

SUPERVISION OF LAND CLEARING BY BURNING ACCORDING TO THE WORK CREATION LAW

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Abstract: *Land clearing by burning is a common agricultural practice in Indonesia. However, this practice can cause negative impacts such as air pollution and forest fires which endanger the environment and the health of humans and wildlife. Therefore, supervision of land clearing by burning is very important to protect the environment and public health. The Job Creation Law, or the Omnibus Law, has several articles related to monitoring land clearing by burning. Article 116 states that everyone is obliged to protect and preserve the environment. In addition, Article 117 stipulates that the government, communities and entrepreneurs are required to control forest and land fires. Whereas, Law Number 32 of 2009 and Law Number 39 of 2014 also regulate land clearing by burning and provide strict sanctions for perpetrators of forest fires. More serious and effective prevention and handling efforts need to be carried out by the government, the community, and all relevant stakeholders to reduce and overcome this problem. One way is to increase supervision of land clearing practices that are not in accordance with the rules and provide strict sanctions for perpetrators of forest fires. In addition, socialization and education is needed for the community about the importance of preserving the environment and not taking actions that damage the environment. In this case, the role of society, especially farmers,*

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Introduction

Clearing land by burning is a common practice in Indonesia to clear land for agriculture or plantations. However, this practice is very dangerous and can cause major environmental impacts such as forest destruction, loss of wildlife habitat, and air pollution which is detrimental to human health. The rise of cases of forest fires for land clearing is a serious problem that is still being faced by Indonesia. The practice of clearing land by burning forests is an act that damages the environment and endangers human life and wildlife. In addition, clearing land by burning also violates the rules set by the Indonesian government.

The act of clearing land by burning forest is carried out by several parties due to various factors, such as the desire to expand agricultural land, plantations or industrial development. Apart from that, lack of supervision and weak law enforcement are also one of the reasons for the rampant cases of forest fires for land clearing. More serious and effective prevention and handling efforts need to be carried out by the government, the community and all relevant stakeholders to reduce and overcome this problem. One of them is by increasing supervision of land clearing practices that are not in accordance with the rules and strict sanctions for forest burning perpetrators. Besides that, (Sulaeman & Ayunda, 2020).

Forest and land fires cause problems in the environment, both socially and economically, while the direct impact is felt as a result of forest and land fires, namely air pollution which causes the haze to be severe enough so that the smoke covers several areas and causes respiratory problems for the surrounding community. Besides that, it is exacerbated by the activity of clearing agricultural or plantation land by burning it together with the dry season by the community or certain elements with an interest in it. This incident will be very detrimental to the community because of the disruption of various activities and also public health due to air pollution.

In the Job Creation Law, the Indonesian government has emphasized the importance of monitoring land clearing by burning. Article 67 paragraph (1) of the Job Creation Law stipulates that every entrepreneur or business owner is obliged to manage the environment and control environmental pollution by supervising and controlling pollutant sources. In addition, article 92 paragraph (1) of the Job Creation Law also states that everyone who carries out a business and/or activity must obtain a business and/or activity license from the government and comply with the terms and conditions set forth in the permit. (Pakpahan, 2018).

In the context of clearing land by burning, the government has also issued related regulations, such as Minister of Environment and Forestry Regulation (PMLHK) No. 39 of 2018 concerning Procedures for Granting Plantation Business Permits. This regulation contains requirements that must be met by entrepreneurs or business owners before clearing land by burning, such as conducting an environmental impact assessment, reporting land clearing plans, and obtaining permits from the government. In this law, there are several articles relating to supervision of land clearing by burning. Article 116 of the Job Creation Law regulates Environmental Protection. This article states that everyone is obliged to protect and preserve the environment. Besides that, Article 117 also regulates forest and land fire control. This article emphasizes that the government, communities and entrepreneurs are required to control forest and land fires (Ministry of Agriculture, 2019).

Based on Law Number 32 of 2009, concerning Environmental Protection and Management it is stated that: Article 69 paragraph (1) letter h Everyone is prohibited from clearing land by

burning. Article 108 Anyone who sets fire to land as referred to in Article 69 paragraph (1) letter h, shall be punished with imprisonment for a minimum of 3 years and a maximum of 10 years and a fine of at least Rp. 3,000,000,000.00 and a maximum of Rp. 10,000,000,000.00.

Furthermore, in Law Number 39 of 2014 concerning Plantations it is also stated that in Article 56 (1) Every Plantation Business Actor is prohibited from clearing and/or cultivating land by burning. (2) Every Plantation Business Actor is obliged to have a land and garden fire control system, facilities and infrastructure. (3) Further provisions regarding land clearing without burning shall be regulated by a Ministerial Regulation. Article 108 Every Plantation Business Actor who clears and/or cultivates land by burning as referred to in Article 56 paragraph (1) shall be subject to imprisonment for 10 years and a maximum fine of Rp. 10,000,000,000.00).

During the last three years, from 2019 to 2021, Indonesia is still facing a large forest fire problem. In 2019, there were 6,330 forest and land fires which burned a total area of around 1.65 million hectares. September was the peak of fires with around 3,114 hotspots. The provinces of Riau and West Kalimantan are the areas most affected by forest fires (Greetings, 2023).

In 2020, even though the number of forest fires has decreased, they are still quite significant, namely 52,291 cases. In addition, there were 386,000 hectares of land burned across Indonesia. The areas most affected are Riau and South Sumatra Provinces. Finally, in 2021 there were 22,793 cases of forest and land fires that occurred throughout Indonesia. The total area of land burned was 133,960 hectares, mainly in Kalimantan and Sumatra (Greetings, 2023).

The forest and land fires that have occurred over the last three years have caused a lot of losses, such as environmental damage, loss of wildlife habitat, and economic losses for the people and the country. Therefore, more serious and effective prevention and management efforts are needed in order to reduce and overcome this problem.

Cases of forest fires often go to court because forest burning is an unlawful act that harms the environment and society. Courts will usually assess the actions of the perpetrators and take legal action in accordance with applicable regulations, such as imposing sanctions or punishments commensurate with the environmental damage and social impacts caused. However, the handling of cases of forest fires in Indonesia is still faced with challenges, especially the problem of implementing rules and inadequate supervision. This is a challenge for the court to give a fair decision and in accordance with the applicable law (Zaharia, 2017).

Then Article 187 of the Criminal Code states that, "Anyone who intentionally causes a fire, explosion or flood, is threatened with: 1. by imprisonment for a maximum of twelve years, if because of the above-mentioned actions a general danger arises for goods; 2. by imprisonment for a maximum of fifteen years, if because of the aforementioned act a danger to the lives of other people arises; 3. by imprisonment for life or for a certain period of time at most twenty years, if because of the above-mentioned act a danger arises for the lives of other people and causes a person to die".

The government is making efforts to increase supervision, law enforcement, education and public awareness, control the issuance of plantation business permits, cooperate with various parties, impose strict sanctions and penalties, and provide adequate facilities and infrastructure to deal with the practice of clearing land by burning according to the Law. Job Creation Act.

In increasing the effectiveness of monitoring the clearing of land by burning in Indonesia, strategic steps are needed that can overcome the various challenges that are often faced in supervision, especially considering that the monitoring situation is still poor and prone to corruption in Indonesia. Several efforts that can be made include improving the quality of supervision by strengthening supervisory institutions, providing training and competency improvement for supervisors, increasing transparency and accountability in the supervision process, and adopting technology that can strengthen supervision. In addition, it is also important to encourage community participation in supervision, either through reporting mechanisms or direct supervision, so as to strengthen the effectiveness of supervision.

Discussion

The principle of strict liability has long been developed in the modern environmental law system, as an option to overcome the weaknesses of liability based on errors adhered to by civil law. By using this principle of strict liability, one can be ensnared in environmental crimes which require scientific evidence which is unlikely to succeed if prosecuted on the basis of ordinary liability. This is in line with the principle of early prevention of the environment (Rangkuti, 2000).

Rudiger Lummert in his writing "Changes in Civil Liability Concept" argues, that with the development of industrialization which results in greater risks and more complicated causal relationships, legal theory has abandoned the concept of "error" and turned to the concept of "risk". The development of modern industry has brought with it a number of risks that occur every day which are unavoidable from an economic point of view. He has caused suffering and for the sufferer it cannot be borne without compensation. Since the mid-nineteenth century, the principle of strict liability has been introduced, at least for a wide variety of cases, most of which relate to environmental risks. (Rangkuti, 2000).

The concept of strict liability is defined as an absolute obligation associated with causing damage. One of its main characteristics is that there are no requirements, there is a need for errors. The same thing was stated by James E. Krier in his writings 'Environment Litigation and the Burden of Proff', that "the strict liability doctrine can be a very big help in trials regarding environmental cases, because many activities according to experience give rise to harm to the environment are dangerous acts, for which the provisions of liability without fault can be applied. Another important factor related to the strict liability doctrine is the burden of proof.

Land clearing by burning is a serious problem in Indonesia, especially in terms of environmental and socio-economic aspects. This has an impact on poor air quality, damage to ecosystems, and conflicts with indigenous peoples who have rights over the land. To overcome this, the government through the Job Creation Law has regulated oversight of land clearing by burning.

Supervision of land clearing by burning is regulated in Article 99 of the Job Creation Law which states that any land clearing by burning must have a permit from the competent authority, such as the Ministry of Environment and Forestry or the Regional Government. In addition, Article 100 also regulates sanctions for perpetrators of land clearing by means of burning without permission, namely imprisonment for a maximum of 15 years and/or a fine of up to 15 billion rupiah. Supervision of land clearing by burning is also regulated in Government Regulation no. 11 of 2021 concerning Control of Land Clearing by Burning. This regulation regulates the

requirements for permits to clear land by burning, reporting, monitoring, and sanctions for violators. To improve oversight,

Before the Job Creation Law was passed, there were several laws related to employment, investment, taxation, and so on. Some of these laws include:

1. Law No. 13 of 2003 concerning Manpower
2. Law No. 25 of 2007 concerning Investment
3. Law No. 36 of 2008 concerning Income Tax

After the Job Creation Law was passed in 2020, several of these laws underwent changes in terms of regulations and requirements. Some comparisons between the laws before and after the Job Creation Law are as follows:

1. Investment Previously, investment was only limited to certain areas. After the Job Creation Law, investments can be made in all regions of Indonesia with easier and simpler requirements.
2. Employment Previously, companies had to pay severance pay to workers who were laid off. After the Job Creation Law, severance pay was abolished and replaced with a more flexible Job Loss Guarantee (JKP) program.
3. Income Tax Previously, income tax was only applied to income above IDR 50 million per year. After the Job Creation Law, income tax was imposed on all income without a limit on the amount.

This comparison shows that the Job Creation Law provides for several changes in terms of regulations and requirements that affect various sectors in Indonesia.

Risk management can be used as a solution to overcoming supervisory problems in areas where there is a lot of corruption in issuing land clearing permits. Several steps that can be taken in risk management include:

1. Risk identification: Analyze and identify potential risks that may occur in the issuance of land clearing permits.
2. Risk evaluation: Evaluate and determine the severity and likelihood of the risk occurring.
3. Risk control: Developing effective risk control strategies, such as strict supervision by security forces and law enforcement, use of technology, and improving governance and management.
4. Monitoring and evaluation: Monitor and evaluate the implementation of risk control strategies that have been carried out periodically to determine their effectiveness and make improvements if necessary.

By carrying out effective risk management, it is expected to minimize the risk of corrupt practices in issuing land clearing permits and increase the effectiveness of supervision. In practice, risk management must be carried out continuously in monitoring and issuing land clearing permits to prevent corrupt practices and ensure transparency and fairness in the management of natural resources. Top of Form

However, even though there have been regulations governing the supervision of land clearing by burning, this problem still occurs frequently in Indonesia. This is related to weak law enforcement, limited resources, and problems of corruption within the government. Therefore, there is a need for more serious and comprehensive efforts to overcome this problem, such as involving the community and non-governmental organizations in monitoring and enforcing the law.(Fajri, 2016).

Closing

In the context of monitoring land clearing by burning, the Job Creation Law provides a clearer and firmer legal basis for the government to carry out tighter supervision. However, despite adequate regulations, oversight challenges remain, especially in areas that are prone to land clearing by burning and have high levels of corruption. In this case, proper risk management is needed to reduce the potential for slowdowns to occur, including efforts to prevent, supervise and take action in a fair and strict manner against violations that occur. Therefore, the government needs to continue to coordinate with various related parties and conduct periodic evaluations of policies and efforts that have been made to increase the effectiveness of monitoring and handling cases of forest fires in Indonesia.

More serious and effective prevention and handling efforts need to be carried out by the government, the community and all relevant stakeholders to reduce and overcome this problem. One of them is by increasing supervision of land clearing practices that are not in accordance with the rules and strict sanctions for forest burning perpetrators. In addition, socialization and education is also needed for the community about the importance of preserving the environment and not taking actions that damage the environment.

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