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The Regulation of Legal Responsibility: Illegal Logging Perpetrators in Indonesia and Nigeria

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ABSTRACT

The study aims to analyze the offenders of illegal logging in Indonesia and Nigeria from its legal liability regulations. The study employed an empirical juridical approach involving literary analyses on legal materials used—the statutory regulations, scientific journals and other pertinent documents. The results shows that legal responsibility for illegal logging perpetrators in Indonesia are under the Law on Forestry, the Law on Prevention and Eradication of Forest Destruction, and the Law on Job Creation. In Nigeria, it is governed by several states, such as the Edo State Forestry (Amendment) Law 2002; Cross River State Forestry Commission Law 2010; and Taraba State Forestry Law 2010. Finally, the legal responsibility for illegal logging has been established in both countries. Accordingly, the Indonesian government is suggested to disseminate the latest laws and regulations, so that the public and corporations are aware of them. Meanwhile, Nigerian government is expected to immediately issue nationwide legislation on illegal logging, so that law enforcement is not relied solely on the requirements of each state.

Keywords: Accountability; Illegal Logging Crime.

INTRODUCTION

Indonesia is a common law country, as stated in the Republic of Indonesia's 1945 Constitution, which means that everything must be based or sourced from law, and that every criminal act occurs must be processed through legal channels. Accordingly, the law is seen as the only means of resolving a criminal act. Conforming with these provisions, one of the key principles is quality before the law for everybody. Therefore, everyone has the right to be recognized, to be guaranteed, to be protected, to have fair legal certainty, and to be treated equally before the law.¹

Law No. 18 of 2013—the prevention and eradication of forest destruction, specifically mentioned the legal responsibility of illegal logging perpetrators. Cumulative criminal sanctions, the impact or consequences in the forestry sector which are detrimental to the state's finances, economy and social affairs, should not only result in heavy sanctions, but should also be states concerned. "Orderly action plan" sanctions are required not only to fulfill a sense of justice, but also to formulate criminal sanctions in the forestry sector committed by civil servants or government

¹ Wahyu Sudrajad Dan Umar Ma'ruf, *Rekonstruksi Sebagai Upaya Mengungkap Tindak Pidana Pembunuhan Berencana (Studi Kasus Wilayah Hukum Polsek Banyumanik Semarang)*, Jurnal Hukum Khaira Ummah Vol. 12, No.3, Universitas Sultan Agung Semarang, 2017, Semarang, <https://jurnal.unissula.ac.id/index.php/jhku/article/view/1890>

officials, particularly officials with authority in the forestry sector who could potentially increase organized forestry crime. As a result, it is envisaged that there would be a specific sentence that differs from criminal offenses against persons.²

Forests are a natural resource controlled by the State of Indonesia that aims to improve the lives of all people, thus this purpose is critical. To provide benefits for all, the natural resources must be managed well. Unfortunately, the forests are not effectively managed that they lose their function.³

Illegal logging is one example of forest destruction. Illegal logging is the practice of illegally removing trees or forests, transporting, and selling wood or wood products without the approval of local authorities.⁴ Illegal logging has a negative impact on the current ecosystem, as well as the diversity of plant and animal species, resulting in extinction.⁵ Illegal logging practices that disregard forest preservation result in the destruction of irreplaceable natural resources. People's livelihoods will be directly impacted as well, because the loss of local biodiversity reduces state income.⁶

In fact, forests destruction is strictly prohibited, as stated in Article 12 letter (k) of Law Number 18 of 2013 that "Everyone is prohibited from buying, selling, accepting exchanges, accepting deposits and/or owning the proceeds of forests that are known to originate from illegal logging." In addition, criminal act against Illegal Logging is governed by Article 50 paragraph (1) of Law Number 41 of 1999 (Forestry), which states that "Anyone who intentionally damages forest protection facilities and infrastructure faces imprisonment for a maximum of 10 years, and a fine of a maximum of 5,000,000,000 (Five Billion Rupiah).

With the support of criminal elements, the legal foundation in the forestry sector is ideal to govern the sanctions for anybody who commits forest destruction and pollution. The penal provisions controlled in Article 50 and criminal punishments regulated in Article 78 of Law Number 41 of 1999 in conjunction with Law 19 of 2004 are among the measures designed to protect forests, notably to sustainably maintain forest function. Imposing heavy criminal sanctions aims to create a deterrent effect. The deterrent effect extends not only to those who commit forestry crimes, but also to those who engage in forestry-related activities. As a result, the perpetrator may no longer commit

²Nina Mirantie Wirasaputri, *Tindak Pidana Illegal Logging keterkaitan aparat dalam penegakan kebijakan hukum pidana Studi Kasus di Kabupaten Blora, Provinsi Jawa Tengah*, Progresif Jurnal Hukum Vol.13 No.1, Universitas Negeri Gorontalo, 2019, Gorontalo, DOI: <https://doi.org/10.33019/progresif.v13i1.1029>.

³Wardianto, *Penegakan Hukum Terhadap Tindak Pidana Illegal Logging Oleh Polri (Studi Kasus Di Polres Kampar, Skripsi, Universitas Islam Riau, 2020, Riau, <http://repository.uir.ac.id/id/eprint/8571>*

⁴Steven Dherry Susanto, *Penegakan Hukum Pidana Terhadap Pelaku Pembalakan Liar (Illegal Logging) Pada Hutan Di Provinsi Riau, Skripsi, Universitas Atma Jaya Yogyakarta, 2021, Yogyakarta, <http://e-journal.uajy.ac.id/id/eprint/24297>*

⁵Alimuddin Pohan, *Peran Dinas Kehutanan Kabupaten Labuhanbatu Utara Dalam Menanggulangi Illegal Logging Di desa Sungai Raja, Skripsi, Universitas Islam Negeri Sumatra Utara, 2021, Sumatra Utara, <http://repository.unisu.ac.id/13338/1>*

⁶Syerra Felia dan Fani Budi Kartika, *Jurnal Tindak Pidana Illegal Logging Ditinjau Dari Perspektif Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, Jurnal Lex Justitia Vol. 1 No. 2, Universitas Potensi Utama, 2019, Medan, DOI: <http://dx.doi.org/10.22303/lex%20justitia.1.2>*

crime. The legal aspects of law enforcement apply to every person and/or legal body (business). Furthermore, orders, restrictions, and threats of criminal fines against anyone found guilty might have prevention effect to the public.⁷

A solid policy from the authorized body is urgently needed, in addition to the implementation of the law in overcoming or preventing illegal logging. Policy implementation is a highly complex and politically charged process including the intervention of numerous stakeholders. In Leo Agustino,¹⁷ Van Meter and Van Horn define public policy implementation as measures taken by individuals, officials, government or private entities to achieve the aims outlined in policy decisions. Importantly, the policy objectives, activities that respond to goals, or the outcome must all be included in the implementation. In general, the legislation prohibiting illegal logging is insufficient; relevant officials must also enforce such policies. Thus, legal accountability could hit right on the target.⁸ If it is not, the perpetrators will not fulfill their legal responsibility due to backing support from certain parties who unregretful performing unlawful acts, despite the fact that they do it in a prohibited area.

Global deforestation has reached at an all-time high. Illegal logging is prevalent and is carried out by reckless persons. Accordingly, those who engage in illegal logging must face sanctions and be held accountable for activities taken one's own selfishness. Meanwhile, the government must maintain legal tenacity in prosecuting Illegal Logging criminals. Furthermore, society must strengthen environmental preservation, by means synergizing with government policies.⁹ Finally, the study aims to analyze the legal responsibility options for illegal logging perpetrators under Indonesian and Nigerian law.

METHODOLOGY

The study employed analytical methods incorporating empirical juridical legal research. Empirical juridical research is a legal research based on empirical facts derived from human behavior, by means verbal behavior—real behavior observed directly. Furthermore, the study is also analytic—detailing and assessing how legal accountability for Illegal Logging perpetrators can be carried out properly, referring to the laws and regulations applied in Indonesia and Nigeria.

⁷Bawono,¹⁰ D. T., & Mashdurohatun, A. *Penegakan Hukum Pidana Di Bidang Illegal Logging Bagi Kelestarian Lingkungan Hidup Dan Upaya Penanggulangannya*. Jurnal Hukum Vol. 26 No.2, Universitas Islam Agung⁷ 2018, Semarang, <http://research.unissula.ac.id/file/publikasi/210303039/81764.pdf>

⁸Cut Maya Aprita Sari dan Ayu Mahara, *Analisis Kebijakan dan Implementation Gap dalam Merespon Masalah Illegal Logging di Kecamatan Atu Lintang, Aceh Tengah*, Jurnal Ilmu Administrasi Publik Vol.4 No.2, Universitas Muhammadiyah Mataram, 2019, Mataram, DOI: <https://doi.org/10.25077/jakp.4.2.74-87.2019>

⁹Pieter Agustinus Mikael Rondo, *Quo Vadis Penegakan Hukum: Kewenangan Pemerintah Terhadap Lingkungan Hidup Dalam Kasus Illegal Logging Di Indonesia*, Jurnal Syntax Transformation Vol. 3 No. 4, Universitas Tarumanagara Jakarta Barat, 2022, Jakarta Barat, <https://jurnal.syntaxtransformation.co.id/index.php/jst/article/view/545/753>

FINDINGS AND DISCUSSIONS

1. Indonesian Law: Legal Responsibility for illegal logging perpetrators

Referring to Indonesian statutory regulations or positive law, the legal basis for responsibility are as follows:

a. Law 18 of 2013 concerning The Prevention and Eradication of Forest Destruction

Illegal logging perpetrators are held accountable under law No. 18 of 2013. Article 3 specifies the following objectives:

- 1) ensure legal certainty and provide a deterrent effect for forest destruction perpetrators;
- 2) ensure forests sustainability while maintaining them without harming the environment or surrounding ecosystems;
- 3) optimize forest product management and utilization by focusing on the balance of forest functions to establish a prosperous society; and
- 4) increasing the capacity and coordination of law enforcement officials and related parties in handling the prevention and eradication of forest destruction.

In addition, they can be subjected to Article 12 letters (d) and (m) jo, as well as Article 83 paragraph (1) letter a Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. Loading, unloading, removing, transporting, regulating, and/or possessing logging goods in forest regions without a licence is prohibited under Article 12 letter (d) of Law Number 18 of 2013.

Meanwhile, under Article 12 letter (m) of Law Number 18 of 2013, collecting, selling, receiving exchange, accepting deposits, storing, and/or having wood forest products originating from illegally removed or gathered forest lands is prohibited. Loading, unloading, removing, transporting, controlling, and/or possessing logging products in forest areas without a permit, as intended in Article 12 letter d, is punishable by imprisonment for a minimum of one year and a maximum of five years, as well as a fine of at least Rp. 500,000,000.00 (five hundred million rupiah) and a maximum of Rp. 2,500,000,000.00 (two billion five hundred million rupiah).

b. Law 6 of 2023 concerning Job Creation

The illegal logging perpetrators are also be held accountable under Law Number 6 of 2023, particularly Article 12 and Article 82. According to Article 12, no one may: a. carry out tree felling in forest areas that is not in accordance with business permits related to forest utilization; b. carry out tree cutting in forest areas without a business permit from the Central Government; or c. carry out illegal tree felling in the forest area.

Article 82 reads (1) An individual who intentionally: a. performs tree felling in Forest Areas that is not in accordance with Business Permits related to Forest Utilization as intended in Article 12 letter a; b. performs tree felling in a Forest Area without having a Business Permit as intended in Article 12 letter b; and/or c. performs illegal tree felling in a Forest Area as intended in Article 12 letter c, shall be punished with imprisonment for a minimum of one year and a maximum of

5 (five) years and a fine of at least IDR 500,000,000.00 (five hundred million rupiah) and a maximum of IDR 2,500,000,000.00 (two billion five hundred million rupiah).

Article 82 of Law 6 of 2023, paragraph (2) states if the action described in paragraph (1) is carried out by a person who has lived in and/or around the Forest Area for less than 5 (five) years and not continuously, the perpetrator faces imprisonment for a minimum of 3 (three) months and a maximum of 2 (two) years, as well as a fine of at least IDR 500,000.00 (five hundred thousand rupiah) and a maximum of IDR 500,000,000.00 (five hundred million).

Meanwhile, paragraph (3) states that corporations that: a. engage in tree felling in Forest Areas that is not in accordance with Business Permits related to Forest Utilization as intended in Article 12 letter a; b. engage in tree felling in a Forest Area without having a Business Permit as intended in Article 12 letter b; and/or c. engage in illegal tree felling in a Forest Area as intended in Article 12 letter c, shall be punished by: a. management with a minimum of 5 (five) years and a maximum of 15 (fifteen) years in prison and a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah); and/or Corporations are subjected to an aggravation of 1/3 (one third) of the criminal fine imposed.

2. Nigerian Law: Legal responsibility for illegal logging perpetrators

The following are the legal bases for illegal logging perpetrators attributed to Nigerian statutory rules or positive law:

a. Endangered Species Act, CAP E9 LFN 2004

This law includes measures for managing and conserving the nation's wildlife as well as for protecting some of its unique and endangered species. The 91 animal species specified in schedules 1 and 2 of the Act that are considered endangered wildlife are expressly prohibited from being hunted, captured, or traded under the Act. Although the Act 20 focuses more on the conservation of wildlife species that live in the forest than it does on protecting the trees from which unlawful logging takes place. The Act is brought up at this point in our examination of illegal logging because it is one of the main reasons why the animal species that the Act aimed to protect could become endangered.

b. National Parks Act 1999

The Act is a piece of legislation that offers a safe haven for endangered animal species and works to conserve the natural beauty and greenery of the nation. Six national parks were initially established by the National Park Decree of 1991, and the current Act included two more parks. In and near established parks, it prohibits tree-cutting, fishing, hunting, and campfires.

c. Edo State Forestry (Amendment) Law 2002

Without the permission of the Director of Forestry or another Forestry Officer formally authorised by him, it is a crime for anyone to: a) Uproot, fell, or otherwise damage any protected tree that is above two feet in girth while in a protected forest. A punishment of 200,000 naira or three years in prison, or both, is applicable to such an offence.

d. Cross River State Forestry Commission Law 2010

Whoever takes any forest produce from a forest reserve without a forest officer not below the level of assistant conservator having written permission; or who damages any tree by uprooting it, burning it, removing its bark or leaves, or doing anything else to it... Be liable for a summary... conviction to a fine of 200 Naira, a term of imprisonment of 12 months, or both. In addition, the court may order the offender to pay a sum equal to the fees and royalties due on any forest produce removed or damaged, as well as any additional sums that the court may deem a just compensation for any harm done.

e. Taraba State Forestry Law 2010

Without first receiving written permission from the prescribed officer, anyone who violates the following rules within a protected forest is subject to summary conviction and a fine of 30,000 Naira (N30,000) or three years in prison. In addition, the court may also order the offender to pay a sum equal to the fee and royalties due on any forest produce that was removed or damaged.

f. Customary Conservation Practices

The locals' lands experience extremely powerful tides. They have evolved old customs, practises, and laws that have been utilised to directly or indirectly govern the use and, as a result, ensure the conservation of natural resources by both natives and outsiders. They have great knowledge of their territories and natural resources. ⁹ Certain resources were protected from human exploitation by being devoted to deities. The use of agricultural techniques like shifting cultivation, the adoption and strict enforcement of customary rules concerning regime (payment of a specified amount) for stranger element who desired to engage in the exploitation of natural resources in communities other than one's own, and the restriction of the use of forest

CONCLUSION

⁸ In Indonesia, legal accountability for Illegal Logging perpetrators (positive law) is controlled under Law Number 41 of 1999 – Forestry, Law Number 18 of 2013 – Prevention of Eradication of Forest Destruction and Law Number 6 of 2023 – Job Creation. In Nigeria, on the other hand, it is only regulated by a few states, particularly the Edo State Forestry (Amendment) Law 2002; Cross River State Forestry Commission Law 2010; and Taraba State Forestry Law 2010. To summarize, different regulations apply in both countries due to disparities in government systems. Indonesia has

a unitary state system, which means that rules are centralized, but Nigeria has a federated state system, which means that each state can set its own regulations.

RECOMMENDATION

Accordingly, for the Indonesian government, it is suggested to disseminate the latest laws and regulations so that the public and corporations are aware of them. Meanwhile, Nigerian government is expected to immediately issue nationwide legislation on illegal logging, so that law enforcement is not relied solely on the requirements of each state.

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