

ENVIROMENTAL LAW ENFORCEMENT IN FORETRY CRIME

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Environmental law enforcement in forestry crime: A disjunction between ideality and reality

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Abstract: Forestry law enforcement is far from what is intended and expected. Despite compelling data and evidence showing that illegal logging is a worldwide epidemic, most forest crimes go undetected, unreported, or are ignored. Illegal logging cases in Papua province is important and interesting to be studied from a criminological perspective. The research is a socio-legal research. It was conducted to obtain empirical-qualitative observations of the research issue. It was located in Papua Province, Indonesia. The results show that the legislation in term of illegal logging is considered adequate, law enforcement officers in the field are very inadequate. Whereas, the forest areas that must be handled is wide. In order for the quality of forest law enforcement to be improved, the actors involved—whether on the forestry side or in criminal justice—need to develop a better understanding of the wide range of laws. Also, the things related to facilities and infrastructure as well as the culture of the people who tend to cut down or destroy the forest (shifting cultivation/illegal logging). Changing culture quickly is not an easy task, it requires a long time, and it is known that culture is strongly attached to the community. For this reason, the local government is expected to be able to approach the communities to reside around the forest to provide an understanding of the importance of forest protection and preservation, as well as preparing agricultural and plantation land for their survival and livelihood.

1. Introduction

Indonesia as a country with abundant natural resources ought to thanksgiving for this entire nation. The wealth of these natural resources must be managed, administered, and utilized as well as possible for the people prosperity. Forests as one of the natural resources owned are national development capital which should be utilized for the life and livelihood of the Indonesian people. In its position as one of determinants of life support systems, forest has provided great benefits for humanity. Therefore, the existence of invaluable natural resources



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must be preserved, because the forest has a strategic role as a balancing for global environment [1].

The utilization of forests and forest areas must be adjusted to its main functions, i.e conservation, protection and production. In order to maintain the sustainability of the basic function and condition of the forest, the forest and land rehabilitation and reclamation need to be done, which aims to restore the quality of the forest and increase community empowerment and welfare, so that community participation become the core of its success. The suitability of these three functions is very dynamic and the most important thing is that the utilization must remain in synergy. To maintain the quality and function of the environment, then always take into account the principle of sustainable development for the benefit of future generations.

However, as it turn out into practice, forestry's criminal justice system is broken. Despite compelling data and evidence showing that illegal logging is a worldwide epidemic, most forest crimes go undetected, unreported, or are ignored [2]. Goncalves et al report that there are countless examples of the criminal justice system's failures in this area, especially in Indonesia. In 2005, an initiative to combat illegal logging in Papua, Indonesia, identified 186 suspects and secured almost 400,000 cubic meters of illegally harvested timber. However, only 13 suspects were convicted, and the most significant punishment was a two-year prison sentence [2].

The current condition of forest resources is alarming due to the increasing practice of illegal logging and timber smuggling, widespread forest and land fires. According to the Ministry of Forestry in 2012, the area of forest damaged and not function optimally has reached 59.6 million ha of 120.35 million ha of forest in Indonesia, with deforestation rates in the last 5 years reaching 2.83 million ha per year. If this condition is maintained, where Sumatra and Kalimantan have lost their forests, then Sulawesi and Papua will experience the same thing. Same report from the analysis of the World Bank, forest in Papua is estimated to disappear in 2012. The practice of illegal logging and forest exploitation without care to the sustainability has resulted in invaluable destruction of forest resources, destruction of lives and loss of timber worth US \$5 billion, including State's revenues of approximately US \$1.4 billion every year. These losses have not yet accounted for the loss of biodiversity values and environmental services that can be produced from forest resources [3].

As occurred in Papua, there is still a lot of forest destruction in various forms, including forest exploitation, theft/illegal logging, shifting cultivation by community members [4]. A case of illegal logging in Papua province is important and interesting to be studied from a criminological perspective, in which it is important to get an overview of the factors causing illegal logging and how to overcome them. The temporary result of research indicates that from year to year the forest destruction it illegal logging are increasing.

South-east Asia is one of three important regions worldwide which still have large tropical rainforests, together with the Amazon Basin and Central Africa. It would be less disturbing if these were isolated or unusual incidents, which could be attributed to random

error or to the eccentricities of individual prosecutors, courts, or judges [5]. Unfortunately, they are typical, and represent a larger, persistent, and pervasive problem. With such weak penalties and so little likelihood of prosecution, the criminal justice system fails to provide any real deterrent to forest crime. For this reason, this research tries to link law enforcement efforts with the social and cultural contexts of the local community and determining whether illegal logging in Papua province has a relevance with the weakening of the criminal justice system or it caused by a disjunction between law enforcement and cultural factors in the local community.

2. Method

The research was a socio-legal research. It was conducted to obtain empirical-qualitative observations of the research issue. It was located in Papua Province, especially in Jayapura, Nabire, Mimika and Keerom districts. All of these districts have forest areas that are very potential to be cleared by irresponsible individuals, so that the forest areas in the districts are vulnerable to illegal logging.

3. Reviewing sustainable forestry-based forest management

The law No. 32 of 2004 on Local Government and Law No. 33 of 2004 on Financial Balance between Central and Local Governments, these Acts constitute the legal framework of the Special Autonomy Law No. 21 of 2001 which has real implications for changes in the system of governance in Papua Province. It can be indicated that the first law emphasizes the importance of power sharing, while the second law relates to the sharing of authority for financial utilization, so that the two authorities are controlled by the central government, while the regions only perform programs from the center. In Local Autonomy Law regulated 11 (eleven) authorities delegated to the regions, including the Forestry Sector, indicating that forest management is the authority of the local government, which covering the utilization and conservation. However, based on Act No. 41 of 1999 on forestry, forest management is part of the authority of the central government, so that the issuance of the law creates overlapping in forest management.

Past forest management prioritized the principle of economic benefits, while ecological and social benefits were ignored. The granting of Forest Concession Rights (so called, HPH) and forest concessions to the private sector and SOEs, especially the development of industrial forests is not running optimally, this is caused by weak planning, implementation, and supervision in forest exploitation, as well as the low capacity of HPH entrepreneurs in forest management. Data relating to the description of forest area and its function in Papua Province are indicated in table 1.

As table 1 related to the program of Local Government at 5 research site then the forest management in Papua Province with the Sustainable Forestry Management, it can be seen that there are 2 (two) protected forest areas, namely Wildlife Area (1,287,782 ha) and Protected Forest Area (1,694,133 ha). For cultivation forest consists of Restricted Production Forest (1,661,415 ha) and Fixed Production Forest (646,029 ha).

Table 1. Area of forest and its function per research site in Papua

No	District	Protected Area		Cultivation Area		
		Wildlife Area	Protected Forest	Restricted Production Forest	Fixed Production Forest	Convertible Production Forest
1	Jayapura	89,276	550,329	361,141	78,469	247,743
2	Nabire	129,698	371,784	337,754	182,473	121,689
3	Mimika	712,665	344,254	391,685	60,858	330,083
4	Sarmi	270,017	189,230	422,639	254,432	142,014
5	Keerom	8,126	148,137	148,137	68,797	176,077
	Total	1,287,722	1,694,133	1,661,415	646,029	977,609

Source: Forestry Office of Papua Province, 2018.

The principle of management as mentioned is part of the system for sustainable forestry management, functions and benefits of forests can place a considerable role in the preservation of environmental quality and order as well as the development of populist economies and State revenues. Therefore, the utilization and preservation of forest resources needs to be conducted through a management system that can maintain and improve its functions and roles for the interests of present and future generations, and the need to develop professional management institutions.

Papua has relatively large natural resources and local values. These potential must be fully utilized by wisdom through a sustainable development approach, based on a people-based environment. Therefore, development policies must be aimed at efforts to optimize natural resources and environmental, while maintaining their carrying-capacity and sustainability, in order to provide the greatest possible benefit to the people and generation to generation.

On the other hand, in the implementation of forest management policies in Papua is sustainable forestry management, it also facing the problem and not much different from other regions, as expressed by the Head of Forestry Agency Papua emphasize that forest area in Papua based on the local regulation reached 31,727,069 ha, but after being re-calculated in relation to the planned revision of the Spatial Plan, the area was reduced to 30,387,498 ha or reduced by 0.16 percent.

The reduction of forest area in Papua is partly due to land conversion and overlapping in the field. This condition makes the Local Government of Papua propose to release the area and change the allotment of forest areas to the Ministry of Forestry of the Republic of Indonesia. The aim is to avoid conflicts between the community and stakeholders in the region and that is also the proposal of the districts and city. Data from Forestry Service of Papua for changes the forest area in the region is indicated on table 2.

Table 2. Changes of regional forest areas in Papua

No.	Function of Forest Area	Initial Area (Ha)	Conversion area (Ha)
1	Jayapura	386,662	313,531.39
2	Nabire	1,142,397	1,062,115.11
3	Mimika	1,779,768	1,756,660.11
4	Sarmi	1,278,281	1,244.582.66
5	Keerom	840,707	596,470.24
Total		5,421,815	4,973,359.96

Source: Forestry Office of Papua Province, 2018.

As table 2 indicates that the initial wildlife forest is 4,973,359.96 ha has been reduced to 4,373,359.98 ha. Based on re-calculation using the Geographic Position System (GPS), the area of Papua Province also changes from 5,421,815.00 ha to 4,973,359.96 ha. So far, restricted production forests have also changed and 1,476,316 ha to 1,349,640 ha, production forests are only left to be 273,986 ha and from initial area is 500,589 hectares. In addition, conversion production forests have changed to 162,446 ha from initial area 251,865 ha.

Another social phenomenon is the destruction of forest areas caused by illegal logging in the forest, and it is main problem in the forestry sector, and a cause of illegal logging. A number of factors cause the practice of illegal logging due to: Firstly, by the community. Illegal logging that occurs at the community level is generally performed for economic reasons and the influence of business actor, the opening of forest areas for gardens and agriculture, both for their own needs and for sale to outside communities, timber from the opening of the forest areas are sold to the community or owners of industries without document. The sale is initial capital to continue the plantation and agricultural business. Clearly, the contracting company began to show its expansion in several forest areas, especially conservation forest areas. Just look at the trends of several cases that have occurred lately, leave behind the problems in its management.

The role of the Regional Police, the Forest Service and the Natural Resources Conservation Agency of Papua Province are very important in reducing the deforestation rate in Papua. Several cases as described above include the investigation of the police, such as illegal logging at the opening of axis road in Sarmi-Jayapura, illegal logging in Afiar protected forest of Keerom district, Legari protected forest of Mimika district, the protected forest of Nabire district, Besa Hulu protected forest of Mamberamo Raya district, and several other cases that have arrived at court decisions, including a Court Decision No. Reg 93/Pid.Sus/2015/PN.Jpr.

As described above, it can be seen that the demand to exploit forest areas is getting bigger. To realize the plan, they will take various immoral ways, violate legal provisions and ignore the aspirations or interests of the community. In fact, from any aspect, their efforts to change the function of protected forest areas, more harm than benefits are obtained. Economically, the utilization of protected forests is only enjoyed by a few people. The people who have been dependent on protected forests or from conservation forest areas have become

increasingly marginalized. While, environmental damage arising from landscape changes is a disaster that can threaten anyone.

4. Effectiveness of overcoming illegal logging crime in Papua

Although steps conducted by law enforcement officials in overcoming illegal logging in Papua Province have not run optimally and adequately, it must be recognized that there have been actions taken, both preventive and repressive. Preventive step is defined as all efforts made before the occurrence of forest destruction by taking precautions, so that acts of forest destruction do not occur. This preventive step has been conducted by the government by conducting socialization and counselling on the importance of the existence of forest areas for the lives of the people, the nation and the country. This step is conducted by providing information about the impact of the actions taken, both directly and indirectly, which can damage the forest area.

The government has also conveyed to the public about criminal threats applied to perpetrators of illegal logging. In counselling to the community, the government (*extension officers*) experiences a variety of obstacles, especially the level of awareness of the community which so far was very low indeed. The low level of public awareness is due to their relatively very low education. Therefore, for counselling or extension activities can be achieved as desired, it needs to be conducted patiently, regularly, directed, simple, and continuously.

Repressive step is defined as an effort conducted by giving action to someone who has committed a violation or a criminal act. The concerned perpetrators are people who do illegal logging or forest destruction in Papua. To determine whether an action conducted by someone who is suspected of being a criminal act of illegal logging to which sanctions can be applied to him, here the role of law enforcers is crucial. However, if one element of law enforcer cannot do their duties properly, this will have an effect on the other elements. A judge, for example, cannot impose criminal sanctions on someone suspected of having violated the law, if there is no claim made by the public prosecutor, then the public prosecutor cannot prosecute someone suspected of violating the law before the court, if the investigator does not file a case file with the party of prosecutor, as well as the investigator, also cannot conduct an investigation of someone who has violated the law, if the investigator does not make a report about a criminal act that is alleged to have occurred.

The involvement of various agencies in efforts to uphold the law of forest destruction must be ratified **to be able to achieve the goal** of the bureaucracy itself, i.e the achievement of efficient and effective duties. Each relevant agency must be aware of their respective duties and obligations without having to intervene in the duties and obligations of other agencies. The involvement of other agencies does not have to be interpreted as working individually but the implementation of duties and obligations and each agency must be coordinated in an integrated manner so that the law enforcement organization of forest destruction can truly achieve efficiency and effectiveness.

As a result, reviewed from the Forestry Laws, the criminalization policy seems to be inseparable from the purpose of making a law, namely the implementation of forestry aimed at maximizing the prosperity of the people who are just and sustainable, therefore all formulations in the Forestry Laws are focused on all activities or actions that causing damage to the forest. The type of criminal sanction used is a basic crime through imprisonment and a fine and additional criminal in the form of seizure of the proceeds of crime and a tool used to commit a crime. For criminal acts committed by and or legal entities or business entities (corporations) subject to criminal sanctions, in accordance with the threat of criminal sanctions as referred to in Article 78, plus 1/3 of imprisoned crimes, and based on Article 80, those responsible to pay compensation according to the level of damage or consequences caused to the State for rehabilitation costs, restoration of forest and other necessary measures.

In these laws, criminal sanctions are formulated cumulatively, where imprisonment is accumulated with criminal penalties. This can cause problems because the formulation is a cumulative-imperative. Criminal sanctions are formulated cumulatively in the form of rigid imperatives, namely the principal penalty in the form of imprisonment and substantial fines and additional penalties in the form of proceeds of crime and violations and/or tools including the means of transportation used to commit crimes and or violations. Thus, the likelihood of a large threat of criminal penalties will not be effective, because if it is not paid, it will only be subject to imprisonment as substitute sentence of 6 (six) months or 8 (eight) months. However, for convicted prisoners to replace the fine, they may not have any influence because if the convicts pay a fine, they will also continue to face imprisonment imposed cumulatively.

For the act of using and utilizing forest products such as wood without a legitimate permit from an authorized official, then it is categorized as an illegal logging crime, as stated and formulated in Article 50 jo Article 78 of the Forestry Laws. The absence of a definition of illegal logging is often misinterpreted and overlapped in interpreting what is meant by illegal logging in its application.

Viewed from the perspective of criminal law, efforts to deal with criminal acts can be seen and various aspects include aspects of criminalization policies (formulation of criminal acts) and criminal liability (fault) and punishment. Criminalization policy is a policy in determining an act that was not a criminal offense into a crime (an act that can be punished). In essence, the criminalization policy is part of criminal policy by using the means of penal policy, especially the formulation policy [6].

In contrast, the suppression of illegal logging through the criminal justice system has gotten little attention from policy makers, activists, and technical assistance providers. When the criminal justice system is discussed, the focus is generally on its failures, rather than its potential to help reduce and deter illegal logging [7]. For example, a study of four different countries by Akella [8] found that one common challenge impeding effective enforcement was poor interagency cooperation. One of the main causes of ineffective enforcement in Mexico was "poor collaboration among environmental enforcement agencies"; in Brazil, it

was “jurisdictional confusion”; and in Indonesia, “a lack of coordination between agencies and between local, provincial, and central offices of single agencies was to blame”.

A description of how difficult the efforts to overcome illegal logging in Papua have been answered in more or less. Even though this is not a final answer, but with these explanations we have obtained a rather clear description of the obstacles to overcoming illegal logging crime in Papua. This finding is expected to form a new strategy for law enforcement against illegal logging crimes in the future, both related to the legislation tools, law enforcement officials, facilities and infrastructure and legal culture. Why we do not use a similar strategy to run national legal politics, especially efforts to solve crime in various fields of life, including in the forestry sector. The problem of overcoming crime is a classic problem. Anytime, the obstacles to prevent a crime always haunt our law enforcement officers [9]. Until now, there has been significant progress to overcome or reduce the obstacles to the crime prevention process. This includes strengthening police and the courts to better detect and punish illegal forest activities.

5. Conclusion

Normatively, the legislation in term of illegal logging is considered adequate, law enforcement officers in the field are very inadequate. Whereas, the forest areas that must be handled is wide. In order for the quality of forest law enforcement to be improved, the actors involved—whether on the forestry side or in criminal justice—need to develop a better understanding of the wide range of laws. Also, the things related to facilities and infrastructure as well as the culture of the people who tend to cut down or destroy the forest (shifting cultivation/illegal logging). Indirectly it has been answered here. How the culture of local communities responds to the process of overcoming illegal logging in Papua. The process of overcoming illegal logging remains an obstacle as long as the culture and values of land and forests adopted by Papuan people still remain as they are today. Changing culture quickly is not an easy task, it requires a long time and it is known that culture is strongly attached to the community. For this reason, the local government is expected to be able to approach the communities to reside around the forest to provide an understanding of the importance of forest protection and preservation, as well as preparing agricultural and plantation land for their survival and livelihood.

References

- [1] Wahid M Y, Bohari N, and Achmad 2015 Penegakan Hukum Lingkungan di Sektor Kehutanan (Studi Kawasan Hutan Lindung di Kabupaten Sinjai, Sulawesi Selatan) *Hasamuddin Law Rev.* 1 (1) 61-73.
- [2] Goncalves M P, Panjer M, Greenberg T S, and Magrath W B 2011 *Justice for forests: improving criminal justice efforts to combat illegal logging* (World Bank series: R67).
- [3] Suhendang E 2002 *Pengantar Ilmu Kehutanan* (Bogor: Yayasan Penerbit Fakultas Kehutanan).
- [4] Klute M 2008 Forests in Papua: Data and Facts *Forest Conference of West Papua in*

- Witten* (Germany: Biofuelwatch).
- [5] Ijaiya H and Joseph O T 2014 Rethinking environmental law enforcement in Nigeria *Beijing L. Rev.* **5** 306.
 - [6] Arief B N 2006 *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime in Indonesia* (Jakarta: PT. Raja Grafindo Persada).
 - [7] Haris O, Syahbudin and Yunus A 2019 Legal Existence of Local Wisdom for Bajo Fishery Tribe on Indonesian Maritime Border *Hasanuddin L. Rev.* **5** (1) 41-54.
 - [8] Akella S and Cannon J 2004 *Strengthening the Weakest Link—Strategies for Improving the Enforcement of Environmental Laws Globally* (Arlington Center for Conservation and Government at Conservation International).
 - [9] Olbrei E and Howes S 2012 A very real and practical contribution? Lessons from the Kalimantan Forests and Climate Partnership *Climate Law* **3** (2) 103-37.

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