



CORPORATE CRIMINAL LIABILITY IN ILLEGAL LOGGING DUE TO EXPLOITATION OF NATURAL RESOURCES

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Abstract: The practice of illegal logging represents a significant challenge to the sustainability of Indonesia's forests. This is because the negative impact of this practice extends beyond the loss of biodiversity to encompass climate change and the welfare of local communities. The main objective of this research is to determine the criminal liability of corporations involved in illegal logging due to the exploitation of natural resources. The method used in this research is normative analysis, which includes an approach to legislation and a case approach. The findings indicate that despite strict regulations, the effectiveness of criminal law in preventing illegal logging is constrained by several operational challenges. These challenges include corruption, inadequate resources, and lack of public awareness. Therefore, corporate criminal liability must be strictly enforced to effectively address the detrimental impacts of illegal logging practices on the environment and local communities while ensuring the sustainability of natural resources for future generations. The findings of this study indicate the need for increased collaboration, stronger law enforcement measures, and greater community engagement. They can contribute to developing more effective forest protection policies and preventing illegal logging in Indonesia.

Keywords: Corporate Liability; Exploitation; Illegal logging; Natural Resources

1. Introduction

Indonesia, a country rich in natural resources, especially forests, is often the target of uncontrolled exploitation of natural resources.¹ It can be said that the exploitation of forest resources is a form of forest destruction. However, forest destruction in this form is not classified as an illegal act because the damage to the forest is through a structured and systematic mechanism that goes through a mature planning or management process by considering efforts to protect the forest itself, such as by reforestation or regular logging with the Indonesian selective logging system (TPI) and so on². Illegal logging is one form of exploitation of natural resources that is detrimental and threatens environmental sustainability, resulting in forest degradation and loss of habitat for various species of flora and fauna. This action, in addition to threatening the preservation of ecosystems and the survival of flora and fauna, can also harm the state from an economic point of view and harm the communities around the forest that receive impacts that will arise, such as floods, landslides, droughts, and others.

¹ Elita Rahmi et al., *Land Resource Conflict Resolution Model (Agrarian) Based on Local Wisdom of Indigenous Peoples of Jambi Province* (Atlantis Press SARL, 2023), https://doi.org/10.2991/978-2-38476-194-4_11.

² Fuzi Narindrani, "Upaya Masyarakat Dalam Pencegahan Dan Pemberantasan Pembalakan Liar Di Indonesia," *Jurnal Penelitian Hukum De Jure* 18, no. 2 (2018): 241, <https://doi.org/10.30641/dejure.2018.v18.241-256>.



Corporate crime may be perpetrated by individuals in the context of employment relationships or other relationships undertaken on behalf of and for the benefit of the corporation within the scope of its business or activities, whether acting individually or collectively. In Law No. 18 of 2013 concerning preventing and eradicating forest destruction, corporations are designated as subjects of criminal law.³ This research identifies the issue of corporate crime as an important topic that needs to be studied in depth. In addition to the widespread involvement of corporations in illegal logging, the question of how to capture and sanction the corporations involved has become increasingly urgent.

This study aims to examine and analyze corporate criminal liability in illegal logging due to the exploitation of natural resources, analyze the effectiveness of the application of criminal law in practice, and provide recommendations to improve the effectiveness of criminal law enforcement against corporations in cases of illegal logging due to the exploitation of natural resources in Indonesia.

Forest destruction has now developed into a criminal act that has an extraordinary impact, is organized, and involves many parties nationally and internationally; existing data and information show that illegal logging is still high. GAKKUM noted that unlawful logging cases that could be handled through law enforcement from 2015 - 2022 were highest in 2020 with 124 cases, and in the following year, there was a decrease but not significant, namely 110 cases (2021) and 70 cases (2022) respectively compared to other instances of environmental destruction.⁴ Based on these facts, this research is essential to be conducted to find out how corporate criminal liability in illegal logging can affect the effectiveness of law enforcement so that it can provide a deterrent effect to corporations and prevent the rampant illicit logging that occurs due to the exploitation of natural resources.

2. Research Method

This research employs normative legal research methods, utilizing both statutory and case approaches. The normative research method is a research approach that focuses on the analysis of legal norms that regulate the object of research. This research utilizes a literature review based on primary sources relating to corporations, illegal logging operations, and natural resources. These sources include legal and regulatory frameworks, particularly Law No. 41/1999 on Forestry, Law No. 18/2013 on Prevention and Eradication of Forest Destruction, and Law No. 32/2009 on Environmental Protection and Management. The analysis was also conducted regarding the 1945 Constitution of the Republic of Indonesia, jurisprudence, case studies, and information from online media. This case approach allows for identifying challenges that affect the successful application of criminal law in practice and providing appropriate recommendations to improve law enforcement in cases of illegal logging due to natural resource exploitation.

³ Rulanty Tirta Hakim Tiranda, Herlyanty YA Bawole, and Grace Yurico Bawole, "Penegakan Hukum Kepada Korporasi Sebagai Pelaku Pembalakan Liar Berdasarkan Undang-Undang Nomor 18 Tahun 2013 Tentang," 2013, <https://www.bpkp.go.id/berita/read/2332/11840/Kasus>.

⁴ Wayah Aji Kurniawan, "Penanggulangan Pembalakan Liar Dengan Hukum Pidana Dan Penerapannya," *Unes Law Review* 6, no. 1 (2023): 1845–52, <https://doi.org/https://doi.org/10.31933/unesrev.v6i1>.

3. Discussion

In light of the discussion above, it can be concluded that the following topics will be addressed in this study: firstly, an explanation of the criminal act of illegal logging due to exploitation of natural resources; secondly, an examination of corporate liability in unlawful logging due to exploitation of natural resources based on applicable laws and regulations; and thirdly, an analysis of the challenges contained in the enforcement of criminal law against corporations in illegal logging. Forests are a natural resource bestowed by God to the Indonesian people, and as such, they are priceless natural wealth. It is, therefore, of the utmost importance that the Indonesian people take care of and utilize these forests properly. By the 1945 Constitution of the Republic of Indonesia, which establishes the state as the primary authority responsible for regulating and using the country's natural resources for the benefit of its citizens, the implementation of forestry policies is inherently imbued with a populist, just, and sustainable spirit. Consequently, the implementation of forestry must be conducted based on the principles of benefit and sustainability, populism, justice, togetherness, openness, and integration, based on noble morals and accountability.

3.1. Criminal Act of Illegal Logging due to Exploitation of Natural Resources

The practice of illegal logging in Indonesia has persisted since the colonial period, continuing until the timber industry's decline following the fall of the New Order. During the greatest prosperity for the timber industry, from 1970 to 2000, Indonesia's tropical rainforests were subjected to extensive destruction. The prevalence of illegal logging can be attributed to the existence of a well-organized trade system, both within the country and abroad. Indonesia's role as a major timber producer is pivotal within the global supply chain, serving both developed and developing countries.⁵

Illegal logging is a criminal offense that has a profoundly detrimental impact on many levels. In addition to the environmental consequences, it also has ramifications for the community's social, economic, and cultural aspects. This activity is typically the result of excessive and unregulated exploitation of natural resources, particularly within the forestry sector. Those engaged in illegal logging usually seek to generate substantial profits by destroying forest ecosystems without regard for the rule of law or the impact of their actions on environmental sustainability. Forests that should be maintained for the balance of the ecosystem and the lives of local communities become damaged and are thus unable to fulfill their function as a life support system.

The exploitation of natural resources, particularly timber and other forest products, is frequently conducted by large corporations that pursue maximum profits by exploiting legal loopholes or the lack of adequate supervision. These activities involve local companies and international networks with the capital and access to export timber from illegal logging. This practice results in a significant loss of forest cover endangers biodiversity and exacerbates the climate crisis by increasing greenhouse gas emissions due to deforestation.

⁵ Rinanda Aderiswanto, "Tindakan Hukum Terhadap Kasus Pembalakan Liar Di Hutan Riau," *AL-BAHTS: Jurnal Ilmu Sosial, Politik, Dah Hukum* 2, no. 1 (2024): 26–34, <https://doi.org/10.32520/albahts.v2i1.3084>.

To prevent and address illegal logging, the government must demonstrate a commitment to strengthening regulations and law enforcement. Furthermore, reforms are necessary regarding the management of natural resources. This must adopt a more sustainable approach, with the active participation of local and indigenous communities. Furthermore, the government can leverage modern technology to monitor forests and track timber from illegal logging through legal timber certification and digital tracking systems.

3.2. Corporate Criminal Liability in Illegal Logging due to Exploitation of Natural Resources based on Applicable Laws and Regulations

Initially, Indonesian criminal law did not regulate corporations as legal subjects. The principle of corporate responsibility is not explicitly regulated in the Criminal Code (KUHP). However, with the increasing prevalence of economic crimes committed by or on behalf of corporations, there is a demand to recognize corporations as subjects of criminal law, especially in statutes governing economic crimes. This demand arises because of the assumption that corporate crimes are often detrimental and threaten society's economic joints. Corporations are considered to be criminally accountable for their actions.

Article 50 of Law No. 41/1999 on Forestry establishes a prohibition against the destruction of forests and the illicit exploitation of forest natural resources.⁶ This legislation aims to prevent the illegal felling of trees and the exploitation of forest resources without the requisite permit. To establish criminal liability for illegal logging, it is necessary to demonstrate that the elements outlined in Article 78 have been satisfied. These include acts of forest destruction, such as felling trees, burning forests, and collecting and selling forest products, whether intentionally or unintentionally. The fulfillment of these elements is essential for the perpetrators of illegal logging crimes to be held accountable and thus to impose the appropriate sanctions.⁷

By Law No. 18/2013 on the Prevention and Eradication of Forest Destruction, corporations may be held legally accountable for perpetrating criminal acts. By Article 1, point 21, any individual or corporate entity that engages in organized forest destruction in Indonesia or causes legal losses within Indonesian territory may be deemed a criminal offender. Furthermore, Article 1, point 22 defines a corporation as an entity comprising individuals or organized wealth, whether in the form of a legal or non-legal entity. Article 109, Paragraph (2) stipulates that the act of cutting down, harvesting, collecting, controlling, transporting, and distributing timber from illegal logging is committed by a corporation if the criminal offense is committed by persons, either based on employment relationships or other relationships, who act within the scope of their employment. If a corporation is held accountable as the subject of a criminal offense, the provisions of Article 109, Paragraph (3) apply. If criminal charges are filed against the corporation, the corporation is represented by its management. The corporation's management is liable for criminal offenses to the extent that they occupy a functional position in the corporation's organizational structure.⁸

⁶ Republik Indonesia, "Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan," no. 1 (1999).

⁷ Kurniawan, "Penanggulangan Pembalakan Liar Dengan Hukum Pidana Dan Penerapannya."

⁸ "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 18 TAHUN 2013 TENTANG PENCEGAHAN DAN PEMBERANTASAN PERUSAKAN HUTAN," Pub. L. No. 18 (2013), <https://peraturan.bpk.go.id/Details/38884/uu-no-18-tahun-2013>.

The legal framework governing corporate criminal liability in Indonesia has explicitly been regulated in Law No. 18/2013 on Prevention and Eradication of Forest Destruction. By this law, the principal penalty imposed on corporations is a fine, as outlined in Articles 82 to 103. In addition to criminal sanctions as stipulated in Article 82 through Article 103, corporations may be subject to further criminal sanctions, including the closure of all or part of the company. In addition to these criminal sanctions, Article 18 stipulates that violations of the provisions as referred to in Article 12 letters a, b, and c, Article 17 paragraph (1) letters b, c, and e, and Article 17 paragraph (2) letters b, c, and e, if carried out by legal entities or corporations, are subject to administrative sanctions, which can be in the form of: ⁹ a). government coercion; b) forced money; and/or c). revocation of license.

Government Regulation Number 4 of 2001 concerning the Control of Environmental Damage and/or Pollution regulates provisions regarding the mechanism and procedures for applying administrative sanctions as referred to in paragraph (1).

In Law No. 32 of 2009 concerning Environmental Protection and Management (UU PPLH), the legislation does not explicitly address the issue of criminal liability for illegal logging. However, Article 76 of the UU PPLH outlines the sanctions that may be imposed in the event of a violation, including administrative sanctions against the party responsible for environmental damage, administrative fines in the form of written warnings, government enforcement, and environmental permits.¹⁰

The term 'corporate criminal liability' refers to the legal responsibility imposed on companies or other legal entities for criminal acts committed within the scope of their business activities. Such criminal acts may include, for example, the exploitation of natural resources, as evidenced by the case of illegal logging. Consequently, corporate criminal liability in the context of illegal logging arises when a corporation engages in activities prohibited by law, such as logging, collecting, transporting, or selling timber without a valid permit or in contravention of applicable legislation.

The relevant legislation defines the concept of corporate criminal liability by the legal sanctions imposed on the company and its managerial personnel. Such sanctions may be administrative, including revoking the company's license, imposing financial fines, and other measures. Such penalties are imposed due to law violations committed by employees, agents, or representatives. Criminal liability, such as imprisonment and fines, are imposed on individuals who commit offenses or crimes related to illegal logging. If a corporation is found to have committed a criminal offense, it is bound by several legal principles. These include strict liability, which is a form of liability that is imposed directly without the necessity of proof; vicarious liability, which is a form of liability based on the existence of an act (*actus reus*) and fault (*mens rea*); the respondeat superior doctrine, which concerns the overall responsibility of superiors for the actions of their subordinates; and the delegate theory, which focuses on

⁹ UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 18 TAHUN 2013 TENTANG PENCEGAHAN DAN PEMBERANTASAN PERUSAKAN HUTAN.

¹⁰ Kurniawan, "Penanggulangan Pembalakan Liar Dengan Hukum Pidana Dan Penerapannya."

overall management responsibility. ¹¹ Nawawi Arief argues that various formulations of environmental crimes in laws related to the environment almost always include elements of intent, negligence, or negligence. So, it can be said that criminal liability in environmental legislation contains the principle of system liability based on fault. The identification theory in criminal law posits that the individual ultimately responsible for a criminal act is the one who gave the order, the manager or leader who carried out the order, and the manager, leader, or individual who gave the order is held accountable.¹²

3.3. Challenges of Law Enforcement Against Corporations in Illegal Logging Crimes

Imposing criminal punishment on an innocent individual is an unfair practice contravening the fundamental tenet of criminal law, namely the "principle of no punishment without guilt." The basic tenet of criminal law is the "principle of no punishment without guilt," which stipulates that a person can only be subjected to a criminal penalty if proven guilty beyond a reasonable doubt. This principle applies to individuals, but its implementation in the context of corporations is more complex. This is because, as a subject of criminal law, corporations do not possess the psychological attributes that are typically associated with humans. Consequently, establishing guilt and criminal liability for corporations represents a significant challenge.

The challenges law enforcement faces against corporations in the crime of illegal logging are very complex and involve various aspects that affect the effectiveness of law enforcement. The owners and directors of CV Alco Timber Irian and CV Sorong Timber Irian were engaged in operations arrested by DG Gakkum in December 2018 and January 2019, with 1,679.73 m3 of Merbau timber seized. In October 2019, the Sorong District Court sentenced Ming Ho to five years imprisonment and a fine of 2.5 billion Rupiah (equivalent to 178,200 US Dollars). The Jayapura High Court later upheld this decision in December 2019. However, in July 2020, the Supreme Court decided to reduce Ming Ho's prison sentence to two years and ordered the return of 1,936m3 of illegal timber with an estimated rough value of IDR 23.2 billion (USD 1.6 million) to him.¹³

Despite the significant reduction in the prison sentence, the decision to repatriate the illicit timber was incredibly controversial. Article 46 of the Criminal Procedure Code requires three conditions for the return of confiscated assets. However, in the case of Ming Ho, none of the above conditions were satisfied. The complete decision was not made available for public examination, thus impeding an exhaustive examination of the legal rationale employed by the Supreme Court in reaching its conclusion.

The court process was beset with several issues, including the following:

¹¹ DJS Joko, *Perkembangan Pertanggungjawaban Pidana Korporasi Dalam Sistem Hukum Pidana Di Indonesia*, 2021, [http://repo.jayabaya.ac.id/3105/2/Pertanggungjawaban Kejahatan Korporasi Revisi.pdf](http://repo.jayabaya.ac.id/3105/2/Pertanggungjawaban%20Kejahatan%20Korporasi%20Revisi.pdf).

¹² Dalinama Telaumbanua, "Pertanggungjawaban Pidana Korporasi Di Bidang Lingkungan Hidup," *Refleksi Hukum: Jurnal Ilmu Hukum* 9, no. 1 (2015): 101, <https://doi.org/10.24246/jrh.2015.v9.i1.p101-112>.

¹³ "Soal Putusan Ringan Hakim Terhadap Pelaku Illegal Logging, Ini Pendapat Ahli Hukum Unpatti," TITASTORY.ID, 2021, <https://titastory.id/putusan-hakim-2-tahun-penjara-untuk-pelaku-perusak-hutan-adat-sabuai-jauh-lebih-ringan-dari-dakwa-an-gakkum-klhk-15-tahun/>.

1. The lack of transparency can be attributed to the challenges encountered in accessing the information necessary to substantiate allegations of legal violations, coupled with the constraints imposed by limited resources available to law enforcement agencies, including personnel, financial resources, and technological capabilities.
2. The absence of comprehensive dissemination of judicial determinations impedes public cognizance and comprehension of legal processes.
3. The absence of subsequent action on court rulings that permitted certain enterprises to persist in operation despite being directed to cease operations evinces a deficiency in enforcing legal determinations.

These issues present significant challenges to the effective enforcement of criminal laws in cases of illegal logging, resulting in a loss of public confidence in the system and its institutions. Furthermore, these issues foster an environment conducive to corruption, ultimately undermining the progress in combating illegal logging. The process of law enforcement regarding crimes related to illicit logging also encounters challenges from an evidentiary standpoint. In many instances, the companies involved frequently utilize intermediaries or subcontractors to engage in illegal logging activities, making it challenging to establish a direct link between the parent company and the criminal act. Furthermore, the failure of companies to comply with environmental regulations constitutes a significant obstacle to implementing law enforcement initiatives to combat illegal logging offenses.

To provide more effective environmental protection and prevent illegal logging practices that harm natural resources and the environment, the above challenges must be addressed through cross-sectoral cooperation, increased transparency, and a more transparent reporting system. It is recommended that a system be established whereby every corporation engaged in the natural resources sector is required to report its activities regularly. The general public must be granted access to these reports to enhance accountability and foster a unified effort to reinforce regulations and intensify law enforcement. Moreover, the government must reinforce legal sanctions for corporations engaged in illicit logging activities. These sanctions should include substantial financial penalties, revocation of operating licenses, and criminal penalties for culpable corporate officers. Furthermore, it is of the utmost importance to address the issues of corruption and collusion.

4. Conclusion

Illegal logging refers to cutting down trees without a license or in ways prohibited by law. This can adversely affect the environment, society, and the economy. The global market is driving an increase in demand for forest land for plantations, leading to a disregard for the rights of local communities to manage their forests. This has resulted in the exploitation of natural resources. The discussion of corporate criminal responsibility in illegal logging due to the exploitation of natural resources provides an opportunity to gain a deeper understanding of the role and responsibility of corporations in preserving the environment. The advancement of criminal law theory that acknowledges the culpability of corporations as legal entities, alongside that of individuals, constitutes a significant stride in the pursuit of justice and environmental stewardship. This is especially pertinent because corporations, as legal entities,

can perpetrate illicit actions, including illegal logging, which may have detrimental consequences for society and the environment. Corporations are employing destructive techniques to log forests.

The term "corporate criminal liability" describes the legal responsibility of a company or other legal entity for criminal acts committed while conducting business. In this case, illegal logging can be linked to the exploitation of natural resources. The company and its management may be subject to legal sanctions for violating the law. Such sanctions may include license revocation, financial penalties, or other disciplinary measures. In cases of illegal logging, individuals may be imprisoned or fined. This is because, in criminal law, the person responsible for the offense is the person who gave the order, the manager, the leader, or the person who carried out the order. It is difficult for law enforcement to take action against corporations in Indonesia's illegal logging cases. The law allows for corporate criminal liability, but it is challenging to implement because of a lack of transparency, limited resources, corruption, and unclear regulations. Low public awareness also makes it difficult to take action. To improve law enforcement, we must clarify regulations, improve transparency, and work together across sectors to address this issue.

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