



Ratio of Legal Regulation of the Authority to Investigate Forestry Crime

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Abstract

The presence of Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction, intends to provide comprehensive protection of the importance of the existence of forests. On the other hand, this P3H Law also resulted in overlapping authorities investigating criminal acts on forest destruction. The authority to investigate criminal acts of forest destruction is carried out by three institutions namely police investigators, civil servant investigators, and investigators for the Prevention and eradication of forest destruction.

Keywords: Authority; Investigation; Crime; Forest Destruction.

Introduction

The term of the forest in Indonesia is known as various "jungle", for example, the grove, the virgin forest, the natural forest etc. At the time, jungle in English is called forrest while wildwood is called jungle. In general, the general perception of the forest will be full of trees that do not grow.¹ According to Black Law's Dictionary, *Forrest is a tract of land, not necessarily wooded, reserved to the king or a grantee, for hunting deer and other game.*²

So the sustainability of the forest is a loss because the forest has a function as a system to support life.³ The existence of the forest can provide a variety of strategic benefits, namely ecological, social and economic benefits.⁴ The financing of the forest according to the statute of the forestry, the institution which is protected from the status of the resident, the status of the people, the protectors, the people who are in charge, the protectors, and the institution.⁵

¹ Leden Marpaung, *Tindak Pidana Terhadap Hutan, Hasil Hutan dan Satwa*, (Jakarta, Erlangga, 1995), p. 11

² Garner, *Black Law's Dictionary*, Seventh Edition, (Dallas: West Group, 1999), p. 660.

³ Eko Supriyadi, *Hukum Agraria Kehutanan*, (Jakarta: Aswaja, 2017), p. 1.

⁴ Bambang Eko Supriyadi, *Hukum Agraria Kehutanan, Aspek Hukum Pertanahan dalam Pengelolaan Hutan Negara*, (Jakarta: Raja Grafindo Persada, 2013), p. 1.

⁵ Salim HS, *Dasar-Dasar Hukum Kehutanan*, (Jakarta, Liberty, 2003), p. 43

World Bank in June 2004 said that for just a few seconds Indonesian forest trees reaching 6 times the size of a football field and the loss in a year reaching 31 trillion rupiah. In this reformation era, precisely the destruction of the forest reached 3.8 million hectares per year. In 2004, the destruction of Indonesia's forests had reached almost 45 million hectares of forest, which amounted to only 120.35 million hectares. More than a third of tropical forests in Indonesia have been destroyed.⁶

The presence of **Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction**, intends to provide comprehensive protection of the importance of the existence of forests. The existence of this Law on P3H causes overlapping authorities in investigating forestry criminal acts between police investigators, civil servant investigators and investigators of the **Institute for Prevention and Eradication of Forest Destruction (LP3H)**. Departing from issues the above, the problem has raised is what is the ratio of the legal authority to the investigation of forest crime?

Research Method

This type of research is normative legal research with a statutory approach and conceptual approach. Types and sources of legal materials consist of primary, secondary and tertiary legal materials. The technique of collecting legal materials with the study of laws and regulations and the study of literature and the analysis of legal materials using deductive logical analysis.

Discussion

The fortune that is in the form of forests is the support for the success of development in Indonesia, so for that it needs to be repayed in the future optimally. According to Supriadi⁷, if the forest that is found in the area was reduced, then it would give dramatic impact negatively in life.

Because the forests are very important to be served and optimally utilized. Alam Setia Zein⁸ said that forest areas are open natural resources, so that the access of people to use them is very large. These conditions lead to problems in forest management. Many of the factors causing the occurrence of damage occur due to the occurrence of intentional acts or the occurrence of legal subjects which consist of human beings and law.

The destruction of the forest has evolved into an act of violence that has been widely affected and has been involved in many areas, involving many parties, both national and international. The damage that has been caused has already reached the level of living in a large part of the life of the country. The restructuring of the forest has to be done in an extraordinary manner. The effort to end the forestry business has actually been carried out, but it has not yet been effective and has not shown an optimal result.

Investigation on actions in the forestry field cannot only be handled by the Police investigator, but also includes forestry officials covering certain areas of forest management. The authority of PPNS in the forestry sector is to be continued in the Republic of Indonesia (2) Law no. 41 In 1999, the Forestry has been amended by Law Number 19 of 2004 concerning Amendment to Law No. 41 1999 about Forestry.

⁶ Anton Tabah, *Mengurai Anatomi Illegal Logging Dan Deforestasi Di Indonesia*, Makalah disajikan pada Seminar Nasional di Manggala Wana Bhakti, (Jakarta. 16 Mei 2005).

⁷ Supriadi, *Hukum Kehutanan & Hukum Perkebunan di Indonesia*, (Jakarta: Sinar Grafika, 2010, p. 113.

⁸ Alam Setia Zein, *Hukum Lingkungan Konservasi Hutan*, (Jakarta: Rineka Cipta, 1996), p. 6.

The theoretical authority of the ability to act is given by the law which applies to the relationship with the law.⁹ The authority is the power to carry out any act of public law.¹⁰

The basic authority of the investigation held by LP3H is sourced from Article 54, 55 and Article 56 of the Law on P3H, which is the authority of the contribution. The authority of the contribution to the form of authority that was granted by the government.

The legal ratio of forming LP3H Law and provides the authority to carry out the investigation into investigation of crime act and the destruction of the forestry and to implement the administration of the following investigations, can be concluded as follows:

1. Destruction of the forest has already reached a point that will be a major element of the life of the living system and the country because of the destruction of many sources of life.
2. The majority of legal regulations related to forestry have resulted in differences in the legal basis used by the apparatus for the destruction of forests based on particular interests.
3. The unevenness of the meaning of the word in the legislation gives rise to different interpretations among those concerned, such as the difference in perceptions or restrictions that cover the control of illegal logging and other forestry crime.
4. forestry crimes do not stand alone, forest destruction crimes tend to go to corporations or organized crime¹¹ that is funded or financed by certain people or regions that have a significant influence so that it is difficult to carry out, even at the level of small-scale area of logging or unauthorized area use for the sake of mining or gardening.
5. The enhancement of the mode of destruction of the quality and the quantity of forest.
6. The ineffectiveness of the existing forest protection institutions (organizations, law and human resources), especially those who are concerned with the forestry security resources (Forestry Police, Civil Servant Investigator (PPNS), and other forestry security resources, for example, forestry, Forestry Investigators, and as well tools and infrastructures and inadequate financial support).
7. The existence of LP3H aims to repress corporate crime and is organized in terms of which is not governed by the previous law. The Corporations themselves in the P3H Law are defined as group of people and / or organized wealth, whether they are legal entity or not.
8. Forest resource management policies in the regions are more oriented to increasing Regional Original Revenue (PAD), and in general do not pay attention to the principles of *Sustainable Forest*

⁹ SF. Marbun, *Peradilan Administrasi Negara dan Upaya Administrasi di Indonesia*, (Yogyakarta: Liberty, 1997), p. 154

¹⁰ Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, (Jakarta: Ghalia Indonesia, 1981), p. 29.

¹¹ United Nations Environment Assembly (UNEA). *Transnational Environmental Crime - a common crime in need of better enforcement*. Driven by perceptions of low risk and high profit, indications have emerged of environmental crime activities attracting the greater interest of organized crime groups. Organized criminal syndicates are moving poached or illegally harvested wildlife with the help of the same sophisticated techniques and networks used for illicit trafficking in persons, weapons, drugs and other contraband (Scanlon, 2012). Groups specializing in money laundering, financial crime, thefts and drug trafficking in European Union (EU) Member States are now engaged in environmental crime as well. In general, however, substantial intelligence gaps preclude a comprehensive assessment of organized crime activity in this area (Europol, 2011). Sumber: <http://na.unep.net/>, accessed April 19, 2015

*Management (SFM)*¹², so it is feared that the policy will become a supporting factor for acts of forest destruction.

If it's viewed from the authority granted by the State to investigators in the destruction of the forest through the P3H Law, these things are such big things and could be alligned to other extraordinary crimes. This authority is not wholly owned by the investigator, because there are limitations of prosecution on the number of cases / corporations that make investigators beside LP3H can only handle the small cases, while the organized crimes and corporation are handled by the LP3H.

Forest crime is rarely done on its own. As an illustration, in the case of illegal logging or without permission, chainsaw operator who will cut down trees with a diameter of more than 60 centimeters, does not stand alone, if it is examined, the operators who will be assisted by a person who is a *checker*, so that the tree will fall to the proper direction. when they get caught, not only the chainsaw operator could be the suspect, either the assistant, they could be charged with article 82 juncto article 12 letter c 3 of P3H Law.

It would be different if the tree that was cut illegally had been felled, then taken with the vehicle which does not have the legal document, then gets caught around the crime scene then in the investigation there will be questions such as, when it comes from, who, when, with what, with who, and so on. Then the answer from the truck driver and "kenek" or the worker will led to loggers by pointing to the location of the crime scene of carrier, so that it will be charged with the article 83rd Paragraph (1) Jo Article 12 letter e of P3H Law.

The similitude between crime and crime gives rise to the differentiation of speech between one offense and another. Determination of sanctions with the principle of equality is seen as an effective way to bear the symptoms of crime.¹³ This principle of equality has a close relationship with the classification of crime. That is, the classification of the seriousness of a crime determines the severity of criminal sanctions.

Regarding the classification of crime can be viewed from various perspectives, including crime as a legal social problem that is classified based on¹⁴:

1. Heavy or light act;
2. Those who are disvantaged, can be divided in :
 - a. Crime that harms individuals, such as murder, rape, theft, robbery, and others;
 - b. Crime which is detrimental to the state, include criminal offenses against the majesty (*dignity*) and state security;
 - c. Crimes that are detrimental (to) social welfare, for example not paying income tax, shutting down cars at maximum speed, economic crime etc.
 - d. Traditional crime or contemporary crime (new concept).

There is no clear benchmarks regarding the classification of organized crime that can be handled by investigators outside LP3H institutions and investigators, because there is no juridical regulation in the form of Government Regulation as a reference for the implementation of aids with clear boundaries or

¹² Niniiek Suparni, *Pelestarian, Pengelolaan Dan Penegakan Hukum Lingkungan*, (Jakarta, Sinar Grafika, 2004), p. 87.

¹³ Roeslan Saleh, *Beberapa Catatan Sekitar Perbuatan dan Kesalahan Dalam Hukum Pidana*, (Jakarta: Aksara Baru, 1985), p. 29

¹⁴ Purnianti dan Moh. Kemal Darmawan, *Mazhab dan Penggolongan Teori Dalam Kriminologi*, (Bandung: Citra Aditya Bakti, 1994), p.37

norms regarding the handling of forest destruction cases, then this matter can lead to unclear legislation and contradictions that allow various interpretations of the law that can bring this case "null and void" on the court table.

Closing

the authority of investigators of forest destruction crimes is carried out by three institutions namely police investigators, PPNS investigators and LP3H investigators. The legal basis for police investigators to conduct criminal investigations on forest destruction is article 9 UJ P3H, article 7 KUHAP, and article 16. Law no. 2 of 2002 concerning the Indonesian National Police. PPNS is given special authority as an investigator listed in article 7 paragraph (1) of Law no. 41 of 1999 concerning God as amended by Law number 19 of 2004 concerning amendment to Law no. 41 of 1999 concerning forestry, and LP3H based on article 111 paragraph (1) of the P3H Law. The overlapping authority in investigating this destructive crime does not reflect legal certainty in carrying out its duties and authorities.

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