

Illegal logging and its effects on law on forestry

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Abstract

Forests become the national development capital that can provide benefits for life and livelihood of Indonesia, either ecological, socio-cultural and economic benefits in a balanced way and dynamically. In that opinion, the forest must be taken care, managed, protected and utilized continuously for the welfare of Indonesian society, both present, and future generations. In order to realize it, the principle of just and sustainable yield principle is needed. Factors that influence illegal logging are due to the weakness of forest security and management systems, economic and social factors. Illegal logging handling effort is regulated with the Presidential Instruction Number 4 of 2005 on Eradication of Illegal logging in Forest Area and its Distribution. Throughout the Territory of the Republic of Indonesia 18 government agencies were addressed to take action in a coordinated manner.

Keywords: illegal logging, forestry, government, effects.

Introduction

The environment is a fundamental asset for human life. In principle, the environment is a system that is interconnected with one another so that the definition of the environment almost covers all the elements of God's creation on Earth including humans. Forest is the largest source of natural wealth owned by Indonesia. Forests become national development capital that can provide benefits for life and livelihood of Indonesia, either ecological, socio-cultural or economic benefits in a balanced way and dynamically. For that the forest must be taken care, managed, protected and utilized continuously for the welfare of Indonesian society, both present, and future generations. In order to make it happen, the principle of just and sustainable yield is needed. This principle places the community as the subject of active and intrasystem forest management activities. As the country with the third largest tropical forest in the world after Brazil and the Democratic Republic of Congo, the principles of sustainable and equitable forest building are essential. In more detail based on Decree of forest and water area designation until November 2012, Indonesia's forest area is 134.290.240,94 ha, consisting of conservation forest 27, 086, 910, 23 ha, protected forest 30,539,823,36 ha and production forest 76,663 .507,34 ha. However, the area of Indonesia's forest has decreased every year due to deforestation occurring in various regions. Based on the Forest Watch Indonesia (FWI) analysis, the deforestation rate in the 2000-2009 period was 1.51 million ha/year. With this deforestation rate estimated in 2020 the forest in Java will be elapsed, while in Bali and Nusa Tenggara 0.08 million ha remaining, 2.37 ha in Maluku, 7.20 ha in Sulawesi, 7.72 million ha in Sumatra, 21, 29 million ha in Kalimantan and 33.45 million ha in Papua. If it is projected to 2030 by ignoring the grouping based on the function of the area, it is estimated that forests in

Java, Bali and Nusa Tenggara will be elapsed, 1.12 million ha in Maluku, 4.01 million ha in Sumatra, 5.54 million ha in Sulawesi, 15,79 million ha in Kalimantan and 32.82 million ha in Papua. If reviewed by region, the largest deforestation rate in Kalimantan is 0.55 million ha/year and in Sumatra, the deforestation rate is 0.37 million ha/year. And the areas that suffered the worst damage to the forests were Riau and East Kalimantan provinces. The rapid rate of deforestation is caused by various factors. Based on data from the Ministry of Forestry of the Republic of Indonesia in June 2010 stated that the loss of forest is so fast due to encroachment (60%), conservation (22%), highway use (16%) and 0.6% due to mining. Illegal logging becomes the biggest factor in the declining number of forests in Indonesia. Illegal logging is caused by forest resources, especially timber that has an important role in providing raw materials for industries that can increase income and create jobs . Wood is also a commodity that can be transformed into another more valuable processed product. This is what encourages the emergence of various companies engaged in the wood processing industry in Indonesia. The development of various companies engaged in the wood processing industry causes the demand for logs is very high both local and foreign markets. This is what prompted various parties to steal timber by conducting illegal logging that the results will be sold to timber fence.

Illegal logging activities will cause damage to forests where the forests will be barren and will also damage the forest ecosystem. In long term, this will result in natural disasters in various regions in Indonesia. If the condition of the forest is more damaged and not followed by efforts to overcome it will threaten future generations. It cannot be denied that the cases of the dangerous illegal logging in Indonesia are basically caused by irresponsible and selfless human behavior. To overcome illegal logging activities, the government has taken preventive and repressive action by issuing Law No. 41 of 1999 on Forestry and Presidential Instruction No. 4 of 2005 on Eradication of Illegal Logging in Forest Area and its Distribution throughout the Territory of the Republic of Indonesia. This regulation emphasizes to every community that forests are essential for humanity's survival and future generations. Therefore everyone is prohibited from illegal logging which is illegal or criminal acts that harm the state as well as the lives of many people. So the purpose of the issuance of this regulation is in addition to preventing the illegal logging, it also provides a deterrent effect to the parties who conduct illegal logging activities with the provision of three means used in prosecuting the violation of punishment namely the means of administrative law, criminal law facilities and civil law facilities (indemnification). These three legal means play an important role in law enforcement.

Literature Review

Definition of Forest

The word forest is a translation of the words "boss" (Dutch) and "forest" (English). Forrest is a wavy ground plain and can be developed for non-forestry purposes, such as tourism. In ancient English law, forest (forest) is a certain area whose land is overgrown with trees, where the beasts and birds live. There are four elements contained in the definition of forests listed in Article 1 paragraph (2) of Law No. 41 of

1999 on Forestry is:

1. Elements of a large field (at least ¼ hectare) called forest soil;
2. Tree elements (wood, bamboo, palm), flora and fauna;
3. Environmental elements;
4. Elements of government determination;

The definition of forest here embraces the concept of law vertically because between the field (land), trees, flora and fauna and its environment is an integral part. The existence of an element of the government's determination of forests is essential to strengthen the juridical standing of the forest, i.e. so that any person cannot arbitrarily clear, occupy and or work on forest areas and obligations to the government to organize the planning, designation, as well as safeguarding and protecting forests. While forested areas are certain areas that are established by the government to be maintained as permanent forest areas. Thenceforth, forest areas are areas that are already forested or non-forested and then assigned their control to the state. The forest areas, all of which are areas in which land use planning has been / will be defined for forestry use based on the needs and interests of the people of Indonesia. From the above definition it can be concluded that the characteristics of the forest area are:

1. A particular area;
2. There are forests or no forests;
3. Stated as a forest area by the government (minister);
4. Based on the needs and interests of the community.

Definition of Illegal Logging

Illegal logging is a logging activity in the forest area without a permit or with a permit by officials authorized to conduct logging illegally is an act that breaks the law that violates the valid law and regulation in which such action will result in the forest destruction. Illegal logging is carried out by legal subjects possessing or obtaining, logging permits but exceeding the limits/targets set by forestry officials or logging outside the designated area. The root of the problem of illegal logging occurs due to systemic corruption that is both chirping and horizontal so that it spreads (widespread), persistent, rooted, annually, and difficult to eradicate because almost all enjoy or get benefits of the plunder. The forms of illegal logging as argued can be classified as a deliberate act committed by the subject of law. In the theory of criminal law, the principle that "The element of intent on every crime is usually preceded by the intention followed by the act of the perpetrator is real". In some cases for illegal logging within the forest area, the element of intent is a set of unified actions to accomplish a goal. However, based on a legal and factual consideration, it is found that the suspect of the perpetrator commits a criminal offense due to a pressure factor or strong influence from the other party as the perpetrator's brains. The illegal forms of logging can also be seen from the anatomy of crime i.e.:

1. UpStream area (timber origin).
 - a. Logging is done without authorization from authorized officials.
 - b. Logging with permission but conducted outside the block area it has.
 - c. Illegal logging by involving the local community, but mobilized or funded by the

broker.

d. Involving unscrupulous government officials or officials as a backing or as coordinator of illegal logging activities.

2. Downstream area (timber or port destination).

a. Timber is not equipped with documents.

b. Timber comes with fake documents.

c. The physical load of wood on the vessel or truck does not match the one listed in the document.

d. With a replacement document (ticket).

e. Utilizing auction minutes.

f. Wood is stamped with false documents or without documents.

3. Perpetrators

a. Broker, the owner of capital, entrepreneur.

b. Local community or landing.

c. Owner of molding factory or sawmill.

d. HPH license holders acting as thieves or fence.

e. Government officials.

f. Foreign entrepreneurs

Research Method

A. Specification of Research

This research is analytical descriptive that is research which describes or explain about Illegal Logging and Its Relation to Law Number 41 of 1999 on Forestry. The approach applied in this research is normative law approach. A normative legal approach is an approach based on the legal rules relating to Illegal Logging as regulated in Law No. 41 of 1999 on Forestry.

B. Type of Data

The type of data required in this study is secondary data. Secondary data is data obtained indirectly from respondents, but obtained from books or writings from scientific journals or research reports, especially related to the title of research.

C. Data Collection Technique

The data collection technique is library research, using data collecting tool in document form where the writer tries to find the primary law material or secondary legal material related to Illegal Logging and its effect on Law Number 41 of 1999 on Forestry. Primary law material.

D. Data Analysis

Data analysis conducted in this research is qualitative analysis.

Research result and discussion

Law Number 41 of 1999 on Forestry is a comprehensive provision because it has made new provisions, which are not yet known in Law Number 5 of 1967 on Basic

Forestry Provisions. The new matters such as class action, i.e. a lawsuit filed by the public to the court and or reporting to law enforcers against forest destruction that is detrimental to the life of the forestry dispute settlement community, criminal provisions, indemnification and administrative sanctions. -The Law of Forestry is further elaborated in other laws and regulations. The legislation in question, such as:

1. Presidential Instruction No. 5 of 2001 on Eradication of Illegal Logging and Illegal Forest;
2. Products Distribution in Leuser Ecosystem Area and Tanjung Puting National Park;
3. Government Regulation No. 63 of 2002 on City Forest;
4. Government Regulation in Lieu of Law No. 1 of 2004 on Amendment to Law No. 41 of 1999 on Forestry;
5. Government Regulation Number 44 of 2005 on Forestry Planning;
6. Government Regulation Number 45 of 2004 on Forest Protection;
7. Presidential Instruction Number 4 of 2005 on Eradication of Illegal Logging In Forest Area and Its Circulation In All Areas Of The Republic Of Indonesia.

While those obliged to conduct forest supervision under Article 60 of Law Number 41 of 1999 on Forestry are: Governance and regional government (Articles 61 to 66 of Law No. 41 of 1999 on Forestry). Article 61 reads "The government is obliged to supervise the management of forests organized by the regional government". Article 62 of Law Number 41 of 1999 on Forestry reads "The government, regional government, and the community shall supervise the processing and or utilization of forests conducted by third parties". Article 63 of Law Number 41 of 1999 on Forestry reads "In implementing forestry supervision as referred to in Article 60 paragraph (1) of Law Number 41 of 1999 on Forestry, the government and regional government have the authority to monitor, request information and conduct inspection on the implementation of forest management ". Article 64 of Law Number 41 of 1999 on Forestry reads: "The government and the community shall exercise supervision over the implementation of forest management with national and international impacts." Measures that could damage forests, such as using machines without the authorization of authorized officials, without permission of authorized officials, logging trees without permission of authorized officials, burning forests, grazing cattle in the forest, and taking grass in the forest. To further regulate Law No. 41 of 1999 on Forestry, so the Government Regulation No. 45 of 2004 on Forest Protection is issued that emphasizing the forest supervision activities in forest areas, those who are responsible for forest processing, are responsible for the forest processing. Furthermore, Article 8 Paragraph (4) of Government Regulation Number 45 of 2004 on Forest Protection states that "Forest Protection covers": Securing the area of work that transports forest, forest area and forest products including plants and animals, Prevents forest destruction from human acts and livestock, Forest burning, pests and diseases and natural resources, Taking the first action required for forest security disturbance in its work area, Reporting any incidents of law violation in its working area to the nearest forestry agency, Providing facilities or infrastructure, safeguarding forests according to need, Investigating illegal logging which is carried out by the investigating officers of the Indonesian National Police, as well as certain Civil

Service Officials whose scope of duties and responsibilities cover the management of forests, are given special powers as investigators as referred to in the Criminal Law Procedures Code (Kuhap). In the special handling of forest-specific crime in a forest ecosystem, there are several stages that must be done by PPNS Forestry and Police Investigator namely: PPNS Forestry office for 1 (one) day or 1 X 24 hours. This is done to examine the perpetrators of criminal acts, sanctions and collect evidence obtained by PPNS Forestry. And also the PPNS Forestry make such information, the collection of evidence, Collection of evidence is done by PPNS Forestry to know the type of crime committed by PPNS Forestry and to know the status of the perpetrators of crime, PPNS Forestry conduct examination on: Suspects, Witnesses, Minutes of Examination (BAP), Submission of the suspect along with cover letter from PPNS Forestry to National police investigators. The sanctions against illegal logging are: Criminal sanctions are regulated in Article 78 of Law Number 41 of 1999 on Forestry and Article 42 - Article 44 of Regulation Number 45 of 2004 on Forest Protection. There are three kinds of punishment provided for in Article 78 of Law Number 41 of 1999 on Forestry and Article 42 - Article 44 of Government Regulation Number 45 of 2004 on Forest Protection. The punishment against illegal logging is Imprisonment. There are 10 categories of criminal offenses punishable by imprisonment and fines, provided for in Article 78 paragraph (1) to paragraph (11) of Law No. 41 of 1999 on Forestry, namely: a. Destructing forest infrastructure and facilities and the destruction of forests in Article 78 Paragraph (1) of Law Number 41 of 1999 on Forestry is determined two types of punishable criminal acts, that is deliberately destroying forest infrastructures and facilities (Article 50 Paragraph (1) Law No. 41 of 1999 on Forestry and deliberately causing forest degradation (Article 50 paragraph (2) of Law No. 41 of 1999 on Forestry The category of punishable persons who intentionally cause forest destruction is that everyone is granted permission, especially:

1. Permit for forest area utilization;
2. Business permits for the utilization of environmental services;
3. Timber and non-timber forest product utilization permit;
4. Timber and non-timber forest product collection permits.

A person who deliberately damages forest infrastructure and protection, and any person or legal entity granted a forestry business permit deliberately causing damages can be imposed maximum imprisonment of 10 (ten) years and a fine up to Rp 5.000.000.000,00, - (five billion rupiah).

b. Burning down the forest.

There are two categories of criminal acts mentioned in Article 8 paragraph (2) and paragraph (3) of Law No. 41 of 1999 on Forestry namely:

1. Deliberately burning the forest.
2. Because of negligence that causing forest burning.

Sanctions against these two deeds are different. For the person who deliberately burns the forest is punished with severe punishment, namely a maximum of 15 (fifteen) years imprisonment and a fine of not more than Rp. 10,000,000,000.00 (ten billion rupiahs), while those whose negligence caused a forest burning shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp 5,000,000,000.00 (five billion rupiahs).

c. Cutting down trees and having forest results products illegally.

In Article 78 paragraph (3) of Law Number 41 of 1999 on Forestry determined two types of criminal acts are violated namely:

1. Violating Article 50 paragraph (3) letter e.

Violation of the Article 50 paragraph (3) letter f. The elements of a criminal act set forth in Article 50 Paragraph (3) letter (e), i.e anyone, cut trees, harvest or collect forest products, within the forest and without the rights or permission of the competent authorities.

2. While the elements of criminal acts mentioned in Article 50 paragraph (3) letter f stated that anyone who receives, buys or sells, receives or trades deposits, or owns forest products, known or suspected to come from forest areas. The offender may be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp.5.000.000.000,00, - (five billion rupiahs).

d. Conducting mining and explore without permission.

There are two types of Article violated governed by Article 78 paragraph (5) of Law Number 41 of 1999 on Forestry namely Article 38 paragraph (4), and Article 50 paragraph (3) letter (e) of Law Number 41 of 1999 on Forestry. The element of criminal acts contained in Article 38 paragraph (4) of Law No. 41 of 1999 on Forestry, i.e. anyone, logging, open pattern and protected forest area. The element of a criminal act as regulated in Article 50 Paragraph (3) letter g. Law No. 41/1999 on Forestry, whoever conducts activities, general investigation or exploitation, exploitation (retrieval), mining goods, in forest areas and without the Minister's permission.

If the elements are fulfilled, the perpetrator shall be punished by imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp.5.000.000.000,00, - (five million rupiahs).

e. Having forest products without a certificate.

Article 78 paragraph (7) letter h of Law Number 41 of 1999 on Forestry reads: "Anyone who intentionally violates the provision as referred to in Article 50 paragraph (3) shall be punished with imprisonment of 5 (five) years and a maximum fine of Rp.10.000.000.000,00 (ten billion rupiahs). "The elements which are fulfilled in this article are those who, intentionally, transports, controls or owns forest products and are not equipped with a valid certificate of forest products.

f. Shepherding cattle.

In Article 78 Paragraph (8) of Law Number 41 of 1999 on Forestry is determined only one article which is violated, namely violating Article 50 paragraph (3) letter i. The elements of the criminal act as referred to in this provision, ie, who, intentionally, shepherding the cattle, within the forest area and not specifically appointed by the competent authority. If the elements are met, then the perpetrator can be punished with imprisonment for a maximum of 3 (three) months and a maximum fine of Rp.10.000.000,00, - (ten million rupiahs)

g. Bringing heavy equipment without permission.

Article 78 Paragraph (9) of Law Number 41 of 1999 on Forestry determines one Article which is violated by Article 50 Paragraph (3) letter j, whoever, intentionally, carries heavy equipment or other equipment, which unusual or unexpected, will be used to transport forest products, within forest areas, without authorization of authorized

officials. If these elements are met, the offender may be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp.5.000.000.000,00, - (five billion rupiahs).

g. Bringing the usual tools used.

In Article 78 Paragraph (10) of Law Number 41 of 1999 on Forestry, one article is violated, namely Article 50 paragraph (3) letter k. The elements of criminal acts stipulated in these two provisions, i.e., who, intentionally, carry commonly used tools, to cut or split the tree, in a forest area and without the permission of the competent authority. If such elements are met, the offender may be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp.1.000.000.000, 00 - (one billion rupiahs).

h. Disposing dangerous objects.

The elements of criminal acts contained in Article 78 paragraph (11) letter I of Law No. 41 of 1999 on Forestry are those who, intentionally, disposing objects, causing a damaging fire, endangering the existence or sustainability of the function of forest and in the Forest area. If the elements are met with the perpetrator, they shall be punished with imprisonment for a maximum of 3 (three) years and a fine of not more than Rp.1.000.000.000,00 (one billion rupiahs)

i. Bringing in protected wildlife and vegetation.

In order for perpetrators to be punished under Article 78 Paragraph (12) of Law No. 41 of 1999 on Forestry there are 7 elements to be met: whoever, deliberately, expels, carries, and transports, plants, and wildlife, protected Act, comes from the forest area and without the permission of officials from the authorized officials. If the seven elements are met, the offender may be punished with a maximum imprisonment of (3) years and a maximum fine of Rp. 1.000.000.000,00 (one billion rupiahs) Both imprisonment and fines may be stipulated simultaneously to the perpetrator who commits a violation in the field of forestry. In addition, in Government Regulation Number 45 of 2004 on Forest Protection is also regulated on sanctions, especially sanctions or imprisonment that can be applied to perpetrators who commit criminal acts in the field of forestry. There are two categories of criminal acts that can be punished by imprisonment and fines, as set forth in Article 42 and Article 43 of Government Regulation Number 45 of 2004 on Forest Protection namely: Carrying, controlling or owning forest products without validation of forest products. Article 42 Government Regulation Number 45 of 2004 on Forest Protection reads: "Anyone who violates the provisions referred to in Article 12 paragraph (2) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp.10, 000, 000, 000. 00, - (ten billion rupiah) as referred to in Article 78 paragraph 7 of Government Regulation Number 45 of 2004 on Forest Protection. "While included in the definition of forest products that are not equipped together with a certificate of the legality of forest products that are not equipped together with a letter with a legal statement of forest products is Article 12 paragraph (2) of Government Regulation Number 45 of 2004 on Forest Protection. Information on the origin of forest products and destinations for carrying-out shall not be in accordance with the letter contained in the certificate of validity of forest products. If the physical condition, whether the type, quantity or volume of forest products carried, controlled or owned or not entirely unlike the

contents contained in the letter validity of forest products, At the same time and place not accompanied and completed with the contents listed in the Legal Certificate of Forest Products, the validity of the validity of the forest products has expired, Forest products have no validation of forest products, Utilization and use of forest products without permission of the competent authority.

Illegal Logging Handling Efforts

Handling is efforts undertaken to prevent, confront or overcome a situation. Handling also mean the process, deeds and how to cope. Meanwhile, according to the Indonesian synonym or equality of the word handling is the solution, problem-solving, control and solution. Illegal logging causes forests to become barer. The existence of forests, in addition, to producing timber also producing non-timber forest products (climate, micro, water). This crime can have a tremendous impact on civilization and generations to come. The circulation of illegal logging in Indonesia is an organized crime because it involves many actors with various interests and networks, both in the Ministry of Forestry and in other agencies and in the domestic market network. Particularly abroad, the circulation of illegal forest products has involved a neat network of international organizations. Smuggling of illegal timber out of this country through the countries border. As for the mode of operation which is always used by this organized crime is dehiscent and/or broker through a cell system involving members of society to conduct illegal logging. The organization network consists of forestry officials, customs officials, police, TNI AD, AU, AL, Pelra, local government, prosecutors, courts, and politicians. Various efforts to overcome illegal logging and forest protection, whether in the form of operations, functional security, combined and operation in particular and various cooperation seems not optimal and even tends to lead to rampant illegal logging both protected areas and conservation areas. The eradication of illegal logging and the circulation of illegal forest products requires a confidential effort, so the President takes over this illegal logging issue by issuing instructions. With the issuance of Presidential Instruction Number 4 of 2005 on Eradication of Illegal Logging in Forest Area and Its Distribution Throughout the Territory of the Republic of Indonesia addressed to 18 government agencies. It is expected to handle illegal logging can be carried out properly.

Conclusions

The regulation on illegal logging as regulated in Law Number 41 of 1999 on Forestry is in Article 50 paragraph (3) which regulates the actions classified in illegal logging, Articles 78 and 79 on criminal sanctions against illegal logging and Article 80 regulating sanctions compensation and administrative sanctions against illegal logging. Factors that affect the occurrence of illegal logging is due to the weakness of the system of forest security and management, economic factors and social factors. Illegal logging effort is regulated in Presidential Instruction Number 4 of 2005 on Eradication of Illegal Logging in Forest Area and Its Distribution Throughout the Territory of the Republic of Indonesia addressed to 18 government agencies to take action in a coordinated manner.

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