

**IMPLEMENTATION OF THE ASEAN AGREEMENT ON TRANSBOUNDARY
HAZE POLLUTION IN THE SOUTHEAST ASIA REGION**

**IMPLEMENTASI PERJANJIAN ASEAN TENTANG POLUSI KABUT ASAP LINTAS
BATAS DI KAWASAN ASIA TENGGARA**

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Abstract: this study aimed to determine the extent of the implementation of the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region. This study was normative empirical legal research (applied law research). Empirical normative legal research began with written positive legal provisions that were applied to in-concreto legal events in society. The principle of the working mechanism of the ASEAN Agreement on Transboundary Haze Pollution was the right to exploit one's own resources with environmental and development policies, but this cannot be separated from the responsibility to ensure that exploitative activities did not cause environmental damage and threaten human health from other countries or an area outside the jurisdiction of a country but seeing the incidence every year there were still forest fires that cause a large haze and cause inconvenience to other ASEAN member countries and this must be immediately sought out so that an agreement that had been mutually agreed upon the same can be a parameter to reduce the occurrence of haze in the Southeast Asia region.

Abstrak: tujuan dari kajian adalah mengeksplorasi implementasi ASEAN Agreement on Transboundary Haze Pollution di Kawasan Asia Tenggara. Penelitian ini merupakan penelitian hukum empiris normatif (penelitian hukum terapan). Penelitian hukum normatif empiris dimulai dengan ketentuan hukum positif tertulis yang diterapkan pada peristiwa hukum *in-concreto* dalam masyarakat. Prinsip mekanisme kerja ASEAN Agreement on Transboundary Haze Pollution adalah hak untuk mengeksploitasi sumber daya sendiri dengan kebijakan lingkungan dan pembangunan, namun hal ini tidak lepas dari tanggung jawab untuk memastikan bahwa kegiatan eksploitatif tidak menimbulkan kerusakan lingkungan dan mengancam kesehatan manusia dari negara lain atau daerah di luar yurisdiksi suatu negara. Namun, melihat kejadiannya setiap tahun masih terdapat kebakaran hutan yang menyebabkan kabut asap yang besar dan menimbulkan ketidaknyamanan bagi negara anggota ASEAN lainnya. Maka dari itu, hal ini harus segera diupayakan sebagaimana kesepakatan yang telah disepakati bersama sehingga dapat menjadi parameter yang berguna dalam mengurangi terjadinya kabut asap di kawasan Asia Tenggara.

INTRODUCTION

Almost every year, entering the dry season, forest and land fires occur again in Indonesia (Darmawan *et al.*, 2020). The islands of Sumatra and Kalimantan have always been the subject of forest and land fires, although similar things have occurred in other areas such as in Sulawesi and Java, but on a relatively small scale. Based on the monitoring of a number of hot spots from January 1 to August 31, 2014 in the areas of Kalimantan Island, Sumatra Island and Sulawesi Island, there are 15,300 hot spots. The latest data based on monitoring of Terra and Aqua satellites from Meteorology, Climatology, and Geophysical Agency (BMKG) on Sunday, 12 October 2014 at 05.00 WIB shows that there are 153 hotspots that are still actively burning forests and land in Sumatra (Yulianti, Hayasaka, & Sepriando, 2013).

Forest and land fires in some of these areas have caused haze that disrupts public activities and health and even has the impact of polluting neighboring countries, such as Malaysia, Singapore and Brunei Darussalam. As a result, in 2013, Malaysia and Singapore submitted protest notes to the Indonesian government because of the smog originating in Indonesia that had polluted its airspace and disrupted flight schedules and hampered the activities of their citizens (Kusumaningtyas & Aldrian, 2013).

This annual phenomenon has had quite fatal consequences for affected countries, both politically and environmentally and economically. Singapore and Malaysia, as neighboring countries of Indonesia and the closest countries to the island of Sumatra, experienced the greatest impact from the haze brought by Indonesia. Singapore and Malaysia each suffered a loss of \$ 700 million when severe haze hit the region in 2015. The loss funds have been allocated by the respective governments to overcome the health problems experienced by their residents due to the smog that blankets cities in the two countries. In addition, several sectors such as tourism and aviation have also suffered from this haze (Santika, *et al.*, 2020).

For Indonesia, as a country experiencing forest fires, the haze has a bigger impact on society and the country's economy (Krah, 2020). Apart from damaging human health, this haze has also stopped economic activities

and schools in several regions in Indonesia. Politically, this haze is putting international pressure on Indonesia to immediately resolve this case, pressure not only comes from the Southeast Asian region but also from the international world at large. To overcome this problem, ASEAN has had several institutionalized efforts. Generally, this effort is sponsored by Singapore as a city state which is enveloped in fog every year by Indonesia, thus stopping economic activity. ASEAN's efforts began in 1997, when the biggest haze that occurred in the Southeast Asia region gave birth to a Regional Haze Action Plan (RHAP). In 2003, ASEAN finally had a framework to tackle forest fires, namely the ASEAN Agreement Transboundary on Haze Pollution. This framework is the first binding cooperation to be formalized in ASEAN and becomes a reference for handling the haze (Syaufina & Sitanggang, 2020).

Forest fires in various Southeast Asian countries, which have joined ASEAN in 1997-1998 prompted member countries to sign the ASEAN Agreement on Transboundary Haze Pollution on June 10, 2002. This agreement is intended to prevent, monitor, and overcome forest and land fires in Southeast Asia to control smog pollution across national borders through national, regional and international cooperation (ASEAN) policies (Hayasaka, Usup, & Naito, 2020). The ASEAN Agreement Transboundary on Haze Pollution includes several steps and mechanisms such as monitoring and assessment, prevention, readiness, national and regional responses, procedures for assigning personnel, materials and equipment across borders, as well as technical cooperation and scientific research. These aspects are summarized in the Standard Operating Procedure for Monitoring, Assessment, and Joint Emergency Response. In coordination, ASEAN member countries are members of the Conference of Parties (COP) to the ASEAN Agreement Transboundary on Haze Pollution and the Committee (COM) under the COP to AATHP (Toulier *et al.*, 2019).

In resolving cases or disputes that occur in the Southeast Asia region, ASEAN refers to the norms adhered to by this organization, namely non-interference, deliberation to reach consensus results that do not harm one party, and informal diplomacy in resolving regional problems. This can be seen from ASEAN

which tends to avoid direct involvement in the country's domestic problems even though it has an impact on the region. This research will discuss how to implement the ASEAN Agreement on Transboundary Haze Pollution in Southeast Asia (Cotton, 1999).

METHODS

This research is normative empirical legal research (applied law research). The main point of the study is the implementation or implementation of positive legal provisions in any particular legal event that occurs in society in order to achieve predetermined goals. Empirical normative legal research begins with written positive legal provisions that are applied to in-concreto legal events in society so that in research there are always a combination of two stages of study.

The first stage is a study of the applicable normative law, in this case in the form of basic principles and theories regarding compensation for oil pollution due to tanker accidents. The second stage is the application of in-concreto events to achieve predetermined goals. This application can be realized through empirical research on legal cases and documents. The results of the application will create an understanding of the realization of the implementation of normative legal provisions whether it has been carried out properly or not.

Because this type of research is empirical normative legal research, the data required is secondary data and primary data. This study aims to be change-oriented (reform-oriented research), which is research that intensively evaluates the fulfillment of existing regulations and recommends changes to any regulations that are needed. This legal research is explanatory (explanatory legal study), which aims to test the suitability of the application of theory and practice of how to implement the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region. Explanatory truth expression (explanatory or explanatory) is an expression of the truth of a study which aims to explain the data found in research activities.

The method/technique of collecting data to collect primary data in this study is by interview. The data collection tool used was in the form of an interview guide that was prepared based on the researcher's understanding of the object of

research. Secondary data is obtained through document study or literature study. Literature study is data retrieval by tracing reading materials, examining the problem variables to which the answers are sought.

Document studies are carried out on statutory regulations, documents and court decisions as well as legal materials related to the implementation of the ASEAN Agreement on Transboundary Haze Pollution. Methods/techniques of secondary data collection are carried out by the method of documentation, tracking literature and legal materials while the techniques used to collect primary data are using in-depth interviews, recording and documentation.

RESULTS AND DISCUSSION

History of the establishment of the ASEAN Agreement on Transboundary Haze Pollution

The formation of AATHP departed from a series of cases of forest fires that had hit this area. Although it has previously been stated that this agreement originated in the crisis that occurred in 1997, several years earlier there had been minor agreements regarding the handling and recognition of this haze problem, especially in the early 1990s. This case is transnational in nature so that it cannot be solved by one country alone (Heilmann, 2017). Especially for Singapore, which realizes that mitigation measures only function to reduce the impact of this case but cannot function in reducing the intensity of smoke from Indonesia (Nguitragool, 2010).

ASEAN's recognition of the occurrence of transboundary haze cases began in 1985, when in the previous three years there were 3.2 million hectares of forest burned (Varkkey, 2012). Following this phenomenon, ASEAN made an agreement regarding the protection of nature, the Agreement on the Conservation of Nature and Natural Resources, which regulates efforts to reduce air pollution caused by natural forest destruction or human activity. This agreement is the first time that ASEAN has had a binding environmental cooperation framework, despite the fact that the agreement has not been implemented to date. Some of the reasons that prevented this agreement from being realized were the lack of technical and expert power so

that it made several ASEAN countries not yet ratified the agreement (Macarlyan, 2013).

In 1997, there was a haze that was severe enough in ASEAN to require member countries to develop a more concrete framework to solve it. Between July and November 1997, an estimated 45,000 km² of forest burned in Kalimantan and Sumatra.⁷ The forest fires cost Singapore and Malaysia \$ 0.4 trillion each (Varkkey, 2009). Conditions were also exacerbated by the economic crisis that was hitting Southeast Asia at that time, which made people's purchasing power to buy fog protection equipment lower, making the health impact even more difficult to overcome. From this phenomenon, in the same year ASEAN formed the Regional Haze Action Plan (RHAP). RHAP constitutes a joint step by ASEAN member countries in order to resolve the haze problem.

The aim of this program is to tackle forest fires by implementing better management and supervision, establishing a system of monitoring mechanisms and increasing regional capabilities in dealing with forest fires.⁸ This program also provides a clearer division of labor than the previous agreement. In this agreement, Malaysia is at the forefront of prevention measures, Singapore is under surveillance, and Indonesia is in mitigation measures.

Following the failure of RHAP, Brunei, Malaysia, Indonesia and Singapore continue to work together to resolve this transboundary haze through the 7th Joint Meeting of the Working Groups for the Sub-Regional Fire Fighting Arrangements for Sumatra and Kalimantan. From this collaboration, finally the ASEAN Agreement on Transboundary Haze Pollution was formed in 2002. However, this agreement was only active in 2003 after Thailand became the 6th country to ratify this agreement. This agreement on paper is made more binding than the previous agreement by stating several rights and obligations of the countries that ratify this agreement.¹⁰ This agreement is indeed a reference for the policies of ASEAN countries in formulating policies related to forest management. However, Indonesia as the largest contributor to smoke from forest fires only ratified this agreement in 2015, so the points of rights and obligations contained in the ASEAN Agreement on Transboundary Haze Pollution cannot reduce the intensity of

the haze because the countries directly involved have not ratified it. and ASEAN cannot force Indonesia to ratify the agreement.

Implementation of the ASEAN Agreement on Transboundary Haze Pollution in the Southeast Asia Region

Forest fires that have frequently occurred in Indonesia since 1997 have caused haze pollution across national borders. Forest and land fires that occur are caused by various factors, one of which is HTI (Industrial Plantation Forest) and HPH (Forest Concession Rights) ⁷¹. As a result of the large number of foreign investors and companies clearing land using burning techniques carried out by plantation companies, causing a fire large enough to cause haze pollution to cross national borders (Tan, 2005).

Malaysia and Singapore are countries that are often directly affected by heavy haze due to forest and land fires in Indonesia. This made the countries of Malaysia and Singapore to protest against Indonesia. A protest attitude can be interpreted as a formal communication from an international subject to another international subject to raise a complaint about a problem or an objection to a violation of international law (Varkkey, 2014).

Transboundary haze pollution caused by forest and land fires in 1997 in Indonesia has left Malaysia covered in thick smog. The fires of 2006-2014 in Indonesia, also resulted in cross-border smog pollution to Malaysia, Malaysia felt aggrieved because the haze had disturbed the country's productivity from the social, economic and health sectors.

Forest and land fires in Indonesia occur almost every year and often result in transboundary haze that adversely affects its closest ASEAN neighbors such as Singapore and Malaysia. Therefore, Indonesia and other ASEAN countries agreed to deal with the fires and the impact of their aspirations through the signing of the ASEAN Agreement on Transboundary Haze Pollution (AATHP) on June 10, 2002. AATHP came into effect on November 25, 2003. The AATHP aims to prevent and monitor transboundary haze pollution as a result of land and/or forest fires that must be addressed, through concerted national efforts and intensifying regional and international cooperation (Nazeer & Furuoka, 2017).

Regarding protection and prevention, according to the AATHP, it is necessary to establish an agency to mitigate the smoke fires caused, but Indonesia has yet to establish such a body to further coordinate with the “ASEAN Coordinating Center for Transboundary Haze Pollution Control”. In fact, Indonesia’s forest area is a forest area where forest fires often occur, so an agency is needed to monitor this so that later it can minimize the impact (Varkkey, 2020).

Until now, the agency that monitors all the pollution that occurs is the Government’s Environmental Impact Management Agency (BAPEDAL). Therefore, with regard to state accountability, references in dispute resolution often refer to forms of state responsibility as regulated in the Draft Article on State Responsibility adopted by the International Law Commission (ILC). Although the ILC draft is not binding as an international legal instrument because it has not been established as a legal product. However, the binding strength of the ILC draft is not seen from its form as an instrument, but in its content.

Meanwhile, the responsibility of corporations that have burned peatlands for industrial interests in an instant manner has committed acts against the law. The consequences caused by corporations, not only harm local citizens, the Indonesian state as a polluter, but also harm neighboring countries affected by cross-country smoke pollution. In the AATHP, there is no further explanation regarding which responsibility the corporation should carry if it pollutes.

CONCLUSION

Agreement on Transboundary Haze Pollution is an agreement that aims to avoid and overcome forest fires and haze generated through joint efforts and harmonization of government policies. This agreement was signed on November 10, 2002 and became effective on November 25, 2003 after being ratified by six countries. Indonesia, as the main actor in transboundary haze pollution, is in the spotlight in every forest fire that occurs in the Southeast Asia region that causes transboundary haze. Indonesia complies with the ASEAN Agreement on Transboundary Haze Pollution Regime, Indonesia complies with it by making regulations governing the taking of preventive, monitoring and controlling actions

in accordance with the articles contained in the ASEAN Agreement on Transboundary Haze Pollution to achieve the objectives of the ASEAN Agreement on Transboundary Haze Pollution. The Indonesian government is also carrying out its obligation by creating a special institution or agency in handling haze, especially those caused by peatland fires because in Indonesia itself, the problem of trans-smog due to forest fires is generally caused by burning peatlands which produce thick smoke and reach territories in outside the jurisdiction of Indonesia.

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