

## LAW ENFORCEMENT AGAINST *ILLEGAL LOGGING* IN INDONESIA THROUGH EFFORTS TO INCREASE THE ROLE OF THE POLICE

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### Abstract

Mikael P. Sitanggang. 2021. Dissertation of the Doctoral Study Program in Law, Diponegoro University, Semarang. Law Enforcement against *Illegal Logging* in Indonesia through efforts to increase the role of the Police. The purpose of this study is to analyze: 1) What is the role of the police in handling illegal *logging in Indonesia*? 2) What is the criminal law policy in handling illegal logging in Indonesia. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The implementation of forest protection and management to prevent forest destruction from *illegal logging practices by irresponsible humans requires guard and supervision by authorized officials, in this case the Forestry Police (Polhut)*. 2) *In various legal literature, the crime of illegal logging is a criminal crime that has the nature of an extraordinary crime (extra ordinary crime). Illegal logging is classified as a crime that directly violates Law No. 23 of 1997, concerning Environmental Conservation. Thus, police firmness is needed in applying criminal justice to individuals or groups involved in Illegal Logging.*

**Keywords:** Law, Illegal Abuse, Role, Policing.

## INTRODUCTION

### Background

Forests are one of the greatest natural wealth owned by the Indonesian people. Forests become the capital of national development that can provide benefits for the lives and livelihoods of the Indonesian people, both ecological, socio-cultural and economic benefits, in a balanced and dynamic manner.

For this reason, forests must be managed and managed, protected and used sustainably for the welfare of the people of Indonesia, both present and future generations.<sup>1</sup>

In forest protection, criminal legislation against crimes in the forestry sector, including illegal *logging*, is the protection of the main functions of the forest itself, both ecological, economic and socio-cultural functions whose impact is not only felt by communities living in and around forests and communities nationally, but also communities in regional and international contexts.

As explained by Koeswadji above, which is relevant as a basis for criminal implementation of *illegal logging* crimes.

Given the orientation of criminal policy in Law No. 41 of 1999 as affirmed in paragraph 18, the general explanation is that the provision of severe criminal and administrative sanctions is expected to have a deterrent effect on violators of forestry laws. It basically adheres to the

purpose of punishment based on relative theory, namely:

"*Aglemene* or generale preventie, which is prevention aimed at the general public, so that thus the nature of prevention is general, and *bijzondere* or *speciale preventie* is prevention aimed at the criminal himself (special prevention)"<sup>2</sup>

The function of criminal sanctions in the life of environmental law, including forestry, has changed from *an ultimum remedium* to a law enforcement instrument that is *premium remedium*.<sup>3</sup> It further stated that the provisions on criminal sanctions in the environmental law regarding the government's duty to outline policies and take actions that encourage the improvement of harmonious and balanced environmental conservation efforts. That is, there is a balance between the use and protection of forests must be integrated in one development concept.

Illegal logging is the biggest factor in the decline in the number of forests in Indonesia. If explored further, forest encroachment is mainly caused by factors such as illegal logging, land and forest fires, encroachment, mining and plantations without permits, and the use of non-procedural forest areas, forest conversion for non-forestry sectors (plantations, agriculture, and settlements), territorial expansion, and law enforcement that is still weak in forestry cases.

The weak law enforcement factor shows that the rules in the positive law cannot always solve the problem of *illegal logging*. Therefore, the idea of increasing the role of indigenous peoples can be one of the relevant alternatives in preventing illegal logging. In *illegal logging (illegal logging)* is a form of crime that until now still occurs a lot. The absence of specific regulations and definitions on illegal logging *is* one of the factors that makes illegal logging difficult to eradicate in Indonesia even though the impact of illegal logging is already real. According to Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction in accordance with the provisions of Article 1 point 4, illegal logging is all organized illegal use of timber forest products.

Illegal logging as an act against laws and regulations in terms of where, how and some many trees are felled, testing and classification of timber, transportation and utilization, as well as payment of dues (levies, taxes, fees etc.) as well as measures to ensure sustainable forest management. According to Suarga the definition of illegal logging is: "A series of activities, ranging from logging and transporting to processing and export without permission from the government, and therefore illegal, unlawful and considered acts that destroy forests".<sup>4</sup>

In anticipating efforts to overcome the criminal act of illegal logging, *it is very important to carry out a criminal law policy, especially legislative policy, namely how to formulate an act that is considered a criminal act of illegal logging*, what conditions must be met to blame someone for committing *illegal logging* and what criminal sanctions should be imposed and how to implement these legislative policies by the judiciary.

### Problem Statement

1. What is the role of the police in handling *illegal logging* in Indonesia?
2. What is the criminal law policy in handling illegal logging in Indonesia?

## Theoretical Framework

In research using law enforcement theory analysis knife. According to Satjipto Raharjo, law enforcement is essentially the enforcement of ideas or concepts about justice, truth, social benefit, and so on.<sup>5</sup> So law enforcement is an effort to make these ideas and concepts a reality. The fact that law enforcement embodies values or methods that contain justice and truth, law enforcement is not only the duty of conventionally known law enforcers, but is the duty of everyone. Nevertheless, in relation to public law it is the government that is responsible.

In the process of law enforcement, the state becomes a party responsible for a common commitment as a state based on law, therefore the state is responsible for the order, security and peace of its citizens which is the initial and traditional duty and authority of the government or state which is then delegated to legal institutions.<sup>6</sup>

Concrete law enforcement is the enactment of positive laws in practice as they should be obeyed. Therefore, providing justice in a case means deciding the law in *concreto* in maintaining and guaranteeing the observance of material law using procedural means established by formal law.<sup>7</sup>

Law enforcement is an effort to make the ideas of justice, legal certainty and social benefits a reality. So law enforcement is essentially the process of embodiment of ideas. Law enforcement is the process of making efforts to uphold or function legal norms in real terms as guidelines for actors in traffic or legal relations in public and state life.

In the process of law enforcement, there are factors that influence it. These factors are quite meaningful so that the positive and negative impacts lie in the content of these factors. According to Soerjono Soekanto, there are five of these factors, namely<sup>8</sup> legal factors, law enforcement, facilities or facilities that support law enforcement, society, and culture.

However, efforts to overcome a crime cannot be separated from criminal policy or criminal *law policy*. In this criminal policy, operationally must complete the following elements: first, legislative policy, namely the stage of formulation / preparation of criminal law. Second, judicial policy is the stage of application of criminal law. Third, executive policy is the stage of criminal law implementation.<sup>9</sup> However, as well as the legal regulations prepared, they cannot be guaranteed if their application is not carried out in an integrated criminal justice system.

## RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The normative juridical approach is to understand the problem using the approach of legal regulations or applicable laws and regulations.<sup>10</sup> The normative legal research method is also called positive law science referred to here is a law that applies at a certain time and place, namely a written rule and norm that is officially formed and promulgated by the ruler, in addition to written laws that regulate the behavior of community members.<sup>11</sup>

In this study, a statutory approach and a comparative approach were used.<sup>12</sup> Legal research conducted by examining library materials or secondary data.<sup>13</sup> Statute approach: an approach taken by examining laws and regulations related to the focus of research.

Then the conceptual *approach* is an approach that departs from the views and doctrines that develop in legal science. A concept is a mental integration of two or more units isolated according to characteristics and united by a distinctive definition.<sup>14</sup> The concept approach is used with regard to the concepts in Withdrawal of Fiduciary Guarantee Objects as well as Continuous Action Against Debtor Default.

## RESEARCH RESULTS

### The role of the police in handling illegal logging in Indonesia

The definition of "*Illegal Logging*" in existing laws and regulations is not explicitly defined. However, the term *illegal logging* can be seen from the literal understanding of English. In *The Contemporary English Indonesian Dictionary*, "*illegal*" means invalid, prohibited or contrary to law, haram. In *Black's Law Dictionary* illegal means "*forbiden by law, unla wdull*" meaning prohibited by law or invalid. "*Log*" in English means logs or logs, and "*logging*" means cutting wood and carrying it to a sawn place.<sup>15</sup>

Illegal logging has a significant impact on the state of ecosystems in Indonesia. Logging has a very detrimental impact on the surrounding community, even the world community. The losses caused by forest destruction are not only damage in economic value, but also result in priceless loss of life. The impacts of *Illegal Logging are the impacts that have begun to be felt now is that during the rainy season the territory of Indonesia is often hit by floods and landslides*, *Illegal Logging* also results in reduced water sources in forested areas. The trees in the forest that usually absorb water to provide a source of spring water, the decreasing layer of fertile soil. The fertile soil layer is often carried away by floods that hit Indonesia. As a result, arable land is decreasing, *Illegal Logging* also has the impact of the destruction of various fauna and flora, erosion, conflicts among communities, devaluation of timber prices, loss of livelihoods, and low state and regional revenues from the forestry sector, except for income from auctions of confiscated timber and timber found by related parties for the benefit of local communities, now exhausted by illegal loggers.<sup>16</sup>

Logging/illegal logging/forest logging is an act prohibited by law and is a criminal offense. Therefore, as a criminal offense, people who commit illegal logging must be given sanctions or laws in the form of crimes. Regarding forest protection and supervision, the official who spearheads is the forest police. According to Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction in article 1 states as follows:

"Forestry Police are certain officials within the scope of central and/or regional forestry agencies who in accordance with the nature of their work carry out and/or carry out forest protection efforts which by law are given special police authority in the field of forestry and conservation of biological natural resources and ecosystems in one unit of command"

The duties and functions of forest police as mentioned in article 4 paragraph 1 of the Regulation of the Minister of Forestry of the Republic of Indonesia Number: P. 75 / menhut.11 / 2014 concerning forest police as follows:

1. Carry out protection and security of forests, forest areas, forest products, plants and wildlife; and
2. Defend and safeguard the rights of states, communities, and individuals over forests, forest areas, forest products, plants and wildlife, investments and tools related to forest management.

Then in paragraph 2 of the above article it says as follows:

"The duties and functions of Polhut as referred to in paragraph (1), are carried out in the form of: preemptive, preventive; and repressive."<sup>17</sup>

In order to carry out the duties and functions of the Forestry Police based on responsibility in carrying out protection and everything related to forest areas. Carry out protection and security of forests, forest areas, forest products, plants and wildlife. Responsibility by carrying out the protection and security of forests, forest areas, forest products, plants and wildlife is one way to protect forests from illegal logging.<sup>18</sup> Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction in article 1 means forest destruction is the process, way or act of destroying forests through illegal logging activities, the use of forest areas without permits or the use of permits that are contrary to the purpose and purpose of granting permits in forest areas that have been determined, which have been designated, or are being processed for determination by the government. The eradication of forest destruction without permits must be prevented by efforts made to eliminate opportunities for forest destruction with cross-sectoral coordination in the prevention and eradication of forest destruction, meeting the resource needs of the forest security apparatus, incentives for parties who contribute to maintaining forest sustainability, meeting the needs of facilities and infrastructure for preventing and eradicating forest destruction.<sup>19</sup> Then, according to Article 36 paragraph (2) of Government Regulation Number 45 of 2004 concerning Forest Protection, the Forestry Police is authorized to:

1. Conduct patrols/patrols within the forest area or its jurisdiction;
2. Examine papers or documents relating to the transportation of forest products within the forest area or its jurisdiction;
3. Receive reports about criminal acts involving forests, forest areas, and forest products;
4. Seeking information and evidence of criminal acts involving forests, forest areas, and forest products;
5. In the event of being caught, it is mandatory to arrest the suspect to be discharged to the authorities;
6. Make reports and sign reports on the occurrence of criminal acts involving forests, forest areas, and forest products.

As stated in Article 36 paragraph (3) of Government Regulation Number 45 of 2004 concerning Forest Protection, it is determined that the Forestry Police by order of the leadership is authorized to conduct investigations, in order to find and arrest suspects. Although the Forestry Civil Servant Investigator has been authorized by law to conduct investigations, in carrying out his duties his position is under the coordination and supervision of POLRI investigators (Article 7 paragraph (2) of the Criminal Procedure Code) in other words that:

1. The position of the National Police Investigator in investigating forestry crimes is:
  - a. As coordinator; and
  - b. As a supervisor of the investigation process by the Forestry Civil Servant Investigator.
2. The position of the Forestry Civil Servant Investigator as an investigator of forestry crimes.<sup>20</sup>

Forest rangers need seriousness in carrying out their duties and holding tightly to the principle of justice in carrying out their duties and functions, on the other hand the firmness of officers in cracking down on any activities that violate, damage the sustainability of forests in the forest area of Jembrana Regency. Over time, the modus operandi of crime has become more sophisticated as technology advances, forest police play a very important role in reading crime modes, approaching communities around forests and establishing cooperation to jointly maintain and prevent damage to forest areas.<sup>21</sup>

The implementation of forest protection and management to prevent forest destruction from *illegal logging* practices by irresponsible humans requires guard and supervision by authorized officials, in this case the Forestry Police (Polhut). The passing of the Forestry Law must be able to serve as a legal basis for law enforcement officials to crack down on illegal logging perpetrators. Firm and indiscriminate law enforcement as long as it is in accordance with the legal corridor is believed to be able to minimize the practice of *illegal logging*. In addition to the Forestry Police, community participation is also expected in maintaining and preserving forests both directly and indirectly.<sup>22</sup>

Although Forest Police have broad authority, it does not necessarily prevent the practice of *illegal logging* without cooperation with various parties. The increase in illegal logging is caused by the economic limitations of the surrounding community. Another factor that has led to the increased rate of forest destruction is the limited number of Forest Rangers and the lack of firearms used by officers in maintaining security. For this reason, preventive efforts are needed to minimize these illegal activities, namely:

#### **a. Preemptive Efforts**

In the form of educational actions including guidance and socialization to the community, such as providing understanding, education, awareness related to how important it is to preserve forests in order to maintain the continuity of environmental balance to prevent global warming.

## **b. Preventive Efforts**

Efforts are made in the form of routine patrol activities. Patrol activities with Forest Police personnel are carried out as an effort to prevent and limit the movement of perpetrators *of illegal logging practices*.

## **c. Repressive Efforts**

In the form of law enforcement actions by imposing penalties on perpetrators of *illegal logging* indiscriminately, for individual or corporate actors. Countermeasures include the stages of investigation, prosecution, court hearings with a note that it must not contradict the Procedural Law applicable in the Indonesian Justice System. The crime committed is not the first or even the umpteenth time it has happened.<sup>23</sup>

### **Criminal Law Policy in Handling *Illegal Logging* in Indonesia**

However, efforts to overcome a crime cannot be separated from criminal policy or criminal *law policy*. An effort to realize a criminal law that is in accordance with the circumstances of the situation at a time and for the future. In this criminal policy, operationally must complete the following elements: first, legislative policy, namely the stage of formulation / preparation of criminal law. Second, judicial policy is the stage of application of criminal law. Third, executive policy is the stage of criminal law implementation.<sup>24</sup>

In the implementation of forest protection carried out by the Forestry Police there are 2 types of security based on the Regulation of the Minister of Forestry of the Republic of Indonesia Number P.75 / Menhut-II / 2014 concerning Forestry Police in Article 4 Paragraph 1, as follows:<sup>25</sup>

1. The implementation of forest protection carried out preventively is an activity aimed at preventing, eliminating, reducing, closing the opportunity for individuals or groups to commit forest crimes.
2. The implementation of repressive forest protection is a judicial law enforcement activity to reduce, suppress or stop forestry crimes committed by individuals or groups.<sup>26</sup>

The impact of ecological (environmental) damage due to illegal logging (*illegal logging*) according to various studies conducted by environmental and forestry experts that various natural disasters that occur, allegedly as a result of forest destruction as a result of *illegal logging*. In addition to natural disasters, *illegal logging* also causes damage to flora and fauna and the extinction of rare species.<sup>27</sup> Since the issuance of the 2009 UUPPLH which replaced Law No. 23 of 1997 (hereinafter referred to as the 1997 UUPPLH), the function as the master law of umbrella provisions is attached to the 2009 UUPPLH. UUPPLH brings fundamental changes in environmental management arrangements in Indonesia. UUPPLH, in general explanation, views criminal law as the ultimate remedium for certain formal crimes, while for other crimes regulated other than Article 100 of the UUPPLH, the principle of ultimum remedium does not apply, which applies the principle of premium remedium (prioritizing the implementation of criminal law enforcement). The principle of ultimum remedium places

criminal law enforcement as the last legal option.<sup>28</sup> The dependence of the application of criminal law rests on the circumstances of administrative sanctions that have been imposed not being complied with, or violations committed more than once.

Enforcement of environmental management laws is currently still difficult to do because of the difficulty of proving and determining standard criteria for environmental damage.<sup>29</sup> Environmental law enforcement efforts through criminal law are how the three main problems in criminal law are outlined in laws that more or less have a role to carry out social engineering, which includes the formulation of criminal *acts*, criminal liability, and sanctions) both criminal and orderly. In accordance with its purpose not only as a tool of order, environmental law also contains the purpose of community renewal (*social engineering*). Law as a tool of social engineering is very important in environmental law.

More specifically, the role of the police in law enforcement, regulated in article 14, among others: (a) conducting investigations and investigations into all criminal acts in accordance with the Code of Criminal Procedure and other laws and regulations; (b) conducting police identification, police medicine, and forensic laboratories and police psychology for the purposes of police duties, and (c) maintaining order and ensuring public safety.

In the second level, the results of police investigations and investigations are followed up by the procuratorate to conduct prosecutions. As a public prosecutor, Article 30 of the Law. No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia states as follows: In the criminal field, the prosecutor's office has the following duties and authorities:

1. Conduct prosecutions;
2. Carry out the determination of judges and court decisions that have obtained permanent legal force;
3. Supervise the implementation of conditional criminal judgments, supervisory criminal judgments, and conditional release decisions;
4. Conduct investigations into certain criminal offences under the law;
5. Complete certain case files and for that can conduct additional examinations before being transferred to the court which in its implementation is coordinated with investigators, and so on.<sup>30</sup>

In this context, the prosecutor as a public prosecutor is authorized to prosecute *illegal logging* crimes. An act carried out individually or corporately, actions that result in forest destruction that has a negative impact, one of which is the crime of illegal logging which is logging activities without permits and / or damaging forests, that *illegal logging* activities are unpredictable activities to forest conditions after logging, because they are outside existing planning.<sup>31</sup>

In various legal literature, the crime of *illegal logging* is a criminal crime that has the nature of an extraordinary crime (*extra ordinary crime*). *Illegal logging* is classified as a crime that directly violates Law No. 23 of 1997, concerning Environmental Conservation. In particular,

Article 48 states that forest destruction is a crime in the form of environmental destruction, through *illegal logging* practices.

The criminal provisions and sanctions against illegal logging activities according to Law No. 41 of 1999 include the following:

**First**, everyone is prohibited from damaging forest protection infrastructure and facilities. This is stated in Article 50 paragraph (1), "Whoever intentionally damages forest protection infrastructure and facilities shall be punished with a maximum imprisonment of 10 years, and a maximum fine of Rp. 5,000,000,000 (Five billion rupiah).

**Second**, everyone who is granted an area utilization permit, an environmental service utilization business license, a timber and non-timber forest product utilization business license, and a timber and non-timber forest product collection permit, is prohibited from carrying out activities that cause forest destruction (Article 50 (2)). Whoever violates this provision shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).

**Third**, everyone is prohibited from cutting trees in forest areas with a radius or distance (Article 50 paragraph (3) letter c) up to: 500 (five hundred) meters from the edge of a reservoir or lake, ... Dst.

**Fourth**, everyone is prohibited from cutting trees or harvesting or collecting forest products in the forest without having the right or permission of the competent authority. (Article 50 paragraph (3) letter e). Violation of this provision is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).

**Fifth**, receiving, buying or selling, receiving exchanges, receiving deposits, storing, or possessing forest products known or reasonably suspected to originate from forest areas that are taken or collected illegally (Article 50 paragraph (3) letter f). Violation of this provision is punishable by imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).

**Sixth**, transporting, controlling or possessing forest products that are not equipped together with a valid certificate of forest products (article 50 paragraph (3) letter h). Violation of this provision is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 5.000.000.000,- (five billion rupiah)

**Seventh**, carrying heavy equipment and or other equipment that is common or appropriate will be used to transport forest products within the forest area without the permission of the authorized official (Article 50 paragraph (3) letter i). Violation of this provision is punishable by imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).

**Eighth**, bring tools commonly used to cut, cut or split trees in forest areas without the permission of authorized officials (Article 50 paragraph (3) letter k). Violation of this provision is punishable by imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 1,000,000,000 (one billion rupiah).

*Ninth, the state confiscates forest products and equipment including in transportation used to commit crimes and / or violations (Article 78 paragraph (15)). In his explanation, objects that include means of transportation include ships, barges, trucks, trailers, pontoons, tugboats, sailboats, helicopters.<sup>32</sup>*

## CONCLUSION

The results showed that;

1. The implementation of forest protection and management to prevent forest destruction from *illegal logging* practices by irresponsible humans requires guard and supervision by authorized officials, in this case the Forestry Police (Polhut).
2. In various legal literature, the crime of *illegal logging* is a criminal crime that has the nature of an extraordinary crime (*extra ordinary crime*). *Illegal logging* is classified as a crime that directly violates Law No. 23 of 1997, concerning Environmental Conservation. Thus, police firmness is needed in applying criminal justice to individuals or groups involved in *Illegal Logging*.

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