum importer, forestry could potentially become the largest foreign exchange earner in Indonesia. Demand for wood and its selling price tend to increase steadily. No other commodity has a market as stable growth as timber.
- b. For Indonesia as a developing country, the comparative / competitive advantage possessed is only the advantage in the wealth of natural resources (natural resources endowment) that is many and of good quality, not (yet) in human resources, capital and science and technology. Therefore, the forest sector is strategic for the Indonesian economy, as well as a means of preserving the environment and balancing the ecosystem. Recently, there has been a change in Indonesia's forests both in Sumatra, Kalimantan and in Papua so that Indonesia's forests are the lungs of the world and a means of balancing ecosystems. Reduced in extent and this threatens the world from the danger of global warming (global warming).

Forests as the capital of national development have tangible benefits for the lives and livelihoods of the Indonesian nation, both ecological, socio-cultural and economic benefits in a balanced and dynamic manner. For this reason, forests must be managed and managed, protected and used sustainably for the welfare of the people of Indonesia, both present and future generations.

With the rapid development in all sectors and the rapid development of technology, humans in meeting their needs began to forget aspects of environmental sustainability. Technological development and development, whether we realize it or not, besides having a positive impact, also have a negative impact. The negative impact seen from the naked eye is the amount of environmental damage caused by the indiscriminate exploitation of natural resources and development that does not pay attention to aspects of environmental sustainability.

Thus, there must be a determination of law enforcement and legal certainty for the comfort of the community over forest fire smoke. However, prevention efforts with juridical instruments have not yielded significant results, because forest fires and logging are still continuing. Thus, forestry issues, especially regarding wild forest fires and logging, become interesting to study.

## **METHODS**

The approach method used in this study is juridical-normative, with a type of dogmatic research, a form of prescriptive research on legal relations. The specification of this study is descriptive-analytical. The data collection method used through the library research method by testing the document materials and library materials used in this study. Data are analyzed qualitatively-normatively, examining by interpreting and constructing statements contained in statutory documents. Qualitative analysis method, built based on secondary data in the form of theory, meaning and substance from various literature, laws and regulations then analyzed with normative laws, and related theories, so that conclusions are obtained.

## **RESULTS AND DISCUSSION**

### **Law Enforcement Effectiveness against Forest Burning**

Speaking of legal issues, of course, it will not be separated from the enforcement process. Law can be seen from its form through rules or legal regulations that contain actions that must be carried out, such as law enforcement. Law enforcement is the main thing in preventing or minimizing forest destruction, especially in green areas in Indonesia. Through law enforcement, it can realize the ideas and desires contained in Law Number 32 of 2009 concerning Environmental Protection and Management. Law enforcement is a step that must be taken, because basically a law will be visible when it is at the applicative stage. Law enforcement carries out a great task to be achieved as the initial plan for the establishment of a law to improve order and legal certainty in society.

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In an effort to realize a peaceful, safe and peaceful life, rules are needed to regulate the social life of the community so that fellow humans can behave properly and get along. However, friction and strife between human beings cannot be eliminated. Thus, the law is applied to anyone who commits unlawful acts. Because the State of Indonesia is a state of law. The state of law in question is a state that upholds the rule of law to uphold truth and justice.

In general, in every country that adheres to the idea of the rule of law there are three basic principles, namely the rule of law (supremacy of law), equality before the law, and law enforcement in a way that does not conflict with the law (due process of law). In the next description, in each country the law has the characteristics:

1. Guarantees of protection of human rights;
2. Independent judicial or judicial power;
3. Legality in the legal sense, namely that both the government / State and citizens in acting must be based on law.

In social life, laws can apply normally, but also laws can occur due to violations, therefore laws that have been violated must be enforced by law enforcement officials. The issue of law enforcement is an interesting issue to study because it relates to the existence of law and humans. It is impossible for the law to realize its own wills, because it is only a rule. Therefore, human presence (law enforcement officers) is needed to realize the will of the law. By looking at the law like that, law enforcement not only enforces the formal mechanism of a rule of law, but also seeks the realization of the virtues contained in the rule of law.

Similarly to environmental problems, environmental problems are not only domestic problems, but environmental issues have become global problems, this happens because environmental problems, between sources or causes and consequences caused cannot be localized.

Along with the development of modern life in the face of globalization and the process of industrialization and modernization, especially the industrialization of forestry has had a major impact on the continuity of forests as a buffer for life and life of living things in the world. Forests are a very important resource not only as a timber resource, but more as a component part of the environment. So the existence of forests needs legal protection.

In the concept of the rule of law, making the law a tool that prevents or hinders rulers and humans from acting arbitrarily. The law provides limits for individuals and authorities in every social interaction, which provides protection for public order and justice in order to realize the welfare of society. So that without the enactment of the law and the enforcement of the right and fair law in society, it will cause chaos and arbitrariness, whether it is done by the state or done by individual humans.

For the implementation of control of damage to land / land related to forest fires and / or land, it has also been regulated in Government Regulation Number 4 of 2001. In an effort to control damage to the land/land, this PP regulates regarding:

a. General Standard Criteria for National Environmental Damage

General criteria for national environmental damage, which include:

- 1) standard general criteria for damage to mineral soils related to forest and land fires,
- 2) general standard criteria for peatland damage related to forest and land fires,
- 3) Standard general criteria for flora damage related to forest and land fires, and standard general criteria for fauna damage related to forest and land fires.

In the general criteria of national environmental damage standards, there is no critical threshold value and will be further determined on the technical criteria of national environmental damage standards. Therefore, the general criteria for national environmental damage standards cannot be used in land damage control monitoring activities.

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Another law that needs to be observed is Law Number 41 of 1999 concerning Forestry. Article 50 paragraph 3 specifies that everyone is prohibited:

- a. Do... Dst;
- b. encroaching on forest areas;
- c. doing tree felling... Dst;
- d. burning forests;

In the explanation of the article it is determined that in principle forest burning is prohibited. Limited forest burning is allowed only for special purposes or unavoidable conditions, including forest fire control, pest and disease eradication, and plant and animal habitat construction. The implementation of limited burning must obtain permission from the competent official. Just like the previous 2 laws, Law Number 41 of 1999 also includes criminal sanctions for actions committed that result in forest destruction. This law distinguishes between deliberate forest burning and negligence. Article 78 paragraph (3) specifies that whoever intentionally violates the provisions as referred to in Article 50 paragraph (3) point d, shall be threatened with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). While Article 78 paragraph (4) specifies that whoever due to his negligence violates the provisions as referred to in Article 50 paragraph (3) point d, is threatened with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah). Law Number 41 of 1999 also lists cumulative criminal sanctions, namely imprisonment and fines at once.

From the things mentioned above, it turns out that the perpetrators of burning forests and land can already be charged and are criminal acts. Therefore, there is no need to form a special Perpu. What is needed is strict and consistent law enforcement against the provisions stipulated in the above laws and regulations.

### **Enforcement of Administrative Sanctions Against Forest Burning**

The government has carried out various law enforcement efforts against business units / activities that do not carry out environmental management efforts properly, because environmental management efforts are an integral part of sustainable development efforts that are environmentally sound. Enforcement of environmental laws consequently certainly needs seriousness from all levels of society so that environmental problems can be minimized.

Efforts to strictly and consistently enforce administrative sanctions by the government in accordance with existing authorities will have an impact on law enforcement, in order to preserve environmental functions. In this regard, the enforcement of administrative sanctions is the front line in environmental law enforcement (*primum remedium*). If administrative sanctions are considered ineffective, criminal sanctions are used as the ultimate weapon (*ultimum remedium*).

Administrative sanctions in environmental law enforcement will effectively minimize the occurrence of environmental damage if, first, the government (State administrative officials) uphold the principle of equality before the law by not being selective in imposing administrative sanctions, secondly the availability of professional human resources (supervisors) in carrying out their functions. Basically, every development activity will cause positive or negative changes. To realize environmentally sound development, it is necessary to strive to increase positive impacts and reduce negative impacts.

The authority of the government to regulate is something that has been stipulated by law. In terms of State Administration Law, this authority is called attribution power (*Attributeive bevoeghdheid*), which is the authority attached to government agencies obtained from the Law. So that these government bodies thus have the authority to implement the provisions of Article 63 of Law Number 32 of 2009.

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Thus, authorized government bodies have the legitimacy (authority to act in a political sense) to exercise their legal authority. Because the issue of legitimacy is a question of authority, namely the authority to apply sanctions such as supervision and sanction which is a government duty as mandated by law. In the event that supervision is carried out by an institution specially formed by the government.

Administrative sanctions are the authority of the central government, provincial government, Regency / City Government, this is stated in article 76 of Law Number 32 of 2009 concerning Protection of Environmental Management which reads:

1. The minister, governor or regent/mayor shall apply administrative sanctions to the person in charge of the business and/or activity if violations of environmental permits are found under supervision.

2. Administrative sanctions consist of:

- a) Written reprimand;
- b) Government coercion;
- c) Freezing of environmental permits; or
- d) Revocation of environmental permits.

Law enforcement on forest burning administratively is an effort before the ultimum remedium as a final resort. This can be a reference for the application of laws and / or enforcement of laws related to the environment to be more binding for entrepreneurs / loggers / communities and / or the government, for efforts to provide a deterrent effect to these law violators

## **CONCLUSION**

The results of the analysis show that the state has an obligation to protect forests and enforce environmental laws related to forest destruction. This obligation is regulated in applicable laws and regulations, such as Law No. 32 of 2009 concerning Environmental Protection and Management. In addition, states also have international obligations to protect forests and maintain environmental sustainability, as stipulated in international treaties that have been ratified by states.

Efforts made by the state in protecting forests and enforcing environmental laws include tightening supervision of activities that have the potential to damage forests, sanctioning perpetrators who commit violations, and restoring forest damage that has occurred. However, in practice, there are still several obstacles in environmental law enforcement related to forest destruction, such as lack of facilities and infrastructure, as well as weaknesses in coordination between relevant agencies.

In conclusion, enforcement of environmental laws against forest destruction requires good cooperation between the government, communities, and the business world. States should increase efforts to protect forests and enforce environmental laws, as well as strengthen coordination between relevant agencies. In addition, the community also has an important role in maintaining and protecting the forest, so it is necessary to carry out proper environmental socialization and education to the community.

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