

International Journal of Judicial Law

Measuring law enforcement in action criminal plantation without a permit in forest area

Muslimin ^{1*}, Takdir ², Tahmid Nur ³, Firman Muhammad Arif ⁴, Rahmawati ⁵

¹ Larona Malili Forest Management Unit, Indonesia

²⁻⁵ Postgraduate Lecturer at IAIN Palopo, Indonesia

* Corresponding Author: **Muslimin**

Article Info

ISSN (online): 2583-6536

Volume: 02

Issue: 01

January-February 2023

Received: 02-01-2023;

Accepted: 03-02-2023

Page No: 09-16

Abstract

The act of Clearing plantation land in state-protected forest areas is a form of forest destruction that is still rife. This study aims to explore legal cases of plantation crimes committed by individuals in limited production forest areas without permission from the authorities. The legal case has been decided with permanent legal force by the East Malili Luwu District Court. This study uses research and development (research and development) methods through several procedures and dissected using scientific-based analysis. The results of the study show that the District Court judges received evidence and evidence during the course of the case. The tendency of judges to decide cases involving criminal acts committed by defendants is based on evidence that has the potential to damage limited production forest areas and without permits. The response and attitude of the defendant who tends to be cooperative during the trial until the reading of the verdict leads the judge to give a decision by prioritizing the aspect of legal justice rather than legal certainty because if the tendency of the judge's decision to be in the aspect of legal certainty then it is certain that the criminal sanctions received by the defendant are heavier so that the aspect of legal justice becomes the judge's priority with less criminal sanctions.

Keywords: enforcement, Measuring, permit, forest

Introduction

Global hopes are borne by Indonesia as one of the third largest countries after Brazil and Congo which has the largest tropical rain forest in the world. The obligation to preserve forests in the Indonesian region is a gift from God that must be managed in a sustainable manner. Forest management does not yet reflect compliance with good forest governance so that forest degradation and deforestation occur massively. The dysfunction and malfunction of protection of forest areas is like a never-ending matter. ^[1]

Government and community decisions that make forest areas an area that must be protected and maintained in a sustainable manner are responded to and treated barbarously by elements in destructive ways that disrupt their various ecological functions. ^[2]

The existence of forests must be protected because protecting forests is analogous to maintaining water management, soil

fertility that can still work and ensures benefits for the surrounding community. The existence of a forest that is preserved is synonymous with protecting the universe that penetrates the passage of time and across generations. These gaps and problems require precise and accurate solutions to increase public awareness to participate, build concern for protecting forests as the "lungs" of the world because trees are one of the world's largest oxygen producers and a source of basic needs in life. ^[3]

Protecting forests is categorized under environmental law with a wide scope so it is not easy to understand pragmatically because it includes aspects of forestry environmental management, environmental health, human benefit that synergizes with forest functions, spatial planning, sectoral aspects, regional autonomy, internationalization of the

¹Yasir Said & Ifrani, Indonesian Forestry Criminal Shifting Forestry Offenses as Oremium Remedium (Cet. I; Bandung: Nusamedia Publisher, 2019), 2-3

²Sri Rahayu Muh. Saleh, Legal Review of the Use of Protected Forest Land Areas by Communities in East Luwu Regency, Thesis on the Master of Law Study Program, Faculty of Law, University of Hasanuddin Makassar, 2021,

[Http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf](http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf)

Hukum Universitas Hasanuddin Makassar 2021,

[Http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf](http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf)

³Tempo Data and Analysis Center, Protecting Protected Forests (Jakarta: Tempo Publishing, 2022), 36.

environment and law enforcement.^[4]

The study of the relationship between the community and the existence of the forest environment needs to be massively expanded so that any literature that touches on the environment is of contributive value to the positive application of legal science and socially just law enforcement, especially those that intersect with the enforcement of criminal law in the forestry sector.^[5]

The protection and management of forests is still in doubt because law enforcement is often an issue and topic of discussion by all Indonesian people, both from the leadership, from the community level to the international community. Law enforcement that has been running has been dominated by an emphasis on administrative law and criminal law but must also utilize other relevant legal instruments. Various studies tend to view forest protection as a scope that needs serious attention in the midst of ongoing logging and forestry crime justice processes that are considered unsuccessful in the aspect of law enforcement.^[6]

The research aims to present criminal cases in order to fully capture the reality of law enforcement in courts that offer legal functions in environmental aspects or specifically intersect with forest management and provide solutive options in advancing national law. Facts on the ground are elaborated with a juridical analysis of criminal acts that occurred in a case in order to provide legal education on forests that need serious attention not only on regulatory aspects but also on policy aspects, criminal sanctions to renewal of forestry crimes. Law enforcement in criminal acts in any field demands a sustainable adaptation and a just solution.^[7]

Research Methods

This research is qualitative in nature as measured by non-statistical analysis in its testing. Derived from social events, non-exact and inductive process. Findings obtained from law enforcement units^[8] which was subsequently prosecuted legally with an *incrah* verdict. Search for meaning as an important component in research by analyzing the thoughts and feelings of informants. Direct data is prioritized by collecting data sourced from observation, interviews and documentation. Triangulation is used to test the correctness of the data obtained and highlight contextual details which are then broken down in detail and not compartmentalized.^[9] Disclosure of confirmed facts in the form of information themes that meet the research focus criteria. The constraints experienced by the forestry police are related to the quantity

of personnel in carrying out their main tasks and functions. Another obstacle is the negligent attitude of individuals who commit violations in the limited production forest area and do not fulfill obligations in the form of utilization permits from the authorities.^[10]

The research data was obtained from mapping information sourced from documents and fact-based information that synergizes with data in the field.^[11]

Presenters of information and documentation participate and prove their involvement in research. The existence of these participants has been tested, both in terms of their integrity and capacity in presenting correct and accurate information on criminal acts in the plantation sector in the concrete form of clearing plantation land without a permit in a forest area categorized as limited production forest. The following participants were involved in the research:

1. Forestry police who regularly patrol forest areas.
2. Participants from local district courts who have been involved and are accustomed to handling legal cases in the environment. Some court personnel have been transferred to other areas, but this does not prevent researchers from obtaining accurate information because the documents on the cases under study are still well stored, accessible and analyzed in order to realize research quality.
3. The prosecutor's party with its central role in law enforcement as a *dominus litis* in determining whether or not a case can be prosecuted. Accompanied by a strategic function in assessing evidence for criminal acts and as a guard for the upholding of a rule of law state building in order to uphold the principle of a fair legal process.^[12]

With regard to research instruments, the data collection process presents interview guidelines as the basis for formulating questions.^[13] Questions are submitted openly and consistently within the scope of the field of criminal acts in a comprehensive manner or carried out in a structured, systematic and massive manner.^[14] One of the related data is action without a permit and presents evidence in the form of tools used to exploit forest products. As for the others, the adequacy of formal and material data for filing the incident in the legal realm by taking a penal and non-penal policy approach.

The research procedure lasts for several months until the end of 2022 involving various agencies.^[15] Informants from several agencies or institutions were interviewed based on their awareness and willingness. Various questions were

⁴Wilsa, *Environmental Law, Study of the Historical Approach to Environmental Law* (Yogyakarta: Published, 2020),

⁵Yasir Said, Ifrani, *Forestry Crime in Indonesia: Shifting Forestry Offenses as a Premium Remedium*, (Bandung: Nusamedia Publisher, 2019), H. 1-2

Remedium, (Bandung: Nusamedia Publisher, 2019), H. 1-2

⁶Sadino, *Obstacles in Enforcing Criminal Law in Forest Management in Indonesia*, Dissertation of the Doctor of Law Program in the Graduate Program of Parahyangan Catholic University Bandung 2010, <https://repository.uai.ac.id/Wp-Content/Uploads/2021/11/Hbatan-In-Criminal-Law-Enforcement-On-Forest-Management-In-Indonesia> Dissertation Sadino.Pdf

⁷Dudung Darusman, *Kehutanan Demi Keberlanjutan Indonesia* (Cet. II; Bandung: Ipb Press, 2012), H. 3

⁸Herien Puspitawati & Tin Herawati, *Family Research Methods*, Cet. I; IPB Press: Bogor, 2013, p. 56.

⁹Adhan Efendi, Susilawati, Rosiah, Wahyu Noviansyah, Ade Nuraeni *et al.* *Fundamentals of Writing Scientific Papers* (Cet. I; Yogyakarta: Published, 2021), h. 46

¹⁰Albi Anggito & Johan Setiawan, *Qualitative Research Methodology* (West Java Sukabumi: CV Jejak, 2018)

¹¹Zainal Aqib & Mohammad Hasan Rasidi, *Educational Research Methodology*, ANI Publisher, Yogyakarta, 2019, p. 8

¹²Jan S. Maringka, *Attorney Reform in the National Legal System* (Cet. III; Jakarta: Sinar Graphic, 2019).

¹³Firdaus & Fakhry Zamzam, *Application of Research Methodology* (Cet. I; Yogyakarta: published,

2018), p. 106. See also, Herien Puspitawati & Tin Herawati, *Family Research Methods* (Cet. I; IPB Press: Bogor, 2013), h. 12

¹⁴Restu, Marwan Indra Saputra, Aris Triyono, Suwaji, *Research Methods*, Cet. I; Yogyakarta: published, 2021, p. 7-8

¹⁵Djulaeka, Devi Rahayu, *Textbook of Legal Research Methods*, Scopindo: Surabaya, 2019, h. 10

asked one by one openly in a safe and comfortable atmosphere. Some of the interviews were conducted directly / face to face or indirectly. The willingness of informants to provide experience and tell actual facts that are in line with the research theme is considered to be very helpful in the realization of research results. At the same time probing is carried out or a way to explore answers in order to realize research results that are complete, concrete and minimal in error.

Data mapping is sourced from interview data, legal case documentation that has signed status and some information sourced from online news. These data are classified thematically to emphasize the types of legal imbalances that occur in plantation crimes without permits that occur in limited production forest areas. Classification of data is carried out according to the theme under study and considering aspects related to the theme under study. The significance of the context of differences regarding law violations is analyzed based on the applicable parameters such as legal certainty, legal benefits and legal justice.

Data were analyzed through three stages, namely data restatement, data description and data interpretation. Data restatement was carried out by referring to various quotations originating from interviews based on the perspective of informants who used legal reasoning and social reasoning abilities.^[16]

The description of the data is taken by showing the patterns and trends of the data relating to the typology of legal cases. The process of interpreting the data is carried out by taking into account the individual, social and institutional context which is the source of data for researchers in disclosing research results. The three stages of the analysis become the basis for drawing conclusions (inferences). Data sourced from several informants in various agencies or institutions become a comparison that mutually reinforces data sourced from realities in the field, documentation and digital information that are interrelated.

Research activities related to normative Islamic law take the form of legal *istinbath* as a continuation of research based on legal principles with the aim of photographing the legal process that occurs and guiding Islamic jurists in reaching a legal opinion in a particular case. Its scope is quite broad, including examining the opinions of legal experts, opinions of schools of thought, fatwas of scholars, and court decisions. Conventional jurists call this legal clinical research, namely the process of making in abstracto law into in concreto law. Included in this research area is research on the process of creating a rule in the paradigm of Islamic law and decisions from courts.^[17]

Research Results and Discussion

Research reveals the formal and material application of law in plantation crimes without permits committed in forest areas, which until now have been considered ambiguous in law enforcement. The case documents analyzed originate from cases revealed by the Forest Police which were then

handled by the East Luwu Police and tried by the Malili District Court with a decision on a plantation case without a permit in a forest area number 144/Pid.B/2015/PN.MLL. The gap between legal practitioners occurs due to disparities in intellectual preference and scientific reasoning in interpreting the case. This reality shows that different interpretations in any case are sure to irritate legal observers, especially if the judge has passed a decision in the legal case he is facing.

This fact is common and synergy with the rules of Islamic law *حكم الحاكم يرفع الخلاف*

(*hukmu al hakim yarfa'u al khilaf*) which means the judge's decision aborts differences of opinion.^[18] This fact is in line with the norms in Article 5 paragraph 1 to 3 of Law no. 48 of 2009 concerning Judicial Power which legitimizes judges as long as they do not conflict with the judge's code of conduct.^[19]

Reality and Facts of Legal Cases

In the period from 2005 to 2022, there were 27 criminal cases involving plantations in forest areas without permits prosecuted by the Attorney General's Office using instruments from the Corruption Law. Of the 27 cases, 15 of which were tried at the District Court but received an acquittal. The other 12 cases were sentenced to various sanctions but the dominant ones were in the light category.^[20] Research reveals that plantation criminal cases have been tried and elaborated in order to provide legal education in 2 matters, namely:

- a. maintain the balance of nature so that people do not arbitrarily dredge nature. Common facts show that humans often fail to read the universe but continue to claim to be powerful, feeling capable of overcoming the universe so that they are greedy to scavenge and plunder.
- b. Providing clear barriers and educating the public in distinguishing between authority and arbitrariness in treating the environment and forests in order to protect flora and fauna.

This research describes one of the cases of illegal plantation crime that occurred on September 26 2015 in a protected forest area in Baruga Village, Towuti District, East Luwu Regency. The perpetrator Mude bin Kalu was named a suspect because was picked up by the Forestry Police during a patrol from the Larona Malili Protected Forest Management Unit (KPHL). The suspect was found while cleaning his pepper plantation and it was proven that he had been cultivating it since 2013. The pepper plantation he was cultivating was in a protected forest area based on taking coordinates from patrol officers who were also considered to have scientific knowledge about forestry^[21] and the existence of the land is clearly prohibited according to law so that the formal offenses and material offenses in the incident are met in order to prosecute the suspect in the realm of law.^[22]

Formal offenses do not need consequences, with the occurrence of a crime it is stated that the crime has occurred. In contrast to material offenses where a crime is declared to

¹⁶Elisabeth Sri Hendrastuti, Erliza Noor, Husin Alatas, Ni Wayan Kurniani Karja, *Ethics of Scientific Writing and Publication*, Bogor: IPB Printing, 2022, h. 3

¹⁷Faisar Ananda Arfa, Watni Marpaung, *Islamic Law Research Methodology*, Cet. II: Jakarta: Kencana, 2018, 54-55

¹⁸H. A. Djazuli, *Principles of Jurisprudence – Principles of Islamic Law in Resolving Practical Problems* (Cet. III; Jakarta: Kencana Prenada Media Group, 2010).

¹⁹Republic of Indonesia, Law no. 48 of 2009 concerning Judicial Power.

²⁰Andi Burhani, Deputy Registrar Judge of the Malili District Court, East Luwu Regency, Interview, 11 October 2022, 08.15 WITA.

²¹Fachrul Jafar "Interview & Documentation" Patrol Officer and Member of the Protected Forest Police Unit (KPHL).

²²Fachrul Jafar, "Interview and Documentation" Member of the Protected Forest Police Unit in Malili District on January 12, 2023.

have occurred if there has been a consequence.^[23] as discussed in the science of law with various other branches of knowledge such as material and formal criminal law. Other sources of law are anything that can give rise to binding and coercive regulations accompanied by strict sanctions for anyone who violates them without discrimination. Material criminal law is a rule of law that includes criminal acts with the composition and formulation of criminal acts, fulfilling the requirements and rules for criminal offenders.

Material sources of law determine the contents of legal regulations that are binding on people. It is said to be binding because rules originate from public opinion, community law, environmental conditions, sociology, economics, morals, legal politics and others. While formal criminal law is the law that is used as a basis for law enforcers including forest rangers which regulates how the state responds to equipment to carry out obligations to investigate, prosecute, prosecute and carry out crimes. Formal sources of law have the power to bind existing regulations with the aim that rules are complied with which are not only obeyed by the public but also obeyed by law enforcers at the same time.^[24]

Criminal cases involving plantations without permits in forest areas are de jure (based on law) in Articles 12 to 28, which are further regulated by criminal sanctions in Articles 82 to 109 of Law no. 18 of 2013 concerning eradicating forest destruction. In addition to land that is included in the forest area, several tools that are usually used for felling, chopping and splitting wood were found, such as chainsaws, machetes, axes, shovels, hoes, chainsaws, tape measure, spray tanks, jerry cans filled with gasoline and oil. The existence of these items placed in the cottage owned by the suspect. It is certain that the equipment and tools were used to destroy protected forest areas because it was proven that they were used by cultivating plantations that are included in state-owned forest areas. The material element in a criminal act is considered to strengthen in imposing criminal sanctions as stipulated in the regulations.^[25]

The existence of two pieces of evidence in the form of arable land entering the coordinates of a protected forest and the tools used in logging, chopping and splitting wood are considered to fulfill the elements of a criminal act so that they are worthy of being processed for the next step, namely the investigation and determination of the perpetrator as a suspect which is realized formally by issuing a detention order in accordance with applicable regulations is 20 days and can be extended by the public prosecutor for a maximum of 40 days if the investigation has not been completed. The administration of the case will proceed to the Prosecutor's Office with a copy to the District Court to proceed with the

legal process at the local district court.^[26]

Some evidence of the completeness of the files through criminal investigation codes that are familiar to the public, such as:

1. P-18: notification that the results of the investigation are incomplete. Referring to article 110 paragraph (2) of the Criminal Procedure Code (KUHAP).
2. P-19: Return of case files to investigators to be completed and in which there are instructions from the prosecutor, both material and formal which must be completed. Investigators are required to carry out additional investigations according to instructions from the public prosecutor.
3. P-21: if the public prosecutor considers that the results of the investigation are complete so that the status of the case becomes P-21.^[27]

From the dossier investigation code above, the case dossier is stated in the form of P-21 or is considered complete and can be forwarded to the public prosecutor from the prosecutor's office after the formal legality is fulfilled and the case dossier is signed by the investigator and the public prosecutor with the authority to change the status of a suspect to a defendant. During the prosecution period carried out by the public prosecutor, the defendant is in the custody of the prosecutor's office with a detention period of 20 days and if the case file or examination has not been completed, the chairman of the district court can extend it for a maximum of 30 days.^[28]

During the trial, the defendant Mude bin Kalu was charged with cleaning up the plantation he had owned since 2013 and the plantation was located at a coordinate point that was included in the limited production forest area based on expert testimony and testimony from several parties who found the defendant at that location. The testimony of several witnesses conveyed other violations, namely the finding of equipment for cutting and splitting wood during an inspection at the defendant's boarding house and its surroundings. These tools are generally suspected of being used to carry out plantation activities or transporting forest products in protected forest areas without a permit from the ministry.^[29]

The formal and material facts owned by the defendant are considered to fulfill a criminal offense which is in line with Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction. Material evidence with the garden that he cultivated and was included in a protected forest area was pepper plants and several banana plants. The plantation or arable land is considered legally flawed because there is no certificate as proof of the right to ownership of the location cultivated by the defendant. The truth of the

²³Yuda Pencawan, How to Distinguish between Formal Offenses and Material Offenses, Mawar Saron Legal Aid Institute and accessed from Online Law via the URL <https://www.-lt569f12361488b> published May 9, 2016

²⁴Zuleha, Fundamentals of Criminal Law (Cet. I; Yogyakarta: Deepublish, 2017), ISBN 978-602-453-102-7, p. 2-3. See, Kurniawan Tri Wibowo & Warih Anjari, Material Criminal Law (Cet. I; Jakarta: Kencana, 2022), ISBN 978-623-384-171-9, h. 9. See also, Mahrus Ali, Fundamentals of Criminal Law (Cet. I; Jakarta: Sinar Graphic, 2011). ISBN 978-979-007-383-8.

²⁵ Fachrul Jafar "Interview & Documentation" Patrol Officer and Member of the Protected Forest Police Unit (KPHL).

²⁶Court Practice Laboratory & UKM-FH KOMMPAS, Case File Module for Investigation, Prosecution, Advocates and Courts (Madura: Universitas Trunojoyo Madura, t.th).

²⁷Diva Lufiana Putri & Rendika Ferri Kurniawan, P18, P19 and P21 What does it mean? Here is the code in the case file,

<https://www.kompas.com/tren/read/2022/10/04/070000665/p18-p19-dan-p21-artinya-apa-ini-kode-kode-dalam-berkas-case> published October 4, 2022. See also, Attorney General of the Republic of Indonesia, Decree of the Attorney General of the Republic of Indonesia Number: KEP-518/A.J.A/11/2001 Date: November 1, 2001 Concerning Amendments to the Decree of the Attorney General of the Republic of Indonesia Number: KEP-132/ J.A/11/1994 Date : November 7, 1994 Concerning the Administration of Criminal Cases, accessed from http://catalog.danlevlibrary.net/index.php?p=show_detail&id=6553 on March 2, 2023.

²⁸Yakob Lili, Head of Crime Unit for Malili Police, East Luwu Regency, Interview, 9 October 2022.

²⁹Yakob Lili, Head of Crime Unit for Malili Police, East Luwu Regency, Interview, 9 October 2022.

indictment is supported by Information sourced from the agriculture, plantation and animal husbandry services of East Luwu Regency stated that the relevant agencies did not have data on plantation activities carried out by individuals, let alone giving permits. Officials from the relevant agencies. Only have data on legal plantation activities carried out by 3 companies, namely PT Latunrung, PT Sindoka and PTPN XIV.^[30]

This provision emphasizes that the act of a person cultivating land without being accompanied by a legal statement of the legality of cultivating the land (inside a forest area) which, if intentional, is considered a criminal act. Indonesia recognizes the principle of legal fiction, namely that when a statutory regulation has been promulgated, at that time everyone is deemed to know it (presumption iures de iure) and these provisions are binding so that one's ignorance of the law cannot free or forgive from lawsuits (ignorantia iuris non excusat). The principle of legal fiction has been normalized in the explanation of article 81 of Law Number 12 of 2011 concerning the Formation of Legislation^[31].

The prosecutor's office acknowledges various obstacles, especially at the strata court level by continuing to try to prosecute criminal cases on plantations in forest areas without permits by using the Corruption Law instrument by minimizing legal loopholes that can be used as an excuse for perpetrators to break free from corruption. Law enforcement officials and other law enforcement officers who are considered to have not responded to cases related to forestry crimes using the Corruption Law approach.^[32] The prosecutor's office still treats plantation crimes within the scope of certain criminal laws and all prosecutors throughout Indonesia are instructed to provide the highest charges against the perpetrators so that disparities do not occur so that criminal charges in forestry cases are controlled by the Attorney General's Office.

In this decision, the prosecutor's office in East Luwu Regency prosecuted the defendant by proposing various tools normally used for felling, chopping and splitting wood. The existence of such equipment is in line with Law no. 18 of 2013 concerning eradicating forest destruction. In the trial process, the defendant was considered cooperative, straightforward, gave information as it was and was considered honest in admitting his mistakes. In the title of the case from the public prosecutor only included evidence with goods that had the potential to be used for forest destruction by the defendant and it was proven that he did not have an exploitation and logging permit.^[33]

During the trial, the public prosecutor was ignorant of the actions taken by the defendant who were proven to be working on a location that was included in a limited production forest area. Knowledge of forestry at trial, presenting expert witnesses with the profession of forestry police and having qualified training certificates in their field. During the trial, the testimony of the expert witness as

evidence presented two criminal acts, namely the act of working in the forest which is prohibited by law and the perpetrators who were proven to have brought tools that could potentially be used to damage the forest. Of these 2 activities, the act of working on land has a criminal sanction of 3 years and the other is carrying tools with a criminal sanction of 1 year.^[34]

The testimony provided by the expert witness only accommodated evidence of the existence of tools brought by the defendant to destroy the protected forest. Disappointment is certain because the charge that should be imposed is the act of working on land in a limited production forest area which carries a penalty of 3 years and can have a deterrent effect for perpetrators and an intimidating effect on the public who try to do the same thing. In contrast to the demands for violations of carrying tools for only one year, the court tends to sentence a sentence of only one year and work on land without a permit for 3 years is ignored.^[35] The result of the decision determined that the defendant was sentenced to 1 year in prison for the crime of carrying tools proven to be used to cultivate land for plantations in a protected forest area which is clearly forbidden to be damaged.

Based on the title of the case, the statements of expert witnesses, the statements of the accused, the statements of witnesses, the evidence presented, the arguments of the public prosecutor, the reading of the verdict from the panel of judges at the Malili District Court, East Luwu Regency. The verdict from the trial judge was accepted with grace from the defendant even though the category of crime he committed was relatively light compared to the others. Several juridical analyzes of research are based on case titles that have been decided by using several approaches such as sociological, empirical juridical, phenomenological, and other approaches that are considered relevant

First: The defendant is considered cooperative, straightforward, looks resigned and feels guilty for the crime he committed.^[36] The performance shown by the defendant while holding a case in court or as the perpetrator of a plantation crime in a forest area that is prohibited is none other than the act of cultivating the land in which it is admitted that it was carried out personally in order to fulfill the family's food needs and fulfill responsibilities as the head of the family which is also carried out by the local community.^[37] so that the criminal act he committed was assessed as not having a significant impact on the location of the plantation with pepper and banana trees cultivated in the forest area. The tools used to destroy forest areas are clearly used for plantations that are concretely located in forest areas for plants that have commodities and plants for food consumption so that the evidence is considered synonymous with several other actions that are interrelated, namely opening plantation areas in forest areas and destroying the

³⁰Salma, Staff Head of KPH Forest Service, East Luwu Regency, South Sulawesi Province, Interview 9 October 2022

³¹See, Theo Evander, Only Ordered to Transport Illegal Forest Products Can Drivers Be Penalized, accessed by the Mawar Saron Legal Aid Institute & <https://www.-driver-convicted-lt60865fc24ed03> published June 22, 2021.

³²B. Arief Sidharta, Reflections on Law Science as the Foundation for the Development of National Law Science (Cet. III; Mandar Madju: Bandung, 2000), h. 33.

³³Sahwal, Head of the General Crimes section of the East Luwu District Attorney, Interview, 10 October 2022.

³⁴Andi Burhan, Deputy Registrar of the Malili District Court, East Luwu Regency, Interview 11 October 2022.

³⁵Muslimin, Larona Malili Protected Forest Management Unit & Expert Witness in Trial, Interview. October 10, 2022.

³⁶Yakob Lili, Head of Crime Unit for Malili Police, East Luwu Regency, Interview, 9 October 2022.

³⁷Ahmad Yusran, Hill Forest to Riverside Suddenly Becomes Pepper Fields, accessed via <https://www.liputan6.com/regional/read/2562180/hutan-bukit-Sampai-tepi-sungai-mendadak-jadi-ladang-merica> published 27 July 2016.

forest area for the garden land it cultivates. ^[38]

Second: the testimony of the expert witness from the local Protected Forest Management Unit (KPHL) office is categorized as evidence in the title case at trial, but the judge has the perception and independence in giving a decision that is not affected by the testimony of the expert witness which is considered burdensome for the defendant's confession. It is better to provide expert information from representatives of associations such as Forest Watch Indonesia (FWI), the Indonesian Forum for the Environment (WALHI), the Forestry and Environment Service (DHL) or the Agriculture and Food Security Service.

Third: the plantation criminal act committed by the defendant was carried out in a limited production forest area whose area is in third place which is considered not to pose a potential hazard. At that time, criminal acts of land tenure in the forest did not provide legal certainty. ^[39]

Table 1

Forest area location	Hectares area
Protected Forest area	238.589,52 Ha
Nature reserves and Nature Conservation areas	179.552,45 Ha
limited production forest	96.554,38 Ha
permanent production forest	9.135,32 Ha
convertible production forest	17.759,63 Ha.
Forest area in East Luwu	541.591,30 Ha

Data sourced from the East Luwu Forestry Service up to 2014.

Third: the plantation criminal act committed by the defendant was carried out in a limited production forest area whose area is in third place which is considered not to pose a potential hazard. At that time, criminal acts of land tenure in the forest did not provide legal certainty. ^[40] The charges against the defendant regarding the aspect of bringing in tools for land conversion, were used to utilize forest products in the form of wood which is certain to destroy forests and reduce the main function of limited production forest areas. ^[41] As for claims that arable land that enters a limited production forest area cannot be certified by changing the status of the land to an Area for Other Uses (APL). The existence of the accused and the people who control land in forest areas has not received attention from the aspect of legal certainty from the central government and regional governments. Legal protection for people who control land in production forest areas was issued two years later. ^[42]

The reality of land tenure in limited production forest areas, permanent production forests and convertible production forests makes it possible to own them by applying for and granting an Area for Other Use (APL) certificate after the issuance of Presidential Regulation No. 88 of 2017 and land tenure before the existence of this regulation is considered to

have no legal certainty and the perpetrators can be punished as in the case presented in this paper. ^[43] This fact shows that the judge in giving a decision before the issuance of Presidential Regulation No. 88 of 2017 concerning the settlement of land tenure in forest areas places more emphasis on the certainty aspect and assesses that the land the defendant is cultivating is still illegal when the legal case is being heard. The judge's decision tends to be fair because the defendant is the head of the family and the actions of the Civil Service Police Unit (Satpol PP) executed hundreds of hectares of land from local people who controlled land in forest areas to plant pepper or white pepper as a crop that has a competitive price commodity and tantalizing. ^[44]

Of the 3 aspects assessed in this paper, the actions and decisions given by the judge in the title case for the defendant are not intended to pursue quantity of law enforcement because the data submitted in the trial process must be precise, the procedures adopted are ensured to be complicated and impose criminal sanctions on the perpetrator or Offenders need to have several considerations such as considerations from a humanitarian standpoint, legal certainty, legal justice, legal, sociological and financial benefits that must be borne by the defendant as the perpetrator of the violation and the defendant's family. The court's decision will certainly be different if the perpetrator is a corporation which is confirmed to be carrying out massive exploitation and destruction on a large scale which is usually not on the legal side but the corporation tends to deviate from the permits given. ^[45]

In the aspect of law enforcement, the forestry police in East Luwu with a total of 8 coordinators and only 5 are in the category of State Civil Apparatus in the Protected Forest Management Unit / KPHL who are directly responsible to the governor as of October 2016 which were previously under the ministry. Areas in East Luwu Regency which are dominated by forests with limited personnel are a challenge so cooperation and collaboration with relevant agencies from the local government and local police are needed in terms of:

- Preparedness (readiness) of all agencies and associations that are in contact with maintaining the sustainability of the forest so that they continue to educate the public so that they exploit the forest in a civilized way.
- Prevention (guarding), violations that continue to occur are usually due to friction between the economy, the environment or social. In reality, economic interests win. ^[46]
- Recovery (rehabilitation), preserving forests by reforestation or planting deforested forests and avoiding illegal logging.
- Response (emergency response), not carrying out brutal logging, acting massively to restore forest functions to

³⁸Andi Burhan, Deputy Registrar of the Malili District Court, East Luwu Regency, Interview 11 October 2022.

³⁹Ahmad Jazuli, Benefits of Protected Forest Tangerang: Literature Workshop, 2019

⁴⁰Ahmad Jazuli, Benefits of Protected Forest Tangerang: Literature Workshop, 2019

⁴¹Republic of Indonesia, Government Regulation of the Republic of Indonesia Number 6 of 2007 concerning Forest Administration and Preparation of Forest Management Plans and Forest Utilization, Article 1 paragraph 8 Chapter 1 General Provisions.

⁴²See, Republic of Indonesia, Presidential Regulation no. 88 of 2017 concerning Land Tenure in Forest Areas.

⁴³Sigit Dzakwan, Production Forests Can Be Certified By Changing Land Status To Other Use Areas,

<https://area.sindoneews.com/berita/1286358/174/hutan-production-bisa-disertifikat-dengan-mengubah-status-lahan-be-app> published March 2, 2018.

⁴⁴Ahmad Yusran, Hill Forest to Riverside Suddenly Becomes Pepper Fields, accessed from <https://www.liputan6.com/regional/read/2562180/hutan-bukit-jadi-tepi-sungai-mendadak-jadi-ladang-merica> published 27 July 2016.

⁴⁵M. Yasir Said, Ifrani, Indonesian Forestry Criminal Shifting Forestry Offenses as Premium Remedium, Editor: Yati Nurhayati, Cet. I; Bandung: Nusamedia Publisher, 2019.

⁴⁶Dudung Darusman, Forestry for Indonesia's Sustainability, Cet. II; Bogor: IPB Press, 2012.

prevent flash floods.^[47]

- e. Development (development).

Conclusion

The realization of law enforcement from law enforcement agencies from the police, prosecutors to courts will not touch and be felt by the wider community if it is carried out by eliminating the motivation of the values of justice, benefit and legal certainty. Therefore efforts to decide from the court are needed to foster the value of justice.

In the legal cases that were studied in the district court area in East Luwu, it can be seen that the judge who gave the decision in the case was considered to prioritize justice in enforcing environmental and forestry laws. The defendant is a plantation business actor who cultivates land in a limited production forest without a permit with a business scale that meets food needs intended to support his family. Nevertheless, the destruction of forests either from individuals or corporations threatens the survival of the people so that to give a deterrent effect a strong legal basis is needed and is able to guarantee the effectiveness of law enforcement.

References

- Adhan Efendi, Susilawati, Rosiah, Wahyu Noviansyah, Ade Nuraeni, *et al.* Fundamentals of Writing Scientific Papers Cet. I; Yogyakarta: Deepublish, 2021
- Albi Anggito, Johan Setiawan. Qualitative Research Methodology (West Java Sukabumi: CV Jejak, 2018).
- Andi Burhani. Deputy Registrar Judge of the Malili District Court, East Luwu Regency, Interview, 2022, 08.15 WITA.
- Ahmad Jazuli, Benefits of Protected Forest Tangerang: Literature Workshop, 2019.
- Ahmad Yusran. Hill Forest to Riverside Suddenly Becomes Pepper Fields, accessed via <https://www.liputan6.com/regional/read/2562180/hutan-bukit-Sampai-tepi-sungai-mendadak-jadi-ladang-merica> published 27 July 2016.
- Andi Burhan. Deputy Registrar of the Malili District Court, East Luwu Regency, Interview, 2022.
- B Arief Sidharta. Reflections on Law Science as the Foundation for the Development of National Law Science (Cet. III; Mandar Madju: Bandung, 2000).
- Diva Lufiana Putri & Rendika Ferri Kurniawan, P18, P19 and P21 What does it mean? Here is the code in the case file, <https://www.kompas.com/tren/read/2022/10/04/070000665/p18-p19-dan-p21-artinya-apa-ini-kode-kode-dalam-berkas-case> published October 4, 2022.
- Djulaeka, Devi Rahayu, Textbook of Legal Research Methods, Scopindo: Surabaya, 2019.
- Dudung Darusman. Forestry for Indonesia's Sustainability (Cet. II; Bandung: IPB Press, 2012).
- Elisabeth Sri Hendrastuti, Erliza Noor, Husin Alatas, Ni Wayan Kurniani Karja, Ethics of Scientific Writing and Publication, Bogor: IPB Printing, 2022.
- Firdaus, Fakhry Zamzam. Application of Research Methodology (Cet.I; Yogyakarta: Deepublish, 2018). See also, Herien Puspitawati & Tin Herawati, Family Research Methods. Cet. I; IPB Press: Bogor, 2013, 106.
- Faisar Ananda Arfa. Watni Marpaung, Islamic Law Research Methodology, Cet. II: Jakarta: Kencana, 2018.
- Fachrul Jafar. Interview and Documentation Member of the Protected Forest Police Unit in Malili District on January 12, 2023.
- HA Djazuli. Principles of Jurisprudence – Principles of Islamic Law in Resolving Practical Problems. Cet. III; Jakarta: Kencana Prenada Media Group, 2010.
- Herien Puspitawati, Tin Herawati, Family Research Methods, Cet. I; IPB Press: Bogor, 2013.
- Jan S Maringka. Attorney Reform in the National Legal System. Cet. III; Jakarta: Sinar Graphics, 2019.
- Attorney General of the Republic of Indonesia, Decree of the Attorney General of the Republic of Indonesia Number: KEP-518/A/J.A/11/2001 Date: 1 November 2001 Regarding Amendments to the Decree of the Attorney General of the Republic of Indonesia Number: KEP-132/J.A/11/1994 Date: 7 November 1994 About the Administration of Criminal Cases, accessed from http://catalog.danlelibrary.net/index.php?p=show_detail&id=6553 on March 2, 2023.
- Kurniawan Tri Wibowo, Warih Anjari. Material Criminal Law (Cet. I; Jakarta: Kencana, 2022), ISBN 978-623-384-171-9.
- Court Practice Laboratory & UKM-FH KOMMPAS, Case File Module for Investigation, Prosecution, Advocates and Courts (Madura: Universitas Trunojoyo Madura, t.th).
- Mahrus Ali. Fundamentals of Criminal Law (Cet. I; Jakarta: Sinar Graphic, 2011). ISBN 978-979-007-383-8.
- M Yasir Said, Ifrani. Indonesian Forestry Criminal Shifting Forestry Offenses as Premium Remedium, Editor: Yati Nurhayati, Cet. I; Bandung: Nusamedia Publisher, 2019.
- Muslimin, Protected Forest Police Unit Larona Malili & Expert Witness in Trial, Interview. October 10, 2022.
- Tempo Data and Analysis Center, Protecting Protected Forests (Jakarta: Tempo Publishing, 2022).
- Health Crisis Center of the Ministry of Health of the Republic of Indonesia, Restoring Forest Functions to Prevent Flash Floods, diaskes <https://pusatkrisis.kemkes.go.id/mengembalikan-fungsi-hutan-untuk-prevent-banjir-bandang> published 26 February, 2017.
- Republic of Indonesia, Government Regulation of the Republic of Indonesia Number 6 of 2007 concerning Forest Administration and Preparation of Forest Management Plans and Forest Utilization, Article 1 paragraph 8 Chapter 1 General Provisions.
- Republic of Indonesia, Presidential Regulation no. 88 of 2017 concerning Land Tenure in Forest Areas.
- Republic of Indonesia, Law No. 48 of 2009 concerning Judicial Power.
- Restu, Marwan Indra Saputra, Aris Triyono, Suwaji, Research Methods, Cet. I; Yogyakarta: Deepublish, 2021.
- Salma. Staff Head of KPH Forestry and Plantation Service, East Luwu Regency, South Sulawesi Province,

⁴⁷Health Crisis Center of the Ministry of Health of the Republic of Indonesia, Restoring Forest Functions to Prevent Flash Floods,

diaskes <https://pusatkrisis.kemkes.go.id/mengembalikan-fungsi-hutan-untuk-prevent-banjir-bandang> published 26 February 2017.

- Interview 9 October, 2022.
31. Sahwal, Head of General Crime Section at the East Luwu District Attorney, Interview, 10 October, 2022.
 32. Sigit Dzakwan, Production Forests Can Be Certified by changing land status to other use areas, <https://area.sindonews.com/berita/1286358/174/hutan-production-bisa-disertifikat-dengan-mengubah-status-lahan-be-> app published March 2, 2018.
 33. Sadino. Obstacles in Enforcing Criminal Law in Forest Management in Indonesia, Dissertation of the Doctor of Law Program in the Graduate Program of Parahyangan Catholic University Bandung 2010, https://Repository.Uai.Ac.Id/Wp-Content/Uploads/2021/11/Hbatan-In-Criminal-Law-Enforcement-On-Forest-Management-In-Indonesia_Desertasi_Sadino.Pdf
 34. Sri Rahayu Muh. Saleh, Legal Review of the Use of Protected Forest Land Areas by Communities in East Luwu Regency, Thesis on the Master of Law Study Program, Faculty of Law, University of Hasanuddin Makassar, 2021, [Http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf](http://Repository.Unhas.Ac.Id/Id/Eprint/13442/2/B012181080_Tesis%201-2.Pdf)
 35. Theo Evander, Only Ordered to Transport Illegal Forest Products Can Drivers Be Convicted, accessed by the Mawar Saron Legal Aid Institute & <https://www.-invicted-1t60865fc24ed03> published June 22, 2021.
 36. Wilsa, Environmental Law, Study Approach to the History of Environmental Law. Yogyakarta: Deepublish, 2020),
 37. Yasir Said & Ifrani, Indonesian Forestry Criminal Shifting Forestry Offenses as Oremium Remedium (Cet. I; Bandung: Nusamedia Publisher, 2019).
 38. Yuda Pencawan. How to Distinguish between Formal Offenses and Material Offenses, Mawar Saron Legal Aid Institute and accessed from Online Law via the URL <https://www.-1t569f12361488b> published May 9, 2016
 39. Yakob Lili, Head of Crime Unit for Malili Police, East Luwu Regency, Interview, 9 October, 2022.
 40. Zainal Aqib & Mohammad Hasan Rasidi, Educational Research Methodology, ANI Publisher, Yogyakarta, 2019.
 41. Zuleha. Fundamentals of Criminal Law (Cet. I; Yogyakarta: Deepublish, 2017. ISBN 978-602-453-102-7.