

Smog and Environmental Crime

(Reflected From Cases in Riau)

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Abstract—Forests are one of the livelihoods of the people in Riau Province. Many of the people depend on forestry for their livelihoods. This becomes an economic dependency system, because the forest legacy can be utilized to meet various needs such as timber, vegetation and various potentials that can be utilized. Deforestation has a devastating impact on the environment and people living in rural areas. This paper would like to discuss about the impact of forest destruction by fireworks. There are several crimes committed by companies related to the law or procedure of land clearing, including among other violations of law by the company. Specifically this paper found that there is no alignment between the company and related communities related to the use of forests.

Keywords: *Smog, Environmental Crime*

I. INTRODUCTION

A. Background

Viewed from the ecological aspect, the role of forests is home to thousands and even millions of living things linked in a food chain with humans, as well as a major source of oxygen producers. Similarly, from the economic aspect, forests provide the benefit of high economic value for the community and also the State. However, the economic advantages possessed by the forests, it sometimes makes some parties even more investors who move in the plantation sector and HTI trying to make a profit by exploring the forest regardless of the function and balance of nature.

Currently Indonesia's forests have suffered high damage to reach the point of great concern. In 2004 forest destruction in Indonesia reached 3.8 million hectares. This means that within one minute on this archipelago there are 7.2 million hectares of damaged forest. Even according to the Word Research Institute, from Indonesia's forest cover of 130 million hectares, 72 percent of which are native forests of Indonesia have been lost. Ministry of Forestry data reveal that 30 million hectares of Indonesia's forests have been severely damaged or equivalent to 25 percent [3].

One of the processes of forest destruction in almost all countries that have large tropical forests and impact on other countries is the phenomenon of forest fires. In Indonesia, the

phenomenon of forest fires as the cause of smoke haze is not new. Since the 1980s, the phenomenon of forest fires and the effects of smoke haze sent to neighboring countries seems to have become a regular agenda in every dry season hit Indonesia.

The occurrence of forest destruction in recent decades has transformed Indonesia's forests and peatlands into 'terror' as well as 'climate bombs' which are very frightening for society. Imagine, reflecting on the experience in some Regions (Provinces) that often experience forest fires, say in Riau. For the last 18 years or so in the Province during the dry season, people are constantly facing and breathing in dirty air filled with damp and dense smoke from burning forests and peatlands. The year 2015 was the worst year of its impact in Riau compared to the previous year. The condition can be seen from the response of local governments who are forced to establish the status of 'Emergency Smoke', as a signal that the air in the Riau region is quite dangerous. So it is not excessive to say, if there is no space or place in Riau at that time that is free from exposure to thick and dangerous smoke.

It is estimated that there are about 81,000 people in Riau, exposed to various diseases ranging from ispa, pneumonia, asthma, eye and skin disease, and 6 cases of death. Other impacts such as the economy reached 27, 70 trillion, the aspect of transport become abnormal (stagnant), massive destruction of nature, 150,000 students closed for a long time. And the most daunting of the next health aspect is the long-term risks primarily for infants and pregnant women who have been infected with the disease from the haze [12].

Common causes are often used as the main reason for the phenomenon of forest fires in Indonesia, always associated with the habit of the farmers in opening the land with slash and burn method. It is chosen by most traditional cultivators based on economic calculations because it does not require high costs and can be done without the need for certain skills [3].

In other circumstances, greatly affecting and exacerbating forest destruction widely is the presence of large corporations at the level of Multi National Corporation (MNC) who became the actor behind the incidents of forest fires. This is particularly noticeable during the dry season when fire spots appear in concession areas (HPH) of land companies. In some

legal processes traced it is even found that production forests have higher levels of forest fires compared to other forest types [3].

B. Problem Formulation

From the description that has been presented in the background, it can be drawn from the essence of the problem in this paper. That the smoke haze case is a major disaster for humanity that was present due to burning process and burning of peatland which happened evenly in some areas in Indonesia during the dry season. And in general, the source of vulnerability and fires of peatland occurs in the work area of the licensing company.

II. LITERATURE REVIEW

A. Environment

In general, the living environment is defined as all things, the power of conditions contained in a place or space where humans, living things are and can affect his life. In the environmental dictionary compiled by Michael Allaby that the environment is defined as:

"The physical, chemical and biotic condition surrounding and organism" [1].

While Noughton and Larry L Wolf interpret the environment with all the external factors that are biological and physical in nature affecting the life, growth, development and reproduction of organisms [14].

Environment according to article 1, Law No. 23 of 1997 on environmental management are:

"The unity of space with all things, power, circumstances, and living beings includes human beings and their behavior, which influence the viability of the life and the well-being of human beings and other living beings" [15].

B. Environmental Crime

Crime against the environment as stated by Ridha Saleh:

"Any behavior or act of depriving or omitting the rights of the environment and the source of the life of the people directly undertaken through the influence of the power of capital, political power and power in a business entity / government that cause and cause continuous destruction or destruction of the environment and sources of people's livelihoods as well as threats to human life disorders" [9].

Viewed from the perspective of criminology, compared to conventional (general) crimes, environmental crimes are more peculiarly complex. When compared to some elements of the criminology study concerning: perpetrators, victims and social reactions, it is clear that environmental crimes can be said to be a bigger crime than conventional crime.

The comparison between the two crime groups can be illustrated in the table below: [9]

| Element | Conventional Crime | Environmental Crime |
|--------------|--|--|
| Perpetrators | - Individual & collective - Easy to uncover | - Legal entity - Difficult to uncover |
| Duration | Every now and then | Recurring |
| Victim | Individual & collective | Accumulative |
| Reaction | Direct | Slow |
| Proof | - Easy - Short-term | - Difficult - Long-term |

III. METHOD

A. Type

This paper uses a literature study approach by finding reference to the theory relevant with cases or problems found. Reference theory obtained by way of research literature study serve as the basic foundation and the main tool for research practice in the field. Data approach in this paper refers from various literatures obtained from various sources, journals, books, documentation, media and so forth.

B. Analysis

The analysis in this paper is descriptive. Descriptive analysis is done by describing the facts which then followed by the analysis, not merely deciphering, but also provide sufficient understanding and explanation.

IV. DISCUSSION

A. Corporate Crime

Judging from its nature, the crime by the company is a complex crime in both planning and organizing. Therefore, law enforcement addressing the issue of corporate crime is not sufficient to use only criminal law, but a more comprehensive legal review is needed in relation to corporate matters.

Sutherland said environmental crimes can also be categorized as corporate crime. In his book *White Collar Crime*, he discusses the Crime and Corporation as part of a white-collar crime. Environmental crimes committed by the company have its own problems, especially in terms of law enforcement who is responsible, company or corporate leader? [10].

Subsequently Sutherland was assisted by Geis, trying to clarify the ambiguity to distinguish between the company, its executives and employees. They among others formulate [10]:

“Cooperation are, of course, legal entites which can be and are subjected to criminal processes. There is today, little restriction on the range of crimes for which a cooperation may be held responsible, though it cannot for abvious reason, be imprisoned”.

Furthermore without any hesitation, Sutherland insists that corporate crime is actually a crime committed by the executive officers and managers of their company. Thus, Cooperation Crime is a violation of violations committed by the company and its employees for the benefit of the company [10].

B.Problematic State Role in the Context of Environmental Degradation of Forests

Forest exploitation to support industrialization of plantations and HTI is recognized to be the main cause of uneven field fire phenomena in Sumatra and some areas in Kalimantan. Various forms of transfer function cause degradation of strategic function of peat land, thus increasing the area of critical land area. Like hydrological functions that play an important role in the biosphere system. As a carbon source, CO₂ circulatory controllers, peatlands greatly affect the condition of carbon balance in the atmosphere. So far, the peat swamp forest management system generally does not pay attention to the inherent nature of peat and forget the sustainability principles so that it is potentially difficult to control the damage.

In a scientific meeting of the Round Table Discussion (RTD) between Malaysian and Indonesian scientists at the Pangeran Hotel Pekanbaru 16-18 November 2015, Prof. Dr. Fachri, M.Sc, from Andalas University (Padang) stated that smoke haze cases are not separated from the issue of granting the concession license by the State to investors without protecting peatlands [12].

It cannot be denied that the impact of forest sector policy failures is a major pillar of forestry problems in Indonesia. This has happened since the beginning of the new order, led to the forests as the main source of policy (other than oil and gas) in order to support the country's economic growth. In addition, the forest product management policy is also used as a tool for rewards for state power [11]. Dense forests were distributed as gifts in the form of HPH, HTI and plantation concessions to family, friends, and coworkers of the new order leaders at the time, as well as to key members of the military and political elites in order to maintain their loyalty [11].

Consequently, there are a number of laws which are: Law Number 1 of 1997 on Foreign Investment (PMA), Law Number 5 Year 1967 on Forestry Principles (UUPK), and Law No. 6 of 1968 on Domestic Investment (PMDN), then Government Regulation (PP) No. 21 of 1970 on Forest Concession Rights (HPH) and Forest Product Collection Rights (HPHH) [7].

In 1967 - 1980 there were 519 logging concessions granted without auction procedure with an area of 53 million ha [7]. Subsequently up to 1989 there were 572 licensed HPH licenses issued with a total area of 64 million ha of Indonesia's production forest [2].

Therefore, it is difficult indeed to give up the participation of the State regarding the realities of forest and environmental crimes that have occurred so far. The problem lies in a policy. Many findings of rules in granting overlapping permissions at the same time do not provide, Protection against environmental safeguards. While in other cases law enforcement process against forest crime perpetrators are still doubt its seriousness. It can be examined from several cases of Publication of Case Investigation Letter (SP3) against licensing companies that have been identified as perpetrators of forest destruction. For example in 2008, the Police and Attorney Office in Riau gave SP3 to 14 forest management licensing companies in Riau for forestry sector crime [5].

Lastly in 2015, from 18 cases of burning of land by companies handled by Polda Riau, only 3 companies whose case continues until the court, including:

“PT Langgam Inti Hibrindo, PT Palm Lestari Makmur, and PT Wahana Subur Sawit” [6].

Furthermore, 15 other companies were discontinued by SP3, such as:

“PT Bina Duta Laksana, PT Perawang Sukses Perkasa Indonesia, PT Ruas Utama Jaya, PT Suntara Gajah Pati, PT Dexter Perkasa Industri, PT Siak Raya Timber, PT Sumatera Riang Lestari, PT Bukit Raya Pelalawan, PT Hutani Sola Lestari, KUD Bina Jaya Langgam , PT Rimba Lazuardi, PT Langgam Inti Hibrindo, PT Palm Lestari Makmur, and PT Wahana Subur Sawit” [6].

When viewed from theoretical glasses, many theories explain how the role of the state in the effort to make social changes that in the course of even cause social problems. Gunar Myrdal argues that in developing countries tend to characterize soft state, characterized by the weakness of non-economic conditions such as cultural attitudes, institutional structures and laws and policies to encourage the development of society [8]. In that context, Peter Evans and Chalmers Johnson use another term weak state, as opposed to a strong state, to explain the role of a state that is unable to drive change for society [8].

Views Myrdal and Evans above, tend to place the State as an instrument of the corporation so that State and corporation is a unity that dominates society. This is what the famous criminologist Kramer and Michalowski tried to do in linking a criminal conspiracy between the State and the corporation into a State-Corporate Crime study. According to Kramer and Michalowski, State-Corporate Crime is a state-facilitated crime that leads to the failure of government regulatory agencies to prevent aberration in business activities [4].

Furthermore Melzoff, pointing out the failure of government regulatory agencies in preventing the deviation of business activities cannot be separated from the duality of interests that not only operate at the level of individuals, but also participate in determining the goals of regulatory agencies so that there is room for parties to:

- 1) Seek to advance their own goals through institutions
- 2) Translating its objectives into policy objectives.
- 3) Measuring each proposed policy on the basis of how to serve their priorities
- 4) Supporting national policies on the same basis [4].

Still according to Kramer and Michalowski, the State-Corporate Crime study, conducted in several countries such as Europe and Latin America, experts find the conclusion that there is overlapping of rules here and there. And in many countries in the study, the role of regulatory officers from the government who should prevent crimes committed by companies does not work because there are interests among them [4].

V. CLOSING

A. Conclusion

The failure of governance policies in the forestry sector in turn reaps a variety of very basic problems. The case of haze that became a climate of terror for most Indonesians as in Riau is just one of many impacts, from the failures of forestry sector governance as mentioned above. The licensing process in the past was followed by overlapping rules in which making the process of forest exploitation undertaken arbitrarily by the company became increasingly difficult to be observed by law. Responding to violations that may occur to companies holding forest management rights, often never give satisfactory results. Alibi law by law enforcement is always constrained on the adequacy of evidence or data, so that SP 3 becomes an alternative in the settlement of cases. Situations like this certainly describe as if there is a reality of evil without a doer even if there are many victims.

B. Suggestions

From this paper then there are some important points that can be recommended include:

- 1) It needs a legal rule on the act of burning land which then causes the smoke problem, as an environmental crime. This applies to individuals, companies wherever they may be.
- 2) Making layout related to peatland conservation and peatland forests.
- 3) Discontinue the function of peat forests for plantation and agricultural land.
- 4) There should be a rigorous investigation into the existence of fire actions in the plantation industry, related to intentional or unintentional elements.
- 5) Reviewing the extent of plantation land granted to the company, as many companies are expected to

manage the plantation area more broadly than the permits they have.

- 6) Making strict rules regarding sanctions for the perpetrators of land fires.
- 7) Evaluation of State policy on the conversion of forest and land functions into plantation and industrial crop areas.

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