

ENFORCEMENT OF CRIMINAL LAW AGAINST IMPLEMENTERS OF FOREST BURNING

Khalisa Hayatuddin¹, Leoman Saputra²

Abstract: *The background in this study is the rise of cases of forest fires due to the element of deliberate humanity who deliberately burned the forest for personal interests to open new land in Kayuagung District, Ogan Komering Ilir Regency. The formulation of the problem in this study are 1) How is criminal law enforcement against the perpetrators of forest fires in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency ?; and 2) What are the obstacles encountered in the enforcement of criminal law against the perpetrators of forest fires in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency ?. The research method used is empirical research. Data sources used in this study consisted of primary data and secondary data. Based on the results of the study showed that 1) Criminal law enforcement against the perpetrators of forest fires in the village of Celikah, Kayuagung District, Ogan Komering Ilir District has gone through a penal effort that is repressive measures of Investigation because the perpetrators threatened with imprisonment in accordance with criminal theory in applying the principle of subsidiarity and in accordance with article 99 paragraph (1) Article 108 jo Article 69 letter h Law of the Republic of Indonesia No. 32 of 2009 concerning Environmental Protection and Management and regulates criminal sanctions alternatively, namely in the form of imprisonment or only fines and 2) Constraints faced by law enforcement agencies in carrying out criminal law enforcement against perpetrators of forest and land burning, namely first, at the level of investigation, constraints faced is the limited budget support for the management of smoke disasters, the tradition of the community opening land by burning, not yet optimized community empowerment to care about smoke disasters, and the limitations of environmental expert witnesses. Second, at the level of the public prosecutor and judge, the obstacles faced are that the police have never been involved at the level of investigation, the lack of certified public guides and judges (expertise) in the field of environment especially forest and land fires, users of tools that are not of Indonesian national standards.*

Keywords: *criminal law enforcement, forest burning, forest burning perpetrators*

The Introduction

Law has an important position and meaning in solving environmental problems and is a juridical basis for implementing government policies. Law is a series of tools that exist in the government to realize environmental policies that have been formulated by the government and set forth in environmental legislation as the basis and container. Criminal policy in law enforcement is one of the efforts to protect the environment. The policy must

¹ Fakultas Hukum Universitas Muhammadiyah Palembang, Email: khalisahfhump@gmail.com

² Fakultas Hukum Universitas Muhammadiyah Palembang, Email: LeomanSaputra@gmail.com

be able to generate ideas about new methods for the purpose of preventing crime and protecting the environment at the same time. (Husni and Sugino, 2006: 6).

Crimes in the form of pollution and environmental destruction have had a huge impact on human life, such as global warming, flash floods, forest fires, landslides that have caused casualties to both human and community economic resources, social facilities and public facilities. In addition, the decline in the quality of the carrying capacity of the environment has resulted in various endemic diseases that afflict almost all parts of Indonesia such as dengue fever, vomiting, lung and diarrhea and others.

The forest fires in Indonesia are currently viewed as a regional and global disaster. This is due to the impact of forest fires that have spread to neighboring countries and the combustion gases emitted into the atmosphere (such as CO₂) have the potential to cause global warming (Suryani, 2012: 60). So that the cases of forest and land fires that occur in Indonesia are no longer a strange thing for the community, because forest and land fires occur almost every year (Silalahi, 2012: 21). Forest and land fires occur due to 2 (two) main factors, namely natural factors and uncontrolled human activity factors. Natural factors, among others, are the influence of El-Nino which causes prolonged drought so that plants become dry. Dried plants are potential fuel when exposed to sparks from sunlight that appear on the surface or from other burning, whether intentional or unintentional. This causes ground fire and surface fire. (Rasyid, 2014: 48).

In the case of forest and land fires (Karhutla), the most prominent impact is the occurrence of haze which disturbs health and the transportation system of land, sea and air. (Cahyono, et al, 2015: 108). The magnitude of the impact of these fires is not only due to the large area of forest and land that were burned, but the forest and land fires occurred in forests and peatlands. Forest and peatland fires have different characteristics from forest and dry land fires. This characteristic is because forests and peatlands have different ecosystems from forests and dry land. (Pinem, 2016: 142).

Forest and land fires have a significant impact on human losses, both material and immaterial. The government has made great efforts to resolve this problem through policy support, institutional support, and funding support. But in reality this incident still recurs throughout the year (Supriyanto and Ardi, 2018: 94). Despite receiving assistance from outside countries to extinguish the fires, but until now the problem has not been resolved. Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Management has determined cumulatively imprisonment and fines as principal crimes against perpetrators of Environmental Crimes which can be supplemented with disciplinary action sanctions (maatregel).

South Sumatra Province is one of the provinces that has experienced a level of environmental pollution due to the critical haze caused by forest fires. Like the case of forest fires in Palembang, according to the Panel of Judges at the Palembang District Court, from 2014 to 2019, there were many cases of forest fires. One of them is a civil suit for compensation from the Ministry of Environment and Forestry amounting to 7.9 trillion rupiah as the cost of restoration filed for land fires covering an area of 20 thousand hectares in the case of forest fires on concession land belonging to PT Bumi Mekar Hijau 2014, forest fires caused by slash and burn action. The judge considered that

the defendant, namely PT Bumi Mekar Hijau (BMH), which is a subsidiary of the Sinar Mas Group, said that the judge considered that the charges against the company could not be proven to have damaged the environment. Head of the Panel of Judges at the Palembang District Court, Parlas Nababan, assessed that the fire did not damage the land because it could still grow plants.

The causes of forest fires occur due to natural factors or due to human factors, whether intentional or unintentional. Human-acted factors are a deliberate factor in the context of certain activities, such as: preparing shifting cultivation of land, plantations, industrial forest plantations, transmigration or also large livestock activities such as cattle that always need forage from young grass, by burning reeds, then immediately you will find fresh young grass to eat cattle. Meanwhile, accidental factors such as fire from carelessly discarded cigarette butts which at the time of their disposal appear to have died, but actually there are still coals. Fire from the fireplace of people camping or fire from former people working in the forest.

The most concerning thing is the case of forest fires due to an element of human deliberation deliberately burning the forest for personal gain to open new land. Forest and land fires that are carried out by humans are legal events, namely events or incidents that cause legal consequences. Forest and land fires not only have a negative impact on natural (biotic-abiotic) and artificial ecosystems, but also create legal responsibility for the perpetrators. It even obliges the government and law enforcement officials to take the necessary legal actions according to their authority and duties. The wider community also has a social responsibility to prevent forest fires from occurring (Murhaini, 2012: 9).

One example of a criminal case in forest burning by burning is the case file number BP / 68 / VIII / 2017 / Reskrim where the chronology of the crime of burning land, which was caught red-handed on Wednesday, August 16, 2017 at around 08.45 WIB at Jalan Lintas Timur dsn III Desa Celikah Kec. Kayuagung Kab. The OIC or at least is still in the jurisdiction of the OKI Police, which the perpetrators allegedly committed. Herman als Man Bin Abdullah, by means of the land belonging to the WASNI that had been leased by PT. Waskita, in which Mr. Herman als Man Bin Abdullah as the manager of the land, on personal initiative, the land where the trees had been cut was for branches and Herman Als Man Bin Abdullah burned the leaves of the tree, burned by using light blue Tokai gas matches, as many as 4 (four) points, and when the perpetrator was burning, the police found out and the perpetrator was immediately secured, and by the police and the perpetrators immediately extinguished the fire that had been burning and spreading. as referred to in Article 99 paragraph (1) Article 108 in conjunction with Article 69 letter h Law no. 32 of 2009 concerning Protection and Management of the Environment in conjunction with Regulation of the Minister of the Environment Number 10 of 2010 concerning the mechanism for preventing environmental pollution and / or damage related to forest and / or land fires.

Article 108 Anyone who burns forest / land 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. , 00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah). In reality, most of the laws and

regulations governing environmental crimes outside of Law Number 32 Year 2009 regulate alternative criminal sanctions, namely in the form of imprisonment or just fines.

Based on the above background, the writer tries to write with the title "Enforcement of Criminal Law Against Perpetrators of Forest Burning in Celikah Village, Kayuagung Subdistrict, Ogan Komering Ilir Regency". From what has been described in the background above, the problems that are taken up in this writing are as follows: first; how is the enforcement of criminal law against the perpetrators of forest burning in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency? Second; What are the obstacles faced in enforcing the criminal law against the perpetrators of forest burning in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency?

Then the research method used in research is empirical legal research. Empirical legal research is carried out by examining directly into the field to see firsthand the application of laws or regulations related to law enforcement, as well as conducting interviews with several respondents who are deemed to be able to provide information about the implementation of law enforcement (Muhammad, 2004: 13) . According to Abdul Kadir Muhammad, empirical research (Empirical Law Research) is an unwritten positive legal research regarding the behavior (Behavior) of community members in community life relations (Muhammad, 2004: 13) empirical research, namely research with field data as a source of data. major, such as the results of interviews and observations. Empirical research is used to analyze law which is seen as patterned community behavior in people's lives that always interacts and relates to social aspects (Sunggono, 2004: 43).

In this study the authors used a qualitative descriptive approach, which is a way of analyzing the results of research that produces analytical descriptive data, namely data that is stated in writing or orally as well as real behavior, which is researched and studied as something intact (Fajar ND and Achmad, 2010 : 192) In this approach the emphasis is on data quality, so that in this approach the compilers are required to be able to determine, sort and choose which data or materials have quality and which data or materials are not relevant to the research material. The research conducted is descriptive in nature, which describes the symptoms in the community towards a case being studied. The approach taken is a qualitative approach which is a research methodology that produces descriptive data. The author uses a qualitative approach to understand or understand the symptoms under study. The main data in this study are primary data and secondary data (Soekanto, 2014: 252).

Research methods

The research method used is empirical research. Sources of data used in this study consisted of primary data and secondary data. The research location is in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency. as for data collection is done by means of interviews, observation and documentation. The data analysis technique used is descriptive qualitative method.

Discussion and Results

Criminal Law Enforcement Against Perpetrators of Forest Burning in Celikah Village, Kayuagung Subdistrict, Ogan Komering Ilir Regency

Forest burning crimes This includes corporate crimes, crime victims, and the frequency, scope and severity of crimes that hurt victims in various day-to-day settings. There is no denying the fact that forest burning crimes sometimes take on the characteristic of responsible officials that decisions to break the law are made by individuals. however, these people were influenced by the context in which they worked and committed their crimes. Those jobs are people who will commit crimes influenced by the characteristics and imperatives of their business organization. This means that the decisions of the offenders by the perpetrators of forest burning crimes are influenced by the risks and benefits they perceive for themselves, the risks and benefits they perceive for the corporation.¹⁰

As one of the cases raised in this study with the chronology of the case of the crime of burning land, which was caught red-handed on Wednesday, August 16, 2017 at around 08.45 WIB on Jalan Lintas Timur dsn III Desa Celikah Kec. Kayuagung Kab. The OIC or at least is still in the jurisdiction of the OKI Police, which the perpetrators allegedly committed. Herman Als Man Bin Abdullah, by means of the land belonging to Ms. Wasni that had been leased by PT. Waskita, in which Mr. Herman Als Man Bin Abdullah as the manager of the land, on personal initiative, the land where the trees had been cut was for branches and Herman Als Man Bin Abdullah burned the leaves of the tree, burned by using light blue Tokai gas matches, as many as 4 (four) points, and when the perpetrator was burning, the police found out and the perpetrator was immediately secured, and by the police and the perpetrators immediately extinguished the flaming and spreading fire as referred to in Article 99 paragraph (1) Article 108 in conjunction with Article 69 letter h of Law No. 32 of 2009 concerning Protection and Management of the Environment. Initially, on Wednesday, August 16, 2017 at around 07.45 WIB after holding the morning rally, then the witness together with Brigpol Candra Leka and Brigpol Fariansyah carried out fire patrols in order to prevent forest and land fires around the Kayuagung area. Then at around 09.00 WIB, we arrived at the 3 (three) intersection in front of the Jalan Lintas Timur gas station, we saw a puff of smoke after the gas station heading to Palembang. Then we went straight to the location of the smoke puff. Arriving at the exact location in one of the residents' gardens on the side of the Jalan Lintas Timur which entered the area of Dusun III, Desa Celikah Kec. Kayuagung Kab. OKI. Arriving at the location of the burning plantation land, at that time there was 1 (one) man who later claimed to be Herman Als Man Bin Abdullah. At that time Herman als Man bin Abdullah was waiting for the fire to burn in the land. Then we conducted an initial interrogation and ordered Herman als Man bin Abdullah to come together with us to make an initial fire suppression effort. At that time we made an initial extinguishing effort by hitting the fire with large logs and separating dry wood and branches that had not been burned so that the fire did not spread. In addition, we also coordinated with the Fire Department to ask for help from a fire extinguisher because it was feared that the fire would continue to grow.

Article 108 Anyone who burns forest / land 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. 00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah). In reality, most of the laws and regulations governing environmental crimes outside of Law Number 32 Year 2009 regulate alternative criminal sanctions, namely in the form of imprisonment or just fines. Apart from carrying out the blackout attempt, the witness also conducted an initial interrogation with Herman als Man bin Abdullah. And at that time Herman als Man bin Abdullah admitted that he was the one who burned using 1 (one) light blue "Tokai" gas lighter which was then burned onto dry leaves and twigs on the front of the land, then Herman als Man bin Abdullah continued to burn the dry leaves and twigs in the next 2 parts of the leaves and dry twigs in the back of the garden. Then because the wind was strong enough, the fire at the 4 points got bigger. After an effort to extinguish the fire for about 20 (twenty) minutes, we succeeded in extinguishing the fire. Besides that, at the time of carrying out the blackout efforts. Furthermore, the perpetrator Herman als Man bin Abdullah, as well as witnesses and evidence were secured at the OKI Police for further processing.

Regarding the position as the maker and the nature of responsibility for the crime of forest burning, the punishment can be imposed on the perpetrators involved in it, so there are 4 (four) systems of accountability as follows: (1) Management as perpetrators of criminal acts, (2) perpetrators of criminal acts, (3) the perpetrator of the criminal act and the company itself which must bear the criminal responsibility, and (4) the management and the corporation are both the perpetrators of the criminal act. The Criminal Code adheres to the first system. The Criminal Code adheres to the stance that because a corporation cannot commit an act itself which is a criminal act, but its leaders. In other words, the Criminal Code does not adhere to the position that corporations are liable for criminal liability. The establishment of the Criminal Code which adheres to the first system is in line with or as a consequence of the establishment of the Criminal Code that only humans are the subject of criminal acts.²⁰ In article 59 of the Criminal Code it reads: "In cases where the offense is determined to be criminalized against the management. Members of the governing body, or commissioners, the board, members of the board of directors, or commissioners, who apparently did not interfere with the offense are not punished." Then article 399 of the Criminal Code reads: "A manager or commissioner of a limited liability company, Indonesian airline or association. a cooperative which is declared bankrupt or whose business activities are ordered by a court to be resolved, shall be punished with a maximum imprisonment of seven years if he fraudulently deducts the rights of debtors of the company, airline or association: exists, or does not book revenue or withdraw items from a bundle. The second has transferred (vevreemden) something for Free or in fact at a price lower than the price. The third, in a way that benefits one of the creditors at the time of the bankruptcy or at the time of settlement of the bankruptcy estate, or knowing that the bankruptcy or settlement action is unavoidable. The fourth does not fulfill the obligation to record as referred to in the Indonesian Commercial Code or as referred to in article 27 paragraph 1 of the Ordinance

concerning Indonesian Andil Airline and regarding storing and displaying books, letters and writings according to that article. "

The perpetrator of the forest burning that occurred in Kayuagung District, Ogan Komering Ilir Regency. a legal accountability must be held before the competent District Court. This means that the perpetrator must be able to be responsible for the act of burning the forest which is detrimental to the community and damaging and polluting the environment. The imposition of cumulative penalties must be imposed, imposed in such a way that there is a deterrent effect, both preventive and repressive.

Thus, it means that there is a desire from legislators to apply the principle of strict liability in general in Indonesian criminal law to impose crimes against humans and corporations as subjects of criminal law. Article 69 paragraph (1) letter h: Everyone is prohibited from clearing land by burning; Article 108: Anyone who burns the land 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. 00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

Article 69 paragraph (2): The provision as referred to in paragraph (1) letter h takes seriously local wisdom in each region. Elucidation of Article 69 paragraph (2): Local wisdom referred to in this provision is to burn land with a maximum area of 2 hectares per family head to plant local varieties of plants and to be surrounded by firebreaks to prevent fire from spreading to the surrounding area. The criminal law policy in efforts to tackle forest burning, especially in Kayuagung Subdistrict, OKI Regency based on the results of an interview with Bripka Meldianto, as an investigator at the Ogan Komering Ilir District Police Headquarters (OKI) stated that; "The suspect is indeed proven guilty of committing a police act of burning the forest. This is in accordance with the government policy that has issued Law no. 41 of 1999 concerning Forestry which contains prohibitions. These prohibitions are punishable by criminal law, but penal policy alone cannot provide maximum results due to the limitations of the penal policy itself. Non-penal factors (factors that give rise to forest burning crimes) must be in synergy with penal policy efforts. The local government has made Governor Regulation No. 11 of 2014 concerning the Center for Forest and Land Fire Control, which is a form of local government concern for forest fire disasters that often occur both by natural and human factors. In terms of policy, actually many regulations have been made, but they are very difficult to implement. Even though we realize that forest fires are always recurring, the level of vigilance of the apparatus, especially in the regions, seems very lacking. The government has just rushed into action and even looked panicked when the fires had started then decreased when the fires had been resolved. Likewise regarding responsibility, it seemed that they were only burdened on the Forestry Department and the Forestry Service in the regions, perhaps considering that the object of the fire was forest in the area. In fact, as an institution, forest fire management also involves other institutions, so that the government, especially the relevant departments and agencies, and the forest fire management team, seem less solid. The negative impact of forest burning must be overcome by the government and the community because burning

the forest and land damages the ecosystem, balance and the environment is a crime.

Based on the testimonies of witnesses, expert witnesses, which are corroborated by the suspect's testimony, and linked to existing evidence, it is true that the suspect Herman Als Man Bin Abdullah is the suspect / perpetrator who carried out the land burning. So the element of "burning land" has been fulfilled by 3 (three) pieces of evidence as described above and there are strong indications that Herman als Man Bin Abdullah is a suspect in the crime of land burning. Article 99 paragraph (1) of Law Number 32 Year 2009 concerning Environmental Protection and Management. Then regulated in Article 50 paragraph (3) Law Number 41 Year 1999 concerning Forestry.

Constraints Faced in Criminal Law Enforcement against Forest Burning Perpetrators in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency

Law enforcement in its implementation is not an independent matter but is related to various aspects. Based on the results of the interview, it can be found that there is uncertainty that it has been explained that burning is prohibited in paragraph (1) to prohibit clearing land by burning but in paragraph (2) it is permissible but with respect to local wisdom. It is inconceivable that if 100 heads of families burn simultaneously at several points in Ogan Ilir Regency, it can cause tremendous smoke pollution and it is difficult to monitor whether the bulkhead referred to in the explanation of Article 69 paragraph (2) was properly carried out by the surrounding population if they wanted to. clearing land by burning, according to the author, the Government also needs to review Article 69 Paragraph (2) of Law Number 32 Year 2009.

The second factor is law enforcement. In line with Article 1 point 2 of the Criminal Procedure Code, it is clear that the police investigator has the duty and obligation to make clear about the alleged crimes that have occurred. One of the obstacles that hinders law enforcement is the lack of competent investigators on forest and land fire issues. The existence of human resources who understand the problems of handling forest and land fires will facilitate and think that forest and land fires are not an ordinary case. In the handling of cases of forest and land fires in Ogan Komering Ilir District, there is often surgery on corporations. This professionalism in handling cases against corporations is unwillingness and courage to disturb corporations when burning forests and land, seen from cases of forest and land fires, investigations often stop, with cases found guilty of burning forests and land, as well as reasons for terminating case investigations against This forest and land burning corporation is actually almost the same reason as the termination of the illegal logging case that occurred in Ogan Komering Ilir Regency. Therefore, the lack of investigators may be a major obstacle but it is meaningless. Actually, it is clear about the advice and infrastructure that a company must have when applying for a business license, an amdal permit. Because it is a prerequisite for a company to be issued a business license is that it must have an Amdal or Uklupl license, both of which require completing the facilities and infrastructure. Here, what is sadly is that the conditions are not sufficient, such as only 1 (one) fire suppression device with an area of 100-200 ha, plus officers who are not experts.

Then, community factors have contributed to forest fires. Several factors that cause forest and land fires include: first; use of fire in land preparation activities. Communities around forest areas often use fire for land preparation, both for making agricultural land and for plantations such as coffee and cocoa. The high difference in production costs is one factor driving the use of fire in land preparation activities. The method of using fire in land preparation activities is carried out because it is cheap in terms of cost, time-effective and the results achieved are quite satisfactory. Second; There is disappointment with the forest management system, various social conflicts often arise in the community around forest areas under investigation, but the professionalism of an investigator is more important than the number of conflicts experienced, especially conflicts over forest management systems that do not provide economic benefits to the community. The dissatisfaction of some communities with forest management can trigger the community to act at will without taking into account existing conservation principles and laws. The limited educational background of the community and the lack of community knowledge of the functions and benefits of forests greatly influence their actions in managing forests which tend to be destructive. Third; illegal logging or illegal logging. Illegal logging activities or illegal logging mostly produce critical lands with a high level of fire susceptibility. Often uncontrolled fires easily spread to these critical forest areas. Illegal logging activities or illegal logging often leave behind fuel (leaves, branches, and twigs) which can easily become a trigger with the existence of which is increasing over time and accumulates in forest and land areas which in the dry season will dry up and have the potential to cause forest fires and land. Fourth; the need for forage. The life of the community around the forest area cannot be separated from livestock and grazing. Livestock is a form of side business to meet the needs of family life. The need for forage and grazing areas is one of the things that must be fulfilled. To get grass with good quality and has a high level of palatability, people usually burn pasture areas that are no longer productive. After the pasture area is burnt, new grass will grow with better quality and high nutritional content. Fifth; forest encroachment. Another factor that is no less important as the agent causing forest fires is the migration of people in forest areas (forest encroachers). Whether we realize it or not, the longer it takes, the people's need for life will increase along with the increasing number of families and the more complex the necessities of life. This requires residents to increase the area of their cultivated land so that their agricultural products can meet their daily needs. Sixth; and Other causes. Another reason that could trigger a fire was the lack of public awareness of the dangers of fire. Usually the form of activity that is the cause is the accident of the perpetrator. For example, the community has a high interaction with the forest. One form of this interaction is the habit of residents to take rattan, which is usually light cigarettes while working. Unconsciously they throw cigarette butts in forest areas that have abundant fuel potential, which may cause fires to occur. (Rasyid, 2014: 49-50).

The obstacle lies at a considerable distance from the city to the location of the fire so that it takes a long time, determining the opinion of environmental and criminal experts so that it can be said that the smoke disaster is said to be not a natural factor but because of a deliberate act by an irresponsible person. included in the category of constraints in law

enforcement in facilities and infrastructure, as well as the difficulty of finding witnesses, especially the perpetrators due to the absence of people living around the forest and land fires, several companies had their licenses revoked by the government and there were serious efforts so that investigations had to be stopped or the issuance of SP3 in accordance with Article 109 paragraph (2) of the Criminal Procedure Code. Another obstacle is that there are articles that are recommended to be removed because they can hinder the law enforcement process, namely in Article 69 UUPPLH paragraph (2) which allows clearing land by burning a maximum of 2 hectares per head of family with regard to local wisdom which is difficult to monitor whether the community can implement it. local wisdom, and seeing that burning simultaneously at several points can cause haze disasters due to natural factors in Ogan Komering Ilir (OKI) Regency which are also peat which quickly transmits heat, it is a factor in the constraints of law enforcement in legal means, namely Constitution. In addition, what becomes an obstacle is that the prohibition alone tends to cause antipathy and resistance, because something that is prohibited may be part of a culture that has its own values and norms that require time and certain conditions to change. Especially if this habit has been tested for several generations and becomes knowledge that continues to be passed on to the next generation as indigenous knowledge, which needs to be respected by all stakeholders. The prohibition of forest burning for all people is a tragedy of knowledge, which needs to be regretted and misleading.

From the explanation of Article 69 (2) it is permissible to clear land by burning with certain conditions, but in reality at this point in time, let alone clearing land by burning, burning trash in front of the yard, the community is very afraid, afraid of being arrested by the police. Currently, the majority of people already know the dangers of burning forests and land. It becomes a question why forest and land fires still occur, all of which occur on concession land, it should be an obstacle for the police, not the residents' concern for not clearing land by burning, but corporations that do not care about forest and land fires in the work area they. When all corporations can be aware of the dangers of forest and land fires, it can minimize forest damage. The form of awareness of the dangers of forest and land fires in a corporation, can be seen by the existing facilities and infrastructure in the corporation and educating workers to burn their work areas.

Conclusion

Enforcement of criminal law against perpetrators of forest burning in Celikah Village, Kayuagung District, Ogan Komering Ilir Regency has been going through penal measures, namely repressive actions at the level of investigation because the perpetrator is threatened with imprisonment in accordance with the criminal theory in applying the principle of subsidiarity and in accordance with Article 99 paragraph (1) Article 108 jo Article 69 letter h Law of the Republic of Indonesia No. 32 of 2009 concerning Protection and Management of the Environment and regulates alternative criminal sanctions, namely in the form of imprisonment or just fines. However, criminal law enforcement against perpetrators of forest burning in Kayuagung Subdistrict, Ogan Komering Ilir District is still sharp downward and blunt upwards because criminal law enforcement against corporations

still does not have the will and courage of law enforcers to ensnare corporations that are indicated for burning forests and land in Kayuagung District, Regency Ogan Komering Ilir.

Constraints faced by law enforcers in enforcing criminal law against perpetrators of forest and land burning in Kayuagung District, Ogan Komering Ilir Regency. First, at the level of investigation, the obstacles faced are limited budget support for haze disaster management, geographic conditions for forest and land fires that are difficult to reach, the community tradition of clearing land by burning, has not optimized community empowerment to care about haze disasters, and limited environmental expert witnesses. , There is a long time in obtaining laboratory results, there has not been an integrated handling, there is no regulation that clearly and clearly regulates the advice and infrastructure that companies must have in anticipating forest and land fires. Second, at the level of public prosecutors and judges, the obstacles faced are never being involved by the police at the investigation level, the lack of public guides and certified judges (expertise) in the environmental field, especially forest and land fires, legal experts (legally appointed by the Ministry of Environment and Forestry). , Users of tools that are not yet of Indonesian national standards, such as still using peralon to take samples of land, are sometimes incomplete at the level of investigation so that it will make it difficult for judges.

References

- Cahyono, S. Andy., Warsito, Sofyan P., Andayani, Wahyu & Darwanto, Dwidjono H. (2015). *Faktor-Faktor yang mempengaruhi kebakaran hutan di Indonesia dan implikasi kebijakannya*. *Jurnal Sylva Lestari*, 3(1), 103-112. <http://dx.doi.org/10.23960/jsl13103-112>.
- Husni, Ahmad & Sugino, Bambang. (2006). *Strategi pendekatan hukum dalam penyelesaian masalah lingkungan*. FHUI.
- Murhaini, Suriansyah. (2012). *Hukum kehutanan: Penegakan hukum terhadap kejahatan di bidang kehutanan*. Laksbang Grafika.
- Muhammad, Abdulkadir. (2004). *Hukum dan penelitian hukum*. Citra Aditya Bakti.
- Mukti, Fajar ND & Yulianto, Achmad. (2010). *Dualisme penelitian hukum normatif & empiris*. Pustaka Pelajar.
- Pinem, Tanda. (2016). Kebakaran hutan dan lahan gambut: Kajian teologi ekofeminisme. *Gema Teologika: Jurnal Teologi Kontekstual dan Filsafat Keilahian*, 1(2), 139-166. <https://doi.org/10.21460/gema.2016.12.219>
- Rasyid, Fachmi. (2014). Permasalahan dan Dampak Kebakaran Hutan, *Jurnal Lingkar Widyaishwara*, 1(4), 47-59.
- Silalahi, M. Daud. (2012). *Hukum lingkungan dalam sistem penegakan hukum lingkungan Indonesia*. Alumni.
- Sunggono, Bambang. (2004). *Metodologi penelitian hukum*. Raja Grafindo Persada.
- Supriyanto., Syarifudin & Ardi. (2018). Analisis kebijakan pencegahan dan pengendalian kebakaran hutan dan lahan di Provinsi Jambi. *Jurnal Pembangunan Berkelanjutan*, 1(2), 94-104. <https://doi.org/10.22437/jpb.v1i2.5413>.

- Soekanto, Soerjono. (2014). *Pengantar penelitian hokum*. Universitas Indonesia.
- Suryani, Anih Sri. (2012). Penanganan Asap Kabut akibat Kebakaran Hutan Di Wilayah Perbatasan Indonesia. *Aspirasi: Jurnal Masalah-masalah Sosial*, 3(1), 59-75. <https://doi.org/10.46807/aspirasi.v3i1.256>.