

**Corporate Criminal Responsibility In Cases Of Wildfires As The Legal Protection For Public
(A Study In Central Kalimantan Province)**

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Abstract

Wildfires, caused by degradation and deforestation in one decade and done by corporation who has legality in forest management, has destroyed woodland and made many losses in all aspects. In the economic development, almost all national development sources come from the management of natural resources of forest areas in Indonesia. In the 1945 constitution chapter XIV, article 33, paragraph 3, it is stated that “The land, the waters, and the natural riches contained therein shall be controlled by the state and exploited to the greatest benefit of the people”. In fact, the weaknesses of law enforcement in forestry and environment make the transgression and deforestation keep on going.

Keywords: *Fire, corporation, protection laws*

Introduction

The valuable of woodland as breadwinner of national economic development makes the government has to be carefully and be wise in considering of policy-making because it can impact public prosperity. According to the writer, this concept is in accordance with law sovereignty that should be put successively with public sovereignty. The synthesis both of the sovereignties are known as constitutional state based on public democracy (*demokratischerechstaat*) or democracy based on law (*constitutional democracy*). As in act 1945, article 1 (2) and (3) that Indonesia is one of the state that implements *Constitutional democracy*.¹ Koesnardi Hardjasoemantri states that basic rule of Indonesia’s development and environment protection has been written in paragraph (4) four of the 1945 preamable. Then, the detail of this basic rule is spelled out in the 1945 constituent, article 33 (3), where according to him, this rule gives “authority rights” to State for all Indonesia’s natural resources and gives “obligation for state” in shall be used to the greatest benefit of the people.²

¹ Lembaga Pengembangan Hukum Lingkungan Hidup (*Indonesia Center For Environmental Law*), Pengantar Redaksi, *Adakah Demokrasi Lingkungan?*, In *Jurnal Hukum Lingkungan Indonesia*, Volume 01 Issue 01, January 2014, page. V.

² Koesnardi Hardjasoemantri, In Isharyanto, *Hukum Kebijakan Ekonomi Publik*, Thafa Media, Yogyakarta, 2016. Ctk. 1. page. 151

Pan Mohammad Faiz also said that state through the government has legality in the determining of using, exploitation, and right to natural resources. Because of the importance of natural resources that affect of the state and public utilities, it should be authorized by State and done by government where people have chance to use the greatest benefit of natural resources with extently, welfare situation and general prosperous of fairly and evenly.³

The Forestry Act Number 41 of 1999 was made as the government law politic product for forest management, preserving, and protecting as long as forest provides various benefits for human beings thereby requiring us to be grateful, manage, and utilize the same optimally and maintance the preservation. Therefore, two questions appealed in this paper; first, why does the implementation of criminal responsibility to the corparate in case of wildfires has not been applied yet?, second, how does corporate criminal responsibility in cases of wildfires in the perspective of legal protection for society ?

Method/Concept

1. National Development

The standard of national development policy is not overruling special function of woodland as a buffer of public life and their prosperity where it can not be implemented well without public prosperity.⁴ It means that woodland has important and strategic role for national development and buffer system of public life and prosperity. The Act Number 32 year 2009 about environment protection and management was made based on the quality of environment that getting worse have been treated human life continuity and the other creature, therefore, all stakeholders are needed to protect and manage the environment seriously and consistently.

The impact of wildfires is the global warming will be more seriously and affects climate changes, thereby make the quality of environment getting worse. So, the protection and management of environment must be implemented.⁵

³ *Ibid*, page. 159.

⁴ Masrudi Muchtar, Abdul Khair, Noraida, *Hukum Kesehatan Lingkungan (Kajian Teoritis Dan Perkembangan Pemikiran)*, Pustaka Baru Press, Yogyakarta. Ctk. 1. 2016. page 12

⁵ Legal Consideration based on the Establishment of Law Number 32 Year 2009 Concerning on Environmental Protection and Management.

2. Economic Crime

The economic crime concerning with environmental that is focused on wildfires crime can be seen from degradation and deforestation in the woodland that done by corporation who has legality in the forest management. However in the implementation, those corporate takes action to the exclusion of forest area management which must concern to the sustainable development of environmentally friendly.

The impact of the conversion of natural resources, such as forest is becoming extractive industries, one of them is wildfire due to the government's unresponsiveness in the prevention and taking action of wildfire. So that the minimum sanctions given to the criminal corporate cannot give a deterrent effect to prevent wildfire in its concession area.

The government has done many ways as issuing the act that regulates the sanction for the wildfire doer and also forming institution for haze disaster happens. However, all efforts are useless. Wildfires cases happened continuously in the year 1997-1998, in 23 provinces (from 27 provinces in Indonesia on that year) in almost 10 million Hectare, shows that most wilfires areas were in the area of the company concession and allotment for plantation activity.

At that time almost ASEAN region was affected and Indonesia received serious warning from neighboring countries.⁶ As a result of the government's unseriousness within a decade to catch up the main criminals in the case of wildfires, involve many corporations, that event reoccurred in 2015. Thus, one of the most horrible wildfires in history. The economic impact is estimated to reach more than 15 billion US dollars or equivalent to 196 trillion rupiah.⁷

Result And Discussion

1. Law Enforcement of Wildfires

This inequality is influenced by our law enforcement, downward and blunt law enforcement. The economic interests as well as the interference of political power is becoming its sanctions executed to the companies is far from the sense of justice.

⁶ Isharyanto, *Kebakaran Hutan di Indonesia dan Penegakan Hukumnya*, accessed <http://isharyanto.wordpress.com/derap-ekonomi-publik/kebakaran-hutan-di-indonesia-dan-penegakan-hukumnya/>, on 10 july 2016

⁷ Sarah Porter, BBC Indonesia, *Dapatkah kebakaran hutan di Indonesia diakhiri?*, accessed www.bbc.com/indonesia/berita_indonesia/2016/03/160314_indonesia_kebakaran_hutan_2016, on 26 january 2017 at 12.00 WIB

Basically, everyone is equal in the law position as stated in the act 1945 in Article 27 paragraph (1): " All citizens have equal status before the law and in government and shall abide by the law and the government without any exception".

Commonly, the use of criminal law or its involvement in economic life is equal with the understanding of legal performance. Satjipto Rahardjo identified legal performance into two law functions; namely a means of social control and social engineering.⁸ It is seen, that the law does not have a power to the corporation as an example of forest land fire cases in Central Kalimantan. In 2015, Central Kalimantan, based on the data from Karlahut Provincial-Central Kalimantan post on October 29, 2015, stated that the forest area burned by 11.996, 22 hectares in October 2015. As a result of this case is the deterioration of air quality with the average particulate matter 10 / PM10 diangka 1,800 by period August-October 2015.

The Indonesian Forum for Environment of Central Kalimantan also stated that wildfire is caused by the wide authority of corporation area. 12,7 million hectare (78%) of 15,3 million hectare of Central Kalimantan is controlled by investment. Those areas are included Forest Concession Permit, coconut, or mining. In 2015, there are 17.676 fires in Central Kalimantan concession. However, the law enforcement has not worked well yet. 30 companies are investigated and 10 companies are rounded up, but the punishment is still unclear. The Indonesian Forum for Environment of Central Kalimantan said "Suspect which is judged by The Headquarters of the Indonesian National Police is small company. They have not found the big actions which accumulate big burning practice."

The weakness of law enforcement corporation in implementing criminal responsibility in case of wildfires in Central Kalimantan and other regions, such as: 1) The hostage of KLHK workers who were investigating wildfire in PT. Andika Permata Sawit Lestari area, Rokan Hulu, Riau. Whereas, Siti Nurbaya as the environmental and forestry ministry stated that PT. Andika Permata Sawit Lestari as corporation is supposed to command a group of society to hold hostage Ministry of Environment and Forestry team. 2) Regional Police Riau decide to stop investigating wildfire of companies because less evidence and the field is still in dispute.

⁸ Satjipto Rahardjo, Di dalam Supanto, *Kejahatan Ekonomi Global Dan Kebijakan Hukum Pidana*, Alumni Bandung, Ed. Pertama 2010. page. 19.

This following data shows that prosecution and verdict which round up corporation in wildfire is weak. The report of Ministry of Environment and Forestry 2016 is as follow.

Table 1

NO.	CASES TYPOLOGY	CASES PROCESS		AMOUNT
		INVESTIGATING	P21	
1.	Illegal logging	0	43	43
2.	Forest Encroachment	8	28	36
3.	Illegal Plant and Wildlife	6	43	49
4.	Pollution of Environment	4	4	8
5.	Wild Fire	5	0	5

Source: *The Directorate General of Law Enforcement of Environment and Forestry.*⁹

Conclusion

The wildfire cases that can not be solved well happen for more than a decade. It is happen because law enforcement does not understand and less effort of society to stop the wildfire action. Moreover, constitution can not work effectively. Whereas act number 41 year 1999 in article 49 about forestry stated clearly, "Right or permit holders have responsibilities about wild fire in their working area." It is adopted by *Strict Liability doctrine* and *Vicarious Liabiliti*.

It is not only stated in act number 41 year 1999 article 49 about forestry which stated that the holder of right and permit who have responsibility of wildfire in their working area, which adopt strick liability and vicarious liability doctrine. Strick liability is used since the act number 23 year1997 about environment management, and the act number 23 year 2009 about the protection and management of environment. Therefore, it does not need to prove that there is a mistake. In other words, just showing that it is potential to be the problem can be the base for lawsuit.¹⁰ One of the most crucial problems is the difficulty to prove the responsibility of corporation cases to complete cases which is done by that corporation. It is because law enforcement still believes in a principle, there is no cases without faults which is used as the basic of cases responsibility in Indonesian criminal legislation. Strict liability is

⁹ Kementerian Lingkungan Hidup dan Kehutanan, *Pengendalian dan Penanganan Kebakaran Lahan hutan LHK*, Accessed <http://www.menlhk.go.id/berita-121-pengendalian-dan-penanganan-kebakaran-lahan-dan-hutan-kementerian-lhk.html> on 23 february 2017

¹⁰ Muchtar Masrudi, Op.cit., page 120.

used since constitution 23 in 1997 about environment management, and constitution 23 in 2009 about the protection and management of environment. Therefore, it is not necessary to prove mistake, showing the cause of that problem is enough to be suit basic.

One of the most crucial problems is the difficulty to prove the responsibility of criminal corporation cases to complete criminal offense for outraged corporation. The law enforcer still believes to the principle that there are no cases without legal faults which is used as the penal code in Indonesian.¹¹ This limitation as the example is¹²; to regulate the existence of a criminal act done by the corporation, it can not be viewed as in common crime, since criminal corporation mostly is part of the white collar crime.¹³

Criminal responsibility is also spreaded out given to whom giving instruction or the chief of institution for the crime he/she does not commit (fysieke daderschaps). This principle gives more opportunity to apply *geen straf zonder schuld* because the fault of the chief or corporation members will be judged as the corporation fault.¹⁴ According to Wolter, this theory is judge interpretation which the judge interprets members and/or corporation to accede society requirements.¹⁵

Suggestion

The implementation of the act number 32 year 2009 about environment protection and management in punishing corporation of wildfire cases which happen during a decade. It means that application of strick liability and vicarious liability theory in the act number 41 year 1999 article 49 about forestry clearly stated, “the right and permit holder has responsibility if there is fire in their working area”. According to the writer that the act number 41 year 1999 article 49 concerning Forestry is applying *Strick Liability* dan *Vicarious Liabiliti* concept.

¹¹ Lu Sudirman Dan Feronica, *Pembuktian Pertanggungjawaban Pidana Lingkungan Dan Korupsi Korporasi Di Indonesia Dan Singapura, dalam Mimbar Hukum, Volume 23, Nomor 2, Juni 20011*, page. 292-293

¹² Yusuf Shopie, *Tanggung Jawab Pidana Korporasi Dalam Tindak Pidana Perlindungan Konsumen di Indonesia*, dalam ADIL Jurnal Hukum, Volume 2, Nomor 1, April 2011, Jakarta, page. 14-15

¹³ J.E Sahetapy, *Kejahatan Korporasi*, Ctk.Kedua, Refika Aditama, Bandung, 2002 page. 1.

¹⁴ Yusuf Shopie, *Tanggung Jawab Pidana Korporasi Dalam Tindak Pidana Perlindungan Konsumen Di Indonesia*, Op.cit., page. 133-134.

¹⁵ Setiyono, *Kejahatan Korporasi; Analisis Viktimologi Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Banyumedia Publishing, Malang, 2005. page. 133-134.

Corporation responsibility is implemented with considering accepted doctrines. Finally, legislators conclude that the responsibility can be given not only for people as individual but also for corporation. Criminal corporation can be asked to take legal responsibility for all actions which against the law.

“Strict liability” doctrine is defined as someone has to get responsible for certain crime although he/she does not have fault (*mens rea*). Then, Strict liability is defined as liability without fault.¹⁶

Then, vicarious liability is a criminal responsibility given to someone because of other’s fault (the legal responsibility of person for the wrongful acts of another).¹⁷ The example of this kind responsibility, getting the impact of other faults, happens in the same institution or position. Vicarious liability applies only to certain crimes based on England criminal law. Vicarious liability is just applied to:

- 1) Crimes by quality requirements.
- 2) Crimes by the relationship between worker/ employee and boss.

When strict liability and vicarious liability are compared, its similarities and differences are clear described. Their similarities are strict liability crimes as well as vicarious liability does not require a *mens rea* or an element of error in the person charged with the criminal. The difference is, in strict liability crimes criminal responsibility is directly due to the perpetrators, while the vicarious.

According to critical criminology, the occurrence of crime can be indicated if it incurs losses and victim. This means, even if an act is not included into a crime by the act, but if the consequences of the action result in losses and victim, then the act has been referred to as a criminal.¹⁷ Corporate crime victims include competitor, state, employee, consumer, public and shareholders.¹⁸

To anticipate, in the policy- making of criminal law, it must be noted the nature of criminal law “ultimatum remedium / subsider nature” which states criminal law should not be used if there are other ways to solve the case. However, in criminal corporation which

¹⁶ Barda Nawawi Arief, *Pelengkap Bahan Kuliah Hukum Pidana I*, (Semarang: FH-UNDIP, 1984), page. 68

¹⁷ Waluyadi, *Kejahatan, Pengadilan Dan Hukum Pidana*, “Urgensi Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia”, Mandar Maju:Bandung, Cet. 1, 2009. page 66.

¹⁸ Ibid, hlm. 67, lihat pula Muladi, *Demokratisasi, Hak Asasi Manusia Dan Reformasi Hukum Di Indonesia The Habibie Center*, Jakarta, 2002, page 148-149.

damages nation's economy, the criminal law must be implemented to punish, it is a "primum remedium". Eventhough, in law enforcement, it is very rare to face perpetrators of crime with power and greedy ("corporate crime" is included into that crime), compared with blue collar crime (stealing, robbery, etc).

The writer suggests the urgency of applying the doctrine of Strick Liability and Vicarious Liabiliti. The corporate criminal responsibility in the case of wildfires and the implementation of primum remedium in enforcing environmental laws to provide legal and justice protection for wildfires victims in order to create a prosperous society blessed by Allah SWT.

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