



# GOVERNMENT RESPONSIBILITY FOR FOREST AND LAND FIRES

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## Abstract

In 2015, Indonesia experienced quite large forest and land fires, which caused smog to spread to neighboring countries, Singapore and Malaysia. During the haze disaster, both in the pre, incident, and post forest and land fires, the government was considered slow in anticipating the spread of forest and land fires, as well as the lack of coordination between the central government and regional governments so that people became victims. Whereas state laws and policies that contain the authority of the Central Government and Regional Governments related to forest and land fire control, it can be said that they are very comprehensive in regulating the government's responsibilities, ranging from prevention, extinguishing, to post-fire handling. Therefore, the central government and local governments, as well as existing institutions such as BNPB, BPBD should continue to improve strategies and improve coordination to be more effective when carrying out roles according to their responsibilities, so that later they are able to reduce the risk of forest and land fires in the future.

**Keywords:** Government Responsibility, Forest, Land Fires.

## INTRODUCTION

One of the objectives of the establishment of the Republic of Indonesia as stated in Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia is to form an Indonesian state government that protects the entire Indonesian nation and all of Indonesia's bloodshed. In realizing this goal, the Indonesian state is based on the principles that are used as pillars in the administration of the state, including the principle of the rule of law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a state of law. Likewise in Article 1 paragraph (2) of the 1945 Constitution which states that "Sovereignty is in the hands of the people and carried out according to the Constitution", which means that sovereignty is in the hands of the people and all actions carried out or decided by state apparatus and society must be based on the rule of law.<sup>1</sup>

Law is a unified state system, where the holder of the highest power in a country is the law, not reflected in individuals or people. The concept of the rule of law requires the existence of certain elements in the administration of the state administration system, especially the guarantee of human rights. In fact, the state is formed because of the social contract. From this social contract, individuals in the bonds of living together in the state surrender their political and social rights to the state community, so that the state must provide guarantees for the rights inherent in individuals and in the bonds of social life.<sup>2</sup>

Humans and the environment are a unity that influence each other as stated in Article 1 of Law Number 32 of 2009 concerning Environmental Protection and Management which states that the environment is a unitary space with all objects, power, circumstances, and living things, including humans and animals. behavior, which affects nature itself, the continuity of life, and the welfare of humans and other living things.<sup>3</sup>

Forests are invaluable natural resources because they contain biodiversity as a very valuable source of natural wealth. Therefore, the use of forests and their protection have been regulated in the 1945 Constitution, Law Number 5 of 1990, Law Number 41 of 1999, Law Number 32 of 2009, Government Regulation Number 28 of 1985 and several Ministerial Decrees. Forestry as well as several Decrees of the Directorate General of Forest Protection and Nature Conservation and the Directorate General of Forest Concession. However, disturbances to forest resources continue and even increase in intensity, such as forest and land fires. At first, forest fires were considered as natural events/natural disasters.<sup>4</sup>

As in the case of Forest and Land Fires in Central Kalimantan Province in 2015, which became the province worst affected by forest and land fires, the area of forest and land fires was around 122,882.90 Ha. Based on data from the National Disaster Management Agency (BNPB) in 2015 fires occurred in peat land covering an area of 196,987 hectares and non-peat land covering an area of 133,876 hectares.<sup>5</sup>

The smog has harmed students in several areas of Central Kalimantan by reducing class hours and temporarily stopping teaching and learning activities. Due to the life-threatening smog, the community evacuated themselves assisted by the Advocates and Activists Movement

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<sup>1</sup> Jimly Asshiddiqie, *Green constitution: nuansa hijau Undang-undang Dasar Negara Republik Indonesia tahun 1945* (Rajawali Pers, 2009). h. 108.

<sup>2</sup> B. Hestu Cipto Handoyo, *Hukum Tata Negara Indonesia* (Yogyakarta: Cahaya atma Pustaka, 2015). h. 17.

<sup>3</sup> "Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," Pub. L. No. Lembaran Negara Tahun 2009/Nomor 140, Tambahan Lembaran Negara Nomor 5059 (2009).

<sup>4</sup> Fachmi Rasyid, "Permasalahan Dan Dampak Kebakaran Hutan," accessed October 4, 2021, <http://juliwi.com/edisi0104.html>.

<sup>5</sup> Putusan Pengadilan Negeri Palangka Raya 118/Pdt.G/LH/2016/PN Plk (Pengadilan Negeri Palangka Raya 2016).

(GAAS) to Banjarmasin, in 2 stages, the first stage was about 20 people and the second stage was around 21 people.<sup>6</sup>

During the haze disaster, both in the pre, incident, and post forest and land fires that cause smog, the government was slow in anticipating the spread of forest and land fires and the lack of coordination between the central government and local governments so that people became victims. The government's slow performance This is evidenced by the smog that extends to Singapore and Malaysia, the victim died, residents suffered from Acute Respiratory Infection (ARI) and the disruption of community activities

Based on the description of the background above, what is the government's authority related to forest and land fires according to the applicable laws and regulations?

## **RESEARCH METHODS**

This research is a normative legal research, with a model approach of law and applicable laws and regulations. The statutory approach is an approach using legislation and regulations, or an approach through legal products. From this approach, an analysis was carried out with legal theories and the practice of implementing positive law related to the problems in this research. The primary legal materials are in the form of applicable laws and regulations, such as: 1) Law Number 39 of 1999 concerning Human Rights; 2) Law Number 41 of 1999 concerning Forestry; 3) Law Number 24 of 2007 concerning Disaster Management; 4) Law Number 32 of 2009 concerning Environmental Protection and Management; 5) Law Number 26 of 2014 concerning Ratification of the Asean Agreement On Transboundary Haze Pollution (ASEAN Agreement on Transboundary Haze Pollution); 6) Government Regulation of the Republic of Indonesia Number 4 of 2001 concerning Control of Environmental Damage and/or Pollution Related to Forest and/or Land Fires; and 7) Government Regulation of the Republic of Indonesia Number 34 of 2002 concerning Forest Management and Preparation of Forest Management Plans, Forest Utilization, and Use of Forest Areas.

## **RESULTS AND DISCUSSION**

### **Overview of Legal Liability**

According to the Big Indonesian Dictionary, responsibility is a state of being obliged to bear everything (if anything happens, you can be sued, blamed, sued, and so on. And it is said that "legal responsibility" means the function of accepting the burden, as a result of the attitude of one's own party or another party.<sup>7</sup> In the legal dictionary, responsibility is a must for someone to carry out what has been required of him.<sup>8</sup>

According to the law, responsibility is a consequence of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an act.<sup>9</sup> Titik Triwulan states that accountability must have a basis, namely things that cause a legal right for a person to sue another person as well as in the form of things that give birth to other people's legal obligations to provide accountability.<sup>10</sup>

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<sup>6</sup> Putusan Pengadilan Negeri Palangka Raya 118/Pdt.G/LH/2016/PN Plk.

<sup>7</sup> "Arti Kata Tanggung Jawab - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed September 6, 2022, <https://kbbi.web.id/tanggung%20jawab>.

<sup>8</sup> Andi Hamzah, *Kamus hukum* (Ghalia Indonesia, 1986).

<sup>9</sup> Soekidjo Notoatmodjo, *Etika Dan Hukum Kesehatan* (Jakarta: Rineka Cipta, 2010). h. 54.

<sup>10</sup> Titik Triwulan and Shinta Febrian, *Perlindungan Hukum Bagi Pasien* (Jakarta: Prestasi Pustaka, 2010). h. 48.

According to Abdulkadir Muhammad, the theory of responsibility in violating the law (tort liability) is divided into several theories, namely: 1) Liability due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or knowing that what the defendant did would result in a loss; 2) Liability due to unlawful acts committed due to negligence (negligence tort liability), based on the concept of fault related to morals and laws that have been mixed (intermingled); 3) Absolute responsibility for violating the law without questioning the error (strict liability), based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses that arise as a result of his actions.<sup>11</sup>

In Article 6 of Law 24 of 2007 concerning Disaster Management, it is explained that the Government and local governments are responsible for implementing disaster management. Government responsibilities include: 1) Disaster risk reduction and integration of disaster risk reduction with development programs; 2) Protection of the community from the impact of disasters; 3) Guarantee the fulfillment of the rights of communities and refugees affected by disasters fairly and in accordance with minimum service standards; 4) Recovery of conditions from the impact of disasters; 5) Adequate allocation of disaster management budget in the State Revenue and Expenditure Budget; 6) The allocation of disaster management budget in the form of ready-to-use funds; and 7) Maintaining authentic and credible archives/documents from disaster threats and impacts.<sup>12</sup>

Meanwhile, the responsibilities of local governments contained in Article 8 of Law 24 of 2007 include the following: 1) Guaranteeing the fulfillment of the rights of communities and refugees affected by disasters in accordance with minimum service standards; 2) Protection of the community from the impact of disasters; 3) Disaster risk reduction and integration of disaster risk reduction with development programs; and 4) Adequate allocation of disaster management funds in the Regional Revenue and Expenditure Budget.<sup>13</sup>

Forest and land fires that occurred in Indonesia not only caused losses to the country of origin where the fire occurred, but also caused losses to other countries in the form of transboundary haze pollution such as Malaysia and Singapore. This raises the responsibility of the state (Indonesia) because the occurrence of transboundary smoke pollution that causes environmental disturbances in other countries is an act that is contrary to the principles of international law.

Forest fires are an event that should be the responsibility of a state towards the state and its people. These forest fires sometimes cause diplomatic polemics between Indonesia, Singapore, and Malaysia because there has been transboundary air pollution (smoke) caused by forest fires in Indonesia, which often occurs on the islands of Kalimantan and Sumatra, especially in Riau, which spreads to other areas, neighboring countries, namely Malaysia and Singapore.

According to data from the Ministry of Environment and Forestry of the Republic of Indonesia, forest and land fires in Indonesia from 2014 to 2019 reached an area of 3, 776, 009, 81 hectares, namely in 2014 an area of 44,411.36 hectares, in 2015 an area of 2,611,411, 44 hectares, in 2016 it was 438,363.19 hectares, in 2017 it was 165,483.92 hectares, in 2018 it was

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<sup>11</sup> Abdulkadir Muhammad, *Hukum perusahaan Indonesia* (Citra Aditya Bakti, 2010). h. 503.

<sup>12</sup> “Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana,” Pub. L. No. Lembaran Negara Tahun 2007/Nomor 66, Tambahan Lembaran Negara Nomor 4723 (2007).

<sup>13</sup> Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.

510,564.21 hectares, and in 2019 it was 5,775.69 hectares. And the largest forest and land fires occurred in 2015.<sup>14</sup>

International law requires each country to take the necessary steps to control and address serious global sources of pollution or transboundary sources of destruction within their jurisdiction.<sup>15</sup> In the *Trial Smelter* case that principle has been applied, where the arbitral tribunal has decided that the Canadian Smelter must compensate the United States for the pollution it has caused. The Council also stated the principle of “*Sic Utere Tuo Alineun Non Laedas*”, which emphasized that: “No states has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another and that measures of control were necessary”.<sup>16</sup> And Article 2 letter (a) of Law Number 32 of 2009 concerning Environmental Management and Protection, clearly states that environmental protection and management is carried out based on the principle of State responsibility. However, in practice Indonesia has failed to manage the environment, resulting in land fires caused by human activities.<sup>17</sup>

### **Forest Protection Against Forest and Land Fire Disasters**

Forest and land fires in Indonesia are problems that routinely occur every year, especially when entering the dry season especially the extreme dry season (El-Nino) where forest or land and plantation fires occur in many places. Natural factors, such as the El-Nino effect, cause long droughts until the plants dry out. This becomes a potential fuel if it is exposed to sparks originating from coal that appears on the surface or from other unintentional or intentional combustion.<sup>18</sup>

The characteristics of forest and land fires in Indonesia are very specific because most of them are on peatlands which have the potential to cause smoke. However, forest fires that occur in Indonesia can be said to be mostly carried out intentionally by humans, while fires that occur naturally are very rare.<sup>19</sup> Generally caused by human activities, namely when they prepare land for cultivation, agriculture, and plantations by burning; an easy, cheap, and fast way, but not controlled.<sup>20</sup>

Forest and land fires have an impact on human life, both positive and negative. However, the negative impacts are more dominant, which among others result in carbon gas emissions into the atmosphere thereby increasing global warming, loss of habitat for wildlife resulting in an imbalance of ecosystems, loss of trees which are oxygen producers and absorbers of rainwater, resulting in floods, landslides, and droughts. loss of industrial raw materials that will affect the economy, reduced forest area which will affect the microclimate (the weather tends to be hot), smoke pollution that disrupts community activities and causes various respiratory diseases, and a

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<sup>14</sup> “SiPongi - Karhutla Monitoring Sistem,” accessed August 4, 2021, [http://sipongi.menlhk.go.id/hotspot/luas\\_kebakaran](http://sipongi.menlhk.go.id/hotspot/luas_kebakaran).

<sup>15</sup> Widodo, *Hukum Internasional Publik* (Yogyakarta: Aswaja Pressindo, 2017). h. 39.

<sup>16</sup> “Negara Hukum - Menyajikan Segala Bahan Materi Kuliah Ilmu Hukum, Penelitian, Kasus-Kasus, Pendapat, Serta Kajian Budaya Yang Di Kemas Dalam Kategori Cerpen,” Negara Hukum, accessed August 4, 2021, <https://www.negarahukum.com/>.

<sup>17</sup> Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

<sup>18</sup> “Penyebab Kebakaran Hutan, Dampak, Dan Cara Menanggulangnya | Merdeka.Com,” accessed October 4, 2021, <https://www.merdeka.com/trending/penyebab-kebakaran-hutan-dampak-dan-cara-menanggulangnya-kln.html>.

<sup>19</sup> “Potret Keadaan Hutan Indonesia Periode 2009-2013,” *Forest Watch Indonesia* (blog), accessed August 4, 2021, <https://fwi.or.id/publikasi/potret-keadaan-hutan-indonesia-periode-2009-2013/>.

<sup>20</sup> Aldi Ariansyah, “Rencana Kontinjensi Nasional Menghadapi Ancaman Bencana Asap Akibat Kebakaran Hutan dan Lahan,” BNPB, accessed August 4, 2021, <https://bnpb.go.id/buku/rencana-kontinjensi-nasional-menghadapi-ancaman-bencana-asap-akibat-kebakaran-hutan-dan-lahan>.

decrease in the number of tourists.<sup>21</sup> Other negative impacts caused by forest fires are quite large, including ecological damage, decreased biodiversity, declining economic value of forests and soil productivity, and the smoke disrupting transportation activities, whether on land, rivers, lakes, sea and air. The haze disturbance due to Indonesia's forest fires has recently crossed national borders.<sup>22</sup>

Because the negative impact of forest and land fires is quite large, efforts to prevent, protect and control forest fires are needed. Whereas the Indonesian government already has laws governing the protection of forests and land prior to the occurrence of severe forest and land fires in 2015, including Law Number 41 of 1999 concerning Forestry, Law Number 32 of 2009 concerning Environmental Protection and Management, Law No. -Law Number 39 of 2014 concerning Plantations, and Law Number 24 of 2007 concerning Disaster Management. However, this does not prevent forest fires from occurring.

According to Saharjo et al, the chance of a forest and land fire hazard is due to the following factors: 1) Political will of the government. That it is time for the government to have a realistic political will in order to deal with the problem of burning forest fires in Indonesia. It's not just an action as a result of "international pressure" so that it seems to be "forced" and only formal. 2) Law enforcement. That there have been many rules made either in the form of laws, government regulations, ministerial decrees and so on, but unfortunately these rules are blunt when dealing with arsonists especially if the ones being faced are PMA (Foreign Investment) companies. 3) Coordination. That ineffective coordination between Jakarta (central government) and local governments, is often an obstacle in efforts to overcome forest fires. The hotspots which were successfully monitored by satellite monitored by the forest fire control post (Pusat), turned out to take two weeks to reach the area (a true story that was successfully monitored in the field). This happened because the hotspot information had to pass through long lines of bureaucracy/organizations which actually hindered the arrival of the information into the hands of the fire department. 4) Human resources. That most of the forest firefighters encountered in the field, especially when the fire was in action, did not have basic skills or knowledge about forest fires, especially if the fire occurred in peat forest or in ex-exploitation areas. The result is panic and uncontrolled blackout activities. 5) Knowledge of forest fires. That there is not much information about Indonesian forest fires, especially about fire behavior, prevention techniques, extinguishing techniques, and others that comes from the results of research in the field. This is a result of the various types of vegetation and specific environmental characteristics that require different techniques in their management activities. 7) Early warning and detection. That the rapid response of efforts to extinguish forest fires stems from the rapid arrival of information regarding indications of fire spots in the field, which was received directly by the fire brigade. Unfortunately, these hotspots must be investigated first in the field (the location of forest fires) through hotspot data from satellite monitoring by both NOAA and Himawari. Because not all hotspots are hotspots. 8) Approach to the community. That many efforts have been made in the context of preventing and overcoming forest fires in the country under the pretext of community empowerment. In fact, what has happened so far is not community empowerment, but rather to mobilize the community.<sup>23</sup>

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<sup>21</sup> Sri Nurhayati Qodriyatun, "Kebijakan Penanganan Kebakaran Hutan Dan Lahan," *Info Singkat Kesejahteraan Sosial* 6 (2014). h. 10.

<sup>22</sup> Fachmi Rasyid, "Permasalahan Dan Dampak Kebakaran Hutan."

<sup>23</sup> Bambang Hero Saharjo et al., *Pengendalian Kebakaran Hutan Dan Lahan Di Wilayah Komunitas Terdampak Asap*, ed. Aditya Dwi Gumelar (Bogor: IPB Press, 2018). h. 73-77.

Environmental damage due to forest fires does not only affect an area in Indonesia, but the whole of Indonesia, even other countries are also affected by the environment. It is noted that Indonesia is a country that is included in the Guinness world record list released by Greenpeace as a country that has the fastest annual rate of deforestation in the world. As much as 72% of Indonesia's original forests have been destroyed with 1.8 million hectares of forest destroyed per year between 2000 and 2005, a forest destruction rate of 2% annually or 51 km<sup>2</sup> per day or in one hour the area of Indonesia's forest destroyed is equivalent to 300 football fields.<sup>24</sup>

### **Government Legal Responsibilities**

Based on Article 65 paragraph (1) of Law Number 32 of 2009 which states that everyone has the right to a good and healthy environment because it is part of their human rights,<sup>25</sup> the State has the responsibility to create a good and healthy environment for the community. This is in line with the objective of the establishment of the Unitary State of the Republic of Indonesia as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia which states that "...to form a government of the State of Indonesia which protects the entire Indonesian nation and all of Indonesia's bloodshed...." <sup>26</sup> Therefore, normatively the state has a general state responsibility to protect all Indonesian people, including the emergence of various material losses as a result of the forest and land fires.

In general, forest and land fire control is everyone's responsibility. However, the biggest responsibility lies with the government, starting from prevention, response, to post-fire handling. In accordance with the applicable laws and regulations, the government's authority regarding forest and land fires is contained in a series of laws and regulations as follows.

#### 1) Law Number 41 of 1999 concerning Forestry

Law Number 41 of 1999 is intended to implement the use of forests for the greatest prosperity of the people in a just and sustainable manner. Based on Article 23 it is determined that forest utilization aims to obtain optimal benefits for the welfare of the entire community in an equitable manner while maintaining its sustainability. Utilization of forest resources must be based on the principles of sustainable development on the carrying capacity of ecosystems and inter- and intra-generational justice to enjoy the results.<sup>27</sup> This protection aims to protect forests, forest areas and their environment, so that the protection function, conservation function, and production function are achieved optimally and sustainably.

For the implementation of forest protection, forestry officials are given special police authority to: a) conduct patrols/ patrols within the forest area or its legal area; b) examine letters or documents related to the transportation of forest products within the forest area or its legal area; c) receive reports on the occurrence of criminal acts involving forests, forest areas, and forest products; d) seek information and evidence of criminal acts involving forests, forest areas, and forest products; e) in the case of being caught red-handed, it is obligatory to arrest the suspect to be handed over to the authorities; and f) make a report and sign a report on the occurrence of criminal acts involving forests, forest areas, and forest products.<sup>28</sup>

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<sup>24</sup> Deutsche Welle (www.dw.com), "Hutan Indonesia di Guinness World Records | DW | 07.10.2008," DW.COM, accessed October 4, 2021, <https://www.dw.com/id/hutan-indonesia-di-guinness-world-records/a-3697037>.

<sup>25</sup> Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

<sup>26</sup> "Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945" (n.d.).

<sup>27</sup> "Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan," Pub. L. No. Lembaran Negara Tahun 1999/Nomor 167, Tambahan Lembaran Negara Nomor 3888 (n.d.).

<sup>28</sup> Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan.

Government Regulation Number 4 of 2001 concerning Control of Environmental Damage and/or Pollution Related to Forest and/or Land Fires, has provided clarity and the role of each party in handling forest and/or land fires, namely: *First*, the authority of the Central Government. The Minister who is responsible for forestry coordinates the extinguishing of forest and/or land fires across provinces and/or across national borders, in the form of: a) providing means of extinguishing forest and/or land fires; b) development of human resources for fighting forest and/or land fires; and or c) implementation of international cooperation to extinguish forest and/or land fires. *Second*, the authority of the Provincial Government. That the Governor is responsible for controlling environmental damage and/or pollution related to forest and/or land fires whose impacts are across districts/cities. In the event that forest and/or land fires occur across districts/cities, the Governor is obliged to coordinate the prevention of forest and/or land fires across districts/cities. The Governor may request assistance from the nearest Governor and/or the Central Government. The governor may establish or appoint an authorized agency in the field of forest and or land fire control in his area. Where the agency has the authority, which is obliged to carry out an inventory of businesses and or activities that have the potential to cause damage and or pollution to the environment. *Third*, the authority of the Regency/City Government. Regent/Mayor who has responsibility for controlling environmental damage and/or pollution related to forest and/or land fires in his/her area. In the event of a forest and/or land fire, the Regent/Mayor is obliged to take the following actions: a) overcoming forest and/or land fires; b) examination of public health in the area affected by forest and/or land fires through existing health service facilities; c) impact measurement; d) announcements to the public about impact measurements and the steps needed to reduce impacts related to forest and/or land fires; e) The Regent/Mayor may request assistance from the nearest Regent/Mayor; and f) In dealing with forest and/or land fires, the Regent/Mayor may also establish or appoint an authorized agency in the field of forest and/or land fire control in his/her area.<sup>29</sup> And to ensure the implementation of forest utilization, the Central Government and Regional Governments are obliged to carry out supervision.

## 2) Law Number 24 of 2007 concerning Disaster Management

This law categorizes forest and land fires into 2 (two) types of disasters, namely natural disasters due to natural factors and non-natural disasters caused by humans. Natural disasters are disasters caused by events or a series of events caused by nature, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides. Meanwhile, non-natural disasters are disasters caused by non-natural events or series of events, which include technological failures, failed modernization, epidemics, and disease outbreaks.<sup>30</sup>

According to this Law, the Government and regional governments are responsible for the implementation of disaster management. The authority of the Central Government in implementing disaster management includes: a) determining disaster management policies in line with national development policies; b) making development plans that include elements of disaster management policies; c) determination of the status and level of national and regional disasters; d) determination of cooperation policies in disaster management with other countries, agencies, or other international parties; e) formulation of policies regarding the use of technology

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<sup>29</sup> “Peraturan Pemerintah Nomor 4 Tahun 2001 Tentang Pengendalian Kerusakan Dan Atau Pencemaran Lingkungan Hidup Yang Berkaitan Dengan Kebakaran Hutan Dan Atau Lahan,” Pub. L. No. Lembaran Negara Tahun 2001/Nomor 10, Tambahan Lembaran Negara Nomor 4076 (n.d.).

<sup>30</sup> Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.



that has the potential as a source of threat or disaster hazard; f) the formulation of policies to prevent the control and exploitation of natural resources that exceeds the ability of nature to carry out restoration; and g) controlling the collection of money or goods of a national nature.<sup>31</sup>

The authority of the regional government in the implementation of disaster management includes: a) the determination of disaster management policies in its territory in line with regional development policies; b) making development plans that include elements of disaster management policies; c) implementation of cooperation policies in disaster management with other provinces and/or districts/cities; d) regulation of the use of technology that has the potential as a source of threat or disaster hazard in its territory; e) the formulation of policies to prevent the control and depletion of natural resources that exceeds the natural capacity of its territory; and f) controlling the collection and distribution of money or goods in its territory.<sup>32</sup>

The Central Government's responsibilities include: a) disaster risk reduction and integration of disaster risk reduction with development programs; b) community protection from the impact of disasters; c) guaranteeing the fulfillment of the rights of communities and refugees affected by disasters fairly and in accordance with minimum service standards; d) recovery of conditions from the impact of disasters; e) adequate allocation of disaster management budget in the State Revenue and Expenditure Budget; f) budget allocation for disaster management in the form of ready-to-use funds; and g) maintenance of authentic and credible archives/documents from disaster threats and impacts.<sup>33</sup>

Meanwhile, the local government's responsibilities include the following: a) guaranteeing the fulfillment of the rights of disaster-affected communities and refugees in accordance with minimum service standards; b) community protection from the impact of disasters; c) disaster risk reduction and integration of disaster risk reduction with development programs; and d) adequate allocation of disaster management funds in the Regional Revenue and Expenditure Budget.<sup>34</sup>

Following up on the Government's responsibilities as intended, the National Disaster Management Agency (BNPB) was formed. This agency is a non-departmental government institution that has the task of assisting the President in coordinating the planning and implementation of integrated disaster and emergency management activities, as well as carrying out disaster and emergency management from before, during, and after a disaster occurs which includes prevention, preparedness, handling emergency, and recovery. In addition to the central level, the Regional Disaster Management Agency (BPBD) has also been established which has the main task of carrying out disaster management, also has the function of coordinating agencies/institutions within the scope of its authority.<sup>35</sup>

### 3) Law Number 32 of 2009 concerning Environmental Protection and Management

The 1945 Constitution of the Republic of Indonesia affirms that a good and healthy environment is a human right and a constitutional right for every Indonesian citizen. Therefore, the state, government and all stakeholders are obliged to protect and manage the environment in

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<sup>31</sup> Lihat Pasal 7 Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.

<sup>32</sup> Lihat Pasal 9 Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.

<sup>33</sup> Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.

<sup>34</sup> Undang-Undang 24 Tahun 2007 Tentang Penanggulangan Bencana.

<sup>35</sup> Penjelasan Pasal 18- Pasal 21 *Undang-Undang Tentang Penanggulangan Bencana*. UU No. 24 Tahun 2007. LN. No. 66 Tahun 2007. TLN No. 4723.

the implementation of sustainable development so that the Indonesian environment can remain a source and life support for the Indonesian people and other living creatures.<sup>36</sup>

Based on Law Number 32 of 2009, in the protection and management of the environment, the Central Government has the duty and authority to establish and implement policies regarding pollution and/or environmental damage across national borders and to enforce environmental laws. For the provincial level, the Provincial Government has the duty and authority to coordinate and carry out control of pollution and/or environmental damage across districts/cities, as well as to enforce environmental laws at the provincial level. And for the Regency/City level, the Regency/City government has the duty and authority to enforce environmental law at the Regency/City level.<sup>37</sup>

#### 4) Law Number 26 of 2014 concerning Ratification of the Asean Agreement on Transboundary Haze Pollution

To formalize the 1995 ASEAN Cooperation Plan on Transboundary Haze Pollution and make the 1997 Hanoi Plan of Action effective, ASEAN Members agreed to make the ASEAN Agreement on Transboundary Haze Pollution as a joint commitment (AATHP). The ASEAN Agreement was signed in 2002 and became effective in 2007. This ASEAN Agreement aims to prevent and mitigate transboundary haze pollution as a result of land and/or forest fires which must be implemented through intensive national, regional and international efforts. The AATHP was ratified by Indonesia into law in 2014 through Law Number 26 of 2014 concerning Ratification of the Asean Agreement on Transboundary Haze Pollution (ASEAN Agreement on Transboundary Haze Pollution).

The forest and/or land fire control policies issued by the Government as a manifestation of the government's responsibility are considered to be comprehensive enough, starting from prevention, suppression, to post-fire handling. However, forest and/or land fires still occur every year. The experience of forest and/or land fires, as well as the haze that has occurred in previous years, should have made the government more agile in anticipating and overcoming these events. Prolonged forest and or land fires have an impact on the haze disaster which causes multiple losses to the state and threatens human life, especially people living in or around forests and land that are burned and exposed to smoke haze. Handling forest and/or land fires also needs to be handled immediately to speed up and facilitate the process of investigation, investigation, and prosecution in law enforcement if there are allegations of misuse of permits and intentional burning of forest or land.

### CONCLUSSION

Laws and state policies that contain the authority of the Central Government and Regional Governments related to controlling forest and land fires issued by the Government as a manifestation of their responsibilities can be said to be very comprehensive, starting from prevention, extinguishing, to post-fire handling. However, the central government and local governments, as well as existing institutions such as BNPB, BPBD should continue to improve strategies and improve coordination to be more effective when carrying out roles according to their responsibilities. Management and accountability for forest and land fires needs to be more

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<sup>36</sup> Penjelasan *Undang-Undang Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*. UU No. 32 Tahun 2009. LN. No. 140 Tahun 2009. TLN No. 5059.

<sup>37</sup> Lihat Pasal 63 *Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*.

transparent and clear, and the government must be bound by its own laws, which will reduce the risk of forest and land fires occurring again in the future.

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