


A Form of Accountability CV Sumber Berkat Makmur Which Encroached On Customary Forests

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Article Info	Abstract
<p>Keywords: Accountability; CV Sumber Berkat Makmur; Encroaching on Customary Forests.</p>	<p>Introduction: The people of Sabuai Village reject the existence of a company that has been operating since 2019. Until now, the Environment Agency has never processed documents, either Amdal or other environmental documents according to the acting Head of the Maluku Province Environment Area. The people of Sabuai Village deny the existence of a company that has been operating since 2019, because it is suspected of cutting down and managing customary forest products without permission.</p> <p>Purposes of the Research: The long goal is to find out the Form of Accountability of CV Sumber Berkat Makmur that Encroaches on Customary Forests in the Research Environment of Eastern Sabuai Seram Village.</p> <p>Methods of the Research: The approach method used in this study is sociological juridical which is a descriptive study of qualitative analysis. This study seeks to illustrate what is happening in the Indigenous peoples of Sabuai Village, SBT. The data collection techniques used in this study were: Interviews, questionnaires and literature studies.</p> <p>Results of the Research: The form of cv accountability of the source of prosperous blessings that encroached on customary forests in Sabuai Village, Eastern Seram Regency, namely: From the point of view of administrative law, permission is a public service. In fact, permits as one of the sources of destruction and pollution in the name of illegal logging, illegal fissing and illegal maning. Thus illegal logging is a fraudulent practice since from licensing, activities, results of activities, actors and the purpose of their sale subscribe to the law. Legal liability under civil law in illegal encroachment is: The principle of liability based on unlawful acts, the Principle of absolute liability (strike liability) and the Principle of Liability based on Unlawful Acts.</p>

1. INTRODUCTION

The Environment Agency of Maluku Province has summoned representatives of CV Sumber Berkat Makmur, a company operating in the customary forest of Sabuai Village, Eastern Seram Regency, Maluku. The people of Sabuai Village reject the existence of a company that has been operating since 2019, because it is suspected of cutting down and managing customary forest products without a permit. Until now, the Environmental Agency has never processed documents, either the Environmental Impact Assessment

(AMDAL) or other environmental documents according to the acting Head of the Maluku Provincial Environment.¹

The summoning of representatives from CV Sumber Berkat Makmur by the Maluku Provincial Environment Agency there are allegations of encroachment of customary forests in Sabuai Village.² The Environment Agency of Maluku Province wanted to ensure the completeness of the company's documents, but CV Sumber Berkat Makmur did not comply with the call. There are allegations that the company CV Sumber Berkat Makmur only pockets a plantation business license, if you do not have a (environmental) permit, it means illegal, because the investment requirements must be complete documents including environmental permits. CV Sumber Berkat Makmur does not yet have an Environmental Impact Assessment and Permits, UKL, and UPL.³

The logging and forest management activities carried out by CV Sumber Berkat Makmur in the Sabuai Village Customary Forest have been rejected by the local community. The company is considered to be cutting down forests to areas prohibited by indigenous villages that are sacred by indigenous peoples.⁴ The acts committed by CV Sumber Berkat Makmur are allegedly contrary to Article 1365 of the Civil Code, as follows: "Any unlawful act that brings harm to another person, obliges the person who, because of his fault, to compensate for the loss".

This is also contrary to Article 87 paragraph (1) of the Environmental Protection and Management Act (UUPPLH), which states:⁵ "Every person in charge of a business and/or activity that commits unlawful acts in the form of pollution and/or destruction of the environment that causes losses to other people or the environment, is obliged to pay compensation and/or take certain actions".

Regarding the liability for providing compensation by corporations as a result of an act of pollution and/or destruction of the environment that causes losses, both to individuals, community groups and the government or to the environment itself. From the background above, the formulation of the problem that will be studied in this study is: What is the Form of Accountability of CV Sumber Berkat Makmur Who Encroached on Customary Forests in Sabuai Village, Eastern Seram Regency?

2. METHOD

This research was conducted using a sociological juridical approach which is a descriptive study of qualitative analysis.⁶ The research seeks to illustrate what is happening in indigenous peoples in Sabuai Village, Seram Bagin Timur Regency. i rationalization process. The way empirical juridical or sociological juridical methods work in this research proposal is from the results of collecting and finding data and information through literature studies on basic assumptions or assumptions used in answering problems in this

¹Pembabatan Hutan Adat di Maluku, Pemprov dan Perusahaan Beda Pendapat soal Izin. <https://regional.kompas.com/read/2020/02/29/17585221/pembabatan-hutan-adat-di-maluku-pemprov-dan-perusahaan-beda-pendapat-soal?page=all>, retrieved October 11, 2022.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Kitab Undang-Undang Hukum Perdata (KUHPerdata)

⁶ Maria SW, Sumardjono, *Pendoman Pembuatan Usulan Penelitian Sebuah Panduan Dasar*, Penerbit Gramedia Pustaka Utama. Jakarta, p. 10.

study, then inductive-verification testing is carried out on the latest facts contained in the community.

3. RESULTS AND DISCUSSION

3.1 Definition of Legal Liability

If a person is harmed because of the actions of another person, while between them there is no agreement (legal relationship agreement), then under the law there is also a legal relationship arises or there is a legal relationship between that person that causes the loss.⁷ This is regulated in article 1365 of the Civil Code, as follows: "Any unlawful act that brings harm to another person, obliges the person who for his fault published the loss, to compensate for the loss" According to article 1365 of the Civil Code, then what is meant by an unlawful act is an unlawful act committed by a person who because of his fault has caused harm to others. In legal science, there are 3 (three) categories of unlawful acts, namely as follows:⁸ a. Unlawful acts due to willfulness, b. Unlawful acts without error (without any element of willfulness or negligence) and d. Unlawful acts due to negligence

Then the model of legal responsibility is as follows:⁹ 1) Responsibility with elements of error (intentionality and negligence) as contained in article 1365 of the Civil Code. 2) Responsibility with elements of error, especially negligence as contained in article 1366 of the Civil Code. Absolute responsibility (without error) as contained in article 1367 of the Civil Code. The term unlawful act (*onrechtmatig daad*) before 1919 by Hoge Raad is defined narrowly, that is, any act that is contrary to the rights of others arising from the law or any act that is contrary to his own legal obligations arising from the law. According to narrow teachings, it cannot be used as a reason to claim compensation for an act against the law, an act that does not conflict with the law even if the act is contrary to the things required by morals or things that are required in the association of society.

The definition of unlawful acts became broader with the decision of Hoge Raad dated January 31, 1919 in the case of *Lindebaum versus Cohen*. Hoge Raad has given considerations including the following:¹⁰ "that by an unlawful act (*onrechtmatige daad*) is defined an act or negligence, which is or contrary to the rights of others, or contrary to the legal obligations of the perpetrator or contrary, whether with good decency, the association of life towards another person or thing, while whoever because of his fault as a result of his deed has brought harm to others, is obliged to pay compensation" Liability for unlawful acts can be intentional and unintentional or negligent. This is regulated in article 1366 of the Civil Code, as follows: "Everyone is liable not only for the losses caused by his deeds, but also for the losses caused due to his negligence or lack of care".

Responsibility for unlawful acts above is the responsibility of acts against the law directly, also known as acts against the law indirectly according to article 1367 of the Civil Code:¹¹ (1) A person shall not only be liable for losses caused by his own deeds, but also for

⁷AZ Nasution, *Hukum Perlindungan Konsumen*, cet.2, Jakarta: Diapit Media, 2002, p.77.

⁸ Munir Fuady, *Perbuatan Melawan Hukum*, cet.1, Bandung: Citra Aditya Bakti, 2002, p.3.

⁹ *Ibid.*, p. 3.

¹⁰M.A. Moegni Djodirdjo, *Perbuatan Melawan Hukum*, cet.2, Jakarta: Pradnya Paramita: 1982, p. 25-26.

¹¹ La Ode Angga, Hasan Suat, Legal Responsibility in the Pollution and Environmental Destruction Due to Gold Mining Exploitation in Botak Mountain of Buru Regency, journal FIAT JUSTISIA 13(4):381 November 2019, ISSN: 1978-5186 https://www.researchgate.net/publication/338995389_Legal_Responsibility_in_the_Pollution_and_Enviro

losses caused by the deeds of persons he is dependent on or caused by goods under his supervision; (2) Parents and guardians are liable for any harm, caused by immature children, living on them and against whom they exercise parental or guardian power; (3) Employers and those who appoint others to represent their affairs, are liable for losses incurred by their servants or subordinates in performing the work for which these persons are used; and (4) The aforesaid responsibilities end, if the parents, guardians, school teachers and head-builders prove that they cannot prevent the act for which they should be responsible.

The employer's liability in article 1367 paragraph (3) of the Civil Code is not only about liability in the employment bond, including to a person who is outside the employment bond has been ordered by another person to do something certain work, as long as the person who is ordered to do the work does his job independently either at his own direction or has done th.¹² As referred to in article 1601 a of the Civil Code, the employer's responsibility for unlawful acts of its employees.¹³ "A labor agreement is an agreement by which the one party, the laborer, binds himself to under his orders the other party, the employer, for a certain time doing the work by receiving wages."

Hoge Raad's ruling of November 4, 1938 also provides for liability for acts that, even if outside the duties assigned to the subordinate, have something to do with the subordinate's duties, so that they can be considered to be carried out in the work for which the subordinate is used:¹⁴ "Liability under article 1367 paragraph (3) of the Civil Code is intended to include also losses caused by acts that do not include duties assigned to subordinates, but have such a relationship with the duties of such subordinates, so that such acts are considered to be carried out in the work for which the subordinate is used"

In addition to man as a subject of law, a legal entity (*rechtspersoon*) is also a subject of law, that is, it has rights and obligations like a human being. A legal entity can become a subject of law by fulfilling several conditions as follows:¹⁵ a. If the legal entity has its own wealth separate from the wealth of an individual acting within that legal entity; b. If the legal entity has the same interests as the interests of individual people, namely the interests of a group of people with intermediaries in their management.

Legal entities can participate in the association of life in society, can sell or buy goods, can rent or rent goods, can exchange goods, can be an employer in labor agreements and can also be held accountable for unlawful acts that harm others.¹⁶ Organ theory recognizes that in a legal entity there is a person besides its members, that person has the ability to act and also has his own will. The will is formed in the brains of the members, but because the members at the time form and express their will act as organs, that is, as part of the organism in the form of people, the will is also the will of the legal entity.¹⁷

Hoge Raad adheres to the organ theory and makes this theory a permanent jurisprudence because according to this theory a legal entity can be accounted for under

mental_Destruction_Due_to_Gold_Mining_Exploitation_in_Botak_Mountain_of_Buru_Regen, diakses tanggal 25 Januari 2023

¹² *Ibid*, p. 128

¹³ *Ibid*, P. 131

¹⁴ *Ibid*, p. 132.

¹⁵ Subekti, *Pokok Pokok Hukum Perdata*, Jakarta: Intermasa, 1989, P.21.

¹⁶ Wirjono Projodikoro, *Perbuatan Melanggar Hukum*, Bandung: Sumur Bandung, 1960, P.51

¹⁷ M.A. Moegni Djojodirdjo, *Perbuatan Melawan Hukum*, cet.2, (Jakarta: Pradnya Paramita: 1982), p. 175

article 1365 of the Civil Code, namely if its organs commit acts against the law.¹⁸ A legal entity is considered to be really a person who has the authority to act, by having its own will, then it can be concluded that the legal entity must also be considered to meet the element of guilt in committing an unlawful act.¹⁹

Not all organ deeds can be accounted for to legal entities, there must be a relationship between the deeds and the working environment of the organ. The organ has done its deeds within the formal environment of its authority. If the organ of a legal entity acts to fulfill the duties imposed on it and the act is against the law then the act against the law by that organ is considered an unlawful act of the legal entity.

In talking about the issue of organs, it is necessary to put forward the matter of deputy. Vollmar holds a distinction between organs and deputies. The organ according to Vollmar is a representative acting for its legal entity. In addition to the deputy as an organ according to Vollmar there is also a representative who acts not as an organ. As for the organ, it can be distinguished between organs not as subordinates and organs as subordinates.²⁰

Vollmar gave a formulation of the organ as follows:²¹ "organs are representatives whose functions have a stand-alone nature, that is, in the sense that the way in which they should perform their duties and the way in which they should represent a legal entity is entirely left to themselves, even if their execution must be carried out within the limits prescribed by law, or regulations and so on.

Thus in most cases the legal entity itself has committed an act against the law and its direct liability is based on article 1365 of the Civil Code and not under article 1367 of the Civil Code. If the unlawful act is committed by a subordinate person then the legal entity must be liable under article 1367 of the Civil Code. As a guideline, it is given by article 1865 of the Civil Code that: "Any person who postulates that he has some right, or, to assert his own right or to disprove a right of another person, to point to an event, is obliged to prove the existence of that right or event."

3.2 A Form of Accountability for CV Sumber Berkat Makmur Who Encroached on Customary Forests in Sabuai Village, Eastern Seram Regency

a. Definition of CV

CV is a form of business entity formed by two or more people who then entrust the capital owned to two or more people. This is done to run the company as well as being trusted to lead the company. The goal is to achieve the ideals together with the level of involvement of each member is different. Therefore, within the CV there are two different allies. Meanwhile there are some experts who argue that the CV consists of allied allies and complementary allies. Allied (passive allies) have the responsibility to provide CV capital to complementary allies (active allies) who are responsible for carrying out CV activities. The amount of business profit sharing is adjusted by mutual agreement. For more details, we can look at article 20 of the KUHd or the Trade Law Code which discusses passive allies (komanditer) can be concluded as follows: first Not being directly involved in the running of the company, second Each passive ally (komanditer) is referred to as a limited investor ally because it only deposits its money or assets as capital in order to be entitled to profit

¹⁸ *Ibid*, p. 177.

¹⁹ *Ibid.*, p. 176.

²⁰ *Ibid*, p. 178.

²¹ *Ibid*, p. 178.

from the company's profits, third CV losses are also borne by passive allies but only limited to the amount of capital invested, and four Passive allies can also be referred to as silent partners or sleeping partners because their names must be hidden and.

b. Illegal logging

Illegal logging or also known as illegal logging is also known as illegal logging. Illegal Logging is a logging activity, and distribution, to the sale of illegal timber. This is done unlawfully and also without permission. So this will be a form of a threat. The reason is the increasing need for wood, both in the local and international markets. This is influenced by the very weak law enforcement factors that usually exist in Indonesia. So for illegal logging activities this can happen so very easily. There are so many factors that can indeed cause the growth and development of illegal logging that is common in Indonesia. Whether it's a factor that can indeed be direct or not directly. Here are some of the causes of illegal logging.²²

c. Form of Accountability CV Sumber Berkat Makmur

Permission is one of the instruments used in administrative law. The government uses permits as a juridical means to regulate the behavior of citizens.²³ Thus permission as a regulatory or controlling norm so that the community in carrying out certain activities in accordance with applicable legal provisions. The goal is to prevent deviant behavior from society in order to meet the provisions of the applicable law and not just a source of income.²⁴

From an administrative legal point of view, permissions are public services. Therefore, it is not worth charging. The principle of free licensing services is already embraced by the EU (European Union) as Brian Jones and Katherine Thompson said of the permit: "As a general rule a government body may not require any payment as a condition precedent to the issue of the license, unless this is provided for expressly by statute."²⁵

In fact, permits as one of the sources of destruction and pollution in the name of illegal logging, illegal felling and illegal mining. On the other hand, licensing in Indonesia is one of the obstacles to investment. *Illegal logging* according to Prasetyo as an unlawful logging activity.²⁶ Illegal can be interpreted as unofficial, wild, illegitimate according to the law, untrue, violating the applicable rules. Meanwhile, logging is a series of forest management activities that start from planning, building facilities and infrastructure, logging, transportation and marketing. Thus illegal logging is a fraudulent practice since from

²²Pengertian, Penyebab, dan Cara Mencegah Pembalakan Liar - (agrotek.id). <https://agrotek.id/pembalakan-liar/>, retrieved October 11, 2022.

²³ Pengertian, Penyebab, dan Cara Mencegah Pembalakan Liar - (agrotek.id). <https://agrotek.id/pembalakan-liar/> diakses tanggal 11 Oktober 2022.

²⁴Penebahan liar dari sudut hukum Administrasi <https://www.kompasiana.com/kotijah/54feca18a333115f4950f83e/pembalakan-liar-dalam-prespektif-hukum-administrasi>, diakses tanggal 11 Oktober 2022.

²⁵ La Ode Angga ed.al, Responsibilities of Industry Actors to Environmental Conservation in Coastal Areas, *International Journal of Sustainable Development and Planning* .ISSN: 1743-7601 (Print); 1743-761X (Online) Published: 26 August 2021 <https://ieta.org/journals/ijmdp/paper/10.18280/ijmdp.160405> diakses tanggal 23 Januari 2023.

²⁶ Rory Jeff Akyuwen ed. Al, Management of Maritime Tourism of the Kei Indigenous Peoples of Southeast Maluku Regency as an Economic Driver Based on Environmental Sustainability, ISSN: 1743-7601 (Print); 1743-761X Published: 30 December 202, <https://ieta.org/journals/ijmdp/paper/10.18280/ijmdp.1608>

licensing, activities, results of activities, actors and the purpose of their sale subscribe to the law.

Illegal logging in the legal concept of administration does not mean that it does not have a permit (documents permits), or has a permit, but there is a defect because it does not meet formal legality or substantial legality. Both have legal consequences of being illegal, so the term illegal logging appears. According to Tatik, there is a difference between the terms unlicensed and licensed but containing juridical defects.

In the case of unlicensed timbers, they can be accused of theft or logging. In this context the security forces can catch the theft and be processed on charges of theft according to Article 362 of the Criminal Code which states:²⁷ "whoever takes the goods, which are at all or as the property of others, with the intention of possessing the goods by unlawfully stealing with imprisonment for a term of five years or a fine of up to nine thousand rupiah". With the demikinan of illegal logging in the criminal shutter. On the other hand, it would be different if the logs that were cut down had permits, but there were juridical defects. In this case there is a defect of the procedure on the permit, thus what is corrected is the weakness of the existing procedure, whereas the defect of the substance must repeat the application for permission from the beginning for the.

However, in many cases of illegal logging, many perpetrators escaped the legal trap, and were even released because in the administration only saw the existence of permits from the ownership of the timbers, or even if the logging perpetrators were arrested for cutting down beyond the territorial capacity of the permits obtained. Thus, perpetrators of illegal logging will definitely escape the trap of punishment, because it only violates the permits and complies with article 97 paragraph 9, Article 120 and article 121 of Law Number 5 of 1986 jo Law Number 9 of 2004 concerning State Administrative Courts. The penalty is only the revocation of the license, indemnity or rehabilitation. So the eradication of illegal logging is just a dream and forests will continue to be cut down, stolen and stolen. if this is the case, whose fault is it?

The position of forests as one of the determinants of life support systems, has provided great benefits for mankind, and illegal logging is the biggest cause of forest destruction in Indonesia, in Article 17 paragraph (2) of Government Regulation Number 6 of 2007 jo PP Number 3 of 2008 concerning Forest Management and Preparation of Forest Management Plans and Forest Utilization, that the use of forests as referred to in paragraph (1) can be carried out through the following: utilization of environmental services; utilization of timber and non-timber forest products; and the utilization of timber and non-timber forest products.²⁸

In relation to the utilization permit, Article 19 states "in every forest utilization activity carried out as referred to in article 17 paragraph (2), it must be accompanied by a forest utilization permit which includes: In the fifth part of PP Number 6 of 2007 jo PP Number 3 of 2008 regulates the authority to grant permits regulated by Articles 60-66. Thus, the

²⁷ La Ode Angga ed.al, Responsibility of Manufacturers in Waste Management of Plastic Packaged Drink Products Based on Law Number 18 of 2008 Regarding Waste Management (Case Study in Ambon City, Maluku Province), <https://iieta.org/journals/ijsdp/paper/10.18280/ijsdp.160212>, Published: 23 April 2021 dikases tanggal 25 Januari 2023.

²⁸ Adonia Ivone Laturette ed. Al, Natural Resources Management Rights in Land Conservation Areas in Coastal Areas and Small Islands Based on Environmental Sustainability, ISSN: 1743-7601 (Print); 1743-761X Published: 30 November 2021 <https://iieta.org/journals/ijsdp/paper/10.18280/ijsdp.16071>, dikases tanggal 27 Januari 2023.

permits that must be owned by entrepreneurs in the use of forests are obviously not easy to obtain forest timber without being accompanied by permit documents issued by authorized officials. In the future, the judges in making decisions should not only look at the administrative shutter, but think about the consequences caused by the practice of illegal logging.

4. CONCLUSION

The conclusion of the discussion above is: The form of cv accountability of the source of prosperous blessings that encroached on customary forests in Sabuai Village, Eastern Seram Regency, namely: From the point of view of administrative law, permission is a public service. In fact, permits as one of the sources of destruction and pollution in the name of illegal logging, illegal fissing and illegal maning. On the other hand, licensing in Indonesia is one of the obstacles to investment. Illegal logging (illegal logging) according to Prasetyo as an unlawful logging activity. Illegal can be interpreted as unofficial, wild, illegitimate according to the law, untrue, violating the applicable rules (onrechtmatige). Meanwhile, longging is a series of forest management activities that start from planning, building facilities and infrastructure, logging, transportation and marketing. Thus illegal logging is a fraudulent practice since from licensing, activities, results of activities, actors and the purpose of their sale subscribe to the law. Illegal logging in the legal concept of administration does not mean that it does not have a permit (documents permits), or has a permit, but there is a defect because it does not meet formal legality or substantial legality. Both have legal consequences of being illegal, so the term iillegal logging appears. According to Tatik, there is a difference between the terms unlicensed and licensed but containing juridical defects. In the case of unlicensed timbers, they can be accused of theft or logging. In this context the security forces can catch the theft and be processed on charges of theft according.

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