

LEGAL ANALYSIS OF CRIMINAL RESPONSIBILITY OF PERPETRATORS IN CLEARING LAND FOR OIL PALM PLANTATIONS IN PRODUCTION FOREST AREA (Study of Decision Number 56/ Pid.Sus /2024/PN ksn)

Chettlin Benitha¹, Aristoteles², Louise Theresia³, Joanita Jalianery⁴

Universitas Palangka Raya, Palangka Raya¹²³⁴

E-mail: chettlinenjel@gmail.com¹, aristoteles@law.upr.ac.id², theresia.louise@gmail.com³, joanita@law.upr.ac.id⁴

Received:04/07/2026 | Revised : 10/07/2026 | Accepted: 27/07/2026 | Published :05/08/2026

Abstract

Cases involving defendant Ir. Sunarto Bin (the deceased) Supardi, who was accused open land in the area forest protected without permission , lifting issue law important related management forests and regulations use land in Indonesia. The defendant open land For plantation coconut palm oil in Production Forest Areas Permanent (HMP), which is regulated by law Forestry (Law No. 41 of 1999). This law arrange function forests and management land , prohibit activities that change function area forest without appropriate permission . This case clear show that violation main related with management area forest as arranged in the Forestry Law , not violation to activity operational business plantation as arranged in the Plantation Law (Law No. 39 of 2014). Forestry Law focused on conservation forests and use land sustainable , while the Plantation Law discusses things technical in operation plantation like licensing , use land and management environment . In case this , action defendant in a way direct violating the Forestry Law , especially Because land used For plantation the is part from area forest protected . Situation This highlight importance limitation strict laws in use land forests and their necessity get agreement government in a way explicit before change land status forest protected For objective agriculture . With compare second Constitution this case This underline the need stricter enforcement of Forestry Law effective For prevent deforestation illegal and ensure practice management forest sustainable followed . Findings this also shows How gap law in protection forest Keep going hinder protection the right environment although there is relevant laws .

Keywords: Forestry Law, Environmental Crime, Land Clearing

INTRODUCTION

Coconut plantation palm oil has become one of the main pillars the Indonesian economy , but expansion land often cause conflict with preservation environment . According to data from the Ministry of trade , contribution export oil vegetable from palm oil reach more of 50% of total global exports by 2022 .¹ However , the practice This often threaten sustainability forests , especially in the area forest production . Analysis juridical to accountability criminal perpetrator opening land palm oil in the area This worthy discussed For support policy prevention Logging forest that is done in a way wide good by humans and reason natural , so that changes function forest (deforestation).²

Indonesia has a total area of forest around 120.5 million hectares , where the area forest production covering 68.8 million hectares ”, as arranged in Constitution Number 41 of 1999 concerning Forestry . This area intended For utilization sustainable , such as harvesting wood , not conversion become land agriculture or plantations . However , according to ministry agriculture , oil palm area reached 14 million hectares in 2022, with contribution significant to foreign exchange and creation field work . On the other hand , expansion illegal has cause deforestation massive , with *Global Forest Watch* report lost forest up to 1.7 million hectares between 2020-2023 due to conversion land . This is threaten biodiversity , accelerate erosion land , and improve emission carbon , which is contrary to with Indonesia's target in The Paris *Agreement* . Although Thus , the government has launch initiative like ISPO (*Indonesian Sustainable Palm Oil*) certification For promote practice sustainable , showing effort balanced between development economy and conservation environment . In system Indonesian law , preamble land in the area forest production without permission is action criminal Forestry Law Number 41 of 1999 concerning Forestry as has changed become Constitution Number 11 of 2020 concerning Job Creation , prohibits change function forest without

¹Ministry of Environment and Forestry (KLHK), *Report Indonesian Forestry Annual 2023*, Jakarta: KLHK , 2023, pp . 45-50.

² *Global Forest Watch, Forest Loss in Indonesia 2022*, Washington DC: World Resources Institute , 2023, p . 20-25.

Minister's approval through Article 78 paragraph (2) " *Everyone who with on purpose violate provision as intended in Article 50 paragraph (2) letter a is threatened with criminal imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 7,500,000,000.00 (seven billion five hundred million)* in conjunction with Article 50 paragraph (2) letter (a) " *Every person is prohibited from doing so work on , use , and/ or occupy forest areas in a way No valid ; "* . Decision Kasongan District Court Number 56/ Pid.Sus /2024/ PN.ksn in Central Kalimantan Province shows mismatch between regulations and their implementation . In case this , the defendant sentenced to 1 month imprisonment and a fine of Rp. 5 million on opening land palm oil as wide as not enough more than 100 hectares in the area forest production that is below permission with Decree of the Minister of Forestry Number : SK.529/ Menhut -II/2012 dated 25 September 2012 and attachments Decree of the Minister of Environment and Forestry Number: SK.6627/MENLHK-PKTL/KUH/PLA.2/2021 managed by PT. Dwima Group , namely , is the only one companies operating in the field management forest (IUPHHK) and operates in the Katingan area , Central Kalimantan.

Urgency study This lies in the need For examine in a way deep related gap between legal norms and reality enforcement criminal related opening land plantation coconut palm oil in the area forest production , in particular through studies on decision Number 56/ Pid.Sus /2024/ PN.Ksn . Condition continued deforestation ongoing , as well as the rise violation permission show that device available laws Not yet fully executed in a way consistent . The verdict is considered light in case the become description that mechanism accountability criminal Still face various obstacles , good in application of Article, assessment tool evidence , as well as compilation judge's considerations . Research This present For study more Far How provision in Constitution Number 41 of 1999 concerning Forestry , Law Number 39 of 2014 concerning Plantations, and Regulations related others , as well as to what extent is the implementation the capable answer challenge damage forests and violations related permits in forest areas Production still .

So , because that , analysis juridical deep to opening land plantation coconut palm oil in the area forest production required For reveal mismatch between regulation legislation and its implementation in decision court . Research This relevant For support policy prevention logging forest that is done in a way wide good by humans and reason natural , so that changes function forest or what is called with (deforestation) and strengthen system justice criminal environment . Based on background behind said , the author lift formulation problem as following :

1. How analysis juridical opening land plantation coconut palm oil in the area forest production according to applicable statutory provisions , in particular in perspective decision Number 56/ Pid.sus /2024/ PN.ksn ?
2. How accountability criminal to perpetrator opening land plantation coconut palm oil in the area forest production based on studies decision Number 56/ Pid.Sus /2024/ PN.ksn ?

METHOD

Study This use approach Normative Jurisprudence as method The main focus is on the analysis of legal norms applicable in Indonesia related to not quite enough answer criminal on opening land plantation coconut palm oil in the area forest production . Approach This chosen Because study aim For analyze and explore provision regulation relevant legislation , as well as its implementation in implementation court , as explained in introduction , research This based on the formula problem analysis pressure juridical opening land according to terms and conditions law and accountability criminal in perspective decision number 56/ Pid.sus /2024/ PN.Ksn .

RESULTS AND DISCUSSION

Decision Number 56/ Pid.Sus /2024/ PN Ksn

Decision number 56/ Pid.Sus /2024/PN Kasongan to judge case crimes involving defendant Ir. Sunarto Bin (Alm) Supardi, who was charged on action open land in the area forest without permission . This case started from report public about existence opening land illegal in Mirah Kalanaman Village, District Central Katingan Regency Katingan , Central Kalimantan Province . Opening land the done For plantation coconut palm oil as wide as not enough more than 117.34 hectares with a total of 250 hectares , which is known has starting in March 2022. Field inspection carried out by the Central Kalimantan Regional Police who found that location opening land the be inside area forest production fixed (HP). Based on results checking use GPS tools and photos air , it is known that location the including in area forest production still with Minister's permission . The defendant together with Mr. Obert Manik bought land the with price of Rp. 3,500,000 per hectare , with total area of 250 hectares . Activities opening land and planting coconut palm oil done without valid permit from party authorized . The witnesses presented in trial , including Mr. Sukirman and Mr. Jhondri F. Situmorang who are contractor tool assigned weight For work on land said by the defendant Ir. Sunarto, then confirm that opening land the is part from business plantation managed by the defendant .

Demands from Public Prosecutor to defendant is criminal prison for two months as well as fine amounting to Rp. 5,000,000.00, which if No paid will replaced with criminal five months in prison . The Public Prosecutor also requested that the goods evidence , including the plantation area located in area forest , returned to the state through the Sustainable Production Forest Management Center Region X (BPHL X) Palangka Raya. The Public Prosecutor also demanded that the costs case charged to defendant amounting to Rp. 5,000.00. The defendant state understand and not submit object to the charges filed . In In its decision , the Panel of Judges stated that defendant has proven in a way valid and convincing do action criminal offense " occupying " area forest in a way No legal " based on Article 78 paragraph paragraph (2) “ *Everyone who with on purpose violate provision as intended in Article 50 paragraph (2) letter a is threatened with criminal imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 7,500,000,000.00 (seven billion five hundred million)* in conjunction with Article 50 paragraph (2) letter (a) “ *Every person is prohibited from doing so work on , use , and/ or occupy forest areas in a way No valid ;* ” which is listed in the Constitution Number 41 of 1999 concerning Forestry as has changed become Constitution Number 11 of 2020 concerning Job Creation. Action criminal This is violation to management and protection area regulated forests in Constitution Forestry and regulations related other .

As consequence from his actions , the panel of judges sentenced punishment to defendant in the form of criminal prison during One months and fines amounting to Rp. 5,000,000.00, with provision that If fine No paid , will replaced with criminal confinement during One month . The panel of judges decided that all goods proof in the form of land plantations located in area forest production fixed (HP) that has opened the defendant , covering an area of 117.34 hectares , was returned to the state through the Sustainable Production Forest Management Center Region X (BPHL X) Palangka Raya. Decision This aim For ensure that damage environment caused by the opening land illegal can be repaired and so that the actions similar No repeated .

Analysis Legal Procedures for Opening Oil Palm Plantation Land in Production Forest Areas According to Statutory Provisions .

Forest area is draft central in the Constitution Number 41 of 1999 concerning Forestry , defined , classified , and regulated in a way details For prevent exploitation overexploitation and deforestation . In Article 1 paragraph 3 “ *Forest areas is a specific area designated and / or determined by the government For maintained its existence as forest still* ” Constitution Number 41 of 1999 concerning Forestry explain that area forest No just area forested , but an ecologically diverse area law protected and managed For function social and economic . With objective preserve ecosystem forest as buffer ecosystem , water sources , preventing erosion , and absorption carbon .

Constitution Number 41 of 1999 concerning Forestry allow use area forest production and area forest protected For interest development outside activity forestry with No change function area forest . Use area forest outside activity forestry the in the form of business mining through permission borrow use area forest (IPPKH) with provision No may do mining with pattern mining open to the area forest protect . So , Law Number 41 of 1999 concerning Forestry No allow activity outside activity forestry besides mining . For other activities such as business plantations , then use area forest new can done after existence release area forest .

Based on Regulation of the Minister of Forestry Number P.51/ Menlhk / Setjen /KUM.1/6/2016, Release area forest For interest development outside activity forestry only can carried out in Production Forests which can Converted (HPK). With criteria :

- a) HPK functions in accordance with the provisions of laws and regulations
- b) not burdened with forest area use permits, forest utilization permits and/or other permits from the Minister;
- c) unproductive, except in provinces where unproductive HPK areas are no longer available;
- d) located in a province where the forest area is above 30% (thirty percent).

Elements that are fulfilled in action criminal This covering existence actions open land without approval of the Minister of Forestry as arranged in Article 50 paragraph (2) letter a “ *Everyone is prohibited work on , use , and/ or occupy area forest in a way No valid ;* ” which is listed in Constitution Number 41 of 1999 concerning Forestry . In context this , the principle legality (*lex certa*) very important For ensure certainty law , while principle sustainability (*sustainable use*) become runway preservation forest for resources Power natural No damaged .

Function forest shared become a number of part namely , Conservation Forest which has function main preservation diversity plant as well as animals the ecosystem , then there is a functioning protected forest as protection life that regulates water management, controls erosion , preventing seawater intrusion and maintenance fertility land and the last one namely Production Forest which is classified become a number of part that is ;

1. Production Forest still ;
2. Production Forest Limited ;

3. Production Forest Conversion .³

Opening land plantation coconut palm oil in the area forest production involving inspection provision legislation that regulates use land forest , protection environment , and sanctions criminal law . Forest area production , as arranged in Constitution Number 41 of 1999 concerning Forestry , aimed at For utilization sustainable , such as harvesting wood , and not may changed its function without permission official from the Minister of Forestry . Opening land plantation coconut oil palm in Production Forest Areas without Permission violate a number of provision main , namely :

1. In the Constitution Number 41 of 1999 concerning Forestry as has changed become Constitution Number 11 of 2020 concerning Job Creation: Article 50 paragraph (2) letter a " *Everyone is prohibited from working on, using, and/or occupying forest areas illegally,* " clearly states. in this Article forbid change function forest production without valid consent from authority forestry Good individual and corporation forbidden do activity whatever , with sanctions criminal based on Article 78 paragraph (2) " *Any person who intentionally violates the provisions as referred to in Article 50 paragraph (2) letter a shall be subject to a maximum prison sentence of 10 (ten) years and a maximum fine of IDR 7,500,000,000.00 (seven billion rupiah). five hundred million* " . Analysis juridical show that action This No only violate principle sustainability (*sustainable use*), but also threatens biodiversity and stability ecosystem .
2. Furthermore This article also contains relatedness with Constitution Number 39 of 2014 concerning Plantations , namely in Article 107 " *everyone equally No legitimate as intended in Article 55 letter a, shall be punished with criminal maximum imprisonment of 4 (four) years or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah)* " Jo. Article 55 letter (a) " *Working on , using , occupying , and/ or control land plantations* " Law Number 39 of 2014 concerning Plantations, prohibits in a way clear actions that are No legitimate master , do , use , and/ or occupy land plantation with threat maximum sentence of 4 years or a maximum fine of 4 billion rupiah.
3. As for the efforts law non-litigation (settlement of cases outside court) , in similar cases effort law *restorative justice* can become solution , if there is such cases after existence decision This with notes problems that arise more low from problem or decision previously mentioned with Jurisprudence . Then , there is administrative fines that must be paid by the defendant where fine it is calculated by experts in accordance with state losses , and if No paid , then demands criminal must keep on going . Then existence openness in designation of Production Forest areas still what can enhanced by the PKH task force to minimize occurrence similar cases .

In perspective Decision Number 56/ Pid.Sus /2024/ PN.ksn from Kasongan District Court , analysis juridical show mismatch between provision law and its application . In decision this , the defendant sentenced punishment light (1 month) imprisonment and a fine of Rp. 5 million) for opening land as wide as not enough more than 117 hectares in the area forest production . Analysis juridical reveal that the judge may consider factor mitigation like lack of intention wicked or cooperation the defendant . According to theory law environment , decision This show weakness enforcement law , where the principle *lex certa* (certain law) no fully applied , so that open opportunity for perpetrator to escape from not quite enough answer full .⁴

Apart from the violation to Constitution Number 41 of 1999 concerning Forestry , clearing land plantation coconut palm oil in the area forest production in Decision Number 56/ Pid.Sus /2024/ PN.Ksn also shows connection close with Constitution Number 39 of 2014 concerning Plantations, which specifically specific arrange activity plantation For ensure sustainability , security and certainty law in management land plantations . In context case this activity the accused involved opening land covering an area of 117.34 hectares For planting around 10,000 trees palm oil without permission official can disqualified as violation against the Article , because land the used For business plantation coconut palm oil that is not own licensing try utilization forest (PBPH) or permission plantation others , so that violate principle mastery legal land as arranged in Constitution Number 34 of 2014 concerning Plantations.

This matter reinforced by facts that defendant Work The same with other parties and get funding external , which shows existence element corporation or business together as it should be subject to the provisions licensing plantations . However , in demands prosecutor and judge's decision , focus only given in the Law Number 41 of 1999 concerning Forestry without consider violation to Constitution Number 34 of 2014 concerning Plantations, which has the potential ignore aspect sustainability plantations and more sanctions proportional to impact economy as well as environment . Conditions This show inconsistency in enforcement law , where the law Number 34 of 2014

³ Sigit Sapto Nugroho, *Forestry Law: Construction law source Power forest Community- based* , (Solo: Pustaka Iltizam, 2017) <https://share.google/SQChZpcSD5l7ElZMy>

⁴Rende Jhony, "Obstacles enforcement law to pollution and destruction environment life", *Journal law Scientia de lex* Vol. 6, No. 3 (2013).

concerning Plantations as instrument special For sector plantation No integrated optimally , so that weaken effectiveness prevention opening illegal land In context Decision Number 56/ Pid.Sus /2024/ PN.Ksn , where the defendant Ir. Sunarto Bin (Alm) Supardi was charged on opening land covering an area of 117.34 hectares For plantation coconut palm oil in the area forest production still without permission , demands prosecutor and judge's decision indeed only focus on the Law Number 41 of 1999 concerning Forestry , without involving Constitution Number 39 of 2014 concerning Plantations. In fact , the case This clear involving element criminal plantation without permission , as arranged in *Article 107 " everyone equally No legitimate as intended in Article 55 letter a, shall be punished with criminal maximum imprisonment of 4 (four) years or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah) "* Jo. Article 55 letter (a) " *Working on , using , occupying , and/ or control land plantations "* which prohibits possession , operation , use , or occupation land plantation in a way No valid . The following is description reason Why Constitution Number 39 of 2014 concerning Plantations does not used in demands and decisions , based on analysis juridical , practice justice , and literature related :

- a) Priority on the principle of *lex specialis derogat legi generali* : Law Number 41 of 1999 concerning Forestry is considered a *lex specialis* (special rule) which more specifically regulates forest areas, including the prohibition on clearing land without permission in production forests, while Law Number 39 of 2014 concerning Plantations is more general in nature (*lex generalis*), which regulates plantation activities as a whole without considering the status of forest areas. In Indonesian legal practice, judges and prosecutors tend to choose the most specific and directly related rules to the location of the violation (forest areas) to avoid overlapping charges. This is based on the principle that specific rules trump general rules, so charges based on Law No. Number 41 of 1999 concerning Forestry is considered sufficient to ensnare this act without the need to add laws Number 39 of 2014 concerning Plantations .⁵
- b) Focus on the main impact on forestry : This case is primarily considered a forestry violation because land clearing was carried out in a permanent production forest area, resulting in deforestation, ecosystem damage, and violation of the forest's function as an environmental buffer. Number 41 of 1999 concerning Forestry explicitly regulates criminal sanctions for changes in forest function without a permit, with the threat of a sentence of up to 10 years in prison and a fine of IDR 7.5 billion, which is considered heavier and more relevant than the sanctions in Law Number 39 of 2014 concerning Plantations (maximum 4 years imprisonment and a fine of IDR 4 billion).

In this case , the case involves defendant Ir. Sunarto Bin (Alm) Supardi related opening land in the area forest production fixed (HP) without permission cause various conflicting violations with regulation legislation in the field of forestry and plantations . Clearing actions land For plantation coconut palm oil is carried out in a way illegal and this show non-compliance to Constitution Number 41 of 1999 concerning Forestry and Law Number 39 of 2014 concerning Plantations , including :

1. Land clearing in permanent production forest (HP) areas without a permit
Based on Article 50 paragraph (2) letter a " *Everyone is prohibited work on , use , and/ or occupy forest areas in a way No legal "* and Article 78 paragraph (2) " *Everyone who with on purpose violate provision as intended in Article 50 paragraph (2) letter a is threatened with criminal imprisonment for a maximum of 10 (ten) years and a fine of a maximum of IDR 7,500,000,000.00 (seven billion five hundred million) "* Law Number 41 of 1999 concerning Forestry explain That everyone is prohibited from working on, using, or occupying forest areas illegally. In this case, the defendant cleared land within a Permanent Production Forest (HP) area without valid government permission. This action clearly violates regulations governing the use of forest areas, which require that HP areas be maintained and used in accordance with existing provisions .
2. Does not meet plantation business permit requirements based on Article 50 " *Ministers , Governors, and district heads/mayors who are authorized to issue Plantation Business permits are prohibited from: a. issuing permits that are not in accordance with the intended use; and/or , b. issuing permits that are not in accordance with the terms and conditions of statutory regulations "* Law Number 39 of 2014 concerning Plantations requires plantation businesses to have a valid business permit from the Minister , Governor , or Regent to conduct plantation activities . The defendant's actions in clearing land and planting oil palms in production forest areas without obtaining a plantation business permit constitute a violation of this provision, which requires every plantation business to comply with the licensing procedures established by the government.

⁵Barda Nawawi, *Principles of Criminal Law* , (Semarang: Publishing House of Diponegoro University Semarang, 2020) <https://share.google/a0gdJRmGFpVJhj04h>

3. Violation of provisions on sustainable forest use

Law Number 41 of 1999 about Forestry contain Sustainable forest management regulations that take into account environmental, social, and economic balance. Illegal land clearing for oil palm plantations can cause environmental damage, such as deforestation and biodiversity loss, which contradicts the sustainability principles guaranteed by the Law. Law Number 41 of 1999 concerning Forestry. Unauthorized land clearing can also damage the function of forest ecosystems that should be protected .

4. Does not have an environmental impact analysis (AMDAL)

In accordance with Article 67 paragraph (1) " *every perpetrator business plantation must look after sustainability function environment life* " and paragraph (3) letter a reads " *For look after sustainability function environment life as referred to in paragraph (1) before get permission business plantations , companies plantation must : a. make analysis impact environment life and effort monitoring environment life ;* . In Constitution Number 39 of 2014 concerning Plantations is explained in a way details That is, before obtaining a plantation business permit, business actors are required to conduct an environmental impact analysis (AMDAL). The defendant's actions in opening a palm oil plantation in a forest area without conducting an AMDAL or proper environmental management violate the obligations stipulated in the Law to preserve the environment around the plantation area.

Although opening land done For business plantation coconut palm oil , violations the main thing that happened is related with regional status forests and permits use land in the area forest , which is authority from Constitution Number 41 of 1999 concerning Forestry . Although arrange permission business plantation Constitution Number 39 of 2014 concerning Plantations, no in a way explicit arrange use the land that is located in area forest . So , the action defendant more appropriate For ensnared with The law that regulates about determination and protection area forest , namely Constitution Number 41 of 1999 concerning Forestry , which provides limitation firm about use land in area forests and obligations For get permission from government . In matter this , the Law Number 39 of 2014 concerning Plantations relevant For arrange activity operational business plantations , however No covers violation related to the status of the land included in area protected forests and forest production fixed (HP).

So, based on comparison between provision the laws that govern opening land in the area forest production and application in Decision Number 56/ Pid.Sus /2024/ PN.Ksn , appears existence sufficient distance clear between the norms that should be applied and practiced emerging criminalization in case mentioned . Norms in various Constitution has set prohibition firm , threat criminal weight , and possibility accountability corporation , however decision precisely show implementation sanctions light , neglect element certain actual fulfilled , and lack of evaluation to impact environment and potential involvement of business entities . Situation This show that implementation law in case the No walk in accordance with framework applicable norms , so analysis comparative between das sollen and das sein becomes helpful steps highlighting areas that have not been covered harmonized in enforcement law environment .⁶

Evaluation to elements action relevant criminal law with case opening land in the area forest production , all element the main things needed For set existence action criminal environment Actually has fulfilled by the defendant . Subject law clear , action open land without permission proven , elements intentional appear from knowledge defendant regarding regional status and relations because consequence between actions and damage are also visible clear . Although so , no all fulfilled elements the made into base demands or consideration criminalization in a way comprehensive . Condition This show that facts on the ground has describe fulfillment offense in a way intact , but its implementation in the enforcement process law Not yet accommodate overall elements that have been proven according to law positive .

Based on overall description in section this , can seen that construction the laws that govern area forest production Actually has give limitation clear about prohibition opening land without permit , type actions that are included action criminal , as well as consequence the crime that should be implemented to violation said . All element relevant offense start from subject law , action open land , use tool heavy , deliberate , to connection causality proven fulfilled in matter . However , its implementation in Decision Number 56/ Pid.Sus /2024/ PN.Ksn show distance results from framework normative said , well from side selection of Articles, imposition sanctions , as well as evaluation to impact ecological and possible involvement corporation . Conditions This describe that runway law Actually has provide sufficient device strong For ensnare actions opening land illegal in the area forest production , but apparatus enforcer law Not yet fully utilise device the so that criminalization No represent the weight violation and damage caused .

⁶Sudirman, A, *The Gap between Legal Norms and Practice Environmental Law Enforcement in Indonesia: A Case Study of Deforestation of Production Forests* , Indonesian Journal of Environmental Law Vol 2 No 1, 2020, p. 12.

Based on indictment solely by the Public Prosecutor according to Constitution Number 41 of 1999 concerning Forestry where Constitution This arrange about management forests in Indonesia with objective main For ensure sustainability function supporting forests system buffer life and welfare of the people. Constitution This state that forest is wealth controlled by the state for prosperity of the people, with management that includes function conservation , protection , and production . Government given authority For organize and manage forest , determines the status of the area forests , as well as give permission For utilization forest in accordance with existing provisions .⁷ Constitution This arrange about status and function area forest , which consists of from state forests and forests rights . State forests include areas controlled by the state, incl forest recognized customs its existence , while forest right relate with encumbered land right on land . Forests are also distinguished based on function basically , like forest conservation , forest protected areas and forests production . Management area forest done with consider function main from area said , with objective For guard sustainability environment as well as ensure benefit social and economic for public .⁸ On the other hand , the Law Forestry also discusses protection to forest from damage caused by the action humans , fire , or disturbance others . Every holder permission business utilization forest required For guard , maintain and preserve forests in the area they manage . Sanctions criminal and administrative charged for violating parties provision about management and utilization forests , including For case encroachment forest or destruction area forest in a way illegal .⁹

Apart from the existence of Forestry Law , case is also related with Constitution Number 39 of 2014 concerning Plantations in Article (3) letter a reads " *organization plantation aim to : a. improve welfare and prosperity of the people*" is explained that one of objective existence plantation that is , to regulate organization plantations in Indonesia for increase people's welfare , maximizing potential economy sector plantations , and maintaining sustainability environment . Regulations This covers various aspect like planning , use land , budi Power plant plantations , processing results plantations , up to marketing product plantations . Law This discuss management sustainable , efficient and appropriate plantations with principle sustainability , integration and openness in frame create mark add and pay attention function environment life .¹⁰ In the aspect licensing , laws This arrange about obligation perpetrator business For get permission business plantations , good For good Power plants , processing results plantations , as well as other related activities . Investment , both domestically and internationally foreigners , also regulated with provisions that take into account interest national regulations this also regulates right on land For business plantations , including rule about changes in land status and boundaries minimum area or maximum For business plantations , as well as conditions technical others that must be fulfilled by the perpetrator business .¹¹

Constitution This contain rule supervision to implementation business plantations . Government central and regional given authority For do coaching and supervision to activity business plantations , with involving community and actors business . Actor business is also required For comply related provisions with management environment life , including analysis impact environment and control risk related with activity plantations . Provisions This aim For ensure that sector plantation can develop optimally without ignore aspect sustainability and protection environment . From the Discussion previously , Author has load a number of Regulations under Constitution Number 41 of 1999 concerning Forestry , and so on can also seen from Candy environment life and forestry Number 7 of 2021 concerning Forestry Planning , Change function of Forest Areas and Use of Forest Areas related to with opening land plantation coconut palm oil in the area forest production , in Decision Number 56/ Pid.Sus /2024/ PN.Ksn , Changes function area forests , and use area forest . Candy this , as derivative from Constitution Number 41 of 1999 concerning Forestry , providing guide technical about planning forestry , mechanisms change function area forests , and use area sustainable forests , with emphasize obligation permit , study environment , and participation public For prevent deforestation illegal . Analysis juridical show that actions defendant No only violate Constitution parent , and regulations President , but also procedures planning and change function in this Ministerial Regulation , which aims

⁷ Hariadi Kartodihardjo, *Policy Forest Management : Analysis Institutions and Implementation of Law No. 41 of 1999*, *Journal Analysis Policy Forestry* Vol. 1, No. 2, 2004 pp . 15-18.

⁸Rudy and Hesti P., *Function Conservation , Protection , and Production in Framework Sustainability of Indonesian Forests*, *Journal Constitution* Vol. 12, no. 3, 2015 p . 510

⁹Rudy and Hesti P. , *Function Conservation , Protection , and Production in Framework Sustainability of Indonesian Forests*, *Journal Constitution* Vol. 12, no. 3 (2015): p . 511, **Op. cit** .

¹⁰I Nyoman Nurjaya , *Review Legal Issues Regarding the Implementation of Sustainable Plantations Based on Law No. 39 of 2014*, *Journal of Agrarian and Environmental Law* Vol. 2, No. 1, 2016 p . 15

¹¹I Nyoman Nurjaya , *Review Legal Issues Regarding the Implementation of Sustainable Plantations Based on Law No. 39 of 2014*, *Journal of Agrarian and Environmental Law* Vol. 2, No. 1 2016 p . 20, *Op.cit*

For ensure use forest in accordance with function basically .¹² However , in practice decision , implementation Candy This Not yet fully integrated , so that weaken effectiveness enforcement laws and efforts prevention change function forests that are not valid . Regulation of the Minister of Environment life and forestry Number 7 of 2021 concerning Forestry Planning , Change function of Forest Areas and Use of Forest Areas in general specific arrange planning forestry as base For management forests , including change function area the forest that only can done through procedure tight . Candy This state that planning forestry covering compilation plan forestry term long , medium , and annual , with consider function forest as buffer ecosystem .

In context case Decision Number 56/ Pid.Sus /2024/ PN.Ksn , opening land covering an area of 117.34 hectares in the Production Forest Area Permanent (HP) by the defendant Ir. Sunarto Bin (Alm) Supardi is clear contradictory with Article 2 letter c " *This Ministerial Regulation regulate : c. Use of forest areas* " which can be seen in Article 364 " *Use area forest as intended in Article 2 letter c aims For arrange use part area forest For interest development outside activity forestry* " and Article 365 paragraph (1) " *use of forest areas as intended in Article 364 only can given in ; a. Forest area production ; and Article 365 paragraph (2) " use of forest areas as referred to in paragraph (1) is carried out without change function main area forest with consider limitation area and term time certain as well as sustainability environment .* " , where candy This forbid change function area forest without permission official and study impact environment (KDLH) approved by the Minister of Environment life and forestry (LHK). Regulation This emphasize that change function forest production become land plantation only possible through release area forest or over function forest based on plan forestry nationally regulated start from Article 130 paragraph (3) letter d " *settlement of control land in frame arrangement area state forests as referred to in paragraph (2) is carried out with inventory and verification initial, including : d. mastery field land in area state forests by the community done before its validity Constitution Number 11 of 2020 concerning Job Creation* " and then clarified in Article 132 letters b and c " *use field land in state forest areas as follows intended in Article 130 paragraph (3) letter d must fulfil criteria : b. mastered for at least 5 (five) years in a way Keep going continuously , c. controlled by individuals with maximum area of 5 Ha (five hectares)* " where in Candy This confirm Mastery field land in Forest Areas is carried out for 5 years before its validity Constitution number 11 of 2020 concerning creation Work with provision must domiciled in the area the .

In case the related with Production Forest remain in control For made into land plantations , whereas in Article 139 letter c paragraph 1 (b) " *in matter field land the used For land cultivation agriculture , plantations , fish ponds , and have mastered more from 20 (twenty) years in a way consecutively , done with to expel field land from in area forest through changes in regional boundaries forest* " and paragraph 1 (c) " *in matter field land the used For land cultivation agriculture , plantations , add , and have mastered not enough from 20 (twenty) years in a way consecutively , done with agreement management forestry social* " has explained in a way details through Candy This that is , emphasizing If mastery area forest more from 20 Years so Can done with changes in regional boundaries forest , and if not enough from 20 years so Can done pass agreement management forestry social . However , in case the No there is permission related based on provision Candy this and inside verdict , the judge is more focus on sanctions criminal based on Constitution Number 41 of 1999 concerning Forestry without integrate procedure planning from Candy this , like obligation compilation consultation area environment life (KDLH) or plan ordered recovery to the defendant . This matter show gap between strict planning norms in Regulation of the Minister of Environment life and forestry Number 7 of 2021 concerning Forestry Planning , Change function of Forest Areas and Use of Forest Areas with lack of implementation comprehensive in justice , which has the potential fail prevent change function destructive forests ecosystem .

In Regulation of the Minister of Environment life and forestry Number 8 of 2021 concerning Forest Management and Forestry Compilation Plan Forest Management , as well as Forest Utilization in Protected Forests and Production Forests , opening land plantation coconut palm oil in the area forest production in Decision Number 56/ Pid.Sus /2024/ PN.Ksn can also analyzed through lens Minister of Environment and Forestry Regulation Number 8 of 2021 concerning Forest Management and Compilation Plan Forest Management and Forest Utilization in Protected Forests and Production Forests . Ministerial Regulation this , as derivative from Constitution Number 41 of 1999 concerning Forestry , providing guide technical regarding forest management , preparation plan management forest (RPH), and utilization sustainable forest in the forest protection and production , with emphasize obligation permits , management participatory , and monitoring For prevent deforestation illegal .¹³ Analysis juridical show that

¹²Faisal Achmad, 2016, *Environmental Law : Regulation Waste and the Green Industry Paradigm* , Pustaka Yustisia , Yogyakarta, p . 60.

¹³Andri G. Wibisana, *Measuring Justice in Environmental Law Enforcement Analysis Disparity Decision Forestry Matters* , Journal Legal Tribune Vol. 35, No. 2, 2023 p . 18

actions defendant No only violate Constitution parent , Presidential Decree , and Ministerial Decree previously , but also forest management and RPH in Candy this , which aims For ensure utilization forest in accordance with function the main thing is without damage ecosystem . However , in practice decision , implementation Candy This Not yet fully integrated , so that weaken effectiveness enforcement laws and efforts management sustainable forests . Minister of Environment and Forestry Regulation Number 8 of 2021 specific regulate forest management as framework management forests , including preparation of RPH which includes plan Work annual (RKT) and plans Work business plan (RKU). Article 1 number 12 *"use of forest areas is usage on part area forest For interest development outside forestry without change status and function main area forest "* Candy This state that use area forest No may change function basically where opening land in the area forest production still has change function forest than it should be

S in a way whole , candy LHK No. 8 of 2021 concerning Forest Management and Preparation Plan Forest Management , and Forest Utilization in Protected Forests and Production Forests . This Ministerial Regulation give runway strong juridical For evaluate opening land in the forest production as violations that require forest and resort management governance legitimate forests (RPH) and also the Articles that have been explained in table on arrange in a way clear related condition application try utilization forest or what is called with (PBPH). However , in case Decision Number 56/ Pid.Sus /2024/ PN.Ksn , clear No There is submission application related Minister of Environment and Forestry Regulation Number 8 of 2021 concerning Forest Management and Forestry Compilation Plan Forest Management , and Forest Utilization in Protected Forests and Production Forests No become reject measuring in case the .

In line with matter said , efforts For emphasize enforcement law , government Then publish Presidential Decree Number 5 of 2025 concerning Regulation of Forest Areas specific arrange regulation as step comprehensive For handle destruction forests , including opening land without permission . In Article 2 number (1) *" For handling and improvement of activity management mining , plantations , dams/ or other activities in the forest area as well as optimization State Revenue , Central Government Conducts action government in the form of forest area regulation "* number (2) *" regulation of forest areas " as referred to in paragraph (1) is carried out to everyone who does forest area control No in accordance with provision legislation "* and Article 3 *" regulation area forest as intended in Article 2 is carried out with : a. billing administrative fines , b. Re -possession of forest areas ; and / or , c. recovery of assets in forest areas "* which is essentially Presidential Decree This state that regulation done through inventory violation , confirmation of area boundaries forest , emptying land illegal , and recovery function forest , with involving ministry related like ministry environment life and forestry (KLHK), ministry agrarian and spatial planning / land agency national (ATR/BPN), police , and TNI.

In context case Decision Number 56/ Pid.Sus /2024/ PN.Ksn , opening land as wide as not enough more than 117.34 hectares in the area forest production fixed (HP) by the defendant Ir. Sunarto Bin (Alm) Supardi clearly contradictory with Article 4 paragraph (2) letter a *" Regulation area forest as intended in Article 3 is carried out to everyone who does activity mining , plantations , and/ or other activities in the area forest production that: a. has licensing try However No fulfil condition basics and requirements other in accordance with provision regulation legislation , imposed sanctions in the form of administrative fines and can done mastery back "*. Presidential Decree This forbid activities that change function forest without permission and require regulation quick to land under control in a way illegal . However , in verdict , the judge is more focus on sanctions criminal based on Constitution Number 41 of 1999 concerning Forestry without integrate mechanism regulation from Presidential Decree this , like order emptying land or recovery that can ordered to the defendant . This matter show gap between progressive regulatory norms in Presidential Decree Number 5 of 2025 concerning Regulation of Forest Areas with lack of implementation holistic in justice , which has the potential fail return function damaged forests and prevent deforestation repeating . In a way overall , Presidential Decree Number 5 of 2025 concerning Forest Area Regulation provides runway strong juridical For evaluate opening land in the forest production as violations that require regulation comprehensive including evacuation , termination , and restoration . The existence of a Presidential Regulation Number 5 of 2025 can become guidelines For handle case similar If happen later day .

Accountability criminal to Perpetrator Land Clearing for Oil Palm Plantations in Production Forest Areas based on the Decision Study Number 56/ Pid.Sus /2024/ PN.ksn .

In case decision Kasongan District Court Number 56/ Pid.Sus /2024/ PN.Ksn , defendant proven do opening land as wide as not enough more than 117 hectares in the area forest production still without permission from the Minister of Environment life and forestry . Based on fact law said , the act defendant in a way juridical has fulfil elements action criminal as arranged in Constitution Number 41 of 1999 concerning Forestry as has changed become Constitution Number 11 of 2020 concerning Job Creation, prohibits change function forest without Minister's approval through Article 78 paragraph (2) *" Everyone who with on purpose violate provision as intended in Article*

50 paragraph (2) letter a is threatened with criminal imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 7,500,000,000.00 (seven billion five hundred million) in conjunction with Article 50 paragraph (2) letter (a) " Every person is prohibited from doing so work on , use , and/ or occupy forest areas in a way No legitimate ; " which prohibits everyone changes function area forest without permission officials authorized , with threat maximum sentence of 10 years imprisonment and a maximum fine of IDR 7.5 billion .

From the perspective elements action criminal (*delicta*) , act defendant fulfil all element that is , the existence of subject law namely individuals , actions (*actus reus*) in the form of opening land without valid permit from party authorized , element error (*mens rea*) in the form of intentional act it also has connection direct between action defendant and the emergence damage in the area forest production . So , from aspect *actus reus* and *mens rea* , defendant has fulfil condition For asked accountability criminal full as theory classic law criminal law which states that " there is no criminal without error " (*geen staff without schuld*). Based on the principles of Criminal Law , there are Related principles with case the that is first , the principle legality (*nullum crimen sine lege , nullum poena sine lege*) as arranged in Article 1 paragraph (1) of the Criminal Code it is stated that " *somebody only can convicted based on The law that has been There is before actions done* " .¹⁴

In case this , the provisions prohibition open land in the Production Forest area without permission Already arranged in a way clear in regulation legislation , so that principle legality has fulfilled . Second , the principle error (*schuld beginsel*) who said that " criminalization only can dropped to someone who is capable responsible responsible and have element intentional or negligence . " Can seen defendant in case This in a way aware know that area the is forest production , but still do opening land , so that actions the can become reference and requested accountability criminal full . Accountability criminal in decision This can dissected through Combined Theory glasses (*Verenigingstheorieën*), which attempts unite between justice retributive and beneficial for society . In case This retributive theory (revenge) demands that the accused accept suffering that is worth it with damage forest covering an area of 117 hectares which has been caused by it . However , the emergence of gap between threat criminal maximum and the judge's verdict indicates Dominance of Relative Theory or the Theory of Goals (*Doeltheorieën*), which views criminal No as revenge pure , but rather as tool For prevent occurrence crime similar in the future (prevection general) . Unfortunately , the verdict that is far below minimum standards instead weaken aspect *deterrent effect* (effect deterrent) , so that goals of Rehabilitation Theory For repair behavior actors and objectives protection public to destruction environment No achieved optimally . If the sanctions imposed No give pressure economy or comparable physique with potential profit from plantation palm oil illegal , then law criminal fail operate its function as instrument controller effective social for sustainability forest production .

Comparison between threat criminal in The law and the verdict handed down by the judge show a very wide gap between structure sanctions designed by the creators Law and realization criminalization in case 56/ Pid.Sus /2024/ PN.Ksn . Threat criminal in Constitution Number 41 of 1999 concerning Forestry , Law Number 39 of 2014 concerning Plantations provides range far- reaching punishment more heavy , good from long - term criminal law prison and size fine , however decision precisely give sanctions that are in place far below minimum standards available . In fact , the provisions relating to with use tool heavy as well as prohibition do activities in the area forest without permission No applied , although the elements has proven in fact trial . Situation This show that criminalization No in line with construction sanctions that have been set in regulation legislation , so that objective protection environment through instrument law criminal No achieved optimally in case This .

CONCLUSION

Opening case land by the defendant Ir. Sunarto Bin (Alm) Supardi which occurred in the area forest production fixed (HP) without valid permit show violation to provision the laws that govern use area forest . This action violate Constitution Number 41 of 1999 concerning Forestry , which regulates with clear that every changes in forest status , including opening land For activity plantations , must get permission official from government . Violation to Constitution Number 41 of 1999 concerning Forestry This related direct with management area protected and purposeful forests For guard sustainability function forest that covers conservation , protection , and production . Thus , the actors who open land in the area forest without permission can ensnared with sanctions strict laws in accordance with applicable provisions . The legal process undergone by the defendant show existence incompatibility between violations that occurred and implementation sanctions given , which in the end No in accordance with the weight the impact caused by actions the .

¹⁴Marzuki, P. M, *Elements Action Criminal in Indonesian Criminal Law : Analysis of Actus Reus and Mens Rea*, Journal Criminal Law , Vol 4 No 1, 2021, p. 6.

Accountability criminal defendant has fulfilled in a way perfect Good from aspect material both formal and informal . juridical , act defendant do opening land coconut palm oil covering an area of ±117 hectares in the Production Forest area Still without permission minister has fulfil element *actus reus* and *mens rea* as arranged in Article 78 paragraph (2) jo. Article 50 paragraph (2) of the Forestry Law has changed through the Job Creation Law. This in harmony with principle legality and principles error , where the defendant in a way aware do action oppose laws that are prohibited by regulations applicable legislation . From the perspective elements action criminal (*delicta*) , act defendant fulfil all element that is , the existence of subject law namely individuals , actions (*actus reus*) in the form of opening land without valid permit from party authorized , element error (*mens rea*) in the form of intentional act it also has connection direct between action defendant and the emergence damage in the area forest production . Situation This show that criminalization No in line with construction sanctions that have been set in regulation legislation , so that objective protection environment through instrument law criminal No achieved optimally in case This .

REFERENCES

- Arief Nawawi Barda, 2018, Bunga rampai kebijakan hukum pidana dan perkembangan penyusunan KUHP baru, Jakarta, Kencana, Hlm. 142
- Asshidiqie Jimly, 2020, Hukum Lingkungan dan Pembangunan Berkelanjutan, Jakarta, Rajawali Pers, Hlm. 112.
- Andri G. Wibisna, 2023, Menakar keadilan dalam penegakan hukum lngkungan analisis dispratasi putusan perkara kehutanan, Jurnal Mimbar Hukum, hal 35.
- Barda Nawawi, Asas-Asas Hukum Pidana, Semarang: Badan penerbit Universitas Diponegoro Semarang, 2020 <https://share.google/a0gdJRmGFpVJhj04h>
- Faisal Achmad, 2016, Hukum Lingkungan: Pengaturan Limbah dan Paradigma Industri Hijau, Pustaka Yustisia, Yogyakarta, hlm. 60.
- Global Forest Watch, 2023, Forest Loss in Indonesia 2022, Washington DC: World Resources Institute, hlm. 20-25.
- Hariadi Kartodiharjo, 2024, Kebijakan pengelolaan hutan: analisis institusi dan implementasi Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan, Jurnal analisis kebijakan kehutanan, hal 15-18.
- I Nyoman Nurjaya, 2016, Tinjauan Yuridis terhadap pelanggaran perkebunan yang berkelanjutan berdasarkan Undang-Undang Nomor 39 Tahun 2014 tentang Kehutanan. Jurnal hukum agrarian dan lingkungan, hal 15.
- Kementerian Lingkungan Hidup dan Kehutanan (KLHK), Laporan Tahunan Kehutanan Indonesia 2023, Jakarta: KLHK, 2023, hlm. 45-50
- Koesnadi Hardjasoemantri, Hukum Tata Lingkungan , Yogyakarta: Gadjah Mada University , Press, 1999, hlm. 33
- Moeljatno, Asas-asas Hukum Pidana, Jakarta, Rineka Cipta, 2015, hlm. 56.
- Marzuki, P.M, 2021, Unsur-unsur tindak pidana dalam hukum pidana Indonesia: Analisis *actus reus* dan *Mens rea*, Jurnal hukum pidana, hal 6.
- Rende Jhony, 2013, Hambatan penegakan hukum terhadap pencemaran dan kerusakan lingkungan hidup, Jurnal hukum Scientia de lex, hal 7-8.
- Sudirman A, 2020, Kesenjangan antara norma hukum dan praktik penegakan hukum lingkungan di Indonesia: Studi kasus deforestasi hutan produksi, Jurnal hukum lingkungan, hal 12.
- Satjipto Raharjo, Ilmu Hukum dalam Aksi: Menggapai keadilan substantif, Yogyakarta, Genta Publishing, 2016, hlm. 75
- Sigit Sapto Nugroho, Hukum Kehutanan: Konstruksi hukum sumber daya hutan berbasis Masyarakat, Solo: Pustaka Iltizam, 2017 <https://share.google/SQChZpcSD5I7ElZMy>
- Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan (Lembaran Negara Tahun 1999 No.167, Tambahan Lembaran Negara Republik Indonesia No. 3888)
- Undang-Undang Nomor 18 Tahun 2013 tentang Pencegahan dan Pemberantasan Perusakan Hutan (Lembaran Negara Tahun 2013 No. 130, Tambahan Lembaran Negara Republik Indonesia No. 5432)
- Undang-Undang Nomor 39 Tahun 2014 tentang Perkebunan (Lembaran Negara Tahun 2014 No. 308, Tambahan Lembaran Negara No. 5631)
- Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Lembaran Negara Tahun 2020 No. 245, Tambahan Lembaran Negara No. 6573)
- Peraturan Presiden Nomor 5 Tahun 2025 tentang Penertiban Kawasan Hutan.
- Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 7 Tahun 2021 tentang Perencanaan Kehutanan, Perubahan fungsi Kawasan Hutan dan Penggunaan Kawasan Hutan.
- Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 8 Tahun 2021 tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Serta Pemanfaatan Hutan di Hutan Lindung dan Hutan Produksi.