

# AUTHORITY OF SINGAPORE IN ARRESTING INDONESIAN SUSPECTED OF PERPETRATING TRANSBOUNDARY HAZE POLLUTION

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## Abstract

The re-occurrence of haze pollution arising from forest and land fires in Indonesia has led to frustration in Singaporean side, which in turns led the Singaporean government to stipulate a rule that contained extraterritorial jurisdiction within its provisions. This rule became known as the Transboundary Haze Pollution Act of 2014. Under these regulations Singapore has jurisdiction to prosecute perpetrators of forest and land fires in Indonesia. As a form of THPA implementation, in 2016 Singapore arrested Indonesian citizens who allegedly burned down forest and land in 2015. This study is intended to determine Singapore's competency in arresting Indonesian citizens suspected of perpetrating forest and land burning which leads to transboundary haze pollution in terms of International law.

**Key Word:** Transboundary Haze Pollution, Ratification, THPA Implementation, Sovereignty

## A. Introduction

Like an annual agenda, Indonesian forest and land fire continues to occur. It has been recorded in 2018 alone that 4,666 Hectare of plots of agricultural land have been incarcerated across few provinces in Indonesia, such as in: Riau, West and Central Borneo.<sup>1</sup>

In its most fundamental form, forest and land fires in Indonesia are caused by human and natural factors. Natural factors of forest fire could be caused by the effect

of the *El Nino*, which caused prolonged droughts in Indonesia, otherwise, human factors of wildfire in Indonesia is related to the activity of land conversion for palm oil plantations and agricultural plot or for residential and real-estate development, the activity of land conversion for such purposes are usually done by using Slash-and-Burn technique.

The effect of forest and land fires does not merely affects Indonesia alone, but also the impacts of such disasters also affects other countries when the haze

<sup>1</sup>Sipongi, (2019), *Data dan Grafik Luas Kebakaran Hutan*, available at

[http://sipongi.menlhk.go.id/hotspot/luas\\_kebakaran](http://sipongi.menlhk.go.id/hotspot/luas_kebakaran), [Accessed on 24 October 2018]

caused by such activities crosses national borders. Indonesia has been recorded to “export” haze to other countries several times in the past, namely in 1997, 1999, 2002, 2004, 2006, 2010 and recently 2013 and 2015.<sup>2</sup> Therefore, the issue of cross-border haze and smoke pollution is not merely national issues, but also regional and to further extent, an international issues that needed to be addressed.

Specifically, in Southeast Asia, The Association of Southeast Asian Nations or more colloquially known as *ASEAN*, has stipulated a regional agreement that agrees to cooperatively address the issue of transboundary haze pollution issues arising from the incarceration of forest and land, known as the *Agreement on Transboundary Haze Pollution* (henceforth shall be referred as *ATTHP*) which is signed in Kuala Lumpur on 10<sup>th</sup> of June 2002 and entered into force starting from 25<sup>th</sup> of November 2003, after six members of *ASEAN* ratifies on said agreement.<sup>3</sup> Meanwhile, Indonesia which is in fact a “exporting” country in terms of transboundary haze, is the last

member to ratifies said agreements, which is on 16<sup>th</sup> of September 2014.

One year before the ratification of *ATTHP* by Indonesia. A massive fire occurred in the forest and land in the Sumatran region, especially in the Riau Province which resulted in transboundary haze pollution, a surprising record by *The Pollutant Standard Index* (*PSI*) recorded that the pollution index of Singapore at the time reached 401 which is very dangerous and was the worst record compared to 1997 where it only reaches a mere 226 points. Meanwhile in Muar, Johor, *Air Pollution Index* (*ASI*) reaches 746 points at the time, this leads the respective area to issue a emergency status which leads to the disturbance of activities in both Singapore and Malaysia and drives schools in both areas to be forcefully closed as a result of the dangerous amount of pollution.<sup>4</sup> At the time, Indonesia promises to address said issue. Unfortunately, Indonesia efforts on tackling issues of Transboundary Haze had come to a stall, which forces the then-incumbent president at the time, Susilo

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<sup>2</sup> Nazia Nazeer dan Fumitaka Furouka, (2017), *Overview of ASEAN Environment, Transboundary Haze Pollution Agreement and Public Health*, *IJAPS*, No. 1 Vol. 13, p. 77.

<sup>3</sup> Daniel Heilmann, (2015), *After Indonesia's Ratification: The ASEAN Agreement on Transboundarry Haze Pollution and Its Effectiveness As a Regional Enviromental*

*Governance Tool*, *Journal of Current Southeast Asian Affairs*, No. 3, p. 96.

<sup>4</sup> Grizelda, (2015), Thesis: *Penerapan Yurisdiksi Ekstrateritorial dalam Singapore Transboundarry Haze Pollution Act 2014 Akibat Kabut Asap Dari Kebakaran Hutan di Indonesia*, Yogyakarta: UGM, p. 2.

Bambang Yudhoyono, to issue a formal apology to both Singapore and Malaysia.

As a result of said incident, Singapore started to explore and study the possibility to formulate regulations that uses extraterritorial jurisdiction in its provisions, with the intent of arresting prospected individual or corporate entities suspected on arson on forest and law that causes transboundary haze pollution.<sup>5</sup> On February 19<sup>th</sup> of 2014 Minister of Environment and Water Resources of Singapore proposes *Transboundary Haze Pollution Bill* which was later passed by Singaporean parliament on August 5<sup>th</sup> of 2014 and became *Transboundary Haze Pollution Act of 2014* or abbreviated as THPA (and henceforth shall be referred as such).

In the 4<sup>th</sup> article of THPA, it is stated that *“This Act shall extend to and in relation to any conduct or thing outside Singapore which causes or contributes to any haze pollution in Singapore.”*. As a form of implementing THPA, in 2016, Singapore Environment Agency (NEA) arrested the director of an Indonesian company suspected of being the perpetrator of forest and land burning in 2015 when he was in Singapore.

Based on the explanation, arise single question about the authority of the Singapore Government in arresting Indonesian nationals who are accused of the haze-and-smoke-causing forest incarceration across national borders.

## B. Research Method

This research was compiled using a type of normative juridical research, namely research focused on studying the application of rules or norms in positive law.<sup>6</sup> The method of data gathering of this research is done in the method of literature study, which is a method of collecting data by tracing and reviewing written materials (i.e literature, research results, internet, scientific journals and other written materials). The analytical method of this paper is the qualitative analysis method; the aim of such method is to obtain a full understanding of the intended research materials.

## C. Discussion

History and Impact of Forest Fire in Indonesia

Indonesian Forest and Land fires have been recorded to actually occurred since the

<sup>5</sup> Alan Khee-Jin TAN, (2015), Paper: *The ‘Haze’ Crisis in Southeast ASIA : AssessingSingapore’s Transboundarry Haze Pollution Act 2014*, National University Singapore, p. 5.

<sup>6</sup> Johnny Ibrahim, (2006), *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, p. 295.

days of the *Hindia Belanda* or the Netherland East-Indies days, this could be seen in the rules and ordinances issued by the Dutch Indies Government, such as the *Java and Madura Forest Ordinances of 1927* (Article 20) and *Provinciale Bosverordening Midden Java* (Article 14) that provisioned efforts to increase preparedness in facing wildfires season around May-November, and methods and techniques for using fire in the forest border.<sup>7</sup>

Next development in the history of Indonesian forest fire is after the Independence, the practice of forest fires began to flourish circa 1980, this coincides with the legalization by the government for forest clearing (land conversion) for plantation areas. As a result, one of the largest forest fire during the 1980 decades are during circa 1982-1983 in the East Borneo area which caused 2.7 Million Hectare of lost jungle area as a result of this slash-and-burn method of land conversion.<sup>8</sup>

During the period spanning from 1997 until 1998, in the midst of multidimensional

crisis that Indonesia faced, forest fire occurred in 23 of Indonesia's 27 provinces.<sup>9</sup> And land clearing for palm oil and industrial plantation in that coincides with a long drought during said time is thought to be the cause of extensive forest and land fires during the time spanning of the stated above.

Based on a study conducted by *Asian Development Bank* (ADB) with *National Development Planning Agency* (BAPPENAS), it is estimated that 9.75 million hectares of forest and land were lost because of incarceration and resulted in financial losses estimated to be around US \$ 10 Billion.<sup>10</sup> Moreover, in addition to massive financial loss, 1997 Land and forest fire also resulted in transboundary smoke and haze pollution that covers parts of Malaysia, Singapore, Brunei and small parts of northern Australia. Hence it is considered to be the worst forest and land fire in recent Indonesian history.<sup>11</sup> After the 1997-1998 forest and land fire, consistently forest and land fire case has become a consistent yearly occurrence.

<sup>7</sup> Fahmi Rasyid, (2014), *Permasalahan dan Dampak Kebakaran Hutan*, Jurnal Lingkar Widyaiswara, Edisi 1 No. 4, p. 55.

<sup>8</sup> Rahmi Deslianti, (2015), *Motivasi Indonesia Meratifikasi Perjanjian Asap Lintas Batas "ASEAN Agreement on Transboundary Haze Pollution" 2014*, Jom FISIP, Vol. 2 No. 2, p. 178.

<sup>9</sup> Yordan Gunawan, (2016), Thesis: "Pertanggungjawaban Indonesia Terhadap Asap Lintas Batas Negara Pasca Ratifikasi Asean

*Agreement on Transboundarry Haze Pollution"*, Yogyakarta: UMY, p. 51

<sup>10</sup> Luca Tacconi, (2003), *Kebakaran Hutan Di Indonesia: Penyebab, Biaya dan Implikasi Kebijakan*, Bogor: Center for International Forestry Research, p. 2.

<sup>11</sup> Helena Varkkey, (2016), *The Haze Problem in Southeast Asia: Palm Oil and Patronage*, New York: Routledge, p. 3.

It is obvious that forest fire would have serious adverse effect arising from such activities. As for the adverse effects of forest and land fires could be broadly divided into several parts, of those are:<sup>12</sup>

a. Environmental Damage

The most obvious adverse impact due to forest fire the damage of the environment, due to such activities, there is a year-on-year loss of Indonesia forest area and is set to further decrease. based on a data released by Indonesian Ministry of Environment, in 2015, Indonesia's forest area was around 128 million hectares. Meanwhile, just in the span of two years, Indonesia lost 34,4 Million Hectares of forest area, and as such, in 2017 the total area has decreased into 93,6 million hectares.

The decline in total sum area of Indonesian forest will have an impact on water retainment ability of the forest. Hence, the areas that were in part of or near to deforestation areas will be vulnerable to erosion, flooding and landslide. In addition, deforestation would also further contribute to the severity of current global warming state which will threaten the existence of a variety of flora and fauna and if forest fires continue, the possibility of pushing these

flora and fauna towards extinction could arise.

b. Health Problems

Smoke and haze generated from incarceration of forest will certainly raises quite a variety of adverse health conditions, such as, but not limited to: eye and nose irritation, worsening of asthma and lung disease, pollutants from smoke from fires that has settled to the surface could become clean water pollutants, and a vector of ARI (Respiratory Tract Infection I).

c. Financial and Economic Loss

During the forest and land fire that occurred in 2016, it is estimated by World Bank that as a result from such occurrence, Indonesia experienced a loss of US\$ 16 Billion in the aftermath, this financial loss is estimated to be twice the size of the calculated loss of 2004 *Aceh Christmas Tsunami*<sup>13</sup>.

d. Foreign Relations

The problem of transboundary haze problem has stirred political tensions between Indonesia and its neighboring countries, Because "importing" of smoke causes countries to suffers its adverse effects and losses and moreover, because haze pollution is a reoccurring annual problems and the most frequent affected

<sup>12</sup> Yordan Gunawan, Thesis, Op.Cit., p. 61.

<sup>13</sup>World Bank Group, (2015), *Indonesias Fire and Haze Crisis*, available at

<http://www.worldbank.org/en/news/feature/2015/12/01/indonesias-fire-and-haze-crisis>, [Accessed on 28 October 2018].

countries of this event are Malaysia and Singapore has resulted in both countries to frequently express their protest and concerns of the affairs.

As happened in 2015, as Malaysia dan Singapore express their concern and protest on the haze problems, Incumbent Indonesian Vice President, Jusuf Kalla issued a rather controversial statement, where he said (sic) "11 months of fresh air from Indonesia, zero gratitude ever sent, yet 1 month of merely minor smoke, all the rages were sent". Although there were no official rebuttal statement in return by both government for such statement, but Singaporean netizens made a satirical page as a response, named [thankyouindoforthecleanair.com](http://thankyouindoforthecleanair.com)<sup>14</sup>.

#### Indonesia Response on Transboundary Haze Pollution Problem

According to theory of territorial sovereignty, a state has the absolute right to exploit its own natural resources within its defined territory, or this is what is commonly known as the concept of *Cujus est solum, ejus est usque ad coelum*, which translates to "Whoever's is the soil, it is

theirs all the way to Heaven and all the way to Hell".<sup>15</sup>

In the practice of International Law, the right of a country to use its natural resources is stated in 21<sup>st</sup> principle of the Stockholm Conference, which stated that:<sup>16</sup>

*"states have, in accordance with the Charter of the United Nation and the principles of the 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"*.

Also in accordance with said principle, naturally besides having the right to utilize its natural resources arise an obligation for said state to ensure that the activities that is done would not harm the environment outside of its jurisdiction or this is what is also known as the *good neighborliness principles* or *sic utere tuo, ut alienum non laedas* which is also found on

<sup>14</sup>CNN Indonesia, (2015), *Protes Asap Indonesia, Singapura Buat Status Sindiran*, available at <https://www.cnnindonesia.com/teknologi/20151002133218-185-82342/protes-asap-indonesia-singapura-buat-situs-sindiran>, [Accessed on 25 November 2018]

<sup>15</sup>Ifa Latifah Fitriani, (2014), *TransboundaInrry Haze Pollution Act 2014 dan Problematika*

*Kebakaran Hutan Di Indonesia*, Jurnal Al-Mazahib, Vol. 2 No. 2, p. 293.

<sup>16</sup>Asdar, (2015), *Transboundary Haze Pollution di Malaysia dan Singapura Akibat Kebakaran Hutan di Provinsi Riau ditinjau dari Hukum Lingkungan Internasional*, Jurnal Legal Opinion, Vol. 3 No. 1, p. 3.

2<sup>nd</sup> Principles in Rio Conference and Article 74 of UN Charter.

In the practice of statehood and in environmental multilateral agreements, the principle of good neighborliness is manifested in the form of rule of international customary law, which are:<sup>17</sup>

1. a state has a duty to prevent, reduce, and control transboundary pollution and environmental harm resulting from activities within their jurisdiction or control.
2. States also have a duty to cooperate in mitigating transboundary environmental risk and emergencies, through notification, consultation, negotiation, and in appropriate cases, environmental impact assesment.<sup>18</sup>

Hence, with the emergence of cross-border smoke pollution from forest and land fires, Indonesia could be subjected with such responsibilities. The emergence of state responsibility will arise if a country violates international obligations originating from international agreements and/or international customs or failure to implement a binding court decision.<sup>19</sup>

Based on 1<sup>st</sup> article of *Article on Responsibility of The States for International Wrongful Acts*, it is declared that “every internationally wrongful acts of the States entails international responsibility of the State”.

Declaration of a wrongful act is if it is included in the category of action or inaction (omission) that can be attributed to the state based on the practice of international law.<sup>20</sup> As of actions that is attributable to the state, according to the *Article on the Responsibility of the States* are as follows:<sup>21</sup> a) actions of state organizations, be it in the realm of the executive, judicial, and legislative; b) actions of individuals or entities that exercise state authority; c) responsibility or *ultra vires* actions; d) responsibility of individuals that is controlled or directed by the state; e) Actions of successful rebel groups and have formed a new governments, or rebel groups taking state actions because official government authorities cannot implement such actions; and f) actions of other states that occurs if said country provides assistance, control or forces a country against another country to

<sup>17</sup> Patricia Birnie, et al, (2009), *International Law & The Environment*, 3<sup>rd</sup> Edition, New York: Oxford University Press, p. 137.

<sup>18</sup> *Ibid*

<sup>19</sup> Martin Dixon, (2013), *International Law*, 7<sup>th</sup> Edition, United Kingdom: Oxford University Press, p. 254.

<sup>20</sup> Abdul Ghafur Hamid@Khin Maung Sein, (2011), *Public International Law*, 3<sup>rd</sup> Edition, Selangor: Sweet & Maxwell Asia, p. 217.

<sup>21</sup> *Ibid*, p. 218.

do wrongful actions according to international law.

Based on the explanation of the types of actions that can be attributed to state actions as described above, the actions of corporations that carried out forest and land incarceration are not included in the types of actions that are attributable to state actions, hence, by such thought, it is deemed unnecessary for Indonesian responsibility on the affairs of transboundary haze pollution. Moreover, Indonesia is also trying to overcome the problems of land and forest fires with the operation of firefighting, in form of land and air based firefighting, law enforcement, and empowerment of community.<sup>22</sup>

Although, state's responsibility doesn't arise only from acts attributable to the state (commission), but could also arise from the act of omission. Two categories of omission by the state that results in state's responsibility are:<sup>23</sup>

#### 1. State failure to perform the act of "due diligence"

According to International Law, the Responsibility of the states arise in case of failure to perform "due diligence" of

preventing individuals from the destruction upon foreign property or attack toward foreign nationals, *Due diligence* is the fulfillment of certain standards based on reasoning and customary in an effort to fulfill international legal obligations.<sup>24</sup>

#### 1. Denial of Justice

Responsibility of the states arise in case of state failure to punish individuals who are responsible upon losses suffered by foreign nationals or failure to provide the opportunity to said parties to refund losses suffered in the local court. Denial of Justice could be a relevant reason with Indonesian conditions, because of the lack of effectivity and ineptitude of Indonesian Legal system, corruptible nature of Indonesian law to profits of few corrupt individual interests. In addition, the existence of collusion or the ineptitude of government officials to uphold law and justice properly.<sup>25</sup>

As an example, in the case of forest and land fires that occurred in 2015 in Riau Province 15 companies were named as suspects in forest and land incarceration. Alas, the legal process has come to a stall,

<sup>22</sup> Kompas.com, (2017), *BNPB Siapkan Helikopter "Water Bombing" di Tiga Daerah Siaga Karhutla*, available at <https://nasional.kompas.com/read/2017/06/22/14530761/bnpb.siapkan.helikopter.water.bombing.di.tiga.daerah.siaga.karhutla>, [Accessed on 20 December 2018]

<sup>23</sup> Abdul Ghafur Hamid@Khin Maung Sein, *Op. Cit.*, p. 227.

<sup>24</sup> Cristianugra Philip, (2016), *Tanggung Jawab Negara Terhadap Perlindungan Hak Asasi Manusia Menurut Hukum Internasional*, Lex Administratum, Vol. IV No. 2, p. 35.

<sup>25</sup> Alan Khee-Jin Tan, *Op. Cit.*, p. 11.

because of the issuance of the Termination of Case Investigation (SP3) order by the Riau Regional Police with the argument of the lack of evidence that said companies did the act of arson.<sup>26</sup>

Referring to the case that has been stated above, Indonesia could be imposed with the Responsibility of the states, where such responsibility arises from the omission in form of denial of justice by Indonesia.

As based on *Article on Responsibility of The States*, in case of a state carries a wrongful acts, the country is then obligated to stop the action and provide guarantees that such action will not be repeated. The most important issue is that state is responsible for full restitution and reparation upon the loss or damage as a result of state wrongdoings. The three types of reparation contained on *Article on Responsibilities of The States* that is Restitution, Compensation, and Satisfaction.

Although Indonesia can be burdened with state responsibility for transboundary smoke pollution that has occurred, so far there have been no official demands submitted to Indonesia for reparation for losses suffered by Singapore or Malaysia,

which in fact is the country most often a victim of smoke. Nevertheless, Indonesia has officially apologized to the two countries in 2013.

Effectiveness of the ASEAN Agreement on Transboundary Haze Pollution

ATHP is a Southeast Asian regional agreement to tackle the affair of transboundary smoke problems. Indonesia ratifies AATHP in 2014 and was thereby bound to carry out obligations contained in AATHP in accordance with the principles of *Pacta sunt Servanda*, such as: a) collaborating in the prevention of cross-border smoke pollution prevention through early warning systems, information exchange and mutual assistance; b) provide information to affected countries or potential affected countries by smoke pollution to minimize adversity ; and c) make legislative and administrative efforts to carry out these obligations. In addition, by ratifying AATHP Indonesia also has gained some advantages, namely:<sup>27</sup> 1) the responsibility of haze and smoke management became the responsibility of Indonesian and other ASEAN member countries, certainly, ASEAN member

<sup>26</sup> Kompas.com, (2016), *SP3 Perusahaan Tersangka Pembakar Hutan Dinilai Penuh Kejanggalan*, available at <https://nasional.kompas.com/read/2016/10/03/19444031/sp3.15.perusahaan.tersangka.pembakar.hutan>.

[dinilai.penuh.kejanggalan](#), [Accessed on 20 December 2018]

<sup>27</sup> Yordan Gunawan, (2014), *Transboundary Haze Pollution In the Perspective of International Law of State Responsibility*, Jurnal Media Hukum, Volume 21, p. 178.

countries will help in conditions if Indonesia is incapable of overcoming the problem of haze. 2) Because cross-border smoke management is a mutual responsibility, Indonesia will be free from state responsibility of neighboring countries that are affected by cross-border smoke.

However, AATHP is an agreement in the form of soft law, making it very difficult to hold the commitment of participating countries to obey the agreement. In addition, the selection of soft law agreements can affect the effectiveness of the agreement itself. According to Kenneth W. Abbot, the effectiveness of the agreement is determined by legalization consisting of three elements, namely bonds, precision and delegation.<sup>28</sup>

In terms of obligation, it is very clear that AATHP contains obligations and emphasizes implementation with the use of the word " shall ", but AATHP does not contain sanctions for those who violate. In terms of precision or degree of ambiguity of words, AATHP contains ambiguous words, for example in article 7 states " Each Party shall take appropriate measure ... " there are

no provisions regarding "appropriate" so that each participating country can interpret differently.

Furthermore, in terms of delegations or 3rd parties who are given the authority to implement rules or resolve disputes, AATHP mandates the establishment of the ASEAN center, but until 2018 the ASEAN center is still in the formation stage..<sup>29</sup> In addition, the effectiveness of AATHP can also be viewed based on the indicators put forward by Arild Underdal, with the following conditions:<sup>30</sup>

#### a. Output

Output is at the level of regulation making, where the rules in the agreement are determined by the parties to overcome certain disputes. In this indicator there is no indication that AATHP is ineffective, because the establishment of AATHP is based on overcoming the haze problem that occurs in the SEA Region by means of joint handling by ASEAN member countries.

<sup>28</sup>Sidiq Ahmadi, (2012), *Prinsip Non-Interference ASEAN dan Problem Efektifitas ASEAN Agreement on Transboundary Haze Pollution*, Jurnal Hubungan Internasional, Vol. 1 No. 2, p. 191.

<sup>29</sup> Liputan6.com, (2018), *ASEAN apresiasi Indonesia dalam Mengatasi Kabakaran Hutan*, available at

<https://www.liputan6.com/health/read/3549775/asean-apresiasi-indonesia-dalam-mengatasi-kebakaran-hutan>, [Accessed on 27 December 2018]

<sup>30</sup> Sicilya Mardian Yo'el, (2016), *Efektifitas ASEAN Agreement on Transboundary Haze Pollution dalam Penanggulangan Pencemaran Asap Lintas Batas di ASEAN*, Arena Hukum, Vol. 9 No. 3, p. 345.

*b. Outcome*

Outcome are changes in behavior of participating countries after the agreement is made. Especially for Indonesia despite ratifying the AATHP land and fire incarceration still occurs. Whereas in AATHP it contains "zero burning policy" which should be implemented by Indonesia.

*c. Impact*

Impact is the quality of environmental changes on the parties location. In context of Indonesia, despite ratifying AATHP in 2014, it did not prevent cross-border smoke pollution from occurring again. Also, the conditions due to forest and land fires that occurred in 2015 were worse than the forest and land fires that occurred in 1997.<sup>31</sup>

In addition to the theory from Kenneth W. Abbot and the indicators put forward by Arild Underdal, there is one more factor that has resulted in AATHP being ineffective, which is the existence of the non-interference principle adopted by ASEAN . Based on this principle, other ASEAN member countries cannot interfere in Indonesian domestic affairs

even though they are related to cross-border smoke pollution prevention.

Application of Extraterritorial Jurisdiction in THPA and Violations against Indonesian Sovereignty

In International Law there is no prohibition for a country to form a rule that extends its jurisdiction, to people or objects outside its territory. Although in practice it will be hindered by its implementation.<sup>32</sup> It is acceptable for a country to form rules that contains extraterritorial jurisdiction, and this practice has been in use in several countries with Indonesia being one of such.

In Indonesia, the regulations containing extraterritorial jurisdiction are contained in Article 2 of Law Number 11 Year 2008 concerning Information and Electronic Transactions (ITE) as amended by Law Number 19 of 2016. Therefore, the existence of extraterritorial jurisdiction in THPA is not a form of violation of sovereignty upon other countries.

As an implementation of THPA, the Singapore Government investigated four companies suspected of carrying out forest fires, namely: PT Rimba Hutani Mas, PT Sebangun Andalas Earth Wood Industries, PT Bumi Sriwijaya Sentosa, and PT

<sup>31</sup> CNN Indonesia, (2015), *Pemerintah: Kebakaran Hutan Tahun Ini Lebih Parah dari 1997*, available at <https://www.cnnindonesia.com/nasional/20151021155255-20-86387/pemerintah-kebakaran-hutan-->

[ini-lebih-parah-dari-1997](#), [Accessed on 27 December 2018]

<sup>32</sup> Abdul Ghafur Hamid@Khin Maung Sein, *Op. Cit.*, p. 126.

Wachyuni Mandira<sup>33</sup> in form of correspondence by sending a letter containing questions about the forest fire that was done without coordination with Indonesia.<sup>34</sup>

In the aftermath, Singapore arrested Indonesian citizens who were the director of one of the companies that allegedly set fire to the forest, when the suspect was on vacation in Singapore, and prevented the director from making a notice to the Republic of Indonesia Grand Embassy.

Singapore's unilateral actions in applying its national law to individual acts that occur outside the jurisdictions of their country have a similarity to the Lotus collier case of 1926. Lotus Case was a case of a ship collision between the SS Lotus (France) steamer with Turkey's SS Boz Kourt collier in international waters on August 2, 1926 which killed eight SS Boz Kourt crew and resulted in M Demons, the Lotus Ship Captain being tried in Turkey.

France protested the Turkish action, by assumption that Turkey had no jurisdiction to do the trial and France also assumed that the authority for trial of the

case was of France's authority, as a flagged ship country. In the end the case was brought to the Permanent Court of Justice (PCIJ). The PCIJ justifies Turkish actions on the basis of not contradicting the customs of International Law or international agreements.

PCIJ decisions raised some inquiries as the ruling showed that there was no limit to the jurisdiction of a country as long as it did not conflict with international customs or international agreements.<sup>35</sup> As such, the decision was implicitly canceled by Article 11 of 1958 Sea Convention or Article 97 of the 1982 Sea Convention.

In Context of Singaporean THPA act there are differences with the Lotus Case, which is in form of the place of crime and the existing law. The affairs of Lotus Case was occurred in the realm of international waters which were not in the sovereignty of any country and at the time there were no laws governing collisions of ships in international waters, while Singapore punished individuals who committed crimes in Indonesian territory which Indonesian law should apply in this case.

<sup>33</sup>Beritagar.id, (2016), *Singapura Perintahkan Tangkap Petinggi Perusahaan Indonesia*, available at <https://beritagar.id/artikel/berita/singapura-perintahkan-tangkap-petinggi-perusahaan-indonesia>, [Accessed on 27 December 2018]

<sup>34</sup>Tempo.co, (2016), *Singapura Investigasi 4 Perusahaan Diduga Pembakar Hutan*, available at [https://nasional.tempo.co/read/798186/singapura-](https://nasional.tempo.co/read/798186/singapura-investigasi-4-perusahaan-diduga-pembakar-hutan/full&view=ok)

[investigasi-4-perusahaan-diduga-pembakar-hutan/full&view=ok](https://nasional.tempo.co/read/798186/singapura-investigasi-4-perusahaan-diduga-pembakar-hutan/full&view=ok), [Accessed on 27 December 2018]

<sup>35</sup>Hugh Handeyside, (2007), *The Lotus Principle in ICJ jurisprudence; Was The Ship Ever Afloat?*, Michigan Journal of International Law, Vol. 29, p. 76

As stated by Hikmahanto Juwana was that Singapore address such affairs arrogantly and clearly did encroaching Indonesian sovereignty.<sup>36</sup> Even though international law view the respect to state sovereignty with utmost importance, where it is also further confirmed and enforced in the *Act of State* Doctrine that states:<sup>37</sup>

*“Every sovereign State is bound to respect the independence of every sovereign State and the courts of one country will not sit in judgement on the acts of government of another done within its own territory”*

In addition, viewed within the perspective of ASEAN regulations, the Singaporean act violates Article 2 par (2) of the ASEAN Charter which states that “all ASEAN members must act on the principle of respecting the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN members”.

#### Settlement of Transboundary Haze Pollution Disputes

International dispute settlement can be achieved through means of diplomatic settlement and through legal

procedures. Diplomatic settlement is carried out by means of negotiation, mediation, inquiry and conciliation.

Within ASEAN, peaceful dispute settlement between member countries are regulated in Article 13-17 in the Treaty of Amity and Cooperation in Southeast Asia (TAC). Article 15 TAC states:

*“In the event no solution is reached through direct negotiation, the High Council shall take cognizance of the dispute or the situation and shall recommend to the parties in dispute appropriate means of settlement such as good office, mediation, inquiry or conciliation. The high council may however offer his good office or upon agreement of the parties in dispute, constitute itself into a committee of mediation, inquiry or conciliation. When deemed necessary, the High Council shall recommend appropriate measure for the prevention of deterioration of the dispute or the situation”.*

Based on the article, disputes between ASEAN member countries that failed to be resolved through negotiations, mediation, good office, inquiry or conciliation will be

<sup>36</sup> Agroindonesia, (2016), *Singapura Permalukan Indonesia*, available at <http://agroindonesia.co.id/2016/06/singapura-permalukan-indonesia/>. [Accessed on 24 October 2018]

<sup>37</sup>Sigit Riyanto, (2012), *Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer*, Yustisia, Vol. 1 No. 3, p. 8.

carried out by the High Council. Nonetheless, the provisions of Article 17 of TAC allowed the settlement process of disputes between ASEAN member countries to be carried out outside scope of ASEAN. As of resolving disputes through means of legal procedures, such procedures could be taken through ICJ or International Arbitration.

#### D. Conclusion

Based on the discussion above, the authors found conclusions as follows: In essence, a country could not carry out its jurisdiction outside of its territory as it would conflict with the sovereignty of other states. Specifically, International Law does not prohibit extraterritorial rules. However, in the implementation of extraterritorial jurisdiction, the country concerned shall initiate mutual cooperation with the countries affected and to not trigger actions detrimental to the other countries (harmfully - action).

Singapore lacks the competence to arrest Indonesian nationals who are suspected offorest incarcerations, with the reasons that the lack of coordination between Singaporean government with Indonesian Government, as it is a clear violation of Indonesian territorial sovereignty. Indonesia, as a fully sovereign

state of her territory and population, has rights to make a rejection of the singapore enforcement of THPA

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