

CHAPTER I

INTRODUCTION

A. Background

Forest and peatland fire have become a concerning issue in Indonesia for almost four decades.¹ For the last six years these annual problems have not only affected Indonesia, but also its neighboring countries, Malaysia and Singapore. There are two factors that caused forest fire and peatland fire, natural cause and human cause. However, almost 99 percent fires in Indonesia especially in Kalimantan and Sumatra are caused by human activities, whether it is intentional or accidental.²

Since the worst fires in 2015, the government had committed to take serious and effective measure to tackle and prevent the fires from recurring again. However, in 2019, the fires in Sumatra and Kalimantan region have the same level as in 2015. Cross-border haze has again occurred due to the significant increase in the number of forest and peatland fires in 2019. The hazardous smoke produced by the fires that occurred in the regions of Sumatra

¹ Greenpeace Southeast Asia, 2020, *Burning Up: health Impact of Indonesia's Forest Fires and Implications for the Covid-19 Pandemic*, retrieved from: <https://www.greenpeace.org/southeastasia/publication/43859/burning-up-health-impact-of-indonesias-forest-fires-and-implications-for-the-covid-19-pandemic/>, (accessed on 10 November 2020 at 13:00 p.m)

² Antara News, 2019, *Indonesia Pays Serious Attention to Forest Fires Handling*, retrieved from: <https://en.antaranews.com/news/129296/indonesia-pays-serious-attention-to-forest-fires-handling>, (accessed on 10 November 2020 at 13:40 p.m)

and Kalimantan was carried by wind to the neighboring countries of Malaysia and Singapore.³

Due to the haze, the air quality in Malaysia and Singapore reached at the point where it is dangerous and unhealthy for the health. This situation had caused a diplomatic tension between Indonesia and those two neighboring countries.⁴ There is an ASEAN agreement formed on 10 June 2002, it is known as ASEAN Agreement on Transboundary Haze Pollution . The object of the agreement is to overcome the smoke pollution caused by forest fires that have occurred since 1982 in the region of Southeast Asia.

Although Indonesia had not ratified the agreement, the policy regarding fires prevention was implemented by Indonesia in 2009. This is stated in Article 69 paragraph (1) letter H and Article 69 paragraph (2) Law Number 32 of 2009. ASEAN Agreement on Transboundary Haze Pollution was only ratified by Indonesia into law in 2014, which is Law Number 26 of 2014 concerning Ratification of the ASEAN Agreement on Trans-boundary Haze Pollution (ASEAN Agreement on Transboundary Haze Pollution) even though it was officially entered into force and ratified by six countries since November 25 2003.⁵

³ Greenpeace Report, 2020, *Karhutla dalam Lima Tahun Terakhir: Omnibus Law Hadiah Impunitas bagi Pembakar di Sektor Perkebunan Terbesar*, page 6, retrieved from: <https://www.greenpeace.org/indonesia/publikasi/44219/karhutla-dalam-lima-tahun-terakhir/>, (accessed on 11 November 2020 at 10:00 a.m)

⁴ Greenpeace Report, *Ibid.*

⁵ Gamiyel Siouw Josephia Sumoked, Muhammad Hero Soepono, and Godlieb N. Mamahit, "Tanggung Jawab Pemerintah Terhadap Kebakaran Hutan dan Lahan (Karhutla)", *Lex Administratum*, Vol. 8, No. 3 (2020), p. 160.

The purpose of the ASEAN Agreement on Transboundary Haze Pollution is stated in Article 2, it is to prevent and monitor transnational smoke pollution from forest and land fires. Based on the agreement, the forest and land fire mitigation must be carried out on the basis of the principle of sustainable development through agreed national efforts and intensive international and regional cooperation.⁶

It can be concluded that Indonesia failed to prevent and overcome the forest and land fires in Indonesia. This can be proven by the situation where in 2019, Malaysia and Singapore experience almost the same haze pollution in 2015. Indonesia should have done serious and effective measures in preventing forest and land fires in order Malaysia and Singapore would not be affected by the haze as bad as back in 2015.

Indonesia is considered as the exporter of air pollution in the ASEAN region because of the annual forest and peatland fire. Indonesia is also considered as one of the countries with the largest greenhouse gas emitters in the world besides China and US.⁷ In 2019, the haze caused by the fires resulted a really bad condition for the society. Based on Greenpeace Indonesia, the Air Quality Index reached 2000. Meanwhile, the scale of 301-500 is already considered as hazardous.⁸

⁶Article 2 of ASEAN Agreement on Transboundary Haze Pollution

⁷ Mia Sarmiasih, Prawira Yudha Pratama, 2019, "The Problematics of Forest and Land Fire District (Kerhutla) In Policy Perspective (A Case Study: Kalimantan and Sumatra in Period 2015-2019)", *Journal of Governance and Public Policy*, Vol. 6, No. 3, p. 272.

⁸ BBC News, 2019, *Indonesia Haze: Why do Forests Keep Burning?*, retrieved from: <https://www.bbc.com/news/world-asia-34265922>, (accessed on 12 November 2020 at 11:00 a.m)

The annual fires had been a long battle for the government and the society. The impacts caused by the fires, especially the haze pollution is really dangerous and a threat to the health of the people. Moreover, in 2020 the Covid-19 pandemic struck the world, including Indonesia. A research conducted by Harvard University researches shows that long-term air pollution exposure can increase the severity of Covid-19.⁹

The increase of air pollution can increase the vulnerability of people to Covid-19.¹⁰ This condition is really concerning in Indonesia, especially in Kalimantan and Sumatra region. In 2020, there are six provinces have declared alert status of fires, namely, Riau, South Sumatra, Jambi, West Kalimantan, Central Kalimantan, South Kalimantan.¹¹ Even though the fires in 2020 is considered as mild compared to 2019 fires, it is a threat to the society especially in the pandemic situation.

In this regard, the right to a healthy environment should be the government's priority. The right to a healthy environment must be upheld by the government. It is a human right that should not be violated and must be protected.¹² The governments have to protect and ensure the people in living in

⁹ The Harvard Crimson, 2020, *Harvard Researchers Explore Link between Pollution and Covid-19 Mortality*, retrieved from: <https://www.thecrimson.com/article/2020/11/6/hsph-pollution-covid-19-link/>, (accessed on 19 August 2021 at 13:00 p.m)

¹⁰ Greenpeace Southeast Asia, 2020, *Forest Fires Haze: New Greenpeace Report Reveals Alarming Health Impacts and Links to Severity of Covid-19*, retrieved from: <https://www.greenpeace.org/southeastasia/press/43871/forest-fires-haze-new-greenpeace-report-reveals-alarming-health-impacts-and-links-to-severity-of-covid-19/>, (accessed on 12 November 2020 at 13:00 p.m)

¹¹ The Jakarta Post, 2020, *Six Indonesian Provinces Declare Alert Status for Forest and Land Fires*, retrieved from: <https://www.thejakartapost.com/news/2020/08/25/six-indonesian-provinces-declare-alert-status-for-forest-and-land-fires.html>, (accessed on 13 November 2020 at 11:00 a.m)

¹² Sirajuddin and Winardi, 2016, *Dasar-dasar Hukum Tata Negara Indonesia*, Malang, Setara Press.

a healthy environment since it is stated in the 1945 Constitution and Law No. 32 of 2009.

The annual fires show that the government did not put the right to a healthy environment as a priority. Moreover, the government recently passed a new Law, the “Omnibus” Law, which is Law Number 11 of 2020. The law tends to weaken the protection of environment and leads to a great possibility of bad natural resources exploitation. The Job Creation Law also weakens the environmental law enforcement, especially the *Strict Liability* principle, which is an important principle in forest fires cases handling.

Based on the explanation above, the author will discuss the government’s effort to overcome fires, and the impacts of the Job Creation Law towards the eradication of forests and peatlands from fires. There is a previous study conducted regarding the impact of Job Creation Law for the environment which is “Omnibus Law dan Izin Lingkungan dalam Konteks Pembangunan Berkelanjutan” by Al Sentot Sudarwanto and Dona Budi Kharisma. The previous study conducted, focus on the permit matters meanwhile this research focuses on the efforts made by the government to tackle fires and the impacts of the Job Creation Law towards the eradication of forest and peatland from fires.

B. Problem Formulation

Based on the research background explained in the previous section, the author formulated two problem formulations, namely:

1. What are the efforts made by the government to tackle forest and peatland fire?
2. What are the impacts of the Job Creation Law towards the eradication of forest and peatland from fires?

C. Objectives of Research

1. To analyze the efforts made by the government to tackle forest and peatland fire.
2. To analyze the impacts of the Job Creation Law towards the eradication of forest and peatland from fires.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

This study would give benefit to give better understanding of the issue of annual fires and the right of a healthy environment in Indonesia.

2. Practical Aspect

This study would give a better suggestion in order the government to put the fires issue and right to a healthy environment in Indonesia as a priority.