

Application Of Criminal Sanctions Against Corporations As Subjects Law On Burning Forest Which Cause Damage Environment

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ABSTRACT. Forest fires are an environmental problem that occurs so often that it has become a local and global concerns. The phenomenon of forest and land fire that occurred in various regions of Indonesia several years ago is a legal fact that the implementation of Law Number 32 of 2009 concerning Environmental Protection and Management, Law Numbers 19 of 2004 concerning Forestry and various other statutory regulations does not in understand with predetermined expectations and rules. It cannot be denied that the phenomenon of forests fires is a serious and urgent threat that must be addressed by all parties. The method used in this research is normative legal research which comes from primary data, secondary data and tertiary data to support the arguments in this article. The data collection technique is qualitative descriptive analysis, namely by taking a conceptual and statutory approach. Using literature studies by collecting data through books, articles, statutory regulations, journals or other legal literature as well as online sites that are relevant to the problem being often about. This research aims to determine the impact of forest fires which cause environmental damage, the application of criminal sanctions against corporations as legal subjects for criminal acts of forest burning which. Based on the description above, it can be concluded that in accordance with the development of Indonesian criminal law regulations, a corporation that is declared obstacles faced when applying criminal sanctions against corporations as legal subjects for criminal acts of forest burning which cause environmental damage legal subject can also be burdened with criminal liability. Corporations that have been proven to have burned forests which caused environmental damage can be held criminally liable under forestry laws and environmental protection and management laws.

Keywords : Criminal Sanctions, Corporations, Forest Burning, Environment.

INTRODUCTION

A. Background Behind

Indonesia is the largest archipelagic country in the world which of course has various regional diversity with strategic geographical conditions. Natural resources abundant for human survival so it requires management Which well, in order to improve human welfare. One of the most natural resources potential in life man is forest. Forest very role important for life because forests are the lungs of the world as the largest oxygen producer on earth. Forest is community plant Which consists from various type type tree Which grow together in close rows and form a tree closing trees .

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In an increasingly advanced era, we are faced with various related problems with human life and habits. One of them is enormous forest destruction worrying consequence burning Which done by man. Burning forest Which give rise to impact negative on all sector life ie sector health, sector education, economic sector, tourism sector and international relations. Fire forest and the destruction of forest ecosystems is evidence of environmental management and supervision Which very bad. Whereas There is Constitution Which arrange about supervision And management forest Which prioritize principles sustainable Which designed For ensure forest and environmental sustainability. But in reality it is actually dangerous environment and threaten people's lives.

One of the environmental crimes that attracts attention is forest fires carried out by both individuals and corporations. Corporate forest burning is not can done in a way Partial Because in a way whole has connect with policy politics and law enforcement. Law no. 32 of 2009 concerning Protection and Management Environment Life based philosophy about draft development Which sustainable and environmentally sound in the context of economic development. Protection And management environment life is method man For interact with environment sake maintain well-being And sustainability environment life from pollution or damage environment life. Protection And management Which intended includes planning, utilization, control, maintenance, supervision and enforcement law.

Burning forest is deed Which forbidden Because violate Chapter 50 Law no. 41 of 1999 in conjunction with Law no. 19 of 2004 concerning Forestry, violates Article 11 of Government Regulation no. 4 of 2001 concerning Damage Control And Pollution Environment Life as well as Chapter 187 And Chapter 188 Book Constitution Criminal Law (KUHP). Corporation as an institution legal which has a unique structure and is equipped with a set of provisions which regulate personnel actions. An institution whose existence and capacity to do something is determined by law actually often breaking the law but in various ways corporation often escapes noose law. Corporation as subject law No only operate activity in accordance with principle economy, but have obligation For obey regulation law in economic sector that is used by the government to realize the welfare of society and fair social.

Forest burning in Indonesia shows the poor pattern of forest allocation policies in this country. Forest fires are not solely caused by changes in the ecological chain However, it is influenced by the intentional element of the perpetrator. This shows that supervision and prevention of forest fires still very weak. As form responsibility The government should immediately revoke business permits for the perpetrators of forest fires points that

experienced the fire. Because it cannot be denied that fire Forests have become a serious threat that must be addressed. Ask for accountability Corporate crime is not easy because corporate crime is a crime complex, difficult seen And difficult For proven. Crime corporation Also categorized as as organized crime or white collar crime because of crime corporation own elements and system Which structured. Dan Wrong One effort For Retaliating against the perpetrators of forest burning is by providing sanctions or criminal punishment prison And fine maximum maybe so can give effect deterrent to si perpetrator.

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According to the Criminal Code (KUHP) in Indonesia, corporations are not the subject of criminal law, which means that a corporation cannot be subject to criminal threats so that crimes or criminal acts committed by corporations are not a form of crime crimes under general criminal law. From the description of the background to the problem above, So the author felt interested in writing a scientific work entitled " **Implementation of Sanctions Criminal To Corporation As Subject Law On Burning Forest Which Cause Environmental damage** " .

B. Formulation Problem

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Based on the background description above, the formulation of the problem that will be studied in writing this is :

1. What impact fire forest Which done by corporations ?
2. How to apply criminal sanctions to corporations as legal subjects burning forest Which cause damage environment ?
3. How constraint moment apply penalty criminal to corporation as subject law on burning forest Which cause damage environment ?

METHOD STUDY

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Method is a method while research is an activity carried out with deliberately and purposefully and have certain procedures. The type of research used is study law normative Which emphasize on study aspect rule written with identify and conceptualize law as norms, rules and regulations legislation in force at a certain time and place as a product of a power country. Approach Which done in study law normative is approach legislation (statute approach) ie with gather And analyzing the provisions in Law Number 32 of 2009 concerning Protection and Environmental Management, Law Number 41 of 1999 concerning Forestry, Constitution Number 18 Year 2013 about Prevention And Eradication Vandalism Forest, Criminal Code (KUHP). 1
This research is descriptive analysis the data collection

technique ²³ is carried out by collecting, compiling and processing data. Whereas material law sourced from material law primary, material law secondary And material law tertiary with search literature (*library research*) ie through search for statutory regulations, documents and books and works scientific other Which in accordance with objects Which will be researched.

DISCUSSION

1. Impact Fire Forest Which Done By Corporation

Sector forestry become Wrong One source Power natural Which Lots give contribution to community life and has quite a large influence in Indonesia. Good For balance ecosystem nor source economy for inhabitant public. Damage forest No only lower benefit economy but Also influential wide to all sectors that need water, triggering natural disasters as well lower environmental quality local, national and global.

According to Soemarwoto, environment global is environment life as something the entire container of life within which mutually influencing relationships take place (interaction) between creature life (component biological) with environment place his life (non-biological components). This is closely related to the contents ²⁵ of the State Constitution Republic of Indonesia in 1945 ⁷ as a constitutional basis requires that resources nature is used for the prosperity of the people. Article 33 paragraph 3 of the 1945 Constitution states that the earth, water and natural resources contained therein are controlled by country and used For as big as possible prosperity of the people.

Development economy in era globalization expected can support growth And development world business. But matter This No in line with principle an economy that seeks as much profit as possible using as little capital as possible small. Especially if it is related to the existence of corporate habits who is always looking methods and justifications in order to gain large profits, so that those who suffer losses are public. whereas actually existence corporation become Wrong One bone back world economy but corporations tend to do things that are not in accordance with ethics and violate law.

Environment life And forest become priority government Indonesia And world International. With seriously voice For give protection remember forest is access for future generations to live in good health. So the body Businesses or corporations are prohibited from burning land in forest areas because of the impact Forest fires are very detrimental to people's health and even disturb the country neighbor Which close by with Indonesia.

Fire forest Which happen in a way sustainable will give rise to impact Which cause happen environmental damage, that is :

- a) Rain Occurs Sour. The impact of rain this acid can affect quality surface water, damages plants, dissolves heavy metals contained in soil thereby affecting groundwater quality. It is corrosive and thus damaging material and buildings;
- b) Occurrence of Ozone Depletion. A man-made chemical called ODS (*Ozone Depleting Substances*) can damage the ozone layer so that the ozone layer becomes thinner. As we know, the ozone layer functions to protect the earth from radiation ultra violet Which emitted by sunlight;
- c) The Occurrence of Global Warming. Global warming or rising air temperature on earth is the increase in average temperature worldwide. The impact of global warming is melting of polar ice, regional and global climate change, changes in life cycles flora and fauna;
- d) Occurrence of Health Problems in Humans. The most common disease is an ARI (acute respiratory infection), namely *bronchitis* , of the lungs wet, asthma as well as disease Serious other related to with channel Respiratory;
- e) It happened Disturbance On Plant. Impact Which happen that is there is freckles black, necrosis, chlorosis. There is particle Because fire forest cause This environmental damage can disrupt the process of photosynthesis in plants hampered.

2. Application Penalty Criminal To Corporation As Subject Law On Burning Yang Forest Causing Environmental Damage

Incident fire forest Which happen almost in every year in Indonesia always received national and international attention. Forest fires are usually caused by two factors, namely natural factors and uncontrolled human (artificial) activity factors. Factor experience caused Because influence El Nino Which cause drought prolonged so that the plants become dry and when exposed to sparks from coal Which appear in surface or burning other will cause happen fire bottom (*g round fire*) and surface fires (*surface fire*).

Forest resources in Indonesia have reached the point of *ecological imbalances* . According to Ministry Environment Life And Forestry (KLHK), on generally fire forest occurred due to massive exploitation. The problem of forest destruction is exacerbated by activities clearing land through burning. Forest burning has caused smoke pollution which causes global warming and climate change which is ultimately annoying forest ecosystem. The use of forests is unsustainable and does not have an ecological perspective can caused by

a number of factor ie factor law, man, enforcer law And etc.

Burning forests is a criminal offense and has legal sanctions has arranged in in Constitution. Act criminal in Book Constitution Law Criminal (Criminal Code) known with term *stratbaarfeit* , Which in in law criminal often using the term offense. According to Simons, *stratbaarfeit* is a behavior that done in a way on purpose by somebody Where behavior That violate law And must accountable under the law. So that the meaning of a criminal act can be interpreted as an act prohibited by a legal rule accompanied by threats or sanctions, which if violated will be subject to criminal or punishment in accordance with the regulations has set. Law criminal very role important in application penalty law against perpetrators of environmental destruction. However, things must be paid attention to when implementing it Criminal law is an *inherent* limitation such as the principle of legality and principles error.

The stages of development of corporations as subjects of criminal acts are very influential regarding the position of corporations as creators and the nature of corporate criminal liability in legislation, that is :

- 1) Manager corporation as maker And administrator Which responsible answer;
- 2) Corporation as maker And administrator responsible answer; And
- 3) Corporation as maker and corporations Also Which responsible answer.

For this reason it is necessary law in in public which will become means The main objective is to preserve, protect and overcome environmental pollution and damage in order to create a conducive, clean and decent environment for the community. Law What is meant is environmental law that has been contained in a statutory regulation invitation. Corporations is gathering person and/or riches Which organized Good whether a legal entity or not a legal entity. Corporate responsibility as The legal subject of the criminal act of forest burning is regulated in Law no. 32 years 2009 concerning Environmental Protection and Management, Law no. 41 Years 1999 concerning Forestry, Law no. 39 of 2014 concerning Plantations and Regulations Supreme Court No. 13 of 2016 about Tata How to Handle Criminal Acts By Corporation. In carrying out its business activities, corporations must always maintain sustainability with No do deed Which give rise to damage environment specifically forest fires.

In overcoming the problem of forest fires, the government must act more decisively and punish the perpetrators, one of which is criminalizing corporations that damage the environment reduce the rate of forest destruction. According to Hans Kelsen, the concept of

responsibility is closely related with the concept of legal obligation. This means that legally someone is obliged to be responsible for an action what he did. Apart from implementing criminal sanctions like confinement and fines, compensation sanctions for losses incurred as a result of forest burning as well need applied. Until Finally to retraction permission business for corporation which has proven carrying out forest fires.

²⁰
According to Law no. 32 of 2009 concerning Protection and Management Environment Life, application penalty criminal for perpetrator Which has proven do Forest burning will be subject to imprisonment and fines. This has been regulated in Chapter 98 verse 1, verse 2 and verse 3 that is :

- a) Article 1 reads "Every person who intentionally commits an act that result surpassed it standard quality air ambient, standard quality water, standard quality sea water or standard criteria for environmental damage, shall be punished with a crime imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of IDR 3,000,000,000.00 (three billion rupiah) and a maximum Rp 10,000,000,000.00 (ten billion rupiah)".
- b) Chapter 2 sounds "If deed as intended on paragraph 1 resulting in injury to persons and/or danger to human health, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000.00 (four billion rupiah) and most a lot of Rp 12,000,000,000.00 (two twelve billion rupiah)".
- ³
c) If the action as intended in paragraph 1 results in someone being injured serious or death, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).

Article 119 which sounds "Aside from criminal penalties as intended in the law In this case, business entities may be subject to additional criminal or disciplinary action in the form of: confiscation of profits obtained from criminal acts, closure in whole or in part place of business and/or activity, repair as a result of criminal acts, obligation to do it What which is done without rights and placing the company under supervision for a maximum of 3 (three) year".

²
According to Law no. 41 of 1999 in conjunction with Law no. 19 of 2004 concerning Forestry, states that every company that burns forests then this action violates Article 50. On the other hand, the article which regulates penalty deed burning forest Also arranged in

Chapter 78 paragraph 3, that is "goods Who intentionally violates the provisions as intended in Article 50 paragraph 3 letter d threatened with criminal prison 15 (five mercy) year And fine most Lots Rp 5,000,000,000.00 (five billion rupiah) for perpetrators of forest fires will be subject to imprisonment." Whereas in Chapter 78 paragraph 4 mentioned that punishment to corporation on basically has the aim "Whoever, through negligence, violates the provisions as follows referred to in Article 50 paragraph 3 letter d, is threatened with imprisonment for a maximum of 5 (five) year and fines most Lots Rp 1,500,000,000.00 (one billion five hundred million rupiah)".

According to Chapter 50 Constitution No. 39 Year 2014 about Plantation that "Act criminal as intended in Chapter 50 paragraph 1, paragraph 2, And paragraph 3 if done by And or on Name body law or body business, demands And penalty the crime dropped to the manager. Good individually nor together worn criminal in accordance with threat criminal each added with 1/3 (one third) from crime Which dropped".

According to Chapter 187 Book Constitution Law Criminal (Criminal Code) Which sounds "Anyone who intentionally causes a fire, explosion or flood, is threatened with a maximum prison sentence of 12 (twelve years) if the act causes danger common for many people. A maximum prison sentence of 15 (fifteen years) if committed This poses a danger to the lives of other people. Sentenced to life imprisonment or time a maximum of 20 (twenty years) if the act causes harm to life person others and results rang dead".

In implementing the laws and regulations governing follow criminal forest fires by corporations require the procedure clear. But the Code of Laws Law Program Criminal (Criminal Code) only arrange system method criminal with subject law man. The presence of Supreme Court Regulation (PERMA) no. 13 of 2016 concerning Tata How to Handle Criminal Cases by Corporations makes corporations the subject law And Which can requested accountability.

Regarding additional penalties for corporations proven to have committed criminal acts regulated in Article 30 to Article 33 of Supreme Court Regulation No.13 2016. Chapter 30 states criminal addition or disciplinary action or other action against the corporation held based on decision court. Chapter 32 state about corporation Which subject to additional punishment in the form of compensation in the form of money or material. While Art 33 states that corporations are subject to additional penalties in the form of repairing damage resulting from criminal acts. And the procedures for implementation are carried out in accordance with the provisions statutory regulations invitation .

3. Obstacles in the Implementation of Criminal Sanctions Against Corporations as Legal Subjects Burning Yang Forest Causing Environmental Damage

Objective from management environment is carry out development And utilise source Power natural with Good so that achieved well-being people in a way maximum. Poor environmental management or not following the rules is considered Wrong. One reason main the damage environment. Government is device Which make regulations in the form of institutions that focus on management so that the government is obliged play an active role in managing the environment. In this case, he plays an active role in structuring, utilization, maintenance, recovery, supervision And control environment life in room environmental scope Indonesia.

Burning forest is something crime criminal Because action the has harm interest Lots person And proven fulfil elements follow criminal so that perpetrator may be subject to sanctions. The government spends a lot regulation Which related to law enforcement against environmental crimes. However its implementation in the field still experiencing various kinds of obstacle, among them :

- a) Weak coordination supervision And law enforcement;
- b) Unsimplcity device law And device regulation legislationinvitation;
- c) Lack of public concern and legal awareness of the environment carried out by corporations. This is caused by a lack of knowledge about so far where influence activity destruction And pollution to environment Because para perpetrator only think about profit big;
- d) Licensing status and disorderly land use have many consequences land Which No clear status And its management. Process transparency And mechanism openness document for public No walk in accordance hope;
- e) Lack of professionalism apparatus enforcer law Which Not yet effective. Limited knowledge and understanding of environmental aspects of enforcers law in handle environmental cases;
- f) Planning budget Which Not yet adequate make Lots party become No Serious And No care to sustainability environment. Because in solution case environment life need tools advanced nor laboratory Which adequate. And For operate tools the requires professional experts and of course costs money Which Lots;
- g) Forestry criminal law provisions cannot touch intellectual actors perpetrator crime; And

- h) Not yet he determined institution Justice special follow criminal forestry remember crime in the field forestry is crime outside normal so that need handling extra so that handling it Can maximum.

CONCLUSION

From descriptions above the author interesting conclusion as following :

1. The impact of forest fires carried out by corporations is rain sour, happen depletion ozone, happen warmup global, happen disturbance health and happen disturbance on plant.
2. Application penalty criminal to corporation as subject law on burning forest Which cause damage environment based on Constitution No. 32 Year 2009 about Protection And Management Environment, namely Article 98 paragraph 1, paragraph 2 and paragraph 3, as well as Article 119. Based on Law no. 41 of 1999 in conjunction with Law no. 19 2004 about Forestry ie Article 50 paragraph 1, paragraph 2 And paragraph 3 And Chapter 78. Based on the Criminal Code (KUHP), namely Article 187. Based on Supreme Court Regulation (PERMA) no. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations criminal addition namely from Article 30 to Article 33.
3. Obstacles faced when implementing criminal sanctions against corporations as legal subject for forest burning which causes environmental damage that is weak coordination supervision And enforcement law, unsimplicity device law And device legislation, lack of concern and awareness of community law, licensing status and disorderly or unclear land use, lack of professionalism law enforcement officers, inadequate budget, criminal law provisions forestry that has not touched the intellectual actors who commit crimes and has not founding of the institution special court criminal act forestry.

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