



Juridical Analysis of Environmental Law Enforcement in Forestry Crimes Regulation in the Regional Autonomy

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ABSTRACT

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This paper discusses the UUPH as the basis of Indonesia's environmental policy to prevent and overcome environmental pollution and destruction. A good and healthy environment is created; ecological law enforcement uses state administrative law instruments, civil law, and criminal law. At the law enforcement level, there are many obstacles. Due to the unclear formulation of offenses and various sanctions, the proof is quite difficult, except in being caught red-handed. Strictly speaking, preventive and repressive law enforcement measures against forest and land fires cases and their ecosystem impacts are still not adequate. This fact can be seen from the lack of resolution of forest and land burning issues that have been submitted to the court, and even almost none of the perpetrators of forest and land logging were charged with the legal sanctions above. As for the culture of law culture, the cases of forest and land fires are certainly large-scale corporations, which can even control political power. The state, in this case, state administrators, should consistently target corporate crime and focus on law enforcement efforts using available instruments.

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1. Introduction

Efforts to enforce environmental laws that are appropriate, consistent, and sustainable will provide a strong foundation for the implementation of development, both in the economy, politics, socio-culture, and defense and security. Environmental law enforcement is closely related to the government's ecological policies, where sometimes there are wrong government policies that cause controversy in their implementation. According to David Trubeck, law-making and enforcement is a "purposive human action." (Erina and Yanis 2020)

In other words, lawmaking is never autonomous and sterile. Still, it is full of group interests or potential forces in a country that want their claims to be legalized or protected in law, because of regulations, according to Schuyler. Is "een neerlag van politieke machtsverhoudingngen" (Handayani et al. 2017) (sediment from the exchange between political forces in society), or in Karl Marx's view,

he calls it a representation of the capitalist parties. (Ketut Rachmi Handayani 2013)

The various factors above contributed to the environmental crisis from multiple aspects, especially in the forestry sector. Forest is an integrated ecosystem in the form of a stretch of land containing biological natural resources dominated by trees in their natural environment, which cannot be separated from one another. Forests are determinants of life support and a source of people's welfare, which is increasingly declining. (Sudarwanto and Handayani 2019a)

Therefore its existence must be maintained continuously to remain eternal and handled with noble character, justice, dignity, transparency and professionalism, and responsibility. Indonesia's forests are the lungs of the world because Indonesia has forests of 53% of the world's total area. (Soediro, Handayani, and Karjoko 2020) The type of forest is a tropical forest owned by Indonesia throughout its

archipelago, especially in Sumatra, Kalimantan, and Irian Jaya. Forests from Indonesian forest products are the world's foremost suppliers of tropical timber. A record of the size and number of forests in Indonesia and the products from these forests, especially the wood, which is the main product, has resulted in many illegal logging and forest fires. (Utomo and Karjoko 2018)

Environmental issues that have often been discussed in recent years are the depleting ozone layer and increasingly uncertain climate change. The main problem in several countries is forest fires. The question of forest destruction to forest burning that occurs in areas is felt by the people living around the forest and neighboring countries, resulting in losses for citizens of neighboring countries of Indonesia. The act of burning the forest is deliberate for oil palm and HTI plantations by the company and a million-hectare land project. The burned areas have been cleared through the land clearing process as part of the preparation for the development of plantation areas. This means that forest fires are triggered by fires that are deliberately set up. (Akhmaddhian, Hartiwingsih, and Handayani 2017)

A similar opinion was conveyed by I Gusti Ayu Ketut Rachmi Handayani, that the destruction of forests and land that occurred due to illegal logging (Illegal Logging) in Java, Kalimantan, Sumatra, Papua, and other areas had caused drought in the dry season, floods and landslides in the rainy season, as well as the priceless loss of biodiversity. Forest and land destruction are also caused by land clearing by burning, which causes forest fires and mining businesses that ignore the principles of preserving environmental functions. (Akhmaddhian, Hartiwingsih, and Handayani 2017)

Currently, illegal logging forestry crimes are alleged to have also become organized and systematic crimes because these crimes involve individual people and have involved a group of people with their respective roles. Illegal logging is also included in the list of transnational crimes by the United Nations that must be prevented and eradicated. It involves producing countries, countries where timber laundering occurs, and consumer countries. Because of their extraordinary nature (extraordinary crimes), including actors from the field level, investors, financial institutions, and state apparatus as protectors, handling forestry crimes or illegal logging requires a unique system to prevent and combat them. (Kuncoro et al. 2019)

The UUPLH is the basis of Indonesia's environmental policy because laws and all other implementing regulations as instruments of policy (instrumenten van beleid) are needed for legal certainty and reflect the importance of law for solving environmental problems. Environmental policy traditional instruments are established by the government through various means that are preventive, or at least restoration, up to the regular ecological quality stage. (Utomo and Karjoko 2018) The problem of forestry crimes did not just disappear after the birth of the UUPLH. This can be seen in WALHI's annual report; for January-September 2015, there were 16,334 hotspots. In 2014 there were 36,781. Based on the 2015 NASA FIRM data, there were 24,086 hotspots, and 2014 there were 2014. Forest and land fires caused residents to catch ISPA. (Leonard et al. 2020)

There are 20,471 people in Jambi, Central Kalimantan 15,138, South Sumatra 28,000, and West Kalimantan 10,010 people. According to the Executive Director of Walhi Kalteng, the fires were caused by too extensive corporate land tenure patterns. Of the 15.3 million hectares of Central Kalimantan, 12.7 million hectares (78%) are controlled by investment. Both HPH, palm oil, and mining. In 2015, there were 17,676 hotspots in Central Kalimantan. Mostly in the concession. However, law enforcement efforts are still lacking. Only 30 companies were investigated, ten were sealed, but it is not clear what kind of follow-up. (Karjoko 2017)

Illegal logging resulted in state treasury losses of more than the US \$ 7 billion (approximately Rp. 70 trillion) between 2007 and 2011, totaling more than the US \$ 2 billion or Rp 20 trillion in total. In addition to the losses caused by bad governance, wrong governance also has implications for violations of people's rights, which depend on forests for their livelihoods through the allocation of forest use and the application of boundaries for forest industry concessions. (Sudarwanto and Handayani 2019a)

These rights include the rights of communities recognized by domestic law to meaningful consultation and fair compensation for the loss of access to land and forests, rights of indigenous peoples under international law controlling communal lands and natural resources, and rights recognized by the international community on safety of a person, there is no interference with personal life to privacy, family, and home, and to enjoy personal property comfortably. Mismanagement and

corruption related to forestry and agricultural concessions have also fueled land conflicts, sometimes resulting in violence, between companies and local communities. (Jaelani et al. 2020)

2. Results and Discussion

On the one hand, environmental law enforcement through litigation has not fully supported efforts to eradicate forestry crimes in a preventive and repressive manner, for example, from several ecological cases, such as 2014 to 2016 criminal court decisions by the District Court. A good judge's decision does not only contain formulations but must be supported by material aspects. Judges' decisions must be filled with scientific theories, especially in the fields of formal law and temporal law that can be applied in court hearings appropriately and correctly. It can then be stated in the form of a decision that can fulfill a sense of justice, provide legal certainty, and provide benefits to interested parties and society. (Sukmoro, Sulistiyono, and Karjoko 2019)

Judiciary is the enforcer of law; in concrete terms, there is a claim for rights or the occurrence of a dispute or violation, whose function is carried out by an independent body and free from any influence by providing binding decisions and aimed at preventing "eigenrichting." An ideal judge's decision must contain elements of *Gerechtigheit* (justice), *Zweckmassigkeit* (usefulness), and *Rechtssicherheit* (legal certainty). The judge's decision must be fair, but it must also be useful for the person concerned and the community, and guaranteed standard lock. (Jaelani et al. 2020)

Different laws and regulations in the field of environmental impact conservation and control have been established quite intensively over the last three decades, both as International Environmental Law and as National Environmental Law with the UUPH as a law. On the basis of the 24th principle of the Stockholm Declaration, which enables governments to enter into negotiations and to conclude international environmental agreements, the international community must begin to work hard to improve environmental legislation. (Kuncoro et al. 2019)

Several international treaties or agreements have been drawn up and some of which have been ratified by the Government of Indonesia, creating an international mechanism for dealing with environmental problems. Full outcomes have not yet been achieved by the Government's commitment to motivate regulatory environmental law enforcement as an effort to stop (preventive) as well as an attempt

to impose legal penalties (repressive) against environmental pollution offenders. Different environmental enforcement requirements, starting from laws and legal derivative goods, including legal arrangements in the regions in line with regional autonomy, in addition to the consistency factor of the regulation. (Handayani 2015)

There are two types of concepts of legal certainty, according to Gustav Radbruch, namely legal certainty by statute and legal certainty by or from law. Useful laws are laws which have succeeded in providing a lot of legal certainty in society. Legal clarity must remain valuable since the law offers another legal mission, namely legal justice and legislation. Legal certainty of practice, meanwhile is obtained if the law is as lawful as possible. There are contradictory clauses in the law (laws are founded on a structure that is reasonable and practical). The law is based on *rechtswerkelijkheid* (a serious legal condition) and there are no words in that law that can be construed differently. (Sudarwanto and Handayani 2019b)

A legal norm is a true legal norm, according to Hans Kelsen. Hans Kelsen makes a sharp distinction between what is) and what should be. Law deals with form (formal), not substance (material), for Kelsen. Therefore a normative-juridical approach that is free from non-jurisprudence must be used in the application of the law. For him the (positive) written law is a requirement that governs humans as reasonable beings. In this case, it is not how the law should be that is challenged by the law, but what the law is, so legal clarity can be assured. The thinking of Hans Kelsen is renowned for his theory of *munis law*. (Wibowo, Sulistiyono, and Karjoko 2019)

Van Der Pot claimed that the criteria of a material nature and formal requirements must be fulfilled for the validity of an administrative stipulation. Legal assurance is a question that can only be answered, not sociologically, normatively. Normative legal certainty is when, since it rules simply and logically, a law is made and promulgated. It is explicit in the sense that it does not trigger doubts (multi-interpretation) and is rational in the sense that it becomes a set of norms with other norms in order not to interfere with or establish conflict between norms. Conflict of rules resulting from rule ambiguity can take the form of standard compromises, reduction of standards, or distortion of standards. (Pratiwi 2019)

Legal certainty refers to a transparent, permanent, uniform and consistent law enforcement structure, the operation of which cannot be compromised by

arbitrary circumstances. In accordance with Article 28 D, paragraph 1 of the 1945 Constitution, the value of legal certainty is that all persons are entitled to recognition, assurances of fair legal security and certainty, and equal treatment before the law. (Ivnaini 2019)

According to Satjipto Rahardjo, "Sicherheit des Rechts selbst" (certainty about the law itself is legal certainty. The definition of legal certainty is linked to four aspects. Second, the legislation is positive which means that it is law (gesetzliches Recht). Second, that this legislation is based on evidence (Tatsachen), not a formulation of the decision that the judge will carry out later, such as goodwill, courtesy. Third, the evidence must be clearly formulated in order to prevent misunderstanding of context and to be easy to enforce. Fourth, the positive rule must not be constantly altered. Mochtar Kusumaatmadja claimed that efforts should be made to ensure legal certainty in human relationships in society in order to attain order, because without legal certainty and order, it is impossible for humans to optimally grow their talents and skills provided to them by God. (Calinoiu et al. 2018)

The law should be viewed as a system in order to better understand law-related issues. Lawrence M. Friedman, speaking of law as a framework, pointed out that there are components included in the law, namely: structure, substance, and legal culture. These three subsystems are the system's binding system and establish the position of the legal system at the center of the community of the nation as a whole. One of them can be seen from the perspective of the legal system itself in order to research the problem of forest fires which occurred in Indonesia. (Erina and Yanis 2020)

In this case, one by one, the three components of the legal system and their association with legal certainty will be clarified as one of the law's goals. Written or unwritten rules or conditions that are understood and followed in compliance with the set of rewards, opportunities or penalties and penalties that are available are rules in use. There are three layers of these provisions, which are nested, operational, collective and statutory. The actors carry out everyday operations at the organizational stage, which are operational in nature. The actors jointly create and determine, at the collective stage, which provisions are to be implemented at the operational level. Who will participate and what policies will be enforced at the collective level are determined at the constitutional stage. (Ketut Rachmi Handayani 2013)

3. Conclusion

Based on the description that has been discussed in the previous discussion, it can be concluded that at the level of law enforcement there are many obstacles, due to the unclear formulation of offenses and various sanctions, the proof is quite difficult, except in the case of being caught red-handed. Strictly speaking, preventive and repressive law enforcement measures against cases of forest and land fires and their ecosystem impacts are still not effective. This fact can be seen from the lack of resolution of cases of forest and land burning that have been submitted to the court, and even almost none of the perpetrators of forest and land logging were charged with the legal sanctions above. Meanwhile, forest and land fires continue to occur every year, especially during the dry season. The impacts of forest and land fires are not only ecologically and economically detrimental, but also cause haze distribution which has significantly disrupted and hampered the smooth transportation of land, sea and air. Interfere with breathing, and cleanliness of the airspace to neighboring countries. In the culture of law, the cases of forest and land fires must be large-scale corporations, which are even able to control political power. The state, in this case state administrators, should consistently target corporate crime and focus on law enforcement efforts using available instruments.

References

- Akhmaddhian, Suwari, Hartiwingsih, and I. Gusti Ayu Ketut Rachmi Handayani. 2017. "The Government Policy of Water Resources Conservation to Embodying Sustainable Development Goals: Study in Kuningan, Indonesia." *International Journal of Civil Engineering and Technology* 8(12): 419–28.
- Calinoiu, Delia et al. 2018. "Parametric Modeling: A Simple and Versatile Route to Solar Irradiance." *Energy Conversion and Management* 164: 175–87.
- Erina, Pane, and Adam Muhammad Yanis. 2020. "Reconstruction of Mining Policies on Justice in Lampung Province." *Bestuur* 8(2): 139.
- Handayani, I. Gusti Ayu Ketut Rachmi, I. Ketut Seregig, Teguh Prasetyo, and Ardi Gunardi. 2017. "The Application of Article 359 of the Criminal Code in the Investigation of the Death of Post-Operative Patients." *Journal of Advanced Research in Law and Economics* 8(5): 1517–25.
- Handayani, I Gusti Ayu Ketut Rachmi. 2015. "Formulasi Legislative Drafting Yang Ideal Dalam Rangka Mewujudkan Negara Hukum Yang Demokratis Dan Menjunjung Nilai-Nilai Lingkungan." *Jurnal Hukum Ius Quia Iustum* 22(3): 373–93.
- Ivnaini, Andesgur. 2019. "Analisa Kebijakan Hukum Lingkungan Dalam Pengelolaan Pesisir." *Bestuur* 7(2).
- Jaelani, Abdul Kadir, I Gusti Ayu, Ketut Rachmi, and Lego Karjoko. 2020. "The Impact of Corona Virus on Supply Chain of Halal Tourism Management in West Nusa Tenggara." 9(5):

- 823–31.
- Karjoko, Lego. 2017. "Setting of Plantation Land Area Limitation Based on Social Function Principles of Land Cultivation Rights To Realize Social Welfare-Promoting Plantation." *Jurnal Dinamika Hukum* 17(1): 1.
- Ketut Rachmi Handayani, I Gusti Ayu. 2013. "Pembentukan Peraturan Daerah Berbasis Lingkungan Dalam Rangka Mewujudkan Praktik-Praktik Good Governance Di Daerah." *Yustisia Jurnal Hukum* 2(1): 66–73.
- Kuncoro, Aditya Bagus, Gusti Ayu Ketut Rachmi Handayani, Yudho Taruno Muryanto, and Lego Karjoko. 2019. "Urgency of Government Protection on Consumers in the Concept of the Rule of Law." *International Journal of Advanced Science and Technology* 28(20): 331–35.
- Leonard, Tommy et al. 2020. "Legal Review of Share Ownership in a Joint Venture Company." *International Journal of Innovation, Creativity and Change* 11(8): 332–45.
- Pratiwi, Ayu Dian. 2019. "Jurnal Bestuur." 7(2): 1–14.
- Soediro, I. Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko. 2020. "The Spatial Planning to Implement Sustainable Agricultural Land." *International Journal of Advanced Science and Technology* 29(3 Special Issue): 1307–11.
- Sudarwanto, Al Sentot, and Gusti Ayu Ketut Rachmi Handayani. 2019a. "The Implementation of Land Provision for Development for the Public Interest in Merauke Land Papua Province." *International Journal of Advanced Science and Technology* 28(20): 269–75.
- Sudarwanto, Al Sentot, and I. Gusti Ayu Ketut Rachmi Handayani. 2019b. "Reconstruction of Society Endeavoring through Establishing the Live Environment Cadre as an Embrio of Service Suplying Institution of the Resolution of the Live Environment Dispute out of the Court." *International Journal of Advanced Science and Technology* 28(20): 560–67.
- Sukmoro, Edi, Adi Sulistiyono, and Lego Karjoko. 2019. "The Politic of Law of PT. Kereta Api Indonesia (Persero) Track Access Charge Policy Based on Justice." *International Journal of Advanced Science and Technology* 28(20): 353–61.
- Utomo, Rinto Nur, and Lego Karjoko. 2018. "Role of the Shareholders within the Composition of Authentic Deed by the Notary." *International Journal of Multicultural and Multireligious Understanding* 5(3): 307.
- Wibowo, Dwi Edi, Adi Sulistiyono, and Lego Karjoko. 2019. "The Application of the Shifting Burden of Proof Principles as an Alternative Consumer Protection Effort Due to Unfair Property Advertising." *International Journal of Advanced Science and Technology* 28(20): 507–9.