

LOCAL SOCIAL ROLE IN FOREST PREVENTION AND FOREST PLANNING BY OPEN COUNTRIES

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Abstract

The majority of Indonesians make their living from farming, which requires a lot of area to grow crops. To produce fresh land for farmers, a small amount of forest must be cleared. The cost of land cannot be increased by cutting down and burning trees and forests, according to the legislation. However, there are several exceptions to local rules, such as burning up to 2 hectares of land per family head, growing local kinds, and encircling themselves with fire traps to prevent disease transmission, but not to the environment. The study's goal was to examine into the involvement of local sages in land clearance, forest burning, and land burning, as well as the establishment of land clearing operations against police officers who broke local laws. This research method combines a legal (sculpture) and a conceptual approach. The findings demonstrate the importance of local wisdom in large-scale forest fire prevention through constitutional acknowledgment of local wisdom.

Keywords: *Local Policy, Local Varieties, Land Clearing, Forest Burning*

1. INTRODUCTION

Recently, there has been an annual ritual in several parts of Indonesia, where the dry season is followed by forest and land fires (also known as *Karhutla*), which has become a tradition in recent years. Forest fires are generally caused by two types of factors: natural factors and human factors. Natural factors are those that occur naturally. Forest fires caused by natural factors frequently occur as a result of natural processes such as friction between dry trees, lightning strikes, volcanic lava eruptions caused by sparks, which cause strong winds in the forest to aid in the prevention of forest fires and burn the ground beneath the trees. Forest fires caused by humans are triggered by a variety of causes, both unintentional and purposeful. People can be implicated in forest and land fires in a variety of ways, such as by carelessly tossing cigarette butts into the forest or by leaving burning material in the forest without putting it out.

Indonesia is an agrarian country, and as a result, many people rely on agriculture in rural areas. Therefore, agriculture is intrinsically linked to land due to its use. The settlement's first farmers came from the surrounding forest. The process of forest conversion to land is documented in a variety of ways, including land prices or burning the forest to make a field. On the other side, burning forest for land has no legal ramifications. Moreover, as a result of the involvement of individuals/companies, illegal mining may occur in forest. However, there is a legislation that regulates deforestation, which was established in 2013 by the Deforestation Law (also known as *UU Deforestasi*) no. 41 and the Forests and Deforestation

Law no. 18. Additionally, based on the Reforestation Law no. 18 of 2004 and Law no. 2009, individuals/companies are barred from burning forests. Likewise, No. 32 contains regulations for environmental preservation and management. Nevertheless, article 69 (32) of the 2009 Law contains provisions allowing for the foundation of a business. As a consequence, forest and land fires are managed in accordance with regional wisdom.

According to the article's explanatory memo, in preparing the fields (hereinafter known as *Huma*) a local sage burnt two hectares of land for each homeowner to cultivate the local variety, which was then surrounded by a fireplace to disperse the embers across the charcoal. Additionally, the final sentence of the paper's explanatory statement underscores the importance of managing the flame to keep the coal from spreading. Besides, while this criterion limits the provision to two hectares per head of household, it takes into consideration the amount of accumulated land that burnt. For instance, if an area contains 2,000 families, each of which reclaims two hectares of land, the total area of land that can be burned lawfully is 4,000 hectares. So what was the human cost of burning 4,000 hectares of forest, and can it be used to prevent forest fires?

Burning of land by communities whose livelihoods are farming and gardening and who act in accordance with the principle "in harmony with nature while protecting nature." Farming by burning land has been shown to boost soil fertility and has been practiced for decades. The community is used as a victim, yet the most powerful party in the burning land is the entrepreneur who cleans up the plantation area (land-clearing). Meanwhile, the community's burning is limited to a modest scale (Masinambow, 2003). According to previous research on Forest Land Clearing from a Human Rights Perspective based on Article 69 paragraph (2) of the UUPPLH, it is permissible to open land by burning in order to preserve local wisdom, which includes human rights such as the right to life and the right to culture, but there are other human rights that must be considered (Apryani, 2018). When the impact of land clearing in this manner is significant, there will be a considerable risk of other human rights abuses, as well as harm to neighboring countries. Furthermore, according to Effendi and Yulias Erwin (in (Elviandri, 2017)), law enforcement on forest fires does not create a deterrent impact because they occur often in different parts of Indonesia. The study's claim that courts must utilize the law gradually to enforce forest fire restrictions. The two studies above discuss forest fires in the same way, but the focus of the discussion is different from this study, which focuses on the role of local wisdom in clearing land by burning as a means of preventing forest fires and law enforcement against violations of forest burning provisions through local wisdom.

Consequently, this study is structured around two main questions: What is the role of community intelligence in preventing forest and land fires?, and How can this topic be applied to local politics?.

2. RESEARCH METHOD

Legal studies often distinguish between three categories: legal, empirical, and empirical (Ali, 2011). Meanwhile, this paper uses a normative approach to legal studies using a legal approach and a conceptual approach. This legal approach is based on consideration of all laws and regulations related to the legal issues to be handled (Marzuki, 2011). Moreover, the conceptual approach differs from the views and doctrines built into the law. The nature of

the data used is the primary, secondary and tertiary legal basis (Soekanto, 2015). Furthermore, correction of library materials is a source of data and is classified as secondary data in scientific research (Soekanto & Mamudji, 2006).

3. RESULT AND DISCUSSION

3.1. The Role of Community Intelligence in Forest Fire Prevention

Local Wisdom is a two-syllable phrase that consists of the words Local and Wisdom. Local culture can be viewed as a sophisticated local notion, consisting of wisdom and values that have been developed by members of the community (Sartini, 2007). A business can be defined as a large or small group of individuals from various organizations working together. People who contribute or for themselves are constrained by their social status and position (Shadily, 1999). It is possible to deduce from the definitions above that local wisdom is a sensible and gratifying local thought that should be lived and followed by everyone. There have been significant social and intellectual shifts as a result of technology advancements in the 21st century. The structure of society is impacted and affected by change in general, but this structure is less affected by other social structures that are involved in or effect societal change in particular. All social changes can be interpreted as changes in the social system of a society when used as a heuristic indicator. Meanwhile, social systems such as values, attitudes, and behavior patterns within groups in a society are influenced by the society as a whole (Soekanto, 2014) Indonesian local wisdom, which is one of the values that has not altered, is still available to be conserved within the legal framework in place. As a result, a forest fire is defined as the intentional burning of a forest. Burning refers to the purposeful placement of a case on a hot point. The purpose is to cultivate the soil, regenerate the forest, and eradicate pests from the environment.

There is little difference between burning a forest and starting a fire in forest discipline. Forest fires are synonymous with planned events that take place in a specific region. Use to clean soil and rejuvenate forests, as well as to manage pests and forest fires that intentionally or unintentionally The act of burning forest is a criminal offense under the applicable laws and regulations. At least three laws govern the prohibition of forest fires. *To begin*, the prohibition on forest burning is outlined in Article 50, paragraph (3) letter d of Law Number 41 of 1999 Concerning Forestry, which states that "everyone is barred from burning forests." Accountability is governed by Article 78 paragraph (3) of Law Number 41 of 1999, which states: "Whoever intentionally violates the provisions referred to in Article 50 paragraph (3) letter d faces a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000 (Five Billion Rupiah)."

Secondly, the prohibition on forest fires is enshrined in Article 48 of Plantation Law Number 18 of 2004: "(1) Anyone who intentionally clears and/or cultivates land by burning, resulting in pollution and damage to environmental functions, as defined in Article 48 of Law Number 18 of 2004 Concerning Plantations, Article 263, is punishable by a maximum imprisonment of ten (ten) years and a maximum fine of Rp. 10,000,000,000.00." (ten billion rupiah). (2) If the unlawful act referred to in paragraph (1) results in the death or serious injury of a person, the perpetrator faces up to 15 years in jail and a fine of Rp. 15,000,000,000.00 (fifteen billion rupiah)."

Third, the prohibition on forest burning is spelled out in Article 69, paragraph (1), letter H of the Law on Environmental Protection and Management: "Everyone is forbidden from removing land by burning."

Furthermore, Law 32 of 2009 regulates accountability in the following manner: "Any person violating Article 69 Paragraph (1) letter h, shall be punished with imprisonment for at least 3 (three) years and at most 10 (ten) years," says Article 108. The minimum fine is Rp.3,000,000,000.00 (three billion rupiah), and the maximum is Rp.10,000,000,000.00 (ten billion rupiah).

Three separate laws prohibit forest fires, and this statement relates to each of them. However, norms based on the local tradition allow for the burning of land prices in specific circumstances. The aforementioned fire prohibition standard is not in conflict with the requirement for a fire permit. The government's attempt to incorporate Indonesian knowledge into the approval criteria must be appreciated.

Indonesia's Constitution, specifically Article 18 B Paragraph (2), establishes the constitutional basis for respecting the state for local wisdom, which states: "The state recognizes and respect customary law community units and their traditional rights as long as they are still alive and in accordance with community development and principles of the Unitary State of the Republic of Indonesia, which are regulated by law." In accordance with Article 69 Paragraph 2 of Law No. 32 of 2009 concerning Environmental Protection and Management, land clearing by burning is permitted under the following conditions: ". Furthermore, the following is the reason for Article 69 Paragraph (2): "The local wisdom referred to in this provision is burning land with a maximum land size of 2 hectares per family head, which must be planted with local varieties and bordered by bulkheads." Paragraph (2) burn in order to keep the fire from spreading to the surrounding region.

People's opinions on the presence of Article 69 paragraph (2) are divided into two groups: those who believe the article is a source of forest fires, and those who believe that respect for local wisdom can truly prevent forest and land fires. The second group's argument can be justified by examining and analyzing the processes for carrying out the practice of burning forests in Indonesia while taking into consideration local wisdom. In this research, Riau, West Kalimantan, and South Sumatra are used as examples of areas that practice forest burning with indigenous wisdom. The Riau people are familiar with the slash and burn (*tebang dan bakar*). Local wisdom of clearing land by burning in West Kalimantan is carried out using the *nataki* technique. Meanwhile, in South Sumatra, the culture of land management using controlled burning techniques (Nurdin, 2013). With this technique, each household head does not burn the forest simultaneously, which raises concerns about the large number of hotspots. The strategy of alternately burning forests will effectively reduce the amount of hotspots that can prevent forest and land fires from spreading.

Meanwhile, the requirements of the Forestry Law and the Law on the Prevention and Eradication of Forest Destruction make it illegal to cut down trees in forest regions unless they have rights or permits from authorized officials. Article 50, paragraph (3) letter e of Law Number 41 of 1999 Concerning Forestry states that "everyone is forbidden from cutting down trees or harvesting or gathering forest products in the forest without having rights or permits from authorized officials."

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Cutting down trees in forest regions is a banned act under any of the two formulations of the legislation unless authorization is obtained from the authorized authority. Individuals who combine tree cutting and burning are no longer need to obtain permission from the authorities. The permit to cut the tree was issued pursuant to Article 69 paragraph (2) of Law No. 32 of 2009 on Environmental Protection and Management in order to carry out the community's wisdom. Local wisdom in the manner described above is a form of community participation in environmental management. Community participation is necessary because environmental managers (policymakers) are typically effective at formulating biological and technical problems but fall short when it comes to social and environmental issues. environmental management politics (Bruce et al., 2007). However, in social reality, when forest fires are prevalent, mutual allegations are always made in order to determine who is the mastermind behind the forest fire events. Not occasionally, the lower social strata of society are accused of responsibility.

3.2. Legal Action Against Forest Burning Violations in conjunction with Local Wisdom

The occurrence of violations of forest land clearing in the manner specified in Article 69 paragraph (2) of the UUPPLH, namely through the local knowledge of the community, is the backdrop for law enforcement. The article's explanation allows people with local wisdom to clear land by burning, provided that the land size is 2 hectares per family head, planted with local types of plants, and the burning is bordered by firebreaks. However, what about law enforcement if the community fails to meet one of the three standards and/or two of the three conditions while clearing land by burning? The term "law implementation" refers to the act of carrying out the law without any controversy or infraction. Furthermore, the law can be implemented as a result of a dispute, which is resolved by a judge. This is also a form of law enforcement (Mertokusumo, 2009)

Sources of regulations that are assessed within the scope of regional regulations are types of laws and regulations that are in the hierarchy of laws and regulations and have binding legal force. Also, if the local government has adopted a zoning management instrument or non-local wisdom to open the field (*Huma*) burning method, how will the law be enforced?. According to Nyoman Serikat Putra Jaya (in (Nasution, 2020)), the source of criminal law in Indonesia includes both written and unwritten offenses. Formally, when the Dutch imposed the *Wetboek van Strafrecht voor Nederlandch Indie* on January 1, 1918, customary criminal law was not enforced, but it is nevertheless materially valid and applied in court practice. Customary sanctions may be applied as the main sanction or as the basic sanction by judges when examining and adjudicating conduct that are regarded crimes under contemporary law but have no equivalent in the Criminal Code (Elviandri, 2017)

Furthermore, the assembly was defined as "a person who has done an act that, according to the living law (customary law) in the area, is an act that breaches customary law, meaning a "customary violation" in the Supreme Court judgment No. 1644 K/Pid/1988 dated 15 May 1991. The culprit received a usual reaction (customary punishment) from the head and traditional leaders. The accused man has carried out the customary punishments.

The accused person who has been sentenced to 'customary reaction' by the customary head cannot be brought before the state judiciary (District Court) with the same charge of violating customary law and sentenced to prison under the Criminal Code (Article 5 paragraph (3) letter b Emergency Law No. 1 Drt 1951) (Wulansari, 2010). As stated in Article 70 paragraph (3) letter e of the UUPLH, "developing and conserving local culture and wisdom in the framework of safeguarding environmental functions," the participation of the community (in this case native people) is critical in preventing forest and land fires. Indigenous communities' laws must be accommodated and applied in the context of environmental protection and forest and land fire prevention. Thus, law enforcement against family heads who are found to have broken the regulations for clearing land by burning can be penalized in accordance with the local customary community's legal provisions. As a result, heads of families who have been convicted of customary violations no longer need to be subjected to positive law enforcement. It is possible to enforce land clearing procedures through positive law if indigenous peoples have not / have not imposed criminal punishments on perpetrators who break land clearing procedures through the use of local wisdom.

4. CONCLUSION

From the discussion described above, it can be determined that:

1. The Indonesian people's traditional knowledge of clearing land by burning still exists and is acknowledged constitutionally. As a way to prevent forest and land fires, this local wisdom is practiced by building firebreaks prior to clearing the land.
2. Indigenous peoples can enforce the law against family heads who depart from or violate the processes for burning forests according to local wisdom. Customary criminal sanctions are used by indigenous peoples (customary authorities) to enforce law and order. In the absence of indigenous peoples imposing customary criminal punishments against family heads who break the provisions of local wisdom, positive law enforcement is carried out.

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