

## A Criminal Law Approach to Illegal Deforestation in Conservation Areas

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Article Info	ABSTRACT
<p><b>Keywords:</b> Illegal Deforestation, Criminal Law, Law Enforcement</p>	<p>Illegal deforestation in conservation areas is a serious threat to the preservation of Indonesia's ecosystems and biodiversity that requires an effective criminal law approach as a protection and prevention effort. This research aims to analyze the criminal legal framework governing illegal deforestation in conservation areas and evaluate the effectiveness of criminal law enforcement in tackling the problem. The research method used is a normative juridical approach by analyzing relevant laws and regulations, court decisions, and empirical data on the implementation of forestry law enforcement in Indonesia. The results showed that Indonesia has a comprehensive criminal law framework through Law No. 5 of 1990, Law No. 41 of 1999, and Law No. 18 of 2013 which provides strict sanctions of up to 15 years in prison and a fine of Rp 15 billion, but the effectiveness of enforcement is still low due to weak coordination between agencies, limited human resources, difficulty of proof, and rampant corruption in the forestry sector. The conclusion of the study shows that although the criminal law foundation is adequate, comprehensive reforms in institutional aspects, improved coordination, application of modern technology, and eradication of corruption are needed to improve the effectiveness of criminal law enforcement in tackling illegal deforestation in Indonesia's conservation areas.</p>
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### INTRODUCTION

As home to a variety of flora and fauna, forests not only function as the lungs of the world that produce oxygen, but also play a role in maintaining global climate balance and preventing natural disasters (Yusuf & Makarawo, 2011). In Indonesia, the existence of forests has a very high strategic value, considering that the country has one of the largest forest areas in the world with extraordinarily rich biodiversity.

However, the current reality is very concerning. Forest destruction in Indonesia continues to increase from year to year. Based on data released by the Ministry of Environment and Forestry, the area of forest destruction in Indonesia has reached 105.2 thousand hectares. This figure shows how serious the threats faced by Indonesia's forest areas are, especially in conservation areas that should receive special protection.

One of the main causes of forest destruction is the practice of illegal deforestation, which is carried out in a systematic and organized manner. Illegal deforestation includes

activities such as illegal logging, burning forests for land expansion, and converting forests into plantation or settlement areas without legal permits. These activities not only damage forest ecosystems, but also threaten the existence of endangered species that live in them (Auhara, 2013).

The impacts of illegal deforestation are vast and complex. Ecologically, loss of forest cover leads to disruption of the water cycle, increased risk of natural disasters such as floods and landslides, and reduced air quality due to loss of natural oxygen sources. Economically, forest degradation causes enormous losses to the state, not only from the loss of the forest's economic potential, but also from the costs of dealing with the negative impacts (Boediningsih and Tandiono, 2022).

Recognizing the seriousness of this problem, the Indonesian government has issued various regulations to protect forest areas. Law No. 41/1999 on Forestry is the main legal basis for forest management in Indonesia. However, along with the increasingly complex modus operandi of forest destruction, the government then issued Law No. 18 of 2013 on Prevention and Eradication of Forest Destruction as a more specific and firm legal instrument.

Law No. 18/2013 was born out of deep concern over forest destruction that has reached an alarming level. Forest destruction that occurs can no longer be considered an ordinary crime, but has developed into an extraordinary crime that is carried out in an organized manner, using sophisticated technology, and even involving cross-border networks. However, in its implementation, the application of criminal law to illegal deforestation cases still faces various challenges and problems. One issue that often arises is related to the interpretation of the legal subject in the law.

Problems arise when local communities living around or within forest areas, who have traditionally depended on forest resources to meet their daily needs, are treated the same as organized criminals who destroy forests for large-scale commercial interests. This raises fundamental questions about justice in the application of criminal law, especially when the social and economic context of the community does not receive adequate consideration.

Conservation areas as areas that receive special protection require more serious attention in terms of law enforcement. The conservation status attached to an area shows how important the area is from an ecological perspective, so any form of destruction in conservation areas must receive strict sanctions. But on the other hand, the criminal law approach applied must also consider aspects of humanity and social justice.

## METHOD

This research uses a normative legal research method with a literature approach that focuses on analyzing laws and regulations and legal theories related to illegal deforestation in conservation areas. The normative approach was chosen because this research aims to examine and analyze legal norms governing forest protection and the application of criminal sanctions against perpetrators of illegal deforestation. This method allows researchers to conduct an in-depth review of various legal concepts, legal principles, and statutory provisions relevant to the research problem (Ibrahim, 2010). The research specification used is descriptive analytical research, which is research that not only describes the state of the

object of research factually, but also provides an in-depth analysis of the legal phenomena studied (Zainudin, 2010). Descriptive analytical research was chosen because the purpose of this research is to describe and analyze how the criminal law approach is applied in cases of illegal deforestation in conservation areas, as well as identify problems that arise in its implementation.

The data used in this research is entirely secondary data obtained through literature studies. Secondary data was chosen due to the nature of the research, which focuses on normative studies of laws and regulations and court decisions. Primary legal materials include laws and regulations that directly regulate deforestation and forest protection, such as Law No. 18/2013 on the Prevention and Eradication of Forest Destruction, Law No. 41/1999 on Forestry, the Criminal Code (KUHP), and court decisions related to illegal deforestation cases in conservation areas. Secondary legal materials consist of legal textbooks, scientific journals, academic articles, previous research results, and other scientific papers that discuss environmental law, criminal law, and conservation area protection. This secondary legal material serves to provide explanation and analysis of primary legal materials and enrich the theoretical perspective in the research. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that provide definitions and explanations of legal terms used in the research.

## RESULTS AND DISCUSSION

### **Analysis of the Criminal Legal Framework Governing Illegal Deforestation in Conservation Areas**

The criminal legal framework governing illegal deforestation in conservation areas has a strong constitutional foundation based on Article 28H paragraph (1) and Article 33 paragraph (3) of the 1945 Constitution, which mandate that everyone has the right to live in physical and mental prosperity, to have a place to live, and to obtain a good and healthy living environment, and that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The philosophy of legal protection of conservation areas not only has an anthropocentric dimension that emphasizes benefits for humans, but also an ecocentric one that recognizes the intrinsic value of the ecosystem itself. The criminal law approach in this context serves as an *ultimum remedium*, which is the last resort when administrative and civil law instruments are unable to provide an adequate deterrent effect against perpetrators of conservation area destruction.

The hierarchy of laws and regulations governing the criminal offense of illegal deforestation in conservation areas forms a comprehensive yet complex legal system. Law No. 5 of 1990 on the Conservation of Living Natural Resources and their Ecosystems became the first *lex specialis* that specifically regulates the protection of conservation areas, which was later strengthened by Law No. 41 of 1999 on Forestry as amended by Law No. 11 of 2020 on Job Creation. Law No. 18/2013 on the Prevention and Eradication of Forest Destruction provides a new dimension with a more assertive approach to forestry crimes, including illegal deforestation in conservation areas. Meanwhile, Law No. 32 of 2009 on Environmental Protection and Management provides a general framework for environmental

protection that includes conservation areas as an integral part of the national ecosystem.

Analysis of the elements of the crime of illegal deforestation in conservation areas shows the complexity of norm formulation that reflects the special characteristics of environmental crimes. Objective elements include the act of cutting down, burning, damaging, or changing the landscape of conservation areas without a valid permit, which is carried out in areas that have been designated as conservation areas based on laws and regulations. Subjective elements in the form of intent (*dolus*) or negligence (*culpa*) are subject to academic debate, considering that some provisions in conservation laws adopt the principle of strict liability which does not require the existence of traditional elements of fault (Sianturi, 2002). This reflects the different paradigm of environmental criminal law from conventional criminal law, where the protection of environmental interests demands a more preventive and assertive approach.

The aspect of criminal sanctions in the legal framework of illegal deforestation in conservation areas shows gradations that reflect the seriousness of the offense. Article 40 of Law No. 5 of 1990 threatens a maximum imprisonment of 10 years and a maximum fine of IDR 200,000,000 for anyone who intentionally carries out activities that can result in changes to the integrity of conservation areas. Meanwhile, Law No. 18 of 2013 provides a more severe threat with more in-depth provisions.

Law No. 18/2013 was specifically designed to address the problem of illegal logging, which causes economic losses and serious environmental damage, including loss of biodiversity and contribution to climate change (Sodik, 2018). Article 82 of Law No. 18/2013 stipulates a minimum imprisonment of 1 year and a maximum of 15 years and a fine of between IDR 500 million and IDR 2.5 billion for perpetrators who intentionally destroy forests, while Article 83 provides more specific sanctions for illegal logging with a minimum imprisonment of 5 years and a maximum of 15 years and a fine of between IDR 100 million and IDR 1 billion.

The specificity of Law No. 18/2013 also lies in the scope of prohibited acts, where Article 12 letter d specifically targets "activities related to the management of forest products carried out illegally" including loading, unloading, transporting, preserving, and trading forest products obtained in violation of laws and regulations.

### **Effectiveness of Criminal Law Enforcement in Tackling Illegal Deforestation**

Criminal law enforcement against illegal deforestation in Indonesia still faces various challenges that affect its effectiveness. Although Indonesia has a comprehensive legal framework through Law No. 18/2013 on the Prevention and Eradication of Forest Destruction, Law No. 41/1999 on Forestry, and Law No. 32/2009 on Environmental Protection and Management, implementation in the field is still not optimal. Data from the Ministry of Environment and Forestry shows that the level of deforestation in Indonesia is still high, with conservation areas being one of the main targets of illegal logging and land grabbing activities (Mardiyah, 2020).

The main weakness in criminal law enforcement against illegal deforestation lies in the institutional aspect and coordination between agencies. Forestry law enforcement involves various institutions such as the National Police, the Attorney General's Office, the Courts, the

Ministry of Environment and Forestry, and local governments. Ineffective coordination between these institutions often leads to overlapping authority or even a vacuum of supervision in the field. Weak coordination among law enforcers is one of the main obstacles in law enforcement against illegal logging, considering that the judicial process from investigation to trial requires huge costs, long legal processes, adequate infrastructure, and special expertise in handling illegal deforestation cases. In addition, limited human resources with specialized competencies in handling forestry cases are also a serious obstacle.

In terms of legal substance, although the criminal penalties in forestry laws and regulations are quite severe with a maximum sentence of 15 years in prison and a fine of up to 15 billion rupiah, the application of sanctions at the court level often does not reflect the severity of the impact caused. This problem is reinforced by the fact that the formulation of criminal sanctions in Law No. 41/1999 on Forestry does not specifically regulate illegal logging and does not regulate minimum sanctions, so that often the punishment imposed does not have a deterrent effect on the perpetrators. Criminal law sanctions against illegal deforestation practices are still not maximized so that they are not commensurate with the state losses incurred. Studies conducted by the Indonesian Center for Environmental Law (ICEL) show that most court decisions in illegal deforestation cases still provide relatively light sentences, both in terms of imprisonment and fines. This does not provide a significant deterrent effect for perpetrators or potential perpetrators of illegal deforestation. This lack of sanctions is also influenced by judges' lack of understanding of the long-term ecological and economic impacts of deforestation (Adinugroho and Chess, 2009).

The evidentiary aspect in illegal deforestation cases is also a challenge in criminal law enforcement. Proving the element of intent and the causal relationship between the perpetrator's actions and forest damage is often difficult due to limited evidence and competent expert witnesses. In the process of confiscating evidence of illegal logging, the handling is different from other criminal offenses because timber evidence from illegal deforestation requires special handling, including procedural issues in the measurement system that need to be regulated separately in legislation. Similarly, the process of auctioning evidence and its distribution must be regulated separately and differentiated from the treatment of evidence in general criminal offenses. The use of technology such as satellite imagery and Geographic Information System (GIS) for evidence is still not optimal due to limited infrastructure and technical capacity of law enforcement officials. In addition, there is often destruction of evidence or data manipulation that complicates the process of proof in court.

Corruption and collusion also greatly affect the effectiveness of criminal law enforcement against illegal deforestation. Transparency International Indonesia notes that the forestry sector is one of the sectors with a high level of corruption, both at the permit granting level and in the law enforcement process. The condition of Indonesia's forests, which still faces chronic problems in the form of cultivating collusion and corruption practices among forestry officials related to forest management and exploitation, has resulted in the unlawful exploration and exploitation of forests that cause forest destruction. The practice of bribery of law enforcement officials, starting from the level of investigation to trial, is still a common

phenomenon. The main juridical obstacle in law enforcement actually lies in the spirit and mentality of law enforcement officials themselves, where even though the legal instruments are weak, if the spirit and mentality of law enforcement officials are good, then law enforcement can be carried out well, on the contrary, if the legal instruments are good and complete but the spirit and mentality of law enforcement officials are poor, then the performance of law enforcement will not run well.

Geographical factors are also an obstacle in criminal law enforcement against illegal deforestation. Forest areas that are mostly located in mountainous areas make it difficult for law enforcement officers to carry out their duties to conduct field supervision in combating illegal logging. Officials must really master the terrain because they are faced with natural realities full of steep ravines and lush bushes that often require extra energy to be able to carry out tasks in accordance with expectations and predetermined targets. These difficult geographical conditions further exacerbate the limitations of human resources and existing infrastructure.

The criminal law enforcement approach that has been applied so far also tends to be reactive and has not touched the root causes of illegal deforestation. The focus of law enforcement is still limited to field actors such as loggers or illegal timber truck drivers, while the masterminds or large networks behind illegal deforestation activities are rarely touched. Research conducted by Forest Watch Indonesia shows that illegal deforestation often involves complex business networks with support from government officials and big businessmen. Considering that illegal logging is an organized crime that has a very wide network from logging to processing to exporting illegal timber products, it requires coordination and synergistic cooperation between related agencies. Without touching this level, criminal law enforcement will only be patchy and not have a long-term impact.

To improve the effectiveness of criminal law enforcement against illegal deforestation, approaches are needed including institutional reform by establishing specialized agencies, improving inter-agency coordination through integrated information systems, and strengthening human resource capacity. The prevention aspect also needs to be strengthened through the implementation of real-time monitoring systems using satellite and drone technology, as well as increasing public participation in supervision through whistleblower protection programs. Reforming the judicial system in handling environmental and forestry cases is an urgent need through the establishment of special environmental courts or increasing the competence of judges. The application of sanctions proportional to the impact of damage, including sanctions for environmental restoration and ecological compensation, can have a significant deterrent effect.

## CONCLUSION

The criminal law approach to illegal deforestation in conservation areas in Indonesia has a deep legal foundation through various laws and regulations, ranging from Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources, Law No. 41 of 1999 concerning Forestry, to Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction which provides stricter sanctions with a maximum imprisonment of 15 years and a fine of up

to Rp 15 billion. However, the effectiveness of criminal law enforcement in practice still faces various serious obstacles, including weak coordination between law enforcement agencies, lack of competent human resources, difficulties in proving in the field, and the rampant practice of corruption and collusion in the forestry sector. In addition, sanctions imposed by the courts are often not proportional to the damage caused, thus not providing an adequate deterrent effect. Law enforcement approaches that tend to be reactive and only target field actors without touching the masterminds or large networks behind them are also factors that reduce the effectiveness of the criminal law system in tackling illegal deforestation in conservation areas. To improve this effectiveness, comprehensive reforms are needed, including institutional strengthening, improved coordination between agencies, the application of modern technology for monitoring and evidence, and the eradication of corruption in the forestry sector.

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