

APPROVAL PAGE

**THE RESPONSIBILITY OF THE STATE ON TRANSBOUNDARY HAZE POLLUTION
AFTER THE RATIFICATION OF AATHP: CASE OF INDONESIA**

UNDERGRADUATE THESIS

Approved by Advisors

on Thursday, September 3rd, 2015

Proposed by:

Muhammad Arizka Wahyu

NIM. 20100610031

Advisor I

Advisor II

Dr. M. Nur Islami, S.H., M.Hum
NIP. 196110031987 021 001

Yordan Gunawan, S.H., Int. MBA
NIK. 19820203200904 153 054

VALIDATION PAGE

**THE RESPONSIBILITY OF THE STATE ON TRANSBOUNDARY HAZE POLLUTION
AFTER THE RATIFICATION OF AATHP: CASE OF INDONESIA**

UNDERGRADUATE THESIS

It has been defended in front of the board of examiners
on Thursday, September 3rd, 2015

Board of Examiners:
Chairman

H. Nasrullah, S.Ag., S.H., MCL
NIK. 19700617200004 153 045

Member,

Member,

Dr. M. Nur Islami, S.H., M.Hum
NIP. 196110031987 021 001

Yordan Gunawan, S.H., Int. MBA
NIK. 19820203200904 153 054

Validation
Dean of Faculty of Law
Universitas Muhammadiyah Yogyakarta

Dr. Trisno Raharjo, S.H., M.Hum
NIK. 19710409199702 153 028

DECLARATION OF RESEARCH AUTHENTICITY



I hereby declare that the undergraduate thesis under the title “**The Responsibility of the State on Transboundary Haze Pollution after the Ratification of AATHP: Case of Indonesia**”, its content is truly the work of my own and I did not do plagiarism or quotation in ways that are inconsistent with the prevailing ethic in the scientific community. On this statement, I am ready to bear the risk/any sanctions imposed to me in accordance with applicable regulations, if the future found a breach of scientific ethics, I am willing to accept the sanctions.

Written by:

Name : Muhammad Arizka Wahyu
Student Number : 20100610031
Faculty : Law
Major : International Program for Law and Sharia
University : Universitas Muhammadiyah Yogyakarta

Yogyakarta, August 27th, 2015

Muhammad Arizka Wahyu

MOTTO PAGE

Indeed, Allah will not change the condition of a people until they change what is in themselves.

(Q.S Ar-Ra'd: 13)

三人行必有我师

Sān rén xíng bì yǒu wǒ shī

“Learn from everyone, no matter who is he/she.”

(Chinese Idiom)

DEDICATION PAGE

This Undergraduate Thesis dedicate to:

ALLAH SWT

Prophet Muhammad SAW

All of My Family

International Program for Law and Sharia (IPOLS)

Faculty of Law

Universitas Muhammadiyah Yogyakarta

International Centre for Law and Sharia Studies (ICLASS)

Faculty of Law

Universitas Muhammadiyah Yogyakarta

PREFACE

Alhamdulillah, thank you Allah SWT, The Most Merciful and Most Gracious who has given His bless and an opportunity to accomplish my Undergraduate Thesis entitled “**The Responsibility of the State on Transboundary Haze Pollution after the Ratification of AATHP: Case of Indonesia**” in Universitas Muhammadiyah Yogyakarta. Thank you for my advisors, Dr. M. Nur Islami, S.H., M.Hum and Mr. Yordan Gunawan, S.H., Int. MBA who guided me with patient, wisdom and compassion.

I would like to say thanks to Dr. Trisno Raharjo, S.H., M.Hum as the Dean of Faculty of Law UMY, Mr. H. Nasrullah, S.H., S.Ag., MCL as the Director of International Program for Law and Sharia (IPOLS) Faculty of Law UMY, Dr. M. Khaeruddin Hamsin, Lc., M.A as the Director of International Centre for Law and Sharia Studies (ICLASS) Faculty of Law UMY, Mr. Iwan Satriawan, S.H., MCL (Ph.D. Cand), Mr. Muhammad Endrio Susilo, H., S.H., MCL (Ph.D Cand), Mrs. Hj. Fadia Fitriyanti, S.H., M.Hum, M.Kn (Dr. Cand) and all of the Lecturers in Faculty of Law Universitas Muhammadiyah Yogyakarta.

Special gratitude to my parents: Ramli Razali and Katijah Hasyim. Your pray, support, guide and affection are being my strength all the way through my life. Thanks to my lovely sister, Siti Rizki Ananda, I love you all so much.

Thanks to all of my friends in IPOLS batch 2010, Albert Norman Fujimori, Husnul Maa'f, Dinda Darojatun Salihah, Rizaldy Anggriawan, Oby Dinata, Hasby Ash-Shiddieqy, Aris Fadillah, Yanatri Arum Sakti, Ria Harianti, Resa Wilianti and Prima Indah Lestari. Thanks to PERSEMAS FC, FIESTA FC, ELEGANT friends in MA Ruhul Islam Anak Bangsa (RIAB) and all of my friends in Aceh and Yogyakarta.

Last, I realize that there are so many mistakes in my undergraduate thesis, I hope that it could benefit for all human beings with the presence of this undergraduate thesis. Amin.

Yogyakarta, August 27th, 2015

Muhammad Arizka Wahyu

ABSTRACT

Land and forest fires in Indonesia has resulted the economic and ecological losses caused by opening the land (land clearing) with burning land. Land and forest fires in Sumatra and Kalimantan is now not only a national issue, but also became an international issue because it arises the transboundary haze pollution. Beside the loss in Indonesia itself, the smoke also disrupt neighboring countries, such as Malaysia, Brunei and Singapore. Every year Malaysia and Singapore as countries affected by transboundary haze pollution filed a strong protest to the Indonesian government. Based on the principle of international law of state responsibility, Indonesia should be responsible for the transboundary haze pollution. Because of it has disrupted the environment of other countries. On June 10, 2002, ASEAN countries agreed to sign the 1997 ASEAN Agreement on Transboundary Haze Pollution (AATHP) to address land and forest fires in Southeast Asia and AATHP entered into force on 25 November 2003. Then, in 2014, Indonesia became the last country to ratify AATHP. The type of this research is a normative legal research. By using a qualitative descriptive method, the research aims to describe the responsibility of Indonesian government on transboundary haze pollution based on international law of state responsibility and ASEAN Agreement on Transboundary Haze Pollution (AATHP) and also the regulations and conventions especially that related to the transboundary haze pollution. The result shows that based on international law of state responsibility, Indonesian government should be responsible for the transboundary haze pollution and after ratification the ASEAN Agreement on Transboundary Haze Pollution, Indonesia as the pollutant country cannot be required to pay compensation fully because it was a shared responsibility of the ASEAN countries.

Keywords: International Law, Ratification, State Responsibility, AATHP, ASEAN.

TABLE OF CONTENTS

| | |
|---|-------------|
| APPROVAL PAGE..... | i |
| VALIDATION PAGE | ii |
| DECLARATION OF RESEARCH AUTHENTICITY | iii |
| MOTTO PAGE | iv |
| DEDICATION PAGE..... | v |
| PREFACE..... | vi |
| ABSTRACT..... | viii |
| TABLE OF CONTENTS..... | ix |
| CHAPTER I: INTRODUCTION | |
| A. Background..... | 1 |
| B. Research Question..... | 6 |
| C. Objectives of Research | 6 |
| D. The Advantages of Research | 6 |
| E. Overview of the Chapters | 7 |
| CHAPTER II: LITERATURE REVIEW | |
| A. Transboundary Haze Pollution | 9 |
| B. The International Law of State Responsibility | 10 |
| 1. The Nature of State Responsibility | 10 |
| 2. The Consequences of Internationally Wrongful Act | 12 |
| C. International Environmental Law..... | 15 |
| D. ASEAN Agreement on Transboundary Haze Pollution | 18 |
| CHAPTER III: RESEARCH METHOD | |
| A. Type of Research | 20 |
| B. Legal Materials | 21 |

| | |
|---------------------------------------|----|
| C. Technique of Collecting Data | 22 |
| D. Method of Data Analysis | 23 |

CHAPTER IV

| | |
|--|----|
| A. The Ratification Process of ASEAN Agreement on Transboundary Haze Pollution by ASEAN Countries | 24 |
| 1. The History of Transboundary Haze Pollution in Southeast Asia ... | 24 |
| 2. The Impact of Transboundary Haze Pollution in Southeast Asia ... | 28 |
| 3. General Overview of the ASEAN Agreement on Transboundary Haze Pollution | 32 |
| 4. Indonesia Ratification of the ASEAN Agreement on Transboundary Haze Pollution | 36 |
| B. Indonesian Government’s Policy toward Transboundary Haze Pollution | 40 |
| C. The Responsibility of the Indonesian Government on Transboundary Haze Pollution before and after Ratification of AATHP | 50 |
| 1. The Responsibility before Ratification of AATHP | 50 |
| 2. The Responsibility after Ratification of AATHP | 57 |

CHAPTER V

| | |
|---------------------|----|
| A. Conclusion | 62 |
| B. Suggestion | 63 |

REFERENCES

ATTACHMENT