

THE ABUSE OF AUTHORITY IN AWARDING PERMITS OF FOREST CONVERSION IN INDONESIA

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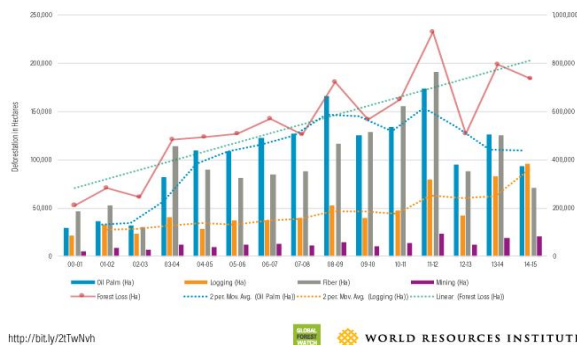
Abstract - Activities in the forestry sector have the potential to rise various cases even this activities can become a critical point in the occurrence of corruption cases. The permits sector is very vulnerable to abuse of authority in awarding forest area utilization that occur in the process of forest conversion permits. The forest areas map and boundaries that still obscure can potentially lead to misuse by individuals who have authority to award the permits. Abuse of authority in awarding permits which is not in accordance with procedures conducted by an authorized official is a violation of law that contains elements of criminal acts.

Keywords - Forestry, Abused of Authority, Permits, Corruption.

I. INTRODUCTION

Based on data from Global Forest Watch, and analysis from WRI Indonesia shows that 55% of forest loss occurs within the concession area, where logging is allowed to some extent, while 45% of forest loss occurs outside the legal concession area. For more details about forest deforestation in Indonesia refer to the following data:

Forest Change in Indonesia by Concessions Type



Primary forest loss inside and outside the concessions across Indonesia

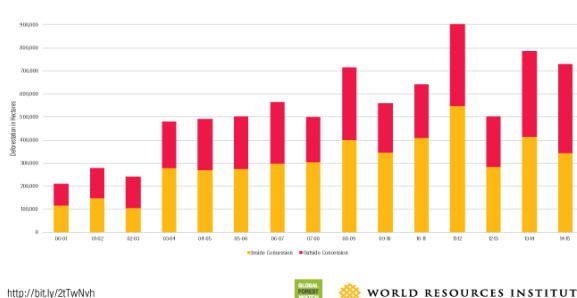
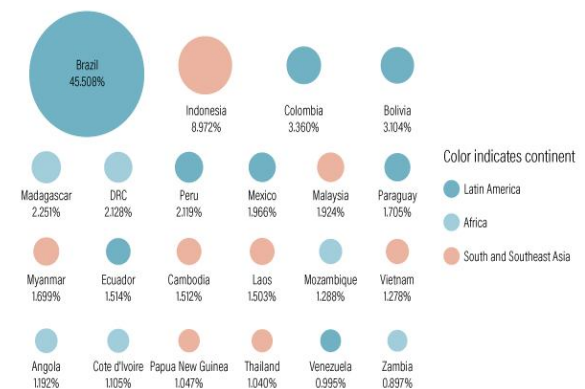


Figure 1: Forest Loss in Concession Area

The study by WRI Indonesia analyzed the loss of tree cover within Indonesia's primary forest and the legal boundaries of oil palm, wood fiber, mining and

selective logging concessions from 2000-2015. The analysis shows that approximately 55% of forest loss (more than 4.5 million hectares or more than 11 million acres) occurs within the concession area whereas outside the concession area 3.6 million hectares or 8.9 million acres of forest disappeared since 2000. This is what causes the increasing total carbon emissions Indonesia, which since 2001-2013 is the second highest in tropical countries. For further explanation see the data from Global Forest Watch below:

Percent of Total Carbon Emissions from Deforestation in Tropical Countries, 2001-2013



For full list visit bit.ly/GFWClimateRankings

Figure 2: Carbon Emission from Forest Loss

These data are proves that the efforts to improve forest governance have become an urgent need and should be a serious concern of the government. Because this is a basic issues in the context of forest management in Indonesia. Especially since 2016 the Indonesian government has a commitment with the international community to reduce GHG emissions with a target of 29% until 2030. Moreover, with the ratification of the Paris Agreements through Law No.

16 Years 2016 on the Ratification of the Paris Agreement to The United Nations Framework Convention on Climate Change. It increased pressure for good forest management. Therefore it is very important to understand how to regulate the proper use of forest areas to gain economic and social benefits without leaving their ecological functions.

II. METHODOLOGY

This study uses a descriptive analytical method that describes and analyzes what facts in accordance with the issues that are the object of research studies.

Researchers describe the facts and material to be discussed and then analyzed through data collection obtained from secondary data, then carried out through a normative juridical approach that is legal research uses secondary data in the form of literature assessment. Research conducted using a normative juridical approach conducted on written regulations or other legal materials.

III. RESULTS AND DISCUSSION

The forestry sector has the potential to cause various corruption cases. Activities in this sector have become a critical point for corruption cases. From inadequate maps of forest areas, unclear area boundaries, violation of requirements for awarding permits to logging outside the permit area. This sector is still often used by some "Actors" as land seeking profit without considering the preservation of forest ecosystems.

Forestry permits usually also connected to parallel developments in other sectors, including agriculture, fisheries, mining and others, although it appears to be a leading edge in many ways. forestry and mining permits is by far the most potential sector for corruption, therefore criminal saction is extremely necessary.

The permits sector which is very vulnerable to abuse of authority especially in awarding permission to convert forestry function. Some of the modus operandi that often occur in the process of awarding permits are the issuance of permits even though the documentation requirements containing Environmental Impact Analysis (AMDAL) does not exist, and accelerating the issuance of permits by giving "bribe" to the authorized official without regard to the mandatory requirements that must be met. Even the Entrepreneur gives the share of profit or "shares" to the authorities in return for protection of illegal forestry activities.

The state administrator has the tools in the form of authority, which can be used at any time because it is embedded in the system, then with that authority state administrators can make policies, decisions, stipulations, etc., as the representation of the State in an active condition. However, behind all that is attached norms and principles, to put functions

according to the path that has been outlined in the law that becomes the basis for administrative action.

That authority could be abused by the regional head for self-enrichment, Mahfud MD, in his paper that cites Acton's adage: "power tends to corrupt, absolute power corrupts absolutely" (that power tends to be corrupt and absolute power is absolutely corrupt). Furthermore Mahfud argued:

"Based on Lord Acton's argument, it is understood that anyone who holds power will be encouraged to commit corruption or fraud if there are no rigorous restrictions on power through the constitution. Even good people who hold power will be pushed for corruption. Because, although he is personally good, the power environment in which he exists will continue to encourage him to corrupt "

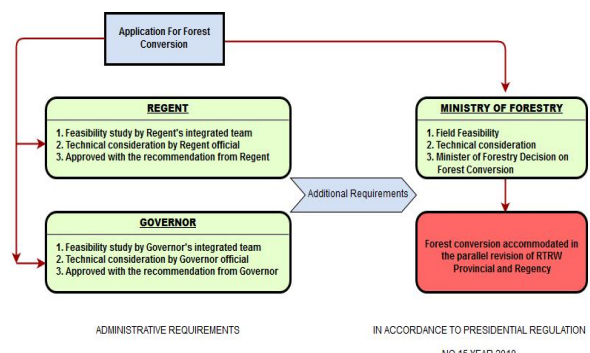


Figure 3: Mechanism of Permits for Forest Conversion

Lack of transparency in the process is also a problem often encountered in Indonesia so it is very high potential to lure corruption. Whereas transparency itself is an important concept, one of the requirements for making and implementing a good regulation and forest policy system.

Permit in forest area is an administrative requirement that must be owned by the corporation (the recipient of the permit) in terms of utilizing forest areas, which so far in the Forestry Law, this violations of permits are more likely to only be subject to administrative sanctions, however in order to provide protection for the forest, administrative threat is not fair enough because these act can affect forest ecosystem and the State will suffers both in economic and politic.

The Directorate of Research and Development of the Corruption Eradication Commission (KPK) received data that around 4.9 million hectares of protected forests and 1.3 million hectares of conservation forests were used for mining. The conversion of the land function was allegedly due to a "game" in granting mining permits. That around 3,772 out of 11,000 mining permits in Indonesia were problematic. The number of problematic permits suspected of involving corruption by the regional head as the authorizer, several permits were made as if fulfilling the regulatory and administrative data aspects. However, after review, there were many problems in issuing permits, which led to the exploitation of natural resources.

The number of problematic permits could be due to lack of supervision and sanctions. This raises suspicion of the act being carried out by the regional head as the authorizer with the employer as the owner of the mining permit. 56 regional heads who had been ensnared by KPK consisted of governors, deputy governors, mayors, regents and deputy regents. Most of the regional heads were caught in cases of abuse of authority, both in managing regional budgets and assets or misuse of permits.

Therefore the abuse of such authority has entered the realm of extraordinary crime with the characteristics of the White-collar crime which is a separate class from ordinary crimes. The perpetrators of this crime include officials, politicians, financial institutions, companies and organizations.

In the context of criminal law, there are three measures that become the parameter of a law to be qualified as *lexspecialis* systematic. First, the material criminal provisions in the legislation deviate from the existing general provisions. Second, the law stipulates formal criminal law which also deviates from the provisions of criminal procedure in general. Third, the addressee or the subject of law in the legislation is specific. The dynamic doctrine of the *LexSpecialist* principles is highly related to the basic teachings of *Concorpus* and *Deelneming* that when they are confused to understand, it will be an indicator of the law enforcer ability to comprehend the basics of criminal law.

It is undeniable that authority such as power, control, influence, interests, and representation are core to politics and governance. Unfortunately corruption is also one of them. Even when precisely defined, efforts to measure empirically such essential concepts are inevitably challenged.

However in the reality the use of punishment often became obscure to determine whether the act of abused authority can be seen as violation of administrative law or criminal law. It is also obscure to choose which law to apply for this certain crime since these laws are special law therefore the use of *lexspecialis derogat legi generali* is out of question.

Therefore to avoid confusion, the principle of *Systematische Specialiteit* or *Lex Specialist* Systematics as an academic doctrine which is not necessarily understood by the public, particularly in the relationship between the administrative penal law (Forestry law) and the Criminal Law (Anti-corruption law), and there provided an explicit understanding through Article 14 of Anti-corruption law.

Article 14 of Law No. 20 Year 2001 on Amendments to the Law No. 31 Year 1999 on the Eradication of Corruption that explicitly states that: "every person who violates the provisions of the legislation which expressly states that the violation of the provisions of the law as corruption prevailing regulations stipulated in this law". The Anti-corruption law can also be used to prosecute other crimes related to financial losses of the state and the national economy such as forest

crime, tax crime, the crime of capital markets, and other criminal acts.

CONCLUSIONS

The state administrators have the tools in the form of authority, which can be used at any time, then and with that authority state administrators can make policies and regulations. But behind all that is attached norms and principles, to put functions according to the path of the law that becomes the basis for administrative action.

At the time of the permit's process, there is a high potential of abuse of authority by state administrators, such as giving permission not accordance with the procedures regulated by laws. These acts contain elements of crime.

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