



Corporate Criminal Liability for Criminal Negligence of Forest and Land Fire Causes

Decision Study: Number 71/Pid B/LH/2021/PN Snt

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ABSTRACT

During the globalization era, forest exploitation has become more frequent, one of them is burning land as a cause of rapid reduction in forest area. Forest and land fires caused by human activities can be categorized as legal acts, i.e. those occurrences or events that can trigger legal consequences. Therefore, forest and land burning is not included in ordinary criminal offenses. This research aims to analyze the arrangements for criminal liability for criminal negligence that causes forest and land fires (Ius Constitutum) and to analyze the considerations of the judges for negligence for causing forest and land fires in Decision Number 71/Pid B/LH/2021/PN Snt. The method used is a normative method with a statutory approach, legal concepts and theories. The result of this research is that criminal liability for the causes of forest and land fires can be identified from several legislations that have been established and are applicable at this time, both those committed intentionally and due to negligence, and both those committed by individuals and those committed by corporations. The Judges' consideration in Decision Number: 71/Pid B/LH/2021/PN Snt, imposed a fine and additional punishment on the defendant that is PT Mega Anugrah Sawit. The judge only recognized the defendant's guilt due to negligence, while from the facts of the trial there was an element of intent.

Keywords: Criminal Liability, Fires, Forest and Land

INTRODUCTION

During the globalization era, forest exploitation has become more frequent, one of them is burning land as a cause of rapid reduction in forest area. Massive forest and land fires cause damage and contaminate the productivity of the environment. Forest fires are burning where the flames spread freely and consume natural fuels such as litter (organic waste in the form of piles of dried leaves, twigs and other plant debris on the forest floor that has dried up), grass, twigs or tree branches, weeds (nuisance plants), shrubs, leaves and trees.¹ Land clearing for plantations is also a reason for forest burning. Forest burning is illegal by the community or local residents because it is cheaper and less labor-intensive. Therefore, land and forest burning is not classified as an ordinary criminal offense, because the incident can lead to state losses in many strategic sectors.

Basically, Indonesia already has laws that regulate environmental issues, such as the Criminal Code; Law No. 32/2009 on Environmental Protection and Management; Law No. 41/1999 on Forestry; and Law No. 39/2014 on Plantations. These laws have attempted to enforce environmental law by incorporating criminal rules with strict sanctions as an *ultimum remedium* or as a final solution to preserve the existing environment. The law enforcement system against forest burning in Indonesia has been implemented, but it has not been optimal in its implementation and resolution. In fact, there are still many violations of the law committed by humans for their personal interests. There are several constraints in implementing environmental and forestry law enforcement efforts in Indonesia, such as difficulties in monitoring and enforcing the law, difficulties in land status and utilization, the simplicity of legal instruments and regulations, the professionalism of law enforcement officials, the provisions of forestry criminal law cannot affect intellectual actors, there is no special judicial institution for forestry crimes, weak coordination between law enforcers, and disharmonization of norms between statutory regulations (conflict of norms).²

One of the legal issues in this research related to forest and land fires, which occurred in Sipin Teluk Duren Village, Muaro Jambi, committed by PT. Mega Anugerah Sawit. Decision Number 71/Pid B/LH/2021/PN Snt stated that PT Mega Anugerah Sawit (PT MAS) was admitted to have committed a criminal offense.³ The negligence of the company caused the air quality standards or environmental damage criteria to be exceeded. The peatland covering 1,425

¹ Bambang Hero Saharjo et al., *Pengendalian Kebakaran Hutan Dan Lahan Di Wilayah Komunitas Terdampak Asap*, 1st ed. (Bogor: PT Penerbit IPB Press, 2018).

² Tirza Sisilia Mukau, "Penerapan Sanksi Pidana Terhadap Pelaku Pembakaran Hutan Atau Lahan Menurut Undang-Undang Nomor 32 Tahun 2009," *Lex Crimen* 5, no. 4 (2016).

³ Gerhard Mangara, "Miskonsepsi Kasus Tindak Pidana Dalam Litigasi Perubahan Iklim," *CELCJ* (2023), <https://celcj.law.ui.ac.id/wp-content/uploads/2023/07/WPS-CELCJ-No.-1-Juli-2023-New-1.pdf>.

hectares of PT MAS concession caught fire in 2019, which caused haze in Sipin Teluk Duren Village in Muaro Jambi.⁴

Based on the previous background of the problem described above, the research aims to determine the causes of forest and land fires (*ius constitutum*); and to examine the considerations of the Panel of Judges regarding negligence in causing forest and land fires in Decision Number 71/Pid B/LH/2021/PN Snt.

RESEARCH METHODOLOGY

This research is a normative legal research with three main problem approaches, such as statutory approach, case approach through court decision research, and conceptual approach using theoretical basis. Normative legal research is a type of research methodology that examines the consistency between laws and legal norms, such as orders or prohibitions that follow laws and legal principles, rather than merely laws or regulations that have implications associated with legal systems.⁵ The sources and legal materials used consist of primary, secondary, and tertiary legal materials, with data collection techniques through library research. Primary legal materials are obtained from analyzing articles contained in relevant laws and regulations with the object of research, arranged systematically to facilitate analysis. Legal material analysis techniques include language interpretation and systematic interpretation, in which legal sources are examined by interpreting the meaning of words and terms; and combining articles with legal theories to solve research problems.⁶

RESULT AND DISCUSSION

Regulation of Criminal Liability for Criminal Negligence of Forest and Land Fires (*Ius Constitutum*)

In order to establish the criminal responsibility of an offender for his or her actions, it is important to establish a clear link between the offender and his or her actions. During the process of sentencing the perpetrator, this needs to be proven and investigated:

1. The subject must match the formulation of law;
2. There is fault on the actor;
3. The action is against the law;
4. The act is prohibited and punishable by law (in a broad sense); and

⁴ Yitno Suprapto, "Kejanggalan Sidang, Sampai Eksekusi Lamban Kasus Karhutla Di Jambi," *MONGABAY: Situs Berita Lingkungan*, last modified 2021, <https://www.mongabay.co.id/2021/11/15/kejanggalan-sidang-sampai-eksekusi-lamban-kasus-karhutla-di-jambi/>.

⁵ Dwi Rossulliati, Yoyok Ucuk, and Wahyu Prawesthi, "Criminal Liability of Notary in Criminal Act Committed by Notary Signing Agent," *YURIS: Journal of Court and Justice* 2, no. 1 (March 1, 2023): 54–65, <https://journal.jfpublisher.com/index.php/jcj/article/view/258>.

⁶ Johnny Efendi, Jonaedi & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 1st ed. (Depok: Prenada Media Group, 2016).

5. The act is committed in accordance with the place, time and other circumstances specified in the law.

The element of intent or negligence is very important in criminal law. The criminal act element covers actions that objectively violate the law, while the criminal liability element involves subjectivity, such as the ability to be responsible and the existence of intent or negligence (mens rea). Criminal responsibility only occurs after a person commits a criminal offense, to be convicted, and fault must be proven. Criminal offenses must violate the law, be regulated by law, and contradict the social order desired by the law. It means that a person can be punished if he or she commits a mistake that is against the law and creates dissatisfaction in society. The criminal liability process, in determining a person as a suspect or perpetrator of a criminal offense, must have the elements stipulated in the applicable laws or regulations. One of the steps that can be applied in maintaining compliance with environmental law, especially in the prevention and control of forest and land fires, is through the implementation of criminal regulations that impose strict sanctions as a final solution (ultimum remedium). Regulations regarding the criminal offense of forest and land burning have specifically been regulated in several laws as follows:

1. Regulations in the Criminal Code

The criminal offense of forest and land burning is generally regulated in the Criminal Code. The Criminal Code regulates the offense of forest burning committed intentionally or negligently. The sanctions are contained in the second book of the Criminal Code on crimes, which are contained in Article 187 and Article 188 of the Criminal Code, categorized as follows:

- a. Article 187 contained that "Any person who intentionally causes fire, explosion or flood shall be punished by a maximum imprisonment of twelve years, if public danger for property is caused as a result of the aforesaid act; by a maximum imprisonment of fifteen years, if danger of life for another is caused as a result of the aforesaid act; by life imprisonment or a maximum imprisonment of twenty years, if danger of life for another is caused as a result of the aforesaid act and death results."
- b. Article 188 of the Indonesian Criminal Code states that "Any person who through negligence causes a fire, explosion or flood, shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year or a maximum fine of three hundred Rupiahs, if therefrom public danger for property or life of another person arises, and if therefrom death results." Based on Supreme Court Regulation No. 2/2012, the

maximum fine under Article 188 of the Criminal Code has been multiplied by 1000 times, which means that the fine amounts to IDR 4.5 million.

2. Regulations in Law No.41/1999 on Forestry as amended by Law No. 6/2023
 - a. Article 50 Paragraph (1) which states that “every person who is granted a Business License in a forest area is prohibited from any activities that cause damage to the forest.”
 - b. Article 50 Paragraph (2) letter b which states that “every person is prohibited from burning the forest.”
 - c. Article 50 Paragraph (2) letter f states that “every person is prohibited from throwing objects that can cause fire, damage and endanger the existence or continuity of forest functions into the forest area.”
 - d. Article 78 Paragraph (1) states that “any person who intentionally violates the provisions as referred to in Article 50 Paragraph (1) shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 5,000,000,000 (five billion rupiah).”
 - e. Article 78 Paragraph (4) which states that “every person who intentionally violates the provisions as referred to in Article 50 Paragraph (2) Letter b, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a maximum fine of IDR 7,500,000,000.00 (seven billion five hundred million rupiah).”
 - f. Article 78 Paragraph (5) which states that “any person who through negligence violates the provisions referred to in Article 50 paragraph (2) letter b shall be sentenced to imprisonment for a maximum of (five) years and a maximum fine of IDR 3,500,000,000.00 (three billion five hundred million rupiah).”
 - g. Article 78 Paragraph (9) which states that “any person who intentionally violates the provisions as referred to in Article 50 Paragraph (2) letter f, shall be sentenced to imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).”
3. Regulations in Law No. 32/2009 on Environmental Protection and Management

Criminal law enforcement in Law No. 32/2009 has implemented minimum and maximum penalties, expansion of evidence, punishment for violators of quality standards, integrated criminal law enforcement and corporate criminal regulation.

Article 1 point (32) states that “every person is an individual or business entity, whether incorporated or unincorporated.”

Article 69 Paragraph (1) letter h states “every person is prohibited from land clearing by burning.”

Article 69 Paragraph (2) states that “the provisions as referred to in Paragraph (1) letter h take into serious consideration the local wisdom in each region.”

However, according to the description of Paragraph (2), there are exceptions that allow burning as a way of land clearing on the condition that it must be done in a way that is based on local wisdom procedures such as making barriers to prevent the spread of fire outside the burned land area and only on land that can be effectively supervised by the landowner, which is stated to be a maximum of 2 hectares.

Article 108 states “every person who commits land burning as referred to in Article 69 Paragraph (1) letter h, 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 IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).”

Article 98 Paragraph (1) “any person who intentionally commits an act that results in the exceeding of ambient air quality standards, water quality standards, sea water quality standards or environmental quality standard 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 IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).”

Article 99 Paragraph (1) “any person whose negligence results in the exceedance of ambient air quality standards, water quality standards, sea water quality standards or environmental quality standard 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 IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).”

Corporate criminal liability is challenging because corporate crime is organized, complex, difficult to assess, responsibility is diffused and difficult to prove. Corporate crime in the environmental sector comes

from the goals and interests of corporations that are perverted in relation to their role in utilizing and managing natural resources, without concern for the existence of other living things and placing the environment, especially forests and land, as objects that have commodity connotations and can be exploited for organizational purposes and interests, the impact of which can be in the form of disastrous forest damage, floods and smoke to the community. There are provisions on sanctions and the forms and systems of corporate criminal liability for committing the crime of clearing land by burning regulated in Law No. 39/2014 on Plantations, including the following:

- a. Article 56 Paragraph (1) states that, "every plantation business actor is prohibited from clearing and/or cultivating land by burning."
- b. Article 108 states, "every plantation business actor who clears and/or cultivates land by burning as referred to in Article 56 Paragraph (1) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)."
- c. Article 113 Paragraph (1) specifies that if a corporation commits acts outlined in Article 108, it will face punishment, including a maximum fine plus an additional one-third of the respective fine.
- d. Article 113 Paragraph (2) specifies that if an official, acting as either a commanded individual or someone possessing authority in the plantation sector, commits an act outlined in Article 108, they will face the punishment stipulated by law along with an additional one-third.

Considerations of the Panel of Judges towards Negligence in Causing Forest and Land Fires in Decision Number 71/Pid B/LH/2021/PN Snt

The consideration of judges in criminal decisions is a form of judicial accountability to society, victims, perpetrators, and God. The quality of a judge's decision can be determined by the balance of considerations and the judge's overall analysis of the case. The judge's duty is not only providing punishment, but also ensuring justice in the punishment given.

Environmental violation cases are often tried in district courts in several regions of Indonesia. One of the decisions investigated in this research is Decision Number: 71/Pid B/LH/2021/PN Snt. According to the verdict, PT Mega Anugerah Sawit was convicted for its negligence in causing violations of ambient air quality standards and environmental damage criteria. PT Mega Anugerah Sawit was fined IDR 3,000,000,000.00 (three billion rupiah) and ordered to pay an additional IDR

542,702,078,000.00 (five hundred forty-two billion seven hundred two million seventy-eight thousand rupiah) to the State.

Based on this decision, it can be determined that the basis for the Judge's consideration, regarding corporate criminal liability, is the fulfillment of all elements of the criminal offense. The panel of judges has considered the various aspects needed, including the indictment, hearing the statements of witnesses, expert witness testimony, the testimony of the defendant and the demands of the public prosecutor. The panel of judges in deciding the case used the term proof based on the law negatively.

Considering that the Defendant was charged by the Public Prosecutor with two alternative charges. Based on the facts at trial, the Panel of Judges immediately chose the second alternative charge, in accordance with the provisions of Article 99 paragraph (1) jo. Article 116 Paragraph (1) letter (a) of Law No. 32/2009 concerning Environmental Protection and Management, the elements of which are as follows:

1. The element of "Any person"

Based on Article 1 point 32 of Law No. 32/2009 on Environmental Protection and Management, the term "any person" means an individual or business entity, whether or not it has legal status.

In this case, the Public Prosecutor has named PT Mega Anugerah Sawit as the Defendant.

However, as the term "any person" is dependent on the other elements of the crime, the panel of judges is of the opinion that if the elements of the crime are fulfilled, then PT Mega Anugerah Sawit is considered to be "any person." On the other hand, if the other elements of the crime are fulfilled, then PT Mega Anugerah Sawit is considered to be "any person." Otherwise, if the other elements of the crime are not fulfilled, then "any person" is also deemed not fulfilled.

Therefore, based on these considerations, the panel of judges concluded that the element of "any person" had been fulfilled.

2. The element of "The negligence results in the exceedance of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria"

Meanwhile, fault or negligence (culpa) has two conditions, as follows:

- a. The act committed is a lack of caution or awareness;
- b. The perpetrator must be able to think of the consequences that may occur due to his or her imprudent actions. Even if he/she is aware of the possible consequences, if he/she does not take steps to prevent them, then it cannot be considered

a precaution. If he/she is careful or aware, then he/she will make efforts to prevent undesirable consequences.⁷

The panel of judges held that because PT Mega Anugrah Sawit as a corporation did not provide adequate facilities, infrastructure, and control systems, the corporation had neglected its responsibilities by not applying the precautionary principle in the fire incident. Therefore, the element of negligence is considered fulfilled. Based on these considerations, the Panel considers that all denials and defense notes from the Accused have no legal basis and must be rejected. As a result, the element of negligence causing abuse of ambient air quality and environmental damage is considered fulfilled. As a consequence, the company was required to pay a fine of IDR 3 billion in accordance with Law No. 32/2009 on Environmental Protection and Management. The researcher argues that the decision of the panel of judges in Decision Number: 71/Pid B/LH/2021/PN Snt is still inaccurate because it convicts the corporation on the basis of negligence, while the facts revealed should justify the criminal act of land fires due to the element of intent. Therefore, the researcher would like to add his/her opinion, such following below:

- a. The first fire incident in the oil palm plantation area of PT Mega Anugrah Sawit (MAS) occurred at approximately 14.00 WIB on July 28, 2019, or at least at some other time during that year. The location of the incident was in Sipin Teluk Duren Village, Kumpe Ulu Sub-district, Muara Jambi District, which is under the jurisdiction of the Sengeti District Court. There was a questionable intent involved in this incident, including the fact that the company did not use all of its resources to put out the fire that had spread throughout the entire area. The fact that PT. MAS only requested help from the Fire Department to put out the fire after a month suggests that there was a conscious decision to let the area burn. This indicates that PT. MAS has openly let land fires to occur in order to establish plantations without having to rent heavy equipment to clean the area.
- b. PT MAS as the cooperator failed to take the necessary steps to prevent greater impacts and ensure compliance with applicable laws, in accordance with Government Regulation

⁷ Muh. Iqram Andi Saputra, "Pertanggungjawaban Hukum Terdakwa Tindak Pidana Kecelakaan Lalu Lintas Yang Mengakibatkan Kematian" (Universitas Bosowa, 2021), <https://repository.unibos.ac.id/xmlui/bitstream/handle/123456789/2689/2021 MUH IQRAM ANDI SAPUTRA 4620101001.pdf?sequence=1&isAllowed=y>.

No. 4/2001 Article 13, Article 14, and Article 15 regarding Control of Environmental Damage and/or Pollution Associated with Forest and/or Land Fires. In Decision Number: 71/Pid B/LH/2021/PN, the expert stated that the fire control facilities and infrastructure at PT Mega Anugrah Sawit were very inadequate, so that when a fire occurred, the efforts made were not optimal and tended to be ignored. This can be seen from the length of time the fire lasted for about 2 (two) months and the size of the fire reached 1425 hectares.

- c. Forest fires emit greenhouse gases such as carbon dioxide, carbon monoxide and other gases. These greenhouse gases cause climate change and global warming as they increase in the atmosphere.⁸ Decreases in the number of microorganisms, soil function, and soil respiration are standard indicators to measure environmental damage. However, one main objective of environmental protection and management, as described in Article 3 letter a of Law No. 32/2009, is to protect the territory of Indonesia from environmental pollution and damage. Therefore, planning activities must take into account the impact of adverse environmental zone changes due to development from an early stage.⁹ The Panel of Judges should take consideration of Article 99 Paragraph (2) of Law No. 32/2009 in determining their decision on Decision Number: 71/Pid B/LH/2021/PN Snt, as the aftermath of land fires can pose health risks to people.
- d. In decision No. 71/Pid B/LH/2021/PN Snt, the corporation cannot be blamed for certain actions, but only the management is responsible for these actions. This means that only the management can be criminally punished.¹⁰ This is stated in Article 116 Paragraph (1), which states that if the corporation is convicted, the authorized management will represent the corporation in or out of court. In addition, the Panel of Judges is required to consider Article 117 in

⁸ Darkwah Kweku et al., "Greenhouse Effect: Greenhouse Gases and Their Impact on Global Warming," *Journal of Scientific Research and Reports* 17, no. 6 (February 15, 2018): 1–9, <https://journaljsrr.com/index.php/JSRR/article/view/830>.

⁹ Masrudi Muchtar, *Sistem Peradilan Pidana Di Bidang Perlindungan & Pengelolaan Lingkungan Hidup* (Jakarta: Prestasi Pustaka, 2015).

¹⁰ Herlina Manullang and Riki Yanto Pasaribu, *Pertanggungjawaban Pidana Korporasi* (Medan: LPPM UHN Press, 2020), [https://repository.uhn.ac.id/bitstream/handle/123456789/3956/Pertanggungjawaban Pidana Korporasi.pdf?sequence=1](https://repository.uhn.ac.id/bitstream/handle/123456789/3956/Pertanggungjawaban%20Pidana%20Korporasi.pdf?sequence=1).

order to strengthen sanctions for offenders of crimes intended to the leader or person issuing the order.

The researcher concluded that based on the analysis of Decision Number: 71/Pid B/LH/2021/PN Snt, corporations lack the adequate infrastructure and facilities to prevent land and forest fires. Furthermore, the tendency to let fires happen persists because corporations do not take considerable action to put out fires that have spread significantly. Due to insufficient efforts to put out the fire, the land fire continued for several days, perhaps even for approximately two months.

CONCLUSION AND SUGGESTION

Conclusion

Criminal liability related to forest and land fires is regulated in several legal regulations, including the Criminal Code, Forestry Law No. 41/1999 amended by the Job Creation Law No. 6/2023, Environmental Protection Law No. 32/2009, and Plantation Law No. 39/2014. Articles that regulate criminal liability for negligence in forest and land fires are contained in Article 188 of the Criminal Code, Article 50 Paragraph (2) Letter b and Article 78 Paragraph (5) of Forestry Law No. 41/1999 amended by Law No. 6/2003, and Article 99 Paragraph (1) of Environmental Protection Law No. 32/2009, both for individuals and business entities or corporations. In addition, corporations may also be subject to additional punishment as stipulated in Articles 31 to 33 of Supreme Court Regulation No. 13/2016 on Procedures for Handling Criminal Cases by Corporations.

In Decision Number: 71/Pid B/LH/2021/PN Snt, the Panel of Judges decided to sentence PT Mega Anugrah Sawit to a fine of IDR 3,000,000,000.00 (three billion rupiah). In addition, they also ordered additional payments to the State in the amount of IDR 542,702,078,000.00 (five hundred forty-two billion seven hundred two million seventy-eight thousand one hundred rupiah). The judge only highlighted the Defendant's guilt due to negligence, although there was evidence of intent in the trial.

Suggestion

The government needs to continuously appeal to the public through socialization. This aims to provide the public with an understanding of the legal consequences they will face if they are involved in the criminal act of forest and land fires, as well as improving handling in fire-prone areas through cooperation with related parties. If necessary, the government can also establish a special court to try environmental crimes.

Corporations must ensure that their operations always comply with Standard Operating Procedures (SOPs) in accordance with applicable regulations. They

must also have an environmental permit as a mandatory requirement to obtain a business license. Communities must be active as well in preserving and protecting the environment. They need to be more aware of the law and comply with the provisions in regulations related to environmental management to create a clean and healthy environment.

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