

Reconstruction of the Legal Policy Model Using the Multidoor Approach to Prevent Land Burning

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ABSTRACT

This research aims to find an effective legal policy model for handling the criminal case of plantation land opening by fire, especially those carried out by corporations in Indonesia. Criminal law enforcement in these cases is not yet fully integrated. Thus, it requires the multidoor approach. The multidoor approach utilizes several criminal provisions to maximize all constitutional potentials and minimize failures starting from the investigation, prosecution, and punishment stages. This research was carried out by analyzing relevant legal principles, doctrines, rules, and norms. The constitution and courtly decisions were the main primary legal materials. This research shows that most plantation burning cases are not yet processed using the multidoor approach. Most of the prosecution's indictments are prepared alternatively. They exclude the possibility of the cumulative application of other crimes as concurrent criminal acts (*concursum*). Based on the results, it was found that the multidoor approach needs to be reconstructed by strengthening the secretariat and the standard operating procedures in applying the multidoor approach that binds all law enforcement agencies. This

crime has been classified as an environmental crime in the law, and it applies the *premium remedium* principle. The imposition of corporate criminal liability must be carried out maximally to prevent repeating the criminal acts that still frequently occur.

Keywords: Corporation, environment, land burning, multidoor, penal sanction, policy

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INTRODUCTION

In the World Resources Institute report, Indonesia is one of the three top countries that experienced the greatest deforestation of primary forests in the world in 2021. Brazil is the first country on the list, losing 1,548,657 hectares. It was followed by the Democratic Republic of the Congo (499,059 hectares) and Bolivia (291,379 hectares). Even though the rate of primary forest deforestation in Indonesia decreased by 25% compared to 2020, the figure is still very high, reaching 202,905 hectares (Weisse & Goldman, 2021).

In Indonesia, there are several kinds of forests based on their status: state, customary, and private. The state forest area encompasses the areas the government determines to be maintained as permanent forests. The state forests are located on land not encumbered with land rights. Meanwhile, customary forests are in the territories of indigenous peoples. Then, private forests include forests that are located on land that is encumbered with land rights such as property rights, rights for business use, and the rights to collect forest products as stated in Government Regulation No. 23 of 2021 on Forestry Implementation (The Republic of Indonesia's Government, 2021). If perceived from the status of the burned forests, the state forests that encompass Permanent Production Forests, Limited Production Forests, Convertible Production Forests, Conservation Forests, and Protected Forests often dominate the hotspots, although fires also occur outside of the forest area, especially in

Areas of Other Use. From 2018 to 2020, most forest and land fires in Rupert Island, Bengkalis Regency, Riau Province in Limited Production Forests (3,928,235 hectares), Convertible Production Forests (827,151 hectares), Permanent Production Forests (660,367 hectares), and Areas of Other Use (409,272 hectares) (Baroroh & Harintaka, 2021).

The burning of forests and plantation lands has caused Indonesia to bear great losses in the form of environmental destruction, economic loss, health problems, educational problems, the steep downfall of the tourism sector, and even smoke pollution over the state's borders. Forest and land fires have become an annual cycle. It experiences the ups and downs of escalation in Indonesia. After the largest forest and land fires in 2015, which affected 2,611,411 hectares, forest and land fires again reached the highest rate in 2019 when they affected 1,649,258 hectares of land. The fires continued in the following years, covering an area of 296,942 hectares (2020) and 358,867 hectares (2021) (Ministry of Environment and Forestry, 2022). The World Bank reports that the total economic loss of forest and plantation burning in Indonesia in 2019 reached 5.2 billion USD or around 72.9 trillion rupiahs. This amount equals 0.5% of Indonesia's Gross Domestic Product (The World Bank, 2019).

Based on the data of Indonesia's National Disaster Management Authority (NDMA), from 2009 to 2022, there were 3.098 cases of forest and land fires in Indonesia. The fires caused 47 deaths,

387 people were injured or suffered from illnesses, and 506 606 victims suffered and were evacuated. The highest number of deaths happened in 2015, when 24 people died. Then, the highest cases of injuries or illnesses happened in 2017, when there were 367 victims. Then, in 2014, there was the highest rate of victims who suffered and were evacuated, reaching 424,648 people (National Disaster Management Authority [NDMA], 2022). The increase in victims follows the trend of the increasingly massive and widespread area of burned forests.

Based on the data for the public policy consideration, 64 companies were sealed, consisting of 47 units of palm-oil plantations, 13 units of plant forests, one unit of ecosystem restoration, and 3 natural forests with a total burned area of 143.43 km² (Ministry of Environment and Forestry, 2019). The dominant number of palm-oil plantation units shows that the burning of the plantation lands is regarded unsustainable practice in plantation cultivation. Even the Head of the National Agency for Disaster Prevention stated that the human factor causes 99% of forest and plantation burning cases, and 80% of the burned land became plantations (National Disaster Management Authority [NDMA], 2022).

Indonesia has determined land burning as an environmental crime. The prohibition of land burning is accompanied by the threat of imprisonment as regulated in some laws, including Law No. 41 of 1999 on Forestry, Law No. 32 of 2009 on Environmental Protection and Management, and Law No. 39 of 2014 on Plantations. As the

codification of criminal laws in Indonesia, the Code of Criminal Law also regulates the prohibition of land burning even though it is not stated specifically (Colchester et al., 2009).

Another obstacle is that only a few forest-burning perpetrators are processed in court and given a final verdict by the judges. The lack of corporate criminal liability happens because it is difficult to prove the elements of land burning. Some corporations were acquitted due to the judge's assessment that the land fires were neither intentional nor caused by negligence. However, they assessed that the fires were due to natural disasters. It is also difficult to criminalize corporations if judges consider that the fires were sourced from outside the corporate concession. It is also difficult to prove the elements of the land fire's impacts on environmental destruction and pollution.

Two scientific pieces of evidence are required to prove environmental cases: factual evidence, such as reports or sampling results, and opinion evidence from competent experts (Roseman-Orr, 2018). The proving of land fire cases is complex, and it requires much scientific evidence, such as damages in the chemical and physical aspects, as well as the biological damage to the land. Other damages that need to be proven are the damages to biodiversity, including the effect on the flora and fauna population. This proof is still followed by the calculation of ecological losses, economic losses, and land restoration costs due to the fires by environmental experts.

During the worst forest and land fires in 2019, the number of individual perpetrators reached 429 people. Meanwhile, there were only 24 corporate perpetrators. The lack of corporate perpetrators followed in the next years. Even in 2020, only two corporations were named suspects (Indonesian Police Force, 2021). Several corporations are still exempt from criminal liability. In the Decision No. 40/Pid.Sus-LH/2019/PN.Tjt dated December 17, 2019, strengthened by the Decision of the Supreme Court No. 2919 K/Pid.Sus-LH/2020 of April 16, 2020, the corporate defendant Kaswaru Unggul Limited (KU, Ltd.) was acquitted in the cases related to plantation fires.

The acquittal in the case of plantation fires continued towards the corporate defendant KU, Ltd. based on Decision No. 233/PID.B/LH/2020/PN PBU on February 17, 2021. It was strengthened with the Decision of the Supreme Court No. 3840 K/Pid.Sus.LH/2021, on November 3, 2021. In general, the consideration of acquittal in land fire cases is often linked with natural disasters. The land fires that happen are deemed to be caused by extreme weather or long drought, or the hotspots originated from outside of the corporation's concession. In addition to having obstacles in proving corporate wrongdoing, corporate criminal liability is still burdened on the management or the activity leader in some cases. In the Decision of the Siak Sri Indrapura District Court No. 101/Pid.SusLH/2017/PN Sak, on August 24, 2017, was strengthened up to the cassation level based on Decision No. 916 K/PID.SUS-LH/2018, on June

7, 2018, corporate criminal liability was not carried out. In this case, the criminal liability was burdened to defendant TB (Defendant's initials) from WSSI's Head of Oil Palm Plantation Limited. He was found guilty in cases related to plantation fires. The problem is that the judge does not have environmental awareness and knowledge, and it is rare to find an expert on forest fires (Hartiwiningsih, 2013). Based on the problem explained above, the problem of this research is, how is the criminal legal policy reconstruction model with the multidoor approach towards the crime of land burning?

LITERATURE REVIEW

Forest Burning as a Crime

The socio-economic lives of the Indonesians highly depend on the forest. The state's largest income also comes from the forests. Unfortunately, there is less hope for the forest to become the people's source of economy, the state's foreign exchange, and the world's lungs. It is due to an increase in the land's functional shift, illegal forest destruction, illegal deforestation, and illegal forest burning (Badan Pengelola REDD+, 2015). Forest burning is part of an economic crime as it causes great loss to the state's economy. It is also categorized as a White-Collar Crime, a Corporate Crime, and an Extraordinary Crime. Thus, an extraordinary method for handling it (Colchester et al., 2011). If committed massively, environmental crimes, including forest burning, will cause long-term and broad impacts that endanger human life.

Such crimes can be qualified as ecocide or even as a violation of human rights (Setiyono & Natalis, 2021).

Corporate Criminal Liability

Simultaneously, two weaknesses cause the suboptimum enforcement of the law: the weak laws and the weak implementation of the case handling procedures. Law No. 32 of 2009 on Environmental Protection and Management contains weaknesses as it delegates corporate criminal liabilities to the order-givers or the leaders of crimes (Article 116 clause (2)). With this provision, the doctrine of direct criminal liability of the identification theory and the doctrine of vicarious liability is not used to construct the actions of the administrators, order-givers, or leaders of criminal actions as corporate actions. Corporate criminal liability can directly be applied according to the identification doctrine, where corporations can carry out some direct crimes through individual agents who are directly linked to the corporation. Errors (*mens rea*) of these individual agents are *mens rea* of the corporation (Hafrida et al., 2022).

The 2020 Omnibus Law, which amended Law No. 32 of 2009 on Environmental Protection and Management, does not allow criminal liability to be imposed on corporations if the forest and land fires happened due to negligence that does not endanger human health and if the fires do not cause injuries, severe injuries, and/or deaths (Article 82B clause (2)). This decriminalization policy ignores the characteristics of environmental destruction

and pollution crimes whose impacts are often only detected in the long term (long latency period). The Omnibus Law is a method commonly used by countries with a common law system to change several laws simultaneously under one regulation. It is generally carried out through a quick procedure (Mahy, 2022). Governments often use the Omnibus Law method to change many unlinked laws in a fast period (Hazama & Iba, 2017).

The weakness of this law increasingly creates gaps in the implementation, as in handling cases, investigators and public prosecutors do not consider the possibility of cumulatively applying other crimes as concurrent crimes. Concurrent crimes may occur, for instance, in cases where corporations intentionally carry out plantation activities in forest areas without permits. Apart from being subject to criminal charges for land burning, the perpetrators of this case can criminally be prosecuted under Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction. In the case of forest burning criminal action, there is a great chance of other crimes, such as corruption and money laundering (Pirard & Cossalter, 2006). Studies reveal that bureaucrats, political parties, parliament members, the military, and the police have been directly or indirectly involved in illegal forest activities (Barr, 2001). Forest officials were also involved in corruption, e.g., demanding bribes to obtain permits and allowing exports without legal permits (Setiono & Husein, 2005). Similar corrupt behavior is widespread within the

Indonesian courts, resulting in very few cases reaching the trial stage and even fewer convictions (Colchester et al., 2006).

Criminal Intentions

One of the factors which cause the burning of forests and land in Indonesia is the preparation of plantation lands. Corporations also choose to use this method to obtain economic benefits by minimizing the budget for land preparation. Fire is a cheap and easy method of clearing plantation lands, such as oil palm. The lack of incentives, especially for smallholders, makes preparing land without fire difficult as it requires a high cost (Purnomo et al., 2017). The land opening by fire only requires a third of the cost of land opening without fire. Apart from requiring a great cost, land opening without fire also takes a long time, bringing the risk of pests or plant diseases (Saharjo et al., 2018). This fact is strengthened by the information from the Ministry of the Environment and Forestry in October 2019, which showed the allegation of the corporations' involvement in forest land burning.

The current legal policy is still dominant in catching the field perpetrators or individual perpetrators. There is still no deterrent effect on corporate perpetrators. The plantation companies or industrial plant forests indirectly cause fires through the mechanism of the wage market in preparing the industrial plant forest land. Usually, the labor team who buys up the job of land preparation chooses the easiest and the cheapest method to obtain the highest profit (Pasaribu & Friyatno, 2008).

The Ministry of Environment and Forest acknowledges that 99% of forest fires are caused by human activity. It is due to economic reasons; it is faster and easier compared to preparing land without fire. This motive of forest burning cannot be separated from the calculations of corporate profits and losses without caring about the destructive impacts. The head of the National Agency of Disaster Prevention states that the budget needed to open a corporate plantation land using fire is only 600,000–800,000 rupiah for every 10,000 m². Meanwhile, without fire, the budget needed is 3.4 million rupiahs per 10,000 m². Land prices increase steeply after being burned (Molenaar et al., 2013).

Apart from that, there is the indication that the companies burn the land to clear it and claim insurance. This motive is carried out when the land is no longer productive. That land is burned, and they propose a claim to the insurance company. Then, it is used to open new land elsewhere. The problem is that the Ministry of Environment and Forest can still not map out the perpetrators of the forest fires. Perpetrators consisted of 413 entities and 147 companies, consisting of individuals and corporations (Hartiwiningsih, 2018).

The Legal Framework of Land Burning

Existing studies show that weak legal policy and inadequate monitoring, exacerbated by chronic corruption among officials, have been a major problem in Indonesia. Law No. 32 of 2009 on Environmental Protection and Management is the main basis for

protecting every person's right to live in a good and healthy environment as part of protecting the whole ecosystem. Other laws that contain environmental policies and stipulations include (1) Law No. 39 of 2014 on Plantations, (2) Law No. 41 of 1999 on Forestry, and (3) Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction. Some substances of the environmental policies in these laws have been amended with Law No. 11 of 2020 on Job Creation.

The policy that prohibits land burning and the obligation of business owners to have systems, facilities, and infrastructure to prevent and handle plantation fires are also regulated in implementing regulations, namely (1) the Governmental Decree No. 4 of 2001 on Controlling Environmental Damages and/or Pollution Associated with Forest and/or Plantation Fires, (2) the Governmental Decree No. 71 of 2014 on the Protection and the Management of the Peatland Ecosystem as amended with the Governmental Decree No. 57 of 2016, (3) the Regulation of the Ministry of Environment No. 10 of 2010 on the Mechanism to Prevent Environmental Damages and/or Pollution Associated with Forest and/or Plantation Fires, and (4) the Regulation of the Ministry of Agriculture No. 05/Permentan/KB.410/1/2018 on Zero Fire Plantation Land Opening and/or Management.

The Concept of Multidoor Law Enforcement

The existing condition shows that the legal policy of the forest burning crime has been

carried out, but it is not yet optimum, as so far, law enforcers have only used the laws regarding the environment. The ineffective legal policy requires a clear solution, where the handling of the multi-regime law or the multidoor approach must also be used in enforcing the environmental law. The multidoor approach was initiated by the note of agreement in 2012, followed by the mutual regulation between law-enforcing institutions with other related institutions in 2013.

The multidoor approach aims to optimize the deterrent effect, especially on corporate perpetrators, to revive the environmental condition, to return state losses, to return the asset appropriation, which is the result of criminal activity, and to implement the principle of following the money (Ministry of Environment and Forestry of the Republic of Indonesia, 2013). Because of that, the multidoor approach uses various legal regimes, including the environment, forestry, spatial planning, plantations, mining, taxation, corruption, and money laundering.

Multidoor law enforcement must close the gaps or weaknesses in several laws prohibiting land burning. Some laws that regard criminal law violation have not determined a fully proportional threat of criminal sanctions. Judges often impose heavy punishments for light actions and vice versa, imposing light sanctions for serious environmental crimes (Ali & Setiawan, 2022). In several cases, land-burning perpetrators were punished with light sanctions as they were not prosecuted with

laws that apply the minimum-special system of penal sanction. Weak law enforcement is one of the factors that cause the repeating cycle of forest fires (Carmenta et al., 2021)

Indonesian environmental laws have not differentiated actions considered crimes because they are regulated in the law (*malum prohibitum*) or crimes due to their characteristics (*malum in se*). The regulations on environmental crimes are stipulated in the administrative law as a *malum prohibitum* offense. However, the application of criminal sanctions is highly severe, like a *malum in se* offense (Amrani, 2022). The multidoor approach is also necessary, as some laws are ambiguous. Thus, the court often fails to differentiate between corporate criminal liability and the criminal liability of corporate administrators (Wibisana et al., 2021).

MATERIALS AND METHODS

It is juridical-normative research. This study is normative juridical research conducted by analyzing legal norms contained in constitutional regulations and court decisions related to the cases of plantation land fires. Juridical normative research is doctrinal legal research that analyzes principles, doctrines, rules, and legal norms relevant to the examined case. Doctrinal legal research is carried out to explain legal concepts, rules, principles, and construction through some interpretation methods (Hoecke, 2011).

Doctrinal legal research tries to resolve practical problems by forming new arguments, theories, or concepts as

a prescription for resolving those issues (Hutchinson & Duncan, 2012). The doctrinal legal research includes the search for legal precedent and the interpretation of legislation. The main characteristic of the doctrinal method is that it involves a critical conceptual analysis of all relevant laws and legal cases to uncover a relevant legal statement to the analyzed problem (Hutchinson, 2015).

This study uses the statute approach and the conceptual approach. The former is carried out by analyzing the constitutional regulations relevant from the ontological aspect (the reason) on the issuing of law, the philosophical basis, and the *ratio legis* (Marzuki, 2010). Meanwhile, the conceptual approach is carried out by analyzing the legal concepts and principles contained in the norms of a constitutional regulation or through the existing legal views or doctrines (Marzuki, 2010).

This research uses secondary data using the data collection technique through the literature review. The secondary data includes constitutional regulations, court verdicts, books, journals, results of seminars or other scientific gatherings, and the opinions of legal experts. This normative-legal research is directed to produce new arguments, theories, or concepts as the prescription for resolving the problem of land burning.

The juridical normative approach is carried out through some stages, including identifying legal cases, legal reasoning, problem analysis, and problem resolution. This research used the qualitative juridical

technique of analysis, where the data that concerns the regulation and enforcement of the criminal law of land fires are systematically compiled. These data were then analyzed qualitatively using legal interpretation and construction. The data analysis was carried out through several activities, which include selecting articles that contain legal norms, compiling the systematics of these articles to produce a classification, analyzing these articles using the existing legal principles, and compiling new argumentation constructions, theories, or concepts as a prescription in resolving the investigated problem (Soemitro, 1985). The data was also analyzed by examining the legal considerations (*ratio decidendi*) used by the judges in examining, adjudicating, and deciding cases of land burning.

RESULTS AND DISCUSSION

The legal policy of the crime of land burning in Indonesia is part of the integrated legal policy on the environment, which involves the Police Force, the Attorney, the Ministry of Environment and Forestry, and the Ministry of Agriculture. The integrated environmental legal policy model is regulated in Article 95 clause (1) of Law No. 32 of 2009 on Environmental Protection and Management, which is strengthened with the Constitutional Court Decree No. 18/PUU-XII/2014 (Maryudi, 2016).

A multidoor approach is an approach of legal policy that utilizes various laws to convict the perpetrators of environmental crime. It regards the laws in the sectors of the environment, forestry, spatial planning,

plantations, mining, taxation, corruption, and money laundering. This approach aims to avoid the disparity of criminal lawsuits in a similar case, creating a deterrent effect, preventing the crime perpetrators from escaping, demanding corporate responsibility, reviving the environment, opening the opportunities for international cooperation as asset recovery, and returning the state's losses (Nurrochmat et al., 2016).

The multidoor approach is carried out because environmental and forestry crimes are inter-sectoral crimes almost always followed by money laundering, bribery, corruption, gratification, and tax evasion. With the multidoor approach, the limitations of one constitutional regulation may be completed by another. Principally, apart from convicting the perpetrators, it is also to find the direction of the money, which is the result of the crime (following the suspect and the money); thus, the physical perpetrators, the functional perpetrators (the crime mastermind), and the corporate perpetrators may be convicted with maximum punishment for their crimes (Tacconia et al., 2019).

In 2012, the multidoor approach started to be initiated in handling the criminal case regarding the forest and the peatland's natural resources and environment. The multidoor approach was initiated with a note of agreement, and followed by the mutual regulation in 2013 between the Republic of Indonesia's Attorney General, the Republic of Indonesia's Police Force, the Ministry of Forestry, the Ministry of Environment, the Ministry of Finance, and the Center of

Financial Transaction Reports and Analyses (Situmorang, 2015). In the multidoor approach, the legal policy uses various legal regimes, including environmental, forestry, spatial planning, plantations, mining, taxation, corruption, and money laundering.

The institution of attorney has also used the multidoor approach since issuing Attorney General Decree No. PER-010/A/JA/06/2013, executed by the International Natural Resource Task Force. This task force is formed to support suing cases on natural resources at the regional, national, and even international levels, using a systematic and coordinative handling method. In the multidoor approach, the suing of the case, which is a series or a combination of crimes in the natural resource and the environment of the forest and the peatland, uses *concursum indictment* (a combination of criminal actions) (Molenaar et al., 2013).

In the legal policy implementation, the Ministry of Environment and Forestry has carried out an integrated approach, working with the Police Force and the Attorney. Since 2015, the Ministry of Environment

and Forestry has facilitated the Police Force and the Attorney on 82 cases of forest and plantation burning. Meanwhile, the Ministry of Environment and Forestry has handled 5 cases of P21 (the investigation results are complete, and the case is deemed ready to be brought to the Attorney) (Molenaar et al., 2013).

If referring to the Data on the Work Results of Law Implementation, the General Directory of Environmental and Forestry legal policy 2015-2020 (General Directory of Environmental and Forestry Legal Policy, 2021), the legal policy through the police and the attorney facilities on the forest and plantation burnings are more effective as they are in the second highest place of the highest number of cases after environmental pollution as mentioned in Figure 1. Conversely, the legal policy results of the forest and plantation burning cases carried out by the Ministry of Environment and Forestry with the P21 status are placed on the fifth rank.

Even though the integrated approach has been carried out, most environmental

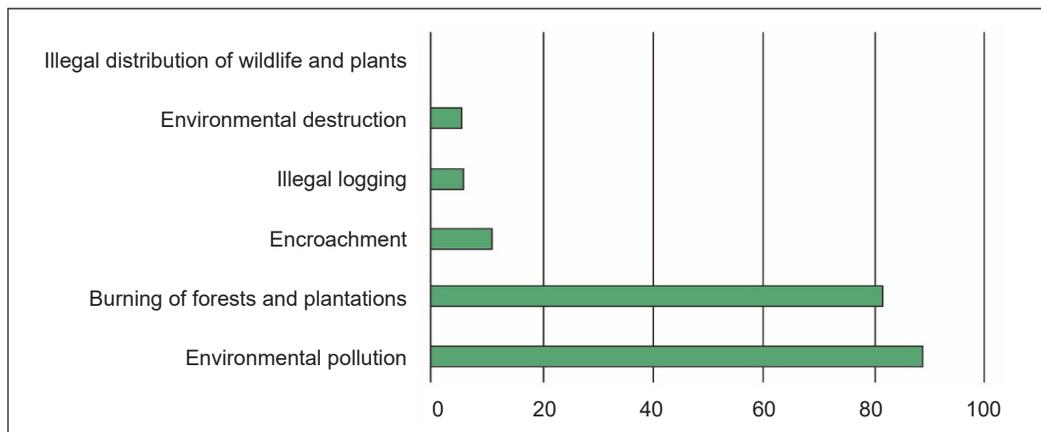


Figure 1. Legal policy results facilitated through the police force and the attorney 2015–2020

cases, including the case of land burning, which is the 3rd most destructive case, as mentioned in Figure 2, still have not used the multidoor approach. Practically, the multidoor approach has only been practiced in several cases, including environmental destruction and illegal logging (Murti, 2017). The assessment results of UDNP Indonesia also showed that in its practice, the Standard Operating Procedures (SOP) of legal policy institutions are still not synchronized with the guide under the multidoor approach, even though an MoU was signed in 2013 (Bahuet, 2016). The Multidoor approach experienced more obstacles due to the limited budgets and field personnel. Between 2015 and 2017, the annual budgets of the Directorate General for legal policy of Environment and Forestry amounted to about USD 13.7 million, equivalent to about 13 cents per 10,000 m² of forest. Similarly, forestry personnel are far below the sufficient level. In the Java-Bali-Nusa Tenggara region, the personnel-to-forest ratio is only one police for every 600 km², while in Papua, the

ratio is even more extreme: one police for about 5,000 km² of forest (The Republic of Indonesia's Ministry of Environment and Forestry, 2019).

Forest legal policy is also conducted with several bureaucratic structures and agencies to overcome the limited resources allocated. For instance, amidst the rampant illegal logging experienced in the country during the early 2000s, in 2005, the President issued a Decree (Presidential Instruction No. 4/2005) that instructed ministries and state agencies (at the national and regional level) to accelerate the eradication of illegal logging in forest areas and its trafficking across Indonesia (Ekawati, 2013).

The coordinated operations, called sustainable forest operations, reduced smuggling in major timber hubs, but the timber and equipment seizures rarely led to the recovery of the financial losses. The joint enforcement sweeps were even said to have resulted in unlawful appropriation of timber by enforcement personnel (Luttrell et al., 2011). Enforcement operations were

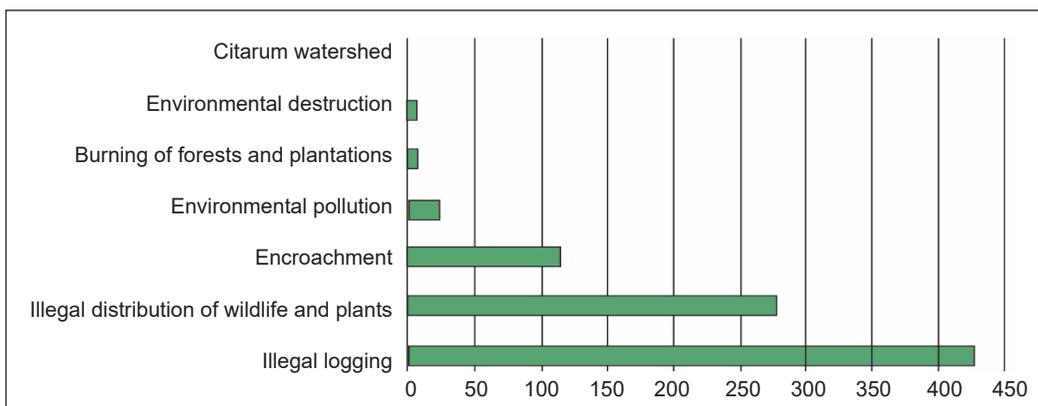


Figure 2. Legal policy results carried out by the Ministry of Environment and Forestry with the P21 status in 2015–2020

seen to have failed to arrest the main actors of illegal logging; only a small fraction of them was prosecuted with even minor sentences (Luttrell et al., 2011).

In recent years, forest legal policy has adopted a multidoor strategy involving the Ministry of Environment and Forestry, the Ministry of Finance, the Attorney General, the National Police, and the Indonesian Transaction Reporting and Analysis Center. The multidoor approach seeks to establish coherence between the inquiry, investigation, and prosecution of forestry crimes by using a combination of various laws related to the environment, forestry, mining, money laundering, corruption, agriculture, and taxation (Arwida et al., 2015).

It targets crimes committed by corporations or corporate actors (United Nations Environment Programme, 2014). The approach applies a follow-the-money approach in dealing with forest-related crime, in which law enforcers track the assets and bank accounts of the suspects, and perpetrators found guilty are obliged to pay the costs of rehabilitation of damaged areas and return lost state revenues.

In the criminal justice process on the crime of land burning, the public prosecutors commonly use a type of alternative indictment and a combination indictment. In the alternative indictment model, some indictments are arranged in layers. One layer is an alternative, excluding the indictments on the other layers. For example, it uses the plantation burning offense in Law No. 32 of 2009 on Environmental Protection and

Management or the land burning in Law No. 39 of 2014 on Plantations (Ekawati, 2013).

It differs from the multidoor approach, which combines indictments that associate the cumulative indictment with the alternative or the subsidiary indictments. For example, the first indictment consists of the primary indictment, a primary indictment using the deliberate offense, and a subsidiary indictment using the negligence of the land-burning in Law No. 32 of 2009 on Environmental Protection and Management. Meanwhile, the second indictment uses the plantation burning offense in Law No. 39 of 2014 on Plantations.

The suing process of the land burning may be imposed on individual or corporate perpetrators. Based on the Law No. 32 of 2009 on the Environmental Protection and Management, if the criminal action of land burning is carried out by, for, or in the name of a business entity, the criminal indictment and the criminal sanctions are convicted to the head of the business entity, and/or the person who gives orders to carry out that criminal action or the person who acts as the leader of that criminal activity.

Suppose the criminal action is carried out by an individual, based on a work-related or other relation, who acts within the work environment of a business entity. In that case, the criminal sanction is convicted to the giver of orders or the leader in that criminal action, without considering whether that action is carried out alone. On the criminal action whose conviction is borne to the business entity, the criminal sanction is imposed on the business entity,

which is represented by the management authorized to represent inside and outside of court according to the constitutional regulations which apply as the functional perpetrator.

In the criminal verdict imposition of the land burning, the judge may impose a principal and additional criminal sanctions. It is a manifestation of the double-track system in the criminal sanction system. Even though the additional criminal sanction has been regulated in detail in Law No. 32 of 2009 on the Environmental Protection and Management, in the imposition of the criminal action verdict of the land burning, it is still seldom to be applied by the judge (Fajri, 2016).

Some of the judges' verdicts that contain additional criminal sanctions include the Verdict of the District Court Opposition No. 228/Pid.Sus/2013/PN.Plw, where the perpetrator is imposed by a principal criminal sanction and an additional criminal sanction in the form of reparation of the criminal action's impacts to revive the land destroyed due to the land burning. Another verdict that contains additional criminal sanctions is the Verdict of Bengkalis District Court No. 547/Pid.Sus/2014/PN.Bls where the perpetrator is imposed with a principal criminal sanction as well as an additional criminal sanction in the form of an obligation to complete the facilities to prevent and avert burning according to the standardized guide which applies (Fajri, 2016).

The law-enforcement model must be reconstructed using the multidoor approach to optimize the prevention of land-burning

criminal action. Until now, the multidoor approach legal framework in the criminal legal policy is only regulated by the note of agreement and the mutual regulation between the Republic of Indonesia's Attorney General, the Republic of Indonesia's Police Force, the Ministry of Forestry, the Ministry of Environment, the Ministry of Finance, and the Center of Financial Transaction Reports and Analyses.

The mutual regulation stipulates that criminal actions are handled using the multidoor approach. One of them is the crime on plantations. Even so, this mutual regulation does not involve the Plantation General Directory of the Ministry of Agriculture, though the plantation burning happens in the plantation areas where in the legal policy, it becomes the task of the plantation Civil Servant Investigators (Ministry of Environment and Forestry, 2020).

For the sake of the investigation's effectiveness, the investigation guidelines must regulate the handling of the investigation through the multidoor secretariat, which is coordinated with the Ministry of Environment and Forestry. Through the multidoor secretariat, the Ministry of Environment and Forestry regularly monitors the development of the case handling, gives technical support, and facilitates communication with the related parties. The multidoor secretariat is necessary to increase the coordination between law-enforcing and related institutions (Barber & Schweifhelm, 2011).

The handling of the land-burning criminal case starts from the complaint

report from the society and the findings of a governmental institution and a law-enforcing institution. Then, the multidoor secretariat facilitates a mutual together with the Police Force Investigators, the Public Prosecutors, and the inter-sectoral Civil Servant Investigators, which include the Environmental Civil Servant Investigators, the Forestry Civil Servant Investigators, the Plantation Civil Servant Investigators, the Spatial Planning Civil Servant Investigators, and the Taxation Civil Servant Investigators. Based on the job descriptions, the Police Force Investigators and the inter-sectoral Civil Servant Investigators will then carry out a preliminary field investigation and collect materials and information. The multidoor secretariat then facilitates a further discussion on the preliminary investigation results to decide upon the status escalation to become an investigation.

Alternatively, they may conduct a preliminary investigation on cases with enough evidence (Hartiwiningsih, 2007).

There needs to be a reconstruction of the coordination plan in handling the criminal case on the natural resources and the environment to maximize the preliminary investigation using the multidoor approach, regulated in the mutual regulation in 2013, into what is presented in Figure 3.

There needs to be an increase in the Civil Servant Investigators', Police investigators, and public prosecutors' competencies and capacities to optimize the investigation of the criminal case of land burning using the multidoor approach (Figure 3). The number of Civil Servant Investigators is insufficient to face the challenges of monitoring and enforcing criminal law (General Directory of Environmental and Forestry Legal Policy, 2019). They should have an increased knowledge of substantive and formal law

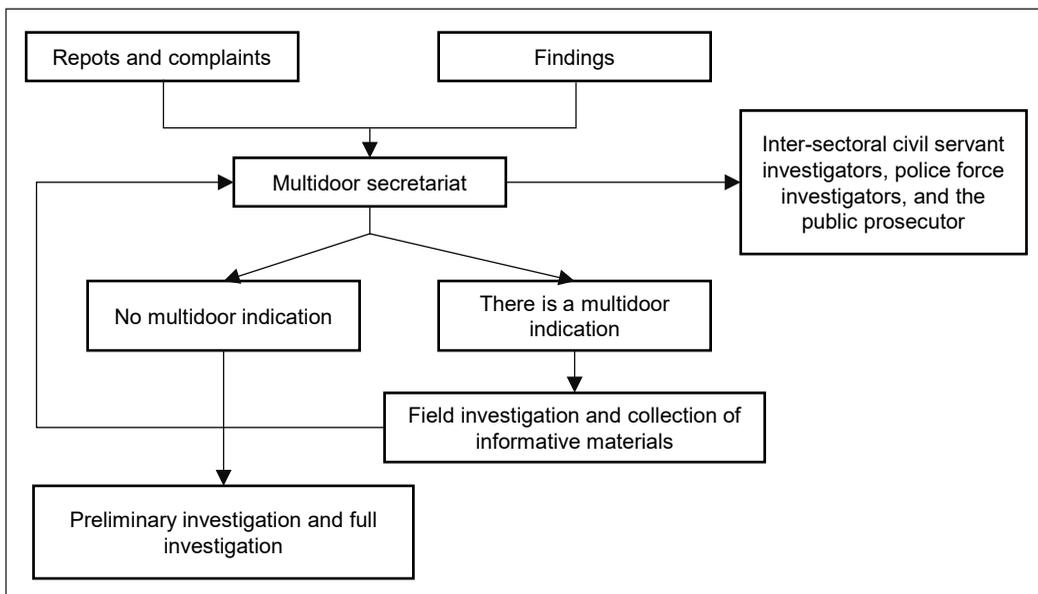


Figure 3. The handling of a case using the Multidoor Approach Model

and legal skills in handling cases using the multidoor approach.

The multidoor approach must also be carried out in the prosecution and investigative stages. Coordination may be carried out since the start of the investigative process through the multidoor secretariat to obtain suggestions for applying the legal constructions. The public prosecutors must primarily scrutinize the related constitutional regulations so that they may use the approach of the multi-regime law. The public prosecutor may carry out the multidoor approach by combining cases and writing them down on one indictment letter as a cumulative indictment.

In line with Article 141 of the Criminal Code, this combination of cases may be carried out if there is a simultaneous or an almost simultaneous acceptance of case files under these conditions: (1) some of the criminal cases are carried out by the same people and the investigative interests do not become an obstacle to its combination, (2) some of the criminal cases involve each other, and (3) some criminal cases are not involved with each other, but there are relations between them, where in this case a combination is necessary for the investigative interests.

The indictment is cumulatively arranged if there are concurrent deeds (*concurcus realis*) in the criminal action of land burning. A *concurcus realis* may happen if someone carries out some actions where each of those actions stands alone as criminal actions. Such actions do not need to be similar, nor do they have to be related. In the multidoor

approach, the indictment is cumulative, but this is contradictory to the *concurcus realis* regulated in Article 65 of the Criminal Code, which regulates that if there are concurrent actions that stand alone, which are then some criminal actions and the perpetrator is threatened with similar principle criminal actions, that person will be imposed with only one sanction.

The prosecution of land-burning perpetrators with concurrent crimes (*concurcus realis*) can be carried out if the criminal perpetrators commit several acts, and each act stands alone as a crime. Apart from being charged with the crime of burning the plantation land, corporations can also be investigated and charged with other possible crimes, such as undergoing business activities without business licenses, which cause several people to become victims, damaging people's health and safety, and/or causing environmental damages as regulated and subject to criminal sanctions. It is stipulated in Article 109 of Law No. 32 of 2009 on Environmental Protection and Management, which was amended into Law No. 11 of 2020 on Job Creation.

Other possible criminal acts linked to plantation land fires are also regulated and subject to criminal sanction in Law No. 18 of 2013 on the Prevention and the Eradication of Forest Destruction, amended into Law No. 11 of 2020 on Job Creation. Apart from being criminally prosecuted for land burning, the perpetrators of that crime can be prosecuted if they undergo plantation activities without permission to undergo business in forest areas as regulated

and threatened with criminal sanctions in Article 92 clause (1) letter A and Article 92 clause (2) letter A of that law. The maximum criminal sanction imposed is the maximum amount of the threatened sanctions of those actions, but it may be more than the most severe maximum sanction added by a third. This stipulation should be changed so that the perpetrator may obtain cumulative sanctions if they commit concurrent crimes (Casson et al., 2006).

The case prosecution of the land burning using the multidoor approach may be used to maximize the criminal responsibility of corporations. As a guide to handling the criminal cases of corporations, there is the issuing of the Supreme Court Decree No. 13 of 2016 on the Guidelines in Handling Criminal Cases of Corporations. The legal subjects whom criminal responsibilities may impose include (1) the corporation or the administrators, (2) the corporation and the administrators, and (3) other perpetrators who are proven to be involved in the criminal activity. The case prosecution of the land burning by corporations is also guided by Attorney General Decree No. PER-028/A/JA/10/2014 on the Guidelines in Handling Criminal Cases with the Legal Subject of Corporations. Those guidelines regulate the actions of the corporations or the actions of the administrators who may be demanded with criminal responsibilities.

Then, the judge may impose a criminal sanction on the corporations through principal and/or additional criminal sanctions. The principal sanction that may be imposed upon a corporation is a fine. Then,

the additional sanction may be imposed on the corporations according to Article 119 of the Law No. 32 of 2009 on Environmental Protection and Management, which includes the appropriation of profits obtained from the crime, the closure of some or all venues of business and activities, the reparation of the criminal action impacts, the obligation to carry out those neglected without right, and the placement of the company under interdiction for the maximum period of three years.

CONCLUSION

Theoretically, in handling cases of land burning, the multidoor approach can increase knowledge in the criminal procedural law sector as a formal law in handling cases. So far, the sources of formal law include the Criminal Procedural Code and the guidelines for handling cases applied by the Police Force, prosecutors, and judicial institutions. These guidelines have not been harmonized with the development of criminal motives as well as the development of knowledge and technologies. Apart from that, the multidoor approach may theoretically strengthen the plural philosophies and objectives of punishments, namely combining the retributive and utilitarian principles in one unity.

Practically, the multidoor approach can factually uncover an indication of concurrent crimes in cases of land burning. In line with the characteristics of environmental crime with corporate actors, this crime concerns business activities starting from land usage, business permits, payment, cultivation,

management, and marketing activities. The corporations' accountability in fulfilling all requirements in each stage of their business activities can become materials and information in the indictment and investigation processes of the land-burning cases.

Generally, crimes in the natural resource sector involve intersectoral crimes. Even crimes in the forestry sector are often concurrent with money laundering, bribery, gratification, and tax evasion. This condition is weakened by the existing gaps in some laws, such as Law No. 39 of 2014 on Plantations, which has weaker sanctions compared to those in Law No. 41 of 1999 on Forestry.

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