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## Law Enforcement Of The Stockholm Declaration Principles In Relation To Forest And Land Fires In Indonesia

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**Abstract.** The frequent forest fires in Indonesia are of important concern for ASEAN countries since Indonesia is considered the biggest contributor to smoke-haze pollution. Land and forest fires in Indonesia contribute to exporting haze to Malaysia and Singapore, causing the two countries to urge Indonesia to immediately address the issue of forest fire since the resulting smoke haze is terribly disturbing and dangerous for the people of both countries. Indonesia is one of the developing countries currently in the international spotlight due to the severe damage to its tropical forests annually. Land and forest fires in Indonesia constitute a transnational environmental pollution, creating a thick smoke haze to disrupt the continuity of life and economic activities in most of the region of ASEAN countries. The impacts of the smoke haze caused by forest and land fires are immense, requiring the Indonesian Government to take a firm stand by immediately making regulations to ensnare forest and land burners to cause a deterrent effect not to do the foregoing again. The present paper addresses law enforcement arrangements for land and forest fires in Indonesia and the harmony of the Stockholm Declaration principles with law enforcement arrangements for forest and land burners. The present study is analytical descriptive using the normative juridical approach. It describes the phenomenon and analyzes the legal issues of law enforcement arrangements for land and forest fires. Results show that law enforcement by the Government of Indonesia is regulated by Law Number 41 of 1999 concerning Forestry, Law Number 18 of 2004 concerning Plantations and Law Number 32 of 2009 concerning Environmental Protection and Management. Each of these laws includes provisions on criminal sanctions and fines for forest and land burners. Law enforcement of the Stockholm Declaration principles for forest and land fires is accommodated in Articles 49 and 50 of Law on Forestry.

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## 1. Introduction

Forest fires occur as the dry season arrives. Entering the dry season, especially the prolonged one, forest and land fires occur in many places in Indonesia. Despite the anticipation, the fires still continue to occur. In addition, there are irresponsible people deliberately burning forests or land to clear new land. However, these fires can occur due to such natural factors as extremely hot weather and very flammable dry leaves. Forest fires, especially those on the islands of Sumatra and Kalimantan, already constitute an annual disaster in Indonesia. It disrupted and damaged the forest ecosystem and killed many forest-dwelling animals. Furthermore, the effects disrupted human activities.

Forest fires represent a national issue that drew serious attention from the government since it occurs repeatedly annually. It should be understood that government agencies and communities, including farmers, plantation companies and Industrial Plantation Forests, are an unbroken link directly related to forest and land fires. The most prominent impact of forest and land fires is the resulting smoke haze that harms public health and disrupts the river, land, sea, and air transport system and affect other economic foundations. Additionally, it had an impact on such neighboring countries as Malaysia and Singapore. They protested Indonesia due to the haze derived from Indonesia [1].

Therefore, the Indonesian government took a firm stance to immediately make regulations in order to ensnare forest and land burners to cause a deterrent effect not to do the foregoing again. The firm regulations are expected to prevent catastrophic annual forest fires impacting the neighboring countries.

### Statement of the problems

1. How is law enforcement for forest and land fires arranged in Indonesia?
2. Is the law enforcement arrangements for forest and land fires in Indonesia in accordance with the Stockholm Declaration principles?

## 2. Literature Review

### 2.1 Forest and Land Fires in Indonesia

Those actually causing and responsible for forest and land fires in Indonesia are difficult to determine. Each agency lays responsibility on each other and further protects the sectors or the farmers/entrepreneurs/community groups it supports. Forest and land fires always occur every dry season and must be addressed to reduce its adverse effects. However, in this case, government agencies and communities, including farmers, plantation companies

and Industrial Plantation Forests, are an unbroken link. A conclusion could be drawn that all those parties contribute proportionally to causing forest and land fires.

The causes of forest and land fires in Indonesia may vary markedly. Fires in upstream non-peatland areas are caused by the inland communities' shifting cultivation. The abandoned land for 2 to 3 years and overgrown with shrubs, including such small trees as acacia, is re-cultivated with crops. Fires on this land are relatively under control since the communities socially have their own customary rules of shifting cultivation. Thus, the typology of fires on upstream non-peatland areas is caused by the inland communities' activities, but the fires are under control by using the traditional cut-and-burn techniques subject to the customary rules. Fires on the permanent non-peat and peat cropland usually occur in transmigration areas where agricultural activities have settled. The previous season's agricultural land is cleared or prepared by cutting trees for the next planting season. Despite the controlled burning of agricultural land, those simultaneous activities produces haze that causes pollution of the environment [2]. As with the forest region of Krasnoyarsk, a region is developed by conservation and use of its forests, which can lead to regional economic growth [3].

### 2.2 Combating Forest and Land Fires in Indonesia in Relation to Other Countries

The state as the main basis for the formation of a rule of law has done many things for the creation of justice in preventing forest fires in Indonesia. Indonesia issued a number of rules of law to keep, protect and prevent forest fires in Indonesia starting from the 1945 Constitution, Law Number 32 of 2009 on Environmental Protection and Management, Law No. 41 of 1999 on Forestry, to Law No. 18 of 2004 on Plantations. Additionally, Indonesia also drafted the Government Regulation on the Prevention of Forest Fires aimed at uniting efforts across ministries and institutions, local governments and businesses, communities and other stakeholders in the prevention of forest and land fires in an integrated, effective and efficient manner. The purpose of the draft is to serve as a national guideline for taking appropriate measures to prevent forest fires properly and to ensure that all activities can be undertaken in a well-coordinated and integrated manner. The goal is to prevent forest fire disasters in the future with the expected outcome of well-managed environmentally sound land and forests.

In principle, each country has the same rights and obligations to keep and protect the environment in relation to utilizing their own natural resources. The principles of international law state that each country has sovereign rights over all available resources and is responsible for all measures taken and for ensuring that measures taken in the management of their resources do not cause environmental damage and harm the

health of citizen of other countries or beyond its jurisdiction [4].

In addition to laws and regulations on forest fire prevention, Indonesia as one of the developing countries that is of ASEAN concern took steps and initiatives to enhance regional, sub-regional and national cooperation in an organized manner in efforts to make policies on cross-border environmental issues, which are focused on the issue of smoke-haze pollution.

In 2002, ASEAN established a legal umbrella to overcome the issue of haze by means of the ASEAN Agreement on Trans-boundary Haze Pollution (AATHP) signed by all ASEAN member countries. AATHP supports regional cooperation in the form of joint monitoring [5].

The AATHP is aimed at further strengthening international cooperation in the development of national policies to prevent and monitor cross-border haze pollution. It is undertaken through information exchange, consultation, research and international monitoring due to annual severe tropical forest damage. Land and forest fires in Indonesia represent a transnational environmental pollution, leading to a thick haze disturbing the life sustainability and economic activities of most other countries in the ASEAN region. The immense impacts of the haze threaten ASEAN regional stability. This leads ASEAN member countries to agree to strengthen national policies and strategies to prevent and reduce forest and land fires.

### 3. Discussion

#### 3.1 Law Enforcement against Forest and Land Fires in Indonesia

The Ministry of Environment and Forestry acknowledges that the law enforcement it has done so far against forest and land burners was only to show a shock therapy, rather than a long-term deterrent effect. This is one reason why there are companies repeatedly burning the land. This relates to their habit of non-compliance. Therefore, the Ministry of Environment and Forestry has been trying to strengthen the deterrent effect. One of the efforts is to involve regents and mayors as the permit grantors, making them the major law enforcers. Local governments entitled to grant the permit are also authorized, as with the Ministry, to impose administrative or criminal sanctions. In addition, in order to provide a deterrent effect, they also impose additional criminal sanctions by applying Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management in relation to the absolute liability of the companies at the site of forest burning. However, it is considered inadequate, necessitating a forensic approach and satellite data utilization by legal experts and spatial forensic experts.

In connection with law enforcement by the Indonesian Government, laws and regulations relating

to the prevention of forest and land fires were issued, namely:

- a. Law Number 41 of 1999 concerning Forestry sets out provisions on forest burners in Articles 49 and 50. Article 49 states that the right or permit holder is responsible for forest fires in their working area. Furthermore, Article 50 paragraph (3) point (d) states that anyone is prohibited from burning forests. However, unfortunately, Article 49 does not explain criminal provisions as set out in Article 50 paragraph (3) point (d). Criminal provisions in Article 50 paragraph (3) point d are set out in Article 78 paragraph (3) stating that whoever intentionally violates the provisions referred to in Article 50 paragraph (3) point (d) is threatened with imprisonment for no later than 15 (fifteen) year and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). In the event that the perpetrator is a business entity, Article 50 paragraph (14) states that criminal prosecution and penalties for crimes referred to in Article 50 paragraphs (1), (2) and (3), if made by or on behalf of the legal entity or business entities, are imposed on their management, both individually and jointly, in accordance with their respective criminal threats plus 1/3 (one third) of the sentences imposed.
- b. Article 48 paragraph (1) of Law Number 18 of 2004 concerning Plantations states that anyone who intentionally clears and/or cultivates land by means of burning resulting in pollution and damage to environmental functions as referred to in Article 26 is threatened with imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah). Furthermore, Article 49 paragraph (1) states that anyone who for his negligence of clearing and/or cultivating land by means of burning causes pollution and damage to environmental functions is threatened with imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 3,000,000,000.00 (three billion rupiah).
- c. Article 69 paragraph (1) point h of Law Number 32 of 2009 concerning Environmental Protection and Management states that anyone is prohibited from clearing land by burning. Violations of this provision shall be subject to criminal sanctions and fines as set out in Article 108 stating "Anyone who burns land as referred to in Article 69 paragraph (1) point h shall be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

In connection with the concept of criminal law enforcement set out in Forestry Law, Plantation Law and Environmental Protection and Management Law are crucial. In criminal law the concept of cause and effect constitutes a form of proof of whether a particular action is categorized a criminal offense already causing losses or not yet causing losses. The three laws only adopt the material unlawfulness

doctrine in which a crime exists when there has been a loss. This doctrine constitutes an obstacle to ensnare criminal offenders since a crime exists only when an offense occurs, despite the massive and cross-border nature of the impacts of forest fires.

In order to ensnare forest and land burners, both corporations and individuals, Indonesia has at least three sets of laws: Law Number 41 of 1999 concerning Forestry, Law Number 18 of 2004 concerning Plantations and Law Number 32 of 2009 concerning Environmental Protection and Management.

Imposition of those laws through the criminal law approach actually provides an alternative to uphold justice. However, those three laws are deemed not provide a sense of justice. The approach of Corruption Law can be used as a new option to ensnare forest and land burners. The Law aims to protect the interests of the state in the sense of recovering losses to the state, while Law on Forestry, Law on Plantation and Law on Environmental Protection and Management protect the use and existence of forests and land in a sustainable manner [6].

In fact, Indonesia made many efforts to prevent and cope with forest fires-caused pollution, but the limited funds and personnel, as well as the vast scale of the fires, left Indonesia helpless [7]. Numerous efforts of both prevention and mitigation were made by the Indonesian government. Most of these efforts were focused on the source of the haze, the forest fires. However, some of these efforts remained in the form of post-disaster emergency responses, such as fire-fighting, treatment of victims, and so on, while the preventive measures still need to be further improved.

In relation to the environmental aspect, efforts to preserve the environment, including keeping the forestry sector, need to be followed up in specific programs on a practical level. The central and regional governments should synchronize laws and local regulations in order to prevent overlapping. Forest clearing activities should be further studied in order to prevent reduced carrying capacity of forests. Forest carrying capacity should be maintained in order for continuous enjoyment of forests by present and future generations [8]. With regard to the legal aspect, strengthening of regulations and application of strict sanctions against environmental offenders should be continuously undertaken.

Additionally, strengthening the role of district-/municipal-level institutions also needs to be a concern. The provincial governments are expected to take part in coordinating the synergistic efforts to deal with interregional haze. However, law enforcement against the crime of forest burning does not run optimally, as evidenced by the absence of perpetrators convicted, but only undergoing investigation process [9].

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### **3.2 Law Enforcement against Forest and Land Fires in Indonesia**

The Stockholm Declaration was made at the Human Environment conference held by the United Nations in 1972. This declaration is also referred to as the Declaration of the United Nations Conference on the Human Environment, which was joined by its member countries. This conference was held in Stockholm, Sweden.

The Stockholm Conference contains three aspects of environmental management: (1) sustainability aspects, a concept of sustainable development that enables the management of natural resources for the benefit of humans without damaging the function of these natural resources. Thus, utilization of natural resources can continue for a long time. (2) The wholeness aspect, an ecological approach where natural resources are not separated from one another. Thus, upstream activities will affect downstream activities; even activities in one country will affect activities in other countries. Therefore, the ecology does not recognize administrative boundaries created by humans. (3) Aspects of attention to the livelihoods of future generations; this principle was developed from the sustainable development principle. This concept seeks to maintain a balance between the management and conservation aspects in order to create protection for future generations. Hence, the present environment can be enjoyed by future generations.

The Stockholm Declaration produced 26 basic principles of environmental and development issues:

1. Human rights (Principle 1);
2. Human resource management (Principles 2 to 7);
3. Relationship between development and the environment (Principles 8 to 12);
4. Development planning and demographic policies (Principles 13 to 17);
5. Science and technology (Principles 18 to 20);
6. State responsibility (Principles 21 to 22);
7. Compliance with national environmental standards and the spirit of cooperation among countries (Principles 23 to 25);
8. Threats of nuclear weapons to the environment (Principle 26).

In connection with the handling of forest and land fires, the State must be responsible for environmental damage affecting other countries, in accordance with Principles 21 and 22 of the Stockholm Declaration. Principle 21 states that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

Principle 22 states that “States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction”.

Some of these principles have been implicitly internalized in the essence of the Environmental Protection and Management Law, including the following [10]:

- 1) Right to healthy environment. This principle is also known as the principle of a good and healthy environment and is the right of every person. This principle can be found in the provisions of Article 5 paragraph (1) of Environmental Protection and Management Law.
- 2) Intergenerational and intragenerational equity. This principle can be found in the provisions of Article 4 point c associated with one of the goals of environmental management, namely “ensuring the interests of present and future generations”.
- 3) Sustainable use of natural resources. This principle can also be found in the provisions of Article 4 point d which state “the achievement of the preservation of environmental functions, meaning that the environment can sustainably support the lives of humans and/or other living things.
- 4) Public participation. This principle is implicitly found in Article 5 paragraph (3) which stipulates that “everyone has the right to play a role in environmental management in accordance with applicable laws and regulations”. Additionally, this principle can also be found in Article 19 paragraph (1) point b, which essentially provides that public opinion must be considered when issuing a business license and/or activity permit.
- 5) Precautionary Principle. This principle can be found in the provisions of Article 6 paragraph (1) which states that “every person is obliged to maintain the preservation of environmental functions and prevent and overcome environmental pollution and destruction”.
- 6) Prevention of environmental harms. This principle can be found in the provisions of Article 17 paragraph (1) which state that “every person in charge of a business and/or activity is required to manage hazardous and toxic materials”.
- 7) Access to information. This principle can be found in Article 5 paragraph (2) which stipulate that “every person has the right to environmental information relating to the role in environmental management”.
- 8) Environmental impact assessment and informed decision making. This principle is set out in the provisions of Article 15 paragraph (1) which stipulate that “every planned business and/or activity that is likely to pose a major and significant impact on the

environment shall be subject to an environmental impact assessment”.

- 9) Peaceful settlement of disputes. This principle can be found in the provisions of Article 30 paragraph (1) and Article 31 paragraph (10) which state “equal, expanded and effective access to judicial and administrative proceedings. This principle can be implicitly found in the provisions of Articles 22 to 27.
- 10) Sovereignty over natural resources and responsibility not to cause damage to the environment of other states or to areas beyond national jurisdiction. This principle is also known as the principle of responsibility.

The enforcement of laws and regulations arranged by Indonesia for forest and land fires is in accordance with Principles 21 and 22 of the Stockholm Declaration. Those principles provide the State’s responsibility for not causing environmental damage and compensating for victims of pollution and environmental damage of other countries caused by activities within the State’s jurisdiction as stipulated in Articles 49 and 50 of Forestry Law. Those articles state that forest rights or permit holders are responsible for forest and land fires and anyone deliberately violating these provisions is threatened with imprisonment and fines. Thus, law enforcement of the Stockholm Declaration Principles relating to combating forest fires is already accommodated in Articles 49 and 50 of Forestry Law.

## 4. Conclusions

- 4.1 Law enforcement it has done so far against forest and land burners was only to show a shock therapy, rather than a long-term deterrent effect. However, with regard to law enforcement arrangements, the Government of Indonesia issued Law Number 41 of 1999 concerning Forestry, Law Number 18 of 2004 concerning Plantations and Laws Number 32 of 2009 concerning Environmental Protection and Management. Each of these laws already includes provisions on criminal sanctions and fines for forest and land burners as the basis for law enforcement, including Articles 49 and 50 of Law Number 41 of 1999 concerning Forestry, Article 48 paragraph (1) and Article 49 paragraph (1) of Law Number 18 of 2004 on Plantations and Article 69 (1) point h of Law No. 32 of 2009 on Environmental Protection and Management.
- 4.2 With regard to the handling of forest and land fires, the State must be responsible for environmental damage that affects other countries. This is in accordance with Principles 21 and 22 of the Stockholm Declaration. Principle 21 of the Stockholm Declaration states “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of

national jurisdiction". Principle 22 states "liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction". These are in accordance with Articles 49 and 50 of Forestry Law which state that forest rights or permit holders are responsible for forest and land fires and anyone deliberately violating these provisions is threatened with imprisonment and fines. Thus, law enforcement of the Stockholm Declaration Principles relating to forest and land fires is already accommodated in Articles 49 and 50 of Forestry Law.

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