

# Legal Responsibility For Forest Fire In Indonesia To The International Community

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## ABSTRACT

This article aims to examine the basic principles of international law that underlie state accountability and state responsibility for forest and land fires in Indonesia that because transboundary air pollution based on international law. The direct impacts of forest and land fires include the emergence of ARI disease, disruption of transportation and socio-economic losses. Environmental problems and even then continue to grow and expand, if in the past the problem of environmental pollution and environmental damage was still a local problem, now it has become a transnational problem. As a result of the impact of forest and land fires that occurred in Indonesia, the Indonesian state is responsible for the impact of transboundary haze. In international law, responsibility is one of the fundamental principles and one of the important guidelines and looks for the characteristics of the existence of international law. State responsibility is contained in Principle 21 of the 1972 Stockholm Declaration which explains based on the United Nations Charter and principles of international law the state's responsibility to ensure that activities under its jurisdiction or control do not cause environmental damage to other countries or areas outside the boundaries of national jurisdiction. State activities in international relations are sometimes not free from mistakes, so regarding the impact of transboundary air pollution, it will relate to the concept of state responsibility and the principles that underlie the state's responsibility in international law. The research method used is a normative juridical research method and literature search.

**Keywords:** Forest and Land Fires, Transboundary Air Pollution, International Law.

## INTRODUCTION

The problem of haze from forest and land fires in Indonesia is a complicated one. This is caused by disturbances to natural resources that continue and even increase in intensity. Almost every dry season in Indonesia in the last few decades has experienced forest and land fires. Forest and land fires continue to occur in Indonesia and are very difficult to stop.

Environmental damage due to forest and land fires then affects not only one region in Indonesia but the whole of Indonesia, even other countries are also affected by the environment, one of which is the impact of forest and land fires that cause neighboring

countries to suffer impacts. environmental damage.<sup>1</sup>

The global impact of forest and land fires that is directly felt is air pollution from the smoke that causes respiratory problems and interferes with daily activities. The forest and land fires that occurred in Indonesia in 1997-1998, 2002-2005, 2014-2015, and 2019 produced smoke that was also felt by the people of Malaysia and Singapore and threatened to disrupt air transportation relations between countries.<sup>2</sup>

The direct impacts of forest and land fires include: First, the emergence of Acute Respiratory Infections (ARI) for the community. Second, reduced work efficiency because when large-scale forest and land fires

occur, schools and offices are closed. Third, the disruption of transportation on land, sea and air. Fourth, the international issue of smoke from forest and land fires causes material and immaterial losses to local communities and often causes transboundary haze pollution to neighboring countries, such as Malaysia and Singapore.<sup>3</sup>

Environmental problems and even then continue to grow and expand. In the past, the problem of environmental pollution and environmental destruction was still a local problem, now it has become a national and even international problem. The case of cross-border air pollution due to forest and land fires in Indonesia can be used as an example of how environmental problems have become transnational.<sup>4</sup>

The problem of forest and land fires in Indonesia has become an international problem because this case caused air pollution in neighboring countries (transboundary pollution), so they filed a protest against Indonesia for this problem and asked the Indonesian state to be responsible for the impacts caused by forest fires and forest fires. the land. This results in the emergence of the responsibility of the Indonesian state for forest and land fires that cause transboundary haze impacts that occur in its territory.<sup>5</sup>

State responsibility is one of the fundamental principles in international law, because state responsibility is one of the important guidelines and characterizes the existence of international law. In international law, state responsibility arises when a state has violated or disturbed state boundaries either directly or indirectly and the act has harmed other countries is called state responsibility.<sup>6</sup>

Based on the Declaration of the United Nations Conference on the Human Environment which contains about state responsibility, it is contained in Principle 21 and Principle 22 of the 1972 Stockholm Declaration, as follows: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do

not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". (States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources in accordance with their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause harm to the environment of other countries or areas outside the limits of national jurisdiction. "States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction". (Countries will work together to further develop international law on liability and compensation for victims of pollution and other environmental damage caused by activities within their jurisdiction or control for areas outside their jurisdiction.

International environmental law generally refers to the principles of international law, including the principle of state responsibility, which requires each country to be responsible for any consequences of its actions that harm other countries. The orientation of the application of these principles is not environmental protection, but the protection and restoration of the rights of the aggrieved state. The existence of international environmental law means that there is a law established to maintain, control and regulate matters relating to the environment in the international sphere, both regarding cooperation between countries, cross-border pollution and so on. This international environmental law regulation arises because of the necessity to regulate,<sup>7</sup>

The activities of the state in carrying out international relations are sometimes not free from mistakes. For example, committing violations against other countries whose actions can cause losses so that state accountability arises. Talking about the impact of transboundary air pollution will relate to the responsibility of a country. State responsibility is a concept in international law which includes state liability.<sup>8</sup>

In connection with the identification of the problems above, it is important for this research to be studied more deeply about how the basic principles of international law that underlie state accountability and what concepts are built in this case the concept of state responsibility according to international law as a form of accountability of the Indonesian state for forest and land fires that cause the impact of transboundary haze in Indonesia.

## **METHODOLOGY**

The method used in this research is normative juridical law research, in line with normative research ethics, researchers use a statutory approach, namely Law Number 32 of 2009 concerning Environmental Protection and Management. In this study, the literature search study technique is also used as the main technique in reviewing legal materials through secondary data in the form of Laws, Books, Journals and the Internet. Then the study of the legal material is adjusted to the topic in this research regarding the existence of the concept of state responsibility for forest and land fires that cause transboundary air pollution according to international law.

## **RESULTS AND DISCUSSION**

### **I. Basic Principles of International Law Underlying State Accountability**

State responsibility is closely related to a situation that against the fundamental principles of international law, the state or a party that has been harmed becomes entitled to receive compensation for the loss it has suffered. Therefore, state responsibility will relate to determining on what basis and under what circumstances the state can be deemed to have committed an international wrongdoing.<sup>9</sup>

The concept of "state responsibility" itself in international law is not yet clear and unequivocal. Likewise, there are no very clear legal provisions regarding the responsibilities of this state. However, these shortcomings do not reduce the importance of the principle of state responsibility as one of the fundamental principles in international law.

Zwanzerberger, explains this fundamental principle by stating, that as a fundamental principle, the principle must have

extraordinary importance in international law compared to other principles. These principles must be an essential part of existing international law or have characteristics that are a reflection of applicable international law. If these characteristics are applied, 7 (seven) fundamental principles will emerge in the body of international law, namely sovereignty, recognition, consensus, good faith, right to self-defense, international responsibility and freedom on the high seas. Therefore, state responsibility is an important guideline in characterizing the existence of international law.

State responsibility at present can be considered as a general principle of international law, which is a fundamental rule and that unlawful acts or omissions are categorized as illegal acts based on regulations arising from rights and obligations.

State responsibility as what legally must be accounted for to a party 'responsibility' must be distinguished from the notion of 'liability' as an obligation to compensate for the loss or repair of the damage. Therefore, liability does not always have to fall at the same time as providing compensation and repairing the damage.<sup>10</sup> What legally must be accounted for is a legal obligation, namely, that a behavior must be in accordance with what is required by law to be obeyed.<sup>11</sup> State accountability is closely related to the basic rights and obligations of the state. In fact, it also relates to permanent rights to natural resources in addition to relating to the principles of international law regarding friendship and cooperation.<sup>12</sup>

Judge Huber in the case of *The Spanish Zone of Morocco Claims* (1925) argued that responsibility is a natural consequence of the existence of rights, and as long as the rights are international in nature, it will give birth to international responsibilities which result in the necessity to make corrections. Similarly, in the case of *The Chorzow Factory* (1938) of the PCIJ Permanent Court of International Justice, PCIJ stated that state responsibility is a principle in international law so that if there is a violation of these obligations, it will result in the birth of

an obligation to make (remedies) fairly and adequate.<sup>13</sup>

On what basis can a state or party demand an obligation from the perpetrator state to account for its actions? For this, the obligations arising from the agreement must first be seen. As is known, that the agreement made by members of the community of nations has the aim of causing certain legal consequences.<sup>14</sup> If there is no prior agreement, what will be the next guide is customary international law and general principles of international law.<sup>15</sup>

Under what circumstances can a state be deemed to have committed an act of wrongdoing internationally? The state as a subject of international law has various basic rights in addition to the basic obligations regulated by international law. The right that is often stated is sovereignty. "Sovereignty in relations between countries signifies the existence of independence and freedom to exercise its sovereign rights to carry out state functions without interference from other countries".<sup>16</sup>

This, of course, also gives birth to obligations towards him, namely the obligation not to exercise his sovereignty in the territory of other countries and the obligation to interfere in the affairs of other countries. Violations of the rights of other countries oblige the state actors to make improvements so that it is impossible for a country to enjoy its rights without recognizing or respecting the rights of other countries.<sup>17</sup> If this international obligation is violated to the detriment of other parties, the responsibility of the state is born. That is why international law institutionalizes this obligation as a fundamental principle.<sup>18</sup>

State liability relates to acts that are declared internationally wrong which are limited by the principles of international law regarding the extent to which states are deemed to have violated the law.<sup>19</sup> If a country violates the obligations established by international law, it is subject to the responsibility to compensate.

Even though the issue of state responsibility is often associated with wrong

actions or omissions committed by a state against another country, later developments show that the intentional factor of the perpetrator state for the violations that occurred is no longer an absolute element for the birth of a responsibility.<sup>20</sup>

## **2. State Accountability for Land and Forest Fires in Indonesia That Cause Transboundary Air Pollution According to International Law**

but because of the locus delicti in Indonesia, Indonesia imposes sanctions on perpetrators in accordance with the provisions of Indonesian national law as a form of accountability for the Indonesian state. In this case, it is not the business entity or individual that is directly held accountable but the state, because this is the responsibility of the state, the Indonesian state is responsible for the states, not the perpetrators, as in the subject of international law, it is also the state that is held accountable by other countries. companies, so other countries also cannot hold companies accountable, because the Indonesian state must also protect citizens and their locus delicti is also in Indonesia. Regarding Indonesia as a victim in forest and land fires,

In addition, in the event that the responsibility of the Indonesian state as a victim and perpetrator of forest and land burning are cooperatives or foreign companies, the concept of imputability is built on the concept of imputability which is a legal fiction that mixes the actions or omissions of state officials with the state itself and makes the state legally responsible. for the loss caused to the property of a foreigner or a foreign person.<sup>21</sup>

Then based on the theory of international law contained in Article 4 of the Articles of the ILC (International Law Commission) stipulates that the behavior of any state organ (including persons or entities with such status in accordance with the internal law of the country) must be considered as an act of the state concerned under international law if the organ carries out its legislative, executive, judicial or other functions, regardless of the position it holds in the

administration of the state and whatever its nature as an organ of the central government or an organ in the territorial unit of that country. As the International Court of Justice notes in *Difference Relating to Immunity from Legal Process of a Special Rapporteur*, "according to the rules established in international law, the behavior of every organ in a country must be considered as an act of that state". In the case of the *Genocide Convention (Bosnia v. Serbia)* the International Court of Justice considers "one of the legal foundations of state responsibility, that the behavior of any state organ must be regarded as an act of the state according to international law, and therefore creates responsibility on the state if the act is a violation of the state's obligations. "

Responding to the proliferation of government bodies and parastatal entities, Article 5 of the ILC states that the behavior of a person or an entity that is not a state organ in accordance with Article 4 of the ILC but which is recognized by law in that country to carry out elements of governmental authority, must be considered as an act of the state according to law. internationally, provided that person or entity acts in that capacity in a certain way. This provision is intended *inter alia* to cover the situation of corporations that have been privatized but still have some public or regulatory functions. Article 5 issues also arise when a state organ or instrument is placed in accordance with the will of another international legal entity in a situation where both the state and the entity exercise control elements over the organs or instruments of the state concerned.<sup>22</sup>

With regard to state responsibility due to state errors, the Tribunal asserted that "it is a fixed principle in international law that the actions of a state will be considered as acts of a state even though they are *ultra vires* or against the law according to the internal law of that country, their acts or omissions." institutions, officials, or state employees), if they are suspected of acting in their capacity as state organs, it is considered an act or omission of the state even though it is contrary to the internal law of the state.<sup>23</sup>In this case, it is related to the form of wrongdoing or negligence of the state (government officials)

related to the supervision carried out by the government which resulted in forest and land fires. Weak government control and supervision in supervising the exploration of forest companies and preventing forest and land fires as well as land overlap are suspected to be the cause of the repeated cases of forest and land fires in Indonesia.<sup>24</sup>Efforts must be made to respond to environmental damage due to forest and land fires in a sustainable environmental management system, so preventive actions are needed in the form of supervision related to environmental permits and business permits. One of the principles in state administrative law is that the official who is authorized to issue permits has the obligation to supervise environmental permits, as regulated in Article 72 of the UUPPLH. Supervision aims to achieve community compliance with legal norms and can also identify violations at an early stage.<sup>25</sup>

There are many conflicting theories regarding whether the state's responsibility for unlawful acts or omissions is absolute or whether it is necessary to prove the existence of an error or intention on the part of the relevant officials. The principle of objective liability (the so-called "risk" theory) states that the state's legal liability is absolute. Once an unlawful act occurs, causes harm and is carried out by state instruments, according to international law, the state must be responsible to the injured state, regardless of good or bad intentions.<sup>26</sup>

Article 2 of the ILC also stipulates that there are acts against international law committed by a country if the behavior includes acts or omissions that can be attributed to that country under international law and constitutes a violation of a country's international obligations. In the case of *Chrozow Factory*, it is a principle of international law, even a broader legal conception, that any violation of an agreement will result in an obligation to take corrective action.

## CONCLUSION

Based on the description of the discussion in this study, the author concludes that the form of the Indonesian state's responsibility for

forest and land fires that cause the impact of smog that crosses national borders is a concept of state responsibility (state responsibility) by the Indonesian state by providing punitive sanctions to the perpetrators of arson. forest and land based on locus delicti in the territory of Indonesia, although the perpetrators are companies owned by other countries and owned by the Indonesian state and according to international law the state must be responsible to the state, not the perpetrators, for example companies or individuals who are held accountable, but the state based on the subject of international law.

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