

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

Universitas Sunan Bonang, Indonesia

Email : armaya@usb.ac.id

Keywords:

Corporations;
Forestry;
Environmental
Fiqh;
Precautionary
Principle.

DOI:

<https://doi.org/10.19109/vs92sa64>

Submitted:

January 20, 2024

Accepted:

June 2, 2024

Published:

June 30, 2024

Pages: 235 - 252

Abstract: *The application of the precautionary principle in enforcing forestry law in Indonesia is a very important principle for protecting forests and the environment. This precautionary principle emphasizes efforts to prevent environmental damage and avoid irreversible risks. This research aims to analyze the application of the Precautionary Principle in Forestry Criminal Law Enforcement carried out by Corporations from the perspective of juridical jurisprudence and the environment. This research employs normative legal methods using various approaches, including the environmental fiqh approach, statutory approach, conceptual approach, case approach, and comparative approach. Implementation of the Precautionary Principle in the context of forestry crime cases involving corporations can be realized through the application of the principle of strict responsibility. The government has issued Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H) as a step to improve Law Number 41 of 1999 concerning Forestry. Judges who handle cases against companies that violate Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H) must consider the existing situation and conditions, taking into account the level of damage that has occurred and the impact of forest damage caused by the corporation. From an environmental fiqh perspective, the precautionary principle is in line with the concept of preserving nature (hifz al-bi'ah) which is part of maqasid al-shariah (goals of sharia). This research suggests increasing the capacity of law enforcement through training and outreach regarding the precautionary principle, as well as closer integration between positive law and environmental fiqh values within the framework of forestry criminal law.*

Introduction

Indonesia is one of the countries with the largest forest wealth in the world with an area of 125.76 hectares or reaching 62.97% of Indonesia's total land area. Indonesia stands out for its extraordinary commitment at the global level to reducing the impact of climate change, particularly in the forestry sector. Indonesia's tropical forests are among the largest in the world, playing a vital role in global survival, especially in mitigating climate change. Therefore, exploitation and use of forests must be carried out in a planned, rational, optimal and responsible manner, taking into account capacity, carrying capacity and maintaining environmental function and balance, this is intended to support efforts to manage forests and sustainable forestry development, in order to improve community welfare (Fikri et al., 2020).

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

This commitment is demonstrated in implementing the REDD+ scenario, implementing adaptation and mitigation strategies, ratifying a number of international regulations (UNFCCC, Kyoto Protocol, Paris Agreement, etc.), as well as other efforts that are in line with the global vision of reducing the impact of climate change. Furthermore, the Indonesian Government ratified Law Number 6 of 1994 concerning Ratification of the United Nations Framework Convention on Climate Change (United Nations Framework Convention on Climate Change) regulating the Climate Change Convention, where Indonesia is included in the category of Non-Annex I countries. The Indonesian government has also agreed to the 2015 Paris Agreement, a global agreement involving 103 countries around the world, as part of international efforts to deal with climate change.

Indonesia is committed to protecting the environment, especially protecting forests, because forests are natural resource assets that have strategic importance in the development process of a nation and state. Their management is carried out by the government and used for the welfare of all the people. Forest resources should be utilized optimally, with the aim of achieving long-term prosperity for the entire community, including future generations. In this regard, it is important to ensure that forest use is sustainable, respecting the rights of local indigenous communities. Forests have an important role (Johar, 2024). To protect the environment and ensure the sustainability of the Indonesian nation and humanity, forest conservation must continue to be maintained because forests act as a life support system that influences various aspects of survival. A healthy and normal water system supports various economic sectors, including agriculture, fisheries, livestock, as well as manufacturing and service industries (Ariyani, 2018). Climate stability is also crucial for increasing productivity in these fields. However, forest destruction can have serious impacts, triggering various disasters such as floods, erosion, landslides, drought and global warming, which can significantly reduce productivity and trigger the spread of human, plant and animal diseases. Forestry has the potential to become the second largest source of foreign exchange after petroleum, with estimates reaching around \$7 billion. Along with Indonesia's change to becoming an importer of petroleum, forestry has the potential to become the largest foreign exchange contributor in Indonesia. The demand for wood and its selling prices tend to increase consistently, making wood a uniquely stable commodity in terms of market growth. As a developing country, Indonesia has a comparative/competitive advantage, especially in its abundant and high-quality natural resources. However, this advantage is not fully found in human resources, capital, and science and technology. The forest sector plays a strategic role in the Indonesian economy, while functioning as an instrument for preserving the environment and maintaining ecosystem balance (Nugroho et al., 2022).

Based on the above, legal protection of the environment, especially forestry, should be very important. In 1999, the government issued Article 50 of Law Number 41 of 1999 concerning Forestry, containing the essence of the law which states that damage to forest protection facilities and facilities prohibited for every individual. In addition, individuals who are granted permits to carry out activities in area utilization, environmental services,

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

exploitation and collection of timber and non-timber forest products, as well as all activities related thereto, are prohibited from carrying out actions that could cause damage to the forest. This was revised in Law Number 1 of 2004, which is an improvement on Law Number 41 of 1999 concerning Forestry.

The government issued Law Number 41 of 1999 concerning Forestry, along with its amendments, Law Number 1 of 2004 based on the legal protection of the forest environment, but until now it is still deemed inadequate as reported by the Ministry of Environment and Forestry, Forests in Indonesia cover an area of 125.76 million hectares, which is equivalent to around 62.97% of Indonesia's total land area. The area of this forest has decreased in the last few decades due to exploitation and land-clearing activities which have resulted in a reduction in forest area. Forest fires have also contributed significantly to the reduction of forest areas throughout Indonesia, forest fires not only cause a reduction in forest area, but also create air pollution. Smoke from fires pollutes the air around the burning area, and can even spread to neighbouring countries such as Malaysia, Singapore, Brunei, Papua New Guinea and Australia, this not only raises environmental problems but also creates complex bilateral problems (Sulastri et al., 2023).

Forest fires are often set by corporations as the perpetrators. Forest fires set by corporations are considered a violation of corporate law, which is classified as a rare crime but has the potential to cause serious consequences for economic and financial losses to the state and society. Therefore, the precautionary principle must be prioritized in law enforcement. The precautionary principle is a precautionary principle that can be used as an attitude in evaluating actions that destroy the forest environment. As stated in Article 3.3 of the UNFCCC, the precautionary principle is important to implement in every climate change mitigation effort. As for the implementation of the precautionary principle in efforts to mitigate climate change, regulations related to forest burning by corporations are strictly regulated in Article 2 letter f of Law Number 32 of 2009 concerning Environmental Protection and Management, and are also regulated in Law Number 1 of 2004 which is a revision of Law Number 41 of 1999 concerning Forestry, and Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction.

Method

This research follows the normative legal approach as proposed by Peter Mahmud Marzuki, this approach involves identifying legal facts, collecting legal materials, analyzing legal issues, drawing conclusions using arguments, and providing recommendations based on the arguments that have been developed. This method is to the prescriptive and applied nature of legal science. Researchers search for relevant legal materials related to the issue being researched, this research adopts various approach methods, namely the case approach, conceptual approach, statute approach, and comparative approach.

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

Result and Discussion

Implementation of the Precautionary Principle in Forestry Law Enforcement in Indonesia

The precautionary principle is a concept in environmental policy that emphasizes preventive action against potential threats of environmental damage, even though there is no definite scientific evidence regarding this threat, this principle stems from the idea that scientific uncertainty should not be used as a reason to delay action that could prevent serious or irreversible environmental damage (Sara & Purnama, 2024; Sudarwanto et al., 2022). The precautionary principle suggests that when there are indications that an activity may cause harm to the environment or human health, precautionary measures should be taken even if the cause-and-effect relationship is not yet fully understood. This principle encourages policymakers to take steps that prioritize environmental protection in situations of uncertainty, thereby preventing potential risks that could result in significant losses.

This principle has been adopted in various legal instruments in the international context, such as the Rio Declaration on Environment and Development in 1992, which stated that a lack of scientific certainty should not be used as a reason to postpone actions that prevent environmental degradation, the precautionary principle functions as a guide in making decisions aimed at protecting ecosystems and public health from potential harms that have not been fully identified (Priyatno et al., 2023; Salim & Palullungan, 2021). The precautionary principle is not only a theoretical concept but also has significant practical implications in public policy and law. Its implementation can be seen in various fields, including hazardous chemical regulation, biotechnology, climate change, and natural resource management. This principle encourages governments and policymakers to adopt a more proactive approach to dealing with potential risks, rather than waiting for irrefutable evidence of possible harm (Abdurrachman et al., 2021; Ryadi & Masyhar, 2021).

The precautionary principle often involves several key steps: first, identification of the potential hazard and associated scientific uncertainty; second, evaluate the potential impact of the hazard; third, development and implementation of appropriate preventive measures; and fourth, monitoring and adjusting actions based on emerging new information. This approach emphasizes the need for cautious and prudent action in managing environmental risks, especially in contexts where failure to act could result in irreversible or extremely detrimental consequences (Dermawan et al., 2023; Roza, 2020).

The application of the precautionary principle also faces challenges, especially in determining the extent of scientific uncertainty that can trigger preventive action and how to measure and manage the potential economic costs of such steps. Criticism of this principle often revolves around the potential stifling of technological and economic innovation, as well as the potential for creating overly conservative and protectionist policies. However, proponents of this principle argue that ignoring potential risks simply because of a lack of

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

definitive evidence can lead to much greater losses in the future (Dewantara & Larasati, 2022; Pardede et al., 2023).

The application of the precautionary principle in international environmental agreements shows a commitment to greater environmental protection. For instance, in the Cartagena Protocol on Biosafety, this principle is used to regulate the movement of genetically modified organisms to ensure that they do not pose a risk to human health and the environment. Likewise, in climate change policy, the precautionary principle encourages countries to take action to reduce greenhouse gas emissions despite uncertainty about the specific impacts of climate change. The precautionary principle also plays an important role in supporting a preventive approach to environmental risk management, by prioritizing prevention and protection in situations of uncertainty, this principle helps ensure that actions taken today do not compromise the environmental health and well-being of future generations (Afajri et al., 2021; Wijayanto et al., 2022).

Law enforcement is the process that aims to realize the will of the law into reality. This legal will refers to the thoughts of the legislative body as outlined in statutory regulations. According to Samsul Wahidin, law enforcement is a method or procedure applied to realize or actualize legal norms in real terms. In English, this term is known as "law enforcement," while in Dutch it is called "rechtshandhaving." *Black's Law Dictionary defines law enforcement, namely:*

"Law enforcement. 1. The detection and punishment of violations of the law. This term is not limited to the enforcement of criminal law. For example, the Freedom of Information Act contains an exemption from disclosure for information compiled for law enforcement purposes and furnished in confidence. The exemption is valid for the enforcement of a variety of noncriminal laws (such as national security laws). 2. Criminal Justice. 3. Police officers and other members of the executive branch of government charged with carrying out and enforcing the criminal law".

Law enforcement encompasses three elements according to Sudikno Mertokusumo's opinion, namely as follows: a) Utility; The law exists for the benefit of humans, so the law and its enforcement need to provide benefits or added value to society without causing dissatisfaction among them because of the implementation or enforcement of the law; b) Justice; Law is not always synonymous with justice. Law has universal scope, binds all individuals, and is equitable. On the other hand, justice is subjective, individualistic, and uneven; and c) Legal certainty, which is also known as legal certainty, is a principle that provides guarantees to citizens regarding legal order, so that individuals can project the expected results in a situational context, society expects legal certainty as an effort to improve more effective order.

According to Indra Ch.R. Forestry law enforcement efforts can be categorized into three aspects, namely as follows: a) Substantial aspects regulated in Law Number 1 of 2004 which amends Law Number 41 of 1999 concerning Forestry, together with Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, as well as implementing

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

regulations and other regulations related to forestry law; b) The legal structure involves law enforcement officials, such as investigators, public prosecutors, judges (including ad hoc judges), and legal advisors. how effectively these officials carry out their duties and exercise their authority, and how well they coordinate within an integrated criminal justice system; and c) Legal culture relates to community participation, both individually and in social groups, community organizations, NGOs, and universities, in law enforcement efforts in the forestry sector.

According to the provisions of Article 8 of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, the mechanism for implementing law enforcement in the forestry sector is stipulated as follows: 1) The Government and Regional Governments have the responsibility to take preventive action against activities that destroy forests; 2) Efforts to eradicate forest destruction are carried out by taking legal steps against individuals or entities involved in activities that cause damage to forests, either directly, indirectly, or related to these activities; and 3) The steps in the legal process mentioned in the second paragraph include the stages of investigation, investigation, prosecution and trial in court.

In forestry law enforcement, apart from being guided by the provisions of Article 8 of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, is also required to pay attention to the precautionary principle. Precautionary Principle which originates from principle 15 of the Rio Declaration:

“To protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”

According to Fachrizal Affandi, Daru Adianto and Prisca Listingrum, the definition in the Rio declaration adheres to the principle of a "precautionary approach" which should be implemented comprehensively by countries according to their individual capabilities. This means that when there is a threat of serious or irreversible damage, scientific and technological uncertainty should not be a reason to delay action that is effective in preventing environmental degradation.

The precautionary principle emphasizes the importance of prevention to avoid degradation of environmental quality because pollution is an impact regulated by this principle. Furthermore, this principle directs prevention strategies to avoid environmental damage. Basically, the concept of early prevention in the Precautionary principle has been widely accepted and applied in various aspects of life, as in the opinion of Freestone and Hey, namely:

“Science does not always provide the insights needed to protect the environment effectively, and that undesirable effect my result if measures are taken only when science does provide such insights”

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

Based on Article 3.3 of the UNFCCC, the precautionary principle is important to implement in every climate change mitigation effort. In its implementation, the precautionary principle in climate change mitigation efforts is strictly regulated in article 2 letter f in Law no. 32 of 2009 concerning Environmental Protection and Management (UU PPLH) which covers various aspects. In addition to the PPLH Law, Law no. 41 of 1999 concerning Forestry also regulates the use of forest products. In essence, the precautionary principle shows that countries must apply caution in making their policies, especially in mitigation efforts. Activities that have the potential for serious and permanent impacts must be anticipated and prevented in accordance with this precautionary principle.

According to Article 3.3 of the UNFCCC, the precautionary principle is important to implement in every climate change mitigation effort. In its implementation, the precautionary principle in climate change mitigation efforts is strictly regulated in article 2 letter f in Law no. 32 of 2009 concerning Environmental Protection and Management (UU PPLH) summarizes a number of aspects. In addition to the PPLH Law, Law no. 41 of 1999 concerning Forestry also regulates the use of forest products. In essence, the precautionary principle shows that countries must apply caution in making their policies, especially in mitigation efforts. It requires anticipating and preventing activities with potential for serious and irreversible impacts.

The application of KKMA Number 36/KMA/SK/II/2013 related to scientific evidence has been implemented in Decision No. 1479 K/Pid/1989 in the Surabaya River pollution case, in this case the panel of judges defined that evidence is considered valid if the process of taking it is carried out in a pro-justice manner using procedural procedures that have been stipulated in the Criminal Procedure Code (KUHAP), Meanwhile, evidence is considered valid if the process of collecting and examining it is based on the most valid scientific methodology. This approach aligns with Lydia Akinyi Omuko's opinion stating that the threat of damage should be an incentive for the authorities to apply the Precautionary Principle regarding the possibility of serious damage with the support of scientific evidence.

The application of the Precautionary Principle is closely tied to potential losses resulting from an environmental or forestry crime. The serious and potentially irreversible nature of forest damage makes the Precautionary Principle important to apply and risk assessment or risk assessment procedures must be carried out by judges as state officials who have a role in the process of handling forest damage cases.

The implementation of the Precautionary Principle in enforcing forestry law in Indonesia has been carried out by the Regional Government of Riau Province as an effort to mitigate climate change in the form of policies such as the formation of regional regulations and the technical implementation of REDD+. However, the implementation of the precautionary principle in Riau Province is not yet optimal, judging by the high intensity of forest and land fires every year. These fires are attributed to various factors, such as: weak goodwill and commitment of regional leaders (Governor, Regent and their representatives), weak organizational capacity and integration between

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

institutions (including frequent permit violations and corrupt practices) as well as a lack of involvement in the role of NAZCA / Non-State Actor Zone for Climate Action Platform (civil society, private sector, financial institutions, local communities and indigenous peoples).

The implementation of the Precautionary Principle in forest damage cases was exemplified by the Supreme Court in Supreme Court Decision Number 666 PK/Pdt/2017 dated 17 December 2019 between PT Merbau Pelalawan Lestari vs. Ministry of Environment and Forestry of the Republic of Indonesia. In this case, the judge handed down a decision by punishing the forest loggers at IDR 16 trillion. PT Merbau Pelalawan Lestari was proven to have logged thousands of hectares of forest in Riau, thereby destroying the environment. In handing down the decision, the panel of judges applied Article 2 letter f of Law Number 32 of 2009, which is the principle of caution. The precautionary principle as stated in Article 2 letter f was adopted from the 15th Principle of the 1992 Rio Declaration, namely the precautionary principle.

In a Comparative study, the implementation of the Precautionary Principle applied in Australia. Australia is one of the countries that has adopted the Precautionary Principle in the environmental law enforcement process. Australia also has a special court to resolve issues related to land and the environment, namely the Land and Environment Court (LEC) in the state of New South Wales, while the decision of a well-known Australian judge, namely Judge Paul Stein, examined, tried and decided the case. between Leatch v National Parks and Wildlife Service in 1993, where this decision was very progressive because Judge Paul Stein granted the Plaintiff's lawsuit on the basis of the precautionary principle.

The implementation of the Precautionary Principle in forestry law enforcement in Indonesia is expected to promote environmental justice, as advocated by Sonny Keraf. He posits that principle of justice is a principle that provides equal access for all groups and members of society in determining policies for managing natural resources and preserving nature as well as participating in enjoying the use of natural resources. Basically, justice is formed from formal elements and substantial elements. Justice is not just a matter of giving other people what they deserve, but also about calling and believing in a moral responsibility to fill the space of shared life with solidarity and dignity. According to Philippe Nonet & Philip Selznick, law must offer something more than just procedural justice, fair law must recognize the public's desires and be committed to achieving substantive justice.

According to John Rawls, a robust theory of justice is a theory of justice in the nature of a contract that guarantees the interests of all parties fairly. The interests of all parties can be realized in a good environment that can be enjoyed together. Environmental justice for society has been implemented in the state's responsibility for the natural resource environment and the guarantee of citizens' rights as stated in the provisions of Article 2 of Law Number 32 of 2009 concerning Environmental Protection and Management, namely: a) The state guarantees that the use of natural resources will provide benefits as much as possible for the welfare and quality of life of the people, both present and future generations; b) The state guarantees citizens' rights to a good and healthy living environment; and c) The State prevents the carrying

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

out of natural resource utilization activities that cause environmental pollution and/or damage.

Application of the Precautionary Principle in Forestry Crimes Committed by Corporations

The legal framework governing forestry crimes in Indonesia comprising several laws and regulations designed to protect forests from illegal and destructive activities. Law Number 41 of 1999 concerning Forestry is the main basis for managing and protecting forests in Indonesia. This law regulates various aspects of forest management, including forest conservation, utilization and rehabilitation, this law regulates sanctions for various illegal acts such as illegal logging, forest destruction and use of forest areas without permission. There is Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction which strengthens the enforcement of forestry criminal law by regulating heavier sanctions for perpetrators of forest destruction, both individuals and corporations (Dekiawati, 2022; Solekhan & Febriharini, 2022).

This legal framework is further bolstered by more specific government regulations and ministerial regulations, such as Government Regulation Number 45 of 2004 concerning Forest Protection, which regulates the prevention and management of forest damage. Law enforcement officials such as the police and forestry are given the authority to investigate and take action against legal violations in the forestry sector. This legal instrument also includes administrative, civil and criminal sanctions, which are designed to provide a deterrent effect and restore the damage that has occurred (Nuradi & Rohaedi, 2020).

Indonesia is committed by various international agreements related to forest and environmental protection, such as the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) (Hafrida et al., 2022; Najicha et al., 2021). The application of the precautionary principle is also starting to be integrated into forestry policy and law enforcement, to ensure that preventive action can be taken even when there is scientific uncertainty regarding potential environmental damage. Indonesia aims for a holistic approach to forestry issues, from preventive aspects to law enforcement, to ensure more effective and sustainable forest protection with this comprehensive legal framework (Candra, 2020; Kuswandi & Ikmayadi, 2023).

Corporations play a very crucial role and responsibility in forest conservation, especially considering the scale of their operations which often have a large impact on the environment. Corporate responsibility in this case includes implementing sustainable business practices that minimize forest damage and support biodiversity conservation. This involves complying with applicable laws and regulations, such as obtaining valid permits to use forest land and carrying out activities in accordance with the principles set out in forestry and environmental laws. Corporations are also responsible for conducting environmental impact analyzes (AMDAL) before starting projects, as well as implementing mitigation measures to reduce the negative impacts of their activities (Hafrida et al., 2020; Wuryandari et al., 2022).

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

Corporations are expected actively participated in forest restoration efforts, such as reforestation and rehabilitation of land damaged by their activities, and they also need to invest in environmentally friendly technology and implement operational standards that support forest sustainability, including responsible and efficient management of natural resources. Corporations must be transparent in reporting the environmental impacts of their operations and take responsibility for repairing damage that has occurred (Ni'am et al., 2020; Rohmy et al., 2021). Moreover, corporations bear the responsibility to involve local communities in forest conservation efforts. This can be done through partnership programs with communities, which can include economic empowerment of local communities, environmental education, and providing alternative livelihoods that do not destroy forests, Corporations can help reduce pressure on forests and improve the welfare of local communities (Ardiyanto & Andrikasmi, 2022; Igorevich Golubev et al., 2020).

The definition of a corporation is an organized entity comprising individuals and/or assets, which may be legal or non-legal entities. Corporation comes from the word *corporare* which in Latin comes from the word *corporatio*. Like the last word of *corporatio* is *tio*, *corporatio* is a noun (*substantivum*) which comes from the verb *corporare* which was widely used by people in the Middle Ages or after that time. Furthermore, *corporatio* originates from a result of work that embodies. According to Satjipto Rahardjo, a corporation is a legal entity which is a creation of law. The created legal entity consists of the word *corpus* which means its physical structure and is incorporated into the law by including the *animus* element which makes the legal entity have personality traits and therefore the legal entity is a legal creation unless its creation and death are also determined by law. I.G. Ray Wijaya further defines a corporation as a legal entity or artificial person capable of legal actions through its representatives. Corporations can have rights and obligations in legal relationships.

Corporations as legal subjects, first need to explain the term legal subject. The term legal subject comes from Dutch, namely *rechtssubject* or law of subject from English. In general, *rechtssubject* has the meaning of supporting rights and obligations, namely humans and legal entities. Defining corporation becomes particularly significant in specialized criminal laws and regulations that extend beyond the Criminal Code, specifically addressing corporations as subjects of criminal law. This is crucial because corporations are not recognized as subjects of criminal law under the Criminal Code itself.

The inclusion of corporations as legal subjects in criminal law cannot be separated from social modernization. The signs of modernization include the need, especially regarding economic life, to place corporations as subjects of criminal law to overcome the negative impacts caused by the existence of corporations. Corporations as the subject of criminal law are a development of criminal law that exists outside the Criminal Code in the form of special criminal law or which adheres to the principle of corporations as the subject of criminal acts.

Corporations as legal subjects, can be held responsible for their actions, particularly in criminal cases. In the opinion of Sutan Remi Sjahdeni, there are

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

four burdens on corporate criminal responsibility, namely as follows: a) Corporate managers who are the perpetrators of criminal acts, so therefore it is the management who must bear criminal responsibility; b) The corporation is the perpetrator of a criminal act but the management is the one who must bear the criminal responsibility; c) Corporations as perpetrators of criminal acts and the corporation itself must bear criminal responsibility; and d) The management and corporation are the perpetrators of the criminal act and both must bear the criminal responsibility. According to Mardjono Reksodiputro, there are regulations for corporate criminal liability that can be applied, namely as follows: a) The corporate management is the creator, and the management is the one who is responsible; b) The corporation is the creator, and the management is responsible; and c) Corporations as makers and also as those responsible. Corporations may be held accountable by management or someone acting in accordance with their position and the corporation will not be responsible for actions carried out in their personal capacity. This is in line with the opinion of Michael J. Allen, who stated that:

“The corporation will only be liable where the person identified with it was acting within the scope of his office; it will not be liable for acts which he did in his capacity.”

Corporate accountability for criminal offenses can be applied in forestry cases because the Forestry Law accommodates corporations as legal entities alongside individuals (natuurlijk person). In 2013, the government provided legal certainty regarding forestry crimes committed by corporations with the issuance of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H), an improvement on the previous Law Number 41 of 1999 concerning Forestry. Law 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H) regulates criminal liability for corporations, both corporate and corporation managers, this answers the problems in the previous Forestry Law which limited criminal liability for corporate managers. The corporate regulations in Law 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H), namely Article 82 paragraph 3, Article 82 paragraph 4, Article 109 paragraph (2) and Article 109 paragraph (5).

Not a few law enforcement cases related to forestry crimes are carried out by corporations. Forestry crimes that are often committed by corporations include illegal logging, illegal logging and forest burning. One of the crimes against forestry that occurred in the province of Riau was committed by large corporations such as PT. IKPP which is owned by Eka Tjipta Widjaja (Sinar Mas) and also PT. RAPP which is owned by Sukanto Tanoto, both individuals rank among the wealthiest in Indonesia and both tycoon companies are said to be the masterminds of Riau forestry crimes.

Law enforcement concerning forestry crime cases committed by corporations can be carried out using the principle of strict liability, namely the absolute responsibility of the perpetrator of a criminal act for the crime they have committed. The principle of strict liability was applied in the case of the criminal act of forest burning in Riau Province which was carried out by

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

PT Adei Plantation in 2014. The reasons for applying the principle of strict liability in handling forestry crime cases committed by corporations are as follows: a) It is very essential to guarantee compliance with certain important regulations necessary for social welfare; b) Proving the existence of mens rea will be very difficult for offenses related to social welfare; and c) The significant social harm posed by such acts.

Implementation of strict liability in forestry/environmental crime cases if corporate activities meet the following classification: a) Contain a high risk of danger to humans, land or movable property, or; b) The possibility of danger occurring is very large, or; c) Inability to eliminate risk, or; d) The activity is not a normal activity, or; Incompatibility between the nature of the activity in question and the environment or place where the activity is carried out. The benefits of these activities for society are outweighed by the dangerous characteristics of these activities.

As for the verdict number 287 / Pid.Sus/ 2014/ PT.BPR where PT Adei Plantation & Industry and Danesuvaran KR Singam were declared legally proven to have committed criminal acts under Article 108, in conjunction with Article 69 paragraph (1) letter (h) jo Article 116 paragraph (1) letters (a) and (b) Law 32 of 2009 concerning Environmental Protection and Management. In decision number 287 / Pid.Sus/ 2014/ PT.BPR the panel of judges considered the Precautionary Principle regarding the possibility that the damage would be serious with the support of scientific evidence. Scientific evidence in decision number 287 / Pid.Sus/ 2014/ PT.BPR, namely:

- a. The empty area burned in the KKPA pattern oil palm plantation managed by PT Adei in Batang Nilo Kecil village, Pelalawan sub-district, Pelalawan Regency, covers an area of 304,702 M²
- b. The burned area consists of oil palm plantations under the KKPA pattern managed by PT Adei in Batang Nilo Kecil village, Pelalawan sub-district, Pelalawan Regency, covering an area of 211,115M².
- c. The catchment area of the burning Jiat River in Batang Nilo Kecil Village, Pelalawan District, Pelalawan Regency, the riverbed area is 50 meters on the left and right sides and is 211,115M² wide.

The judge's decision has established a precedent for the development of strict liability and precautionary principles in Indonesia and has influenced the improvement of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (P3H). According to Imamulhadi, the development of the precautionary principle, when judges implement it, is not in the context of management and policy, but at the level of resolving disputes in court, and in this case the judge has made the precautionary principle a norm to test the truth.

Environmental Fiqh Analysis

Environmental fiqh in Islam is a branch of fiqh studies that explores the principles of Islamic law relevant to environmental preservation and ecological balance. This concept is based on the belief that the universe was created by Allah SWT as a trust for humans, and therefore, humans have a

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

moral responsibility to maintain and protect the environment. The relationship between humans and nature in Islam is seen as a relationship of balance that must be upheld, where humans are given power as caliphs (leaders) on earth to protect and care for Allah's creation (Indrajati et al., 2023).

Environmental fiqh covers various aspects, from protecting forests and water resources to ethics in agriculture and waste management. Islamic principles such as *hifz al-nafs* (protection of the soul), *hifz al-mal* (protection of property), and *hifz al-din* (protection of religion) are interpreted in an environmental context as a responsibility to preserve nature, minimize pollution, and respect the diversity of life. One of the main concepts in environmental fiqh is *mizan* (balance) which emphasizes the importance of maintaining a balance between human needs and environmental needs (Purwanto et al., 2022). This includes prudent management of natural resources wisely, without exploiting or destroying the ecosystem, the principles of *maqasid al-syari'ah* (goals of Islamic law) are also applied in the environmental context, emphasizing the protection of life, religion, heredity, common sense and property.

The concept of a caliphate on earth emphasizes humans' responsibility to act as wise stewards of natural resources, not as owners who destroy or exploit them, and practices such as reforestation, sustainable water management, and tree planting are considered acts of worship that are rewarded by Allah. Environmental fiqh in Islam provides a theological foundation for environmental protection and promotes sustainable and environmentally sound attitudes in human behavior. It reinforces the importance of sustainability and ecological justice in the Islamic worldview, as well as offers a comprehensive view of how humans should interact with the universe they inhabit (Hamzah et al., 2023).

The alignment between the precautionary principle and the teachings of environmental fiqh in Islam is a manifestation of human responsibility as caliphs (leaders) on earth to protect and care for Allah's creation. The precautionary principle emphasizes the need for preventive action in dealing with potential risks to the environment, even in situations of scientific uncertainty. This is in line with the teachings of environmental fiqh which emphasize the importance of maintaining natural balance and preventing irreversible damage.

The concept of *mizan* (balance) underscores the need to maintain harmony between human interests and nature conservation. The precautionary principle adds a proactive dimension to this *mizan* principle by reminding humans to act wisely and carefully in managing natural resources, even when scientific evidence about environmental risks is not yet completely clear, the precautionary principle is not only consistent with the teachings of environmental fiqh, but also reinforces Islamic ethical values which emphasize the importance of maintaining ecological balance and being responsible for the environment, and this emphasizes that environmental protection is an integral part of religious practice and morality, and that preventive measures must be taken as a form of worship to Allah SWT. In addition to the conceptual harmony between the precautionary principle and the teachings of environmental fiqh, there is also an observable practical harmony, the

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

precautionary principle emphasizes the importance of taking early precautionary measures to protect the environment, even if definitive scientific evidence is not yet available or uncertainty remains. This resonates with the proactive approach taught in Islamic environmental fiqh, where preventive action is considered an important part of human responsibility as caliphs on earth.

This can include sustainable forest management, wise use of natural resources, and the application of environmentally friendly technology. The precautionary principle also reflects the principles of environmental justice in Islam, which emphasize the need to protect the rights of nature and consider the welfare of future generations. Thus, the precautionary principle is not only in line with the teachings of environmental fiqh in Islam theoretically, but also supports the practical implementation of the values of sustainability and environmental justice in the daily lives of Muslims. Muslim communities can effectively protect the environment and realizing Islamic teachings about moral responsibility towards the universe by combining the principles of Islamic law with the modern concept of the precautionary principle and emphasizing that religious values and the principles of modern environmental law do not conflict, but instead support each other in efforts to protect the earth as a heritage given by Allah SWT to mankind (Acim & Suharti, 2023).

The significance of environmental fiqh in enforcing forestry criminal law underlines the importance of a holistic approach that considers ethical, moral and religious aspects in forest protection. Environmental fiqh can provide a strong moral and ethical basis for legal action, concepts such as the caliph's responsibility on earth, ecological justice, and the protection of the universe given by Allah, provide a philosophical basis for legal action aimed at preserving forests. In addition, environmental fiqh also offers a comprehensive view of the rights of nature, which must be respected and protected by humans.

The principles of environmental fiqh can serve as guidelines in enforcing forestry criminal law, including in determining sanctions for law violators, for example an understanding of ecological balance and the need to preserve forests can influence the determination of proportional and effective sanctions. The precautionary principle applied in environmental fiqh can also influence law enforcement approaches, by emphasizing the need for preventive action to prevent irreversible forest damage.

Environmental fiqh can inspire broader legal reform in forestry criminal law enforcement. The integration of environmental fiqh principles in the formulation of legal policies can help build a more comprehensive and sustainable framework in forestry law enforcement. This also includes the development of more effective legal mechanisms to prevent, detect and prosecute violations of forestry law, as well as empowering local communities to protect forests and monitor potentially destructive activities. The relevance of environmental fiqh in enforcing forestry criminal law underscores the importance of strengthening the ethical and moral dimensions, and religion in an effort to protect forests.

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

Conclusion

The implementation of the Precautionary Principle in enforcing forestry law in Indonesia, especially in resolving environmental cases in court, is measures outlined by the Supreme Court of the Republic of Indonesia, as stipulated in Chief Justice Decree Number 36/KMA/SK/II/2013. The Supreme Court emphasized the importance for judges to consider the situation and conditions that occurred, as well as the validity of scientific evidence used in resolving environmental cases. Environmental fiqh analysis can strengthen this approach by emphasizing the importance of preventive measures and environmental protection in the context of Islamic ethical and moral values. The application of the Precautionary Principle in cases of forestry crimes committed by corporations, as governed by Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H), illustrates the government's commitment to rigorously penalize environmental offenses, judges in handing down decisions against corporations those who violate the P3H Law demonstrate the application of the precautionary principle in enforcing forestry criminal law by considering the situation and conditions that occur. The integration of the precautionary principle and environmental fiqh values can strengthen forestry law enforcement in Indonesia by ensuring that appropriate preventive and accountability actions are taken to protect the environment.

References

- Abdurrachman, H., Hamzani, A. I., & Mariyono, J. (2021). Environmental Crime and Law Enforcement in Indonesia: Some Reflections on Counterproductive Approaches. *Environmental Policy and Law*, 51(6), 409–416.
- Acim, S. A., & Suharti, S. (2023). The Concept of Fiqh al-Bī'ah in the Qur'an: A Study of the Quranic Verses on Environment in the Ulama's Views of Lombok. *Ulumuna*, 27(1), 115–140.
- Afajri, A., Wahyudi, H., & Setiawan, A. (2021). The Post–Asean's Haze-Free Roadmap 2020 And Implementation Of Precautionary Principle In Indonesia's Environmental Diplomacy: Riau's Perspective. *Berumpun: International Journal of Social, Politics, and Humanities*, 4(1), 15–39.
- Ardiyanto, S. Y., & Andrikasmi, S. (2022). Prevention, Control and Law Enforcement Forest and Land Burning in Riau Province. *2nd Riau Annual Meeting on Law and Social Sciences (RAMLAS 2021)*, 90–94.
- Ariyani, N. A. E. (2018). Implementation of conservation policy through the protection of life support system in the Karimunjawa National Park. *E3S Web of Conferences*, 31, 8014.
- Candra, S. (2020). "Beneficial Owner" Criminal Liability For Corporate Crimes in the Environment Sector. *International Journal of Research In Commerce and Management Studies (ISSN: 2582-2292)*, 2(3), 37–50.

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

- Dekiwati, E. S. (2022). Law Enforcement of Illegal Logging in Indonesia: Problems and Challenges in Present and the Future. *Indonesian Journal of Environmental Law and Sustainable Development*, 1(1), 47–68.
- Dermawan, A. K., Suseno, S., Rompis, A. E., & Sukarsa, D. E. (2023). Reconstruction of the Legal Policy Model Using the Multidoor Approach to Prevent Land Burning. *Pertanika Journal of Social Sciences & Humanities*, 31(3).
- Dewantara, A. M., & Larasati, D. K. (2022). Implementation of Progressive Law in Enforcement of Environmental Law in Indonesia: The Current Problems and Future Challenges. *Indonesian Journal of Environmental Law and Sustainable Development*, 1(2), 237–264.
- Fikri, F., Rahmawati, R., Marilang, M., Muliati, M., Sudirman L, S. L., & Aswad, M. (2020). Role of environmental fiqh: exploitation of mangrove forests on the South Bone coast, South Sulawesi. *International Journal of Innovation, Creativity and Change*, 11(1), 473–481.
- Hafrida, H., Helmi, H., & Permatasari, B. (2020). The implementation of the strict-liability principle to the perpetrators of forest and land burning. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 7(3), 314–333.
- Hafrida, H., Kusniati, R., & Monita, Y. (2022). Imprisonment as a Criminal Sanction against Corporations in Forestry Crimes: How Is It Possible? *Hasanuddin Law Review*, 8(2), 160–170.
- Hamzah, H., Amir, I., Hasanuddin, S., Tarmizi, T., & Syarif, M. F. (2023). Sustainable Development of Mangrove Ecosystem Policy in South Sulawesi from the Perspectives of Siyāsah and Fiqh al-Bi’ah. *JURIS (Jurnal Ilmiah Syariah)*, 22(2), 367–380.
- Igorevich Golubev, S., Viktorovna Gracheva, J., Vladimirovich Malikov, S., & Ivanovich Chuchaev, A. (2020). Environmental crimes: Law enforcement issues. *Caspian Journal of Environmental Sciences*, 18(5), 533–540.
- Indrajati, S., Emawati, E., & Azkar, M. (2023). Aktualisasi Pendidikan Fikih Lingkungan (Fiqh Al-Bi’ah) pada Masyarakat Kawasan Hutan Desa Genggelang Kecamatan Gangga Kab. Lombok Utara. *MANAZHIM*, 5(2), 644–666.
- Johar, O. (2024). Effectiveness Of Law Enforcement Against Land Burning Crimes In Pelalawan. *Proceedings of the 2nd International Conference on Environmental, Energy, and Earth Science, ICEEES 2023, 30 October 2023, Pekanbaru, Indonesia*.
- Kuswandi, K., & Ikmayadi, E. R. (2023). Saving Indonesia’s Forests Through the Vicarious Liability Doctrine Against the Corporate Crimes of Illegal Logging. *International Conference on “Changing of Law: Business Law, Local Wisdom and Tourism Industry”(ICCLB 2023)*, 970–976.

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

- Najicha, F. U., Rachmi, K., & Karjoko, L. (2021). Regulation of law enforcement in prevention and handling of fire forests in environmental hazards. *Medico-Legal Update*, 21(1), 259–262.
- Ni'am, S., Khisni, A., & Hanim, L. (2020). The Implementation Of Criminal Law To The Forester Of Land And Land Combustion In Blora Regency. *Jurnal Daulat Hukum*, 3(2), 275–282.
- Nugroho, H. Y. S. H., Nurfatriani, F., Indraajaya, Y., Yuwati, T. W., Ekawati, S., Salminah, M., Gunawan, H., Subarudi, S., Sallata, M. K., & Allo, M. K. (2022). Mainstreaming ecosystem services from Indonesia as remaining forests. *Sustainability*, 14(19), 12124.
- Nuradi, N., & Rohaedi, E. (2020). Implementation of strict liability principle in civil law enforcement in environment law files as consequence of forest and land fire in Indonesia Justice Practice. *International Journal of Multicultural and Multireligious Understanding*, 7(5), 473–485.
- Pardede, M., Situmorang, M., Aristeus, S., Rumadan, I., Lumban Toruan, H. D., Diogenes, Djamilus, & Nugrahani, E. L. P. (2023). Perspectives of sustainable development vs. law enforcement on damage, pollution and environmental conservation management in Indonesia. *Journal of Water and Climate Change*, 14(10), 3770–3790.
- Priyatno, D., Kamilah, A., & Mulyana, A. (2023). Corporate crime in expropriating land rights through intimidation and criminalization. *Cogent Social Sciences*, 9(1), 2187739.
- Purwanto, M. R., Istiani, M., Hilda, H., Marazi, H., & Nudin, B. (2022). Islamic View Towards Environment Preservation. *KnE Social Sciences*, 11–15.
- Rohmy, A. M., Setiyono, H., & Supriyadi, S. (2021). Corporate Criminal Sanction in Omnibus Law for Forest Destruction in Indonesia: Review of Law Number 11 of 2020 on Job Creation. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 21(1), 49–64.
- Roza, I. D. (2020). Implementation of Strict Liability in The Settlement of Environmental Disputes Related to Land and Forest Burning in Indonesia. *Proceeding Social Science*, 43.
- Ryadi, A., & Masyhar, A. (2021). Forest Fires and Law Enforcement: The Capture of Indonesian Contemporary Condition. *Journal of Law and Legal Reform*, 2(1), 39–50.
- Salim, A., & Palullungan, L. (2021). The challenges of environmental law enforcement to implement SDGs in Indonesia. *International Journal of Criminology and Sociology*, 10, 517–524.
- Sara, R., & Purnama, B. (2024). Environmental Issues and Environmental Law Enforcement In Indonesia In The Perspective of Law Number 32 of 2009. *Jurnal Indonesia Sosial Sains*, 5(01), 8–17.

Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework

RM. Armaya Mangkunegara

- Solekhan, M., & Febriharini, M. P. (2022). Forest and land fire management strategies: Prevention and law enforcement. *International Journal of Educational Research and Social Sciences (IJERSC)*, 3(2), 567–580.
- Sudarwanto, A. S., Karjoko, L., Handayani, I. G. A. K. R., Ma'aruf, A., & Glaser, H. (2022). The Policy on Illegal Oil Palm Plantation Reform in Forest Area during Jokowi's Presidency. *Hasanuddin Law Review*, 8(2), 171–185.
- Sulastri, A., Istantia, R., & Rahayu, N. S. (2023). Handling Money Laundering Crime in the Forestry Sector through Integrated Governance. *International Journal of Economics Development Research (IJEDR)*, 4(3), 1118–1129.
- Wijayanto, A., Wiraraja, H. A., & Idris, S. A. (2022). Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement. *Unnes Law Journal*, 8(1), 105–132.
- Wuryandari, U. S. W., Chairani, A. D., & Safitri, M. A. (2022). Weak Investment Law Enforcement in Land and Forest Fire Cases in Indonesia. *Substantive Justice International Journal of Law*, 5(2), 205–215.