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Review article

FORMULATION OF LEGAL PROTECTION REGULATION IN THE FORM OF COMPENSATION/RESTITUTION TO COMMUNITIES OF VICTIMS AFFECTED IN CASE OF FOREST AND LAND FIRE

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Abstract

The focus of the problem in this research is the difference in the concept of giving compensation between article 84 paragraph (3) of Law number 32 of 2009 which reads that a lawsuit through the court can only be taken if the chosen out-of-court dispute resolution effort is declared unsuccessful by one or the parties. who are in dispute. These differences are very influential in terms of legal protection of community rights to a good and healthy environment based on the principles of social justice. The purpose of this research is to formulate a formulation in the criminal justice system in Indonesia related to legal protection in the form of compensation/restitution for the victims affected by forest and land fires. This type of research is legal research with a statutory approach, a conceptual approach, a case approach, and uses a legal material analysis technique in the form of a qualitative descriptive technique with inductive logic. The results of this study conclude that the formulation of the right norms with the aim of ensuring justice and legal certainty addressed to the community of victims of forest and land fires must be made in a balanced manner, not sharp downwards and blunt upwards, these regulations must be made taking into account the rights and obligations and dignity and the dignity of the community as victims of forest and land fires based on Human Rights (HAM) which recognizes the basic human right to be able to live in a good and healthy environment and is obliged to maintain and be responsible for all actions to prevent pollution.

Keywords: legal protection, Restitution, Victim, Forest and Land Fires.

1. Introduction

Forest and land fires (karhutla) in several parts of Indonesia are increasingly widespread. Based on data from the National Disaster Management Agency (BNPB), the area of forest and land fires in Indonesia in the January-August 2019 period reached 328,724 hectares (Putsanra, 2019). Riau Province is the largest area experiencing forest fires, reaching 49,266 hectares, followed by Central Kalimantan with an area of 44,769 hectares. The forest and land fires that occurred in 2019 were the 3rd largest fires, where previous fires also occurred in 1997 and 2015. Furthermore, the forest fires that occurred in Papua have also become a serious concern for the government, practitioners, environmental activists and others. Based on a green peace report quoted from CIFOR Papua Atlas, in the period 2001-2019, forests have been cleared for land with a total of around 57,000 hectares (Greenpeace Indonesia, 2020). The year 2020 has seen a lot of forest in Papua lost significantly compared to what happened in previous years.

Data from the Ministry of Environment and Forestry (KLHK) states that the government has won a civil lawsuit over the case of forest and land fires (Karhutla) that occurred in 2019 with a total compensation of Rp. 315 trillion. "The total comes from 9 (nine) inkrah (inkracht) lawsuits which were granted by the Supreme Court (MA) from 17 civil lawsuits related to

forest and land fires that were filed by the Directorate General of Law and Human Rights of the Ministry of Environment and Forestry to court. According to Rusmadya Maharuddin: forest and land fires occur due to lack of supervision and enforcement law as an instrument that can be used to create a deterrent effect. Law enforcement is also part of efforts to prevent the recurrence of these fires. So far, the government is still weak in terms of supervision and law enforcement related to forest and land fires that occurred recently.

According to M. Fauzan, the perpetrators of forest and land fires so far have not been dealt with firmly, and it seems that only a few have been followed up in court. In general, dispute resolution is normative, i.e., the method of settlement is in accordance with applicable laws and regulations, where the sanctions that are most often given are administrative sanctions for companies that burn forests. The question is whether administrative sanctions can solve problems for victims affected by forest and land fires such as acute respiratory infections (ARI), the impact on the community's economy, reduced work efficiency both in offices and schools, disruption of transportation, immaterial and material losses. on affected victims, even causing transboundary haze pollution to neighboring countries such as Singapore, Malaysia, and Brunei (Putra, 2015).

Responding to this problem, the Ministry of Environment and Forestry together with the Indonesian Ulema Council (MUI) has played a role in finding solutions and solutions, by stipulating MUI Fatwa no. 30 / 2016 concerning the Law on Forest and Land Burning and its Control (Fatwa Karhutla). According to Makruf Amin, the 2016 MUI fatwa regarding the prohibition of burning forests and land is not sufficient to prevent and deal with forest fires. According to him, there needs to be strict legal action against the perpetrators. This haram fatwa to burn forests and allow forest fires to occur is only a guideline, so there are afraid not to act because it is based on the haram fatwa, but there are also those who don't. Therefore, it is necessary to have another aspect, namely law enforcement (Iswinarno & Ardiansyah, 2019).

Several research results on law enforcement in cases of forest and land fires conclude that existing legal instruments in Indonesia have not been able to overcome this problem. Tuhule (2014) also concludes from the results of his research that there are confusing loopholes in law enforcement regulations in cases of forest and land burning. According to Erdiansyah (2015), the results of his research conclude that there is a reluctance of criminal courts to impose Criminal Liability on corporations, due to the simplicity of legal instruments and legislation. There are three legal remedies related to forest and land fires: (1) administrative sanctions which are the authority of the central government, namely the Ministry of Environment and Forestry, (2) civil sanctions, and (3) criminal sanctions. There are four types of administrative sanctions: (1) written warning, (2) coercive sanctions, (3) license suspension sanctions, and (4) license revocation sanctions. If each of these sanctions has been given, there are criteria and recommendations for arsonists to be fulfilled, so that the administrative sanctions can be lifted (Nugraha, 2019).

On the other hand, in general, in cases of criminal victims, compensation for victims is clearly regulated according to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims as promulgated in the State Gazette of the Republic of Indonesia of 2014 Number 293 In addition to the State Gazette of the Republic of Indonesia Number 5602 (hereinafter written Law 31 of 2014), there is the term restitution, namely compensation given to victims or their families by perpetrators or third parties (Article 1 Number 11). Payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs (Article 1 point 1 PP 43 of 2017).

Based on the foregoing, forest and land fires that occur at several points in Indonesia can also harm indigenous peoples materially and immaterially (Kartodihardjo, 2012). Article 80 paragraph (1) of the Forestry Law only regulates administrative sanctions against perpetrators of forest and land burning, namely "Every act that violates the law regulated in this law, without reducing the criminal sanctions as stipulated in Article 78, requires the person responsible for the act it is to pay compensation in accordance with the level of damage or consequences caused to the State, for the costs of rehabilitation, restoration of forest conditions, or other necessary actions."

However, in the following provisions or articles, there are no further arrangements regarding the procedures or mechanisms for compensation to communities affected by forest and land fires. Only article 80 paragraph (3) stipulates that further provisions as referred to in paragraph (1) and paragraph (2) are regulated by a Government Regulation. Until now, there is no Government Regulation as mandated in Article 80 paragraph (3) of the Forestry Law. In Article 87 paragraph (1) of Law no. 32 of 2009 also explains about compensation which reads "Every person in charge of a business and/or activity who commits an unlawful act in the form of pollution and/or environmental destruction that causes harm to other people or the environment is obligated to pay compensation and/or take other certain actions". This is an incomplete norm to regulate compensation for victims of forest and land fires because Law 31 of 2014 concerning the Protection of Witnesses and Victims also does not regulate victims of environmental crimes, including victims of forest and land fires. The incompleteness of this norm is very influential in terms of efforts to protect the legal rights of the community to a good and healthy environment based on the principles of social justice (Suheri, 2018).

In addition to the lack of synchrony regarding victims of crime, especially environmental crimes which have not been regulated in Law 31 of 2014, a Government Regulation which is a derivative of Law 32 of 2009 concerning the compensation process for victims of pollution and/or environmental damage also does not exist. There is only the Minister of Environment Regulation Number 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage (hereinafter written Regulation of The Minister of Environment (Permen LH) No. 7 of 2014). However, the Permen LH only regulates the compensation mechanism for environmental damage (which includes forest and land fires) by companies to the State, not compensation mechanisms for affected communities. Based on the formulation of the problem above, this research was carried out with the aim of formulating legal protection arrangements in the form of compensation/restitution for the people affected by forest and land fires.

2. Research methods

This type of research is legal research. Legal research is used with an emphasis on legal interpretation and legal construction to obtain legal principles, conceptions, inventory of legal regulations and the application of law in concrete that underlies legal protection and responsibility for environmental restoration in plantation and forestry investment activities or other activities based on extensive land use (Ibrahim, 2011). Forest fires on land that occur are closely related to land use permits for both plantations and forestry. The approaches used to discuss the problems in this research are the statutory approach, the conceptual approach, and the case approach. There are 3 sources of legal materials, namely Primary Legal Materials (primary resources or authoritative records) consisting of statutory regulations, jurisprudence, or court decisions. Primary legal materials are legal materials that are authoritative which means they have authority. Secondary legal materials consist of related scientific books and research results and tertiary legal materials such as dictionaries, encyclopedias, internet, and so on.

The method of collecting legal materials is through literature study, by studying legal materials, exploring principles, norms, rules from laws and regulations, court decisions, agreements and doctrines (teachings). Legal materials were analyzed descriptively, using inductive logic. The legal material is described to obtain a systematic explanation (Marzuki, 2008). The description is carried out to determine the content or meaning of the legal material according to the theme of this research problem. From the legal materials that have been collected, both those obtained from the results of library research and cases that occurred in the field, a qualitative descriptive analysis is then carried out, namely an analysis that describes the actual situation regarding certain facts.

3. Results and discussion

3.1. Forest Fire Management Reformulation: Reformulation of Forest Fire Management Regulations emphasizes the impact of forest fires, forest fires can cause disruption of daily activities. Forest fires can also cause health problems, from a health point of view, the biomass smoke that comes out as a result of forest fires contains various dangerous components. The fires have also resulted in the loss of several livelihoods for communities in and around the forest. Several people who have been depending on forest products for their lives are unable to carry out their activities. The smoke generated from the fire interfered with his activities which automatically also affected his income.

There are quite several regulations regarding the prohibition of burning forests and land. There is a legal basis regarding forest fires in Indonesia, including policies that can be carried out by Indonesia in overcoming the problem of forest fires and haze, namely: first is the status quo policy, the status quo policy is basically forest fires in Indonesia where the Government tries to maintain a conducive situation. with the laws and regulations governing forest conservation (Sumardi & Widyawati, 2011). Several policies implemented by the Government of Indonesia in order to prevent forest fires and forest management, policies undertaken by the Government in forest management to prevent forest and land fires, especially in the territory of Indonesia, can be seen in Table 1.

Table 1. Laws and Regulations regarding Forest and Land Fires

No.	Regulation	Links to forest and land fires	Stakeholders
1.	Law 41 of 1999 on Forestry	Explain the concept of protection in the forestry sector and the prohibition of burning forests. Article 80 paragraph (1): basically, that the party who is charged with the obligation to pay compensation is the person responsible for the act	Government (Central and Regional)
2.	Law 19 of 2004 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Laws Currently it has been changed to Law Number 11 of 2020 concerning Job Creation		
3	Law no. 31 of 2014 concerning Witness and Victim Protection Agency (LPSK)	Article 7A of the Witness and Victim Protection Law, the party charged with the responsibility to pay compensation is the perpetrator	

No.	Regulation	Links to forest and land fires	Stakeholders
4	Law 32 of 2009 concerning Environmental Protection and Management	Article 69 paragraph 1 letter (h) (Prohibition of burning forests) Article 84 paragraph (3) reads that a lawsuit through the court can only be taken if the effort to settle the dispute outside the chosen court is declared unsuccessful by one or the parties to the dispute. Article 85 paragraph (1) reads that the settlement of environmental disputes outside the court is carried out to reach an agreement on point a. namely the form and amount of compensation. Article 87 paragraph (1) reads "Every person in charge of a business and/or activity who commits an unlawful act in the form of environmental pollution and/or destruction that causes harm to other people or the environment is obligated to pay compensation and/or take certain actions.”. These articles are not related to the issue of compensation for the rights of the victims of forest and land fires or environmental crimes, only stipulating compensation to the state.	Government (Central and Regional)
5.	Law 39 of 2014 concerning Plantations	Article 56 paragraphs 1-3 explain the prohibition of land clearing by burning for plantation activities	Government (Central and Regional), Private (Plantation/Industrial Plantation Forest), and Customary Law Communities
6.	Law 18 of 2013 concerning Prevention and Eradication of Forest Destruction	Explain about the prohibition of forest destruction following with the aim of conserving forests as the foundation of survival, especially in reducing the impact of global climate change	Government (Central and Regional) and Community
8.	Law 24 of 2007 concerning Disaster Management	Explain the government's responsibilities in disaster management, including forest and land fires.	Government (Central and Regional) through National Agency for Disaster Management (BNPB) and National Agency for Regional Disaster Management (BPBD) and

No.	Regulation	Links to forest and land fires	Stakeholders
			Private (National and International NGOs).
9.	Presidential Instruction 11 of 2015 concerning Improving Forest and Land Fire Control	Contains instructions to leaders of central institutions and regional leaders to improve the control of forest and land fires through prevention, suppression and post-karhutla handling.	Relevant Ministries and Institutions
10.	Presidential Instruction 3 of 2020 concerning Management of Forest and Land Fires	Dividing the authority of Ministries and Institutions in handling forest and land fires.	Relevant Ministries and Institutions
11.	Government Regulation (PP) 71 of 2014 concerning Protection and Management of Peat Ecosystems	Defining a degraded peat ecosystem can refer to the groundwater table that is more than 0.4 m below the peat surface. It is also explained that the determination of the protection of the peat ecosystem	Government (through the Ministry of Environment and Forestry)
12.	PP 21 of 2008 concerning the Implementation of Disaster Management	Explaining disaster management activities including the establishment of development policies that pose a risk of disaster, disaster prevention activities, emergency response, and rehabilitation. He also explained that the authority to administer disaster management in emergency response situations is the responsibility of BNPB.	Government (Central and Regional) through BNPB and BPBD
13.	Minister of Environment and Forestry P.32/MenLHK/Setjen/Kum.1/3/2016 concerning Forest and Land Fire Control	Explaining the operations of the forest and land fires control organization which includes duties and functions, reporting and monitoring flow for forest and land fires, to financing.	KLHK, Regional Government
14.	Minister of Environment and Forestry P.8/MenLHK/Setjen/Kum.1/3/2018 concerning Procedures for Field Checks on Hotspot Information and/or Information on Forest and Land Fires	Explain the procedure for checking hotspots/fires in the field	KLHK, Regional Government
15.	Minister of Environment Regulation No. 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage		KLHK, Regional Government
16.	Riau Province Regional Regulation Number 1 of 2019 concerning Technical Guidelines for Forest and/or Land Fire Management		Provincial Government, Regency/City Government, Meteorology Climatology and Geophysics Council (BMKG), BPBD, Agency for the Assessment and Application of Technology (BPPT), KLHK, Indonesian

No.	Regulation	Links to forest and land fires	Stakeholders
			National Army (TNI), Indonesian National Police (Polri).
17.	Jambi Province Regional Regulation Number 2 of 2016 concerning Prevention and Control of Forest and Land Fires		Provincial Government, Regency/City Government, BMKG, BPBD, BPPT*, KLHK, TNI, Polri.
18.	South Sumatra Provincial Regulation Number 8 of 2016 concerning Forest and/or Land Fire Control		Provincial Government, Regency/City Government, BMKG, BPBD, BPPT*, KLHK, TNI, Polri.
19.	Gubernatorial Regulation No. 9 of 2020 concerning Standard Procedures for Determining the Status of a Disaster Emergency and the Command of the Riau Province Land and Forest Fire Control Task Force	In the Appendix, it is explained about the technical operational criteria used in determining the status of a disaster and the chain of command in handling forest and land fires in Riau Province.	Provincial Government, Regency/City Government, BMKG, BPBD, BPPT*, KLHK, TNI, Polri.

Efforts to tackle transboundary haze pollution are a form of environmental cooperation that has been intensively implemented in ASEAN in recent years. At the initiative of the Government of Indonesia, the establishment of a special forum at the Minister of Environment level for the problem of transboundary haze pollution has been initiated. Malaysia, Singapore and Thailand. The five countries agreed to hold regular meetings three times a year, in order to intensively monitor the condition of smoke pollution and determine countermeasures. The forum which was formed based on Indonesia's initiative was to show the existence of Indonesia, to show Indonesia's role in the eyes of the international community as a haze-producing country and to show an accountability from Indonesia in the eyes of international law.

The author is of the opinion that in reformulating a legal provision, it must pay attention to legal certainty in its implementation. Legal certainty in this case acts as a benchmark for actions that may and may not be carried out in the reformulation of the legislation carried out. In this case, the benchmark is contained in the provisions regarding the formation of laws and regulations. The law is a state instrument used by the government to achieve the objectives is contained in the norms of the law. Legislation is the basis of the rule of law, where the state and its government system must comply with the law, which consists of laws and their derivative regulations. Making laws is a proposal from the government and the people's representative council to be further discussed and mutually agreed upon, this is as regulated in Article 5 paragraphs (1) and (2) of the Constitution of the Republic of Indonesia and Article 20 Paragraph (1) of the Constitution NRI 1945. The draft law is discussed jointly between the House of Representatives and the Government and will then be approved by the President if it has been agreed. Vlies (2005) distinguishes four types of government actions that are regulated based on provisions by lawmakers, which include the following: Regulating function, awarding function, directing function, and supervising function.

The existence of international environmental law as a branch of international law has also brought about the implementation of the principle of state responsibility in several international environmental law cases such as the 1938 Trial Smelter Case involving Canada, the 1949 Corfu Channel Case between England and Albania, and Lake Lanoux Case 1957 between France and Spain. Along with the development of the perspective of the international community which considers that the environment is an international entity (wholeness) without administrative boundaries, the existence of the principle of state responsibility has begun to be shifted to the principle of Common but Differentiated Responsibility which emphasizes joint responsibility based on a legal responsibility. by certain countries (Satmaidi, 2011). Based on the examples of international environmental law cases that have been mentioned, the responsibilities of the state can be described as follows:
Trail Smelter Case 1941 (Trail Smelter Case 1941) began with air pollution problems caused by a Canadian-owned fertilizer company operating within Canadian territory, near the Columbia River, about 10 miles to the Canada-US border. Starting in 1920 the company's emission production continued to increase. The emissions contain sulphur dioxide, emitting a very pungent odour of metal and zinc. By 1930 these emissions amounted to more than 300 tonnes of sulphur per day. These emissions, carried by the wind, travel toward US territory through the Columbia River basin and have a variety of adverse effects on land, water and air, health and other interests of Washington residents. The United States then made a claim against Canada and asked Canada to be responsible for the losses suffered by the United States (US). After negotiating, the two countries agreed to resolve the case through the International Joint Commission, an administrative body established under the Boundary Waters Treaty 1907 (Downs, 2013). The agency does not have jurisdiction over air pollution issues and only has jurisdiction over disputes relating to water borders.
Corfu Channel Case 1949, this case is a dispute between Albania and England, the method of which is through the court, namely to the International Court of Justice in 1949. The incident occurred on May 15, 1946, when British ships sailed into the Chorfu Strait in Albanian territory. When entering the Albanian territorial sea, the ships were fired upon with cannons on the Albanian coast. Albania was at war with Greece at that time. On October 22, 1949, a British ship had hit a mine in the strait and caused casualties. The British then carried out a clearing of the mines in the strait without the permission of the Albanian government. Then a dispute arose and was submitted to the International Court of Justice. The decision of the International Court of Justice held that Albania was responsible for the damage to British ships and that the British had violated Albania's sovereignty because of its mine-sweeping actions. This problem is not directly related to environmental problems. The settlement of international environmental disputes between the UK and Albania is based on Principle 26 of the 1992 Rio Declaration. Procedures and mechanisms regarding dispute resolution are generally regulated by Article 33 of the United Nations Charter. This article identifies several methods or means, including negotiation, investigation, mediation, conciliation, arbitration, court settlement, efforts by regional bodies or rules, or the choice of parties.

3.2. Forest Fire Management Policy Reformulation: The pattern of disaster management gets a new dimension with the issuance of Law no. 24/2007 which was followed by several related implementing regulations, namely Presidential Regulation Number 08 of 2008 concerning the National Disaster Management Agency, Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management, Government Regulation Number 22 of 2008 concerning Funding and Management of Disaster Assistance, and Government Regulations Number 23 of 2008 concerning the Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management. In addition, the Ministry of Home Affairs also issued Regulation of the Minister of Home

Affairs Number 46 of 2008 concerning Organizational Guidelines and Work Procedures of Regional Disaster Management Agencies.
Following up on the above policies, the Regency Government established the Kendal Regency BPBD through: Kendal Regency Regional Regulation Number 19 of 2011 concerning the Organization and Work Procedures of Other Regional Institutions and the Kendal Regency Civil Service Police Unit, Kendal Regency Regent Regulation Number 46 of 2011 concerning the Elaboration of Main Duties Function Description Duties of Structural Positions and Work Procedures at the Regional Disaster Management Agency of Kendal Regency, Law Number 24 of 2007 clearly states that disaster management is not just an emergency response action, but includes all phases or stages in disaster management, pre-disaster: prevention, mitigation and preparedness. , and post-disaster: rehabilitation and reconstruction.
Modification Policy, a modification policy is an alternative policy that modifies an existing policy, either reducing or adding to an existing policy, but does not change it entirely. Alternative policy modifications in the legal sector only add more comprehensive sanctions and countermeasures to it. Then in the implementation of the modification policy, it adds supervision to the existing law but is closely monitored. Next, the apparatus only carries out strict supervision and sanctions without replacing professional personnel. In granting land clearing permits, they still give HPH permits but will revoke them if they burn forests. The criteria for punishment increase the penalty for fines, and in infrastructure it is still like the status quo but coordinates with other parties. This modification policy has several advantages, such as in infrastructure, with such a policy the costs incurred are cheaper, as well as the apparatus so that the costs of forest fire prevention can be reduced. This modification policy has many shortcomings, including the old policy, so that its effectiveness is feared as a policy regarding the status quo (Tran et al., 2020).
New System Policy, the new system policy offers new policies to deal with forest fires, as in the legal objective of the new policy offering a law prohibiting all types of land clearing such as making a kind of SKB or Presidential Instructions such as in illegal logging. So that the perpetrators of forest fires become a deterrent. The implementation of the new system strengthens both supervision, implementation and management from the bureaucracy to those concerned with forests. Furthermore, in the new system apparatus, it offers to recruit professional officers, as well as giving sanctions to what is wrong and giving rewards to those who excel. In the case of forest clearing permits, which do not give permission, all can only be owned by the state, then the sanctions are the same as in the alternative to the forestry law, namely making heavy prison sentences, as in illegal logging. Problems with facilities and infrastructure in forest fire prevention must provide a new tool so that forest fires can be handled quickly. The new system policy has many advantages including the law standing firmly, permits tightened, clear implementation and strict sanctions and adequate infrastructure. With this, forest fires in Indonesia can be quickly contained. However, the policy regarding this new system has several drawbacks, namely it requires a large budget and requires adaptation time for the stakeholders who run it.

3.3. Restitution for Victims of Crime as a New Mechanism: If the provisions in the Criminal Procedure Code are carefully observed, compensation can be given to victims of criminal acts by looking at Article 98 paragraph (1) which states that if an act that forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person. , then the judge presiding over the trial at the request of that person may decide to combine the lawsuit for compensation with the criminal case. However, it turns out that there are several shortcomings of the Criminal Procedure Code regarding the provision of this compensation. First, the filing procedure is not simple because the claim for compensation

can only be made through a claim for damages combined with an examination of the principal criminal case. In addition, the process must be active, namely the victim of a crime. He must frequently communicate with law enforcement officials to ensure that the process of filing a claim for compensation will be accommodated by the public prosecutor in his claim. This of course will cost the victim's time and money. Second, the form of compensation given was only for material losses. The judge's decision is only limited to granting that stipulates the reimbursement of costs that have been incurred by the aggrieved party. This means that the amount of compensation is only the amount of the actual loss or material loss. Outside of real losses, such as losses that are immaterial, cannot be submitted in a case merger. If immaterial compensation is filed by the aggrieved party, the judge must declare the claim unacceptable (niet onvankelijke).

The application for immaterial compensation can only be filed with a civil lawsuit procedure which is a long and convoluted process. In addition to the Criminal Procedure Code, the laws and regulations governing restitution for victims of criminal acts existed before Law no. 13 of 2006 was formed. However, this provision is still limited to victims of certain criminal acts, namely victims of gross violations of human rights6 and victims of criminal acts of terrorism. The lack of rules regarding restitution will certainly make it difficult for victims of criminal acts who will apply for restitution. First, the victim does not know for sure the damages that can be requested for restitution. Second, the victim does not know when to submit the request for restitution: can the victim directly submit the request for restitution to the LPSK immediately after the crime has occurred, or before the public prosecutor submits a criminal charge, or before the judge decides? Third, the victim does not know the mechanism that can be taken if the perpetrator of the crime is unable or unwilling to pay the compensation requested by the victim. The four victims also did not know the period of payment of restitution from the perpetrator of the crime to himself since the judge's decision which required the perpetrator to pay restitution to the victim had permanent legal force (Kim, 2013).

These various ambiguities could only be answered two years later when the government issued Government Regulation No. 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims (hereinafter abbreviated as PPtu No. 44 of 2008). In the PP it is stated that restitution is compensation given to the victim or his family by the perpetrator or a third party, it can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions (Article 1 point 5). An application for restitution is submitted by the victim, his family, or his proxies with a special power of attorney in writing to the court through the LPSK (Article 20 paragraphs (2) and (3)).

However, the specific rules regarding the new restitution are regulated in PP No. 44 of 2008 turned out to be problematic in practice. Many judges and prosecutors tend to prefer to use the combined claim for compensation as regulated in Article 98 of the Criminal Procedure Code because the procedural law is considered more certain, strong, and flexible than the restitution mechanism in Law no. 13 of 2006 which is described in PP No. 44 of 2008. Many law enforcement officers consider that the regulation of the restitution mechanism in PP no. 44 of 2008 is not in line with the provisions in the Criminal Procedure Code so that it does not have the power as under the Criminal Procedure Code. Therefore, the restitution mechanism that should be used is the mechanism regulated by Article 98 of the Criminal Procedure Code. Furthermore, because in the end the mechanism of Article 98 of the Criminal Procedure Code is used, it is related to the scope of restitution in Law no. 13 of 2006 becomes inapplicable.

Provisions on restitution in Law no. 13 of 2006 has a more extensive scope, which can be in the form of returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions, while the provisions on compensation in the Criminal Procedure Code only focus on real losses resulting from non-criminal acts. This causes in practice, only material losses can be examined by the judge concerned. The claim for compensation for the loss for the victim is considered immaterial, so to obtain the compensation, the victim must use a civil law mechanism.

If observed carefully, the provisions regarding restitution still contain several problems. UU no. 31 of 2014 has indeed accommodated several provisions regarding the mechanism for restitution for victims of criminal acts which were previously regulated in PP No. 44 of 2008 so that it can be said that now these provisions are in line with the Criminal Procedure Code. Thus, law enforcement officers can now be "forced" to use the restitution mechanism regulated in Law no. 31 of 2014 which has more scope for restitution than the Criminal Procedure Code because the provisions of the restitution mechanism now have the same power as if regulated in the Criminal Procedure Code. However, in the law there is a new provision that limits the granting of restitution rights for victims of criminal acts. Article 7A paragraph (2) states that the crime as referred to in paragraph (1) is stipulated by an LPSK Decree. This means that the right to obtain restitution cannot apply to all victims of criminal acts.

The author is of the opinion, rather than harmonizing the provisions of the request for restitution in Law no. 31 of 2014 with the provisions of the incorporation of compensation in the Criminal Procedure Code, it would be better if the provisions of the request for restitution contained in Law no. 31 of 2014 is accommodated by the Criminal Procedure Code because as a formal law, the Criminal Procedure Code is the main guide and reference chosen by law enforcement officials in carrying out their duties compared to provisions outside the Criminal Procedure Code. In addition, by being regulated in the Criminal Procedure Code, the provisions regarding restitution will be wider in scope and scope, not limited to certain criminal acts, considering that restitution is regulated differently in various laws and regulations. If the provisions regarding restitution for victims of criminal acts are only regulated in the Criminal Procedure Code, then there will be a similar implementation mechanism by law enforcement officers.

However, the Criminal Procedure Code must include provisions regarding coercion for perpetrators of criminal acts to pay compensation to victims of criminal acts. By not stipulating the force of coercion for perpetrators of criminal acts to pay compensation to victims, if the perpetrators of criminal acts are unable or unwilling to pay restitution to victims, this will not have legal consequences and will have any implications for the perpetrators. However, on the other hand, this will certainly prevent victims of criminal acts from obtaining restitution. Therefore, the amendment to the Criminal Procedure Code can also accommodate the provisions regarding the compulsion to pay restitution as regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

The provisions regarding the compulsion to pay compensation are clearly different from the provisions on the compulsion to pay restitution as regulated in Law no. 21 of 2007 because it emphasizes the compulsion to pay compensation for perpetrators of criminal acts if the perpetrator tries to avoid (do not want) to pay compensation to the victim. The compensation referred to in the 2012 RKUHAP is also in the form of compensation, not restitution, although there are still many debates that arise about the correct definition of the two terms of compensation. However, the provisions in Article 133 of the 2012 RKUHAP, paragraph (3), can be used as a reference for making provisions regarding the compulsion to pay restitution if the perpetrator of a crime does not want to pay restitution. This is necessary so that the new KUHAP can be equipped with rules for the protection of victims, particularly regarding

restitution, which have not been regulated in Law Number 8 of 1981 concerning the Code of Criminal Procedure.

In this provision, the mechanism for applying for restitution is carried out since the victim reports the case he experienced to the local Indonesian National Police and is handled by investigators together with the handling of the crime committed. The public prosecutor informs the victim of his right to apply for restitution, then the public prosecutor conveys the amount of loss suffered by the victim as a result of the criminal act of trafficking in persons along with the claim. This mechanism does not eliminate the victim's right to file a claim for her own loss. However, in the amendment to the Criminal Procedure Code, the concept of the mechanism for submitting a request for restitution will be revised as follows: The mechanism for submitting a restitution application is carried out since the victim reports the crime he has experienced to the local Indonesian National Police and is handled by investigators along with the handling of the crime committed. The investigator informs the victim of his right to apply for restitution, then the investigator includes a description of the loss that the victim suffered in the case file. After the case file is delegated by the investigator to the public prosecutor, then the public prosecutor examines the case file.

In addition to these problems, it turns out that there is still one thing related to LPSK that becomes an obstacle for victims of criminal acts to obtain their rights to restitution, namely the unclear arrangement of parties or institutions authorized to execute the implementation of restitution. Article 1 point 3 of Law no. 13 of 2006 states that the Witness and Victim Protection Agency, hereinafter abbreviated as LPSK, is an institution that has the duty and authority to provide protection and other rights to Witnesses and/or Victims as regulated in this law. Then Article 12 states that LPSK is responsible for handling the provision of protection and assistance to Witnesses and Victims based on their duties and authorities as regulated in this law. In Law no. 13 of 2006 there is not a single article which states that one of the powers of the LPSK is to carry out court decisions or judge decisions regarding restitution submitted by victims of criminal acts through LPSK. PP No. 44 of 2008 which lays out provisions regarding restitution for victims of criminal acts does not explicitly regulate the authority of LPSK to carry out court decisions or judge decisions related to restitution.

Furthermore, in Law no. 31 of 2014, there is no change in the definition of LPSK. However, in relation to restitution, this law adds a provision stating that in carrying out the duties as referred to in Article 12, LPSK has the authority to evaluate compensation in providing restitution and compensation (Article 12A paragraph (1) letter j). This shows that there is an additional authority for LPSK in terms of restitution for victims, but only in the form of the authority to assess compensation in providing restitution. LPSK is still not given the authority to implement court decisions or judges' decisions regarding requests for restitution submitted by victims of criminal acts through these institutions (Sutrisno, 2011).

Regarding parties who are given the authority to carry out court decisions or judges' decisions, the Criminal Procedure Code explicitly stipulates it in Article 6. Article 6 letter a of the Criminal Procedure Code states that prosecutors are officials who are authorized by this law to act as public prosecutors and implement court decisions that have obtained legal force. permanent. Then Article 6 letter b of the Criminal Procedure Code states that the public prosecutor is the prosecutor who is authorized by this law to carry out prosecutions and carry out judges' decisions. The authority of the prosecutor as an executor is reaffirmed in Article 1 points 1-221 and Article 3022 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter abbreviated as Law No. 16 of 2004).

Based on this explanation, only the prosecutor's office is authorized by the state to carry out judges' decisions and court decisions that have permanent legal force, not least in executing judges' decisions and court decisions on requests for restitution submitted by victims. If the victim of a crime chooses to get the right to restitution through the procedure for combining compensation and criminal cases in the Criminal Procedure Code, then the execution of the criminal decision is clearly carried out by the prosecutor based on Article 270 of the Criminal Procedure Code. In the Law on the Protection of Witnesses and Victims, there is indeed no article that states directly that it is the prosecutor who has the authority to execute the judge's decision or court decision on the request for restitution submitted by the victim. However, given that there is not a single provision in the Law on the Protection of Witnesses and Victims which states that LPSK has the authority to execute requests for restitution submitted by victims of criminal acts, based on the Criminal Procedure Code and Law no. 16 of 2004, it is the Public Prosecutor who has the authority to carry out judges' decisions and court decisions on the application for restitution.

In addition, LPSK is an institution that was newly formed on August 8, 2008, as the implementation of one of the mandates contained in Law no. 13 of 2006 which requires the establishment of a witness and victim protection agency no later than a year after the law is enacted. The law expressly states that LPSK is an independent institution in the sense that it is an independent institution without interference from any party.

Regarding the right to restitution for victims of criminal acts, both considerations deserve to be reconsidered, especially considering that LPSK does not have the authority to carry out judges' decisions and court decisions as the Indonesian Prosecutor's Office. First, it is believed that LPSK will be better in terms of ability and performance, especially with the distrust of the performance of several institutions including the Indonesian Attorney General's Office. As previously explained, LPSK is a new institution which of course lacks experience, especially in helping victims of criminal acts get their right to restitution (Well, 2019). This is clearly very different from the Indonesian Prosecutor's Office, which is very experienced in helping victims of criminal acts to obtain their right to restitution through various procedures, for example the combined claim for compensation under the Criminal Procedure Code or the restitution mechanism for victims of the crime of trafficking in persons. which will be better in terms of ability and performance in helping victims of crime to get the right to restitution when compared to LPSK.

Second, regarding the problem of a large burden of responsibility. With the LPSK position being only in the national capital, it will certainly be a very heavy burden for LPSK to reach victims of criminal acts throughout Indonesia. The burden is not only related to the limited personnel, but also concerns the budget and inadequate infrastructure. Meanwhile, if this is used as one of the prosecutor's powers, it can be utilized and maximized with the position of the prosecutor's office spread throughout Indonesia. Especially if it is related to the prosecutor's authority in the field of prosecution, it will certainly make it easier to access and coordinate with other law enforcement officers in the criminal justice system who have an interest in fighting for the rights of victims of criminal acts.

Based on the explanation, it is not appropriate if the request for restitution can only be submitted by the victim of a crime through the LPSK. In contrast to the considerations of the formulators of Law no. 13 of 2006 that LPSK is believed to have better capabilities and performance than other institutions, including the Indonesian Attorney General's Office. The author finds that LPSK has several shortcomings when compared to the Indonesian Prosecutor's Office so that it would be more appropriate if the authority to apply for restitution for victims of criminal acts rests with the Indonesian Prosecutor's Office.

4. Conclusions

The formulation of the right legal protection arrangements with the aim of ensuring justice and legal certainty addressed to the people who are victims of forest and land fires must be made in a balanced manner, not sharp down and blunt up. These regulations must be made considering the rights and obligations as well as the dignity and worth of the community as victims of forest and land fires. These rights are based on Human Rights (HAM) which recognizes the basic human right to be able to live in a good and healthy environment. Technically, this regulation must contain regulations regarding the type and amount of loss that can be requested by the victim of a crime, the procedure for filing the compensation, and specific benchmarks or criteria for victims who can be given restitution. Provisions regarding the provision of restitution must also include those responsible for activities that require forest fires to be burned, not only limited to the perpetrators of the crime of forest burning. This restitution payment does not eliminate criminal sanctions for perpetrators and those in charge of forest burning activities as well as administrative sanctions in the form of administrative fines and revocation of the company's business license to make one last effort to convince the reader

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