

Law Enforcement Against Perpetrators of the Crime of Burning Peatlands in Banjar Regency

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Abstract: Forest and land fires can have a tremendous impact, especially if the fires involve peatland fires. The purpose of this study is to find out and analyze law enforcement against peatland burning perpetrators in Banjar Regency, and the obstacles to Law Enforcement against peatland burning perpetrators in Banjar Regency. This type of research is an empirical/field legal research with data sources in the form of primary data and secondary data with research locations at the Banjar District Police and the South Kalimantan Provincial Forestry Service. The results showed that law enforcement against peatland burning perpetrators in Banjar Regency from 2019-2021 carried out by the Banjar Police Crime Unit and the Forestry Police of the South Kalimantan Province Forestry Service who entered the investigation stage amounted to 1 case, the causal factors (1) increased public awareness by not clearing land using the burning method, (2) due to natural factors that in 2020 and 2021 the dry season in South Kalimantan Province will not be prolonged, and (3) increasing socialization of forest and land fire prevention carried out by the authorities including the police. The obstacles in law enforcement against the perpetrators of burning peatlands in Banjar Regency are that there are no cases that have entered the investigation stage due to the absence of suspects and also the absence of witnesses who heard and saw the criminal act of burning peatlands. Lack of PPNS Polhut investigator personnel at the Forestry Service.

Keywords : Burning; Law Enforcement; Peatlands

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INTRODUCTION

Forest and land fires can have a tremendous impact, especially if the fires involve peatland fires, firstly, greenhouse gas emissions that are produced continue to persist in the atmosphere, which is a problem in the world, secondly, damaged peat. irreversible, and fires in peatlands can produce hydrogen cyanide which is highly toxic.

Based on the information of experts in the field of forest and land fires, namely Bambang Hero Saharjo, the impact of land fires causes air pollution by exceeding air quality standards, where during the fire there has been a release of greenhouse gases in the form of 1782 tons C; 1603.8 tons of CO₂; 5.13 tons of CH₄; 3.37 tons of NO_x; 1.44 tons of NH₃; 7.69 tons of O₃; and 136.3 tons of CO and 79.2 tons of particulate matter.

In the Standard Operating Procedure (SOP), namely SOP-GEN-013 dated December 1, 2014 dated December 1, 2014, in the event of a fire, it is also stated that those responsible for land fires are the Emergency Management Team (TPKD), which in this case is chaired by Ir. Andhira Dharma Bin (BLHD) Prov. South Kalimantan stated that usually the person who signs the RKL report, RPL is the person who is responsible for environmental problems, this is also

reinforced by the opinion of an expert, namely Bambang Hero Saharjo, M.Agr who stated that based on Law No.18 of 2004 concerning Plantations and Regulation No.26/Permentan/OT.140/2/2007 concerning Guidelines for plantation business licensing, every business actor is obliged to maintain the preservation of environmental functions and prevent damage by implementing environmental impact analysis or environmental management efforts and environmental monitoring efforts. environment and/or environmental risk analysis and management as well as monitoring its implementation as contained in the RPL, RKL which will later be reported to the Provincial, Regency and Ministry of Environment BLHD, and companies that do not carry it out are categorized as having intentionally not carried out prevention, mitigation and and monitoring forest and land fires at their business locations. The same thing was also conveyed by an expert from Ir. Andhira Dharma Bin Ilyas Sudikto, namely HM Hadin Muhjad who stated that if someone signs the RPL and RKL, he is also responsible for environmental damage.

Based on data from Karhutla in South Kalimantan and the area affected from January 1 to August 19, 2019 as follows:

TABLE 1
Forest and Land Fires in South Kalimantan

City/Regency	KARHUTLA IN KALSEL 1 January – 19 August 2019 Total Occurrence	Land Area (Hectare)
Banjarmasin	3	0.95
Banjarbaru	98	125.64

Banjar	43	120.87
Barito Kuala	7	20.3
Tapin	56	263.6
DAS	50	112.19
HST	21	48.4
DAS	2	22.5
Balangan	31	163 ,91
Tabalong	28	64.4
Tanah Laut	137	232.06
Tanah Bumbu	28	94.1
Kota Baru	22	45
Total	526	1,313.92

Source: BPBD KALSEL

Based on the author's search, there are several who carry the same theme but there are differences regarding the substance, among others : written by Faisal Bakri with the title "Juridical Review of Law Enforcement Against the Crime of Land Burning in the Legal Area of the Kuantan Mudik Police Sector"¹ the second was written by Sultan Parsaulian with the title: "Policy Analysis in Enforcement of Environmental Law in Indonesia"² and the third written by Vivi Arfiani Siregar and Jamri with the title "The Realization of Sanctions Against Forest and Land Burners in Aspects of the Law on the Eradication of Criminal Acts of Corruption"³.

¹ Faisal Bakri, "Tinjauan Yuridis Penegakan Hukum Terhadap Tindak Pidana Pembakaran Lahan Di Wilayah Hukum Kepolisian Sektor Kuantan Mudik," *Juhanperak* 1, no. 1 (2020): 28–38, <https://ejournal.uniks.ac.id/index.php/PERAK/article/view/540>.

² Baginda Parsaulian, "Analisis Kebijakan Dalam Upaya Penegakan Hukum Lingkungan Hidup Di Indonesia," *Jurnal Reformasi Administrasi* 7, no. 1 (2020): 56–62, <https://ojs.stiami.ac.id/index.php/reformasi/article/view/839>.

³ Vivi Arfiani and Jamri, "Perwujudan Sanksi Terhadap Pelaku Pembakaran Hutan Dan Lahan Dalam Aspek Undang-Undang Pemberantasan Tindakan Pidana Korupsi," *Jurnal Karya Abdi* 1, no. 1 (2020): 1–14,

Based on the existing background, researchers are interested in conducting research with the problem of how are law enforcement efforts against perpetrators of burning peatlands in Banjar Regency?, and what are the obstacles in law enforcement against perpetrators of burning peatlands in Banjar Regency?

METHOD

type of research is empirical/field legal research with data sources in the form of: (1) primary data, namely the results of interviews with investigators from the Banjar Police and PPNS investigators at the Forestry Service of South Kalimantan Province, and (2) secondary data in the form of legal materials in the research obtained. through literature study consists of: primary legal materials, secondary legal materials and tertiary legal materials, non-legal materials.

The research location was to obtain primary data at the Banjar District Police and the South Kalimantan Provincial Forestry Service. The location of the study was chosen because the two agencies were found in that area where

<https://ejournal.unisi.ac.id/index.php/karya/article/view/1000>.

there were many criminal acts of burning peatlands. The data analysis technique used in this study is a qualitative analysis technique, namely the analysis that prioritizes the depth/quality of the data, not the large amount of data.

ANALYSIS AND DISCUSSION

Law of Enforcement against Peatland Burners in Banjar Regency

The existing condition of Banjar Regency is an area that is mostly peatland agricultural area which is highly flammable, therefore fires in peatland agricultural areas in Banjar Regency are quite large.

Banjar Regency is one of the regencies in South Kalimantan with Martapura as its capital. Geographically, it is located between 2°49'55 – 3°43'38 South Latitude and 114°30'20" – 115°35'37" East Longitude. Banjar Regency has an area of 4,688.50 Km², has a population of 534,699 people (data for December 2014). This area is bordered by Tapin Regency in the north, Tanah Laut Regency and Banjarbaru City in the south, Kotabaru Regency in the east, Barito Kuala Regency and Banjarmasin City in the west.

The Banjar Regency area is mostly dominated by climate type B, with annual rainfall ranging from 2,000 – 2,500mm, rainfall per rainy day ranging from 9.5 – 18.6 mm/rainy day and rainy days per month on average ranging from 12.3 – 15.6 days/month. Air pressure ranges from 1,007.3 – 1,014.3 milibars and air humidity ranges from 48% – 100%. Meanwhile, the air temperature ranges from 20° C – 36.2° C, and the average wind speed is 5.5 knots. The percentage of solar radiation ranges from 21% – 89%.

In this study, the location for obtaining primary data was in Gambut District, Ban-

jar Regency. The research location was chosen because the sub-district has a fairly large peatland agricultural area. In addition, the local community still plays a role in peatland agricultural activities.

Peatland agricultural areas in Gambut District have the most hotspots due to the existing conditions, most of which are peatland areas that are easily burned. Gambut District is the most vital area affected by the peat fire disaster.

Concrete law enforcement is the application of positive law in practice that must be obeyed. So, giving justice in a case means deciding the law *in concreto* in guaranteeing and maintaining compliance with material law by using the procedure established by formal⁴

law. Enforcement of criminal law in the environmental field is carried out by law enforcement officers, investigators from the Indonesian police and PPNS, prosecutors, judges, correctional institutions, and advocates advocating for defendants.⁵

Land burning is a burning event that spreads freely in unplanned areas and consumes natural fuel from peatlands. Incidents where fire devours vegetative material that occurs in peatland areas that spread freely and uncontrollably, while land fires occur in non-forest areas. The cause of land burning can occur from several factors, for example due to human negligence, the arrival of the dry season, or because there is no fuel.

The application of criminal sanctions against perpetrators of land burning has been regulated in Law No. 23 of 2009 concerning

⁴ Dellyana Shant, *Konsep Penegakan Hukum* (Yogyakarta: Sinar Grafika, 1988), 33

⁵ Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia* (Yogyakarta: Graha Ilmu, 2001), 163.

Environmental Protection and Management (UUPPLH). Because in the applicable law, criminal sanctions given to perpetrators have several forms according to the crime committed. Law Number 23 of 2009 concerning Environmental Protection and Management (UUPPLH) in Article 99 Paragraph (1) there are several forms of criminal acts related to destruction and pollution as well as threats of sanctions against criminal acts. environmentalambient, water quality standards, sea water quality standards, or environmental damage standard criteria.

Law enforcement is a responsibility that must be carried out for comfort and security

in the community in terms of law enforcement against the crime of burning peatlands in Banjar Regency which occurs almost every year during the dry season, law enforcement officers in this case the Banjar Police and the Forestry Police of the Forestry Service The Province of South Kalimantan in carrying out law enforcement against the criminal act of clearing peatlands by burning methods every year has handled the case, this can be seen in the data on the handling of case investigations contained in the Banjar Police Satreskrim and the Forestry Police of the South Kalimantan Provincial Forestry Service:

TABLE 2
Investigation Cases of Burning Peatlands
in Banjar Regency

No	Year	Banjar Police	Polhut Dishut South Kalimantan
1	2019	1	0
2	2020	0	0
3	2021	0	0

Source: Research Results, 2021

Based on research data, the number of cases of burning peatlands in the period 2019-2021 has reached the investigator There was only one fish case at the Banjar Police, namely on September 11, 2019 in Keladan Village, Gambut District, Banjar Regency.

Meanwhile, in the Forestry Police of the South Kalimantan Province Forestry Service, there are no cases of burning peatlands which have reached the stage of investigation by the Banjar Resort Police (Polrest) in dealing with forest and land fires. as follows:

TABLE 3
Activities of Banjar Police in Enforcement of Law Enforcement of
Burning Peatlands

No	Activity	Description of Activities
1	Preemptive	<ul style="list-style-type: none"> - Dissemination in the form of lectures, installation of warning banners - Mapping areas prone to peatland fires - Empowering village communities around peatlands - Building canals

2	Preventive	<ul style="list-style-type: none"> - Routine patrols around peatlands - Prepare fire extinguisher facilities - To extinguish the burned area
3	Repressive	<ul style="list-style-type: none"> - Investigation of the perpetrators of burning peatlands - Investigation of the perpetrators of burning of peat

Source: Interviews with Investigators from Banjar Police and Peat Police Sector

Law enforcement efforts are very important after the occurrence of a violation of the legal rules that have been set, but prevention of a violation will be prioritized so that it does not occur, the prevention of peatland fires carried out by the Banjar Police is divided into three forms, as follows:

1. Preemptive efforts

- Put up banners : 156 locations with a total of 399 sheets.
- Spread the appeal: 198 times with a total of 1,000 sheets distributed.
- Outreach to the community: 39 times
- Cooperation with the Non-Governmental Fire Department
- Construction of artesian wells: 100 units.
- Prepare a water pump machine to extinguish fires from modified four-wheeled and two-wheeled motorized vehicles as many as 8 units (5 units at the Banjar Police Station and 3 units at the Gambut Police Station).

2. Preventive efforts

- Carry out forest and land fire patrol activities using 2 (two) and 4 (four) wheels.
- Carry out regular preparedness meetings at the Resort Police and Polsek.
- Carry out exercises using gps to make it easier to read hotspot points.
- Placing personnel at the Karhutla monitoring post.
- Provide mobile health services to communities affected by smog-related dis-

eases.

- Give free masks to schools.
- Carry out the fire with the assistance of the relevant agencies.
- Establish a fire and forest fire post near the fire location to directly monitor the development of forest and land fires.
- Establish a forest and land fire post near the fire location to directly monitor the development of forest and land fires.
- Efforts to control environmental impacts need to be carried out by making maximum use of monitoring and licensing instruments.⁶

3. Mitigation and Disaster Reduction Efforts

- Campaign and socialization of peatland fire control policies.
- Increase fire care community.
- Establishment of a peatland fire fighting force.
- Construction of firebreaks, especially between agricultural land and plantations.
- Avoid clearing peatlands by burning.
- Conduct strict monitoring of land burning for peatland clearing.
- Replanting burnt areas with heterogeneous plants.
- Unity of perception in controlling peatland fires.
- Provision of emergen-

⁶ Aminah, "Mewujudkan Penegakan Hukum Lingkungan Yang Ideal Di Semarang," *Bina Hukum Lingkungan* 2, no. 1 (2017): 90, <https://bhl-jurnal.or.id/index.php/bhl/article/view/bhl.v2n1.8>.

cy response funds for dealing with peatland fires in each related work unit.

The Banjar Police in an effort to enforce the law on the crime of burning peatlands so that it can be measured, clearly, effectively and efficiently, has established a Standard Operating Procedure (SOP) for the Investigation and Investigation of Forest and Land Fires (Karhutla). Standard Operating Procedures (SOPs) are made in order to realize the same pattern of action for investigators/assistant investigators in carrying out investigation and investigation tasks so that they can be legally accounted for.

The forms of law enforcement activities carried out by the Banjar Resort Police are as follows:

- 1) Arresting suspects by a team of forest and land fire investigators.
- 2) Conducting investigation of the crime scene by the team of investigators at the site of former peatland fires.
- 3) Installing police lines at the site of former peatland fires.
- 4) Conducting checks on suspects
- 5) File
- 6) submission Submission of suspects and evidence to the public prosecutor

Land fires in 2020 to 2021 decreased compared to previous years, this is a good increase, as can be seen in Banjar Regency which in the previous year had the highest number of land fires , but in 2020 to 2021 it decreased to no cases. According to investigators from the Banjar Police, this happened due to several factors including:

- 1) increased public awareness by not clearing land using the burning method;
- 2) due to natural factors which in 2020 and 2021 the dry season in South Kaliman-

tan Province is not prolonged;

- 3) increased socialization of forest and land fire prevention conducted by the authorities, including the police.

Obstacles to Law Enforcement againts Peat Burners in Banjar Ragency

One indicator of the rule of law is the success of law enforcement. It is said to be successful because the laws that have been regulated, should and have been due, are implemented and obeyed by all elements of society. The absence and lack of maximum law enforcement can have implications for the credibility of the rule makers, the implementers of the rules and the community affected by the rules themselves, so that all elements will be affected which will cause new problems, including the occurrence of horizontal and vertical social conflicts which will eventually lead to conditions instability of public order and security⁷. For this reason, it is important to know what law enforcement really is. Law enforcement is the process of making efforts to enforce or function legal norms that apply and have been regulated as guidelines for behavior in traffic or legal relationships in human life in society and the state. For this reason, the provisions that have regulated it will not stop in the sense of rules that do not move or die, but will still stand and move forward as determined by official institutions and recognized by the state to regulate them. Broadly speaking, the process of law enforcement involves all legal subjects in every legal relationship. Anyone who carries out norma-

⁷ Teddy Minahasa Putra, "Analisa Yuridis Penyimpangan Penegakan Hukum Pada Konflik Lahan Di Provinsi Jawa Timur," *Arena Hukum* 14, no. 1 (2021): 47, <https://arenahukum.ub.ac.id/index.php/arena/article/view/1106/>.

tive rules or does or does not do something based on the norms of the applicable law, then that means that they have implemented or enforced the rule of law.

Meanwhile, narrowly from the aspect of the subject, law enforcement can be interpreted as an effort by certain law enforcement officials to be able to guarantee and ensure that the rule of law runs as it has been regulated by the rules. This is to ensure that the law is enforced, if necessary, law enforcement officers are allowed to use coercive power. From the point of view of the object, namely from the legal aspect of law enforcement, the meaning also includes broad and narrow meanings. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules or the values of justice that live in society. Things are different in a narrow sense, then law enforcement is only limited to the enforcement of formal and written regulations issued by the institution authorized to issue these rules. However, in the field of law enforcement it is not as beautiful as described by legal theories and regulations that have governed it. There are more than one problems of law enforcement and in order to be able to discuss law enforcement more deeply and to be able to clarify the problem, it is necessary to pay attention to what factors can affect the effectiveness of law enforcement.⁸

Soerjono Soekanto argues that there are factors that can influence law enforcement and have meaning so that law enforcement can have a positive and negative impact on the content of these factors. Disturbances to

law enforcement occur when there is a discrepancy between values, rules, and behavior patterns (“the trinity”). In the event that there is a discrepancy between paired values and manifests in confusing rules, and undirected behavior patterns that will disrupt the peaceful social life, law enforcement cannot be realized. This means that law enforcement will not work properly or will be disrupted in its journey and law enforcement. The main problem of law enforcement lies in the factors that influence it. These factors are the first, the legal factor, the second the law enforcement factor, the third, the facilities or facilities factor, fourth community factor and the fifth cultural factor.⁹

1. Law enforcement factors, law

enforcement factors. What is meant by law enforcers are parties who are directly or indirectly involved in law enforcement starting from the police, prosecutors, judges, the Corruption Eradication Commission (KPK), legal advisors (advocates) and up to correctional officers. Each law enforcement profession has the authority or power of their respective duties. Judges are in a very decisive role when a decision is expected to come out and carry out the task, the judge is in his own independence, while the duties of other law enforcers are convincing and explaining to the judge what and how the legal problem is, so that a judge’s conviction will be obtained. to be able to decide fairly and wisely. However, the problem is not that simple, because in reality law enforcement does not run in the right corridor, so law enforcement has problems at the operational technical

⁸ Agus Riyanto, “Penegakan Hukum, Masalahnya Apa?,” *Binus University Business Law*, last modified 2018, accessed January 21, 2022, <https://business-law.binus.ac.id/2018/12/26/penegakan-hukum-masalahnya-apa/>.

⁹ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali, 1983).

level in each law enforcer. The reasons are, among others, the absence of cases that have entered the investigation stage due to the absence of suspects and also the absence of witnesses who heard and saw the criminal act of burning the peatlands. While the owner of the land is not known, because the land owner is outside Kalimantan. As well as the lack of PPNS Polhut investigator personnel at the Forestry Service.

2. Community

factors Community factors. From a social and cultural point of view, Indonesia is a pluralistic society with many ethnic groups with a variety of different cultures. A law enforcer must recognize the social stratification or social stratification that exists in an environment along with the existing status/position and roles. Every social stratification must have its foundations. Another thing that needs to be known and understood is about the social institutions that exist, and are highly valued by the majority of the existing community members. By knowing and understanding these things, it can make it easier for law enforcers to identify the values and norms or rules that apply in the environment. Broadly speaking, society in Indonesia is divided into two, namely the upper class (the rich) and the lower class (the poor). Law enforcement between the two is also very different. This is because the mindset and knowledge are clearly different. If the lower class people, desire or obey a law by someone is very unlikely or does not want to obey the law that has been regulated. This is due to the lack of knowledge and education that they have very limited, and they cannot know that there are sanctions

that will be binding if violated (blue collar crime). Meanwhile, upper class people tend to follow the existing laws or regulations, because they have more knowledge about the law and know the sanctions. This happens tends to be more orderly. In this upper class if a crime occurs, it can be said to be a white collar crime (for the sake of interest only). People in Indonesia are getting older, the number of poor people is increasing. So when viewed from the community factor, the problem of crime or law enforcement is in this layer. Each social stratification has its own basics, so that it can be done in various ways, including providing legal knowledge to people who may not really understand the law, making it easier for them to identify the values and norms that apply in their environment.

For example, people are reluctant to testify to a criminal act of burning land because they are reluctant to deal with legal issues.

3. Cultural factors

Cultural actors. According to Soerjono Soekanto, culture has a very large function for humans and society, namely to regulate so that humans can understand how they should act, act, and determine their attitudes when dealing with other people. Basically, culture includes the values that underlie the applicable law, which values are abstract conceptions of what is considered good (so that it is embraced) and what is considered bad (so that it is avoided). Actually, cultural factors have similarities with community factors. However, in the cultural factor, more emphasis is placed on the problem of the value system that exists in the community. In terms of community factors, it is said that the level of

community compliance with compliance with community rules is still low. This is because there is a compromising culture that often occurs in Indonesian society. In fact, there will be a tendency for people's culture to escape from the rules that apply to be so.

Legal culture (system) basically includes the values that underlie applicable law, so which values are abstract conceptions of what is considered good and what is considered bad. These values are usually a pair of values that reflect two extreme conditions that must be harmonized. The pair of conservatism values and innovativeness values always play a role in the development of law, because on the one hand there are those who state that the law only follows changes that occur and aims to maintain the status quo. Under these conditions, law enforcement must also be able to understand the problems of cultural elements that can affect law enforcement. Law enforcement when viewed from culture, can be traced from time immemorial. The existence of land burning carried out by the community cannot be separated from the habits carried out by the previous people who burned peatlands to open new land such as agriculture, plantations and others. This shows a cultural weakness in law enforcement. Of course until whenever this culture is not lost, law enforcement will run as it should.

In this cultural factor, there is a habit of people burning peatland areas for efforts to clear new land.

The culture of the community to burn this land has begun to decrease, because many people have understood the sanctions contained in Law no. 32 of 2009

concerning Environmental Protection and Management (UUPPLH).

4. Factors of facilities and facilities

Factors of facilities and facilities. Without the existence or support of adequate facilities or facilities, it is not easy for law enforcement to take place properly, which includes, among others, highly educated and skilled human resources, good organization, adequate equipment, sufficient finances, and so on. If these things are not fulfilled, it will be difficult for law enforcement to achieve its objectives. Highly educated human workers here are defined as qualified and qualified law enforcers, namely capable or able to serve and protect the community in accordance with their respective duties and fields. The process of being accepted as a law enforcement officer has actually met the requirements to produce, for example, police officers who have good abilities to serve the community. But in reality, the acceptance process is often tainted by bribes or a small number of people willing to become members of law enforcement. Thus, the quality of these law enforcement members needs to be questioned and many are not in accordance with what has been determined. As a result, law enforcement officers tend to be fewer than the number of people who continue to grow, so that law enforcement officers cannot carry out their duties optimally as a means of law enforcement.

In this case, the obstacles found were in the form of a shortage of tools and means to extinguish fires (eg fire helicopters), lack of transportation facilities/tools to get to the fire hotspots.

CONCLUSION

Based on the results of the study, it can be concluded as follows:

1. Law enforcement against the perpetrators of burning peatlands in Banjar Regency is carried out by the Banjar Police Criminal Investigation Unit and the Forestry Police of the South Kalimantan Provincial Forestry Service. In the period from 2019 to 2021, the number of cases of burning peatlands that entered the investigation stage amounted to 1 case, this happened due to several factors including: (1) increasing public awareness by not clearing land using the burning method, (2) due to natural factors that in the past in 2020 and 2021 the dry season in South Kalimantan Province is not prolonged, and (3) increased socialization of forest and land fire prevention carried out by the authorities including the police.
2. The obstacles in law enforcement against the perpetrators of burning peatlands in Banjar Regency are that there are no cases that have entered the investigation stage due to the absence of suspects and also the absence of witnesses who heard and saw the criminal act of burning peatlands. Lack of PPNS Polhut investigator personnel at the Forestry Service.

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