



Corporate criminal responsibility in environmental crimes regarding air pollution due to forest fires: an analysis from an international legal perspective

Ahmad Rija Sepei¹, Rani Yuwafi², Sofa Laela³

Study Program of Law, College of Law IBLAM, Indonesia. E-mail: ahmadrija@iblam.ac.id

ARTICLE INFO

Keywords:

Corporations;
Forest Fires;
International Law.

Article history:

Received March 20, 2023;
Revised April 15, 2023;
Accepted June 06, 2023
Online July 01, 2023.

ABSTRACT

Indonesia is a developing country and one of its natural resources is the forest, which is one of the determining factors for the survival and welfare of its people. Forest fires are cases that often occur and cause many negative impacts in Indonesia, one of the consequences is air pollution which is getting out of control so that its effects spread to neighboring countries. Most of the causes of giftedness occur as a result of activities carried out by a corporation that is irresponsible and neglectful of the rules and principles of the obligation to always maintain the environmental integrity of the country that is its parent country. The author's goal in conducting this research is to analyze international legal issues with the title Corporate Criminal Responsibility in Environmental Crimes About Air Pollution Due to Forest Fires: Analysis from an International Legal Perspective. This research is descriptive-analytical by examining systematically the accurate facts that exist using normative legal research methods.

This is an open access article under the [CC BY-NC](#) license.



Corresponding Author:

Ahmad Rija Sepei,
Law Science Study Program,
IBLAM College of Law,
Jl. Kramat Raya No.25, RT.3/RW.2, Kota Jakarta Pusat, Jakarta 10450,
Indonesia
E-mail:ahmadrija@iblam.ac.id

1. Introduction

Indonesia is a developing country in Southeast Asia, where all aspects of developing sectoral strategies to social development programs such as increasing access to education, health, and social protection are also an important focus in achieving sustainable development (Fadhli, 2018). Forests are one of the natural resources in Indonesia which is a determining factor for survival as well as a source of welfare for people whose condition is getting worse.

Article 1 paragraph 2 of the 1999 Law on Forestry, "A forest is an ecosystem unit in the form of a vast expanse of plains, containing a wealth of biological natural resources because trees dominate the natural groups in their environment, so they cannot be separated from being a support for

community life as well as a source of welfare for humans whose existence must be maintained" (Abdul Muis, Yusuf, and Taufik Makarao, 2011).

Article 2 paragraph (2) of the 1999 Law Number 41, "Forests are a natural ecosystem unit, namely a large expanse of land containing biological natural resources which are dominated by plants in a natural environment such as trees, which cannot be separated from each other". Law No. 32 of 2009 Article 2 letter (a) concerning Environmental Management and Protection, specifically stipulates that environmental management and protection is carried out on the basis of the principles of State responsibility. where in reality Indonesia failed to manage the environment, which ultimately led to land fires caused by human activity itself (Arum et al., 2021)

Corporations are linguistically called *corporatie*, *corporation*, or *corporate* in Latin. In a narrow sense, it is a legal entity that has the authority to act and do something (Yeni Widowaty, 2012). At this time, corporations hold important control in the development of the nation's economy (Saputro et al., 2021). The increasing number of corporations is making a global impact in generating a special concern for environmental impacts that have the potential to pollute and damage the environment (Dwi Fajriyah Suci Anggaraini, Purwoto, 2016).

United State (US) Legal in corporate crime provides its understanding that "Corporate crime refers to crimes committed by business entities or companies or by identifiable individuals associated with other companies or business entities", which Corporate crime refers to crimes committed by business entities, companies or individuals who can be identified related to companies or other business entities (Haritia & Hartiwingsih, 2019). Corporate crimes are committed by its members and do not require approval from its officials. (Wibisana, 2016) Officials only need to exercise their authority on behalf of the corporation. That way, to a certain extent, corporate crime will still be closely linked to the actions of its officials. The crime is a reflection of the individual character of running a corporation. Therefore, it is very logical to use corporate crime as a tool to doubt the credibility of corporate officials if the official is involved in a crime (Melani & Agustini, 2021).

Forest fires in Indonesia are one of the biggest causes of decreased air quality which has damaged a lot of land, including agricultural land, peatlands, plantations, shrubs, and areas around forests. In several cases of fires that have occurred in Indonesia, the impact has reached neighboring countries and areas that are prone to forest fires are the islands of Sumatra and Kalimantan where many corporate companies have been found and there are still large areas of forest (Pratama et al., 2022).

In article 1 paragraph (1) of Law No. 36 of 2009 concerning Health, "health is the state of a person both physically, spiritually, mentally and socially enabling everyone to live productively economically as well as socially" (Arum et al., 2021). Several studies have concluded that the impact of exposure to air pollution, namely the smoke produced by forest fires, is very detrimental to health, especially in respiratory diseases. The disease has significant consequences, especially for infants, children, people with certain respiratory diseases, pregnant women, and the elderly (Nisa & Suharno, 2020).

Cases of forest fires become an annual natural disaster that regularly occur in Indonesia. Sumatra and Kalimantan are areas prone to forest fires (Agustia Putra, 2016). The Ministry of Environment and Forestry of the Republic of Indonesia (KLHK RI) provided data due to forest and land fires that occurred in Indonesia from 2015 to 2020, namely covering an area of 5,601,535.19 Ha. Where in 2015 it was 2,612,412.44 Ha, in 2016 it was 439,364.18 Ha, in 2017 it was 166,473.93 Ha, in 2018 it was 528,267.63 Ha, in 2019 it was 1,648,259.01 Ha, also in 2020 it was 207,750 ,01. Then in 2021 it will increase by 19.4% and from January to December 2022 it will be recorded at 204,894 hectares (ha). The wide scale of environmental damage due to forest fires has a significant negative impact, One of them is air pollution, which is not only in one area, but the impact can reach other countries. Especially Indonesia's neighboring countries. (MoEF RI 2023).

In Indonesia, the principle of corporate responsibility is not regulated in the Criminal Code, but this principle is regulated in specific laws and regulations. This is regulated and determined in the Criminal Code Article 59 stipulates that "criminal sanctions can be imposed on administrators and people involved in a crime". In understanding this provision, it is intended that a person considered as the perpetrator of a crime committed by a corporation is someone who is a manager of a corporation, while a corporation cannot be classified as a perpetrator of a criminal offence, because the provisions of the Criminal Code stipulate that the perpetrators of a crime are those who commit acts in a clear and real way, while corporations cannot carry out these actions directly and visibly (Suryan, 2012).

2. Method

This study uses a normative legal method, namely conducting a literature study and analyzing legal issues using laws, literature, and other reference materials that are the subject of discussion (Soerjono Soekanto and Sri Mamudji, 2012). The main subject of this problem is that this research utilizes primary legal sources, including legislation, official records or treatises in the process of making laws, as well as judges' decisions. In addition, secondary legal materials are also used which include publications on legal matters, such as books, legal dictionaries, legal journals, as well as comments (Mahmud Marzuki, 2017). This research is descriptive analytical in nature, which systematically explores the facts that exist accurately.

3. Analysis and Results

3.1. How is criminal responsibility in environmental crimes according to international law

International law regarding liability, especially regarding transboundary haze pollution or air pollution or pollution, has been regulated in international regulations, including in the "Stockholm Declaration 1972, Rio Declaration 1992, Biodiversity Convention, complemented by international environmental law principles. The Biodiversity Convention and the Climate Change Convention in the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources, stated that a country has the right to utilize its natural resources, but the state is also responsible for ensuring that exploitation activities do not cause damage to the territory of other countries. (state responsibility).

The AATHP (Asian Agreement on Transboundary Haze Pollution) agreement consists of 32 Articles and 1 (one) attachment. Some of the main aspects regulated in the AATHP Agreement include regulating: "monitoring, assessment, prevention, preparedness, national emergency response, technical cooperation as well as scientific research regarding the prevention and control of land and/or forest fires including fire suppression". (Yuris, 2015). In the case of forest fires, state responsibility has been stated in Article 3 of AATHP concerning Principles as well as Article 4 concerning General Obligations including: (Huala Adolf, 2004), Permanent Court of International of Justice (PCIJ), Permanent Court of International Court of Justice (ICJ)), International Court of Justice, the International Tribunal for the Law of the Sea (1982 Sea Law Convention), International Criminal Court (ICC).

The Indonesian government on June 10, 2002 signed the AATHP in Kuala Lumpur, Malaysia and then ratified it through Law No. 26 of 2014 concerning Ratification of the ASEAN Agreement On Transboundary Haze Pollution (ASEAN Agreement on Transboundary Haze Pollution). Then this AATHP on November 25 2003 came into force officially. Article 1 of the Draft International Law Commission (ILC) explains that "every internationally wrongful act of a State entails the international responsibility of that State", meaning that if a country takes an action that has the potential to cause harm in the context of international law, then it will cause the country to have a responsibility international responsibility in the aggrieved country.

A country is subject to responsibility if it violates the provisions of international law or acts that violate international law. The concept of state accountability continues to evolve with the times. Activities in carrying out international relations of a country often cannot avoid the risk of conflict and mistakes. Therefore we need the concept that when the state makes a mistake, then the state

has the obligation to correct and overcome the mistake. International law experts reveal that fundamentally the principles of international law are the responsibility of the State (Huala Adolf, 2004).

Settlement of these problems can be done through international courts or international arbitration. The use of international courts as an international dispute resolution mechanism can be used as an effort to resolve this problem. The International Court of Justice is the institution responsible for handling these cases (International Court of Justice). "Settlements outside the court are pursued by: negotiations, good offices, conciliation, inquiries, fact finding, regional settlements, as well as settlements under the auspices of the United Nations (UN)". Then the settlement using international arbitration is a Court led and run by a panel of judges/arbitrators formed based on a special agreement of the parties involved in the dispute, through an existing arbitration agreement. The way to resolve disputes outside the court is to bring the dispute before someone who is freely chosen by the parties involved to decide the dispute, without having to comply strictly with the law (Nurhayati & Ambari, 2021).

3.2. How Criminal Liability Against Air Pollution Due to Forest Fires Is Viewed From The Perspective Of International Law

A corporation is a company in the parent country (home country) and also spread in several other countries or host countries where the majority are developing countries (Ahmad, 2018).

Corporate crime refers to an act committed by a group of people on behalf of a business entity for certain purposes contrary to the law as well as violating applicable legal provisions, which can be subject to sanctions based on applicable law. Other opinions say that corporate crime is also a type of crime that has similarities in its relationship and actions with the economic status of the wider community (Ahmad, 2018). There are various forms of corporate crime that have broad impacts on society, including crimes related to the environment. one example is crimes that involve government regulations, such as many activities that violate air and water pollution control and violate air and water pollution control requirements (Ayu Nurul Alfia, Adji Samekto, 2016).

Corporate crime is an act of a person on the basis of a work relationship or other relationship, carried out alone or in a group and acting within or outside the scope of the company's business on behalf of the company. In Indonesia, specifically, corporate arrangements for criminal acts relating to the environment have been regulated in article 116 UUPPLH. Now, international law has not been able to directly assign criminal responsibility to corporations, nor does it still require the authority of a country as an intermediary to impose legal sanctions. International law is more softlaw in nature, that is, it does not govern how corporate companies enforce the law. but only in the form of principles and obligations for corporations to maintain environmental morality.

The emergence of state responsibility because it is based on actions or activities carried out by corporate companies within the territory of a country that have a negative impact on the environment regardless of national borders. The form of state accountability is regulated in the ILC draft article, Restitution (article 35): "Responsibility to restore the original state of the country that suffered losses", Compensation (article 36): "Responsibility to provide compensation, namely material or money as compensation", Satisfaction (article 37): "regret, or official apology".

Law No. 25 Article 5 (five) of 2007 concerning investment, that every corporate company that plans to operate in Indonesia is required to form its own legal entity, especially in the form of a limited liability company. Therefore, the existence of these companies must comply with Indonesian national law. Corporations based on Indonesian law receive equal legal treatment and legal protection as other national companies, this has been expressly regulated in Law No. 25 of 2007 Article 6 namely "The government provides equal treatment to all investors from different countries who invest in Indonesia based on statutory provisions,

Corporations as legal entities can certainly have their own legal characteristics. The legal characteristics of a corporation are different from the identities of its executive shareholders, directors and other bodies. Juridical resolution by the government can be pursued by imposing sanctions on business entities of a corporation in the form of entrepreneurs/investors who damage and pollute the environment (Satria, 2020). Included in the category of criminal acts are,

an act committed by an individual and/or entity that violates applicable legal provisions. Criminal acts of destruction committed by legal subjects have previously been regulated in the law, including special criminal sanctions, which clearly indicate that the perpetrator can be punished.

Furthermore, in Law No. 41 of 1999 in conjunction with Law No. 19 of 2004 in Article 50 paragraphs (1), (2), and (3) there is a provision stating that a corporate action can be considered a criminal act. Article 50 paragraph (1) states that the term "person" includes legal subjects, both in the form of individuals and legal entities or business entities. In the law on corporate responsibility, especially in the context of criminal law, there are three (3) systems that regulate the status of corporations in criminal law, namely (Erdiansyah, 2015), corporate managers have the role of being responsible administrators, corporations function as creators also a responsible manager, the Corporation has the role of being a responsible maker.

In the 2004 Law Number 19 concerning corporate responsibility that, "if a crime is committed by or on behalf of a legal entity and business entity, then responsibility will be directed to its management both individually and collectively" as article 50 paragraph (1) which states that "the term "person" includes legal subjects, both personally and in the form of a group of legal entities or business entities "(Erdiansyah, 2015). Criminal law provisions can be applied in the process of prosecuting corporate responsibility. These provisions can also apply to regulations directly related to the environment, namely the Stb Nuisance Ordinance. No. 226 which has been amended with Stb. 449 of 1927.

As a result, violations of these regulations can pose a light threat of punishment such as, Criminal sanctions can be imposed on legal entities in cases of environmental damage or pollution, Violations related to the environment must be interpreted in accordance with the definitions contained in the environmental law in order to facilitate the settlement of cases in court, Criminal provisions regarding sanctions in legislation in the field of environment need to be examined and revised again, so that they are in accordance with Article 22 in Law Number 23 of 2009 concerning environmental protection and management, to be readjusted, Successful environmental management requires integrated and harmonious cooperation between legislative, executive and judicial authorities.

Michael Faure and Göran Skogh are of the opinion that in order to determine the amount of a fine, one must also consider the gravity of the crime so that it can create a deterrent effect from a criminal sentence, and the cost of a criminal sentence for the common good of the person being convicted. (Hartiwarningsih, 2008). Thus, the greater and wider the effects arising from the damage caused by environmental crimes, the greater the criminal sanction. Article 49 in Law No. 41 of 1999 concerning forestry states that "a party that has the right or license is responsible for the occurrence of a forest fire in the area where he works". It is concluded from this provision that the system used in this article is a strict liability system. Which means if there is a deliberate or accidental fire in the HPH area managed by the company,

4. Conclusion

A corporation is a company in the parent country and spread across countries where the majority are developing countries. Corporate crime is an act committed by an individual or group on the basis of a work relationship or other relationship, acting on behalf of the company. the form of state accountability is regulated in the ILC draft articles. Compensation or reparation is regulated in Article 31. Corporate criminal responsibility due to air pollution by forest fires is contained in section 50 paragraphs 1, 2 and 3. Which contains a business entity or legal entity that commits damage and does not comply with the rules and regulations is imposed with a threat of imprisonment for a maximum of 10 years with a material fine of Rp. 5,000,000,000 (five billion rupiah) is also added by one third of the fall in the criminal law

References

Abdul Muis, Yusuf, and Taufik Makarao, M. (2011). Forestry Law in Indonesia. Rineka Cipta.

Corporate criminal responsibility in environmental crimes regarding air pollution due to forest fires: an analysis from an international legal perspective. (Ahmad Rija Sepei)

- Augustia Putra. (2016). Indonesia's Interests Not to Ratify the Asean Agreement On Transboundary Haze Pollution (Aathp) Year 2002-2012. In Pekanbaru Riau University.
- Ahmad, A. (2018). Development of Corporate Crime (Impact and Problems of Law Enforcement). Prenada Media Group.
- Arum, IS, Ayu, IG, Rachmi, K., & Najicha, FU (2021). Indonesia's Responsibility for Air Pollution Due to Forest Fires in International Law. *Justitia Law Journal*, 1(6), 38-47.
- Ayu Nurul Alfia, Adji Samekto, NT (2016). Responsibilities of Transnational Companies in Forest Fires in Riau in the Perspective of International Law.
- Dwi Fajriyah Suci Anggaraini, Purwoto, AESA (2016). Diponegoro law journal. *Diponegoro Law Journal*, 5(3), 1-20.<http://www.ejournal-s1.undip.ac.id/index.php/dlr/%0aperjuangan>.
- Erdiansyah. (2015). Implementation of Corporate Criminal Responsibility for Forest and Land Burning in Riau Province. *Journal of Law Studies*, 4(3), 138-166.
- Fadhli, R. (2018). Corporate Criminal Responsibility in Forest and Land Fire Crimes. *Lex Renaissance*, 2(3), 284-303.<https://doi.org/10.35973/sh.v15i1.1109>
- Fajri, MN (2016). Enforcement of Perpetrators of Forest and Land Burning with the Approach to the Corruption Crime Eradication Law. *Integrity Journal of Anti-Corruption*, 2(1), 43-68.<https://acch.kpk.go.id/id/arsip/jurnal-integritas-volume-02/nomor-1>
- Haritia, B., & Hartiwiningsih. (2019). Application of the Principle of Strict Liability in Forest and Land Fire Crimes Committed by Corporations. *Recidive*, 8(2), 111-121.<https://jurnal.uns.ac.id/recidive/article/hview/40622>
- Huala Adolf. (2004). *International Dispute Settlement Law*. PT Grafindo Persada.
- Mahmud Marzuki, P. (2017). *Legal Research (Revised Edition)*. PT Adhitya Andrebina Agung.
- Melani, N., & Agustini, S. (2021). Corporate Crime: Accountability for Criminal Acts in Indonesian Positive Law. *Ganesha University of Education Yustisia Community E-Journal*, 4(2), 736-748.
- Nisa, AN, & Suharno, S. (2020). Law Enforcement Against Environmental Problems To Realize Sustainable Development. *Journal of Bina Mulia Hukum*, 4(2), 294.<https://doi.org/10.23920/jbmh.v4i2.337>
- Noviyanti, A, T, D. (2019). Corporate Responsibility in Environmental Crimes. *Journal of Wamadewa*, 13(2), 2019.
- Nurhayati, DA, & Ambari, A. (2021). Indonesia's Role in Overcoming Haze in Southeast Asia. *Education Journal*.
- Nurisman, Eko, DMS (2016). IMPLEMENTATION OF CIVIL SANCTIONS AGAINST CORPORATIONS IN ENVIRONMENTAL DISPUTES (Case study of case Number: 01/Pdt.G/2013/PN.Kgn). *Journal of Judicial Review*, XVIII (1), 70-83.
- Pratama, SM, Mutiara Putri, M., & Hafiz, M. (2022). Forest Burning as an Environmental Crime: Analysis from a Human Rights Perspective. *Journal of Legal Analysis*, 5(1), 1-13.<https://doi.org/10.38043/jah.v5i1.3157>
- Saputro, AW, Milono, RA, & Medina, SA (2021). Corporate Criminal Responsibility by Management in Cases of Karhutla Due to Unknown Causes: Economic and Environmental Perspectives. *Lex Generalis Journal of Law*, 2(12), 1077-1099.<https://doi.org/10.56370/jhlg.v2i12.146>
- Satria, H. (2020). CORPORATE CRIMINAL ACCOUNTABILITY IN NATURAL RESOURCES CRIME. *Law Platform*, 28(2), 288-300.<https://doi.org/10.36312/jime.v6i2.1433>
- Soerjono Soekanto and Sri Mamudji. (2012). *Normative Legal Research A Brief Overview*. King of Grafindo Persada.
- Suryan, USA (2012). Handling Haze Caused by Forest Fires in Indonesian Border Areas. *Aspirations*, 3(1), 59-76.
- LWibisana, AG (2016). Environmental Crime by Corporations: Finding Forms of Corporate Responsibility and Corporate Leaders/Managers for Environmental Crime in Indonesia. *Journal of Law & Development*, 46(2), 149-195.<https://doi.org://dx.doi.org/10.21143/jhp.vol46.no2.74>
- Yeni Widowaty. (2012). Corporate Criminal Responsibility Against Victims in Environmental Crime Cases. *Judicial Journal*, 5(2), 154-169.