

THE LAW ENFORCEMENT'S SYNERGY THROUGH ESTABLISHMENT OF INSTITUTION FOR THE PREVENTION AND ERADICATION OF FOREST DESTRUCTION

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Abstract - Massive forest destruction can cause deforestation which causes global warming which has an impact on the survival of the nation and state. The effort of Government is to make policies through Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. This article discusses the urgency of establishing an Institution for the Prevention and Eradication of Forest Destruction which is a mandate in the law. The research method used in this article is a normative juridical research method. The results of this article show that the Institution for the Prevention and Eradication of Forest Destruction is one of the mandates contained in Law Number 18 of 2013 and must have been existence for at least two years since the law was promulgated. However, until now this institution has not been formed. It can be said that Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction has not been implemented ideally. The basic idea that was developed through the design of the Institution for Prevention and Eradication of Forest Destruction will be placed below and responsible to the President consisting of elements from forestry, police, prosecutors and other related elements, such as elements from related ministries, experts/specialist and community representatives. Besides having a function of law enforcement, the authority of the Institution for the Prevention and Eradication of Forest Destruction also has the function of coordination and supervision

Keywords: Forest Destruction; Synergy; Law Enforcement.

A. INTRODUCTION

Environmental sustainability including forest areas is the responsibility of human being in carrying out their life activities, because they have the right to a decent living and a good environment. This is regulated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good living environment...". It is also stated in Article 9 of Law Number 39 of 1999 concerning Human Rights, that: "... everyone has the right to a good and healthy environment". Therefore, humans have a responsibility to manage and maintain the universe with full respect, including of protecting and preserving the environment and forest areas. Forests as an ecological part of human life have an important role in environmental sustainability. So that excessive destruction of forests can lead to deforestation which causes global warming. Tropical deforestation contributes as much as 90% of the current release of biotic carbon dioxide into the atmosphere[1], so deforestation is very pertrubing for the survival of the nation and state. The Government has promulgated Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. Forests play a crucial role in mitigating greenhouse gas (GHG) emissions and pollution. Bukata and Kyser (2007) found that forest has causality with environments[2]. Forest ecological products are closely related to ecological balance, and an in-depth under standing of the development dynamics of these products is crucial to the realization of sustainable development that integrates ecological, economic, and social benefits[3]. Article 1 point 3 of the Law stated that forest destruction is a process, method or act of damaging forests through illegal logging activities, use of forest areas without permits, or use of permits that are contrary to the intent and purpose of granting permits in forest areas that are has been determined, which has been appointed, or which is in the process of being determined by the Government. Therefore, perpetrators of illegal logging, mining without permits and plantations without permits are subject to criminal sanctions.




The criminal threat for perpetrators (individuals) of illegal logging as referred to Article 82 is a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of Rp. 500,000,000 (five hundred million rupiah) and a maximum of Rp. 2,500,000,000.00 (two billion five hundred million rupiah). Meanwhile, the criminal threat for perpetrators of (corporate) illegal logging is imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum Rp. 15,000,000,000.00 (fifteen billion rupiah).

In addition, the term organized forest destruction is also known which is stated in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, as forest destruction carried out by a structured group consisting of two or more people and acting together, at certain times with the aim of destroying forests, excluding groups of people who live in or around forest areas who carry out traditional farming and or logging wood for their own needs and not for commercial purposes. The perpetrators of organized forest destruction crimes are organized or structured groups or corporations.

According to Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, the crime of forest destruction act is an extraordinary crime. This is reinforced by data from the United Nations Environment Program (UNEP) report in collaboration with the International Criminal Police Organization (Interpol), which states that around 90% of crimes involving forest destruction through illegal logging are committed by organized crime and valued at up to 100 billion US dollars per year. Organized crime practices cause severe deforestation in several countries, such as Brazil, Indonesia, Uganda and the Democratic Republic of the Congo, which causes carbon emissions of around 17%. This emission figure is even higher than all emissions from ships, airplanes and land transportations around the world when combined together.

Meanwhile, based on the World Bank report, Indonesia's total losses due to the impact of forest destruction throughout 2019 reached US\$ 5.2 billion or the equivalent of Rp. 72.95 trillion or equivalent to 0.5% of Indonesia's Gross Domestic Product. This figure was obtained after calculating economic losses in 8 (eight) priority provinces, i.e Central Kalimantan, South Sumatra, South Kalimantan, Riau, West Kalimantan, East Kalimantan and Papua[4]. Law enforcement against organized criminal acts of forest destruction which is an extraordinary crime requires extraordinary laws or extraordinary measures which can be carried out through the establishment of a specific institution. This is as mandated in Article 54 of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction to establish an Institution for the Prevention and Eradication of Forest Destruction which is expected to prevent and eradicate the organized forest destruction crime.

This article has a research question, how to establish and design an institution for the prevention and eradication of forest destruction?. There are several previous articles regarding the eradication of forest destruction carried out in an organized manner. The first article analyzes about how a level playing field has been conceptualized, approached, and experienced in practice. It focuses on the adoption and implementation of EUTR and VPA in Europe, Indonesia, and Ghana. This article highlights about unsinergy in the practice from Stakeholder engagement excluded some factions of the private sector, notably SME operators, favoring select NGOs in general[5]. The second article explains about the densely cloud covered Congo Basin, this represents a major advantage for the rapid detection of small-scale forest disturbances such as subsistence agriculture and selective logging[6]. The third article results the settlement of existing cases that can not be able to provide a proper punishment to the perpetrators. Therefore, the use of the principle of *ultimum remedium* is important, so that it is appropriate in determining and applying optimal sanctions for violations of environmental law[7]. The fourth article explain many illegal logging in the activity of usage forest resources on a large scale regardless of the needs of future generations. The criminal policy formulation to enforce sanctions against perpetrators of illegal logging activities is the promulgation of Law Number 32 of 2009 concerning The Protection and Management of the Environment and Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction[8].



The novelty of this article is the urgency of establishing and designing an Institution for The Prevention and Eradication of Forest Destruction as contained in Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction so that it can realize the synergy of law enforcement.

B. RESEARCH METHODS

The research method used in this article is a normative juridical research method. Normative juridical research is a legal research method that is carried out by examining literature or secondary materials[9]. This article seeks to formulate the urgency of establishing and designing the existence of an Institution for the Prevention and Eradication of Forest Destruction as contained in Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. The data collection technique in this article was carried out by library research, while the data analysis method is carried out by collecting data through a review of library materials in the form of documents in laws and regulations. Analysis of the results of studies to answer the issues was conducted using a qualitative constructive approach. Qualitative research is research that is used to investigate, describe, explain, discover the quality or features of social influence that cannot be explained, measured, or illustrated through a quantitative approach[10].

C. RESULTS AND DISCUSSION

1. Organized Forest Destruction Criminal Act as an Extraordinary Crime

According to Muladi, the term of extraordinary crime is contained in Law Number 26 of 2000 concerning the Human Rights Court. The crimes referred to the form of Serious Violations of Human Rights, which consist of genocides and crimes against humanity where the definition of these crimes is the same as the definition provided for in Articles 6 and 7 of the Rome Statute[11]. Therefore the term extraordinary crime is always directed to genocide and against humanity's crime, furthermore based on the Rome Statute still added to war crimes and aggressions.

The nature and characteristics of crime as extraordinary crime according to Eddy O.S.Hiarej[12], are *first*, crimes committed in an organized and systematic manner. *Second*, the crime committed with a complex modus operandi and not easy to prove it. *Third*, crime related to the interests of power. *Fourth*, the crime related to the fate of many people, because state harmed finances are very useful for increasing people's welfare. Based on the consequences of the organized forest destruction's criminal act, the crime can be categorized as an extraordinary crime. The Indonesian government also uses the term extraordinary crime for organized criminal acts of forest destruction like other criminal acts, such as terrorism crimes, gross human rights violations, and narcotics crimes. Juridically, the Government issued Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction which mentions the criminal act of destroying forests as an extraordinary crime which is mentioned in its explanation: *First*, Law Number 18 of 2013 is the legal basis for eradicating of forest destruction organized crime's activities carried out by corporations, taking into account the previous legal instrument (Law Number 41 of 1999 concerning Forestry), cannot be used to arrest perpetrators of corporate crimes. *Second*, the act of forest destruction is conducted in organized and systematic manner (organized crime) on a large scale and cross-border country (transnational crime). *Third*, forest destruction is carried out with a modus operandi that is very difficult and not easy to prove, especially with the involvement of increasingly sophisticated and modern crime corporations. Therefore, the conception of a crime/crime of forest destruction as an extraordinary crime must be followed by extraordinary handling efforts, especially in regulation terms of the legal instruments (extraordinary law). It can be said that Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction is the answer to the implementation of Law Number 41 of 1999 especially in eradicating or reaching forest destruction crimes committed by corporations with organized activities.

David Steward[13] in his research revealed that organized illegal logging or organized forestry crime has become a world concern and even Interpol has formed a special program, namely the Environmental Crime Eradication Program with the target of natural resources and forestry

crimes' theft. In addition, Interpol also launched the LEAF Project dedicated to combating and eradicating all aspects of forestry crime which was formed as a consortium between Interpol's Environmental Crime Program and the Center for the Environment Program of the Americas (UNEP), Norway (UNEP GRID Arendal) with the aim of encouraging forestry crime law enforcement. The result of research further emphasize that organized criminal acts of forest destruction can be categorized as extraordinary crimes because they have a very broad and systematic impact. Because the crime of forest destruction is an extraordinary crime, it will also require extraordinary handling with extraordinary law, as already contained in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction as a special criminal law, including the need of extraordinary measures or measures in an effort to enforce the law on organized criminal acts of forest destruction.

Actually, in order to crack down the other crimes have been implemented effectively, for example in eradicating narcotics abuse crime with the establishment of the National Narcotics Agency (BNN) and handling the terrorism crime by formation of the National Counterterrorism Agency (BNPT). Therefore is very appropriate to establish an institution for the Prevention and Eradication of Forest Destruction as an effort to deal with extraordinary crimes of forest destruction.

2. Design for the Formation of an Institution for the Prevention and Eradication of Forest Destruction

It is very important to study the establishment of an institution as a law enforcement measure. This is because of forest destruction crimes are increased that involving corporations, both on a national and international scale. One of the mandates contained in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction is that an institution for preventing and eradicating forest destruction be immediately formed. The aim of formed of forest destruction crimes institution, especially those carried out in an organized manner or corporations, can be handled effectively, efficiently, and providely as a deterrent effect to the perpetrators. The mandate is contained in 4 (four) article formulations, starting from Article 54 to Article 57 of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction which can be described in tabular form as follows:

Table 1
Formulation Policy of Prevention and Eradication of Forest Destruction

Article	Formulation
Article 54	<p>(1) In the framework of implementing prevention and eradication of forest destruction, the President establishes an institution that handles prevention and eradication of forest destruction.</p> <p>(2) The institution referred to paragraph (1) are located under and responsible to the President.</p> <p>(3) The institution referred to paragraph (1) consist of:</p> <ol style="list-style-type: none"> a. element of the Ministry of Forestry; b. element of Indonesia National Police; c. element of Attorney of Indonesia; and d. other related elements. <p>(4) The implementation of the duties of the institution as referred to paragraph (1) is carried out based on the provisions in this Law.</p>
Article 55	<p>(1) The institution is led by a head and assisted by a secretary and several deputies.</p> <p>(2) The secretary as referred to paragraph (1) comes from element of the Government and has tasked to organize the administrative support for the implementation of the duties and responsibilities of the institution.</p> <p>(3) Deputy as in paragraph (1) has field:</p> <ol style="list-style-type: none"> a. Prevention; b. Enforcement; c. Public relations and cooperation;




	<p>d. Internal supervision and public complaint.</p> <p>(4) In carrying out its duties and authority, institutions can form task forces as implementing elements;</p> <p>(5) The task force carries out strategic eradication of forest destruction from investigation to prosecution throughout the territory of State of the Republic of Indonesia, including customs areas on the orders of the head of the agency and/or deputy;</p> <p>(6) Further provisions regarding the formation, organizational structure and working procedures of institutions are regulated in a Presidential Regulation.</p>
Article 56	<p>(1) Institutions that handle the prevention and eradication of forest destruction as intended in Article 54 paragraph (1) have duties:</p> <p>a. conduct probe and investigation of forest destruction's crime;</p> <p>b. conduct the administration of criminal act's probe and investigation of forest destruction;</p> <p>c. conduct campaign of anti-forest destruction;</p> <p>d. build and develop an integrated information system for preventing and eradicating forest destruction;</p> <p>e. empowering communities in efforts to prevent and eradicate forest destruction;</p> <p>f. conduct cooperation and coordination among criminal justice institution in eradication of forest destruction;</p> <p>g. announce the results of the implementation of its duties and authority periodically to the public in accordance with the provisions of statutory regulations; and</p> <p>h. permits the use of evidence of wood found as a result of operations to eradicate forest destruction originating from outside conservation forest areas for social purposes</p> <p>(2) Further provisions regarding the implementation of duties as stated in paragraph (1) are regulated in a Presidential Regulation.</p>
Article 57	<p>Implementation of prevention and eradication of forest destruction, the institution reports the result of its work to the House of Representatives of the Republic of Indonesia at least once every 6 (six) month</p>

Handling crimes or cases involving forest destruction in the integrated of investigation system is the good will from Government that support to the enforcement of environmental law. However, not all violating acts can be categorized as legal violations, but it could also just be an administrative violation.

3. Integrated Non-Judicial Handling of Forest Destruction Cases

Handling small cases of forest destruction so that they do not spread needs to be carried out using a non-justice approach. For example private land from generation to generation that has been cultivated or there are public facilities owned by a person and existed before the establishment of a forest area then the government designates or determines it as a forest environment. According to the regulations, this land is a forest environment to which the law applies forestry on it. So an alternative of integrative solution is needed based on Minister of Forestry Regulation number P.62/Minister of Forestry-II/2013 concerning Amendments to Minister of Forestry Regulation number P.44/Minister of Forestry-II/2012 concerning the Confirmation of Forest Environment which refers to rights on land issued by authorized officials prior to the publication of the map forest register, partial designation, forest confirmation and land use plan, then land rights are recognized and the existence are removed from the forest area. That is a small example of forestry case resolution with an integrated/integrated system without any serious of legal conflicts. The integration can be formed using elements consisting of elements forestry (experts), law



enforcement, local and central government and applicable to land conflicts that are physically ownership are proven clearly.

4. Integrated Handling of Investigations

Handling criminal acts of forest destruction can't be done alone, there needs to be synergy with various institutions that related sectors such as the Ministry of Energy and Mineral Resources, the Ministry of the Environment Live, Ministry of Agriculture and Ministry of Public Works to support enforcement law by Law Enforcement Institutions. The integration of the criminal justice system is formed in synchronization between law enforcement institutions for initiating an integrated criminal justice system in handling the prevention and eradication of forest destruction. The authority owned by the prevention and eradication of forest destruction institution provides an opportunity for deviations in implementation. Therefore, it is necessary strengthening the existing integrity system. The system is formed by selection through an independent, integrated team from leader to executive level field. Internal supervision includes reporting systems (whistleblower and justice collaborator) and support for effective law enforcement processes (for example, budget and infrastructure) need to be prepared to limit the authority of the institution. Increased capacity is required formation of prosecutors, investigators and judges specializing in natural resources and the environment life. This process can start from the certification process and intensive training (selective and special training), in order to build understanding about philosophical, sociological and juridical meaning of forest destruction.

Community involvement in the law enforcement process must be carried out consistently serious and planned. This can be done through building a public complaint handling system and direct networking with the community being monitored regularly. Network existence who have the ability to identify violations committed can help the agency's work in the law enforcement process. Through the existence of this educated network, monitoring can be carried out with the right standards so that cases come through the complaints system the community has data regarding strong indications of violations.

The integrated approach to handling cases carried out by forestry law enforcers will be effective, efficient, fast, and cheap if the entire case handling process is in one unit (one roof system). Currently, legal handling, especially the National Police, generally uses more than one legal aspects so that law enforcers have a perception or different norms so that the resolution of forest destruction cases, including use of the Forestry, Environmental Plantation or Mining Law considered ineffective in catching the perpetrators of forest destruction acts as alleged in the Forestry Law. By the law on preventing and eradicating forest destruction, crimes involving forest destruction, both mining and plantations, have been clearly categorized as a legal object of elements of forest destruction.

The approach to handling forestry crime should be inclusive legal approaches carried out with various related sectors. The Law on the Prevention and Eradication of Forest Destruction has synergistic potential with an integrated approach through approaches from various sectors. This enforcement must be supported by active community involvement through building trained networks as mandated in the Law on the Prevention and Eradication of Forest Destruction. Apart from community involvement, the Law on the Prevention and Eradication of Forest Destruction is expected to be implemented with a focus on organized crime and protect small communities and indigenous peoples who depend on them for their livelihoods forest. The implementation of this can only be created by forming institutional in a regulation that has strong support from the leadership and implementers with integrity.

The establishment of an Institution for the Prevention and Eradication of Forest Destruction will not be without impact. There will be several positive and negative impacts/implications of existence this institution. The positive impacts that there will be an institution that focuses on prevention and eradication of destruction of unaffected forests policies of technical agencies or other institutions in sector management efforts forestry and/or its security. Furthermore, in terms of

handling cases, there are extra authority that can help the performance of the elements support this institution for the effectiveness and functionality of orders/commands, thus law enforcement officials outside this agency, can be more focus handling other criminal cases that also need attention.

Meanwhile, the negative impacts include: there is a new budget burden due to having to prepare all the necessities the institution includes its infrastructure. The next impact is the potential for criminalization towards regional officials who own forest areas and various forest products, and then the potential for “null and void” against investigations carried out by investigators outside this institution, because forestry crime / forest destruction is very rarely a single crime, usually there are other parties involved either directly or indirectly due to the occurrence of a crime involving forest destruction, thereby affecting the law enforcement process being implemented.

D. CONCLUSION

The criminal justice system in the forestry sector places a basic role and authority of the Institution for the Prevention and Eradication of Forest Destruction which originates from the authority as mandated by law. The formation, position, scope of authority, duties and functions of Institution for the Prevention and Eradication of Forest Destruction are regulated in Chapter V Article 54 to 57 of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. To handle forestry crimes, the Institution for the Prevention and Eradication of Forest Destruction has the authority prevention and eradication or action. Preventive function implemented through fulfilling alternative wood sources or other needs by encouraging the development of productive forest plantations and technology processing and policy of eliminating opportunities by increasing the role as well as the community, participation in forest management and conservation, and carrying out campaigns against forest destruction and others. Meanwhile, the enforcement function is carried out by the Institution for the Prevention and Eradication of Forest Destruction, through enforcement law by carrying out probe, investigations, prosecutions until the examination process at trial, which is regulated by separate procedural law. Institute for preventing and eradicating forest destruction also has the function of coordinating and supervising the handling of actions forestry crime.

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