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The Effectiveness of Environmental Law Enforcement in Combating Deforestation in West Papua, Indonesia

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ABSTRACT

This research is motivated by the high rate of deforestation in West Papua, which has had a widespread impact on tropical forest ecosystems, biodiversity, and the socio-economic lives of indigenous communities. The urgency of this research lies in the need for an in-depth evaluation of the effectiveness of regulations and law enforcement systems in preventing and mitigating deforestation. This study uses a qualitative approach with an empirical juridical research style. Data collection techniques were conducted through literature studies, documentation, and interviews with various stakeholders, such as academics, environmental activists, and regional officials. Data were analyzed using descriptive analytical methods with normative and sociological approaches. The results of the study reveal two main findings. First, the impacts and efforts to prevent deforestation in West Papua include ecosystem damage, biodiversity loss, indigenous peoples' rights disruption, and contributions to the climate crisis and agrarian conflicts. Although forest protection regulations, a moratorium on new permits, and a reforestation program have been in place, their implementation remains weak due to limited oversight, low community participation, and a lack of enforcement of violations. Second, the effectiveness of environmental law enforcement is still less than optimal. Enforcement is still dominated by administrative rather than criminal approaches, with weak institutional capacity and political-corporate intervention hampering the independence of law enforcement. There is a clear gap between legal norms and practices in the field, indicating the need for structural and cultural strengthening in the environmental legal system in West Papua.

Keywords: Deforestation, Law Enforcement, West Papua, Environment, Indigenous Peoples.

I. Introduction

National development in Indonesia often intersects with exploiting natural resources, particularly forests. Large-scale deforestation continues in West Papua, known as one of the world's richest biodiversity regions. This demonstrates the gap between *das sollen*, the ideal legal norms enshrined in legislation, and *das sein*, the reality of implementation on the ground (Rahadjo, 2009). Normatively, Indonesia has various legal instruments to maintain environmental sustainability. Law Number 32 of 2009 concerning Environmental Protection and Management guarantees the public's right to a good and healthy environment and affirms the state's obligation to ensure the sustainability of environmental functions. In addition, Law Number 41 of 1999 concerning Forestry and Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction also serve as the legal basis for preventing deforestation and forest degradation.



However, the enactment of Law No. 11 of 2020 concerning Job Creation, which emphasizes the principle of *ultimum remedium*, has raised concerns about weakening criminal law enforcement against perpetrators of environmental destruction. The emphasis on administrative sanctions reduces the deterrent effect on corporations committing violations (Khatarina, 2021). Theoretically, several important reasons can explain the weak enforcement of environmental law:

1. The Law Enforcement Theory put forward by Soerjono Soekanto, John Kenedy, and Agus Rahardjo states that the effectiveness of law enforcement is determined by three main components, namely legal structure, legal substance, and legal culture (Soekanto, 2004).
2. The Theory of Legal Certainty, according to Gustav Radbruch, Utrecht, and Hans Kelsen, emphasizes that the law must be clear, consistent, and predictable in its implementation (Radbruch, 2006).
3. The Theory of Legal Effectiveness, as developed by Soekanto, Gibson, and Friedman, states that the success of a legal norm is highly dependent on the integration between the substance of the law, law enforcement officers, and public legal awareness (Friedman, 2001).

Unfortunately, the reality in West Papua demonstrates the weakness of this law enforcement function. Deforestation is systematically carried out by several large corporations, particularly in the palm oil plantation and mining sectors, which have profoundly impacted ecosystems, indigenous peoples' customary lands, and the sustainability of local communities. Although legal instruments are available, their implementation tends to be weak: criminal sanctions are often replaced by lenient administrative sanctions, or even ignored (EIA, 2020). A concrete example can be found in the case of large-scale land clearing in Boven Digoel Regency. Palm oil concessions allegedly controlled by multinational business groups have caused widespread destruction of primary tropical forests. The legal response to this case, as with similar cases, has tended to be disproportionate. This indicates a lack of legal accountability and weak enforcement of existing regulations (Greenpeace, 2020). Thus, the central issue to be examined in this research is the ineffectiveness of environmental law in preventing deforestation in West Papua and the lack of legal accountability for perpetrators of violations, especially corporate entities.

II. Literature Review and Hypothesis Development

Indonesia's existing legal framework, such as Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 41 of 1999 concerning Forestry, and Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, provides avenues for law enforcement, both administratively, civilly, and criminally. However, implementation on the ground is often ineffective. A study conducted in West Papua also showed that of several cases handled by investigators in the Manokwari region, the majority have not yet received legal certainty, and criminal law enforcement is still not optimal.

A Greenpeace report and other studies have revealed that weak law enforcement is a significant factor contributing to the stagnation of forest protection efforts in West Papua. Since 2000, nearly one million hectares of forest in Papua have been cleared, mainly for oil palm plantations, and government-initiated moratorium programs have yet to yield significant results. Policy gaps, overlapping authority between the central and regional governments, and the lack of recognition and protection of indigenous peoples' rights further exacerbate the situation. Furthermore, law enforcement against deforestation in Papua's customary forests also involves recognizing indigenous communities' rights, which have received little attention. Numerous cases have seen indigenous communities lose access to and control over their customary forests due to the issuance of plantation and mining permits without adequate consultation. This situation demonstrates that environmental law enforcement is not solely concerned with prosecuting perpetrators of deforestation, but is also closely linked to social justice and the recognition of local community rights.

III. Research Method

This research uses a normative-empirical approach, which combines analysis of written legal norms (normative) with observation of legal implementation in the field (empirical) (Mukti & Yulianto, 2015). This approach was chosen because it is relevant to assessing the effectiveness of environmental law enforcement in addressing deforestation cases in West Papua. This approach can reveal the gap between legal idealism and the reality of practices occurring in the field (Soekanto, 2004). The types of data in this study consist of two main categories:

1. Secondary data, namely data obtained from literature studies, includes:
 - a. Primary legal materials: Laws, government regulations, ministerial regulations, and regional regulations related to forestry and the environment.
 - b. Secondary legal materials: Legal literature such as books, scientific journals, academic articles, and reports from research institutions and non-governmental organizations (NGOs).
 - c. Other relevant legal and administrative documents.
2. Primary Data, namely data obtained directly from interviews with competent sources in the field of environmental law and forestry management in West Papua. This study used purposive sampling, a method of deliberately selecting informants based on considerations of their role, competence, and relevance to the problem being studied (Sugiyono, 2019). The selected informants included:
 - a. Employees of the West Papua Provincial Forestry Service, who understand forest protection policies and technical implementation in the field.
 - b. Employees of the West Papua Province Environmental and Land Agency, who handle environmental regulation and law enforcement aspects.
 - c. Local academics or environmental activists, who can provide a critical perspective on the impacts of deforestation and the implementation of forestry policies.

The data collection process is carried out through two main techniques:

- a. Library Research
This technique is used to obtain secondary data by analyzing legal documents, reference books, scientific journals, policy reports, and other relevant written sources (Salim & Nurbani, 2014).
- b. Field Interview
Interviews were conducted using structured and semi-structured questionnaires. The goal was to elicit in-depth information from the interviewees while maintaining focus on the research problem (Creswell, 2014).

The collected data will be analyzed descriptively and qualitatively. This analysis is conducted by processing, grouping, and interpreting data from primary and secondary sources, which are then compared with applicable legal theories and norms (Moleong, 2017). This analysis aims to comprehensively answer the research questions, basing arguments on a combination of normative foundations and empirical conditions in the field. Thus, the results of this study are expected to provide a comprehensive and objective picture of the extent to which environmental law has effectively addressed deforestation in West Papua.

IV. Results and Discussion

4.1. Impacts and Efforts to Prevent Deforestation in West Papua

1. Analysis of Deforestation Conditions in West Papua

West Papua, one of Indonesia's remaining provinces with tropical forest cover, faces an increasingly alarming threat of deforestation. According to Global Forest Watch data and a Greenpeace Indonesia report, between 2015 and 2019, more than 4.4 million hectares of land were burned in Indonesia, a significant portion of which occurred in Papua and West Papua. One of the leading causes of deforestation in West Papua is the expansion of palm oil plantations, infrastructure development, and mining, all carried out without due regard for comprehensive environmental impact assessments. Large-scale land concessions granted to foreign and national corporations have resulted in the loss of primary forests, habitats for endemic Papuan wildlife, and the customary territories of local communities. Despite being prohibited, the practice of land clearing by burning is still found in investigative reports by several environmental NGOs (Walhi, 2021). This demonstrates this region's weak control and oversight of environmental law implementation.

2. Evaluation of the Role of Society and Government

a. Role of Government

The central and regional governments have a strategic role in controlling deforestation by strengthening regulations and monitoring systems. Three main regulations serve as the legal basis for environmental and forest management in Indonesia, particularly in West Papua:

- Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH)
This law is the primary legal framework governing comprehensive environmental protection, replacing Law No. 23 of 1997. This law emphasizes the precautionary principle, participation, state responsibility, and law enforcement, which includes administrative, civil, and criminal sanctions. One important provision is Article 69 paragraph (2), which prohibits land burning and regulates criminal sanctions for environmental damage.
- Law Number 41 of 1999 concerning Forestry
This law regulates forest management based on protection, conservation, and production functions. The basic principle of this law is sustainable and environmentally conscious management. Violations of these provisions, such as illegal logging and the conversion of protected forests for oil palm plantations without permits, are subject to criminal sanctions.
- Special Regional Regulation of Papua Province Number 21 of 2008 concerning Sustainable Forest Management
This regulation is a regional legal product based on the Papua Special Autonomy Law (Law No. 21 of 2001) and recognizes the importance of ecological justice and the role of indigenous communities. However, implementing these regulations in West Papua still faces structural obstacles such as overlapping central and regional authority, minimal socialization, and the absence of implementing technical regulations. Although national and regional regulations are available and are progressive, their implementation faces significant challenges: limited human resources and budgets for supervisory agencies,

weak oversight of corporations holding concession permits, and the dominance of administrative sanctions over criminal ones.

b. Role of Society

Indigenous communities in West Papua play a vital role in preserving forests through traditional practices and local knowledge passed down through generations. Custom-based management systems, such as prohibitions on felling trees in sacred areas, designated no-hunting zones, and land-use rotation, are concrete examples of conservation based on local wisdom. However, in practice, the role of indigenous communities is often marginalized in the land investment permitting process. The lack of legal recognition of customary rights makes them vulnerable to eviction. The participation of civil society and NGOs in environmental legal advocacy is growing, but is not evenly distributed. Community involvement is crucial as a strategic partner in monitoring deforestation, but no formal system is in place to facilitate their integrated participation.

3. Comparison between Regulations and the Real Impact of Deforestation

Normatively, legal regulations in Indonesia are actually quite comprehensive and progressive. However, comparing regulations with reality reveals profound inequalities:

Table 1. Legal Regulations in Indonesia

| Aspect | Normative Provisions | Factual Conditions in West Papua |
|-----------------------------------|--|--|
| Ban on forest burning. | Law No. 32/2009 Article 69(2) prohibits land burning | The practice of clearing land with fire is still being found |
| Enforcement of criminal sanctions | Law No. 18/2013 stipulates criminal penalties for those who destroy forests. | Corporate actors are only subject to administrative sanctions. |
| Community involvement | Article 65 of Law 32/2009 guarantees the right to participation | Indigenous communities are rarely involved in permits |
| Forest spatial planning | PP No. 104/2015 and Ministerial Regulation No. 8/2021 | There is still overlapping land with customary areas |

4.2. The Effectiveness of Environmental Law Enforcement in Combating Deforestation in West Papua

1. Study on the Effectiveness of Administrative and Criminal Sanctions

Environmental law enforcement in Indonesia, including in West Papua, is based on two approaches: administrative sanctions and criminal sanctions. The *ultimum remedium* principle adopted through Law Number 11 of 2020 concerning Job Creation primarily emphasizes administrative sanctions in addressing environmental violations. However, this administrative approach is often insufficient to address severe violations such as illegal forest clearing by large corporations. Violators are often subject to fines or minor administrative sanctions such as permit revocation or reforestation obligations, without criminal proceedings. This is not a deterrent, especially for corporations with significant capital. A 2020 Greenpeace report shows that of the hundreds of deforestation cases detected through satellite imagery in Papua and West Papua, only a small fraction were prosecuted. Even among those prosecuted, most ended in administrative settlements or were not pursued further. "Administrative sanctions are corrective, not repressive. If applied without strict screening, they lose their deterrent effect and instead open up opportunities for business actors to engage in irregularities." (Interview: Environmental Law Academic, UNRI Manokwari, 2024)

2. Analysis of the Implementation of the Environmental and Forestry Law in West Papua



Implementing various environmental and forestry regulations in West Papua, such as Law No. 32 of 2009, Law No. 41 of 1999, and Law No. 18 of 2013, faces challenges in implementation. Although legal norms establish obligations to protect forest areas and impose criminal penalties on perpetrators of environmental destruction, the implementation instruments have not been effective. Examples of suboptimal implementation include a lack of AMDAL carried out properly in oil palm plantation permits; the absence of continuous supervision by the Environmental Service of environmental permits; and the "unsynchronized" pattern between the central and regional governments, especially in mapping and determining customary forest areas and customary rights. Even in cases involving customary forests, the law's implementation often clashes with concession practices granted by the central government, without coordination with local governments or indigenous communities.

3. Obstacles in Law Enforcement

Several crucial factors hinder the effectiveness of environmental law enforcement in West Papua:

a. Local Political Constraints

Environmental law enforcement is often hampered by local political interests aligned with corporate concession holders. Local governments sometimes tend to favor economic investment over environmental sustainability.

b. Corporate Influence

Large palm oil and mining companies wield significant influence over local policy. Some use their economic power to lobby or even bribe officials to avoid prosecution.

c. Weak Institutions

Technical agencies, such as the Environment and Forestry Agency, face personnel, logistics, and budget limitations. Furthermore, a lack of synergy among law enforcement officials leads to slow or inconsistent case handling.

Table 2. Problems in Law Enforcement and Governance Aspects

| Aspect | Problems |
|--------------------|--|
| Local Politics | Investment dominance; conflict of interest |
| Corporation | Political lobbying, capital power, and economic pressure |
| Institutional | Limited human resources, budget, and synergy between institutions |
| Socio-cultural | Minimal participation of indigenous communities in the law enforcement process |
| Laws & Regulations | Dominance of administrative sanctions; weak implementation of criminal sanctions |

V. Conclusion

1. Impacts and Efforts to Prevent Deforestation in West Papua

Deforestation in West Papua has had a significant impact on the destruction of tropical forest ecosystems, the loss of biodiversity, and the disruption of the rights and livelihoods of indigenous communities. Deforestation also accelerates the climate crisis and agrarian conflicts. Despite several preventative measures, such as forest protection regulations, permit moratoriums, and reforestation programs, implementation remains weak due to limited oversight, minimal community participation, and weak enforcement of violations.

2. Effectiveness of Environmental Law Enforcement

Environmental law enforcement in combating deforestation in West Papua has been ineffective. The main factors contributing to the law's low deterrent effect are the dominance of administrative approaches over criminal sanctions, weak institutional capacity, and political interference and

corporate interests. The disparity between legal norms and reality demonstrates that the law enforcement system still needs structural and cultural strengthening.

3. Strengthening Legal Instruments and Firm Action Against Violations

Central and regional governments need to strengthen the implementation of criminal sanctions against deforestation perpetrators, especially corporations, to create a deterrent effect. Policies that are too lenient on administrative violations must be revised immediately to avoid weakening environmental protections.

4. Empowerment of Indigenous Communities and Strengthening of Local Institutions

Regional governments must actively involve indigenous communities in forest monitoring and environmental governance decision-making. Furthermore, environmental and forestry institutions in West Papua need to be strengthened through increased human resource capacity, budgeting, and a more synergistic and responsive inter-agency coordination system.

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