

CHAPTER I

INTRODUCTION

A. Background

During monsoon season, from May to September, the Southeast Asian mainland and Borneo face the prospect of haze arriving from the Indonesian archipelago. Human activity creates the haze when individuals and companies cut down trees and burn peat lands to clear the land for small-scale agricultural purposes or for industrial purposes, such as palm oil plantations and logging.¹

Smog problems re-emerged in recent times. Land and forest fires in Sumatra and Kalimantan are now not only a national issue, but also an international issue, because this case cause transboundary haze pollution.²

Transboundary haze pollution is considered one of the major problems in the ASEAN region. It is caused by land/forest fires which mostly derive from Indonesia land and forest fires. The worst forest fire was in 1997-1998 and since then they occur every year with various intensity.³

It is not easy to regulate the transboundary haze pollution. ASEAN Agreement on Transboundary Haze Pollution (AATHP) has a long history

¹ David B. Jerger Jr, Indonesia's Role in Realizing the Goals of ASEAN's Agreement on Transboundary Haze Pollution, *Sustainable Development Law & Policy*, Washington DC, American University Washington College of Law, Vol. 14, No.1, 2014, p. 35

²Yordan Gunawan, *Ekspor Asap dan Ratifikasi AATHP*, Kedaulatan Rakyat Newspaper, Wednesday, November 5, 2014, <http://krjogja.com/liputan-khusus/analisis/3484/ekspor-asap-dan-ratifikasi-aathp.kr> accessed on January 7, 2015 at 2am

³ Laely Nurhidayah, 2012, *The Influence of International Law upon ASEAN Approaches in Addressing Transboundary Haze Pollution in the ASEAN Region*, NUS-Asian SIL Young Scholars Workshop, NUS Law School, p. 2

before it is signed and ratified by the ASEAN countries. The fires or land that occurred in Indonesia in 1997 become a trigger discussion of this issue at the regional level of ASEAN.

Indonesia has finally ratified the ASEAN Agreement on Transboundary Haze Pollution (AATHP) on September 16, 2014. The ratification of the AATHP is the right step taken by Indonesia to demonstrate its seriousness in overcoming transboundary haze caused by land and forest fires.

The ratification was done following a discussion by a plenary session of the House of Representatives attended by parliamentary members and leadership, as well as ministers of environment, foreign affairs, justice, and human rights.⁴

Land of fire and/or forest that occurs massively in 1997 and lead to transboundary haze pollution in some ASEAN countries. This has become one of the agenda at ASEAN Informal Summit II in Kuala Lumpur in 1997.⁵ The meeting was attended by the Hanoi Plan of Action 1997, which included efforts to resolve transboundary haze pollution. In order to make the Hanoi Plan of Action effective, the ASEAN members assessed that they needed to make a binding agreement as a commitment to follow up on this issue.

⁴Indonesia ratifies ASEAN agreement on transboundary haze pollution, <http://www.antaraneews.com/en/news/95683/indonesia-ratifies-asean-agreement-on-transboundary-haze-pollution>, accessed on February 14, 2015 at 4.30 am

⁵ Indonesia Meratifikasi Undang-Undang Tentang Pengesahan Asean Agreement on Transboundary Haze Pollution (Persetujuan Asean Tentang Pencemaran Asap Lintas Batas), <http://www.menlh.go.id/indonesia-meratifikasi-undang-undang-tentang-pengesahan-asean-agreement-on-transboundary-haze-pollution-persetujuan-asean-tentang-pencemaran-asap-lintas-batas/> accessed on January 10, 2015 at 11. 44 am

Finally, in 2002 the whole ASEAN members agreed to sign the ASEAN Agreement on Transboundary Haze Pollution (AATHP) in Kuala Lumpur, Malaysia. Although at that time Indonesia has not yet ratified. They draft the ASEAN Agreement on Transboundary Haze Pollution (AATHP) and entered into force officially on November 25, 2003 which aims to prevent and resolve the transboundary haze pollution from land and/or forest fires which should be implemented through national efforts, regional, and international intensive.⁶

The land and forest fires that hit the ASEAN region in 1997-1998 have been particularly severe. The environmental, economical and social impacts of these fires, and the associated transboundary haze pollution, were profound. The total economic losses in terms of agriculture production, destruction of forest lands, health, transportation, tourism, and economic endeavors have been estimated to more than USD 9 billion⁷.

Based on Indonesia legal system, Law Number 32 of 2009 on the Protection and Management of the Environment stated that everyone is obliged to protect the environment including land owners also have an obligation and responsibility. Therefore, forest and land fire offenders deserve to be punished to provide a deterrent effect. The offender of forest and land

⁶ Teddy Prasetiawan, *Implikasi Ratifikasi AATHP Terhadap Pengendalian Kebakaran Hutan dan Lahan di Indonesia*, Info Singkat, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI, Jakarta, Vol. VI, 2014

⁷ ASEAN Cooperation on Transboundary Haze Pollution, <http://environment.asean.org/asean-cooperation-on-transboundary-haze-pollution/>, accessed on February 14, 2015 at 4.50 am

fires in Riau can be sentenced to 15 years in prison and fined of 15 billion rupiahs maximum, if the fire causes the casualties.⁸

Air pollution from forest fires is against the principles of international environmental law. One principle is "*Sic utere tuo ut alienum non laedes*" which determines that a State is prohibited from or permitted activities that may harm other countries, and the other principle is "*Good Neighborliness*" which basically says that the principle of the sovereignty of the territory of a State shall not be disturbed by other States.⁹

Another principle of international law for the protection of the environment is "*in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*".¹⁰ In principle 21 of the Stockholm Declaration in 1972 also stated, "*responsibility to ensure that activities within reviews their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction*".¹¹

⁸ Bakar Hutan, Ini Hukumannya, <http://www.republika.co.id/berita/nasional/umum/14/03/11/n290lj-bakar-hutan-ini-hukumannya>, accessed on March 19, 2015 at 4 am

⁹ Mohammad Naqib Ishan Jan, 2008, *Principles of Public International Law: A Modern Approach*, Malaysia, IIUM Press, p. 322

¹⁰ United Nations (UN), Rio Declaration on Environment and Development 1992, Principle 2

¹¹ Stockholm Declaration 1972, Declaration of the United Nations Conference on the Human Environment, Principle 21

These principles can be the basis for asking the liability of the state against other state that has committed acts that harm other countries. According to international law, state responsibility arises when the related state harms other countries. In this case, the forest fires in Indonesia have a negative impact on Malaysia and this happens almost every year without any serious follow-up from the Indonesian government.

B. Research Question

What is the responsibility of Indonesian government toward the transboundary haze pollution before and after the ratification of ASEAN Agreement on Transboundary Haze Pollution (AATHP)?

C. The Objectives of Research

To know the responsibility of Indonesia to the transboundary haze pollution based on international law of states responsibility and ASEAN Agreement on Transboundary Haze Pollution (AATHP) before and after the ratification of AATHP.

D. The Advantages of Research

1. Scientific Advantage

This research would increase the knowledge about the international law of states responsibility and the ASEAN Agreement on Transboundary

Haze Pollution (AATHP) in overcoming the problem of transboundary haze pollution in Indonesia and to know what is the responsibility of Indonesian government to the transboundary haze pollution before and after ratification of AATHP.

2. Practical Advantage

This research would develop the understanding on how the international law of state responsibility and ASEAN Agreement on Transboundary Haze Pollution regulate pertaining transboundary haze pollution in Indonesia and also will share what is the responsibility of Indonesian government to the transboundary haze pollution before and after ratification of AATHP.

E. Overview of the Chapters

This research consists of five chapters, namely: Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV Result and Discussion, Chapter V Conclusion and Suggestion.

The aims of this research are to learn more about the responsibility of Indonesian government to the transboundary haze pollution based on international law of states responsibility and ASEAN Agreement on Transboundary Haze Pollution (AATHP) after ratification.

1. Chapter 1: the researcher tries to explain about ASEAN Agreement on Transboundary Haze Pollution (AATHP) and the history of transboundary haze pollution. Chapter I also discuss the objectives of the research and the advantages of the research.
2. Chapter II: Chapter II will explain about the transboundary haze pollution, the international law of state responsibility, international environmental law and ASEAN Agreement on Transboundary Haze Pollution (AATHP).
3. Chapter III: Chapter III will discuss about the research method which is used in the research. This research method consists of type of research, legal materials, technique of collecting data and methods of data analysis. Type of this research is a normative legal research with statute approach and case approach. The research will use material research taken from some literatures consisting of primary legal research, secondary legal material, tertiary legal material and non legal material. Then, the methods of collecting data in this research will be analyzed systematically through juridical thinking.
4. Chapter IV: This chapter will explain on how the implementation of ASEAN Agreement on Transboundary Haze Pollution (AATHP) to the Indonesian government and what is the responsibility of Indonesian government to the transboundary haze pollution before and after the ratification of AATHP.
5. Chapter V: Chapter V consists of conclusion regarding the responsibility of Indonesia government to the transboundary haze pollution before and

after ratification of AATHP and also the suggestion of the problem that faced by Indonesian government.