Disharmornisation of Criminal Liability Related to Land Fire Due to Clearing Plantation Land

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Abstract

Burning forests or land is a crime that must be combated comprehensively by every party. One effort to punish perpetrators of forest or land burning is to impose a prison sentence and the maximum possible fine, to act as a deterrent and serve as a lesson to those who commit this act. The emergence of disharmonization between Law No. 32 of 2009 concerning Environmental Protection and Management and Law No. 39 of 2014 concerning Plantations regarding criminal sanctions against perpetrators of land burning is studied with the assumption that what is happening is the result of a malfunction of the law and related law enforcement. with land fires as expected. The type of research used is normative juridical legal research, namely research that focuses on examining the application of rules or norms in positive law. The existence of multiple interpretation articles has hampered the achievement of legal objectives, namely providing a sense of justice, legal certainty and legal benefits. This multi-interpretation article creates legal uncertainty due to the variety of judges' decisions on the same case. Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations are also less useful because they cause fear in the community, thereby triggering unrest in society. Commission I DPR RI needs to immediately revise or harmonize Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations, especially regarding restrictions or benchmarks for offenses and the application of criminal sanctions.

1. Introduction

Fires or burning of forests and land cause environmental damage, not just the destruction of the ecosystem, but the smoke haze it causes becomes a monster that destroys life. Burning forests or land is a crime that must be combated comprehensively by every party.[1] One effort to retaliate against perpetrators of forest or land burning is to impose prison sentences and maximum fines, to act as a deterrent and serve as a lesson to those who commit these acts. Entering the dry season, forest and land fire prevention programs are currently an important focus for the government. This is to avoid the recurrence of severe forest and land fires (karhutla), especially in the 2019 and 2015 cases which spread to various regions such as Sumatra, Kalimantan, West Nusa Tenggara (NTB) to Papua.

These forest fires cause major environmental and social damage. One of the causes of the 2019 forest and land fires was carried out by corporations. The government through the Ministry of Environment and Forestry (KLHK) in October 2019 released a number of perpetrators or masterminds behind the forest and land fires. At least, the perpetrators of these forest and land fires consist of 64 companies, both foreign and local, dozens of suspects and a number of cases from each region.

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Burning forests or land is a crime that must be combated comprehensively by every party.[3] One effort to punish perpetrators of forest or land burning is to impose a prison sentence and the maximum possible fine, to act as a deterrent and serve as a lesson to those who commit this act. Criminal liability is one of the basic issues in criminal law, so this is an important aspect in criminal sentencing. It is not easy to ascertain in practice, this issue is another case, because criminal liability can apply to the management or control of legal entities and legal entities. This is because in problem areas of life it is difficult to determine the causal link between errors in the business structure and the attitudes or actions that are concretely carried out.

For this reason, it is very important for the public to understand fire disasters,

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[1] Yusuf, Hapsoh, Siregar, & Nurrochmat, "Analisis Kebakaran Hutan dan Lahan di Provinsi Riau," *Dinamika Lingkungan Indonesia,* 6, No. 2 (2019): 77.

[2] Mochammad Januar Rizki, "Melihat Pasal-pasal Penjerat Pelaku Pembakar Hutan dan Lahan". hukumonline.com, 2020. https://www.hukumonline.com/berita/a/melihat-pasal-pasal-penjerat-pelaku-pembakar-hutan-dan-lahan-lt5f16ba762542c/.

[3] Olivia Anggie Johar, M. Yusuf Daeng, & Tri Novitasari Manihuruk, "Pertanggungjawaban Pidana Pencemaran Dan Perusakan Lingkungan Hidup Akibat Pembakaran Hutan Dan Lahan Di Provinsi Riau". *Jurnal Hukum Respublica*, *21*(2) (2022): 131-154.

why fire disasters occur and what impact they have on human life. By understanding this, people will be aware of the importance of preventing fire disasters. Communities should not destroy forests and use fire wisely, and be responsible for controlling fire so that it does not spread so that forest fires that recur every year can be prevented and as far as possible do not happen again. Weak enforcement against perpetrators of forest fires in this country means that perpetrators are still free to carry out their actions to clear land by burning.

To achieve the purpose of state control over natural resources, particularly forests and land, the government's authority in terms of control must be able to offer justice, predictability, and benefit to the people. The prohibition of burning woods and land is one manifestation of the state's presence in safeguarding forests and land, as shown in numerous laws that control it as follows:

1) Law Number 41 of 1999 concerning Forestry.

Forests, as national development capital, provide genuine advantages to the Indonesian people's lives and livelihoods, including ecological, socio-cultural, and economic benefits in a balanced and dynamic manner. As a result, forests must be controlled and managed, conserved and used in a sustainable manner for the benefit of the Indonesian people, both current and future generations. Forests are one of the determinants of the life support system, delivering various advantages to humans and acting as a worldwide environmental harmonizer and balancer. In accordance with Article 33 of the 1945 Constitution, which demands that the soil, water, and natural resources contained within be managed by the State and exploited for the best benefit of the people, forestry management must always be practiced contain the soul and spirit of a people, be just and long-lasting. As a result, forest administration and management must be carried out in accordance with the concepts of benefit and sustainability, democracy, fairness, togetherness, openness, and integration, all of which are founded on noble and responsible morals. Forests must not be destroyed as a source of industrial raw materials as a result of efforts to process forest products.

The minister in charge of forestry regulates, guides, and develops the upstream forest product processing business in order to constantly maintain a balance between the ability to supply raw materials and the processing industry. Forest usage must be broadened beyond the production of wood and non-timber forest products to include additional applications such as germplasm and environmental services in order to maximize forest advantages. Forest resources have a vital role in providing industrial raw materials, revenue sources, and the creation of fields and job possibilities. Forest products are commodities that may be transformed into processed goods to add value and create job and business possibilities. Forest products are commodities that may be transformed into processed goods to add value and create job and business possibilities. To obtain the greatest possible benefit

from forests and forest areas for the welfare of the community, all forests and forest areas can be used in principle while taking into account their nature, characteristics, and vulnerability, and changing their main functions (conservation, protection, and production functions) is not permitted.

Forest and land rehabilitation and reclamation initiatives are also carried out with the goal of restoring forest quality and community welfare in order to ensure the sustainability of basic forest functions and forest conditions. To ensure the status, function, and condition of forests and forest areas, efforts are made to protect forests, which include preventing and limiting forest damage caused by human and livestock actions, fires, natural resources, pests, and diseases, as well as defending and safeguarding the rights of state, community, and individual rights to forests, forest areas, and forest products, as well as investments and tools related to forest management.

2) Law Number 32 of 2009 concerning Environmental Protection and Management

The concepts of environmental protection and management based on good governance were strengthened in Law 32 of 2009 concerning Environmental Protection and Management by demanding the integration of features of openness, accountability, involvement, and justice. Good governance begins with the process of developing and implementing tools for preventing and enforcing environmental regulations. So that it can be realized that Indonesia's living environment can continue to be a source of life and support for the Indonesian people and other living species.

It is the responsibility of the Indonesian people, which has great biodiversity and plentiful natural resources, to safeguard and manage them in an integrated and integrated system of environmental protection and management between the sea, land, and air ecosystems based on archipelago knowledge. Natural resource availability in quantity or quality is inconsistent, whereas development activities necessitate growing amounts of natural resources. Environmental contamination and destruction are additional risks associated with development operations. This condition can lead to diminished carrying capacity, carrying capacity, and environmental productivity, which becomes a societal cost in the end.

As a result, Indonesia's environment must be carefully safeguarded and maintained in accordance with the concepts of state responsibility, sustainability, and justice. Furthermore, environmental management must be capable of providing economic, social, and cultural advantages while adhering to the principles of prudence, environmental democracy, decentralization, and respect and appreciation for local wisdom and environmental wisdom. Natural resource utilization must be in harmony, concord, and balance with environmental function. As a result, development strategies, plans, and/or programs must be imbued with the

responsibility to conserve the environment while still achieving sustainable development goals.

Furthermore, enhancing monitoring and licensing tools is a preventive effort in environmental effect control. And repressive measures will be used when pollution and environmental harm have happened in the form of effective, consistent, and consistent law enforcement. In Law Number 32 of 2009, criminal law enforcement established minimum and maximum punishments, expanded evidence, punished violators of quality requirements, and integrated criminal law enforcement and corporate criminal rules. It is envisaged that the execution of criminal legislation would serve as a deterrent and raise awareness among all stakeholders about the importance of environmental conservation and management for the lives of current and future generations.

This legislation has two criminal provisions that govern forest and land fires: material crimes and formal crimes. Material criminal crimes are defined by the effects in Articles 98 and 99, whereas formal criminal offenses are defined by the actions or conduct in Article 109 and the rules on companies in Articles 116 and 117.

3) Law Number 39 of 2014 concerning Plantations

By managing and developing plantation resources more optimally, responsibly, and sustainably, the purpose of Law Number 39 of 2014 is to make plantations support the welfare and prosperity of the people, increase state income, employment opportunities, business opportunities, meet consumer needs, industrial raw materials, and provide protection for entrepreneurs and the community.[4]

The ideals of sovereignty, independence, usefulness, sustainability, integration, unity, openness, efficiency, fairness, local wisdom, and environmental sustainability guide the usage of plantation land. Concerning the topic of forest and land burning, this legislation expressly outlaws clearing land by burning.

In other languages, criminal accountability is referred to as torekenbaarheid (Dutch) or criminal responsibility or criminal liability (English). Criminal responsibility is used to establish whether or not a suspect or defendant may be held accountable. Criminal culpability refers to the individual who committed the crime. If there is no error, a person will not be penalized.[5]

This is consistent with the criminal law idea of geen staff zonder schuld (no punishment if no mistake is made). This idea is not inscribed into Indonesian law, but it is now in effect in Indonesian unwritten law. In addition to the basis of legality, criminal culpability in positive criminal law now conforms to the principle of mistake.

[4] Syarif & Wibisana, 2010, *Hukum Lingkungan: Teori, Legislasi dan Studi Kasus,* Jakarta: PT. RajaGrafindo, hlm 107.

[5] Hanafi Amrani Dan Mahrus Ali, 2015, *Sistem Pertanggung Jawaban Pidana*, Jakarta: PT. Raja Grafindo Persada, hlm 52.

Criminal responsibility is a type of action done by the offender of a criminal act to compensate for the wrongdoing committed.

Thus, criminal culpability arises when there is a mistake that results in a criminal act being performed by someone, and there are laws that control this criminal conduct. When analyzing criminal responsibility, one or two things must be considered from a philosophical standpoint. One of them is justice, thus debates on criminal responsibility will help to define it. Criminal responsibility and justice are inextricably linked in criminal law and philosophy. Criminal responsibility is known as Toerekenbaarheid, Criminal Responsibility, or Criminal Liability in other languages.

The purpose of criminal responsibility is to assess whether or not a suspect/defendant is accountable for a crime that happened. In other words, whether the defendant will be found guilty or not. If convicted, it must be demonstrated that the defendant's activities were unlawful and that he was capable of responsibility. This ability demonstrates whether the perpetrator's error was purposeful or unintentional. This suggests that the defendant was aware of what was going on. In volumes II and III of the Criminal Code, elements of crime and components of criminal liability are blended together.

Is the identification of the problem based on the background description. What is the legal foundation and status of laws in Indonesia for environmental and plantation protection and management? How to discordantly apply criminal punishments to offenders of land burning in Indonesia? Meanwhile, the purpose of this article is to investigate and analyze the legal basis and position of laws and regulations in the field of environmental and plantation protection and management in Indonesia, as well as to determine how discordant the application of criminal sanctions to perpetrators of land burning in Indonesia.

2. Research Method

The study method employed is normative juridical legal research, which examines the application of rules or norms in positive law. A positivist legislative notion is used in a normative judicial approach. This notion regards law as a normative framework that is independent, isolated, and disconnected from society's real existence. Secondary data on legal systematics, such as identifying the key meanings in law, was acquired from a variety of sources, including literature and statutory regulations. Decisions in provincial district courts concerning forest fires were also gathered for this study.

The emergence of discordance between Law No. 32 of 2009 concerning Environmental Protection and Management and Law No. 39 of 2014 concerning Plantations in terms of criminal sanctions against perpetrators of land burning is investigated under the assumption that what is happening is the result of a

malfunction of the law and related law enforcement. This leads to social injustice and legal confusion obtain legal clarity and justice. The recurrence of land fires each year demonstrates this lack of integration.

3. Results and Discussion

Juridical Basis for Forest Burning Due to Land Clearing in Indonesia.

Aside from being a formal state, Indonesia is a nation rich in biodiversity, with enormous forests and peat swamps across the area of the Unitary State of the Republic of Indonesia. Forests and peat bogs are natural resources that play an important role in the lives of nations and states. Approximately two-thirds of Indonesia's 191 million hectares comprise forest regions with different ecosystems ranging from lowland tropical forests to highland tropical forests, peat swamp forests, freshwater swamp forests, and mangrove forests. The value of these resources is growing since forests and peat bogs provide a source of income for many people.[6]

Although there are numerous laws and government regulations that govern the prohibition of clearing land by burning or setting fire to forests, one of which is Law Number 32 of 2009 concerning environmental protection and management, which prohibits someone from clearing plantation land by burning forests in Article 69 paragraph (1) letter (h). Despite the fact that Indonesia has various legislation against land burning, in practice, law enforcement of these regulations is still relatively poor.

Forest and land fires in Indonesia have dropped dramatically with the publishing of Presidential Instruction of the Republic of Indonesia No. 11 of 2015 on Improving Control of Forest and Land Fires. However, priority efforts in the form of prevention, which should be carried out by the government, community, and private sector, have not been able to tackle the source of the problem of forest and land fires in Indonesian peat ecosystems, which continue to occur to this day.

The President then issued Presidential Instruction Number 3 of 2020 about Forest and Land Fire Management, which replaced Presidential Instruction Number 11 of 2015 concerning Increasing Control of Forest and Land Fires. In Presidential Instruction Number 3 of 2020 on Forest and Land Fire Management, it is stated:

(1) Carry out efforts to control forest and land fires throughout the Republic of Indonesia which includes the following activities:
    a. preventing forest and land fires;
    b. extinguishing forest and land fires; and
    c. post-forest and land fire management.
(2) Effective law enforcement efforts against criminal acts of forest and land fires, as

[6] Dodi Nandika, 2005, Hutan Bagi Ketahanan Nasional, Surakarta: Muhammadiyah University Press, hlm 18.

well as payment of compensation for rehabilitation costs, restoration of forest and land conditions, or other necessary actions, as well as the imposition of administrative sanctions in accordance with statutory provisions.

Law enforcement against forest and land burning criminals is critical, given that one of the causes of forest and land damage is fires or burning of forests and land before they are exploited. This is significant since one of the requirements for achieving Sustainable Forest Management (SFM) is heavily reliant on policy, legal, and institutional settings, all of which are covered by Good Forestry Governance.

This is due in part to the fact that existing laws and regulations do not yet explicitly govern organized criminal activity.[7] Inosentius Samsul stated that present legislative instruments for dealing with forest and land burning and smoke pollution have not been able to address the problem of forest and land burning.[8]

Individuals continue to dominate the use of criminal law against offenders of forest and land burning (karhutla) in Indonesia, as detailed above. In truth, numerous players have been implicated in the burning of forests and land, including lords, groups of individuals, commercial actors or businesses, and the community. To save money (low expenses), speed up land clearing activities, reduce pests, and improve soil quality.

Although there are still flaws, the application of criminal law to individuals has been carried out in accordance with statutory regulations, including the Criminal Code (KUHP), Law Number 41 of 1999 concerning Forestry, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law No. 39 of 2014 concerning Plantations. Meanwhile, the use of criminal law against firms accused of burning forests and land is still limited and far from optimum.

Criminal penalties are a sort of sanction that tries to enforce or ensure compliance with the Law's legal obligations for land management. Penalties for a crime include incarceration, fines, and disciplinary punishment. Penalties and punishments vary widely depending on the nature of the offense and the repercussions it creates.

Apart from criminal sanctions and fines, perpetrators can also be subject to disciplinary criminal sanctions as formulated in article 119 of Law Number 32 of 2009 concerning Environmental Protection and Management, namely:

a. Confiscation of profits obtained from criminal acts.
b. Closure of all or part of business premises and/or activities

[7] Sahuri Lasmadi, Elly Sudarti, 2018. Penerapan Pidana Pasal 92 Ayat (1) Huruf A Jo Pasal 17 Ayat (2) Huruf B Undang-Undang Nomor 18 Tahun 2013 Tentang Pencegahan dan Pengrusakan Hutan (Analisis Putusan Pengadilan Negeri Sarolangun Nomor: 16/PID.SUS/2015/PN.SRL), Jurnal Komunikasi Hukum (Jkh), Volume 4 Nomor 2 Agustus (2018): 172-195.

[8] Inosentius Samsul. Instrumen Hukum Penanggulangan Kebakaran Hutan, Lahan, dan Polusi Asap. *Info Singkat. Hukum VII, No 17.* (2015): 1.

c. Repairs resulting from criminal acts
d. Obligation to do what is neglected without rights, and or
e. Placement of the company under supervision for a maximum of 3 (three) years

The use of criminal punishment against offenders of land burning is governed by legislation. Because, under the applicable legislation, criminal consequences for criminals take various forms depending on the criminal conduct performed. Sanctions for the unlawful act of clearing plantation land by burning are outlined in Law Number 32 of 2009 concerning Environmental Protection and Management, Article 69, paragraph (1), Letter H:

"It is illegal for anybody to clear land by burning".

Article 108 of Law Number 32 of 2009 concerning Environmental Protection and Management which reads:

"Every person who burns land will be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000. 00 (ten billion rupiah)".

Plantations play an important and strategic role in national development, particularly in increasing people's prosperity and welfare, according to Law Number 39 of 2014. Plantation development is carried out based on plantation technical culture within a management framework that has economic benefits for natural resources sustainable.

Through equitable access to natural resources, capital, knowledge, technology, and management, sustainable plantation development will maximize the benefits of boosting people's wealth and welfare. This access must be available to all Indonesians. This will result in a healthy and mutually beneficial interaction between plantation business players, local communities, and other stakeholders, as well as the integration of upstream and downstream plantation management.

Plantations must be managed in accordance with the concepts of benefit and sustainability, as well as integration, unity, openness, and justice. The management of such plantations is consistent with the mandate and spirit of Article 33 paragraph (3) of the Republic of Indonesia's 1945 Constitution, which states that "the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

In actuality, what was idealized in Article 33 paragraph (3) and paragraph (4) of the 1945 Constitution turned out to be far from perfect, due to extensive harm to Indonesia's natural resources. It turns out that the issue has so far been one of legal policy and law enforcement. Individuals and legal bodies, including cooperatives

and limited liability corporations, both state-owned and private, operate plantation operations. A plantation business permit is necessary for legal organizations engaged in plantation crop production and/or plantation product processing sectors.

In order for it to be implemented, legal entities or plantation corporations must be able to collaborate with the community, both the community around the plantation and the community in general, in the ownership and/or administration of mutually profitable, respectful, strengthening, and dependent enterprises. Plantations do not need a business permission, but they must be registered with the Regent/Mayor, and the registration certificate serves as a plantation business permit. According to Article 42 of Law Number 39 of 2014:

> "Plantation Plantation Cultivation Business Activities and/or Plantation Product Processing Business Activities as intended in Article 41 paragraph (1) can only be carried out by Plantation Companies if they have obtained land rights and/or Plantation Business Permits."
>
> Article 45 paragraph (1) states that:
>
> "To obtain a Plantation Business as intended in Article 42, you must fulfill the following requirements:
>
> 1. environmental permit;
> 2. conformity with the regional spatial plan; And
> 3. conformity with the Plantation plan
>
> In the meanwhile, paragraph (1) of Article 56 specifies that
>
> "every plantation business actor is prohibited from clearing and/or cultivating land by burning."
>
> Furthermore, in article 108 it is mentioned that:
>
> "Every plantation business actor who clears and/or cultivates land by burning as intended in Article 56 paragraph (1) shall be punished with imprisonment for 10 years (ten years) and a fine of Rp. 10,000,000,000 (ten billion)."

In Indonesia, there is a lack of consistency in the regulations governing land fires.

The application of punishment for the offense of land fire reveals a discrepancy between the implementation of the UUPPLH and the Plantation Law. Several factors contribute to the discordance of legal regulations, including:

1. The creation of regulations by various entities at various periods;
2. During the creation process, authorities with the capacity to create laws change due to the expiration of their term of office, changes in assignments, and so on.
3. The sectoral approach to legislation is more effective than the systems approach;
4. Lack of cooperation among agencies in the development of law; 5. Limited public access in the development of legislation;
5. Neither the approaches and procedures of making law nor the organizations permitted to do so have been developed in harmony.

To address issues of confusion in the application of Law Number 39 of 2014 on Plantations and Law Number 32 of 2009 on Environmental Management and Protection, legislative rules must be harmonized. Citizens can seek judicial review and/or request that the DPR-RI, as a legislative body, revise or change Law Number 39 of 2014 involving Plantations and Law Number 32 of 2009 concerned Environmental Management and Protection, since overlap with rules that explicitly govern it generates a lack of legal clarity, affecting residents' pleasure and enjoyment with a legal rule.

From many environmental issues, including land fires. The most typical action is clearing land by burning. In this example, the researchers analyzed two (two) distinct laws and regulations that restrict land removal by burning. The two (two) rules are as follows: Article 69 paragraph (1) letter h of Law 32 of 2009 on Environmental Protection and Management states: "Everyone is prohibited from clearing land by burning." With the criminal threat regulated in Article 108, which states: "Anyone who burns land as intended in Article 69 paragraph (1) letter h shall be punished with imprisonment for a minimum of three (three) years and a maximum of ten (ten) years, as well as a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)".

Article 56 paragraph (1) of Plantation Law No. 39 of 2014 states that any Plantation Business Actor is forbidden from clearing and/or cultivating land by burning. The criminal threat is codified in Article 108, which states: "Every Plantation Business Actor who clears and/or cultivates land by burning as intended in Article 56 paragraph (1) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000 ,000.00 (ten billion rupiah)".

The issue of unclear punishments cannot be isolated from the overlapping criminal provisions in the two statutes that both govern the act of burning land. As shown in the table below, there is a conflict between Article 108 of Law Number 32 of 2009 about Environmental Protection and Management and Article 108 of Law Number 39 of 2014 concerning Plantations, which controls land burning:

Table 1: Criminal Elements and Sanctions under Law 32 of 2009 on Environmental Protection and Management and Law 39 of 2014 on Plantations

Legislation	Element	Element Meaning	Criminal Sanctions
Article 108 of the Law No. 32 of 2009 on Environmental Protection and Management	Each Person	Every person, whether a legal entity or not, is an individual or a commercial entity.	Imprisonment for at least 3 (three) years and up to 10 (ten) years, as well as a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and up to IDR 10,000,000,000.00 (ten billion rupiah).
	Burning Land	an action or scenario in which land is damaged by fire, resulting in economic and environmental damages	

Legislation	Element	Element Meaning	Criminal Sanctions
Article 108 Law Number 39 of 2014 concerning Plantations	Every plantation business actor	Plantation Business Actors are planters and/or plantation company that manages the business Plantation.	Imprisonment for 10 years (ten years) and a fine of Rp. 10,000,000,000 (ten billion).
	clearing and/or cultivating	an activity/cultivating land using fire, resulting in	

	land by burning	damage that causes economic and environmental losses	

The two provisions above show that there is a difference in the amount of criminal threats, particularly special minimum criminal threats, where the minimum in the Environmental Protection and Management Law is that the defendant will be sentenced to three years in prison and a fine of at least three billion rupiah, whereas there is no threat in the Plantation Law. Minimum sentence is a specific sentencing.

The lack of clarity regarding which provisions of the law will be used in land burning is becoming increasingly visible in court decisions, which show a lack of clarity between cases decided under the Plantation Law and those decided under the PPLH Law, as seen in Decision No. 277 K/ Pid.Sus-LH/2016 in Tembilahan Riau. In this instance, the defendant was accused with setting fire to 3 hectares of his own land, which subsequently spread and created a land fire. Article 108 of the PPLH Law was used to convict the defendant. Meanwhile, in a similar case in Bangkinang Riau (Decision Number 340/Pid.B-LH/2018/PN.Bkn), the defendant was found guilty under Plantation Law Article 108. This uncertainty is not acceptable just in the two preceding rulings, but also in others of a similar nature.

Court rulings citing the Environmental Protection and Management Law and the Plantation Law include the following:

a. Case 168/Pid.B/LH/2018/PN PBU (Pangkalan Bun-Central Kalimantan) Defendant Hairil alias Uwil bin Haidir, a farmer's group member, was charged with alternative charges for clearing land by burning, as provided for in Article 108 jo. Article 56 paragraph (1) Law No. 39 of 2014 concerning Plantations and Article 108 jo. Article 69 paragraph (1) letter h Law No. 32 of 2009 concerning Environmental Protection and Management. The defendant burnt twigs and weeds for gardening and distributed them on other people's property. The defendant was found guilty of infringing Article 108 jo. Article 69 paragraph (1) letter h of Law No. 32 of 2009 concerning Environmental Protection and Management, with the act of burning branches and weeds in non-forest areas fulfilling the requirement elements of removing land by fire. The offender was condemned to three years in jail and fined Rp. 3,000,000,000 (three billion Rupiah).
b. Case Number 33/Pid.B/LH/2021/PN Cag (Aceh-Calang) Defendant Izir Bin Hasanudin et al. were charged with alternative charges of clearing and/or cultivating land by burning, which are regulated and punishable by crime under Article 108 in conjunction with Article 56 paragraph (1) Law Number 39 of 2014 concerning Plantations in conjunction with Article 55 paragraph (1) 1st of the

Criminal Code and Article 108 in conjunction with Article 69 paragraph (1) letter h Law Number 32 of 2009 concerning Environmental Protection and Management i Despite the fact that the defendants, who are planters, opened and cleared the ground and burnt heaps of wood as a result of the clearing, the fire spread, with an area of burned land totaling 26 Meters. The defendants were found guilty of violating Article 108 in conjunction with Article 56 paragraph (1) of Law Number 39 2014 concerning Plantations in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, with the Panel of Judges finding that the defendants did not apply or did not apply the principles of prudence to the maximum extent possible in connection with the clearing and processing of land. The accused were sentenced to 8 (eight) months in jail and a fine of Rp. 500,000,000.00 (five hundred million).

c. Case 2634 K/Pid.Sus-LH/2016 (Meulaboh-Aceh). Defendant Eddy Sutjahyo et al, who are members of PT. Surya Panen Subur, were charged with clearing land by burning in violation of Article 108 jo. Article 69 paragraph (1) letter h jo. Article 116 paragraph (1) letter b Law no. 32 of 2009 concerning Environmental Protection and Management jo. Article 64 paragraph (1) of the Criminal Code. The panel of judges upheld the public prosecutor's appeal and found the defendants guilty of willfully clearing land by fire, as charged in the indictment. The Panel of Judges indicated in its deliberations that the fire happened owing to a lack of monitoring in the field and negligence in cultivating the soil, which might be described as "clearing land by burning". This verdict overturned the decision of the Meulaboh District Court, which had acquitted the accused. The defendants were found guilty of breaking Article 108 in combination with Article 56 paragraph (1) of Plantation Law Number 39 of 2014 and sentenced to two years in jail and a fine of Rp. 3,000,000,000,- (three billion rupiah).
d. Case No. 4/Pid.B/LH/2020/PN Drh (Hunipopu-Maluku Dataran) Defendant Agustinus Lewaherilla was charged with clearing land by burning in violation of Article 108 jo. Article 69 paragraph (1) letter h jo. Article 116 paragraph (1) letter b of Law No. 32 of 2009 concerning Environmental Protection and Management. While clearing land in his garden, the defendant burned 1 (one) pile of plastic waste, food waste, and dry grass with a height of around 30 cm (thirty centimeters) in the shape of a circle with a diameter of 1 (one) meter. The fire spread to the garden land adjacent to the defendant's land and burned the plants growing in the garden land. The defendant was judged to have violated Article 108 jo. Article 69 paragraph (1) letter h jo. Article 116 paragraph (1) letter b Law no. 32 of 2009 concerning Environmental Protection and Management with the consideration of the panel of Judges that the Defendant's actions in burning land to clear land did not pay attention to the precautionary principle in environmental protection and management (article 2 letter f of Law No. 32 of 2009 concerning Management and Environmental Protection) and also the Defendant did not seriously implement the local wisdom of Morekau Village,

District. West Seram District. West Seram does not justify burning to clear land. The defendant was sentenced to imprisonment for 4 (four) years and a fine of Rp. 4,000,000,000 (four billion rupiah).

The criminal rulings discussed above demonstrate that there is discord in the judicial system. Without legal system harmonization, a condition of not being able to ensure legal certainty would occur, causing disturbance in social life, chaos, and a sense of not being protected. In this view, the issue of legal certainty is viewed as a requirement that can only be met by legal system harmonization.

The multiple interpretations of the existence of Article 108 of Law Number 39 of 2014 concerning Plantations and Article 108 of Law Number 32 of 2009 have caused a number of negative impacts, namely:

1. Allows for arbitrariness since law enforcers select the criminal punishments to be administered without regard for the public's sense of fairness.
2. Serve as a tool for persons who wish to "play" in order to avoid the imposition of exceptional minimum criminal threats.
3. There is no assurance of legal certainty. Decisions about multi-interpretation articles are varied, if not contradictory. In some cases, the perpetrator was charged under Article 108 of Law Number 39 of 2014 concerning Plantations, which does not have a specific minimum rule, so the sentence imposed will be lighter even within months, whereas in others, the perpetrator was charged under Article 108 of Law Number 32 of 2014. 2009, which imposed a special minimum sentence of 3 (three) years.
4. Cause discontent and disagreements among community members, who readily report them to law enforcement, and therefore expand the source of conflict between authorities and community members.

Legal certainty is an integral feature of law, particularly written legal rules. Without the value of certainty, law loses relevance since it can no longer be utilized as a direction for everyone's conduct. Where there is no legal certainty, there is no law (Ubi jus incertum, ibi jus nullum).[9] As a result, this issue must be investigated further in the study of legal applicability in the sector. The implementation of this legislation must be backed by a variety of data and facts, as well as legal concepts, all of which must be in favor of each side in this case. As a result, the implementation of this legislation is not viewed as the application of a legal flaw, but rather as a reflection of the parties' legal certainty.

4. Conclusion

Based on the results of the analysis above, it can be concluded that Law Number

[9] Sudikno Mertokusumo dalam H. Salim Hs, 2010, *Perkembangan Teori Dalam Ilmu Hukum*, Jakarta: PT Raja Grafindo Persada, hlm 82.

32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations have multi-interpretive articles, namely Article 108 of Law Number 32 of 2009 and Article 108 of the Law Number 39 of 2014 concerning Plantations. The problem of unclear penalties imposed cannot be separated from the overlapping criminal provisions in the two laws themselves which both regulate the act of burning land. These two provisions show that there are differences in the amount of criminal threats, especially special minimum penalties, where in Law Number 32 of 2009 concerning Environmental Protection and Management, at the minimum the defendant will be sentenced to 3 years and a fine of at least 3 billion rupiah, while in Law -Law Number 39 of 2014 concerning plantations does not have a specific minimum criminal threat.

The existence of multiple interpretation articles has hampered the achievement of legal objectives, namely providing a sense of justice, legal certainty and legal benefits. This multi-interpretation article creates legal uncertainty due to the variety of judges' decisions on the same case. Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations are also less useful because they cause fear in the community, thereby triggering unrest in society. Apart from that, Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations tend to be unfair because they give rise to arbitrariness from law enforcement officials and parties who want to take advantage of the situation.

Judges in deciding forest and land burning cases should not only pay attention to legal certainty, but should also pay attention to environmental preservation. The existence of disharmonization of Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations makes land profitable for certain individuals in order to avoid the application of heavier penalties, thus contradicting the concept of the Rule of Law so that Through the legislative function of Commission I DPR RI, it is necessary to immediately revise or harmonize Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 39 of 2014 concerning Plantations, especially regarding restrictions or benchmarks for offenses and the application of criminal sanctions.

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