

JURIDICAL ANALYSIS OF THE ASEAN AGREEMENT ON TRANSBOUNDARY HAZE POLLUTION AND ITS IMPLEMENTATION IN INDONESIA

Miftah Ramadhan

Central Asia Bank, Jakarta
ramamira9@gmail.com

Abstract

The Trans-boundary Haze Pollution in the international environment scope is not an uncommon problem to be face nowadays. The case that leads to the controversy of how to solve and to decide which party to responsible brings states over the world to have a significant concern in the case to make a new regulation on cross-border smoke pollution. The method used in this paper is a juridical-normative comparative legal research method. The result shows that in international scope both of ASEAN Agreement on Transboundary Haze Pollution (AATHP) and Rio Declaration is not complete enough to handle the case of the trans-boundary haze pollution problem. Therefore, a legal framework is needed to support the international and national regulation concerning on environment.

Keywords: *Pollution, Environment, International, National.*

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A. Introduction

Global Issues in the international landscape are not only related to political and security issues but also including social, economic, cultural and environmental issues. International environmental issues have become one of the world's concerns because of its purpose as an asset in the future to be enjoyed by all human being. The development of environmental law cannot be separated from the worldwide movement to give greater attention to the environment because the environment has become a problem that needs to be addressed together for survival.¹ One of the environmental problems which are special to be concerned in ASEAN is the smog (trans-boundary haze pollution). The haze that occurred in the ASEAN region is frequently caused by forest fires that occurred in Indonesia.

Environmental problems in the form of smog in Indonesia itself are not uncommon problems. This is because mortal affect the environment, and the environment will affect the living patterns of organisms that live in it.² This is motivated by the composition of a fairly extensive forest area in Indonesia. Article 1 Number (2) Law No. 41 of 1999 concerning to Forestry, explains that a forest is an ecosystem unit in the form of the expanse of land containing biological natural resources which are dominated by trees in the fellowship of the natural environment with one another and cannot be separated. Forest is a gift from God that is given to humans to form a balanced pattern on earth and must be preserved. Forests are the lungs of the world that have the potential and function to maintain the balance of the surrounding environment. These potentials and functions contain benefits if they can be managed properly by humans.³

Based on data from the Ministry of Environment and Forestry, in 2015 the forest area in Indonesia recorded an area of 2,611,411 *Ha* burned, in 2016 an area of 438,363 *Ha* and in 2017 covering an area of

¹ Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan* (Yogyakarta: Gajah Mada University Press, 2001), 6.

² Muhammad Akib, *Hukum Lingkungan Perspektif Global dan Nasional* (Jakarta: Raja Grafindo Persada, 2014), 2.

³ Ayu Nurul Alfia, Adji Samekto, Nanik Trihastuti, "Tanggung Jawab Perusahaan Transnasional Dalam Kebakaran Hutan Di Riau Dalam Perspektif Hukum Internasional," *Diponegoro Law Journal* 5, no. 3 (2016): 1.

165,484 Ha (data per January 2018).⁴ The burning of forest areas in Indonesia is caused by burning land for new plants that will be planted, and the only reason for this measure is because it is more saving time and costs.⁵ In 2016 there was a fire in Riau Province due to corporate companies, namely PT Wahana Subur Sawit Indah (WSSI) and PT Sontang Sawit Permai (SSP). The total area of burning forest that occurred as a result of this case was 120 Ha, giving rise to smoke that was thick enough to carry wind until it entered the jurisdiction of the neighbouring country.⁶ Forest burning is intentionally carried out by the company to clear land. This is done to shorten the time and save money for clearing forest land. The problem of forest fires due to forest fires in Indonesia takes place every year on average carried out by corporations both nationally and internationally. Nowadays, international law has not been able to impose legal responsibility on corporations directly, and state authority is still needed to sanction law as an intermediary. In this case, international law has still not moved from the use of classical theory which adheres to the “state-centric” concept.⁷

The Transboundary Haze Pollution case tends to occur frequently in the ASEAN region, the case with the highest smoke level occurred on June 21, 2013, in Singapore with the pollutant index reaching 401 PSI (Pollutant Standards Index⁸).⁹ The pollutant index of more than 300 PSI can be categorized as dangerous because it can adversely affect the health of both animal, plant and human biota within the coverage of the air pollution area. Based on this case, the state of Singapore is very disadvantaged because the effects of the haze of forest fires in Indonesia can endanger the health of the community, especially those who have not been healthy and for elderly.

The haze caused by forest fires is an act of environmental destruction. It is not in accordance with the sustainable environmental development stipulated in the 1992 Rio Declaration on Environment and Development. According to Asdar in his journal *entitled Trans-boundary Haze Pollution in Malaysia and Singapore Due to Forest Fires in Riau Province Viewed from International Environmental Law*, fires are considered a potential threat to sustainable development because they have a direct impact on ecosystems, the contribution of carbon emissions and for biodiversity and Riau Province becomes a source of transboundary haze pollution for nearby countries namely Malaysia and Singapore.¹⁰ As land and forest fires worsened in 1997-1998, ASEAN member countries signed the ASEAN Agreement on Trans-boundary Haze Pollution (AATHP) on June 10, 2002, in Kuala Lumpur, Malaysia.¹¹

The establishment of AATHP is intended to prevent and monitor pollution of smog due to land or forest fires through national efforts of each country. Smoke pollution due to forest or land fires must be reduced to achieve sustainability and environmentally sound principles. In accordance with the Rio Declaration, environmental development is needed to meet human needs so that humans can live well on earth.

The absence of international regulations that specifically regulate the problem of transboundary haze pollution has caused victims of the difficulties in prosecuting losses caused by them. As a form of demand for accountability, victims of smog can provide a protest note to a country that is a source of smog to be able to provide accountability. The responsibility that can be taken by the country that is the source of the haze is to establish legislation that regulates every activity of the company which can lead to forest fires and punish the perpetrators of environmental crimes in accordance with applicable laws.

⁴ Kementerian Lingkungan Hidup dan Kehutanan. “Pencegahan Karhutla Berhasil Tekan Angka Deforestasi”, <http://www.menlhk.go.id/siaran-81-pencegahan-karhutla-berhasil-tekan-angka-deforestasi.html> Accessed on Juny 16, 2018 at 09.40 a.m.

⁵ Anih Sri Suryani, “Penanganan Kabut Akibat Kebakaran Hutan Di Wilayah Perbatasan Indonesia”, *Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI* 3, no. 1 (2012): 70. DOI: <https://doi.org/10.46807/aspirasi.v3i1.256>.

⁶ Syahnun Rangkuti, Regional Kompas “Kebakaran Hutan di Riau, Dua Perusahaan Sawit Jadi Tersangka”, <https://regional.kompas.com/read/2016/09/15/15573291/kebakaran.hutan.di.riau.dua.perusahaan.sawit.jadi.tersangka> accessed on August 19, 2018 at 13.23 a.m.

⁷ Ayu Nurul Alfia, Adji Samekto, Nanik Trihastuti, *Op. Cit.*, 7.

⁸ Standard Pollutant Index (PSI) is an index used as a reference for the Air Pollution Standard Index (ISPU). Standard Pollutant Index (PSI) is used by several countries, including the United States. The calculation method used in the Standard Pollutant Index has a principle on the level of effects that are caused on humans and the environment due to the exposure of a pollutant parameter. The level of effect caused is considered constant for each particular pollutant exposure concentration.

⁹ BBC. Kabut Asap Singapura ‘mengancam jiwa’ https://www.bbc.com/indonesia/dunia/2013/06/130621_singapura_haze, Accessed on August 10, 2018 at 03.07 WIB.

¹⁰ Asdar, “Transboundary Haze Pollution di Malaysia dan Singapura Akibat Kebakaran Hutan di Provinsi Riau Ditinjau dari Hukum Lingkungan Internasional,” *Jurnal Untad* 4, no. 3 (2015): 1.

¹¹ Stated in <https://asean.org/asean-socio-cultural/cop-to-aathp-conference-of-the-parties-to-the-asean-agreement-on-transboundary-haze-pollution/>, accessed on March 8, 2019 at 10.40 a.m.

Based on the impact and laws governing environmental crime in the form of transboundary haze pollution, the authors are interested in discussing: How does International Law regulate Transboundary Haze Pollution? How does the implementation of the ASEAN Agreement on Transboundary Haze Pollution in Indonesia? This type of research used juridical-normative-comparative, which is legal research literature examines a problem based on legal norms contained in international regulations and legislation and comparing between two groups or more than a specific variable to produce a conclusion. The method in data collection used library study technique, practice, namely by studying the provisions of the legislation, international guidelines, books, documentation, journals, and accessing data on the internet related to issues within the scope of international law and the scope of national law. Data analysis was carried out by outlining and giving the meaning of each data obtained into sentences that are detailed, orderly, effective, logical and not overlapping to facilitate the author in interpreting and analyzing the data which then concludes response to the problems contained in this paper.

B. Discussion

1. Transboundary Haze Pollution in National and International Legal Frameworks

In this sub-section, the author will describe the differences in the scope and substance of international treaties and international declarations to make it easier for readers to understand. The Rio Declaration was formed to protect the environment from being able to be enjoyed in the future by humanity. Sustainable development is an ideal that is expected to be carried out by humans in processing resources in the environment. Management of natural resources is also expected to be carried out properly and correctly so as not to disturb neighbouring countries. Every country must guarantee a good environment as the right of all people both now and in the future. All safeguards regarding the environment are regulated in the Rio Declaration, but to be specific to cross-border smoke pollution has not been discussed at this convention. This regulation is the basis and can be further developed for other international regulations relating to the environment.

The establishment of the ASEAN Agreement on Transboundary Haze Pollution was aimed at protecting forests in ASEAN countries and assisting in the event of cross-border smoke pollution due to forest fires so that they can be completed quickly. This agreement discusses the risks of cross-border smoke pollution, which can endanger all sectors in human life. Monitoring of smoke pollution is a priority to safeguard both the environment and humans. Each party in this agreement must take precautionary measures to control any activities that can cause forest fires. Parties who need assistance to extinguish forest fires can request the role of other parties.

To make it easier for readers to know the discussion in both national and international laws, the author will explain the differences in the contents of each article using a matrix. Matrix 1 will explain differences in the framework of international law, namely the Rio Declaration on Environment and Development 1992 and the ASEAN Agreement on Transboundary Haze Pollution. Matrix 2 will explain the differences in the national legal framework that apply in Indonesia, which has a relationship in handling smoke due to forest conditions.

Matriks 1. Comparison of International Regulations

International Regulation	<i>Rio Declaration</i>	<i>ASEAN Agreement on Transboundary Haze Pollution</i>
Types of Forest Fire	Unexplained	Article 1
Fire Prevention and Forest Rehabilitation Efforts	Unexplained	Article 7, 13, and 16 arrange fire prevention measures and in the event of a fire can ask for help from neighboring countries.
Transboundary Haze Pollution Arrangement	Unexplained	Article 1, 4, and 12 arrange <i>transboundary haze pollution</i> , cooperation in the implementation of monitoring, and emergency response
Environmental Quality Standard Category	Unexplained	Unexplained
Prohibition of Forest Burning	Article 7 regulate environmental	Article 9 arrange for the state to make a policy against the cause of fire

	protection and preservation on earth	
Sanctions for Forest Burning Crimes	Article 16 regulates that polluters must bear the costs of pollution	Unexplained
Corporate Crime Sanctions	Unexplained	Unexplained
Recommended National or International Arrangements	Article 27 regulates that in this declaration it can be developed back to international regulations	Article 4 and 28 regulating that the state must make national regulations to reduce haze pollution transboundary

Based on (Matrix 1. Comparison of International Regulations) according to the authors of the International legal instruments it is sufficient to explain the protection of the environment, especially the transboundary haze pollution. Transboundary haze pollution is a matter of considerable concern in the Asian Region so that an ASEAN Agreement on Transboundary Haze Pollution was created to deal with cross-border smoke pollution issues. However, according to the author, the regulation regarding transboundary haze pollution has not been maximized in the matter of resolving disputes and sanctions given to violators. There are no instruments of international law that regulate these issues so that strong national legal instruments are needed to punish violators.

Indonesia has several national instruments regarding protection from forest destruction, transboundary haze pollution, and corporate crime as described earlier. The author will summarize in order to make it easier for readers to identify and understand the substance and scope of each of the rules. Indonesia has the Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry as the legal basis for safeguarding forestry in Indonesia. This law regulates the principles of protection, obligation, role and responsibility of the Government, companies and the public in protecting forest areas from damage. Still, this law does not explicitly regulate cross-border smoke due to forest fires.

The establishment of the Republic of Indonesia Law Number 32 of 2009 concerning Environmental Protection and Management is aimed at providing protection to the environment and eradicating forest destruction which can harm the state and surrounding communities. This law regulates protection for the environment and prohibitions on environmental damage. This law regulates information on environmental quality standards that are good for humans. This law has not fully focused on dealing with forest destruction. Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction is a regulation that is formed as an implementing rule to protect forests from destruction due to forest use. This regulation has been focused on discussing forest protection from damage and criminalization of forest destroyers so that they become supporters and complementary of other regulations. Republic of Indonesia Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations is established as a supporting regulation in the implementation of corporate crimes and procedures for investigation and investigation in corporate criminal acts. The following is a comparison between the Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry, Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment, Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, and the Regulation MA Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations contained in matrix 2.

Matriks 2. Comparison of National Regulations

National Regulation	Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry	Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment	Law of the Republic of Indonesia Number 18 Year 2013 concerning Prevention and Eradication of Forest Destruction	Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations
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Types of Forest Fire	Unexplained	Unexplained	Unexplained	Unexplained
Fire Prevention and Forest Rehabilitation Efforts	Article 43 and 47 regulate forest rehabilitation and its protection	Article 14 and 54 regulate environmental prevention and recovery instruments	Article 18 arrange administrative sanctions in the form of rehabilitation costs due to damage	Unexplained
Transboundary Haze Pollution Arrangement	Unexplained	Unexplained	Unexplained	Unexplained
Environmental Quality Standard Category	Unexplained	Article 20 regulates the type of environmental quality standards	Unexplained	Unexplained
Prohibition of Forest Burning	Article 50 regulates the prohibition of forest destruction	Article 69 regulates prohibitions on actions that result in environmental pollution	Unexplained	Unexplained
Dispute Settlement Arrangement	Article 74, 75, and 76 regulates that settlement of disputes can be carried out in court or outside the court	Article 84, 85, and 86 stipulates that dispute resolution can be carried out in court or outside the court	Article 10 and 39 regulating cases of forest destruction must take precedence and be completed quickly	Article 2 regulating the intent and purpose of the procedure for handling cases, filling in the legal vacuum, especially the criminal procedure of the corporation
Sanctions for Forest Burning Crimes	Article 49, 78, 79, and 80 regulate accountability and sanctions for violators	Article 53, 76, and 97-120 regulate administrative sanctions and criminal sanctions	Article 82 regulates criminal sanctions for cutting down trees by the permit	Article 4, 20, 24, and 27 regulating the corporation can be asked for accountability, compensation, and criminal
Arrangement of the handling of cases of criminal acts by corporations	Unexplained	Unexplained	Article 82 regulating corporations can be punished	Entire Article

Based on (Matrix 2. Comparison of International and National Regulations) according to the authors, the national regulations are sufficiently competent to regulate the handling of the problem of transboundary haze pollution. The respective national regulations complement each other to punish criminal acts of environmental crime, especially forest fires by corporations. However, in the application of penalties for violators have not provided a deterrent effect from the actions they did.

2. Juridical Analysis of the ASEAN Agreement on Transboundary Haze Pollution in Indonesia

Regulations regarding smog due to forest fires have been contained in Indonesia's national regulations. The establishment of these regulations is the basis that Indonesia has focused on preserving the environment, especially forests so that they are not damaged and can be enjoyed in the future. The establishment of regulations concerning the supervision and prosecution of all crimes committed by every legal subject in the forest indicates that Indonesia has taken the legal treatment seriously in the event of a violation. The act of ratification by Indonesia in the ASEAN Agreement on Trans-boundary Haze Pollution became one of the assistance to the Indonesian state in handling the prevention and prevention of all activities that could result in smog. The following is a comparison matrix between national and international regulations.

Matriks. 3. Comparison of International and National Regulations

National Regulation	ASEAN Agreement on Transboundary Haze Pollution	Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment
Types of Forest Fires	Article 1	Unexplained
Fire Prevention and Forest Rehabilitation Efforts	Article 7, 13, and 16 arrange fire prevention measures and in the event of a fire can ask for help from neighbouring countries.	Article 14 and 54 regulate environmental prevention and recovery instruments.
Transboundary Haze Pollution Arrangement	Article 1, 4, and 12 regulate transboundary haze pollution, cooperation in the implementation of monitoring, and emergency response.	Unexplained
Environmental Quality Standard Category	Unexplained	Article 20 regulates the type of environmental quality standards.
Prohibition of Forest Burning	Article 9 arrange for the state to make a policy against the cause of the fire.	Article 69 regulates prohibitions on actions that result in environmental pollution.
Dispute Settlement Arrangement	Unexplained	Article 84, 85, and 86 stipulates that dispute resolution can be carried out in court or outside the court.
Sanctions for Forest Burning Crimes	Unexplained	Article 53, 76, and 97-120 regulate administrative sanctions and criminal sanctions.

Arrangement of the handling of cases of criminal acts by corporations	Unexplained	Unexplained
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Based on (Martiks. 3. Comparison of International and National Regulations) it can be concluded that national regulations have carried out their duties well in the application of forest protection so as not to cause forest fires and cause cross-border air pollution. The difference in the regulation is that national regulations do not justify any actions that cause forest fires to be under control so as not to endanger the surrounding area. Indonesia keeps guarding against any forest burning in any form because it can harm the environment and humans.

C. Conclusion

Environmental law has regulated environmental health, which must be guarded especially in this case is the haze that is contained in the Rio Declaration on Environment and Development 1992 and the ASEAN Agreement on Trans-boundary Haze Pollution. The Rio Declaration on Environment and Development 1992 stipulates that every country is obliged to protect the environment from being able to be enjoyed in the future and form the basis for the development of international regulations relating to environmental issues. The ASEAN Agreement on Trans-boundary Haze Pollution invites all ASEAN member countries to pay attention to cross-border smoke problems that often occur. This agreement discusses cross-border smoke criteria and their handling. If in its handling, a country cannot do it alone, then it can ask neighbouring countries to assist in handling pollution smoke due to forest risk.

Based on the ASEAN Agreement on Transboundary Haze Pollution, Indonesia has made cross-border smoke as a serious problem and has ratified the ASEAN Agreement on Transboundary Haze Pollution in the Republic of Indonesia Law Number 26 of 2014 concerning Ratification of the ASEAN Agreement on Transboundary Haze Pollution. The act of ratification indicates that Indonesia has been serious and focused on handling the problem of transboundary haze pollution. Indonesia has several legal rules to deal with the problem of forest fires and the environment. The Republic of Indonesia Law Number 41 of 1999 concerning Forestry is the basis for protecting and dealing with problems in forest destruction. Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment as a regulation that protects the environment and criteria for environmental destruction both water, land, and in the air. The Republic of Indonesia Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction was formed to focus more on addressing issues that could cause forest destruction and criminalize every subject who engages in activities in the forest causing damage to the forest.

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Republic of Indonesia Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations

Rio Declaration

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