

# Criminal Law Sanctions for Illegal Logging of Forests Carried Out by Corporations Based on Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage

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by Ismaidar Ismaidar

## Criminal Law Sanctions for Illegal Logging of Forests Carried Out by Corporations Based on Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage

Ismaidar <sup>1</sup>, T. Riza Zarzani <sup>2</sup>, Arnovan Pratama Surbakti <sup>3</sup>

<sup>1,2,3</sup>Panca Budi University Medan Master of Law Study Program

Email: [ismaidar@dosen.pancabudi.ac.id](mailto:ismaidar@dosen.pancabudi.ac.id), [tengkuriza49@gmail.com](mailto:tengkuriza49@gmail.com),  
[aarnovan26@gmail.com](mailto:aarnovan26@gmail.com)

**Abstract** Forest areas are open natural resources that have potential and an important role in supporting human needs. However, as time goes by, natural resources in the forestry sector are starting to decline due to the large number of business entities or corporations carrying out illegal logging activities. If this is allowed to continue continuously, damage to Indonesia's forests will increase and will have a major impact on the economy due to decreasing state income. The research method used in this research is a normative legal method which examines Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction and other laws as research material by taking a statutory approach (Statute Approach) obtained from literature studies (Library Research). This research aims to determine the impact of illegal logging carried out by corporations and to determine criminal legal sanctions for illegal logging carried out by corporations based on Law number 18 of 2013 concerning Prevention and Eradication of Forest Damage. From the problem formulations above, it can be concluded that corporate crime resulting from illegal logging activities is a major crime and is very dangerous and threatens the lives of humans, animals and plants.

**Keywords:** Criminal Law Sanctions, Illegal Logging, Corporations, Forests.

## INTRODUCTION

### Background

Indonesia is a country that is rich in abundant natural resources. Natural resources provide many benefits for human survival. So humans are required to manage forests well in order to maintain the availability of natural resources. The role and position of forests plays a big role in supporting development in Indonesia

Indonesian forests are forests which are usually called the lungs of the world which contribute oxygen for the survival of living things which can absorb dangerous carbon and produce oxygen needed by humans. The decreasing forest area can cause greenhouse gas effects and the extinction of various types of forest species. Land damage caused by illegal logging is a common enemy for those who realize how important forests are for human survival. Not only do forests provide many benefits to humans, they also have a big influence on the country's foreign exchange. In fact, Indonesian forests are rich in diversity and various types of populations in them. However, currently this population is threatened due to forest destruction by illegal cutting of trees. Illegal logging is one of the factors causing damage to forests and the environment.

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\* Ismaidar, [ismaidar@dosen.pancabudi.ac.id](mailto:ismaidar@dosen.pancabudi.ac.id)

The rapid development in the economic and trade sectors means that the modus operandi of various types of crime also develops so that they become a complex unit, making environmental crimes increasingly diverse, especially criminal acts committed by corporations. The occurrence<sup>26</sup> of environmental crimes committed by corporations makes the concept of enforcing corporate criminal sanctions play an important role in ensuring the accountability of these corporations.

Etymologically, the word corporation is a translation of<sup>9</sup> corporatie (Dutch), corporation (English) and corporation (Germany)<sup>3</sup> which means body or body, or in other words a body that is made into a person, a body that is obtained by human actions as opposed to humans that occur according to nature. . In civil law, criminal law experts always use the term corporation or corporation (English) which is referred to as legal entities or<sup>5</sup> corporation. A corporation is an organized collection of legal or non-legal entities. The form of corporation is a limited liability company (PT), cooperative, foundation or firm,<sup>13</sup> limited liability company without legal entity rights, partnership and association.

<sup>23</sup> The position of corporations as legal subjects in criminal law cannot be separated from<sup>13</sup> social modernization. According to Satjipto Rahardjo, social modernization is a modern society that is large and developing in formal social, economic and political life. Social life requires clear, detailed and organized arrangements even though problems in life do not decrease.

The regulation of corporate responsibility in criminal acts of illegal logging is regulated in Article 82<sup>15</sup> to Article 105 of Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage. If corporate management is responsible<sup>9</sup> for criminal acts, the corporation is also<sup>21</sup> capable of being responsible. Corporations can be held accountable for criminal acts of illegal logging based on their<sup>19</sup> work relationships or other relationships within the scope of the corporation.

Illegal logging and forest encroachment have caused serious damage to forest resources. In fact, as time goes by, we can see that illegal logging activities are now becoming more open, transparent and even systematically involving many parties in order to reap personal profits for corporations. Usually those who play a role in illegal logging activities are loggers, financiers, transportation and business security providers from bureaucratic circles, government officials, police officers and the Indonesian National Army (TNI).

Even though there are laws and regulations governing illegal logging, the facts on the ground are that there are still many large-scale and unlawful forest utilization activities that violate

forest protection norms. The rampant illegal logging that occurs requires strict law enforcement against the perpetrators so that they provide a deterrent effect and prevent them from repeating their actions. But in reality, the capacity for implementing and enforcing the law on illegal logging crimes is still very low and there is no firmness so that this activity continues continuously. <sup>25</sup>Based on the background of this problem, the author felt interested in writing a scientific work entitled "Criminal Legal Sanctions for Illegal Logging of Forests Carried Out by Corporations Based on Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction." .

### <sup>11</sup>Formulation of the problem

Based on the background description above, the problem formulation that will be studied in this writing is:

1. What is the impact of illegal logging of forests carried out by corporations?
2. What are the criminal legal sanctions for illegal logging (Illegal Logging) of forests carried out by corporations based on <sup>1</sup>Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage?

### <sup>7</sup>RESEARCH METHODS

The method used in this writing is the <sup>6</sup>normative legal method. According to Philipus M Hadjon, normative legal research is research aimed at finding and formulating legal arguments through analysis of the main problem by conducting research based on a problem approach. This research uses <sup>27</sup>a statutory approach and a conceptual approach in the literature based on what is written in statutory regulations (law in book). The writing comes from <sup>29</sup>primary legal materials and secondary legal materials which are carried out by studying statutory regulations and other literature <sup>14</sup>in the form of books, journals and research results related to the formulation of the problem in the research, namely the impact of illegal logging of forests <sup>9</sup>carried out by corporations and criminal law sanctions for illegal logging (Illegal Logging) of forests carried out by corporations based on <sup>1</sup>Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage. Which was analyzed descriptively qualitatively with the aim of describing and drawing conclusions from various conditions and situations regarding illegal logging.

## DISCUSSION

### The Impact of Illegal Logging Carried Out by Corporations

Forests are an invaluable natural resource because they contain biodiversity as a source of wood and non-wood products which function to regulate water management and prevent flooding, erosion and soil fertility in order to protect biological nature for the purposes of science, culture, recreation and tourism. Based on the Law -In Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry, the definition of forest is a form of land that is integrated into one ecosystem in the form of a deposit of biological natural resources filled with trees in the middle of its natural environment and not separated.

The management and utilization of forest products has become a center of attention at both the national and even global levels. Certain parties take advantage of forests to benefit themselves without thinking about the impact of their actions in the future. One example of unwise use of forests that can cause huge losses is illegal logging activities which are usually called illegal logging.

*Illegal logging* or illegal logging is an illegal logging activity that is carried out in violation of statutory regulations which is very disturbing and dangerous. Forest utilization is an activity or activities that are directly related with forests as assets that can be used or taken by individuals or community groups maintain forest sustainability by not destroying it and of course through valid permits from authorized officials.

As for The elements contained in the crime of illegal logging are the activities of cutting wood, transporting wood, processing wood, selling wood, buying wood, destroying forests and the existence of legal regulations that prohibit and conflict with applicable legal regulations. The occurrence of illegal logging practices in Indonesia is caused by several factors, including:

1. The factor of granting permits for forest exploitation rights (HPH) by naughty, greedy and greedy government elements to naughty entrepreneurs who carry out illegal logging practices. There is real flirting and corruption among officials who have authority,
2. Factors of job availability and poverty that encourage people to commit wood theft, especially people who live around forest areas,
3. The factor is weak law enforcement that regulates illegal logging practices. Where the law is sharp downwards and blunt upwards, meaning there is no legal bias towards small communities. Naughty individuals will escape the law, while people who are weak and do not



have the power of the law will be processed and served punishment in accordance with applicable regulations. The light sanctions given to perpetrators who are proven to have committed criminal acts of illegal logging,

4. Factors such as increasing supply and demand for wood. The large capacity of the wood industry causes an increase in demand for wood supplies which leads to excessive wood harvesting. The ability to supply or supply wood (supply) which is based on the annual cutting quota determined by the government is not commensurate with the high demand for wood (demand),
5. Factor of low quality of human resources (HR). Low education and low awareness who think about their own interests and don't want to think about the impacts that will occur, and
6. The factor is weak supervision by the apparatus so that when violations and irregularities occur by certain officials, it will be difficult to be identified as a clear witness. This is caused by a lack of forestry personnel which results in weak supervision in forest areas.

If this case of deforestation and wood theft is allowed to continue, it will have an impact on forest destruction which will cause various negative consequences. The following are the impacts of illegal logging carried out by individuals and corporations, namely:

1. Impact on the Country. Can cause large losses to the state. The impact of illegal logging will reduce state income from the land and building tax sector and a number of royalty permits and
2. Impact on the Environment. It can cause flood disasters, decreasing water resources, extinction of flora and fauna, loss of soil fertility and global warming.

#### **Criminal Law Sanctions for Illegal Logging Carried Out by Corporations Based on <sup>1</sup>Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Damage**

Illegal logging activities or activities are a form of crime involving environmental destruction which is strictly regulated in <sup>12</sup>Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, namely in Article 1 paragraph 16 which reads "Environmental destruction "Life is the action of a person that causes direct or indirect changes to the physical, chemical and/or biological properties of the environment so that it exceeds the standard criteria for environmental damage." Meanwhile, according toLaw <sup>6</sup>of the Republic of Indonesia Number 19 of 2004 concerning Amendments to Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry, what is meant by forest destruction is the occurrence of

physical changes, physical or biological characteristics that cause the forest to become disturbed and unable to function according to its function. .

Corporation or a legal entity is a legal creation, namely giving <sup>11</sup> the status of a legal subject to an entity in addition to a legal subject in the form of a natural human being. The development of corporations as legal subjects is to facilitate and determine who is responsible for the occurrence of criminal acts and who <sup>3</sup> can be held accountable. And in the development of criminal law in Indonesia <sup>3</sup> there are 3 (three) systems of corporate responsibility as criminal subjects, including:

- a. The corporate management does the action so <sup>3</sup> the management is responsible;
- b. The corporation is the maker, so the management is responsible; And
- c. Corporations as makers and responsible.

According to Bambang Poernomo, the concept of criminal law against a legal entity or corporation can be seen from the broadening of punishment approach, namely the theory of "recht person" interests. The interests regulated or protected by law can change based on time, circumstances and in line with advances in legal awareness in the world. society, thus opening up <sup>20</sup> the possibility of legal entities as legal subjects in the reform of the new criminal law codification (KUHP).

The sanctions that must be applied to corporations are fines and additional penalties. Criminal fines are a civil relationship when someone is harmed, they may demand compensation for damages, the amount of which depends on the extent of the loss suffered. Additional criminal penalties are criminal penalties that add to the main criminal penalties imposed in certain cases in the confiscation of certain goods. Meanwhile, administrative sanctions are a policy that aims to create order, provide legal certainty and guarantee the protection of everyone's rights from disturbances. Sanctions are the provision of punishment commensurate with the actions committed by environmental destroyers, especially in the forestry sector.

Corporate criminal responsibility cannot be separated from the form of action carried out by the corporation. Wrongful acts committed by corporations may not necessarily be punished because in criminal liability there is a principle of no criminal liability without a mistake (geen straf zonder schuld). The judge's assessment of corporate errors is contained in <sup>16</sup> Article 4 of the Regulation of the Supreme Court of the Republic of Indonesia <sup>4</sup> Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, namely:

1. Corporations can be held criminally liable in accordance with the Corporate criminal provisions in the law governing Corporations;
2. In imposing a crime on a corporation, the judge can assess the corporation's mistakes as stated in paragraph 1, including:
  - a) The corporation can obtain profits or benefits from the criminal act or the criminal act was carried out for the benefit of the corporation;
  - b) Corporations allow criminal acts to occur; And
  - c) The corporation did not take the necessary steps to prevent it. Prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.

The imposition of criminal sanctions on corporations that carry out illegal logging according to Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction is regulated in Article 12 letter h with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, as well as 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).

Several ways Things that can be done to overcome forest problems include:

- a) Carry out reforestation or replanting deforested forests;
- b) Applying a selective logging system in cutting down trees;
- c) Environmental manipulation and pest control to restore forests in Indonesia
- d) Intensive forest planting is the best choice because it can be predicted. So that wood needs can be calculated without destroying good natural forest habitat.
- e) Applying severe sanctions for those who violate provisions regarding forest management. For example, with monitoring and enforcement efforts carried out at the TKP (crime scene), namely at the location of the forest area where illegal logging is carried out;
- f) Another effort that can also be made is by optimizing the levy collection points, which are often found on the sides of the road;
- g) out of town. The levy post officer only does the job of withdrawing money from trucks carrying wood, that's all. In addition to withdrawing the levy money, you should also check the documents that legalize the transportation of wood.



- h) Tracing the terminal/final destination for transporting illegal wood, and usually that destination is a company or industry that needs wood raw materials. This effort is considered quite effective in tackling illegal logging. Companies or industries like this can

## CONCLUSION

From the descriptions of the problem formulation above, the author can draw the conclusion that:

1. The impact of illegal logging carried out by corporations is causing large losses to the state, causing flood disasters, decreasing water resources, extinction of flora and fauna, loss of soil fertility and global warming.
2. Criminal legal sanctions for illegal logging carried out by corporations based on <sup>1</sup>Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest <sup>2</sup>Destruction are regulated in Article 12 letter h with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, as well as 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).

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