



# Saving Indonesia's Forests Through the Vicarious Liability Doctrine Against the Corporate Crimes of Illegal Logging

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**Abstract.** As the world's lungs, forests have provided foreign exchange to the country's second-largest income after the non-oil and gas sector. For this reason, it needs more efforts to protect and save forests with all their potential. Government policy restricting, controlling, and regulating the issue are the Law No. 18 of 2013. The enforcement of the law aims to prevent and eradicate forest destruction. The existence of the phenomenon of corporate crimes requires further study to investigate the corporate efforts to account for crimes. For this reason, it needs clear regulations concerning the liability of illegal logging corporate crimes in Indonesia, enforcement aspects of the theory of vicarious liability in illegal logging corporate crimes, and the impact of using vicarious liability in illegal logging corporate crimes. In this study, the problem approach used was a normative juridical approach based on legal principles in the library or secondary data. The results indicate that corporations can be criminally responsible for illegal logging crimes. Several theories, such as vicarious liability and strict liability theories are applied to hold corporate accountability and imposition criminal sanctions on the crimes.

**Keywords:** Illegal Logging, Corporations, Vicarious Liability, Strict liability

## 1 Introduction

One of the products of Indonesian forests is wood as an industrial need. It is beneficial for the prosperity and sustainability of the Indonesian people. Economically it is also an opportunity to participate in international trade. 1 In addition, wood raw material is one of the agricultural products in the agrarian sector. It is a demand for exports and domestic needs in several regions of Indonesia. It indicates that Indonesia is rich in natural resources.

It needs some efforts to bridge the need for natural resources to fulfill human needs with the support system for the development process of the environment. Moreover, it needs more awareness that every development impacts environmental changes, especially the exploitation of forest resources manifested through deforestation. Therefore,

a criminal policy is needed to anticipate, reduce and overcome all types of crimes, including forest exploitation impacting risks to the sense of justice in society.

Forest exploitation is one of illegal logging crimes with tremendous impacts and networks. The crimes are organized across countries. It is committed with a sophisticated modus operandi threatening the community's survival. Thus, an influential legal basis warranting effective law enforcement is required to prevent and eradicate the illegal logging crimes.

The above illustration concerning the issue of saving Indonesia's forests from illegal logging crimes is one of the vital issues. Therefore, the study investigating "Saving Indonesia's Forests Through The Vicarious Liability Doctrine Against The Corporate Crimes Of Illegal Logging" Is Crucial To Conduct.

## **2 Research Method**

This research was conducted using the normative juridical method. It means that the issue of this study illustrates law phenomena or events in terms of the rule of law originating from statutory regulations, court decisions, and the doctrines of legal experts.<sup>4</sup> Moreover, this study applied descriptive analysis to analyze the research data. In this case, the evidence is presented and interpreted systematically to make it easier to draw conclusions and attain the research results.

## **3 Findings & Discussion**

### **3.1 Corporate Crimes of Illegal Logging as Organized Crimes**

One type of law measuring the effectiveness of law in society is criminal law. Criminal law is part of public law. In criminal law, the State has the power to regulate and restrict the rights and freedoms of every individual in society to create order in social life within a nation and State. It is manifested through the hands of sovereign rulers. It is the primary goal of criminal law.<sup>5</sup> All rules created by humans need consistent and consequence reinforcement by the lawmakers, the subjects of the rules, the legal enforcers, and the community.<sup>6</sup>

Corporate crime is organized crime, and the international community acknowledges that organized crimes and their activities, i.e., drug trafficking, money laundering, and terrorism pose a real threat to global stability. The crimes are entirely inconsistent with state regulations or the sovereignty of a country. Giant organized crime groups have recently been significant players in global economic activities. The increasing demands for illegal goods and services improve the profits of the groups. Those are even greater compared to the incomes of some developing and developed countries. Globalization has contributed to the growth of illegal markets, and consequently, transnational crimes are organized and snowballed. It makes the State unable to eradicate the crimes optimally.<sup>7</sup>

Etymologically the word corporation is a translation of *Corporatie* (Dutch), *Corporation* (English), and *Corporation* (Germany) indicating a body. In other words, it

indicates a company made into a person or a company built by humans' actions instead of humans occurring according to nature. The corporation is a term commonly applied by criminal law experts to refer to what is expected in other laws, particularly civil law, or as a legal entity. In Dutch, the term refers to a recht person. Moreover, in English, it refers to a legal entity or a company.<sup>8</sup> However, in current development, corporations should be interpreted as more than legal entities. It should be interpreted more broadly. It is an organized collection of people or assets, whether they are legal entities or not. Thus, the types of corporations cover limited liability companies, cooperatives, foundations, firms, incorporated companies without legal entity right partnerships, associations, and others.<sup>9</sup>

Corporate actions only carry out activities supposed to achieve their goals. However, in particular cases, there have been corporations that have committed some crimes. Corporate crime is one type of crimes currently affecting almost all countries in the world. It causes widespread harm to society. The characteristics of corporate crimes are different from other conventional crimes.<sup>10</sup>

Along with the development of criminal law in Indonesia, there are three systems of corporate responsibility as criminal subjects, namely:<sup>11</sup>

- a. If a corporation's management commits a crime, it is the management who is responsible;
- b. If corporation is the perpetrator, the management should be responsible;
- c. If the corporation is the perpetrator, the corporation should be responsible.

The theories describing corporate responsibility are the doctrine of vicarious liability. The doctrine of vicarious liability is the theory applied to investigate who should be responsible or receive compensation claims for acts against the law. The vicarious liability doctrine determines that a person is not solely responsible for losses caused by unlawful acts committed but also regulates a person's responsibility for unlawful acts committed by his dependents. It is known as the vicarious liability doctrine.

Regarding the vicarious liability actions related to forestry contexts as the legal object, illegal logging is categorized as a crime. The term of illegal logging is illustrated in various laws. Literally, the term of illegal logging coming from English in the Contemporary English Indonesia Dictionary quoted by Sukardi, it means illegal, prohibited, unlawful, or against the law.

Illegal means it is forbidden by law or unlawful. It means that it is prohibited by law or illegal. Meanwhile, Logging in English means wooden logs as wooden raw material'. Moreover, logging means cutting wood and bringing it to a sawing place.<sup>13</sup>

The provisions in Law Number 18 of 2013 concerning the prevention and eradication of forest destruction, mainly Article 109, describes the enforcement of the vicarious liability doctrine to overcome the corporations committing crimes. In this case, the criminal responsibility for corporate crimes is manifested through delegating the criminal responsibility to the corporation's management as a corporate representative. It means that the corporation's management is responsible for the legal process of the corporate crimes.

Law No. 41 of 1999 concerning forestry has no formulation regarding the definition of illegal logging, so it causes different interpretations. However, after the ratification of Law No. 18 of 2013 concerning the prevention and eradication of forest

destruction, it is formulated that the meaning of illegal logging is all organized illegal utilization of timber forest products.

### **3.2 The Regulations of Accountability for Illegal Logging Crimes Committed by Corporations in Indonesia**

The forestry sector is one of the primary high-value natural resources and the top trade product both internationally and domestically throughout Indonesia. International trade is the leading trade route for entrepreneurs in the forestry sector. In this case, international trade is carried out by exporters representing of a company or company owners.

Referring to the concept of a company as a place to produce goods or services to meet the needs of society, there are several types of companies in Indonesia, i.e., a) Individual companies; b) Civil partnership (*matchap*); c) firm partnership; d) limited partnership or *commanditaire vennootschap* (CV); e) Foundation; f) Cooperative; and g) State Company. All are categorized as corporations or legal entities considered legal subjects who can be held accountable when committing a crime. With regard to the corporation theory recommended by Satjipto Rahardjo, it can be concluded that a corporation is a company created by law. Thus, all actions committed by the corporation can be accountable. If the corporation commits an unlawful act, it can be held accountable legally on behalf of the company or an individual.

Law Number 18 of 2013, concerning the prevention and eradication of forest destruction, regulates the cases of forestry crimes. The law substantially illustrates the classification of perpetrators of criminal acts as not only people or individuals (*natuurlijk person*) who must be responsible for their criminal acts but also corporations or legal entities (*recht person*) that can be held accountable for their crimes.

The provisions of the law mention a lot about criminal acts committed by corporations and their responsibilities. Moreover, it is stated in Article 109 paragraph (3) that those who represent in terms of criminal charges are the corporation's management. It is in line with the doctrine or theory in corporate responsibility called the vicarious liability doctrine. It illustrates the substitute punishment or someone who can be held accountable for the crime of others even though the responsible person has no relationship with the crime.

### **3.3 Enforcement of Vicarious Liability in Corporate Crime of Illegal Logging in Indonesia**

Moeljatno, in his book entitled *Criminal Responsibility*, explains that a person is not convicted or does not have to be responsible for crime-related actions if he does not commit a crime or break the law. Criminal liability relates to faults before criminal liability is determined. It is conducted by determining the prohibited criminal acts based on legality. Having investigated the violated criminal act, and then it is determined whether there is or is not a criminal act by the perpetrator.

The manifestation of corporation's responsibility is in the construction of the juridical existence (legal existence), including criminal law. The juridical existence is de-

terminated by referring to a corporation's articles of association and bylaws. Therefore, the juridical existence of a corporation (legal entity) depends on a particular person. In this case, they are an administrator or employee possessing specific status and authority based on a corporation's articles of association and bylaws.

Theoretically, the vicarious liability doctrine has developed in the context of corporate criminal responsibility interpreted as a legal responsibility. In this case, a person can be held accountable for criminal acts committed by others. It is only sometimes necessary to have an employer-employee relationship, as known in civil law, because the relationship can also be with other people who represent the interests of a corporation. A violation of the legal obligations of a corporation is investigated from the status and authority possessed by functional actors and physical actors in a corporation's articles of association and bylaws.

Law No. 13 of 2018 concerning the prevention and eradication of forest destruction regulates illegal logging crimes. In the Law, the provisions of the Article reflected in paragraphs from the Article in the Law can be applied as criminal act elements, including explaining that corporations are legal subjects regulated together with legal subjects of people, for instance, the explanation of article 87.

The enforcement of the vicarious liability doctrine in corporate responsibility raises problems for legal practitioners implementing it. In other criminal acts, especially the crimes of illegal logging, the alternative criminal doctrine or vicarious liability is enforced to bind corporations to be held accountable for their crimes.

### **3.4 The Impact of the Vicarious Liability Doctrine Enforcement in Illegal Logging Crimes Committed by Corporations**

Various types of doctrines are enforced for handling corporations as legal subjects, which are held accountable for criminal acts harming society, or the state and creating legal unrest and uncertainty. The vicarious liability doctrine is one of the doctrines enforced to corporate responsibility for committing criminal acts.

Referring to the vicarious liability doctrine, the criminal act of illegal logging in the provisions of the articles listed in the law, starting from Article 82 to Article 108, clearly explains the crime committed by an individual and a corporation. However, in every item of the article listed, there is a loophole causing a very fatal impact on the law.

As corporations are held accountable for their criminal acts, a theory or doctrine applied to position corporations as legal subjects that can be held accountable emerges. One of the doctrines is vicarious liability or alternative responsibility. Referring to the theories illustrated by the authors in the previous chapters, it is explained that those who must fulfill and be fully responsible for a corporation committing a crime are the management or directors of the corporation.

The Forestry Law explained in Article 109 (3) applied the vicarious liability doctrine. The article states that in the case of criminal charges directed against a corporation, the corporation is represented by the management. The article clearly indicates that the corporation's management will represent the corporation if the corporation receives criminal charges. It is in line with the vicarious liability doctrine. In addition,

referring to the statement of Article 109 paragraph (3), it is explained that if the corporation's management representing the corporation is fully responsible for charges of criminal acts committed by the corporation and is legally subject to imprisonment, the corporation's management is sentenced to imprisonment.

The imposition of prison sentences for corporations committing illegal logging crimes is not in line with the explanation illustrated in Article 109 paragraph (5). The article states that fines are the main punishment imposed on corporations committing crimes. It is the evidence of the inconsistency between the contents of one article and another, and the contents of these articles show opposition to one another.

Regulation of the Supreme Court of the Indonesia Republic Number 13 of 2016 describes the procedures for handling criminal cases committed by corporations called the Supreme Court Regulation of Corporations. Article 25 paragraphs (2) of the Supreme Court regulation states that fines are the main punishment imposed on corporations committing criminal acts. It is in line with the contents illustrated in paragraph (1). Therefore, the provisions described in the Forestry Law regarding the imposition of corporate prison sentences are not in line with the Supreme Court regulations concerning crimes committed by corporations. In the statutory hierarchy, the Supreme Court regulations are legal products under the law. However, based on its specificity, it is the principle of *Lex Specialist derogat legi Generali*, the Supreme Court regulations regarding crimes committed by corporations should be a guideline for all laws regarding the handling of crimes committed by corporations.

## 4 Conclusion

Referring to the illustration above, it can be concluded that illegal logging crime does regulate not only humans (*naturlijk person*) but also corporations (*recht person*). Regarding vicarious liability or someone who can be held responsible for other people's criminal responsibilities, its enforcement raises many problems. It is vulnerable to the emergence of no legal certainty and the absence of justice in society.

## REFERENCES

1. Agus Budiarto, *Delik Suap Korporasi Di Indonesia*, 1st ed. (Bandung: Karya Putra Darwati, 2012).
2. Bachtiar, *Metode Penelitian Hukum*, Unpam Press, Tangerang, 2018.
3. Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi* (Jakarta: Rajawali Pers, 2013).
4. Todung Mulya Lubis, *Mengawal Transisi Penegakan Hukum Dan Demokrasi (Fenomena Permasalahan Penegakan Hukum Anti Terorisme Di Indonesia) Dalam Terorisme, Perang Global Dan Masa Depan Demokrasi* (Depok: Matapena, 2004).
5. Prabowo Soedarso, *Laporan Akhir Tim Analisa Dan Evaluasi Hukum Tentang Pemberantasan Pembalakan Hukum (Illegal Logging)* (Jakarta: Badan pembinaan hukum nasional departemen hukum dan HAM, 2007).
6. Fuji narindrani, "Upaya Masyarakat Dalam Pencegahan Dan Pemberantasan Pembalakan Liar Di Indonesia," *Jurnal Penelitian Hukum* No. 2 Vol. (2018): 242.
7. Hastuti Hesty, "Faktor-Faktor Penyebab Penebangan Kayu Hutan Tanpa Izin (Illegal Logging)," *Jurnal perencanaan dan pengembangan hukum* Vol. 1 No. (2006): 64.

8. M. Rendi Aridhayandi, "Mewujudkan Aparatur Pemerintah Daerah Yang Profesional Dalam Mendorong Percepatan Peningkatan Kualitas Pelayanan Publik Melalui Dinas Perencanaan Dan Tata Ruang Kabupaten Sukabumi," *Jurnal Cahaya Keadilan* Vol. 7, No (2019): 360.
9. Ramsi Meifati Barus, "Pertanggungjawaban Pidana Illegal Logging (Pembalakan Liar) Sebagai Kejahatan Kehutanan Berdasarkan Undang-Undang No. 41 Tahun 1999 Tentang Kehutanan Dan Undang-Undang No. 18 Tahun 2013 Tentang Pencegahan Dan Pemberantasan Perusakan Hutan," *USU Law Jurnal* No. 2 Vol., no. 107 (2015).
10. Rony Saputra, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi Jurnal Cita Hukum," *Fakultas Syariah dan Hukum Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta bekerjasama dengan Pusat Studi Konstitusi dan Legislasi Nasional (POSKO-LEGNAS) UIN Jakarta* Vol.3 No. (2015).
11. Mardjono Reksodiputro, *Pertanggungjawaban Korporasi Dalam Tindak Pidana Korporasi* (Semarang: Makalah Semarang, 2015).
12. Kedutaan Vesar Republik Indonesia, "No Title" (n.d.), <https://kemlu.go.id/nursultan/id/pages/geografi/41/etc-menu>.
13. Muladi, *Pertanggungjawaban Korporasi* (Jakarta: Harian Kompas, 2013).

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