



## Criminal Law Enforcement against Perpetrators of Forest Fires for Agricultural Land Clearing in Indonesia

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**Abstract:** Land clearing that leads to forest fires constitutes a serious threat with far-reaching impacts on the environment, public health, and the national economy. Forest fires contribute to biodiversity loss, air pollution, climate change, and significant social and economic losses, particularly for communities living near affected areas. This research examines the regulatory framework and the implementation of law enforcement in Indonesia concerning perpetrators of land clearing activities that result in forest fires. It also analyzes the role of the government in preventing and controlling forest fires, as well as the obstacles encountered in the enforcement process. The study employs a case approach combined with a normative juridical method, relying on the analysis of relevant laws, regulations, court decisions, and legal literature. The results of the study indicate that perpetrators of land clearing causing forest fires may be subject to legal sanctions, including criminal penalties such as imprisonment and fines, as well as administrative and civil liability. Furthermore, the government plays a crucial role in forest fire prevention and suppression through policy formulation, supervision, and coordination among institutions. However, law enforcement faces several obstacles, including weak supervision, limited resources, difficulties in evidence collection, and lack of compliance by corporations and local actors.

**Keywords:** Enforcement, Government, Law

### 1. Introduction

Forest is one part of the environment. Forest is also a national development capital that has real benefits for the life and livelihood of the Indonesian people, both ecological, socio-cultural and economic benefits, in a balanced and dynamic manner.<sup>1</sup> Until now, forest fires are one of the most serious problems in Indonesia because they cause considerable impact and damage to the environment, especially in the surrounding areas. Forest fires are fires that burn 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 branches of standing dead trees, logs, tree stumps, weeds, shrubs, leaves and trees.<sup>2</sup> Basically, uncontrolled land burning causes damage to the environment, such as soil erosion and land degradation, forest fires, loss of water sources, and causes adverse effects on human health. In addition, land burning also has an impact on global climate change, as gases produced from land burning such as CO<sub>2</sub> and methane, which are greenhouse gases that are very harmful to the environment. The haze arising from forest fires contains a large number of chemical compounds that can cause cardiovascular disease and even death.<sup>3</sup>

<sup>1</sup> Yusuf, A. M., & Makarao, M. T. *Hukum Kehutanan di INDONESIA*. Jakarta, Rineka Cipta, 2011

<sup>2</sup> Saharjo, B. H. *Forest and Land Fire Control Sustainable Fire Control Needs to Be Done*, Bogor Agricultural University, Bogor, 2003).

<sup>3</sup> Yanuar Rachmatul Ridha, et al, "Dispensation for Burning Agricultural Land Clearing Based on Local Wisdom," *Ganesha Law Review* 5, no. 1 (2023): 69-77.)



As a result, forest fires have caused losses not only physically, socially, economically, politically and security-wise, but also to the environment, especially to biodiversity<sup>4</sup>

Criminal law enforcement against perpetrators of forest burning for land clearing in Indonesia is a crucial issue that requires serious attention. The environmental impact caused by the practice of forest burning is very significant, threatening the sustainability of the ecosystem and causing various health problems for the community. It cannot be denied that the process of enforcing criminal law against perpetrators of forest burning is also quite a lot of obstacles.

Although the government has named many suspects related to forest burning cases, the effectiveness of law enforcement is still questionable. This lack of law enforcement effectiveness can be attributed to various factors, such as weak supervision, lack of resources, and lack of coordination between law enforcement agencies.

There is an urgent need to strengthen law enforcement mechanisms against perpetrators of forest burning. This can be done by improving the effectiveness of supervision, strengthening the capacity and resources of law enforcement agencies, and improving inter-agency coordination. Increasing the effectiveness of law enforcement is expected to provide a greater deterrent effect for perpetrators of forest burning, so as to prevent similar violations from occurring in the future.

## 2. Research Methode

The research method used is normative with a case approach and legislation that focuses on analyzing how the application of criminal sanctions for perpetrators of forest fires, assessing the effectiveness and relevance of applicable legal rules. examine how role of government and law enforcement in efforts to prevent and control forest fires due to agricultural land clearing and what obstacles occur in law enforcement.

### 3.1 Criminal Law Enforcement Against Perpetrators of Forest Burning for Agricultural Land Clearing in Indonesia

Criminal law enforcement on perpetrators of forest burning for land clearing is the process of applying criminal law to individuals or groups proven to have committed forest burning with the aim of clearing land for various interests, such as agriculture, plantations, or development. This process involves various stages, ranging from investigation, prosecution, to trial, with the aim of imposing punishment on the perpetrator and providing a deterrent effect. In this case, the purpose of criminal law enforcement is to: 1. Prevent and Stop Forest Burning: Punishment is expected to deter perpetrators and prevent forest burning in the future 2. Ensure Justice: The goal of law enforcement is to bring justice to the victims of forest burning, both environmental and human 3. Protecting the Environment: Forests are important natural resources for ecosystems and human life, and law enforcement is expected to protect them. This complex process involves various parties, including: 1. Law Enforcement Officials: To investigate and prosecute arsonists, police and prosecutors are essential 2. Judicial Institutions: The task of examining and trying forest burning cases and sentencing the perpetrators lies with

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<sup>4</sup> Alya Caesar Nurohma, "Critical Analysis of the Decision of the State Administrative Court in the Dispute over the Borrow-to-Use Forest Area Permit for the Construction of Tampur Hydroelectric Power Plant," *Savana: Indonesian Journal of Natural Resources and Environmental Law* 1, no. 1 (2024): 17-23.

the courts 3. The public: In reporting cases of forest burning and monitoring the performance of law enforcement officials, the community plays an important role.

Environmental law, in addition to being a tool to maintain order and security, also has the aim of reforming society. (social engineering). This goal can be achieved through effective and consistent law enforcement, as well as through education and socialization efforts to the community about the importance of protecting the environment. However, in practice, environmental law enforcement in Indonesia still faces several obstacles. One of the obstacles faced is the lack of effectiveness of regulations regarding forest fires/burning contained in the Forestry Law. Although the law prohibits forest burning, the prohibition can be counteracted for special purposes with permission from authorized officials. This shows that the implementation of environmental law is still not optimal and efforts need to be made to strengthen law enforcement and increase public awareness about the importance of protecting the environment.

In the context of environmental law, violations of legal norms governing environmental management, such as pollution, habitat destruction, and overexploitation of natural resources, are generally associated with criminal sanctions. The application of criminal sanctions in this context is based on the assumption that criminal threats are an effective law enforcement tool to encourage compliance with these norms. This assumption is based on several arguments. First, criminal sanctions are considered as a deterrent for potential offenders, so that they will think twice before committing acts that violate the law. Second, criminal sanctions serve as a tool to provide a deterrent effect to offenders, so that they will not repeat their actions in the future. Third, criminal sanctions can serve as a tool to restore environmental damage caused by the offense, through restitution or rehabilitation mechanisms.

Nonetheless, it needs to be recognized that the application of criminal sanctions in the context of environmental law has several challenges. First, it is difficult to prove violations of environmental law, especially in cases involving long-term environmental damage. Second, the complexity of the environmental law process, which involves various parties and institutions, can slow down the law enforcement process. Third, the lack of public legal awareness about the importance of environmental legal norms can hamper the effectiveness of law enforcement. Therefore, comprehensive efforts are needed to improve the effectiveness of environmental law enforcement, including through legal counseling, capacity building of law enforcement agencies, and reform of the environmental legal system.

Criminal penalties serve as a reaction to transgressions of environmental law, with the objective of upholding and guaranteeing adherence to the legal directives controlling environmental governance. These criminal penalties are intended to dissuade offenders, stop similar offenses from happening in the future, and repair any environmental harm that these offenses have produced. Legal standards governing rights, obligations, and authority in environmental management, for instance, are found in Law No. 32/2009 on Environmental Protection and Management. Law Number 32 of 2009's environmental legal norms are classified as crimes, and those who violate them may face jail time, fines, or other criminal penalties. The kind and degree of criminal penalties that violators face will be tailored to the seriousness of.

The legislation in question, Law Number 32 of 2009 concerning Environmental Protection and Management, sets out the regulations pertaining to the criminal act of clearing plantation land by burning. This is outlined in Article 69, Paragraph (1), Letter H, which states: "Every person is prohibited from clearing land by burning." Furthermore, Article 108 of the aforementioned legislation outlines the penalties for those who engage in land burning, as defined in Article 69. Those found to be in violation of paragraph (1) letter h shall be subject to a minimum of three years and a maximum of ten years of imprisonment, in addition to a fine of at least Rp3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).<sup>5</sup> The function of criminal law is considered by legal experts as the ultimate law enforcement instrument (*ultimum remedium*), because other instruments are considered as a means of protecting the environment.<sup>6</sup>

It can be seen from the case occurred in Jambi, West Tanjung Jabung Regency, six people were detained by the police for allegedly deliberately burning land to clear agricultural land in 2020. the perpetrator who lives in Parit Jawa, West Tanjung Jabung Regency, Husband, was only silent when he was taken to the West Tanjung Jabung Police Station in early August. When he was announced as a land burning suspect, Jambi Police Chief Inspector General Firman Shantyabudi covered his face. It was decided that the 40-year-old man was guilty of burning 6,000 meters of land owned by Sajali and Dedek in Pantai Gading Village on July 29, 2020. According to Law No.39 of 2014, article 108 in conjunction with article 56 paragraph (1), article 187, or article 188 of the Criminal Code, he is sentenced to 10 years in prison and a fine of 10 billion rupiah.

Regarding the responsibility of the perpetrator of the crime of forest burning, so that the perpetrator can be convicted, the perpetrator must fulfill the elements as in Article 187 paragraph (1) Jo Article 188 of the Criminal Code. To be able to declare a suspect who is charged with violating the prohibition stipulated in Article 187 paragraph (1) Jo Article 188 of the Criminal Code proven to have intentionally committed the crime of forest and or land burning. therefore the Police as an institution of law enforcement officials take law enforcement measures in accordance with standard operating procedures and applicable laws and regulations. Based on the juridical analysis of the aforementioned case, the suspect Suhaimi has obtained sufficient evidence to strongly suspect that he has indeed committed forest burning to clear agricultural land which by his negligence has caused public danger to many people. In connection with the above, the investigator is of the opinion that the suspect's actions have fulfilled the elements of the offense listed in Article 187 paragraph (1) Jo Article 188 of the Criminal Code. Therefore, the case can be upgraded to the prosecution stage. The application of Article 187 paragraph (1) Jo Article 188 of the Criminal Code (KUHP) against perpetrators of forest and/or land burning (*karhutla*) is an effort by the Indonesian National Police (Polri) to enforce the law against criminal acts committed by individuals, not corporations.

The practice of burning forests or land by individuals, especially in the context of land clearing for gardening, is a frequent phenomenon in Indonesia. People often use burning to clear land because it is considered easier and more practical. However, this practice violates legal

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<sup>5</sup>Article 108 of Law Number 32 of 2009 concerning Environmental Protection and Management.

<sup>6</sup>Supriadi, *Environmental Law in Indonesia: An Introduction*, Jakarta: Sinar Grafika, 2008

provisions and has the potential to cause serious environmental impacts. The application of Article 187 paragraph (1) Jo Article 188 of the Criminal Code against perpetrators of forest and/or land burning committed by individuals is an effort to provide a deterrent effect and prevent similar violations from occurring in the future. This law enforcement effort is expected to encourage people to use more environmentally friendly methods in clearing land, so as to minimize the negative impact on the environment.

### **3. 2 The government's role in forest fire prevention and suppression in Indonesia**

The primary objective of fire control is the prevention of forest fires. This is achieved by implementing measures that minimize the impact of a potential fire, and it is a process that must be carried out on a regular basis, based on the current situation in the field. This may entail the establishment of work programs, an increase in the capacity and number of fire awareness communities, and the development of sustainable commodities that depend on the surrounding forest. The prevention of forest and land fires, or the pre-disaster stage, can be considered an activity that is inextricably linked to the control of forest and land fires. However, the efficacy of this approach must be evaluated in the context of the broader success or failure in the control of forest and land fires. Prevention and extinguishing are two inseparable and interrelated activities, where prevention necessitates the readiness to extinguish fires as expeditiously as possible to prevent their spread.

In accordance with Indonesian Presidential Instruction Number 3 of 2020 on Forest and Land Fire Management, the Indonesian government has been taking a multi-faceted approach to the prevention and management of forest and land fires : 1. Efforts to prevent fires The government carries out this effort through community awareness campaigns that are designed to: a. raise awareness of the value of maintaining and protecting forests; b. enhance technology to protect forests; and c. implement physical development, such as the building of reservoirs and green belts, to prevent forest fires. 2. The government fights fires by enhancing rescue and evacuation procedures, suppression operations, and suppression technologies. 3. Monitoring, assessing, and cataloging burned woods as well as forest regeneration are all part of post-fire management initiatives.

Natural factors typically do not result in significant impacts with regard to forest fires. However, deliberate human-induced forest fires have the potential to cause considerable damage. It is therefore of great importance to implement measures aimed at the prevention and control of forest fires. Among the measures that can be taken to prevent forest fires are forest fire suppression measures carried out by relevant parties, such as the Forestry Service, as well as forest fire management councils in each village situated in the vicinity of the forest area. Furthermore, the implementation of existing legislation, such as Law No. 1 of 2004 on Amendments to Law No. 41 of 1999 on Forestry and Law No. 32 of 2009 on Environmental Protection and Management (PPLH), is of paramount importance. In order to prevent forest fires, it is essential to gain an understanding of the underlying causes of such incidents and to implement effective prevention strategies. Intentional human-caused forest fires are typically associated with land clearing activities involving the burning of vegetation, such as the establishment of oil palm and rubber plantations. It is therefore imperative to raise public awareness about the dangers of forest fires and how to prevent them, as well as to improve supervision and implement effective countermeasures against uncontrolled waste burning. In

order to mitigate the environmental challenges currently facing Indonesia, it is imperative to prioritize the prevention of forest fires. The occurrence of forest fires has the potential to result in significant environmental damage and adverse effects on human health. It is therefore imperative to implement measures aimed at the prevention and control of forest fires, while simultaneously raising public awareness of the dangers posed by such incidents and the means of preventing them.

Indonesia is home to one of the largest tropical forests in the world. These forests serve not only as the lungs of the world, but also as habitats for numerous rare and endemic species of flora and fauna. However, in recent decades, Indonesia has frequently been confronted with the challenge of forest fires, which have a profound impact on the environment, economy, and public health. The majority of forest fires in Indonesia are caused by human activities, such as the clearance of land for agricultural and plantation purposes through uncontrolled slash-and-burn methods. Furthermore, climate change is a contributing factor to the increased frequency and intensity of forest fires.

In addition, the Indonesian government tries to issue policies or the implementation of legal and regulatory frameworks is essential for the prevention and effective management of forest and land fires. These measures should be accompanied by the imposition of stringent penalties for those who engage in such activities. Explanation: As mentioned in the previous explanation, forest burning is one method of land clearing that is considered quick. This method is used by some areas as it is part of their lifestyle and source of livelihood. This is due to the fact that the land in question will be used for agriculture and other purposes.<sup>7</sup>

To this end, the following measures are recommended: 1.)Conducting guidance and counseling.The objective is to enhance the quality of life for communities situated in or adjacent to forest areas, while simultaneously increasing public awareness of the risks associated with forest and brush fires 2.) It is recommended that customary law be respected in a manner that is consistent with the recognition of state law, or alternatively, that state law be revised through the adoption of customary law 3.)The objective is to enhance the capabilities of government officials with regard to the resources in question through the implementation of training and formal education programs. One potential avenue for consideration is the establishment of a forest fire management study program 4.)The provision of facilities for forest fire management, encompassing both software and hardware 5.)The implementation of legal sanctions against those who violate environmental regulations, particularly those who are responsible for starting or directly causing fires.

In addition to prevention, the government also implements countermeasures through a variety of activities,These include: The government has also taken steps to enhance the capabilities of forest fire posts at all levels, providing guidance on the appropriate response during Alert I and II. Furthermore, it has facilitated the mobilization of all resources (human, equipment, and funds) at all levels, both within the Ministry of Forestry and other agencies, as well as companies. It was also requested that foreign assistance be provided to extinguish the fires, among other things. Bomba troops from Malaysia were deployed to assist with fires in Riau, Jambi, South Sumatra, and West Kalimantan. Australian AT-130 aircraft and Hercules aircraft

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<sup>7</sup> Rahel M.T., Christine S.T., Wilda A., Journal of Law Enforcement Against Perpetrators of Land Clearing by Burning Forests

from the USA were also dispatched to help combat fires in Lampung. Assistance was provided by ASEAN countries, including the provision of masks, medicines, and other essential supplies.

### **3. 3 Obstacles in the Implementation of Criminal Law Enforcement Against Perpetrators of Forest Burning**

Because it is hard to prove environmental damage and establish standard criteria, environmental management law enforcement remains challenging. Using criminal law to enforce environmental laws is an attempt at social engineering. by incorporating into legislation the three primary components of criminal law. The creation of criminal offenses (Criminal Act) is one of these components. The acts that are classified as environmental crimes, such as pollution, habitat destruction, and excessive use of natural resources, must be outlined precisely and comprehensively in environmental criminal law. Criminal responsibility: If it is established that an individual or organization has broken an environmental law standard, environmental criminal law must provide a just and transparent criminal responsibility system for both parties. Sanctions: Environmental criminal law needs to provide appropriate and effective penalties for every kind of. In the enforcement of Criminal Law against perpetrators of forest burning for agricultural land, there are several factors that hinder the implementation of Criminal Law enforcement against perpetrators of forest and land burning in Indonesia, namely:

#### **1 . Geographical Conditions of the Forest at the Fire Location**

Inadequate facilities and the location and geographical conditions of forest and land fires are difficult to reach. The location of the fire is far from the village, sometimes in the forest. To get to the location, it must be traveled for hours and even with rather difficult terrain because the surrounding conditions have also occurred forest and land fires. With such difficult conditions and locations, it sometimes becomes an obstacle for the police to investigate and prosecute arsonists.

#### **2. Society**

The way the law is enforced depends on how advanced the society is. In a relatively simple society, the way the law is enforced is also simple. But in more complex modern societies, the way the law is enforced becomes complicated and bureaucratic. The more advanced the society, the more bureaucracy there is in enforcing the law. Therefore, the organization that regulates and manages the legal process also plays an important role, not just the legal officers. This is also the case with law enforcement for forest and land fires, as there are many factors that influence it.

Many factors cause forest and land fires, and they are all interrelated. But, which factor is most influential depends on the situation and problems faced by the community. Broadly speaking, the factors that affect law enforcement in this case can be divided into two: 1.)Factors in the legal system: This includes the rule of law (legislation), law enforcement officers, and available facilities 2.)Factors outside the legal system: These include public awareness of the law, community development, culture, and government policies. People burn forests for several reasons: 1.)Economic factors: They want to make a profit in an easy and cheap way. 2.)Efficiency: Burning forests is considered a quick way to clear land 3.)Quick pest control: They believe that burning the forest can drive away pests that can damage crops and improve soil quality.

### 3.) Economic Factors

The economic situation is very low, the perpetrators of forest fires burn forests to open plantation land to meet the needs of their families and themselves. Forest burning is a very easy thing to do and does not cost much, the process is fast, the burned land becomes fertile and suitable for planting various types of plants, be it rubber trees, rice and vegetables. Because it is commonly done by people in the village.

### 4.) Lack of Public Education

Lack of public education about the dangers of forest burning and the importance of protecting the environment can make people less aware and less willing to report if they see illegal activities such as forest burning.

## 4. Conclusion

1. Criminal Law Enforcement Against Perpetrators of Forest and or Land Burning in Indonesia has been carried out properly and in accordance with applicable laws and regulations, the investigation of suspects who have been arrested and detained by investigators charged with violating the prohibitions stipulated in Article 187 paragraph (1) Jo Article 188 of the Criminal Code is proven to have deliberately committed the crime of burning forests and or land. The perpetrator is charged under Law No. 39 of 2014 Article 108 in conjunction with Article 56 paragraph (1) regarding plantations, Article 187 or Article 188 of the Criminal Code with a sentence of 10 years in prison and a fine of Rp 10 billion. The police as an institution of law enforcement officials have taken law enforcement steps in accordance with standard operating procedures and applicable laws and regulations.
2. The role of the government in the prevention and control of forest fires for land clearing is :
  1. Fire prevention efforts This effort is carried out by the government through community awareness campaigns aimed at:
    - a. Making people aware of the importance of maintaining and protecting forests;
    - b. Improving technology to protect forests;
    - c. Physical development aimed at preventing forest fires such as the construction of reservoirs and green belts.The government makes efforts to extinguish fires by improving extinguishing technology, extinguishing operations, and rescue and evacuation.
  3. Post-fire management efforts involve monitoring, evaluation, and inventory of burned forests, and forest rehabilitation. In addition to prevention, the government also implements countermeasures through a variety of activities, as outlined by Soemarsono (1997, p. 20). These include:
    - The government has also taken steps to enhance the capabilities of forest fire posts at all levels, providing guidance on the appropriate response during Alert I and II.
    - Furthermore, it has facilitated the mobilization of all resources (human, equipment, and funds) at all levels, both within the Ministry of Forestry and other agencies, as well as companies. It was also requested that foreign assistance be provided to extinguish the fires, among other things. Bomba troops from Malaysia were deployed to assist with fires in Riau, Jambi, South Sumatra, and West Kalimantan. Australian AT-130 aircraft and Hercules aircraft from the USA were also dispatched to help combat fires in Lampung. Assistance was provided by ASEAN countries, including the provision of masks, medicines, and other essential supplies.

3. Obstacles that occur in the implementation of Criminal Law Enforcement are influenced by several factors, namely 1. Geographical conditions of the forest at the location of the fire, 2. People who act traditionally, 3. Economic factors and Lack of Public Education.

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