

Conference Paper

Additional Sanction as an Effort to Restore the Environment Due to Land Fires

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Environmental damage in Indonesia has directly impacted human life, one of which is forest/land fires. Burning forests and land can be considered a form of crime because the action has an impact that can harm the interests of many people. Perpetrators of forest and land fire crimes can be subject to two types of sanctions, namely the main criminal sanctions and additional sanctions. This study aimed to discuss how to apply additional punishment in environmental crimes due to land fires. The study's approach used to conduct this study is of normative law studies. This method focuses on analyzing positive and general legal principles. The application of additional criminal sanctions in Law Number 32 of 2009 is an additional penalty to cover the deficiencies of the principal criminal. Where the maximum fine sanction has a special maximum provision that is less than how much money lost or incurred because of additional criminal acts. The Act for Environmental Management and Protection verbally expressively accommodates the concept of a double-track system, namely the imposition of criminals and additional criminal sanctions simultaneously on perpetrators of environmental crimes. If additional criminal sanctions, in the form of recovery, cannot be carried out by corporations, then additional criminal sanctions that are equivalent and repressive in the form of confiscating assets or closing all or part of business activities can be used as suspension of sanctions.

Keywords: additional penal, environment recovery, fire

1. INTRODUCTION

Environmental issues in Indonesia are one of the most attention-grabbing issues because they are interrelated with legal, cultural, political, and economic issues. Environmental law in Indonesia has been developing rapidly along with the progress of time and science. Indonesia has a specific law that regulates the environment, which is Act. 4 of 1982, which was then declared invalid by Act. 23 of 1997 with regard to Sustainability. In 2009, Act. 23 Year 1997 was repealed and replaced with Act. 32 Year 2009 on Environmental Control & Safeguarding. This law not only focuses on environmental management but also on environmental protection. [1]

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“The goal of Environmental Control & Safeguarding law is to create environmental harmony.” [2] Article 1 paragraph (2) of Act. 32/2009 on Environmental Control & Safeguarding defines Environmental Control & Safeguarding as systematic efforts to preserve environmental functions, prevent pollution and environmental damage. Forms of Environmental Control & Safeguarding include : 1) planning; 2) implementation; 3) control; 4) maintenance; 5) supervision; and 6) law enforcement.

According to Act. No. 32 of 2009, the environment is an entity that includes space and all elements in it such as objects, resources, conditions, live organisms including humans and their behavior. This environment has an influence on the continuation along with wellbeing regarding creatures that live, including people. Humans live in nature and are adapted to coexist with other living things. The environment is formed through a complex and lengthy process, which ultimately forms the current natural world. The environment produces resources used by humans. Therefore, as a reciprocal form for what is given by the environment, humans should strive to maintain the environment [3]

The increasing environmental damage in Indonesia has had a direct impact on human life. One of the environmental damages that occur are land that is undergoing wildfires. The most prominent impact of forest and land fires is the occurrence of haze, which greatly disrupts the health of the community and the transportation system of rivers, land, sea, and air. The definition of land fires differs from forest fires, with the difference being in the location of the incident. Forest fires occur within the forest area, while land fires occur outside the forest area. [4] One example of land fires can be seen in the plantation subsector, where there are land and plantation fires. In 2006, there was a land fire covering an area of 135 hectares that occurred in four locations, namely: PT Wilmar Sambas Plantation has 50 hectares of land, PT Buluh Cabang Plantation has 30 hectares of land, PT Mitra Inti Plantation has 30 hectares of land, and PT Putra Makmur Lestari has 25 hectares of land. In addition, there were fires in two companies, namely PT: Bumi Pratama Khatulistiwa with a fire area of 36 hectares and PT Harapan Sawit Lestari Group with a fire area of 100 hectares that hit their land and plantations, resulting in thick smoke clouds. Fires in green plants produce more smoke than fires in withered plants, including dry fronds or leaves. Fires in green plants will produce larger smoke than those in withered plants, including dried leaves or fronds. Therefore, unexpected fires can occur in peatlands as they can store heat and even spread widely to a certain depth on the surface of the land. [5]

Forest and land fires can be considered as a form of crime and can be called a criminal act as such action has an impact that can harm the interests of many people. The Environmental Control & Safeguarding Act expressly regulates corporate criminal liability

in articles 116-119. However, the construction of criminal sanctions has not guaranteed legal certainty for the implementation of restorative actions, which are essential actions to restore environmental damage and pollution

Two types of sanctions can be applied to perpetrators of environmental violations in forest and land fires, namely criminal penalties and additional sanctions. The existence of the choice of criminal sanctions that can be imposed shows how lawmakers reach the goal of criminalization, which depends on the concept of justice adopted, namely retributive justice or restorative justice. According to the concept of retributive justice, the goal of criminalization is to create a sense of fear and deterrence by punishing perpetrators of criminal acts. "In contrast, in the concept of restorative justice, criminalization is more directed towards the restoration of the situation due to a criminal act. [6] Therefore, in cases of forest and land fires, the concept of restorative justice must be prioritized in the imposition of criminal sanctions so that the imposition of criminal sanctions is not merely aimed at deterring perpetrators of criminal acts. One form of applying restorative justice to environmental litigation can be achieved through additional punishment in the form of environmental cleanup for crimes committed. However, such penalties, like other additional penalties under the Environmental Control & Safeguarding Act, are imposed only where the accused and convicted party is a legal entity.

The restoration of the environment should also be the focus of law enforcement officers in the enforcement of criminal law for environmental offenses that cause pollution and/or environmental damage.

Based on this, what needs to be examined in this paper is how to apply additional penalties in environmental crimes resulting from land fires.

2. METHODOLOGY

This research uses normative legal research methods that focus on analyzing positive legal provisions and general legal principles. "This research is based on legal sources, both primary and secondary." [7] In this research, a statutory and case study approach was used. Data was collected through literature study and then analyzed using a qualitative approach.

3. RESULT AND DISCUSSION

Additional punishment is a type of punishment that is optional (meaning it can be imposed or not). *Ubi non est principalis, non potest esse accessorius*: where there is

no principal, there cannot be an accessory. Therefore, additional punishments cannot be imposed without the principal punishment first. However, the opposite is not true, the principal punishment can be imposed without additional punishment. Furthermore, the judge may impose only one principal punishment with more than one additional punishment. [8]

According to Hermin Hadiati [9], the provisions regarding additional punishment are different from the provisions for imposing principal punishment. These provisions are:

1. Additional punishment can only be imposed alongside the principal punishment. This means that additional punishment cannot be imposed as the sole punishment.
2. Additional punishment can only be imposed if it is explicitly stated as a threat in the formulation of a criminal act. This means that additional punishment is not threatened.
3. Additional punishment is imposed on every type of criminal act, but only for certain criminal acts.
4. Although it is explicitly threatened in the formulation of a certain criminal act, the nature of additional punishment is optional. This means that it is up to the judge to impose it or not.

In the KUHP, additional punishment can be found in Article 10 letter (b), which includes deprivation of certain rights, forfeiture of certain goods and announcement of the judge's decision. In addition, there are various types of additional penalties outside the Criminal Code that are not listed in the Criminal Code. One of the laws that regulates additional punishment outside the Criminal Code is Act. 32/2009 on Environmental Control & Safeguarding. In Act. 32 of 2009, the criminal sanction includes a fine with specific minimum and maximum provisions, while the losses suffered by the state exceed the maximum provision. Therefore, with the additional criminal punishment of restoration due to corporate crimes that cancel activities of forest and land burning, the damaged environment can be repaired in the context of sustainable development, which can be enjoyed by future generations. [10]

Article 1 paragraph 3 of Act. 32/2009, affirms that sustainable development means the integration of environmental, social and economic aspects to ensure the integrity, safety and effectiveness of the environment. It is described as a conscious and deliberate effort to integrate it into development strategies. The existence and quality of life of present and future generations. To support the implementation of restoration sanctions due to criminal acts as an effort towards sustainable development, it is influenced by

several components. According to Lawrence M. Friedman, in the legal system theory, law is seen as something that stands alone. "There are three main components of the legal system, namely the legal structure, legal substance, and legal culture" [11] These three components determine each other, and also influence each other. Legal culture, as Lawrence M. Friedman said, is the attitude of people towards the law, which is influenced by beliefs, values, ideas, and expectations. By presenting these four elements, implicitly, Friedman recognizes that legal issues cannot be generalized across legal systems, because legal culture is unique to each society. The function and purpose of law, which is cited as a tool for changing society or social engineering, should not only be ideas that are to be realized by the law. To ensure the function of law as a societal engineering towards a better direction, there must be a guarantee of the realization of these legal norms or in other words, a guarantee of good law enforcement. [12]

Law enforcement is greatly influenced by the conditions and social interactions that occur in society, which can be reflected in societies that uphold or develop systems of rights based on status, or societies with sharp differences between "the haves" and "the have-nots", or societies that are in authoritarian environments, which will place different systems of law enforcement compared to open and egalitarian societies. "In other words, proper and fair law enforcement is determined by the will and participation of members of society, not solely by the desires of law enforcement actors."(Sanyato, 2008: 201) Therefore, laws are needed in society as the main means to preserve and protect the environment, as well as to prevent pollution and environmental damage in order to create a conducive, clean, and suitable environment for the community. These laws are then referred to as environmental laws contained in legislation. [3]

In Indonesia, there are already laws that regulate environmental issues, namely the Criminal Code, Act. 32 of 2009 on Environmental Control & Safeguarding, Act. 41 of 1999 on Forestry, and Act. 39 of 2014 on Plantations. In these laws, there are several criminal sanctions that can be imposed on parties who intentionally burn forests and land, which are as follows: [14]

1. Under Article 187 of the Criminal Code, anyone who intentionally causes a fire, explosion, or flood is liable to a maximum prison sentence of twelve (12) years, fifteen (15) years, or even life imprisonment, or within a specified period of twenty (20) years. Penalties vary depending on the impact of the crime.
2. Article 98 of the Environmental Control & Safeguarding Act, which prescribes penalties for forest and land burning. This article indicates a substantive offense that highlights the consequences of intentional forest and land burning.

3. Article 108 of the Law on Environmental Control & Safeguarding regarding parties who burn land, as described in article 69 paragraph (1) letter h.
4. Articles 116-119 of the Law on Environmental Control & Safeguarding, which regulate the imposition of criminal sanctions on corporations by explaining which parties in a corporation can be subject to criminal sanctions or held accountable, as well as the additional penalties that can be imposed.
5. Plantation Law Article 108 contains Plantation authorities who will clear and/or manage land by burning as stipulated in Article 56 paragraph (1).
6. Forestry Law Article 78 paragraph (3) contains parties who intentionally commit acts that are clearly prohibited in Article 50 paragraph (3) letter d.
7. Article 78 paragraph (4) of the Forestry Law which regulates the imposition of criminal sanctions on corporations as perpetrators of forest burning crimes.

Based on the implementation of criminal sanctions above, In addition to the imposition of criminal sanctions against land/forest fire originators, enterprises are subject to additional criminal sanctions or disciplinary actions as stipulated in Article 119 of Act. 32 Year 2009 in some cases :

1. to confiscate the proceeds of a criminal offense
2. to close or partially close the place of business and/or business activities
3. repairing the consequences of a criminal offense
4. there is an obligation to perform an obligation or right that is ignored and/or
5. the company is under supervision with a maximum period of three years.

The application of additional criminal sanctions in Act. 32 of 2009 is an additional penalty to cover the shortcomings of the main penalty where the maximum fine sanction in the main penalty has a specific maximum provision which is less than the amount of losses caused by additional criminal acts.

Thus, the Law on Environmental Control & Safeguarding explicitly takes into account the concept of a two-pronged system of imposing both criminal sanctions and additional (criminal) measures against perpetrators of environmental crimes. In practice, however, many decisions have not been fully enforced, both in terms of increasing the government's financial losses and criminalizing criminal offenses against perpetrators. Therefore, there is a need to reaffirm the concept of the Double-Track System in

environmental crimes committed by environmentally oriented corporations, namely by changing the phrase “may” to “must” and placing the restoration/recovery penalty hierarchically in the first option of the additional criminal penalty types in Article 119 of the Law on Environmental Control & Safeguarding. This is intended to create an obligation on judges to impose additional criminal sanctions in the form of remediation and restoration of damages caused by corporate environmental crimes. If the entity is unable to implement additional criminal sanctions in the form of rehabilitation, additional criminal sanctions in the form of asset forfeiture or closure of all or part of the business may be imposed as additional criminal sanctions in the form of fines. There is a nature.

Environmental restoration is regulated in Act. 32/2009 Article 54 paragraph (1) letter (d), which states that every person who pollutes and/or damages the environment is obliged to restore environmental functions. Meanwhile, restoration of environmental damage, as defined in Local Regulation No. 2/2016 Article 19 paragraph (1) on the prevention and control of forest and land fires, is a series of activities to restore the function of society and the environment affected by forest and land fires by improving the organizational structure, infrastructure and facilities through rehabilitation efforts.

The Act on Environmental Control & Safeguarding stipulates that polluters or destroyers of the environment are obliged to restore the polluted or damaged environment. One type of additional penalty that can be imposed on companies is the imposition of criminal compensation. Therefore, the imposition of additional criminal penalties can help efforts to restore the environment due to pollution and damage caused by corporate environmental crimes. Additional penalties in the form of environmental restoration are regulated in the fourth part of paragraph (1) of Article 54 of Law Number 32 of 2009 concerning Environmental Control & Safeguarding, which obliges each individuals' who pollutes and/or destroys the environment to restore environmental functions.

The Environmental Control & Safeguarding Law emphasizes that parties who pollute or damage the environment have an obligation to restore the polluted or damaged environment. “Restitution as a result of criminal acts is also determined as one of the additional types of penalties that can be imposed on corporations” [15] Therefore, the imposition of additional penalties can help in the effort to restore the environment from affect along with pollutants brought into being by corporation criminal acts.

Additional penalties that include environmental restoration are regulated in Article 54 paragraph (1) of Act. 32/2009 on Environmental Control & Safeguarding. According to this article, every individual who pollutes or damages the environment is obliged to restore the function of the environment. The recovery process is carried out in stages to

ensure the sustainability of the disturbed ecosystem and natural balance, as explained below :

- a. stopping the sources of waste along with disinfecting up the toxins;
- b. Recuperation;
- c. Restoration;
- d. Corretion; and/or
- e. Alternative strategies that can advance technological and scientific knowledge.

In Indonesia, the implementation of additional penalties is still not optimal in efforts to help restore the environment from pollution and damage, such as forest and land fires, because: [16]

1. The restitution of criminal acts, in terms of its form, is still understood by law enforcement officers as nominal compensation in the form of money rather than clear and adequate plans and actions for environmental restoration with clear and adequate indicators.
2. The compensation money is deposited into the state treasury in the form of Non- Tax State Revenue (PNBP), which hinders environmental restoration because the allocation of PNBP has complicated procedures that hinder environmental restoration.

In addition, the additional penalties or disciplinary actions regulated in Act. 32 of 2009 are quite often imposed by the court, but difficult to execute because the regulations are not yet clear enough. In principle, Article 119 of Law Number 32 Year 2009 opens the possibility to impose additional punishment or disciplinary action in the form of compensation for criminal offenses. However, the additional punishment in the form of such action is unable to endure independently; always requires a partner by the main punishment. This makes law enforcement officers seem to ignore the additional penalties, where their imposition depends heavily on the understanding and freedom of the judges who examine the case. Therefore, defendants are rarely susceptible to further sanctions, including compensation as well as reinstatement.

4. CONCLUSION AND RECOMENDATION

In conclusion, additional sanctions for environmental violations caused by fires on land are set out in Article 119 of Law 32/2009 on Environmental Control & Safeguarding. These sanctions include confiscation of profits derived from the violation, closure of the

business or a component with an organization with remuneration for damage caused by the violation; Obligation to perform neglected obligations; and/or Impose supervision on the company for no more than a term of three years. The Act for Environmental Management and Protection expressly *verbis* has accommodated the concept of a double track system or a two-track system, namely the imposition of criminal sanctions and (additional criminal) measures simultaneously on perpetrators of environmental crimes. However, in practice there are still many decisions that have not been made optimally, both in terms of recovery of state financial losses and in terms of fines criminal sanctions against perpetrators. So it is necessary to affirm the concept of the Double-Track System in environmental crimes by environmentally oriented corporations, namely by changing the phrase “can” to the phrase “mandatory” and placing remedial/remedial sanctions hierarchically in the first option in the type of criminal sanction addition to Article 119 of the Law on Environmental Control & Safeguarding. This is intended so that there is a necessity (obligation) for judges to impose additional criminal sanctions in the form of repair/recovery of the damaged/polluted environment as a result of a crime committed by a corporation. If additional criminal sanctions in the form of recovery cannot be carried out by corporations, then additional criminal sanctions that are equivalent and repressive in the form of confiscating assets or closing all or part of business activities can be used as subsidiary sanctions. Basically, Article 119 of Act. 32 Year 2009 on Environmental Control & Safeguarding provides the possibility to impose additional criminal sanctions or remedial measures as a result of the criminal offense. However, it is important to note that such additional criminal sanctions cannot be applied separately, but must always be accompanied by the applicable main criminal sanctions. This makes it seem as if law enforcers are subordinate to these additional criminal sanctions, where their imposition is highly dependent on the understanding and freedom of the panel of judges examining the case. Thus, the litigant's is rarely depending on supplementary punishment with the help regarding repair and recovery.

Based on the conclusion mentioned above, the recommendation offered is for the government to immediately create legislation regarding the implementation and supervision of additional punishment and establish an environmental also increasing supervision and law enforcement on the implementation of additional penalties against corporations that carry out forest and land fires.

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