

Enforcement Law to Perpetrator Burning Forests in the District Kotawaringin the East Needs to Involve the Customary Council

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ABSTRACT

Law enforcement against perpetrators of forest fires in East Kotawaringin District needs to involve the Dayak Tribal Customary Council. This research is empirical legal research, with data obtained through literature studies and interviews with informants and respondents. The results of his research were that there were forest and land fires in the East Kotawaringin district due to the clearing of agricultural land and arson, human negligence due to careless disposal of cigarettes, the presence of flammable/dry fuel, and sparks originating from other people. area and natural factors. Like a hot dry season, causing friction of dry/flammable objects. In conclusion, customary councils have an important role in law enforcement against perpetrators of forest and land burning, especially for those who burn forests and land. The perpetrators will be subject to sanctions in the form of a reprimand from the adat council and compensation money for the losses suffered.

INTRODUCTION

Forest and land fires are events that are very detrimental and cause damage to forests and land resources. Forest and land fires have often occurred in recent years in Indonesia, one of which is in East Kotawaringin Regency. This forest fire is solely due to changes in the ecological chain. However, the fact is that it is heavily influenced by the perpetrators of forest fires that are deliberately used for land clearing, and the opening of large-scale plantation industries. This shows that the monitoring and prevention of forest fires in East Kotawaringin Regency are still very weak and require attention from the Government. Forest burning is an act that may not be carried out because it violates laws and regulations, namely: Article 50 Law Number 41 of 1999 in conjunction with Law Number 19 of 2004 concerning forestry, Article 11 Government Regulation Number 4 of 2001 concerning damage and pollution control environment related to forest and land fires, as well as Articles 187 and 188 of the Indonesian Criminal Code (KUHAP). East Kotawaringin Regency is an area in Central Kalimantan Province. Forests and land have very important values because forests and land are places of livelihood for the community which are used as the basic capital in carrying out and carrying out national development both from economic, social, cultural and ecological aspects to increase people's prosperity. This is by the words of Article 33 paragraph (3) of the 1945 Constitution that "Earth, water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people".

Increasingly high population and economic developments have resulted in the forest and land management system in East Kotawaringin Regency increasing and becoming out of control. Forest and land fires are a very big problem faced by the State of Indonesia, one of which is East Kotawaringin Regency, Central Kalimantan Province which is prone to forest and land fires. Forest and land fires that occur during the dry season and when clearing agricultural land or preparing land for agricultural and plantation business activities. In these cases, the customary council has a very important role in law enforcement against the perpetrators of forest and land burning. Law enforcement for perpetrators of forest and land burning is urgently needed, in order to provide a deterrent effect for perpetrators of forest and land burning and to compensate for losses due to forest and land burning. The actions taken by the perpetrators of forest and land burning have had a very detrimental negative impact on the community, namely: causing health problems, loss of property, loss of life, and damage to forest ecosystems thereby affecting the national and regional economy. Another impact is the increasing temperature

of the earth's surface (*global warming*) considering that Kalimantan Island is the world's lungs.

THEORETICAL REVIEW

Overview of the Crime of Forest and Land Burning.

The problems that exist in Indonesia are quite a lot, but one of the concerns is the problem of criminal acts regarding the environment. Lots of environments are now experiencing problems. Much is reported in the media about criminal acts of forest and land burning. Forest and land burning is a serious violation according to existing regulations. There are many areas where this has happened, the big example of what happened on the islands of Sumatra and Kalimantan which has been widely reported in the media. Many people clear land by burning in a short way but causing quite a big effect. Clearing land by burning only takes a short time, the cost is low, and the yields are large enough to make people use this method instead of clearing land by following the rules set by law. Burning forests certainly have many side effects that are quite large and can damage life in the forest. Like the animals in the forest. In addition, the level of soil fertility will decrease, causing an unstable climate that causes respiratory problems that can cause death.

Problems regarding forest and land fires have reached neighboring countries. This is due to the lack of attention from the community about the dangers of clearing land by burning. The cases that have occurred are examples of cases of environmental destruction and are very dangerous and there must be attention from the local and central government so that such incidents do not happen again. To prevent this, there must be binding legal regulations so that this does not happen again as stated in the criminal law, namely law number 32 of 2009 concerning environmental protection and management, then there is also law number 41 of 1999 regarding forestry and law number 39 of 2014 concerning plantations. This law protects how to preserve the environment so that it is maintained and provides strict sanctions containing criminal penalties for anyone who commits these actions without mercy. However, there are several problems arising from the four laws.

Definition of Forestry Law

All forms of knowledge are very important for us to know the meaning that we must understand something from something. Understanding will give a description of something that is contained in science, both general and specific knowledge, for example the science of law. Then this also applies to the science of forestry where in article 1 point 1 of law number 41 of 1999 concerning forestry there is a definition of forestry, namely forestry is a system of management concerned with forests, forest areas and forest products which are

organize in an integrated manner. Seeing from the article above in article 1 point 1 above there is only the definition of forestry, not including the legal definition of forestry. According to Idris sarong al-mar, forestry is a series of unwritten rules or norms and unwritten rules that live and are maintained in matters of forestry and forestry. (Idris Sarong Almar, 1997: 6)

Then, according to Salim, from several definitions of forestry, there are three formulations regarding forestry law, namely the existence of forestry law rules, both written and unwritten, the second regulates the relationship between the state and forests and forestry, and the third regulates the relationship between individuals between individuals and forests and forestry. Based on this opinion, the function of forests has strategic values because forests are a source of national development which has considerable benefits for this country from various sectors ranging from social, economic, cultural and others which have considerable benefits for the sustainability of generations. which will come. (Idris Sarong Almar, 1997: 6). Judging from the many factors that are causing pressure on forests at this time it is very necessary to refer to the values contained in law number 41 of 1999. Looking at article 2 of law number 41 of 1999 it is stated that forestry administration is based on benefits and sustainability, democracy and justice, togetherness, openness, and integration. Judging from the principles stated in article 2 of law number 41, specifically regarding the objectives of forestry administration regulated in article 3 of law number 41 of 1999 it is stated that, the purpose of implementing forestry is only for the prosperity of the people based on justice and sustainability. ensuring the existence of a fairly large forest that is proportionate, maximizing the function of the forest in order to achieve environmental, social, cultural and economic benefits.

Then contribute to watersheds, increase capacity and develop community empowerment in a participatory, fair way, and have environmental insight to external changes and ensure fair and sustainable distribution.

Sources of Indonesian Forestry Law

Sources of law are where we can find or explore sources of law as a basis for moving in implementation. According to Algra, there are two sources of law, namely material sources of law and formal sources of law.

a. Source of material law

The source of material law is the content of statutory regulations. Broad coverage of the content of material legal sources through a sociological approach and various other approaches. According to one of the experts, Lj van Apeldoorn distinguishes the sources of law in a historical sense, in a sociological sense, in a philosophical sense, and in a formal sense.

b. Sources of formal law

The source of formal law in terms of form and procedure becomes positive law through the development of authorized legal authority.

Status, Function and Destruction of Forests

Determination of the status of forests in Indonesia itself must be determined, not only that but also the function of these forests must be clearly defined so as not to cause confusion. The designation is very functioning to provide understanding to the community in order to anticipate claims or demands of the community in order to distinguish between state forests and private forests.

Many people think that private forests are forests that are under the control of local communities, such as for example customary forests, where there should be no state interference. Therefore, the law has regulated the status of forests, even though the State is the one who holds full authority over the forest, but the State also recognizes forests whose existence has been acknowledged, either individually or by the community, in the form of private forests. In article 5 of law number 41 of 1999 it is said that forests based on their status consist of state forests and private forests. Therefore the forest that is meant by State forest is customary forest. Therefore, the government will determine the status of the forest as meant in paragraphs (1) and (2) and will continue to apply it as long as the culture in the area can be recognized and its existence is maintained. If all the elements included in the customary forest are no longer there, the government will return to managing the function of the forest. In this regard, also in Article 5 of law number 41 of 1999 article (1) it is said that state forests can be in the form of customary forests, namely state forests that are handed over to indigenous peoples. The previous designations for customary forest were community forest, clan forest, private forest, or other names. Forests owned by indigenous peoples remain a consequence of power by the State as a form that states as the highest organization and principle of a state but does not eliminate the rights that have been regulated in law.

Acting on behalf of customary forests in the sense that they are included in state forests will not negate the rights of indigenous peoples as long as the culture in indigenous peoples is still intact and recognized. Like the village forest which is controlled by the village and utilized for the welfare of the village community. State forests aimed at empowering communities are called community forests. Then, forests that are under private ownership rights are called community forests. Seeing the recognition of customary law on forest management in law number 41 of 1999 concerning forestry is a continuation of

regulations that have been formed previously which have recognized the rights of indigenous peoples. We can prove this based on law number 5 of 1960 concerning basic agrarian principles, which in article 5 makes customary law the basis for national land regulations, then there is also law number 10 of 1992 concerning population development and community welfare, which provide guarantees based on the use of land that has been worked on as a legacy of customary law.

The field of forestry law is a field of law that has been around for 137 years, since the 1865 forest regulation was enacted. At that time, there was still a lot of lack of literature and caused a lack of attention. Judging from the term forestry, it is a translation from the Dutch language, namely *Boswegen recht* and forest law from English "the system or body of old law relating to the royal forest". It means an old legal system or order that relates to and regulates the royal forests. Judging from the previous definition of forestry law, it only regulates forests but those controlled by the kingdom, while private forests do not have specific rules governing them. As time went on, it began to be perfected in 1971 through the 1971 act.

According to Idris Sarong al Mar what is meant by forestry law is "a series of (unwritten) rules/norms and (written) regulations that live and are maintained in forestry and forestry matters". (Al Mar, 1993: 8). In forestry law there are three elements, firstly there are rules of forestry law both written and unwritten, secondly it regulates the relationship between the State and forests and forestry, and thirdly regulates the relationship between individuals and forests and forestry. Written forestry laws are regulations made by related institutions to regulate forests and forestry. This law is seen in the statutory regulations passed by the government and in the Dutch East Indies era when Indonesia was independent. For example law number 5 of 1967 concerning basic provisions on forestry. Meanwhile, unwritten laws regarding forestry can be seen from local customary laws. The following matters are regulated in the unwritten forest law:

- a. The right to open land in the forest
- b. The right to cut wood
- c. The right to collect forest products
- d. The right to graze cattle
- e. And others.

Nature and Purpose of Forestry Law

Forestry law has a special nature or its legal language is *lex specialist*, even though there are other regulations governing forestry and forestry, what forestry law applies to is the agrarian and environmental law and it is included

in the specialist derogate *lex generalis*. The purpose of forest law is to protect, utilize and provide benefits to society.

METHODOLOGY

To facilitate research the authors use the following research methods:

1. Type and Nature of Research

The type of research that the writer will use is observational research or by survey method, namely research that takes samples from a population and uses interviews as a means of collecting basic data (Masri Singarimbun and Sofian Effendi, 2005: 3).

Meanwhile, when viewed from its nature, this research is categorized in descriptive research, namely describing the condition of the subject or object of research at the present time based on the facts that appear as they are (D. Mutiara Hatia Putri, 2000: 36). In this research, descriptive is the problem that the writer will examine

2. Research Locations

The location of the research was carried out in Kotawaringin Timur Regency, in the jurisdiction of the East Kotawaringin Police and the East Kotawaringin Dayak Tribal Customary Institution. The reason for the research the authors chose for this research location was because of the many cases of forest and land fires caused by the habit of burning forests by means of local wisdom.

3. Population and Respondents

The population is the total number of objects to be studied that have the same characteristics, so a researcher must be able to classify and sort out what and which can be used as a population. The author uses a purposive method, namely setting a sample that represents the population that conducts field surveys.

RESEARCH RESULT

The role of the Dayak Tribal Customary Council is part of local wisdom, local wisdom itself comes from English *local wisdom* which consists of 2 (two) syllables namely wisdom, wisdom *and* local, local *which* are wise, full of wisdom, worth good, embedded and followed by members of the community. (Sartini, 2004: 37) Society is defined as a large or small group consisting of several human beings with or because they are group related and influence each other. (H Shadily, 1999: 47)

From the above understanding it can be concluded that local wisdom is a local idea that is wise and full of wisdom that lives and is obeyed by a local community. Entering the 21st century there is social change in society as a result of the development of technology and information. The entire structure of society is affected by the effects of change or at least influenced by other social structures, which also have an impact on social change. As a guide, it can be formulated that social changes are all changes in social

institutions including values, attitudes, and patterns of behavior among groups in society. (S Soekanto, 2014: 101) . One of the local wisdom values of the Indonesian people that has not changed and is still accommodated in a statutory regulation is clearing land by burning land. Forest burning is an act of setting fire to a forest deliberately. Burning is synonymous with intentional incidents at a predetermined location and area. This burning aims to open land to rejuvenate forests or control pests. Within the scope of forestry science there is little difference in terms between forest burning and forest fires. Forest burning is synonymous with intentional occurrence at a certain location in a controlled manner. The purpose is to clear land, rejuvenate forests, or control pests, while forest fires are more accidental or can also occur naturally. The people of East Kotawaringin Regency are familiar with a land clearing system known as slash and burn. However, not everyone can cut and burn forests. Through customary rules they coordinate how the system has been agreed upon by the local indigenous people. In which way is the family allowed to cut and burn first, after making sure the fire has been extinguished then the other families will continue.

With this system, each family head does not burn the forest together, which of course will raise concerns about a very large number of hotspots. The system of burning forests alternately will actually control the number of hotspots which can prevent widespread forest and land fires. Law enforcement in the context of violations of clearing forest land in the manner stipulated in Article 69 paragraph (2) UUPPLH, namely through the local wisdom of the community. The elucidation of the article contains permission for people who have local wisdom to clear land by burning with the condition that the land area is 2 hectares per head of family, planted with local varieties of plants, and the burning must be surrounded by clearing blocks. However, what about law enforcement if one of the 3 conditions, and/or 2 of the 3 conditions are not met by the community when clearing land by burning. Execution of the law can mean executing the law without any dispute or violation. Besides that, the implementation of the law can occur because of a dispute, which is carried out by a judge. This is at the same time law enforcement against criminal acts of forest and land burning. (S Martokusumo, 2009: 36).

DISCUSSION

The term indigenous peoples is usually addressed to a person or local group who still have their original culture. The English language for indigenous peoples is "indigenous" while the Latin language is "*indigenae*" there are so many terms and meanings from indigenous peoples and until now there is no definite meaning from this definition. (Rafael Edy Bosko, 2006: 2) . The difficulty in interpreting the definition of indigenous peoples is caused by the variety of indigenous cultures in Indonesia so that they have not found a definite and agreed meaning from this definition. There are several other reasons why no definite definition has been found, namely several countries do

not agree with the term indigenous peoples because they can determine their own destiny. (Nathan Lerner, 1991: 3). In terms of terminology, many say that the designation for indigenous peoples contains a negative stigma, for example government policies that mention tribes, races, primitive peoples, minorities and so on. From the terminology of the term indigenous peoples, many think that this gives the impression of harassing, belittling and belittling indigenous peoples. Based on the UUPPLH in chapter I in the general provisions of article 1 it is stated that the term indigenous peoples is as follows:

"Indigenous people groups who have lived in certain geographical areas for generations because of ties to ancestral origins, a strong relationship with the environment and a value system that determines economic, political, social and legal institutions" .

Apart from that, there are international organizations that provide definitions of indigenous peoples, such as the ILO, the World Bank, there are also special pioneers and legal experts. ILO 107 says and uses the word "population" that it has two categories: "tribal or semi-tribal indigenous population" and "tribal or semi-tribal population that are considered indigenous" which were given as a result of colonialism. So the ILO says that society is a group of indigenous peoples who have cultures that are still original from the time of conquest or colonialism.

Many communities that have interests on behalf of AMAN (Association of Indigenous Peoples of the Archipelago) prefer to use the definition used by the ILO. They also held a congress to decide on this to be carried out on March 22, 1999 in Jakarta. (Rafael Edy Bosko, 2006: 5). Categories in indigenous peoples are included as ancestral heritage that has been passed down from generation to generation in certain areas and still has values, ideology, politics, social, culture and others. The most widely used definition in cobo studies. In the discussion of the Cobo study, many have offered definitions of indigenous peoples. From the above understanding it can be concluded that local wisdom is a local idea that is wise and full of wisdom that lives and is obeyed by a local community. Entering the 21st century there is social change in society as a result of the development of technology and information. The entire structure of society is affected by the effects of change or at least influenced by other social structures, which also have an impact on social change. As a guide, it can be formulated that social changes are all changes in social institutions including values, attitudes, and patterns of behavior among groups in society. (S Soekanto, 2014: 101) .

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forest burning and forest fires. Forest burning is synonymous with intentional occurrence at a certain location in a controlled manner. The purpose is to clear land, rejuvenate forests, or control pests, while forest fires are more accidental or can also occur naturally.

Based on the applicable laws and regulations, the act of setting fire to a forest is a criminal act. At least violations of forest fires are regulated in three laws, namely as follows:

1. Article 50 paragraph (3) letter d of law number 41 of 1999 concerning forestry that "everyone is prohibited from burning forests". Accountability is regulated in Article 78 paragraph (3) law number 41 of 1999, namely:

"Anyone who intentionally violates the provisions as meant in Article 50 paragraph (3) letter d, is threatened with imprisonment for a maximum of 15 (fifteen) years and a fine of up to Rp. 5,000,000,000 (five billion rupiah)".

2. Article 108 of Law Number 39 of 2014 concerning plantations namely:

"Any plantation business actor who clears and/or cultivates land by burning as referred to in Article 56 paragraph (1) shall be subject to imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 10,000,000,000. (ten billion rupiah)".

3. Article 69 paragraph (1) letter h of the Law on Environmental Protection and Management, namely:

"Everyone is prohibited from clearing land by burning".

Accountability is regulated in Article 108 of Law 32 of 2009 which reads as follows:

"Anyone 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 Rp. 3,000,000,000. (three billion rupiah) and a maximum of Rp. 10,000,000,000. (ten billion rupiah)".

The description above has mentioned provisions prohibiting forest burning in three different laws. However, there are also rules for permitting land clearing by burning with special conditions based on local wisdom in each area. The existence of the norm of permitting forest burning is not a contradiction with the norm of prohibiting forest burning mentioned above. From the problem of forest fires, the role of the Dayak tribal council is very important because it is able to socialize the procedures and rules for burning forests for the benefit of clearing land with a limit on the size of the land. The Dayak tribal council also has a very important role for nature because together with the community it maintains the natural preservation of forests in East Kotawaringin Regency.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of research and analysis it can be concluded that the role of the Dayak customary council as an institution in society has a very important role. The Dayak customary council does not only have a role in the traditional sphere but the adat council has a role that includes fostering, renewing, exploring, or qualifying customs. The role of the Dayak customary council itself is in enforcing the law against perpetrators of forest and land burning, especially those who burn forests and land of less than 2 (two) hectares. The perpetrator will be subject to sanctions in the form of a warning from the adat council and compensation money for the losses and impacts experienced. So that the Dayak customary council in carrying out its role in enforcing the law against perpetrators of forest and land burning must be more assertive in imposing sanctions on perpetrators of forest and land burning so that perpetrators of forest and land burning feel deterrent and will not carry out forest and land burning again and the Dayak customary council can also make written regulations for perpetrators of forest and land burning so that the preservation of nature is maintained.

ADVANCED RESEARCH

For further researchers, it is hoped that the results of this study can become a basis and theoretical reference for further research conducted by future researchers based on this research. Based on this description, the benefits described are one of the guidelines for researchers in conducting research. The final results of this research can be useful for researchers, for educators and also useful in research to prevent forest fires.

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