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THE RESPONSIBILITY OF INDONESIA TOWARDS TRANSBOUNDARY HAZE POLLUTION AFTER THE AATHP RATIFICATION

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Abstract

Transboundary haze pollution in Southeast Asia has actually been occurring since 1997, yet until now, the problem of haze pollution remains an important agenda of the Association of South East Asian Nations (hereinafter ASEAN). Forest fires on Sumatra and Kalimantan Islands contribute most to haze pollution in Malaysia and Singapore. The ASEAN Agreement on Transboundary Haze Pollution (AATHP) is a form of initiative and effort from ASEAN to increase cooperation at regional and sub-regional levels in a coordinated manner in the form of ASEAN member countries' agreement to resolve the problem of transboundary haze pollution. Indonesia, as one of the countries that "exports" haze to ASEAN countries, was the last country to ratify the AATHP. Using the theory of International Cooperation, State Responsibility Principles and also the Peaceful Settlement of Disputes, this paper examines firstly, to what extent Indonesia is accountable for transboundary haze pollution after the AATHP ratification; secondly, what is the legal settlement mechanism for transboundary haze pollution within ASEAN after the AATHP ratification; and thirdly, to determine the concept of responsibility and mechanisms in the future in transboundary haze pollution. The results of the study showed that after the ratification of the agreement, Indonesia could no longer be prosecuted because haze pollution had become a shared responsibility. In addition, this study also draws conclusions that shared responsibility means that Indonesia must be jointly responsible with other ASEAN countries in addressing transboundary haze pollution. In the context of resolving transboundary haze pollution disputes pursuant to Article 27 AATHP and if there is a later dispute that arises, the parties can resolve the issue through consultation and negotiation. However, if consultations and negotiations have been taken and have failed, the parties can use alternative dispute resolution using the International Arbitration Tribunal.

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Keywords: AATHP ratification, state responsibility, Indonesia, international arbitration.

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1. Introduction

In the present era, environmental problems that occur in a particular country or region not only affect the country itself, but also other countries or regions. Most of these cross-country environmental problems are due to pollution problems. One obvious example of this problem is the problem of forest fires in Indonesia, where forest fires that occur in Sumatra and Kalimantan, not only affect Indonesia as a source of forest fires, but the impact can also be felt by Malaysia and Singapore (Mayer, 2006).

Realizing that this problem is not only a matter of one's own country, but also a problem for neighboring countries, countries in certain regions or regions need to make an agreement or cooperation in an effort to find solutions and overcome these environmental problems.

ASEAN is a regional organization initiated 30 years ago has agreed on several collaborations in various fields of activity, like political, economic and cultural, including in the environmental field. One form of ASEAN's commitment to environmental issues, occurred on 30 April 1, 1981 in Manila during which the first meeting of ASEAN Environment Ministers was held. They succeeded in formulating a framework for ASEAN cooperation in the environmental field as outlined in the Manila Declaration on the ASEAN Environment which aims to:

“To ensure the protection of the ASEAN environment and the sustainability of its natural resources so that it can sustain continued development with the aim of eradicating poverty and attaining the highest possible quality of life of the people of the ASEAN countries.”

Furthermore, in 2002, in ASEAN's efforts to prevent haze pollution through the framework of cooperation, an ASEAN regional agreement on Transboundary Haze Pollution (hereinafter AATHP) was consensually agreed on. The formulation of the AATHP is a form of ASEAN's commitment to end the haze problem that occurs every year in the Southeast Asia region. Based on the meeting of the ASEAN environment minister on transboundary haze pollution problem on October 13, 2006, Malaysia and Singapore asked Indonesia to immediately resolve the problem of forest fires originating in Indonesia. Malaysia and Singapore’s protests were based on the reason that the forest fires had cause haze pollution which had caused losses to both countries in terms of economic, tourism and health sectors which are the sectors most affected by haze pollution from Indonesia. Malaysia had even criticized Indonesia for not being able to overcome the problem and claimed that Indonesia must pay compensation for the losses caused by the haze. Socio-economic and ecological losses arising from forest fires are quite large, where in some cases it is difficult to measure the Rupiah value. The losses borne by Indonesia due to forest fires in 1997 were estimated to reach 5.96 trillion Rupiah or 70.1% of the value of GDP in the forestry sector in 1997. Malaysia, which was also badly affected, suffered a loss of US300 million in the industrial and tourism sectors, while Singapore suffered a loss of around US$60 million in the tourism sector.

In order to resolve the haze problem, in 1995 ASEAN held a cooperation negotiation in the form of the ASEAN Cooperation Plan on Transboundary Pollution. This was followed by the Regional Haze Action Plan in 1997. Then in 2002 ASEAN adopted the ASEAN Agreement on Transboundary Haze Pollution (AATHP) which aims to prevent and monitor transboundary haze pollution from forest and land fires.

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2. Problem Statement

This research is intended to identify the extent of Indonesia’s responsibility towards transboundary haze pollution by Indonesia after ratifying AATHP, and the dispute settlement mechanism upon it also relating the state responsibility as the international law principles. The research also referred to the behaviour of the ASEAN states in dealing with the haze pollution, either they are affecting the damage or being affected.

3. Research Questions

3.1. To what extent is Indonesia responsible for transboundary haze pollution after the AATHP ratification?

3.2. What is the legal settlement mechanism for transboundary haze pollution within ASEAN after the AATHP ratification?

3.3. How is the concept of responsibility and mechanisms in the future in transboundary haze pollution?

4. Purpose of the Study

The purpose of this study is to identify the extent of Indonesia's responsibility for transboundary haze after the AATHP ratification. On the other hand, this study also aims to examine the legal settlement mechanism for transboundary haze pollution within ASEAN. Furthermore, this study also aims to conceptualize responsibility and mechanisms in the future in transboundary haze pollution.

5. Research Methods

The research method used in this study is normative legal research that originates from literature studies. The type of research used is exploratory descriptive research because it illustrates as well as provides as accurate data as possible about humans, circumstances, or other symptoms with the intention of primarily strengthening previous theories and developing new concepts from this research (Creswell, 1994).

6. Findings

6.1. State Responsibility

Literally responsible can be interpreted as a state of obligation to bear everything if anything happens to be prosecuted, blamed, charged or also means the right to function accepting the burden as a result of an individual’s attitude by another party (Boer Mauna, 2005). In the study of international law, state responsibility arises when a State has violated or disturbed the boundaries of the State's territory either directly or indirectly and the act has harmed another State (Brownlie, 1979). In practice, state responsibility is limited to responsibility for actions that violate international law only. So that the bias can be said, if an act of the state is detrimental to another country but the act is not categorized as violating international law,

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then the act does not cause responsibility (Zemanek, 2000). One of the concrete examples is the act of the state rejecting a foreign national who enters the country.

State responsibilities or responsibility of the state contains an obligation of a country to repair damage resulting from an attack carried out within its jurisdiction and against other members of the international community. So that it can be said that, the concept of state responsibility is a form of legal protection in the international context and a conscious effort to prevent a condition that has the potential to cause conflict. One of the principles recognized and protected by international law is the principle of state sovereignty, in which each country has the right to do things deemed necessary in its jurisdiction (Friederich, 2013). However, in the context of international relations, every country must respect and recognize state sovereignty. But this sovereignty is not without limit, where every country in enjoying its sovereign rights is obliged not to abuse the sovereignty.

The principle of state responsibility is born of primary rules of obligation, namely the principle of balance between the rights and obligations of a country. Every country that holds certain rights is also a subject that supports certain obligations. This obligation is the other side of the coin of the rights granted by law.

The basic function of the principle of state responsibility in the study of international law is to provide protection to each country (Harris, 1935), among other things by requiring each offending country to pay compensation to the state that suffers the loss caused. State responsibility is usually carried out in the form of repairs, rehabilitation or compensation, and the form of responsibility is ultimately dependent on the events that occur.

In the context of environmental damage, the implementation of activities within a country's territory towards its environment is a manifestation of the sovereignty of a country. If these activities cause losses to other countries (the act injures another states) then the responsibility of the state arises. The principle of responsibility is also associated with legal strategy, namely efforts to prevent an activity by setting permissible injury standards or the threshold of environmental damage. Environmental injuries can also be considered as external costs arising from economic activities. The violation of the above principles will have an impact on the application of the following principles, namely the 21st principle of the Stockholm Declaration that demands polluting countries to make efforts to improve their actions (Baylis & Smith, 2005). This same approach can also be seen in Article 2 (1) of the ECE (Economic Convention for Europe) Convention on Environmental Impact Control which states that every country must participate in prevention efforts and reduce the impact of transboundary pollution (Vadrevu, Lasko, Giglio, & Justice, 2013). In general, the obligation of each country is to realize administrative and legislative steps to protect the environment so that it can be said to be a good government (Birnie & Boyle, 2002).

Another principle that is also widely known is cooperation between countries to mitigate the risk of damage to the transboundary environment. This principle is also included in the principle 24 of the Stockholm Declaration: "International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing". Then there is also the polluter pays principle which emphasizes the economic principle in which polluting countries are required to finance the programs needed to return the environment to its original condition (Ved & Pring, 2013). Next is the principle of 'balance of interest' referring to the balance of the interests of

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those who have been harmed. This principle is contained in Article 9 of the Draft on State Responsibility. Then there is also the principle of 'non-discrimination' which requires the state to cope with the consequences suffered by other countries in the same way without differentiating from what has been done in its country (Van den Bossche, 2008).

Based on the principle of polluter pays and the principle of strict liability, procedures for proofing have been developed called shifting or alleviating the burden of proof. The application of the strict liability principle can be done with several possibilities:

1. The strict liability with contributory negligence defense, namely the strict liability is applied to the defendant as long as the victim does not have an error in the occurrence of a loss, the fault of the defendant does not need to be proven;
2. Negligence with contributory negligence defense, namely the defendant is responsible if the loss arises because of his mistake, the burden of proof is in the hands of the plaintiff;
3. Comparative negligence, that is, compensation will be adjusted to the proportion of the magnitude of the contribution to the occurrence of losses.

6.2. Transboundary Haze Pollution Due to Forest and Land Fire

Transboundary haze pollution has actually violated the rights of citizens who have been guaranteed certain rights by the constitution as well as international law, such as the right to a good and healthy environment as stated in the principle of 21 Stockholm declaration, the right to file a claim, the right to equal treatment and equally important is the right of posterity for a good environment in the future. The magnitude of the negative impacts generated by haze pollution on the environment has driven countries in ASEAN to ratify an environmental agreement aimed at controlling pollution in Southeast Asia, namely the ASEAN Agreement on Transboundary Haze Pollution (AATHP). The ASEAN Agreement on Transboundary Haze Pollution was signed on June 10, 2002 in Kuala Lumpur, Malaysia. At that time the signatory countries were Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

6.3. Causes and Impact of Transboundary Haze Pollution in Southeast Asia

Deforestation in Indonesia is largely a result of utilization of natural resources, especially forests that are used for political, social and economic interests without regard to sustainable management and paying attention to the rights and local indigenous wisdom. Furthermore, deforestation directly contributes to forest fires that contribute to Indonesia being widely claimed to be the largest contributor to smog pollution in Southeast Asia (Anon, 2015). Fires in Indonesia are largely the result of the plantation industry, this is because Indonesia has ideal conditions to be used as oil palm and various valuable tropical plants. In recent years, a lot of peatland has been intentionally left dry to be used as oil palm plantations and other land (Varkkey, 2013). The dry peatland is very vulnerable and very easy to burn, and the burning fires do not only stop on the surface but also reaches the roots of the plants.

In fact, the Indonesian government itself has banned the use of fire to clear land in 1995, but this ban has not been effectively enforced due to many factors, one of which is the fact that land clearing with

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the slash-and-burn method is believed to make the soil more fertile (Louka, 2006). Broadly speaking, forest fires in Indonesia occur by human and natural factors. In the context of forest fires that occur because of human factors, the sources of forest fires in Indonesia can actually be immediately determined, but there is serious debate about how far each group is responsible for the forest fires. The factors or sources of forest fires can be divided into three groups: communities that are traditional cultivators, small-scale investors, and large-scale investors. One of the biggest sources of forest fires that occur in Indonesia is those who are involved in plantations. Some planters settle and burn their small land after harvesting to rejuvenate the soil and kill pests and weeds. On the other hand, there are mobile farmers, who practice slash and burn methods to clean the forest as their land is cultivated by a rotation system.

6.4. Transboundary Haze Pollution and ASEAN Agreement on Transboundary Haze Pollution

The AATHP is a form of initiative and effort by ASEAN to increase coordinated regional and sub-regional cooperation in the form of ASEAN member countries' agreement to resolve transboundary haze pollution problems. This transboundary haze pollution agreement was signed in 2002 and entered into force since 2003 after six countries Brunei Darussalam, Cambodia, Laos, Malaysia, Myanmar and Singapore ratified it. Transboundary environmental pollution caused by haze has a serious impact on the safety and security of citizens and the interests of each contaminated country. Therefore, ASEAN member countries are aware of strengthening national policies and strategies as an effort and the need to prevent and reduce the occurrence of forest and land fires which will certainly have an impact on the creation of haze.

The issue of transboundary environmental pollution caused by haze to several member countries is the focus of several ASEAN environmental instruments. Thus, the ASEAN Cooperation Plan on Transboundary Pollution (ACPTP) in 1995, considered and made pollution or pollution caused by Transboundary haze as one of ASEAN's general concerns that must be dealt with jointly. Forest fires in Indonesia have been widely recorded since the nineteenth century. Forest fires which then cause haze pollution are one of the perennial issues for discussion, both nationally, regionally and internationally. This is because forest fires have occurred for a long time and the frequency of forest fires continues to increase in Indonesia every year. This is worsened during the dry season.

Forest burning that produces haze pollution has a dangerous impact, which have been widely documented by both international environmental and health organizations. The danger caused by forest burning does not only affect the areas affected by the fire, but also other areas that are affected by the haze. The impacts generated by forest fires are not only limited to environmental damage, but also the subsequent impacts indirectly affect the economy, tourism and so on. Broadly speaking, the impact of haze pollution can be divided into several parts:

6.4.1. Environmental damage

The most obvious impact produced by forest fires and haze pollution is the reduced number of forests. Deforestation will also cause other adverse environmental impacts, including erosion, water pollution, desertification, global warming and climate change, vulnerability to natural disasters such as floods, and threats to biodiversity. In the context of biodiversity, about half of the species known in the

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world are in tropical forests. In fact, Indonesia's rainforests have been recognized as for their variety of species of flora and fauna (Jerger, 2014). Destruction of habitats through forest burning can threaten their survival, and hasten the extinction of flora and fauna.

6.4.2. Tensions in Politics and Foreign Relations

The problem of haze has caused political tensions between Indonesia and neighboring countries such as Malaysia and Singapore. For example, while Malaysia and Singapore tried to help Indonesia deal with the problem of forest fires, Indonesia was at the same time criticized for the attitude shown by Agung Laksono as the Coordinating Minister for People's Welfare who gave scathing criticism to the Singaporean government which he deemed childish in dealing with haze problems in 2013 (Panistik, 2013). Contrary to his minister, President Susilo Bambang Yudhoyono expressed his apology to Malaysia and Singapore regarding haze pollution produced by Indonesia with the promise to immediately resolve the problem of forest fires. It was hoped that relations between ASEAN member countries would be maintained.

6.4.3. Health problems

The most serious impacts of forest fires and haze pollution are related to health because certain chemicals enter the human body, and the contaminated water, contaminated food, and the air inhaled is no longer healthy. In 1997 and 1998 alone, there were around 7.5 million people in six Southeast Asian countries involving Indonesia, Singapore, Thailand, Brunei, the Philippines and Malaysia who were affected by haze pollution, and directly or indirectly they breathed in haze containing copper and chrome which can increase the risk of cancer.

6.4.4 Economic Losses

Forest fires and haze pollution that pose health risks can lead to various problems, one of which is to inhibit economic productivity in the affected Southeast Asian countries. The initial estimate of economic losses for Indonesia due to forest fires in 2015 exceeded $16 billion. This amount is twice as large as the loss and damage caused by the 2004 tsunami in Aceh, equivalent to 1.8% of the Gross Domestic Product (GDP).

This estimate includes losses in agriculture, forestry, transportation, trade, industry, tourism and other sectors. Part of the loss is due to direct damage and loss to crops, forestry, housing and infrastructure, and costs incurred to deal with fire. Many economic losses are caused by indirect impacts, such as disruption of air, sea and land travel due to haze. The impact on local GDP growth is expected to greatly affect economic growth and government efforts to alleviate poverty in the most severe areas, such as Central Kalimantan.

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6.5. ASEAN and Indonesian Government Policies on Transboundary Haze Pollution in Southeast Asia

6.5.1. Challenges in Regulating Transboundary Haze Pollution

Malaysia and Singapore have succeeded in eliminating haze pollution caused by open burning and controlling other sources of air pollution which was achieved because the government of Malaysia and Singapore prioritised efforts to mitigate environmental problems that threaten health and safety. Meanwhile, Indonesia still faces many problems in efforts to control forest fires and haze pollution, which are due to several factors:

6.5.1.1. Institutional Capacity

As we know that, the continued occurrence of haze disasters is caused by the limited authority of ASEAN as a regional organization in Southeast Asia. This limited authority is accompanied by the lack of initiative in Indonesia in an effort to combat forest fires. The main obstacle faced was the lack of responsiveness of the central government and local governments in addressing the potential for land fires. Even when a fire broke out, the government seemed slow in dealing with widespread forest fires.

6.5.1.2. Lack of Coordination and Decentralization

Another factor that impedes the handling of the problem of forest fires is the lack of coordination between government agencies. The policy of regional autonomy which continues to cause policy clashes between central and regional governments has resulted in serious problems related to coordination, due to the tendency of each institution to have a different agenda and even policies that sometimes clash. This causes problems in efforts to deal with haze pollution control in Indonesia, let alone Southeast Asia.

6.5.1.3. Obstacles to Labor and the Area of Indonesia

Another obstacle faced in controlling forest fires is the lack of personnel employed in the forestry sector, especially related to the protection and control of forest fires. This is inversely proportional to the size and geography of Indonesia which makes it difficult for the government to adequately prevent forest fires. Indonesia is the largest archipelagic country in the world, consisting of 17,508 islands, 6,000 of which are inhabited islands. The geography of Indonesia as a vast island nation coupled with a lack of infrastructure has caused delays in the government's response to dealing with forest fires.

6.5.1.4. Lack of Law Enforcement

The lack of law enforcement against those who are responsible for haze pollution from forest fires is alleged to be one of the factors that keep deforestation going on today. As we know, the purpose of sanctioning is to prevent bad deeds and punish the perpetrators. The provision of sanctions is then expected to be able to provide a deterrent effect. The form of sanctions can vary, from are administrative sanctions such as revocation of licenses to criminal sanctions.

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6.6. ASEAN States' Responsibility for AATHP Post-Ratification Transboundary Haze Pollution

Today, it is widely recognized that planet earth is facing various environmental challenges that can only be overcome through international cooperation. Acid rain, ozone depletion, climate change, loss of biodiversity, river pollution, reduced water resources and haze pollution are some of the problems associated with international environmental law.

On the other hand, the development of international relations and international law over the past several decades has evolved from the law that co-existed between countries into mutually cooperative and complementary laws. This is seen from the existence of countries that now depend on each other in the context of the issue of ecological, social and economic globalization, increasing the number of problems of each issue requires international rules and good international cooperation (Litta, 2012).

The fact that environmental problems, one of which is air pollution does not stop at national borders, may seem obvious, but initially air pollution is categorized as a local problem to be overcome by national law. But over time, after transboundary environmental pollution problems have received worldwide attention, haze pollution has begun to be considered as an international problem.

In detail, state responsibility according to A Dictionary of Law 2001 (Responsibility of States for Internationally Wrongful Acts) is "The obligation of a state to make reparations from a failure to comply with a legal obligation under international law". Based on this definition (Martin & Law, 2002), it can be interpreted that the responsibility of the state to make reparations arises when a country fails to comply with legal obligations under international law. Along with the development of the perspective of the international community which considers the environment an international entity (wholeness) without any administrative boundaries, the existence of the principle of state responsibility begins to be shifted to the Common. However, the differentiated Responsibility principle emphasizes joint responsibility based on a legal responsibility by certain countries. This is the antithesis of the principle of state responsibility which is within the realm of international law in general which denies the existence of a legal responsibility of a particular country.

6.7. Mechanism for Settling Transboundary Haze Pollution Disputes in International and ASEAN Legal Perspectives

6.7.1. Transboundary Haze Pollution Dispute Settlement in International Law

According to the International Court of Justice, international disputes occur when two countries have conflicting views regarding the implementation of the obligations contained in the agreement. Hence, disputes between countries can comprise disputes that may or may not have international implications. Conflict or dispute is something that causes differences of opinion between two or more parties who have a dispute in court. Conflicts or disputes occur also because of differences in perceptions which are conscious representations of the environment based on one's knowledge; the environment in question is the physical and social environment. A conflict develops into a dispute if the party who feels aggrieved has expressed his dissatisfaction or concern, both directly to the party who is considered to be the cause of the loss or the other party.

Environmental disputes are disputes that involve two or more parties resulting from the existence or suspected existence of pollution and / or environmental damage. Environmental disputes are a "species" of

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the "genus" disputes pertaining to conflicts or controversies within the environmental field that are lexically interpreted as "Dispute a conflict or controversy; a conflict of claims or rights; an assertion of right, claim, or demand on one side, met by contradictory claims or allegations on the other. The terminology for "dispute resolution" for English references also varies: "dispute resolution", "conflict management", conflict settlement "," conflict intervention”. In general, methods of dispute resolution in international law are generally classified into two categories:

- Ways of peaceful settlement, namely if the parties have agreed to find a friendly solution;
- Means of settlement by force or by force, that is, if the solution used or imposed is through violence.

6.7.2. Choice of Mechanisms for Transboundary Haze Pollution Dispute Settlement in the ASEAN Framework

According to Article 22 paragraph 1 of the ASEAN Charter, ASEAN member countries must resolve their disputes in a peaceful and timely manner through dialogue, consultation and negotiation. Disputing member countries can resolve their disputes by using the good offices, conciliation, or mediation within the agreed time limit. The Secretary-General of ASEAN in an ex-officio capacity may provide good offices, conciliation, or mediation at the request of the disputing member states.

The establishment of an appropriate dispute resolution mechanism is very likely to be provided by the ASEAN Charter, including arbitration, which is established for disputes relating to the interpretation or application of the ASEAN Charter and other ASEAN instruments. Whereas for unresolved disputes, the dispute must be referred to the ASEAN Summit to make a decision. In addition to regulating procedures, methods and the establishment of dispute resolution mechanisms relating to their interpretation and application, the Charter also regulates the compliance of member states with the findings, recommendations or decisions resulting from dispute resolution mechanisms. This is left to the Secretary-General of ASEAN who is assisted by the ASEAN Secretariat or other appointed ASEAN institutions. They must report to the Summit on this matter.

In addition, within ASEAN, there is a dispute settlement arrangement contained in the Treaty of Amity and Cooperation in Southeast Asia (TAC) signed in Bali, February 24, 1976 (Merrills, 1986). Chapter IV of the TAC (Articles 13-17) contains the provisions on peaceful settlement of disputes. In terms of resolving the law of transboundary haze pollution in Southeast Asia, there are a number of dispute resolution mechanisms or procedures that can be used if there is a legal problem going forward, and ASEAN member states are already known, including:

6.7.2.1. Diplomatic Dispute Settlement

Article 13 The TAC requires member states to do their best in good faith to prevent disputes from arising between them. However, if the dispute cannot be prevented, the parties must refrain from threatening violence. This article further requires parties to resolve disputes diplomatically such as negotiation, mediation and conciliation. Diplomatic settlement of disputes is one of the first steps that must be carried out by Indonesia as the party that causes the haze and neighboring countries as parties that are affected by the haze.

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6.7.2.2. Dispute Resolution through the High Council

When direct negotiations by parties fail, settlement of disputes is still possible by the High Council (Article 14 TAC).

6.7.2.3. Settlement of Disputes through the International Court of Justice

Although there is a mechanism above, the TAC does not prevent the parties from resorting to other methods of dispute resolution that the parties agree to as stated in Article 33 paragraph (1) of the United Nations Charter (Article 17 TAC). In practice, the disputing parties are more likely to settle the dispute legally; for example, dispute resolution in accordance with Article 17 TAC, namely the settlement of a dispute in the International Court of Justice (ICJ). Examples of such steps, for example, are the Indonesia-Malaysia dispute regarding the ownership status of Sipadan-Ligitan Island, or between Malaysia and Singapore regarding the ownership status of Batu Puteh Island.

6.7.2.4. Settlement through Arbitration

The development of ASEAN in the 1990s brought new demands and challenges, especially for less developed countries from ASEAN that face issues of sustainable development and environmental management. Furthermore, the presence of ASEAN provides an opportunity for every country to be bound in an area that moves towards a stronger institutional framework and commitment in environmental protection, mitigation and adaptation efforts. Although ASEAN has arrived at the regionalism process, currently it still faces several challenges in resolving environmental issues, especially those related to transboundary haze pollution problems. Among these challenges are a lack of compliance, lack of sanctions, political differences over natural resources versus economic priorities, and financial limitations and human resource capacity.

7. Conclusion

The ASEAN Agreement on Transboundary Haze Pollution was signed in 2014 by Indonesia through Law Number 26 of 2014. Related to this issue, shared responsibility means that Indonesia must be jointly responsible with other ASEAN countries in addressing transboundary haze pollution. It is clear that, in an effort to combat forest fires and haze pollution, every ASEAN member who is also a party to AATHP is obliged to cooperate in developing and implementing definite measures to prevent and monitor haze pollution as a result of forest fires.

Along with the development of the perspective of the international community which considers the environment an international entity (wholeness) without any administrative boundaries, the existence of the principle of state accountability begins to be shifted to the principle of Common but Differentiated Responsibility which emphasizes joint responsibility based on legal accountability by certain countries. The various mechanisms for resolving international environmental law disputes in the early stages of the development of international environmental law shows that there is no binding regulation to provide certainty in the process undertaken in the settlement of international environmental law disputes.

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