

## CRIMINAL SANCTIONS AGAINST CORPORATIONS COMMITTING FOREST BURNING: A PERSPECTIVE OF ENVIRONMENTAL LAW IN INDONESIA

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### ABSTRACT

**Aims:** This research examines environmental crimes rapidly increase because exploitation of the environment is considered to have very high economic value.

**Implications:** Environmental destruction is forest fire activities to expand plantations, settlement areas, and other purposes with the mission of seeking maximum profits while ignoring aspects of environmental safety as stated in article 28 h paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In addition, regarding perpetrators of the crime of forest fire which is regulated in: Law Number 41 of 1999 as changed by Law Number 19 of 2004 concerning Forestry, Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 39 of 2014 concerning Plantations, the Criminal Code and Supreme Court, Regulation Number 13 of 2016, apparently have not been able to provide a deterrent effect for perpetrators of corporate crimes to conduct forests and land fire.

**Method:** The methods used in this research were normative juridical and descriptive-analytical using a statutory regulation approach.

**Results:** Perpetrators of corporate acts who repeatedly burn forests should have legal solutions taken through criminal law, civil law in the form of compensation, and administrative law in the form of revocation of permits to manage the business. The impacts of forest fires that cause environmental damage are acid rain, ozone depletion, global warming, public health, and impacts on plants. Secondly, corporate criminal liability for forest fires that cause environmental damage is borne by corporations as legal entities that are subjects of criminal law that must be responsible for causing environmental damage. Thirdly, criminal law policy regarding corporate responsibility for forest fires that cause environmental damage through penal and non-penal means, penal means namely Administrative, civil, and financial sanctions as well as criminal law policies carried out through a preventive approach using non-penal means.

**Keywords:** forest fire, corporations, environment.

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# SANÇÕES PENAIS CONTRA CORPORAÇÕES QUE COMETEM QUEIMA DE FLORESTAS: UMA PERSPECTIVA DA LEI AMBIENTAL NA INDONÉSIA

## RESUMO

**Objetivos:** Esta pesquisa examina os crimes ambientais aumentando rapidamente porque a exploração do meio ambiente é considerada de muito alto valor econômico.

**Implicações:** A destruição ambiental é atividades de incêndios florestais para expandir plantações, áreas de assentamento e outros fins com a missão de buscar o máximo de lucros, ignorando aspectos de segurança ambiental, conforme estabelecido no artigo 28 h parágrafo (1) da Constituição de 1945 da República da Indonésia. Além disso, no que diz respeito aos autores do crime de incêndio florestal, que é regulamentado em: Lei n.o 41 de 1999, alterada pela Lei n.o 19 de 2004 relativa à silvicultura, Lei n.o 32 de 2009 relativa à proteção e gestão ambiental, Lei n.o 39 de 2014 relativa às plantações, Código Penal e Supremo Tribunal, Regulamento n.o 13 de 2016, aparentemente não foram capazes de proporcionar um efeito dissuasivo para os autores de crimes corporativos para a condução de incêndios florestais e terrestres.

**Método:** Os métodos utilizados nesta pesquisa foram normativo jurídico e descritivo-analítico usando uma abordagem de regulamentação estatutária.

**Resultados:** Os autores de atos corporativos que repetidamente queimam florestas devem ter soluções legais através do direito penal, direito civil na forma de compensação e direito administrativo na forma de revogação de licenças para gerenciar o negócio. Os impactos dos incêndios florestais que causam danos ambientais são chuva ácida, empobrecimento do ozônio, aquecimento global, saúde pública e impactos nas plantas. Em segundo lugar, a responsabilidade penal das empresas por incêndios florestais que causem danos ambientais é suportada pelas empresas enquanto entidades jurídicas sujeitas ao direito penal que devem ser responsáveis por causar danos ambientais. Em terceiro lugar, a política de direito penal relativa à responsabilidade das empresas em matéria de incêndios florestais que causam danos ambientais através de meios penais e não penais, meios penais, nomeadamente sanções administrativas, civis e financeiras, bem como políticas de direito penal executadas através de uma abordagem preventiva utilizando meios não penais.

**Palavras-chave:** fogo florestal, corporações, meio ambiente.

## 1 INTRODUCTION

As a gift given by God Almighty, the presence of forests has many important functions in protecting the earth. So, when utilized, protective measures are needed to avoid various risks of damage. The risk of damage to forests is generally caused by livestock activities, fires, pests, and various diseases that can damage the health of forest resources. The massive increase in human activity and exploitation of natural resources, often justified by economic development, is having a major impact on the environment and human life, as the resulting increase in pollution, deforestation, burning and climate change is not only changing fauna and wildlife. In this case, it is also because the benefits



of the forest itself are not only focused on being used as a source of life for the community but also for human health and breathing through the oxygen produced by the trees.

Therefore, humans need to preserve forests and prevent them from being destroyed to safeguard common interests. Forestry development and its maintenance in Indonesia itself aims to be a form of effort to achieve Indonesia's medium-term vision by realizing forestry management to ensure the preservation and increase of people's prosperity, where it is also certainly carried out to fulfill the aims stated in Article 33 paragraph 3 of The 1945 Constitution of the Republic of Indonesia: "Earth, water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." From the sound of this article, certain prohibitive norms or taboos were born in caring for forests.

To fulfill and achieve it, based on the Decree of the Minister of Forestry Number SK. 456/Menhut/2004 by the Department of Forestry, 5 (five) priority policies have been established, namely: Combating timber theft in State forests and illegal timber trade, revitalizing the forestry sector, especially the forestry industry, rehabilitation and conservation of forest resources, economic empowerment of communities in and around forest areas, and stabilization of Forest Areas.

It aims to fulfill the existence of forest areas and land cover, as well as support the operation of forest management units in realizing business sustainability and the carrying capacity of forestry itself. However, to make the forest management process run smoothly, land ownership of forest resources is classified into several forms, namely:

1. Private forest ownership rights or well-known as Private Property Rights. For Example community forests.
2. Forest ownership rights by the state or well-known as State Property Rights. For Example: the production, protection, and conservation of forests.
3. Forest ownership rights that are owned jointly or well-known as Common Property Rights. For Example: customary forests.

As this classification was formed, according to Forestry Law Number 41 of 1999, community forests are forests with property rights. It is because the existence of this community forest is in the area around the community, so it is very close to community life. This closeness indirectly forms a relationship between the community's living needs in a community forest management system. Meanwhile, Law Number 5 of 1967 concerning Basic Forestry Provisions states that forest exploitation will be aimed at



obtaining and increasing the production of forest products to develop the economy and prosperity of the people and to create a just and prosperous society. This was determined based on considerations to optimize the use of natural and human resources so that both can develop simultaneously now and in the future.

The National Disaster Management Authority (BNPB) stated that efforts to extinguish fires with water bombing to overcome forest and land fires in Sumatra and Kalimantan have not been optimal. The fire cannot be extinguished by water bombing because the source of the fire is deep in the peatland. The source of the fire is below the surface of the ground so if the fire on the surface goes out, the fire underground will still burn. Based on Meteorological, Climatological, and Geophysical Agency (BMKG) observations, hot spots on 12<sup>th</sup> September 2019 occurred in several areas, including 1.865 spots in Kalimantan; 412 points in Peninsular Malaysia and 216 points in Sarawak-Sabah and 1.231 points in Sumatra. Meanwhile, NASA satellite monitoring on 12-14<sup>th</sup> September 2019 showed that the haze was becoming more numerous and denser in Kalimantan. In addition, according to the Singapore National Environmental Agency or NEA, there are still around 1,300 hot spots spread across Kalimantan and Sumatra, Indonesia.

Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction defines a Forest as an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural community environment that cannot be separated from one another (Article 1 number 1). Burning forests and land not only causes damage to forests and the environment but also destroys the ecosystem in the forest which cannot necessarily recover. The impact of smoke from fires is very detrimental to people's health, such as shortness of breath, even among babies and pregnant women.

Forest or land encroachment that causes forest damage by causing widespread forest fires is given the maximum possible prison sentence and fines to corporate actors to create a deterrent and serve as a lesson for those who commit such acts, by freezing forest management permits for approximately 12 years in the same place. Corporations have a significant meaning for the business world and contribute to the development of a country, especially in the economic sector, for example, state income in the form of taxes and foreign exchange. Therefore, corporations contribute the positive impacts. However,



corporations also have negative impacts such as a lot of pollution and environmental destruction caused by corporate actions.

Corporations are legal subjects that contribute to increasing the country's economic growth, especially oil palm plantations. On the other hand, corporations are suspected of committing criminal acts that are detrimental to society and the state. Therefore, it is necessary to strike a balance between carrying out the business of clearing plantation land without burning which damages the environment. Legally, forests and land fire is a prohibited act because of violates Article 50 paragraph of Law Number 41 of 1999 as changed by Law Number 19 of 2004 concerning Forestry.

## **2 RESEARCH AND METHODS**

The method means 'way'. Meanwhile, research is an activity carried out deliberately with purpose and has certain procedures. The relevant type of research used is normative legal research. It is used to place more emphasis on studying aspects of norms (written rules) by conducting research on positive law by evaluating relevant legal rules. It identifies and conceptualizes law as norms, rules, laws, and regulations that apply at a certain time and place as a product of state power.

Thus, it can be stated that the initial approach taken in normative legal research is to carry out an inventory of positive laws or statutory regulations related to Corporate Criminal Responsibility. It is a preliminary activity that is fundamental to other normative legal research, both research on legal principles and research for discovering the law in concreto.

The technique for collecting data/legal materials used in this normative legal research was collecting, compiling, and processing data/legal materials from primary, secondary, and tertiary legal materials by conducting literature reviews. To enrich the literature review, it was carried out using the document study method.

Data analysis techniques/legal materials used from the results of an inventory of secondary data, review of the results of library research, and supported by document studies from the resolution of cases of forestry crimes that occur in practice which are decided by court judges. These stages were carried out in a qualitative juridical manner, namely by providing a detailed, systematic, and comprehensive description of the focus of the discussion of 'corporate criminal liability for forest burning that causes



environmental damage' which was set out in narrative form by explaining analytical descriptively.

### **3 DISCUSSION**

#### **3.1 LEGISLATION THAT REGULATES CRIMINAL ACTIONS REGARDING FOREST AND LAND FIRES BY CORPORATIONS**

The development of the position of corporations as subjects of criminal law is broadly divided into three stages. The first stage is characterized by the nature of the offenses committed by corporations which are limited to individuals (natuurlijk person). If a criminal act occurs within a corporate environment, it is deemed to have been committed by the management of the corporation. This stage is the basis for Article 59 of the Criminal Code which is strongly influenced by the principle of "Societas delinquere non potest", meaning that legal entities cannot conduct criminal acts.

In the second stage, it is recognized that the corporation can commit criminal acts (dader), but those who can be held criminally responsible are the management who actually lead the corporation and this is stated explicitly in the laws and regulations that regulate this matter. At this stage, direct corporate criminal liability has not yet emerged. The third stage is the start of direct responsibility of the corporation which began during and after World War II.

At this stage, there is the possibility of suing the corporation and holding it accountable under criminal law. Specifically in forest and land fire crimes, the statutory regulations that place corporations as subjects of criminal law and can be held criminally accountable are Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 41 of 1999 concerning Forestry, Law no. 39 of 2014 concerning Plantations, as well as procedures for handling corporate crimes are regulated in Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations.

For example, in Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) Article 1 number (32) states: "Every person is an individual or business entity, whether a legal entity or not." UUPPLH Article 69 paragraph (1) letter h states: "Every person who is prohibited from: (h) clearing land by fire " UUPPLH Article 108 states: "Every person who burns land as intended in article 69 paragraph (1) letter h, shall be punished with a crime 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).”

The stages of a corporation's development as a subject of criminal acts also influence the position of corporations as creators and the nature of corporate criminal liability in statutory regulations. There are three models of corporate criminal liability, as follows:

- a. Corporate managers as creators and administrators take the responsibilities.
- b. Corporations as creators and managers take the responsibilities.
- c. Corporations as manufacturers and corporations take the responsibilities.

Environmental damage due to forest and land fires also causes damage to local community settlements around the burned forests. Environmental damage in the form of thick smoke, apart from disturbing and even damaging lung health, also disrupts the economic activities of the community and the activities of residents, both adults and children, educational activities, as well as air and land transportation activities. In efforts to protect forests, it must be seen as an inseparable part of protecting the environment or ecosystem globally.

According to Soemarwoto, the global environment is the living environment as a whole, namely the place of life in which mutual influence (interaction) takes place between living things (biological components) and the environment in which they live (non-biological components). Therefore, the forest is a unified biological ecosystem that is dominated by a place where trees grow, a collection of various types of plants, a place where various types of animals live, natural resources that exist underground, sources of energy materials such as minerals and coal, various sources of springs, nutrient cycles. If forests are destroyed or burned intentionally, it will affect the ecosystem because many of the natural resources in it will become extinct.

Criminal law plays an important role in law enforcement efforts against perpetrators of environmental pollution and destruction. However, it does not mean that it must exceed its capacity and it is necessary to pay attention to inherent limitations in the application of criminal law such as the principle of legality and error. The functionality of criminal law to address the problem of environmental pollution and/or damage is realized through the formulation of criminal sanctions in applicable laws and regulations. There are two reasons for imposing criminal sanctions, namely:



- a. Criminal sanctions are intended to protect not only human interests but also environmental interests because humans cannot enjoy their property and health if basic requirements regarding environmental quality are not met.
- b. The use of criminal sanctions is also intended to create fear among potential environmental polluters and destroyers. Criminal sanctions can be in the form of imprisonment, fines, orders to restore polluted and/or damaged environments, closure of business premises, and announcements via the mass media that can defame the business entity concerned.

In this regard, the government has established Law Number 32 of 2009 concerning Environmental Protection and Management, hereinafter referred to as UUPPLH, in Article 1 number 2, it is stated that:

"Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision and law enforcement."

Then in Article 69 paragraph (1) letter (h), it is stated that:

"In the context of protecting the environment, everyone is prohibited from clearing land by fire."

Meanwhile, Article 69 paragraph (2) states that:

"The provisions as intended in paragraph (1) letter h truly demonstrate local wisdom in each region"

The explanation states that:

What is meant by local wisdom in article 69 paragraph (2) is burning land with a maximum land area of 2 Ha (two hectares) per head of family to plant local varieties and surrounded by fire breaks to prevent the spread of fire to the surrounding area.

The criminal provisions in article 98 and article 99 of the UUPPLH state that:

Any person who intentionally commits an act that results in exceeding the ambient air, water, seawater quality standards, or environmental damage standard criteria, 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 IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).





Environmental cases have certain characteristics that are different from other cases. An environmental case is a case regarding rights guaranteed in the constitution, in this case, the right to a good and healthy environment. Other laws have regulations regarding burning, namely the Forestry Law. The article in this law that regulates forest fire is Article 49. However, this law does not explain the criminal provisions regarding Article 49.

Therefore, it can be seen that accountability is not attached to actual conduct or activity risks. And article 50 paragraph (3) letter d, states that everyone is prohibited from forests fire. However, in this law, if the perpetrator is a corporation, Article 78 paragraph (14) is used. In dealing with forest fires, the regulations used by law enforcers should not overlap. The P3H Law should re-regulate forest fire carried out by individuals and corporations so that when handling cases of forest destruction by forest fire, it should refer to this law.

The implementation of regulations in the P3H Law has now been used to resolve cases of forest destruction by individuals and corporations that occur in the environment, especially forestry. Regarding its use, it creates problems in society. This is proven by forest fire acts carried out by individuals and corporations that have not been done by law enforcement, especially in destroying forests by fire.

This causes many parties to carry out forest fires because they want to reap large profits by burning forests that will be used as plantation land by corporations. The current P3H Law is considered insufficient to address criminal acts of forest destruction because several regulations that should be reinserted in this law do not regulate them, giving rise to overlapping regulations regarding forest destruction carried out by individuals and corporations, especially the criminal act of forest fire.

It should be in the P3H Law, but it doesn't regulate it. It is hoped that in the future the regulations regarding forest fire carried out by individuals and corporations will be reintroduced into this Law. If a forest fire occurs law enforcement can use the regulations in the P3H Law. The latest Law on Forest Destruction, the P3H Law, still has no regulations regarding forest fire, thus creating a vacuum in norms in this law. Apart from that, there is no further explanation regarding the environment, especially forestry.

Regarding the P3H Law in the future, it is hoped that it will be able to fulfill and comply with the expectations of the community. Therefore, the public knows about



criminal acts of forest fire committed by individuals and corporations. Apart from that, the public is aware of actions that can be considered to have violated the regulations.

It is also necessary to provide insight and understanding regarding forest destruction by fire so that people understand that the act of burning forests is a criminal act if it violates existing regulations. Other proposals related to the P3H Law include the need to create regulations regarding forest fires carried out by individuals and corporations by doing these actions carefully towards protecting the environment, especially in forestry and involving the role of surrounding communities and business actors (corporations) in protecting Indonesia's forests so that they are not damaged in the future.

### 3.2 SANCTIONS FOR PERPETRATORS OF CRIMINAL ACTS OF FOREST FIRE BY CORPORATIONS IN INDONESIA

According to the Monistic view of Strabaarfeit or criminal act, it is argued that the elements of criminal responsibility that concern the perpetrator of the offense include:

- a. Ability to be responsible;
- b. Error in the broadest sense (intentional or careless);
- c. There are no excuses.

In connection with Law Number 32 of 2009 concerning Environmental Protection and Management, law enforcement in the environmental sector can be classified into 3 (three) categories, namely:

1. Enforcement of Environmental law concerning Administrative Law;
2. Enforcement of Environmental Law concerning Civil Law;
3. Enforcement of Environmental Law concerning Criminal Law

It means that criminal law enforcement activities for an environmental crime can only begin if the competent authorities have imposed administrative sanctions and have taken action against violators by imposing such administrative sanctions. If it turns out that they are unable to stop the violations that occur, efforts will be made to resolve the dispute through alternative mechanisms outside of court in the form of deliberation / peace / negotiation / mediation. If the efforts made reach a dead end, then environmental criminal law enforcement instruments can be used.

Corporations as legal entities certainly have their own legal identity. The legal identity of a corporation or company is separated from the legal identity of its



shareholders, directors, and other parties. In the rules of civil law, it is stipulated that a corporation or legal entity that is a subject of civil law can carry out buying and selling activities, make agreements or contracts with other parties, and sue and be sued in court in civil relations.

Shareholders enjoy the benefits derived from the concept of limited liability, and corporate activities run continuously, in the sense that their existence will not change even if there is the addition of new members or the termination or death of existing members. However, until now, the concept of criminal liability by corporations as individuals is debatable. Many parties do not support the view that a corporation whose existence is apparent can commit a crime and has criminal intent which gives rise to criminal liability. Apart from that, it is impossible to be able to present the corporation physically in the courtroom and sit in the defendant's chair to undergo the judicial process.

In both common law and civil law legal systems, it is very difficult to attribute a particular form of action (*actus reus* or guilty act) and prove the element of *mens rea* (criminal intent or guilty mind) of an abstract entity such as a corporation. In Indonesia, although the above laws can be used as a legal basis for imposing criminal liability on corporations, the Criminal Courts to date seem reluctant to recognize and use these regulations. This can be seen from the small number of corporate crime cases in court and has an impact on the very small number of court decisions relating to corporate crime.

After a corporation is declared capable of committing a criminal act, the next problem is how to determine the corporation's fault and responsibility. Although a corporation is declared capable of committing a criminal act, to impose criminal sanctions, the error must be determined and held accountable to the corporation. If these two conditions are not met or cannot be determined, then the corporation cannot be subject to criminal sanctions. Article 187 of the Criminal Code.

Any person who intentionally causes a fire, explosion, or flood, is threatened: - with a maximum imprisonment of twelve years, if due to the above act a general danger to goods arises; - with a maximum imprisonment of fifteen years, if because of the above actions a danger to the lives of other people arises; - with imprisonment for life or a specified period of up to twenty years, if because of the above actions there is a danger to the lives of other people and results in the person's death. Then in article 189 of the Criminal Code, anyone who intentionally violates the law by hiding or making fire extinguishing tools or equipment unusable or in any way obstructs or impedes the work



of extinguishing a fire during a fire, is threatened with a maximum prison sentence seven years.

The Criminal Code still adheres to the adage that legal entities cannot be punished with the assumption that corporations cannot be held responsible because if there is a crime committed by the directors of a corporation, it must be an act outside the articles of association of the corporation concerned, then those who are responsible are the directors individually or jointly with other directors, the corporation must not be held responsible (*ultra vires doctrine*) (Herlyanti Yuliana Anggraeny Bawole, 2014).

Criminal acts committed by corporations are classified as unusual crimes but can have an extraordinary impact on economic and financial losses for the state and society. However, the current Criminal Code does not yet regulate corporate unlawful acts, so it needs to be regulated in special criminal regulations. Sudarto stated that special criminal law is criminal law established for special groups of people or relating to special actions.

After looking at several laws related to forest and land fire, namely the PPLH, Forestry, and Plantation Laws and the Criminal Code along with strict rules and sanctions for perpetrators of criminal acts of forests and land fire for plantation business activities, it cannot prevent the forest fire until now. Based on that, forest fires should be handled comprehensively, not only by taking action through legislation after the incident but also by granting permits. There are several terms for naming a company in Indonesian law, some call it a corporation and others call it a business entities. The PPLH Law called it a business entity, the Law on Industry called it a Corporation, and The Law on Oil and Gas called it a Business Entity.

The Law on Water Resources called it a Business Entity; the Law on Mining called it a Company; and the Forestry Law called it a Legal or Business Entity. In essence, business entities and corporations are the same. Corporations derived from the English language. In this article, we will use the term corporation because its use is commonly used in civil law, especially in Limited Liability Company Law. A Corporation is a group of people who in legal relations act together as a separate legal subject – a personification. A corporation is a legal entity that has members but has its rights and obligations which are separate from the rights and obligations of its respective members (Arfiani, Siregar and Jamri, 2020).

In Article 1 paragraph (3) of Law no. 41 of 1999 concerning Forestry, it is stated that: "forest areas are certain areas designated and/or determined by the government to be



maintained as permanent forests". This article does not contain clear boundaries as a legal basis for gazetting forest areas because forest areas use the definition of permanent forest and vice versa, changes in the designation and function of forest areas are regulated in Article 19 and the use (lease-to-use) of forest areas for development purposes outside of forestry activities is regulated in Article 38.

In Article 17 paragraph (2) and Explanation to Article 22 paragraph (1).

Following are the texts of the two clauses, Article 17 paragraph (2) states that:

"The establishment of forest management areas at the management unit level is carried out by taking into account the characteristics of the land, forest type, forest function, watershed conditions, socio-cultural, economic, local community institutions including customary law communities and government administrative boundaries".

Meanwhile, the explanation of article 22 paragraph 1: "Forest management is a design activity for a forest management unit, which in its implementation takes into account the rights of local communities, which arise because of their history and the condition of the forest." The explanation of Article 17 paragraph (2) implies that customary law communities are part of the local community.

Meanwhile, the explanation of Article 22 (1) reaffirms this kind of understanding because it says that the rights of local communities are those born of history, a.k.a born. After all, they originate from the past and are passed on through inheritance. Apart from that, the Forestry Law also uses the term people's rights (Explanation of Article 21).

There is no explanation regarding the term local community rights to forest resources, either inherent rights or vested rights, with emphasis on reviews regarding inherent rights. The Forestry Law in several articles shows an emphasis on prioritizing the interests of the people. This emphasis has been shown in the initial part, such as in the weighing section which states that forests must be utilized as much as possible for the prosperity of the people, and in terms of forest management it must be carried out by accommodating various aspirations and community participation transparently.

One of the concerns in the principles of forestry administration is democracy. The Forestry Law emphasizes that all interests in forest management from timber orientation to being oriented towards all potential forestry resources, and from paying little attention to rights and involving communities to being based on community empowerment, are controlled by the state. Forests as one of the natural resources must be managed in line with the constitution.



It means that forestry management must include people's soul and spirit, justice, and sustainability. Therefore, forest management needs to be carried out based on the principles of benefit, democracy, justice, openness, and responsibility for preserving forest areas, accommodating various aspirations and community participation transparently. One of them concerns the principles of forestry administration namely democracy.

Forest and land fires during the dry season can be caused or triggered by natural events such as volcanic eruptions accompanied by hot lava flows and can be caused by the activities of companies that burn land for corporate activities, plantations, mining and so on which are more oriented towards business profits by ignoring environmental management procedures based on sustainable development.

If the forests and land fire cause widespread forest fires, this is a prohibited act because it violates Article 50 of Law Number 41 of 1999 in conjunction with Law Number 19 of 2004 concerning forestry states that everyone is prohibited from burning forests. Apart from that, forests and land fire are subject to sanctions as regulated in Article 78 paragraph (3) of Law Number 41 of 1999 concerning Forestry, which states that: "anyone who deliberately violates the provisions as intended in Article 50 paragraph (3) letter d is threatened with imprisonment for 15 years and a fine of up to Rp. 5,000,000,000 (Five Billion Rupiah), perpetrators of forest fires are subject to imprisonment. Meanwhile, in Article 78 paragraph (4) it is stated that: "Punishment against corporations, basically has the aim of emphasizing that anyone who, through negligence, violates the provisions as intended in Article 50 paragraph (3) letter d, is threatened with imprisonment for a maximum of 5 (five) year and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah)"

#### **4 CONCLUSION**

The legal approach in preventing criminal acts of forest and land fire perpetrators is already available along with sanctions, including in Law Number 41 of 1999 in conjunction with Law Number 19 of 2004 on Forestry, then Law Number 39 of 2014 concerning Plantations, and regulated in the Criminal Code (KUHP). However, it turns out that the rules and sanctions from this law have not been able to provide a deterrent effect on perpetrators of criminal acts of forest and land fire carried out by corporations, one of the reasons is in the explanation of Article 69 paragraph (2) of Law Number 32 of





2009 concerning Environmental Protection and Management (UU PPLH) which allows local communities to burn land in forest areas even up to 2 Ha, this lead the Corporate criminals to conduct forests and land fire to open plantations.

Corporations as subjects of criminal acts of forests and land fire which damage the environment and harm the community, can be criminally prosecuted under Law Number 32 of 2009 concerning Environmental Protection and Management according to the characteristics of the corporation. Prosecution and criminal prosecution of corporations cannot be equated with people because corporations are not humans but are only equated with humans.

Therefore, criminal charges against corporations can be subject to fines for Corporate criminal liability. The P3H Law already regulates this that in this law corporations can be held criminally responsible. But the P3H Law does not yet regulate the criminal act of forest fire, whether carried out by corporations or individuals so if there is a criminal act of forest fire committed by a corporation, the P3H Law cannot be used to ensnare the perpetrator of the criminal act of forest fire. Therefore, to ensure that perpetrators of criminal acts of forest fire do not escape criminal responsibility, other environmental laws are used, which have regulations regarding forest fires.



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