



## EFFECTIVENESS OF LAW NUMBER 41 THE YEAR 1999 IN THE CASE OF ILLEGAL LOGGING IN MALUKU PROVINCE

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### Abstract

*Ambon City and West Seram Regency (SBB) or SBB Regency, especially in Kairatu sub-district, the condition of the forest was once beautiful and green, but now, that condition has changed, the beautiful and green has changed into a stretch of land and barren grasslands. The above conditions will affect the water cycle by decreasing water discharge as a source of life for the community. The problems that will be examined in this study are why the legal provisions in the forestry sector are not effective in communities living around State forest areas in the Maluku Province? What factors are lead the community members who live around the State forest to be obliged to implement the legal provisions in the forestry sector in the State forest area in the Maluku Province?*

*This research was conducted by an empirical juridical approach which is descriptive qualitative analysis. The research seeks to illustrate what is happening in the communities living around the State forest in Maluku Province. The result of this research is Law No. 41 of 1999 on Forestry in Maluku province, in the city of Ambon City and West Seram District (SBB). Factors that cause residents living in the forest in the region of Maluku, the illegal logging and the second factor is the low level of awareness of the people living around the State forest area in the location of this study.*

**Keywords:** *Effectiveness, Law, Illegal Logging, Maluku Province.*

**How to Cite:** La Ode Angga, Barzah Latupono, Muchtar A Hamid Labetubun, Sabri Fataruba, "Effectiveness of Law Number 41 the Year 1999 in the Case of Illegal Logging in Maluku Province", *Jurnal Cepalo*, 3 (2), (2019): 85-92.

**DOI:** <https://doi.org/10.25041/cepalo.v3no2.1848>

### A. Introduction

Law Number 41 of 1999 concerning Forestry and hereinafter referred to as (UUK), states that:

"State Forest is a gift and trust from ALLAH SWT (God Almighty) bestowed upon the Indonesian people is a priceless natural wealth. It is one of the determinants of a life support system and a source of prosperity for the people, so their existence must be optimally protected and maintained". Furthermore, the UUK states that: "Forest is an ecosystem in the form of a stretch of land containing biological resources that are dominated by trees in the natural alliance of the environment that one and the other can not be separated".

So what is meant by forestry is a management system that has to do in an integrated way with forests, forest areas and forest products. Sustainable and global forest management must accommodate the dynamics of the aspirations of indigenous peoples, and culture, as well as community values that are based on national legal norms and rules.

Forest area is a particular area determined by the government to be maintained as permanent forest. Because of that all the forests in the territory of the Republic of Indonesia meant that the state-controlled the natural resources contained therein for the greatest prosperity of the people. The concept of controlling the state originates from Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945), containing a centralistic and broad meaning, because of the organization of state power that is given a mandate by the people. The implementation and relevance of the state's controlling rights at the moment the implementation and control by the state can be empowered to the autonomous regions and the intended communities within the customary law community, merely necessary and not in conflict with national interests according to the provisions of government regulations.

Based on their status and function, forests consist of two (2) categories, namely: State forest and private forest. State Forest is a forest located on land that is burdened with land rights. Meanwhile, right forests are forests that are on land that is burdened with land rights. According to Koesnadi Hardjosoemantri, forests are grouped into two (2) forms of utilization, namely: firstly forests must be grouped for the use of wood including associated sources, such as rattan, resin and other sources of wealth. Second, the use of forests for activities outside the forestry sector, such as for plantation activities, transmigration, human settlements, agriculture both modern and traditional. Furthermore Koesnadi Hardjosoemantri said that forests for humans have two (2) main functions, namely: ecological functions and economic functions.<sup>1</sup>

In connection with illegal logging in Maluku Province occurred in several places that became the location of this study. In this study, the researchers satisfied the survey at two research locations: Ambon City and West Seram Regency (SBB). For example, in the SBB Regency, especially in Kairatu sub-district, the condition of the forest was once beautiful and green, but now, that condition has changed, the beautiful and green has changed into a stretch of land and barren grasslands. The above conditions will affect the water cycle by decreasing water discharge as a source of life for the community. The question that arises then is how valid are the laws and regulations governing the problem of forests in Indonesia, especially Law Number 41 of 1999 concerning Forestry in communities living around State forests in Maluku Province (precisely the location of this research)? Why are people not subject to existing laws and regulations?

Based on the description above, the formulation of the problems that will be examined in this study are is why the legal provisions in the forestry sector are not effective in communities living around State forest areas in the Maluku Province? What factors are lead the community members who live around the State forest to be obliged to implement the legal provisions in the forestry sector in the State forest area in the Maluku Province?

This research was conducted using a juridical approach to the empirical descriptive qualitative analysis study.<sup>2</sup> The research seeks to illustrate what happens in communities living around State forests in Maluku Province. Quantitative data, if possible, can be translated into percentages presented in tabular form. The workings of the empirical juridical or sociological juridical methods in this research proposal are from the results of the collection and discovery of data and information through a literature study of the underlying assumptions or assumptions used in answering problems in this study, then an inductive-verification test is carried out on the latest facts exist in the community. Thus the truth in a study has been declared reliable without having to go through the process of rationalization.

Sources of data used in this study are secondary data and primary data. Secondary data is data obtained by the research team from library research and documents.<sup>3</sup> Whereas primary information is data obtained directly from the people who live around the State forest. In the legal analysis, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials.<sup>4</sup> Data collection techniques in this study will be collected based on problems that are formulated and classified according to sources for later to be studied in full and comprehensive. The data collection stage will first be carried out through a literature study consisting of an inventory that is collecting data by the object of this study. Known data collection techniques are library study; observation (observation), interview (interview), and list of questions (questionnaire

<sup>1</sup> Koesnadi Hardjosoematri, *Hukum Tata Lingkungan*, Edisi Kedelapan, Cetakan Kedelapan belas, Yogyakarta: Gadjah Mada University Press, (2005), p. 11.

<sup>2</sup> Maria SW, Sumardjono, *Pendoman Pembuatan Usulan Penelitian Sebuah Panduan Dasar*, Jakarta: Gramedia Pustaka Utama, (2001), p. 10.

<sup>3</sup> Ronny Hanitjo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (1999), p. 12

<sup>4</sup> *Ibid.*

## B. Discussion

### 1. Definition of Illegal Logging

Illegal Logging is not explicitly defined in the legislation. Illegal Logging comes from English which consists of Illegal and logging. Illegal means illegal, prohibited, contrary to law. Log means logs, logs while logging means logging and bringing to saw.<sup>5</sup> The phrase illegal logging in the Indonesian treasury is defined as illegal logging

In the practice of eradicating and enforcing the law, the formulation of illegal logging has expanded as described in the Sukardi statement which says that illegal logging is a series of activities encompassing illegal logging, transportation, processing and buying and selling (importing) of timber, which is against the law and can cause forest damage. If it is related in practice, the definition of illegal logging is divided into two (2), namely narrow understanding and broad understanding. Narrow understanding only involves illegal logging, while broad understanding discourages any act of violation in forestry activities that includes licensing, operational preparation, production, transportation, Timber Administration (TUK), processing, and marketing.<sup>6</sup> Based on the terminology, the definition of illegal means not relieved, illegitimate, unofficial, not according to law, while logging means cutting or cutting wood. The definition of illegal logging according to the International Tropical Organization (ITTO) is logging that does not apply the principle of sustainability.

From the description above it can be concluded that illegal logging is a series of activities in the forestry sector in the context of illegal use and management of forest products. An important essence in the practice of illegal logging is the destruction of the ecosystem and the preservation of the function of the forest and later on has implications for the values of Human Rights (HAN) because illegal logging causes losses in the economic, ecological, social and cultural fields. With the effects caused by illegal logging including poverty, health and other cultural lives. Free decisions for perpetrators have implications for the destruction of forests and their functions, namely: economy, water system (hydrology), soil fertility, (orology), climate regulation, (climatology), and natural beauty (aesthetics). Such forest functions can be enjoyed, so that if there is a deterioration in the function of the forest, the consequences will be felt globally.

The forest referred to in this study is an ecosystem unit in the form of a stretch of land containing biological natural resources which are dominated by trees in their natural environment, which cannot be separated from one another (Article 1 point 2 UUK). Illegal logging is already an object of self-regulation, especially regarding deforestation. In Government Regulation No. 28 of 1985 concerning Forest Protection, Article 9 paragraph (2) states: "Everyone is prohibited from cutting down trees in the forest without the permission of the authorized official."

### 2. Principle of Forest Protection

The implementation of forest protection aims to protect forests, forest products, forest areas and their environment so that the functions of protection, conservation functions, and production functions are achieved optimally and sustainably.<sup>7</sup> The principles of forest protection include:<sup>8</sup>

- a. Prevent and limit the destruction of forests, forest areas and forest products, caused by human actions, livestock, fires, natural resources, pests, and diseases.
- b. Defend and protect the rights of the state, the people and individuals over forests, forest areas, forest products, investments and instruments related to forest management.

There are five classes of forest destruction that need protection according to Article 5 of Government Regulation No. 45/2004 concerning Forest Protection as amended by Government Regulation No. 60/2009, namely:<sup>9</sup>

- a. Forest destruction due to illegal work/occupation of forest land, use of forest that deviates from its function, and irresponsible forest exploitation;
- b. Forest damage due to extraction of rocks, soil and other minerals, as well as the use of tools that are not appropriate to the soil/stand condition;
- c. Forest destruction due to timber theft and logging without permission;

<sup>5</sup> Sukardi, "Aspek Hukum Kehutanan Terhadap Daerah Otonom Baru (Dob) Di Indonesia", *Jurnal Tapis*, Vol. 11, No.1, (2011), p. 1.

<sup>6</sup> Didik Dwi Prasetyo, *Tips dan Trik Kolaborasi PHP dan MySQL untuk membuat web database yang interaktif*, Jakarta: Elex Media Komputindo, (2003), p. 1

<sup>7</sup> Ahmad Ali, *Menguak Tabir Hukum (Suatu kajian Philosophis dan sosiologis)*, Jakarta: Chandra Prtama, (1996), hlm. 14.

<sup>8</sup> Sudarto, *Kapita Selekta Hukum Pidana*, Bandung: Alumni, (1986), p. 1.

<sup>9</sup> Supriyadi, "Kebijakan Hukum Pidana Dalam Menanggulangi Tindak Pidana Kehutanan Berdasarkan Pasal 50 Ayat (3) Huruf F dan H Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan (Studi Kasus Di Wilayah Polresta Pontianak)", *Jurnal Nestor Magister Hukum*, Vol.2 No.2, (2012), p. 1.

- d. Forest damage due to livestock grazing and due to fire;
- e. The loss to forest products due to human actions, pest and disease disorders and natural resources.

### 3. Effectiveness of Law No. 41 of 1999 in the Case of Illegal Logging in Maluku Province

The issue of the effectiveness of the implementation of the law is closely related to the problem of the functioning of law in society. When someone talks about the functioning of law in society, then the mind is usually directed at reality (*das sein*), whether the law applies or not. This problem seems very simple, but behind the simplicity some things are quite complicated. In legal theories are usually distinguished between three kinds of things the validity of the law as a rule in society. Regarding matters concerning the application of the rule of law, the following assumptions are stated.<sup>10</sup> As follows:

- a. The rule of law applies juridically, if the determination is based on a higher level rule (Hans Kelsen), or if it is shaped in a predetermined manner (W. Zevenbergen), or if it shows the necessary relationship between a condition and its consequences (L.H.A. Logeman).
- b. The rule of law applies sociologically if the rule of law is effective. It means that these rules can be enforced by the authorities even though they are not accepted by the citizens (the power theory) or the rules apply because they are accepted and recognized by the community (recognition theory).
- c. The rule of law applies philosophically, meaning that it is by the ideals of the law as a positive value that applies.<sup>11</sup>

In connection with this, the problem of the functioning of the provisions of applicable law is used the concept of legal rules that apply sociologically, with the theory of recognition. According to Soerjono Soekanto, effective law means that the law achieves its objective, namely peace through harmony between peace and justice.<sup>12</sup>

Bibata about the effectiveness of Law No. 41 of 1999 based on data obtained in the field, Law No. 41 of 1999 in the case of illegal logging, both in Ambon City and in the District of West Seram (SBB) found answers both in Ambon City and in the SBB Regency have not been effective, This is in accordance with the response of the people who live around the State forests in Maluku Province that many people already know about Law No. 41 of 1999 concerning Forestry, but in reality the community is still doing illegal logging. Another thing that was found was that according to the people who lived around state forests, illegal logging was caused by the lack of information regarding the prohibition, this meant that there was a lack of socialization carried out by the Government, so they did not know the purpose and objectives of Law No. 41 of 1999 and if there is a problem that has to do with environmental damage, due to illegal logging the community has not been too unfamiliar to involve themselves in environmental management (forest environment) around the community's residence or if there is environmental damage caused by community or government action, the community is not too sensitive.<sup>13</sup>

Forests as a life support system oriented to community welfare and forest sustainability cannot yet be felt, it is still merely a discourse and propaganda in conservation efforts. Communities around the forests located upstream are still far from the word prosperity and even the jargon "the culprit of forest destruction" is increasingly embedded and becomes an important theme/topic in seminars and workshops, it is difficult to find solutions that are fast, precise and accurate in solving these problems.

Forestry environment as the basis in running the regional government system will encourage to be able to reduce aspects of forest damage in the area. Cost to the existing forest condition is inseparable from the development and licensing systems that have not prioritized forestry aspects as an aspect that needs to be prioritized. The effectiveness of the law on human-environmental problems, can not be separated from the state of the administrative apparatus and law enforcement officials as an infrastructure of the effectiveness of the implementation of law in the reality of its environmental life.<sup>14</sup>

<sup>10</sup> Soeryono Soekanto, *Sosiologi Hukum Dalam Masyarakat*, Jakarta: Radjawali, (1980), p. 111.

<sup>11</sup> Soerjono Soekanto, *Penegakan Hukum*, Bandung: Bina Cipta, (1983), p. 12.

<sup>12</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, (2008), p. 111.

<sup>13</sup> Efektivitas Tupoksi Polhut Dan Ppns Sebagai Garda Terdepan Penegakkan/ Penyelesaian Perkara Tipihut Dalam Rangka Pengelolaan Kawasan Konservasi, Berita Dari Balai Besar Taman Nasional Bukit Barisan Selatan <https://Programs.Wcs.Org/Btnbbs/Beritaterbaru/Articletype/Articleview/Articleid/8379/Efektivitas-Tupoksi-Polhut-Dan-Ppns-Sebagai-Garda-Terdepan-Penegakkan-Penyelesaian-Perkara-Tipihut-Dalam-Rangka-Pengelolaan-Kawasan-Konservasi.Aspx>. P. 1.

<sup>14</sup> Agus Marzuki, "Aspek Hukum Kehutanan Terhadap Daerah Otonom Baru (Dob) Di Indonesia", *Jurnal Tapis*, Vol. 11 No. 1, (2015), p. 1.

**a. Facilities/ Facilities**

Facilities or facilities are very important to maintain the effectiveness of law in society. The scope of the facilities referred to, especially physical facilities that function as supporting factors. For example, if there is not enough paper and carbon and a good typewriter, how can an official make a report about a crime. How the police can work well if it is not equipped with vehicles and communication devices that are proportional.

If the equipment in question already exists, the maintenance factors also play a vital role. It often happens that a regulation has been functioned, even though the facilities are not yet available. The regulations that were initially intended to smooth the process, even lead to congestion. It might be a good idea to apply a regulation formally or give an assignment to an officer, thinking about the facilities that are based on: (1) what already exists, maintained continuously so that at all times functioning; (2) what does not yet exist, needs to be carried out taking into account the period of procurement; (3) what is lacking, needs to be completed; (4) what has been damaged, repaired or replaced; (5) what is stuck, launched; (6) what has been retreated, improved.

**b. Citizens of the Community**

One of the factors that make regulation effective is the community members. What is meant here is awareness to comply with a statutory regulation, which is often called the degree of compliance. In simple terms, the degree of public compliance with the law is one indicator of the functioning of the law in question. An example can be expressed as follows:

If the degree of compliance with traffic signs is high, the traffic regulation in question will definitely function, which is to regulate the time of crossing at a crossroads. Therefore, if the yellow traffic lights are on, the driver is expected to slow down the speed of the vehicle. But if the opposite happens, the vehicle being driven faster and accelerated or step on the gas, most likely there will be a collision. Based on the example above, the problem is (1) if the regulation is good, while the community members do not obey it, what factors cause it? (2) if the regulation is good and the officers are sufficiently authoritative, the facilities are sufficient, why are there still those who do not comply with the law?

In addition to the above problems, there are still other problems, namely the existence of an assumption stating that the greater the role of social control facilities other than law (religion and customs), the smaller the role of law. Therefore, the law cannot be enforced in everything, as long as there are other effective means. Law should be used at the last level if other means are no longer able to overcome problems. However, to end this discussion, it is necessary to disclose matters relating to public awareness of the law, namely (1) regular legal counselling; (2) giving an excellent example from the officer in terms of obedience to law and respect for law; (3) planned and directed institutionalisation.

**4. Factors that cause people who live around State forests are reluctant to implement the provisions in the field of Forestry**

It can be seen in the field that there are people who are reluctant to implement Law No. 41 of 1999 due to two things, namely because of economic problems, this is because many people live around the forest, many of whom have below the economic level causing them to fulfil their daily needs there is illegal logging for sale. It is because the economic crash of the community causes it and finally the community takes a shortcut to do illegal logging.

Based on the data obtained, the community is reluctant to implement the provisions of the legislation in the field of forestry because it is caused by the community not knowing about the rules governing the environment and the dangers that will arise due to environmental damage and also because people are often used by people who have the interest to take wood in the forest. It is due to the lack of socialization carried out by the government related to this regulation so that the community does not understand the dangers arising from the forest wood being cut down without replanting.

Based on the data obtained in the field, both the people who live around the State forests in Ambon City, West Seram District are reluctant to implement the provisions of the law in the forestry sector because the community does not know about the rules governing the environment and the dangers that will arise caused by environmental damage This is due to the lack of socialization carried out by the relevant government, meaning law enforcers with the intended regulation so that people do not really understand the dangers arising from illegal logging.

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Based on the data obtained in the field, both the people who live around the State forests in Ambon City, West Seram District are reluctant to implement the provisions of the law in the forestry sector because the community does not know about the rules governing the environment and the dangers that will arise caused by environmental damage. This is due to the lack of socialization carried out by the relevant government, meaning law enforcers with the intended regulation so that people do not really understand the dangers arising from illegal logging. In addition, there is also a dualism of government policy, where one the side seeks to protect these protected areas and set rules to preserve them, but other ways open up the protection of these protected forests to be exploited. Policies or development programs must be imbued with the obligation to conserve the environment and realize sustainable development goals. The three laws above within the framework of legal science must not stand alone because they are still included in the realm of environmental law, which means it is very closely related to the Forestry and Environmental Law. Therefore it is necessary to have a policy formulation based on Green Legislation that underlies the management of sustainable and equitable forest areas in a unified regulation.<sup>16</sup>

### C. Conclusions

In connection with the title of the research on the effectiveness of the implementation of Law Number 41 of 1999 in Maluku Province, the conclusions that can be made is regarding the effectiveness of the implementation of Law No. 41 of 1999 in Maluku Province not yet effective. The factors that cause community members to be reluctant in environmental management are economic factors and awareness factors that live around state forests in Maluku Province specifically those that are the locations of this study.

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<sup>15</sup> La Ode Angga & Latupono Barzah, "Implementasi Undang-Undang No. 23 Tahun 1997 Dengan Hubungannya Pengelolaan Lingkungan Hidup Pada Era Otonomi Daerah; (Studi Kasus-Kasus *illegal Logging* Di Provinsi Maluku)", *Report of Research*, (2009), p. 9

<sup>16</sup> Fatma Ulfatun Najicha, "Politik Hukum Perundang-Undangan Kehutanan Dalam Pemberian Izin Kegiatan Pertambangan Di Kawasan Hutan Ditinjau Dari Strategi Pengelolaan Lingkungan Hidup yang Berkeadilan", *Jurnal Pasca Sarjana Hukum Universitas Surakarta*, Vol. 4 No. 2, (2017), p.20.

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