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Law Enforcement Towards Illegal Logging Perpetrators Based on Law Number 18 Of 2013 Concerning Prevention and Eradication of Illegal Logging (P3H)

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### **Abstract**

Illegal logging or illegal logging is logging, transporting or selling timber that is illegal or does not have a permit from local authorities. Deforestation, especially in the form of illegal logging, has caused state losses, damaged socio-cultural life and the environment, and increased global warming. Forest destruction has become a crime that has extraordinary, organized and transnational impacts carried out with a sophisticated modus operandi, has threatened the survival of people's lives so that in the context of preventing and eradicating effective forest destruction and providing a deterrent effect, a strong and capable legal basis is needed. ensure the effectiveness of law enforcement. The purpose of the article with the title "Law Enforcement Against Illegal Logging Perpetrators Based on Law Number 18 of 2013 concerning Prevention and Eradication of Illegal Logging (P3H" is to find out that the existence of this law can be used as an alternative to prevent acts of violating the law on forest crimes, especially illegal logging. and make it easier to deal with cases by referring to existing regulations in conducting research. The type of approach used is a normative legal approach.

Keywords: Law Enforcement; Forestly; Illegal Logging.

## A. Introduction

Forest is one of the life buffer systems which provide usefulness for all the people in the world. Therefore, forest sustainability must be maintained. The role of the forest is to harmonize and balance the global environment that the relationship becomes more important for the world and always prioritizes the national interest (Baso Madiong, 2017). Forest is the most valuable natural resource. The Indonesian forest is one of the most crucial things which have a huge effect on the world climate. The existence of protected forests in several developed countries is a reference for the sustainability of the earth. Forest can make a good balance towards the amount of carbon gas emissions and the effects of industrialization in various developed countries. The damaged forest condition needs serious handling to keep the environmental sustainability and protect the ecosystem.

According to the opening of UUD NRI 1945, the Indonesian state aims to protect the entire Indonesian nation and the entire homeland of Indonesia and to develop the general welfare, which means protecting the state over all aspects of the life of the nation and state. Those aspects also embrace the form of protection of forest

sustainability as an Indonesian asset. As said in the 1945 Constitution chapter 33 paragraph (3) that "Earth and water and the natural resources controlled by the country and used as much as possible for the welfare of the people". One of the natural resources controlled by the country is forest resources. As a public resource, forests become conflict-ridden resources, it can happen because there is a lot of involvement of people who have different interests over the forest resources involved. The conflict diversity includes conflict of interest utilization (purpose), management conflict, and ownership conflict (Baso Madiong, 2017).

The forest resources have to grant benefits optimally for the long-term welfare of the people, for both the current generation or the next generation, and still based on the benefits of forest sustainability. To get the optimal use of forests and forests area as the prosperity of people, in principle the entire forest and forest area can be utilized by looking at the characteristics, vulnerability, and nature and not changing the main function, namely the function of protection, production, and conservation. In order to continuity the main function of forest and forest condition, forest rehabilitation and reclamation efforts are carried out to relocate the existence of a sustainable forest (Abdul Muis Yusuf dan Mohammad Taufik Makarao, 2011).

Forest destruction caused by illegal logging has big damage to socio-cultural life and environment, state losses, and increasing global warming. Illegal logging has become a national issue, regional and international. Forest destruction has become a crime with big damage, organized and cross-border carried out with sophistication of the modus operandi, condemning the survival of the community so that it is effective in preventing and eradicating forest damage as well as give a deterrent effect which needs a strong legal basis and can provide the effectiveness of the law that is being enforced.

There are 3 (three) types of illegal logging, first is carried out by an individual or group of people, whether in a forest environment or far from the forest and do not have permissions or legal rights to tree logging. Second, illegal logging is done by the forestry company which violates the terms of the permit their hold. Third, it is carried out by some people on behalf of the people. Illegal logging become a public phenomenon that can happen anywhere in this world. Illegal logging is not a forbidden activity that secretly done by people, but it has become a daily job. The problem of illegal logging is not just a forest problem, but also multi-stakeholder problems which to resolve also require several related parties.

Legislation is not good and effective enough to handle the eradication of organized forest destruction. These considerations were finally drafted and enacted a Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H). Prevention of forest destruction is all the things that they can do to delete the forest destruction activity, while the eradication of forest destruction is all efforts made to legally follow up on the perpetrators of forest destruction, either directly or indirectly, as well as other related matters. Therefore, the writer has researched in the form of an article entitled.

The problem is the difference between das sein and das sollen. Then, the problem becomes several questions that have problematic characters and have to analyze to answer the question (Hanifah, 2018). According to the background of the article, the writer determines the problems to:

- 1. What kind of factors lead illegal logging to happen?
- 2. How does law enforcement respond to the illegal loggers based on Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H)?

The main purpose of the article entitled "Law Enforcement Towards Illegal Logging Perpetrators Based on Law Number 18 of 2013 concerning Prevention and Eradication of Illegal Logging (P3H)" is to find out the law enforcement existence that can be an alternative to avoid illegal acts of forest crimes, especially on illegal logging and facilitate the handling of cases by referring to existing regulations in conducting research.

#### В. **Research Method**

The research method is a basic tool in the development of science and technology. Thus, Research aims to uncover the truth in a systematic, methodological, and consistent manner (Zainuddin, 2016). The type of approach is a qualitative approach, it is the information from description, explanation, analysis technic and development of legal construction to implement laws and regulations that apply to illegal loggers in this country. This research also uses a normative legal approach. Normative legal research or it can calldoctrinal legal researchwhich aims to provide information that is structured in a clear and systematic manner related to the legal rules governing certain legal fields, analyze the relationship between one rule of law and another.

#### C. **Results and Discussion**

# **Some Factors Cause Occurring Illegal Logging**

Forest destruction is a method, process, or act of destroying the forest with illegal logging activities, forest areas are used without permission or the permits used are in conflict with the objectives, and the purpose of granting permits to forest areas that have been determined, or implemented is determined by the Government. Illegal logging is an activity of forest destruction which uses some forest products without a permit or in an illegal way. Forest areas used illegally are organized actions carried out in forest areas such as mining and/or plantations without the permission of the Minister. In Indonesia, illegal logging has already reached the worst phase in the world along with a large number of losses on a large scale socially, economically, ecologically, and politically. In Indonesia amount of forest destruction reach 2 (two) million hectares each year and the social, economic, and ecological losses including floods, landslides, climate change, and damaged forest/nature habitats reached 530 trillion rupiahs (Kartodihardjo, 2006).

Forest areas that have good wood potential plus weak law enforcers open opportunities for the community to extract the potential presence of wood. Many people think that the wood business can easily increase the economic needs that can produce greater results in less time than other occupations. The main reason why people do illegal logging is poverty which makes their life extremely dependent on illegal logging. Bad economic situation, the minimum number of jobs, low education, skills possessed, and the unavailability of venture capital makes people switch professions to become tree fellers. As stated by the Ministry of Forestry, around 60 million Indonesians depend on forest areas for their livelihood. Most people belong to

the less prosperous group. This kind of situation makes some investors approach many people to do illegal logging activity. Less alternative jobs, low education, and lack of skills make some of the people's livelihood depends on illegal logging activity. Because of this kind of situation, many investors take advantage instantly and force people to do illegal logging activity. This situation is getting worse with the existence of democracy in the reform era whose existence is misused for freedom by supporting anarchist activities with mass movements.

Haque said that poverty is one of the main reasons for illegal logging. Poverty brings a big impact to some villagers to doing an illegal logging command by a broker who provides capital with chainsaws and promises a salary that the villagers think is sufficient. They don't feel guilty about doing illegal logging because a big company does it so and commit violations and nobody followed up, because of it, they think they can do illegal logging too. Even though it is known that this act is an offense and causes damage, some people with bad economic conditions have no choice. Many people considered illegal logging can produce definite and massive results in less time than other occupations. The loggers usually get a direct payment of around IDR 500,000 to IDR 1,000,000 per week. They will get the fees in just 4 (four) to 5 (five) workdays. Working as illegal loggers does not require education, capital, experience, skills, or special knowledge that the community does not have. All the community needs will be provided by the broker while doing illegal logging, or if they need money for the family needs, they can borrow some money from the broker and they can use felled wood by logging to pay their debts (Haque, 2008). There is some confession from the people who do logging that Business in the wood sector is a really quick and easy job to earn an income, or even they can get more money which is good and better than other occupations.

Community involvement in illegal logging does not provide optimal benefits in the long term. Illegal logging is usually done by a group under the authority with a large interest and makes a bind society to force the people to do illegal logging and sell it to the broker. Therefore, the income of people who do illegal logging under the authority is less than the individually illegal logging or independent. The welfare of local people is not increasing or getting richer by doing illegal logging, but only providing profits to illegal timber traders and investors. In fact, a household makes illegal logging as their main job looks like more poverty than normal people. Illegal logging is rampant, some of which are caused by (Kurniawan dkk, 2013):

- a. Socio-Economic Problems
  - Most of the people whose lives depend on the timber sector continue to live in poverty. Investors use this poor condition to get the benefits and make society extremely dependent on a logging job. In this logging, the world community is accustomed to getting more income in a short period, because of it the people feel that they do not have any skill besides wood business, and it is getting hard to leave this kind of job.
- b. Institutional
  - The unstable status of forest areas is the trigger for conflicts that occur over land used by the community and it can be caused by the illegal logging on forest areas. Along with the low public awareness, the existence of forest areas becomes a forest state. These things are based on some reasons that most of the society's

livelihood depends on forest areas hereditary. So, it seems very difficult to give limits to the community regarding the business of using forest areas. Administrative controls and ineffective supervision have made it easier for illegal loggers to carry out the practice of "bleaching" timber from illegal logging by manipulating timber administration. Possibility of manipulating the administration of timber administration towards illegal loggers to process, transport, and trade timber resulting from illegal logging more safely and easily.

- c. High Demand for Woods
  - The high demand for wood for construction and public interest as well as the desire of consumers to get cheap wood prices encourage the need to be fulfilled by illegal logging practices.
- d. Weak Law enforcement

The weakness of law enforcement is the main reason why perpetrators do this kind of job blatantly and continuously make illegal logging their main job. The society's livelihood that depends on illegal logging is used by some investors due to avoid arrest as the main actor of the illegal logging. In addition, as a form of community resistance to disciplined illegal logging practices.

Illegal logging practices have made forest resources existent and non-existent. At least, there are 6 (six) factors that let illegal logging practices happen on a macro basis, namely (Muh Askal Basir, 2016):

- 1) Economic crisis;
- 2) Changes in the political order;
- 3) Weak coordination of law enforcement officers;
- 4) There is collusion, corruption, and nepotism;
- 5) The price system for timber produced by illegal logging is weaker and lower;
- 6) Disparity in Illegal Logging.

In Indonesia, illegal logging activity gives a bad impact on society. Illegal logging has an impact on the environment, namely state finances that are harmed and on the social life of the community. There is no benefit or positive impact on illegal logging, except for parties or actors who carry out illegal logging.

# 2. Law enforcement towards illegal logging perpetrators based on Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (P3H)

Lawrence M. Friedman said that structure, substance, and legal culture influence the effectiveness of law enforcement. Lawrence M. Friedman provides an understanding of the legal structure, namely the steps taken by law enforcement officials to enforce the law, such as prosecutors, judges, and police. The legal substance is embodied in the content of the enactment of laws and regulations. Then, legal culture is habits that exist amid certain societies and are passed down from the previous generation to the latest generation that is respected by the community. In this regard, Soerjono Soekanto states there are 5 (five) factors that bring a big impact to law enforcement, the first one is the constitution factor, factors that encourage law enforcement, law enforcement factors, cultural factors, and community factors. Those five factors are linked to each other and become the essence of the law being enforced and as a benchmark for the effectiveness of law enforcement (Soerjono Soekanto, 2013).

Illegal logging is one of the crimes in forestry sector, which means perpetrator do the logging in illegal way on the country's forest area, or in daily language, everyone can say it is wood theft. There are 3 (three) aspects that cannot be separated from one another including the legal system for law enforcement in the forestry sector, which involve, first is law substance according to constitution number 18 of 2013 and implementing regulations and other laws and regulations related to forestry law. Second, is law structure which is law enforcement officers consisting of investigators, public prosecutors, or judges (including ad hoc judges) and legal advisers. Have law enforcement officers carried out their work properly according to their respective duties and authorities and coordinated as well as possible which is included in the top part of the integrated criminal justice system? (integrated criminal justice system). Third, law culture is directly connected to the social character which includes individuals, social groups, Non-Governmental Organisation, social organization, and universities to enforce the law in the forestry sector.

Forest areas and natural resources which state property that related to forest, forest resources, and forest areas will be managed by the government. The government has the power to decide the forest areas or change the status of forest areas. Then, the government also has the power to establish and regulate legal relations between forests or forest areas, forest resources, and their societies. The last one, the government has the authority to regulate legal actions related to forestry Salim, 2013). So it is just not the ownership that country can get, the state can also let the government manage the forest areas, forest resources, and the forest itself. Government authority to grant permits to other parties to carry out activities in the forestry sector. Deviant legal regulations in the forestry sector can be implemented in stages such as permit application, forest management, and utilization of forest resources. Or even included in forest resources that are transported and later will be traded.

Fauzi (2010) states that almost all the forest areas are under the control of the government. Then, the government also give the management rights to the private parties and individual with permit procedure. The government's right to exercise control over forest resources is not absolute if it is public goods because there are still other people's rights and the right to maintain the existence of the forest (enforcement). The effort to stop illegal logging was never stopped by the committee. The act of authority possessed by the regional government is limited authority. Even though Indonesia has made changes to its government system, from a centralized government system to a decentralized government system, the transfer of authority from the central government to regional governments is a limited delegation of authority. The authority of regional governments which try to exterminate the illegal logging are divided into 5 (five) factors based on the authority of the regional government as regulated in the laws and regulations relating to forestry laws or regional government laws. The authority of the local government in efforts to eradicate illegal logging that occurs in an area includes:

- a. Permission granted;
- b. Local regulations;
- c. Control;
- d. Collaborate with relevant agencies;
- e. Be critical and firm in granting and revoking forest management permits.

The perpetrators have usually bribed the officials to get permits and do illegal logging activity. In Indonesia, this kind of thing is not something new. Sadly, the fact tells that results of illegal logging are more profitable than official logging or logging with permits as well as the applicable legal provisions and make investors more interested in illegal logging activities. As an institution that protects the society from the central government to local governments or provincial governments and district/city governments, it is a form of counseling by the central government. The government is responsible for the people of Indonesia, which includes the earth, water, and all its contents as mandated by the 1945 Constitution of the Republic of Indonesia. The weakness of law enforcement is the reason why people do illegal logging hereditary and continuously and it makes illegal logging become the main job of society (Fauzi, 2010). Some aspects of law enforcement are complex to contact the perpetrators of illegal logging because:

- The location of illegal logging is quite far from the forest areas;
- At the field level as a whole the perpetrators are local communities; and b.
- There is a form of resistance done by the security forces towards the community c. as perpetrators during enforcement activities.

Law enforcement which getting weak against several industries that carry out illegal wood processing, In addition to the difficulty of controlling the practice of illegal logging which is the main supplier of wood raw materials for the existence of the industry as a whole, It is also caused by the difficulty of controlling several industries that done illegal wood processing. In an attempt to stop this activity, the problem of processing the timber industry is complex because it's hard to catch the main perpetrators, and there is strong resistance from the whole community who does the woodwork when there are enforcement activities. The control efforts tend to deal with the surrounding society, which almost all of their daily needs depend on their work, and it makes all the community will resistance if there are enforcement activities.

Law No. 18 of 2013 about P3H is Lex Specialist from the forestry law. As stated in Article 12 letters a and b of the P3H Law that states: "Everyone is banned:

- Do the logging tree without permission from forest utilization in the forest area; and
- b. Do the logging tree without the issuance of permit ownership by officials on their authority".

At first glance, the existence of this article is almost the same as Article 50 paragraph (3) letter e of the Forestry Law which states that "Everyone is prohibited from cutting down trees or harvesting or collecting forest products in forest areas without rights or permission from the authorized official."

Illegal logging become a bad crime because the effect of this activity can interfere with economic aspects, socio-cultural and environmental. This kind of crime is a form of potential threat to social order and can lead to tensions and some problems in the dimensions of society, then the fact of forest crime is an act that deviates from the rules that are the basis of life and social norms. The cause of illegal logging is not only damaging for the forest areas' society but also damaging for the national, regional, and international society. This is because forests are not only owned by specific communities or countries, but the forest is the lung of the world owned by universal communities.

Crimes in the forestry sector, law enforcement has not run as effectively as most people want. The settlement of cases in some areas, logging tends to occur in collusion between law enforcement officers, security forces, and the employers. It caused all law enforcement to come to a standstill (Indra Tihirang, 2013). There are a few law enforcement officers who support syndicates and groups that commit logging crimes, where its eradication has become more difficult. The weakness of law enforcement raises a big concern in society. Therefore, the government's performance in law enforcement by its apparatus involved in handling cases of illegal logging and criminal offense in the forestry sector. In law enforcement, the government must be consistent with the actions of perpetrators of law violations in the forestry sector. This consistency is the main capital to solve every nation's problem, including the economic crisis, banking, and other legal crises that have not been resolved.

The actions of managing and utilizing forests on the one hand will provide some benefits for the whole community (Rugun Romaida Hutabarat dkk, 2018). However, if the act of managing and utilizing the forest in the wrong way will result in losses, and it will give big losses for the whole community. One of the losses is there is no legal basis that used as the main basis for not committing arbitrary acts against the forest. Therefore, the existing legal rules are demanded in the regulation of forest utilization and management, and the role of the State is very much needed when forests are managed to maintain their sustainability. The existence of laws to protect and regulate forests is expected to reduce forest damage which has major implications for environmental harmony. The establishment of a legal basis will be nice if it is supported by criminal aspects that can regulate and limit the sanctions given to anyone who carries out forest destruction.

Criminal offense in forestry is the type of specific criminal offense which regulated in the criminal provisions. There are 2 (two) characteristics that can indicate the existence of a special criminal law, first, each person or special subject, second is a special act(bijzonder lijkfeiten). The specific subject in special criminal law means as a special perpetrator or subject as seen in the military criminal law which is only intended for military groups. Then, the two special crimes in special criminal law are defined as crimes committed specifically in certain fields as fiscal law which is intended for several fiscal crimes. Forestry crime is a special crime that includes the criminal law with special actions which include several forestry crimes including timber forest products obtained. Forestry crime in general linked with several elements of general criminal acts that exist in the Criminal Code can generally be classified in various forms of crime, including:

- a. Forgery (articles 261-276 Criminal Codes);
- b. Thievery (articles 362 Criminal Codes);
- c. embezzlement (articles 372 377 Criminal Codes); and
- d. Destruction (Article 406 to Article 412).

In the forestry sector, those crimes include over cutting which logging is carried out outside the concession area, overcapacity which is the quota logging target is carried out excessively and its use is carried out with a total/clear logging system, while the ownership of the contents is a selective logging system. The data on the number of registered timbers is smaller than the actual total (Irawan Harahap, 2013).

In the article 82, any forest utilization activities without a permit will be subject to criminal sanctions. Article 82 of the P3H Law states that:

- An individual who intentionally:
  - felling of trees in forest areasand do not have a permit to utilize the forestas stated in Article 12 letter a;
  - felling of trees in forest areasand do not have a permitas issued by the b. official with the authority as stated in Article 12 letter b; and/or
  - logging of trees carried out in forest areas that are carried out against the c. law as referred to in Article 12 letter c shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years as well as a minimum fineIDR 500,000,000.00(five hundred million) and a maximum fine IDR 2,500,000,000.00(two billion five hundred million rupiahs).
- 2) In the case of a criminal act as referred to in paragraph (1)implemented for individuals who live and are in and/or in local forest areas, the perpetrator is sentenced to a minimum imprisonment of 3 (three) months and a maximum of 2 (two) yearsand/or a minimum fine of IDR 500,000.00 (five hundred thousand rupiah) and a maximum of IDR 500,000,000 (five hundred million rupiahs).

However, the existence of the forestry law is used as the basis for enforcing the law on illegal logging, but in Indonesia, it is still not optimal. Illegal logging always linked to the weakness of law enforcement, which islaw enforcers only have business with the owner of the wood transportation equipment or the surrounding community. Meanwhile, for large-scale investors who take action both inside and outside the logging area, it is still difficult to be charged with several legal provisions that are enforced.

#### D. Conclussion

In Indonesia, some factors let illegal logging happen, such as social and economic problems, institutions, and high demand for wood. On a macro level, there are 6 (six) factors that let the practice of illegal logging, including changes in the political order, economic crisis, weak coordination between law enforcement officers, collusion, corruption, nepotism, and disparity in criminalization, and the weak system of lower prices for illegally harvested timber. The law enforcement against criminal acts in the forestry sector has not been implemented as effectively as many people want. In some areas to resolve logging cases, collusion still tends to occur between law enforcers and security forces, and businessmen, it caused all law enforcement to come to a standstill. The weakness of law enforcement is the main reason why perpetrators do this kind of job blatantly and continuously make it their main job with illegal logging activity. The existence of laws that regulate and protect forests based on Law no. 18 of 2013 about Prevention and Eradication of Forest Destruction (P3H) is expected to be able to suppress forest damage that occurs and has major implications for environmental harmony. The establishment of a legal basis will extremely good if it is supported by criminal aspects that can be regulated and provide limits on sanctions imposed on anyone who destructions forests.

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