

## URGENCY OF REGULATING LEGAL PROTECTION FOR FOREST AND LAND FIRE VICTIMS IN INDONESIA

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**Abstract:** *A good and healthy environment is a human and constitutional right for every Indonesian citizen (UUD NRI 1945). However, increasingly complex environmental problems continue to threaten human rights, such as cases of forest and land fires. The community is the most disadvantaged party due to the forest and land fires, ranging from environmental damage, healthy problems, delays in the learning process in schools, and other activities that have an impact on economic losses. In this case, the community cannot apply for restitution. The legal problem is that there is a void in norms governing the restitution process for victims affected by environmental crimes in general, including victims of forest and land fires. Therefore, it is necessary to examine the urgency of regulating legal protection for the victims, so that the position of victims of environmental crimes of forest and land fires is the same as victims of other crimes such as victims of violence, victims of terrorism, and victims of other acts of violence which regulated in Law Number 31 of 2014 concerning Amendments to Law number 13 of 2006 concerning the Protection of Witnesses and Victims. This study aims to examine the urgency of regulating legal protection in the form of restitution for forest and land fires victims. This research is normative legal research. The results of this study conclude that the urgency of regulating legal protection for victims affected by forest and land fires must be carried out. The restitution is given by considering the number of losses suffered by the affected victims.*

**Keywords:** *legal protection, victims of forest and land fires, restitution, social justice*

### Introduction

Environmental issues have become an indicator of the strengthening of democratic practices in a country with the argument that the protection and fulfillment of environmental rights is part of citizens' participation in formulating democratic policies. The 1945 Constitution of the Republic of Indonesia (hereinafter written as the 1945 Constitution of the Republic of Indonesia) states that a good and healthy environment is a human right and a constitutional right for every Indonesian citizen. Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: *"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services."*

Therefore, the state, government, and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development, so that the Indonesian environment can remain a source and life support for the Indonesian people and other living creatures. The change in the paradigm of development and the environment in

the 1945 Constitution of the Republic of Indonesia and other laws and regulations is a phenomenon of the adjustment of universal values that continues to develop national development and the environment. With competition in the era of increasingly rapid globalization, the role of environmental law is increasingly inevitable, to ensure legal certainty. The position, role, and function of environmental law are very important in the administration of the State and Government. Law 32 of 2009 is a law that specifically regulates the protection and management of the environment.

The act of burning forests, gardens, and land intentionally for any purpose is prohibited by law. There are three rules that forbid residents from burning land, namely: Law Number 41 of 1999 concerning Forestry as promulgated in the State Gazette of the Republic of Indonesia of 1999 Number 167, an additional State Gazette of the Republic of Indonesia Number 3888 (hereinafter written the Forestry Law), Law Number 39 of 2014 concerning Plantations as promulgated in the State Gazette of the Republic of Indonesia of 2014 Number 308 Supplement to the State Gazette of the Republic of Indonesia Number 5613 (hereinafter written Plantation Law), as well as Law Number 32 of 2009 concerning Environmental Protection and Management. It is currently known that forest fires and land in the number of areas of Indonesia are expanding. Based on data from the National Disaster Management Agency (BNPB), the area of forest and land fires in Indonesia in the January-August 2019 period reached 328,724 hectares. Riau Province is the largest area experiencing forest fires, reaching 49,266 hectares, followed by Central Kalimantan with an area of 44,769 hectares. The fire also created thick smog. Even Malaysia and Singapore claim to receive shipments of haze from Indonesia. According to the Ministry of Environment and Forestry (KLHK) data records that the area of forest and land fires from January to September 2019 was 857,756 ha, with details of mineral land 630,451 ha and peatland 227,304 ha. Central Kalimantan has the burned areas about 134,227 ha, West Kalimantan 127,462 ha, South Kalimantan 113,454 ha, Riau 75,871 ha, South Sumatra 52,716 ha, and Jambi 39,638 ha. Data on forest and land fires in 2019 reached 857,756 hectares, consisting of 630,451 hectares of mineral land and 227,304 hectares of peatland. The forest and land fires that occurred in 2019 were the 3rd largest fires, whereas previous fires also occurred in 1997 and 2015. Data from KLHK states that the government has won a civil lawsuit over the case of forest and land fires that occurred in 2019 with total compensation of Rp. 315 trillion. "The total comes from 9 (nine) *inkracht* lawsuits which were granted by the Supreme Court (MA) from 17 civil lawsuits related to forest and land fires that were filed by the Directorate General of Law and Human Rights of the Ministry of Environment and Forestry to the court. According to Rusmadya Maharuddin: forest and land fires occur due to lack of supervision and law enforcement as instruments that can be used to create a deterrent effect. Law enforcement is also part of efforts to prevent the recurrence of these fires. The government is still weak in terms of supervision and law enforcement related to forest and land fires that occurred recently. Rusmadya also said that the legal process in the case of forest and land fires that have been carried out has 11 companies that have signed (*inkracht*) which have been fined Rp. 18.9 trillion, but there is no realization, whether it has been fulfilled or not [1].

The perpetrators of forest and land burning so far have not been prosecuted decisively, and it seems that only a few are followed up in court. In general, dispute resolution is normative, i.e. the settlement method is applied to laws and regulations, where the most frequent sanctions are administrative sanctions for companies that burn forests.

The question is whether administrative sanctions can solve problems for victims affected by forest and land fires such as acute respiratory infections (ARI), the impact on the community's economy, reduced work efficiency both in offices and schools, disruption of transportation, immaterial and material losses. the affected victims, even causing transboundary haze pollution to neighboring countries such as Singapore, Malaysia, and Brunei. Several research results on law enforcement in cases of forest and land fires conclude that existing legal instruments in Indonesia have not been able to overcome this problem [2]. Hamilton (2019) in his dissertation explores the application of pollution offenses in New South Wales, Australia as part of some prosecution (and by extension, a comparable jurisdiction). His Analysis of the verdicts on land and environmental pollution violations, from interviews with communities involved in prosecuting these violations, reveals that the prosecutions reached a conceptualization of binary justice; namely justice as a procedure and justice as a result [3] . Susanto and Surono (2021) state that it is necessary to enforce environmental laws in an integrated manner to inhibit the rate of pollution and environmental destruction [4]. Enforcement of environmental law is closely related to the ability of the apparatus and citizens' compliance with laws and regulations. By the court's decision in this study, it is suspected that environmental law enforcement officers have not made much progress and have not understood the environmental law enforcement system that should be carried out in an integrated manner. Buys and Lewis (2021) stated that there is a need for other appropriate legal mechanisms for individuals and communities to advocate for their environmental rights and obtain appropriate remedies when their human rights are affected by environmental degradation [5]. Tuhule also concluded from the results of his research that there are confusing loopholes in law enforcement regulations in cases of forest and land burning [6].

The results of Erdiansyah research conclude that there is a reluctance of criminal courts to impose criminal liability on corporations, due to the un-simplicity of legal instruments and laws regulations [7]. There are three legal remedies related to forest and land fires: (1) administrative sanctions which are the authority of the central government, namely the Ministry of Environment and Forestry, (2) civil sanctions, and (3) criminal sanctions. Article 84 of Law no. 32 of 2009 concerning Environmental Protection and Management states: (1) Settlement of environmental disputes can be reached through the courts or outside the courts. (2) The choice of settlement of environmental disputes is carried out voluntarily by the disputing parties. (3) A lawsuit through the court can only be taken if the efforts to resolve the dispute outside the chosen court are declared unsuccessful by one of the parties to the dispute [7].

The incompleteness of legal protection norms in the settlement of forest and land fire cases to protect the rights of the affected community based on the principles of social justice causes the compensation process for victims to be unable to be fought properly. The impact of forest and land fires is not only on the environment but also on society, both on health and the economy. So far forest and land fires victims have not received attention, especially regarding compensation that is appropriate for the affected community. Therefore, it is also necessary to review from the side of compensation resulting from forest and land fires on the rights of the community to be able to live in a good and healthy environment. On the other hand, in cases of crime victims, compensation for victims is regulated according to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Sanctions and Victims as promulgated in the State

Gazette of the Republic of Indonesia of 2014 Number 293 In addition to the State Gazette of the Republic of Indonesia Number 5602 (hereinafter written Law 31 of 2014), there is the term restitution, namely compensation given to the victim or her family by the perpetrator or a third party (Article 1 Number 11).

Payment of compensation charged to the perpetrator based on a court decision with the permanent legal force for material and/or immaterial losses suffered by the victim or his heirs (Article 1 point 1 PP 43 of 2017). Based on the description above, the writer is interested in studying the urgency of legal protection in the form of restitution for forest and land fires victims as the criminal justice system in Indonesia based on the principles of social justice. This is so that the applicable law can truly protect the community. Substantially, legal products in the form of laws and regulations can be said to have good quality if they can accommodate and protect the interests of the entire community.

## **Method**

This research is normative legal research. Normative legal research is research that puts law as a building system of norms or dogmatic law research or doctrinal research. The system of norms in question is about principles, norms, rules of statutory regulations, court decisions, agreements, and doctrines (teachings). Normative legal research was chosen by the author because there is a norm gap in the settlement arrangements for victims affected by forest and land fires in Indonesia. The approach used to discuss the problems in this research is the statutory approach, the conceptual approach (analytical and conceptual approach), and the case approach, using inductive reasoning to analyze problems that occur in general and then analyze the problems. to find answers that are specific and find the truth objectively. Legal research methods emphasize secondary data by studying and reviewing legal principles or principles both in positive legal rules, cases, and provisions of national legislation and those relating to the subject matter under study, namely regarding legal protection to victims affected by forest and land fires based on the principles of social justice. There are 3 sources of legal materials, namely: Primary legal materials (primary resources or authoritative records). The 1945 Constitution of the Republic of Indonesia, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, the Criminal Code Law Number 32 of 2009 concerning Protection and Management Environment, and Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. Secondary Legal Materials (secondary resource or not authoritative records), and Tertiary Legal Materials such as dictionaries, encyclopedias, internet, and so on.

The method of collecting legal materials is through Literature Studies, by studying legal materials, exploring principles, norms, rules from laws and regulations, court decisions, agreements, and doctrines (teachings). The method of analysis of all legal materials that have been collected, both primary legal materials, secondary legal materials, and tertiary legal materials are analyzed descriptively, using inductive logic. The legal material is described to obtain a systematic explanation. The description is carried out to determine the content or meaning of the legal material according to the theme of this research problem. From the legal materials that have been collected, both those obtained from the results of library research and cases that occurred in the field, a qualitative

descriptive analysis is then carried out, namely an analysis that describes the actual situation regarding certain facts.

## **Result and Discussion**

One of the functions of law is to provide protection where the law is grown and needed by humans precisely based on the product of human research to create conditions that protect and promote human dignity and to enable humans to live a normal life in their dignity. Montesquieu, in his view of the state, states that the best state is a state of law because in the constitutions of many countries there are three cores, which are as follows: Protection of human rights; Stipulation of state administration of a country; and Limiting the power and authority of the people of the state. According to R. La Porta et al (2000) in the *Journal of Financial Economics*, the form of legal protection provided by a country has two properties, namely prevention (prohibited) and punishment (sanction) [8]. The most obvious form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation dispute resolution institutions. In line with the understanding of law according to Soedjono Dirdjosisworo which states that the law has various meanings in society and one of the most obvious of the notions of law is the existence of law enforcement institutions. Law enforcement in the form of legal protection, for example in economic activities, especially investment, cannot be separated from the legal aspects of the company, especially regarding limited liability companies because legal protection in investment involves several business actors, including investors, directors, commissioners, permit givers and power holders. as well as parties supporting the occurrence of investment activities such as officials making authentic deeds, namely Notaries, where the parties are dominated by legal subjects in the form of legal entities in the form of limited liability companies [9].

Related to the theory of legal protection, there are several experts had explained this discussion, including Fitzgerald, Satjipto Raharjo, Philipus M Hadjon, and Lily Rasyidi. Fitzgerald quotes the term legal protection theory from Salmond that the law aims to integrate and coordinate various interests in society because, in the traffic of interests, protection of certain interests can be done by limiting various interests on the other hand [10]. The interest of the law is to take care of human rights and interests so that the law has the highest authority to determine human interests that are deemed necessary to be regulated and protected. Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which an agreement by the community to regulate behavioral relations between community members and between individuals and the government which is considered to represent the interests of the community[10]. According to Satjipto Rahardjo, legal protection is to protect human rights (hereinafter referred to as human rights) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law [11]. Phillipus M. Hadjon stated that legal protection for the people is preventive and responsive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes from occurring, including their handling in the judiciary [12]. Meanwhile, according to Lili Rasjidi and I.B Wysa Putra that the law can be functioned to realize protection that is not only adaptive and

flexible but also predictive and anticipatory [13]. From the descriptions of the experts above, it provides an understanding that legal protection is a description of the workings of the legal function to realize legal goals, namely justice, benefit, and certainty.

The results of Abdurrachmana et al. study concluded that there are three main obstacles in enforcing environmental law in Indonesia: the inability to deal with corporations that have strong political support, overlapping authorities in the process of investigating criminal acts, and the difficulties faced by law enforcement officers in dealing with criminal acts. looking for evidence. Based on this study, a model of legal protection for victims of pollution and/or environmental destruction is proposed using the principles of restorative justice. In this model, the judge can represent the facilitator from the state for the initial stage. The value of this model is that rather than simply pursuing punishment for the perpetrator, it is better to shift the focus towards compensating victims by perpetrators [14]. Legal protection is a protection given to legal subjects, individuals, or legal entities by the rule of law, both preventive and repressive, both written and unwritten in the context of enforcing legal regulations. Legal protection is to protect human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party. In international environmental law, several major international environmental law conventions and declarations have included environmental rights in their articles and principles. The inclusion of environmental rights or elements in environmental rights is not done with homogeneous words or language.

In general, global and regional environmental treaties since 1991 contain at least a reference to public information access to remedies. Basically in the convention or declaration, it contains principles on environmental rights, especially regarding public participation in environmental management, even some treaties contain substantive rights for certain environmental qualities, but there are also conventions such as the Lugano Convention, which focuses on repairing environmental damage. In searching for the relationship between environmental rights and various international agreements, the researcher uses several keywords which are the core of environmental rights. Some of the keywords used include the following: human rights that protect the minimum biological requirements for humans to survive; the right to eat, drink, and shelter; individual and group participation; providing and guaranteeing access to information to public; establishment of institutions that have the authority. There are several experts who explain this discussion, including Fitzgerald, Satjipto Raharjo, Philipus M Hadjon, and Lily Rasyidi. Fitzgerald quotes the term legal protection theory from Salmond that the law aims to integrate and coordinate various interests in society because the traffic of interests, protection of certain interests can be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests so that the law has the highest authority to determine human interests that are deemed necessary to be regulated and protected.

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Legal protection is to protect human rights that have been harmed by others. This protection is given to the community so that they can enjoy all the rights granted by the law. Legal protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party. Legal protection is an action or effort to protect the community from arbitrary actions by authorities that are not the rule of law, to create order and peace to enable humans to enjoy their dignity as human beings. Satjipto Raharjo stated that legal protection is protecting human rights that have been harmed by others, and this protection is given to the community so that they can enjoy all the rights granted by the law [11]. According to Philipus M. Hadjon, legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on the provisions of arbitrariness [12].

Law enforcement is part of the legal system that cannot be separated from legal substance and legal culture. Based on Lawrence Friedman's legal theory which explains that the ideal legal system is a good correlation between substance, structure, and culture [15]. Looking at the realm of application of criminal law enforcement against perpetrators of forest and land burning, not all cases of forest and land burning are followed up to the realm of the court, but there is also a cessation of case investigations. Ninety percent (90%)

of cases of forest and land burning carried out by individuals (communities) are more dominant in legal action until the court's domain and in contrast to cases of forest and land burning by corporations, only 2 (two) corporations have arrived in court and have a fixed sentence, while the others are subject to termination of the investigation.

The process of handling law enforcement against perpetrators of forest and land burning starts from the stages of investigation by the police, prosecution by prosecutors, and court decisions by judges. All these processes are carried out in handling this case. At the investigation stage in the case of handling forest and land fires, PPNS (civil servant officers) from the environmental and forestry services and police investigators are carried out. Article 94 of Law Number 32 of 2009 concerning Environmental Protection and Management: "In addition to investigators from the Indonesian state police, certain civil servants within government agencies whose scope of duties and responsibilities are in the field of environmental protection and management are authorized as an investigator as referred to in the criminal procedural law to investigate environmental crimes. The investigation process is a series of actions by investigators in terms of and according to the method regulated by law to seek and collect evidence with which evidence makes clear about the criminal act that occurred to find the suspect.

By tackling environmental violations and preventing their excesses, it is clear that legal efforts are needed that are carried out professionally by the Police, Civil Servants, Prosecutors, and Judges who obtain environmental certification. It is also important to strengthen the education and training system as well as certification assessment to develop an environmentally oriented mindset of law enforcement. These practices are considered practical implications for resolving environmental violations under environmental criminal law. The further solution is establishment of law enforcement officers for environmental violations under legal institutions. This institution is thus integrated under the spirit of the One-Stop Enforcement System model from which environmental problems can be solved. This integrated model is important to expand the space for citizen justice so that justice can be managed properly in the context of good environmental enforcement under the principles of good environmental governance (S. Wijoyo and W. Prihatiningtyas, 2016) [16].

Disruption of daily activities, the presence of smoke disturbances automatically also interferes with daily human activities. For example, in the morning some people cannot carry out their activities because of the difficulty of sunlight penetrating the air filled with smoke. Likewise, many activities require humans to be outside the room. The presence of smoke disturbance will reduce the intensity of his being outside the room. The thickness of the smoke also forces people to use masks, which can increase the cost and interfere with the daily activities of the community. Disruption of health. From a health point of view, the biomass smoke emitted by forest fires contains various hazardous components. This component consists of gases and particles. Gas components that have a major role in disturbing health are carbon monoxide and aldehydes. In addition, the detrimental effects of ozone, nitrogen oxides, carbon dioxide, and hydrocarbons were recorded. In forest fires, various types of substances can fly away, and in this transportation are converted into Nitrate Species and organic Oxygen [2].

The first impact of forest fires on human health is that they can cause eye and skin irritation. Eye and skin irritation may occur when exposed to smoke directly. Forest fire smoke, causes itching, watery eyes, inflammation, and infection. Another impact of forest

fires is that they can worsen asthma and other chronic lung diseases such as chronic bronchitis, COPD, and so on. The smoke from forest fires will be inhaled into the lungs so that the lung's ability is reduced causing fatigue and difficulty in breathing. Haze from forest fires can cause local irritation to the mucous membranes in the nose, mouth, and throat which are directly exposed to forest fire smoke, and cause allergic reactions, inflammation, and possibly infection, ranging from Pollutants in forest fire smoke that fall to the earth's surface may also be a source of pollutants in clean water and unprotected food. The loss of several community livelihoods in and around the forest.

Some people who have been depending on forest products for their lives are unable to carry out their activities. The smoke generated from the fire more or less interfered with his activities which automatically also affected his income. After the fire was over, it was confirmed that the community had lost some areas where they used to make forest products such as rattan, rubber, and others. Another problem that arises after the occurrence of forest and land fires is the increase in the number of pests. Many species are said to be pests if their presence and activities interfere with the production process carried out by humans. The absence of rules regarding restitution will certainly make it difficult for victims of forest and land fire crimes who will apply for compensation. First, the victim does not know for sure the damages that can be claimed. Second, the victim does not know when the request for compensation is submitted: can the victim directly submit the request for compensation to the LPSK immediately after the crime has occurred, or before the public prosecutor submits a criminal charge, or before the judge makes a decision? Third, the victims do not know the mechanism that can be taken if the perpetrator of the crime of forest and land fires is unable or unwilling to pay the compensation requested by the victims. The four victims also do not know the period of payment of compensation from the perpetrator of the crime to him since the judge's decision requiring the perpetrator to pay compensation to the victim has permanent legal force.

The urgency of the norm of regulating legal protection for victims affected by forest and land fires must be carried out to provide compensation as a form of responsibility from the perpetrators to urge it to be promulgated based on the principles of social justice. The compensation is given by considering the number of losses suffered by the affected victims. This compensation is a form of civil liability, the perpetrators of criminal acts can also be given criminal responsibility in the form of criminal sanctions and fines, as well as administrative responsibility in the form of administrative sanctions and revocation of the business license granted.

## **Conclusion**

The results of this study conclude that the urgency of regulating legal protection for victims affected by forest and land fires must be carried out to provide restitution. This is the form of responsibility from the perpetrators of forest and land burning. The restitution is given by considering the number of losses suffered by the affected victims. This compensation is the form of civil liability, and the perpetrators of criminal acts can also be given criminal responsibility in the form of criminal sanctions and fines, as well as administrative responsibility in the form of administrative sanctions and revocation of their business licenses.

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