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The Dilemma of Restorative Justice in the Case of Plantation Land Fires

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Abstract: The haze disaster due to plantation fires that has long occurred in a number of regions in Indonesia, apart from being exacerbated by extreme drought, there are also deliberate factors both individuals and corporations for land preparation. A vindicative justice approach that punishes the perpetrators with severe penalties has been implemented. Ironically, fires continue to recur almost every year. The Covid-19 pandemic and the adoption of the omnibus law have finally encouraged a new paradigm of law enforcement oriented towards economic recovery by prioritizing restorative justice oriented towards non-penal sanctions. This research is a qualitative doctrinal legal research with a statute and case approach. The results show that the application of restorative justice in the case of plantation land fires is not possible because it is included in an excluded environmental crime. The application of restorative justice in plantation fire cases needs to be done selectively, namely only for negligence that does not cause harm to people and significant environmental damage. In addition, smallholders, traditional farmers, and indigenous peoples are entitled to a fair settlement of land fire cases based on the principles of restorative justice and local wisdom.

Keyword: Restorative Justice, Covid-19, Plantation Land Fires, Law Enforcement

INTRODUCTION

In Indonesia, the economic recovery due to Covid-19 has encouraged a new paradigm change in law enforcement through restorative justice that not only looks at the legal aspect, but also on the economic benefits for the country. At the same time, the adoption of an omnibus law that simplifies about 80 laws to remove various barriers to economic and investment activities has led to a legislation process that eliminates criminal charges (decriminalization). (Sudarto, 2007)

Post the omnibus law, negligent acts that result in pollution and/or destruction of the environment (including interpreted by plantation land fires) are only subject to administrative sanctions as long they do not cause harm to human health, injuries, serious injuries, and/or death of people or not in accordance with the business license they hold. (Indonesia, 2009)

These policies indicate that Indonesia has reduced the vindictive paradigm that rests on the philosophy of retribution, then replaces it with a restorative paradigm oriented to restoration and reconciliation.

However, this policy for some people has created a dilemma in law enforcement regarding the plantation land fire cases that have been a criminal offence that causes serious harm and losses to society and the environment. A criminal offense is designated as a serious crime can be seen from the application of special minimum criminal penalties to prevent criminal disparity. (Ali & Setiawan, 2022)

Before Covid-19 hit and the omnibus law was implemented, law enforcement against plantation land fires was carried out strictly to provide a deterrent effect. A few corporations in the plantation sector have been prosecuted and tried with fines and additional penalties in the form of repairs due to criminal offenses to restore land damaged by land fires. Even though plantation land fires occur due to negligence, corporations can still be prosecuted and convicted as perpetrators of criminal offenses.

To maximize criminal penalties against corporations, law enforcers attempt to apply additional penalties in the form of deprivation of profits obtained from criminal offenses because corporations are considered to benefit from cost efficiency. (Arumingtyas, et al., 2019) Cost efficiency occurs because corporations do not incur land preparation costs without burning in accordance with the guidelines. Law enforcers began to implement multi-door prosecution and criminal methods, namely ensnaring corporate perpetrators with several laws at once. The enforcement of this strict criminal law is the answer to the continuous recurrence of cases of plantation land fires, both triggered by long droughts and dry climates and using fire in land preparation. (Kadir, et al., 2022)

Law enforcement against plantation land fire cases is faced with several policy choices, between strengthening the restorative justice approach that is oriented towards nonpenal sanctions and the vindictive justice approach that leads to aggravation of criminal through additional punishment. On the one hand, decriminalization can be considered as an effort to weaken law enforcement because it can free arsonists from criminal charges. Similarly, the application of restorative justice can be considered to ignore criminal liability is definite, logical and firm. On the other hand, the aggravation of criminals through additional punishment can also be seen as a manifestation of the vindictive paradigm because it tends to be intended for solely for retribution and does not solve the root of the problem fundamentally.

In practice, the restorative justice approach has been widely used in cases of minor crimes, cases of children or women in conflict with the law to cases of violations of the information and electronic transaction law. In contrast to the vindictive justice approach which is oriented towards unilaterally punishing the perpetrators of crimes, the restorative justice approach involves victim, perpetrators, and society collectively in applying punishment. (Wenzel, 2008) The application of the restorative justice approach in the case of plantation land fires is not as straightforward as the application of the restorative justice approach in criminal cases that are threatened with light punishment. This reinforces the significance of this legal research.

METHOD

This legal research is carried out with the stages of identifying legal problems, legal reasoning, analyzing problems, and solving problems. In doctrinal law research, it is carried out by examining the concepts, rules, principles and constructions of laws and regulations through several interpretation methods. (Hutchinson & Duncan, 2012) Doctrinal legal research seeks to solve practical problems by making new arguments, theories or concepts as a prescription in solving these problems. (Hutchinson, 2015) The main characteristic of the doctrinal method is that it involves a critical conceptual analysis of all relevant laws and legal

cases. This legal research is carried out with the stages of identifying legal problems, legal reasoning, analyzing problems, and solving these problems. (Marzuki, 2005). Furthermore, the case approach is carried out by examining cases of the crime of burning plantation land through an analyst of court decisions that have permanent legal force. In the case approach, one of them is done by studying the ratio decidendi, which is the legal considerations used by the judge before arriving at the verdict. The case approach in this study is needed to sharpen the analysis by using data in law enforcement practice.

RESULTS AND DISCUSSION

Implementation of Law Enforcement against Plantation Land Fires

In Indonesia, using fire for plantation land preparation is prohibited and is threatened with criminal offenses. Not only punishable in the law in the field of environment, burning forests and land is also threatened with criminal offenses in the law in the plantation and forestry sectors. The act of causing a fire has also long been criminally threatened in the Criminal Code (KUHP).

Although various regulations at the national and local levels have prohibited the use of fire in land preparation, these have so far had little and temporary impact. Multiple violations by corporations that continue to recur have encouraged stricter law enforcement by imposing heavier fines and additional penalties on corporations. Under the Protection and Management of Environment Law (PPLH Law), the penalties imposed include imprisonment and fines ranging from three to ten billion rupiah. (Datta & Krishnamoorti, 2022)

In practice, in general, additional punishment is applied in the form of imposing costs on corporations to repair land damaged by fires based on scientific calculations by experts. Experts use laboratory analysis and scientific calculations to assess the damage to the physical, chemical, biological properties of the soil as well as flora and fauna guided by the standard criteria for environmental damage. If fires occur in peatlands, The damage to peat ecosystems is much heavier to recover. (Thoha, et al., 2019)

More strict law enforcement is also manifested by prosecuting and trying the corporations involved based on several violations of the law at once known as a multi-door approach. In a multi-door approach, corporations can be prosecuted with laws in the fields of environment, forestry, spatial planning, plantations, mining, taxation, corruption offenses and, money laundering offenses. In fact, this multi-door approach has only been used in several cases, including environmental destruction, illegal logging, and illegal logging. The multi-door approach has not been supported by standard operating procedures for law enforcement agencies that can ensure that this approach runs effectively. (Bahuet, 2016)

Since the largest forest and land fires in 2015, which covered 2.6 million hectares that cost enormous economic losses, (Kiely, et al., 2021) the vindictive approach to law enforcement that emphasises deterrence has become the main choice. In the PPLH Law, the application of the ultimum remedium principle (criminal as a last resort) is only for violations of wastewater quality standards, emissions, and disturbances. Thus, law enforcement against plantation land fire cases basically applies the principle of primum remedium (criminal punishment as the main means). All criminal offenses regulated in the PPLH Law are also qualified as crimes.

In many countries, the development of administrative criminal law has fundamentally changed the existing codified criminal law. This creates a diversity of settings and crimes are treated differently by assessing the seriousness of the crime. (Guangquan, 2018) In Indonesia, the vindictive approach is influenced by two factors. Firstly, the influence of the thought of the Criminal Code which is a legacy of the Dutch Wetboek van Strafrecht which was ratified in 1915 and enforced in 1918 until now. The Criminal Code is still dominated by the idea of retributive justice with nuances of retaliation to the perpetrators of crimes.

Secondly, the development of serious crimes, both national and transnational, is characterized by great impacts and losses and brings widespread condemnation from the public, thus degrading the principle of *ultimum remedium*. In addition to the principle of legality, the principle of *ultimum remedium* was born from the idea that criminalization will cause restrictions on people's freedoms so criminalization is always an alternative option. This is to ensure the basic values of justice, freedom, social benefits, and resources. (Melissaris, 2015)

The vindictive approach has brought corporations to court and are liable for plantation fires based on the direct liability doctrine or identification theory also known as the *alter ego* doctrine. This doctrine, which originated in Anglo-Saxon countries, especially the United Kingdom, considers that all mistakes made by high-level managers who are the brains of corporations are identified as corporate errors. A strict doctrine of corporate criminal liability emerged to ensure that all preventive measures are properly carried out by corporations. (Lerner, 2017)

However, in some cases, corporate criminal liability also applies the doctrine of vicarious liability. Based on this theory, a corporation can be held accountable for the actions done by its employees, if the employee acts within the scope of his work. This doctrine assesses that a corporation can be held responsible for the actions committed by its employees, regardless of the employee's position in the corporation. Acts and mistakes of employees are charged to the corporation. (Wibisana, et al., 2021)

Prior the largest forest and land fires of 2015, several companies that used fires for land preparation had been brought to court and punished. (Saharjo & Munoz, 2005) This condition continued even as the number of criminally prosecuted corporations increased in 2019 where fires reached a post-2015 fire of 1.6 million hectares. (Ministry, 2023) According to the World Bank, these fires have become a chronic problem every year and are chosen as the least expensive option in land preparation. (Bank, 2019)

Although law enforcement with a vindictive approach has been carried out, the reality is that companies involved in land fires throughout 2019, some of which were also involved in previous years. Fire incidents monitored by sentinel satellites at the time of the fire and previous years can be "overlayed" with work maps and planting years based on the existing annual work plan of the plantation. The use of fire in land clearing continues to be repeated due to the large amount of revenue obtained by companies through local actors paid. (Purnomo, et al., 2021) Criminalization intended to create a deterrent as a form of vindictive approach has not brought significant results.

The Impact of Decriminalization in the Job Creation Law on Plantation Land Fire Law Enforcement

The adoption of the omnibus method in the Job Creation Law includes several clusters, one of which is the cluster of imposition of sanctions where the idea of decriminalization is formulated. The reformulation of sanctions is carried out by strictly distinguishing between administrative penal law and general criminal law. Any activity that causes an impact that meets the criminal qualifications and is not included in administrative activities is still subject to criminal penalties. As for every activity that is not included in administrative activities, the criminal sanctions that currently exist are changed to fines. Furthermore, the penalty of imprisonment for less than one year was changed to a fine. Finally, the aggravation of criminal sanctions on several laws affected by the omnibus law has been removed. (Indonesia, 2020)

These principles reinforce the principle of *ultimum remedium* and adopt the limiting principles in criminal law. Nilger Walker who proposed this principle prohibits criminal law from being used solely for retaliation. (Duff, 2002) This principle also prohibits criminal law from being used to punish acts that are not harmful or harmful. Criminal law should not need

to be used to achieve a goal that can be achieved more effectively by other lighter means. This principle has encouraged the policy of decriminalization where a few acts that were originally threatened with criminal offenses were changed to non-criminal.

The idea of decriminalization can be found in the new formulation of Article 82B paragraph (2) and paragraph (3) of the PPLH Law which states that every person who causes pollution and/or destruction of the environment where the act is carried out due to negligence and does not cause harm to human beings is subject to administrative sanctions and obliges the person responsible for the act to restore environmental functions and/or other necessary actions. The next formulation states that every person who, due to his negligence, commits an act that results in the exceedment of the standard criteria for environmental damage that is not by the business license he has, is subject to administrative sanctions. These two formulations can be interpreted to include negligent acts in the event of plantation land fires that cause environmental damage.

The enactment of Article 82B paragraph (2) and paragraph (3) is not followed by the revocation of the norm of Article 99 paragraph (1) which still criminalizes similar negligent acts. If Article 82B paragraph (2) and paragraph (3) are applied, then the criminal liability of the corporation cannot be applied as long as the act of the corporation occurs due to negligence and does not result in danger to human health, injury, serious injury, and/or death of the person or the act is not by the business license. Corporations are only charged with administrative sanctions and restoration of environmental functions and/or other necessary measures.

In general, negligence in the event of plantation land fires causes danger and loss to the community and the environment. One of the unavoidable impacts of fires is haze pollution which has an impact on health. Shanon N Koplitz once revealed that exposure to the haze of forest and land fires that occurred during the period of July-October 2015 had implications for an increase in the premature death rate of people in areas directly exposed to smoke. (Saharjo, et al., 2018) With this condition, negligence in the occurrence of forest and land fires is gross negligence (*culpa lata*) and can be classified as a criminal act.

Decriminalization policies should pay serious attention to the characteristics of environmental crimes, including in the case of plantation land fires whose impact is not only immediate but can be long-term. The smog component known as carcinogens can have adverse health effects that may not be seen for years. (Sastry, 2002) In practice so far, law enforcement in the case of plantation land fires has largely contributed by the criminalization of corporate negligence that does not make maximum preventive efforts.

In the case of negligent acts committed by the defendant PT. API, which has been found guilty based on the decision of the Pelalawan District Court No. 190/Pid.B/LH/2020/PN Plw, dated November 12, 2020, is proven in court that the fire prevention facilities and infrastructure belonging to PT. API is inadequate. Even though it was due to negligence, the panel of judges still stated that the defendant's actions that could damage ecological functions were factors that aggravated the sentence. PT. API is subject to criminal penalties of fines and additional penalties in the form of restoration of land damaged by land fires.

Negligence in criminal law contains two conditions, namely the absence of caution and lack of attention to the consequences that can arise. Punishable negligence requires a degree of deviation from a very large standard of prudence (*culpa lata*). In the case of negligent acts committed by the defendant PT. Fire, forest and land fires have resulted in damage to 4.16 hectares of land. Based on the calculation of ecological losses, economic losses, and land restoration costs due to fires carried out by experts, the judge in addition to applying fines, also applied additional penalties by ordering the defendant to pay according to the value of losses of 2.9 billion rupiah.

Based on the guidelines for handling criminal cases by corporations, corporations are declared guilty if corporations do not take the necessary steps to prevent, prevent greater impacts and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts. Corporate error in this condition is a form of negligence. (Indonesia, 2016)

Application of Restorative Justice in Law Enforcement of Plantation Land Fires

Currently, law enforcement is directed to help the national economic recovery after Covid-19 rather than putting as many criminals as possible in prison. January 2022 data shows that prison overcrowding has jumped to 223 percent. (Antara, 2022) Indonesia's criminal justice system has resulted in a heavy caseload and overcrowded prisons. (Afandi, 2019) This condition reflects the failure of a purely punitive-oriented vindictive approach. Law enforcement in this way brings a large financial burden on the state, conflicts, riots, and increases the vulnerability of disease transmission in correctional institutions.

The restorative justice approach was chosen as a new paradigm for law enforcement. In addition to being a solution to overcome prison overcrowding, this approach is used to resolve the increasing arrears of legal cases, the number of law enforcement that is not balanced with the development of cases, including the burden of case costs that is also increasing. In many countries, the application of restorative justice in the criminal justice system is a response to the weaknesses of the pre-existing system. In Indonesia, the application of restorative justice is carried out based on material requirements regulated in several guidelines for handling criminal cases (Table 1).

Table 1. Material Requirements for the Implementation of Restorative Justice in Several Guidelines for Handling Criminal Cases in Indonesia.

Legal Basis	Material Requirements
Regulation of the National Police Chief No. 6 of 2019 concerning Criminal Investigation	<ol style="list-style-type: none">1. does not cause public unrest or there is no society rejection;2. no impact on social conflicts;3. There is a statement from all parties involved not to object, and waive the right to sue before the law;4. Principle of Limiter:<ol style="list-style-type: none">a. on the perpetrator:<ol style="list-style-type: none">1) the level of guilt of the perpetrators is relatively not severe, namely mistakes in the form of intentionality; and2) The perpetrator is not a recidivist.b. on criminal acts in the process of:<ol style="list-style-type: none">1) Research; and2) investigation, before the warrant for the start of the investigation is sent to the public prosecutor.
National Police Regulation No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice	<ol style="list-style-type: none">1. does not cause unrest and/or rejection from the community;2. no impact on social conflicts;3. does not have the potential to divide the nation;4. not radicalism and separatism; <p>It is not a crime of terrorism, a crime against state security, a crime of corruption and a crime against people's lives.</p> <p>Some additional requirements apply to criminal offenses:</p> <ol style="list-style-type: none">1. information and electronic transactions;2. drug; and3. traffic.

Legal Basis

Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice

Decree of the Director General of the General Judiciary of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice

Material Requirements

1. the suspect is the first time to commit a criminal act;
2. criminal acts are only threatened with a fine or threatened with imprisonment for not more than 5 years; and
3. The criminal act is committed with the value of evidence or the value of losses incurred as a result of the criminal act is not more than 2.5 million rupiah;
4. There has been a restoration to the original state carried out by the suspect, unless there is another agreement; There has been a peace agreement between the victim and the suspect;
5. The community responded positively.

Exempt for the following items:

1. criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly states and their deputies, public order, and morality;
2. criminal acts threatened with minimal criminal threats;
3. narcotics crimes;
4. environmental crimes; and
5. criminal acts committed by corporations.

Applied to cases:

1. misdemeanor crimes regulated in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code which are threatened with a maximum prison sentence of 3 months or a fine of 2.5 million rupiah.
2. the case of women who are facing the law.
3. children's matters.
4. Narcotics cases are only for addicts, abusers, victims of abuse, drug dependence and narcotics for one-day use.

Table 1 shows that the restorative justice approach has been regulated in the guidelines for handling cases in law enforcement institutions, starting from the police, prosecutor's office, and courts. The restorative justice approach at the level of investigation, prosecution, and examination of cases in court has various material limitations and requirements. National Police Regulation No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice enforces a broader understanding by involving the role of community leaders, religious leaders, traditional leaders or stakeholders to jointly resolve cases.

Several existing case handling guidelines have limited the application of restorative justice for minor crimes, the level of guilt of the perpetrator is relatively not severe, the value of the losses incurred as a result of the crime is not large, and the perpetrator is not recidivist. The application of restorative justice also considers the community's response to the crime. As long as it does not cause unrest and/or rejection from the community, a restorative justice approach can be used.

Based on the existing case handling guidelines, the application of restorative justice cannot be used in law enforcement against plantation land fire cases because the criminal law policies regulated in several laws are not in accordance with some requirements for restorative justice (Table 2).

Table 2. Comparison of Restorative Justice Requirements with Land Fire Criminal Provisions in Several Laws

Restorative Justice Requirements	KUHP	Forestry Law	Plantation Law	PPLH Law
Criminal acts are only threatened with a fine or threatened with imprisonment for not more than 5 years	Negligence in causing a fire is threatened with a maximum prison sentence of 5 years or imprisonment for a maximum of 1 year or a maximum fine of 4.5 million rupiah.	Negligence in burning forests is threatened with a maximum prison sentence of 5 years and a maximum fine of 3.5 billion rupiah.	Clearing and/or cultivating land by burning is threatened with a maximum prison sentence of 10 years and a maximum fine of 10 billion rupiah.	Burning land is threatened with a minimum of 3 years and a maximum of 10 years in prison and a fine of at least 3 billion rupiah and a maximum of 10 billion rupiah.
Exempt for criminal acts that are threatened with minimal criminal threats.	Maximum criminal threat.	Maximum criminal threat.	Maximum criminal threat.	The criminal threat is minimal and maximum.
Exempted for environmental crimes.	General criminal offenses.	Forestry crimes.	Plantation crimes.	Environmental crimes.
Exempt for criminal acts committed by corporations.	It does not regulate the subject of corporate crimes.	Regulating the subject and criminal liability of corporations.	Regulating the subject and criminal liability of corporations.	Regulating the subject and criminal liability of corporations.

Table 2 shows that the restorative justice approach cannot be applied in law enforcement against plantation land fire cases because the criminal act in this case is not a misdemeanor. The crime of land burning applies a minimum and maximum criminal threat which indicates that this crime is serious. In addition to aiming to prevent the disparity of sentencing, the minimum criminal threat system is used to more effectively effect general prevention of delicacies that result in harm and loss to the wider community. The maximum penalty is always imposed according to the level of the offense made. Deprivation of liberty is the most severe sanction in addition to the maximum fine.

The crime of land burning is also qualified as an environmental crime in the PPLH Law because it results in pollution and ecological destruction. Plantation fires triggered by the use of fire for commercial plantation expansion have led to land degradation and fundamental changes in the ecological landscape. This crime also often involves corporate actors who try to take economic advantage of the efficiency of land clearing costs by burning. Some oil palm plantations use the slash-and-burn method in land preparation because that it is easier, faster, and cheaper. This method saves 20–50% of the normal cost required in land preparation. (Purnomo, et al., 2019)

One way to reduce the cost of land clearing is to use fire. Some palm oil companies maintain low production costs to continue their profitability, especially if land clearing is carried out on peatlands where the drying process becomes very expensive. (Varkkey, 2013) Some corporations that have been proven to burn the land, including recidivists, make the restorative justice approach even more inappropriate to be carried out.

The restorative justice approach that requires no objections from the community is also difficult to fulfill because plantation land fires are a case that attracts the attention of the

wider community, becoming a national problem, even across national borders due to the air pollution caused. In terms of the value of losses incurred from criminal acts, land fires often cause ecological losses, economic losses, and land restoration costs due to large amounts of fires.

The restorative justice approach becomes inappropriate if it becomes a way to absolve corporations of responsibility for plantation land fires that cause harm to public health, economic losses, and ecological damage. The restorative justice approach is still possible to apply to cases of plantation fires due to negligence where it does not cause harm to people and significant environmental damage. In this context, restorative justice is meant to impose an obligation on the perpetrators of arson to recover the impact of plantation land fires.

Laws and several local regulations have allowed land burning with strict requirements, including burning based on local wisdom on land with a maximum area of two hectares per head of family to be planted with local varieties and surrounded by burning barriers, burning by indigenous or traditional peoples to clear land, and burning for the special purpose of plant pest eradication. In principle, people who are excluded from The prohibition of arson cannot be subject to a penalty.

In the case of plantation land fires involving smallholders/smallholders, traditional farmers, and indigenous peoples, a restorative justice approach can be considered. However in fact they cannot be charged because they have been exempted from the burning ban in the law and some local regulations. A restorative justice approach remains necessary because law enforcement is still dominated by conviction-oriented thoughts of vindictive justice and to prevent more innocent people from being convicted.

The main principle in resolving plantation land fire cases with a restorative justice approach is restoration to the original state and a balance of protection and interests of victims and perpetrators of crimes. The restorative justice approach needs to be applied selectively and strictly only in the case of plantation land fires due to negligence where it does not cause harm to the community and significant environmental damage. In addition, smallholders/smallholders, traditional farmers, and indigenous peoples who are vulnerable to criminal justice still have the right to fair settlement while still emphasizing restoration and reconciliation.

CONCLUSION

In law enforcement against plantation land fire cases, the restorative justice approach by its purpose has succeeded in punishing individuals and corporations who use fire for land preparation. Despite being convicted, this case continues to recur almost every year even with the same perpetrator. Despite realizing that the vindictive approach has not solved the problem, law enforcement continues to seek to aggravate criminal penalties for corporations that burn land by prosecuting them on a multi-door basis where corporations are prosecuted with several laws at once. Not only that, additional crimes such as imposing fees on corporations to repair land damaged by fires are also applied to increase the burden of punishment.

The application of the omnibus method that resulted in the Job Creation Law has reduced the punitive criminal law policy (punishment) in administrative criminal law. The Job Creation Law has included a new formulation in the PPLH Law that makes the perpetrators of land burning due to negligence not punished as long as it does not result in harm to human health, injury, serious injury, and/or death of people. This formulation is a form of decriminalization that opens the door to solving cases of plantation land fires due to negligence with non-criminal mechanisms.

Any decriminalization effort should seriously consider the principle of enforceability in environmental law where the availability of sanctions that can cause a deterrent effect must still be considered. The restorative justice approach can be carried out proportionally and

selectively in this case only for cases of plantation land fires due to negligence where it does not cause harm to people and significant environmental damage. This is done to ensure that the restorative justice approach is not utilized, especially by corporate actors to be free from criminal liability

A strict and selective restorative justice approach is still needed as part of the state's recognition and protection of the local wisdom of indigenous and traditional peoples in carrying out controlled burning for agricultural cultivation that has been practiced for generations. In addition to Indigenous peoples, smallholders/smallholders and traditional farmers who are vulnerable to criminal punishment also have the right to fair settlement of cases while still emphasizing recovery and reconciliation as long as the use of fire for agricultural cultivation is carried out in a limited and controlled manner.

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