




A Steep Gall in International Environmental Law Enforcement (An Analysis of International Deforestation)

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Submitted: 2022-02-23

Revised: 2022-03-26

Published: 2022-04-14

Article Info	Abstract	
<p>Keywords: Law Enforcement; Deforestation; Desertification.</p>	<p>Introduction: "Anforce the law, or the world will be destroyed" is an appropriate expression for environmental law enforcement. Many treaties have regulated the environment, mainly deforestation, and many countries have ratified these treaties. However, implementing these regulations did not necessarily stop countries from deforesting.</p> <p>Purposes of the Research: Furthermore, in this research, steps that could be implemented to tackle deforestation internationally were given.</p> <p>Methods of the Research: This research was normative juridical research that examined an international law regulation, using qualitative analysis, and using secondary data.</p> <p>Results of the Research: Based on international data, many countries still carried out desertification, which amounts to thousands of hectares per year. One of the reasons for the weak implementation of treaties relating to environmental protection was the absence of coercive power from international conventions over the State's sovereign authority in forest management. Weak international environmental enforcement is caused by inadequate supervision and control as well as strong authority based on state sovereignty over forest management and utilization which depends on government policies, and the system of settlement and imposition of fines that still originate from a lawsuit.</p>	

1. INTRODUCTION

Forests are buffers for human life and other living creatures, which are gifts and natural heritage that we must preserve and develop their carrying capacity for the continuation of the living things on earth. The beautiful environment we have and enjoy nowadays is none other than the one passed down by our forefathers. Therefore, we, as the human life's successor, are obliged to continuously maintain and preserve the environment's beauty so that our children and grandchildren in future generations can feel the current environment's beauty.

Our concern for maintaining and preserving by regulating the balance between human needs and the continuity of natural life is the primary key in maintaining environmental sustainability. Humans need the environment, especially forests, as the central place to grow trees that produce oxygen for basic human needs to live, in addition to being the primary source of producing raw materials for paper production and wood needs for

human use. As long as humans live, humans still depend on forests to meet their needs, so deforestation is inevitable, while forest growth and human needs are currently not in harmony.

Deforestation occurs when forest areas are cleared and replaced with other forms of land use³. This phenomenon in various parts of the world in the last ten years, especially in agrarian countries, such as Brazil, is the conversion of forest land to soybean farming. According to an analysis of satellite data released by the University of Maryland (UMD) and the World Resources Institute (WRI), primary forests in the tropics are declining quickly. Since 2002, the tropics had lost more than 60 million hectares of primary forest, an area equal to 1.3 times the size of Sumatra⁴. Brazil had the most considerable primary forest reduction rate globally in 2020, 1.7 million hectares. After that, the Democratic Republic of the Congo lost 491 thousand ha of primary forest. Bolivia has recorded a loss of 277,000 ha of primary forest. Peru, which was under Indonesia, lost 166,000 hectares. Colombia was in sixth place due to the loss of primary forest covering an area of 166,000 hectares. Then, Cameroon recorded a loss of 100 thousand hectares of primary forest. Laos and Malaysia lost 89.7 thousand hectares of primary forest and 73 thousand hectares, respectively. Meanwhile, Mexico recorded a loss of 68.4 thousand hectares of primary forest. Meanwhile, the reduction in primary forest in the world would be 4.21 million hectares throughout 2020. This number was more than the previous year, only 3.75 million hectares.⁵

For a decade, logging, whether done legally or illegally, was indeed very concerning. Illegal and uncontrolled deforestation and forest degradation have increasingly exacerbated forest conditions in various areas. Moreover, concern for forest conservation in developing countries is still not mature enough⁶. The high international demand for wood, paper products, and other commodities such as palm oil, has also pushed the rate of forest destruction.⁷ To anticipate the loss of forests due to the immeasurable logging, the international community consisting of state leaders, leaders of international organizations, environmental activists from national and international NGOs, leaders of industrial sector companies, as well as support from the community must have a strong commitment, to tackle deforestation and create proportionality between industrial needs and the carrying capacity of the forest.

The main instrument supporting the commitment of the subjects related to deforestation is the legal instrument. Since the mid-19th century, there have been regional international law products that regulate environmental protection, for example, "The 1900 Convention between the Riverine States of the Rhine Respecting Regulation Governing the Transport of Corrosive and Poisonous Substances."⁸

³ David. Humphreys, "Forest Politics" (London:Routledge, 2013),p.299.

⁴ Rhet A. Butler, "Berapa Banyak Hutan Dunia Yang Telah Menghilang Dalam Satu Dekade Ini?," *Mongabay Situs Berita Lingkungan*, 2020, <https://www.mongabay.co.id/2020/06/13>.

⁵ V. B. Kusnandar, "Laju Deforestasi Hutan Primer Indonesia Peringkat 4 Di Dunia, 10 Negara Dengan Kehilangan Lahan Hutan Primer Terluas," 2020, <https://databoks.katadata.co.id/datapublish/2021/11/04>.

⁶ Ahmad Triadi, "Analisis Efektivitas Rezim REDD+ Di Bolivia Pada Tahun 2010-2018 Dalam Upaya Mengurangi Emisi Gas Rumah Kaca Yang Disebabkan Oleh Deforestasi Dan Degradasi Hutan," *Repository Univ. Brawijaya*, 2019, 3.

⁷ Muhammad Wiry Pratama, "Kepatuhan Indonesia Terhadap Perjanjian Internasional Mengenai Isu Lingkungan Hidup Yang Berdampak Pada Perubahan Iklim, Studi Kasus: Deforestasi Jambi Dan Riau," *Journal of International Relations* 6, no. 4 (2020): 545.

⁸ Sukanda Husin, *Hukum Lingkungan Internasional* (Jakarta: Rajawali Pers, 2016), p.1

According to Ida Bagus, international environmental law has developed since it emerged as environmental cases involving states as parties to the case, such as the *Trail Smelter* case (1938) and the *Lake Lanoux* case (1957). However, the orientation of international environmental law still revolved around efforts to protect state rights in general and not environmental protection. Environmental protection-oriented international environmental law has only developed along with the increasing global environmental awareness.⁹

The first agreement on forest protection started with the United Nations Conference on the Human Environment (UNCHE), held on 5-16 June 1972 in Stockholm. This conference resulted in a Declaration on the Human Environment, which he called the first step in developing international law, which contained 26 principles. The United Nations again held a conference known as the Earth Summit or United Nations Conference on the Environment and Development (UNCED). The Rio Declaration, which contains 27 Principles, emphasizes the principles of sustainable development. The Earth Summit or also known as the United Nations Conference on Environment and Development (UNCED), was a United Nations Summit held in Rio de Janeiro, Brazil, from June 3 to June 14, 1992¹⁰. This conference resulted in the Convention on Biological Diversity, abbreviated as CBD, a multilateral agreement with three main objectives: biodiversity conservation, sustainable use of its components, and fair and equitable sharing of benefits arising from the use of genetic resources. The goal of the CBD was to develop a national strategy for the conservation and sustainable use of biodiversity, which was often seen as a critical document in sustainable development. This convention was signed at the Earth Summit in Rio de Janeiro on June 5, 1992, and entered into force on December 29, 1993. This convention had two additional treaties, namely the Cartagena Protocol and the Nagoya Protocol.

The Cartagena Protocol on Biosafety to the Convention on Biological Diversity was an international agreement that regulates the movement of living organisms modified by modern biotechnology from one country to another. This protocol was adopted on January 29, 2000, as a supplementary treaty to the CBD and entered into force on September 11, 2003. The Nagoya Protocol was another additional agreement within the CBD framework. This protocol provided a transparent legal framework for implementing one of the three objectives of CBD: the fair and equitable sharing of benefits arising from the use of genetic resources. The Nagoya Protocol was adopted on October 29, 2010, in Nagoya, Japan, and entered into force on October 12, 2014.

Juridically, there has been an agreement by state leaders and parties related to the environment as outlined in international agreements to protect the environment, especially forests. However, based on the data and facts that have been contained above, the objectives of these conventions have not been realized until now. Therefore, the author saw the need for a discussion on the enforcement of international environmental law to overcome environmental damage due to deforestation.

2. METHOD

This research was normative, namely research intended to focus on the study of applying the rules or norms that applied.¹¹ The nature of the research was descriptive

⁹ Sonjaya, Tarya.

¹⁰ "Wikipedia," n.d.

¹¹ Jhonny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media Publishing, 2016), p.295

normative research. By reviewing the law and its application, this research was expected to obtain a detailed and accurate picture of the problems that were the research objects and related symptoms. This research used secondary data supported by: 1) Primary legal materials were library materials that contained new or up-to-date scientific knowledge or a new understanding of a known fact or idea (idea); 2) Secondary legal materials were legal materials that explained primary legal materials; 3) Tertiary legal materials, namely legal materials that are usually used both as a guide and an explanation of primary and secondary legal materials.

3. RESULTS AND DISCUSSION

Global environmental problems reflected the international community on environmental damage or pollution that has hit the world due to development. Meadow reported various problems that beset many countries in the world in a report entitled 'The limits to growth, a report to the club of Rome Project on the Predicament of mankind.' In the report, five main problems required global attention, namely: the progress of industrialization, rapid population growth, widespread food shortages, damage to non-renewable natural resources, and environmental pollution, which have led to the thought of developed countries limiting growth in such a way so that the negative consequences could be heeded.¹²

Law enforcement is an effort to create the realization of the goals set by law. Considering the famous adage "*Fiat Justitia et pareat mundus*," which means justice must be upheld even though the world will be destroyed, Achmad Fauzi gives a more relevant meaning today, namely the meaning of law must be enforced so that the world does not perish.¹³ If the legal form is in a written regulation, the legal objectives can be identified. Regulation is only a series of black words and sentences on white paper and means nothing if law enforcement is not implemented.

According to Rahardjo, when we talk about law enforcement, essentially, we are talking about the enforcement of ideas and concepts which are abstract. He adds that law enforcement attempts to make these ideas a reality.¹⁴ Koesnadi Hardjosoemantri adds that law enforcement is carried out through various channels with various sanctions, such as administrative sanctions, criminal sanctions, and civil sanctions. There is also an erroneous opinion as to if law enforcement is solely the responsibility of law enforcement officers. Law enforcement is an obligation of the entire community, and for this, an understanding of rights and obligations is an absolute requirement.

Meanwhile, according to Hawkins' opinion, enforcement of Environmental Law is divided into regulations, namely compliances and sanctions. The characteristic of a compliance strategy is the conciliatory style of the environment, while the penal style is distinctive of sanctioning strategy. Furthermore, Hawkins adds, a conciliatory style is remedial, a method of social repair and maintenance, assistance for people in trouble, related to "what is necessary to ameliorate a bad situation." At the same time, the penal

¹² Susi Yuniarsi, "Pengaruh Global Terhadap Hukum Lingkungan Di Indonesia," *Jurnal Solusi Unpal* 17, no. 3 (2019): 259, <https://doi.org/https://doi.org/10.36546/solusi.v17i3.216>.

¹³ Ahmad Fauzi, "Kredo Fiat Justitia Et Preat Mundus," 2020, <https://doi.org/http://www.papenajam.go.id>.

¹⁴ Satjipto Raharjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis* (Bandung:Sinar Baru, 2011),p.15

control "prohibit punishment" is "accusatory," and its outcome is "binary," i.e., "all or nothing-punishment or nothing."¹⁵

Enforcement of environmental law, especially forest management, should be carried out in three ways, namely administrative, civil, and criminal. Administrative enforcement can be said to be preventive law enforcement or preventive action because it focuses on the field of control and control, issuing warning notes and freezing permits as well as revocation of permits. Administrative action is a legal action that is very easy because the process required is relatively short and practical from the State as the grantor directly to the applicant/permit holder without entering the realm of the court.

G.A. Blezeveld provides an understanding of environmental law enforcement as follows:

Environmental law enforcement can be defined as the application of legal government regulation using:

- a) Administrative supervision of compliance with environmental regulations (inspection) (mainly preventive activity)
- b) Administrative measures or sanctions in case of non-compliance (corrective activity)
- c) Criminal investigation in case of presumed offenses (repressive activity)
- d) Civil action (lawsuit in case) threatens non-compliance (preventive or corrective activity).¹⁶

The enforcement of international environmental law is the responsibility of the State, the commitment of the State, and the firm will consist of the leaders of a State. State responsibility is a fundamental principle in international law that originates from the doctrines of international legal experts. State responsibility arises when there is a violation of an international obligation to do something, whether that obligation is based on international agreements or based on international custom. The implementation of international agreements related to environmental management agreements and their derivative agreements has not had a significant effect. In other words, there are no tangible results that the international community can feel. Seeing this phenomenon, international organizations take concrete steps to realize the goals of international protocols related to the environment.

To realize the objectives and ensure that the parties comply with and carry out the obligations stipulated in the 1992 CONVENTION ON BIOLOGICAL DIVERSITY, law enforcement, especially in the case of crimes/fines, should be carried out more firmly for the parties who sign. It is because the act is an act against international law. The legal action can be a *sine delicto* act that is an act of a lawful state. However, because the act causes harm to other countries, the act creates international responsibility.¹⁷

The very acute damage to forest resources seems to have been realized by various groups, ranging from the government, academics, advocacy groups, non-governmental organizations (NGOs), and even the public who may be considered ignorant about forest management, even though each party believes the level of damage. Relatively diverse, all

¹⁵ H.M. Hadin Muhjad, *Hukum Lingkungan Sebuah Pengantar Untuk Konteks Indonesia* (Yogyakarta:Genta Publishing, 2015),p199

¹⁶ H.M. Hadin Muhjad, *Hukum Lingkungan Sebuah Pengantar Untuk Konteks Indonesia* (Yogyakarta:Genta Publishing, 2015),p.200

¹⁷ Oentoeng Wahjoe, *Hukum Pidana Internasional* (Yogyakarta:UGM Press, 2014),p21

of them still lead to an agreement that forest destruction has reached an acute stage.¹⁸ The level of forest destruction that has reached the acute stage indicates many violations of international agreements on environmental protection, mainly deforestation.

The State's obligation to protect other countries from all activities that have an impact on other countries has been regulated by the United Nations convention article 21 of the 1972 Stockholm Declaration, which stipulates that the state is responsible for ensuring that activities within its jurisdiction and control do not cause pollution to other countries. or areas around its jurisdiction. Article 21 uses the term pollution, but and straightforwardly, it can be analogized as losses that are universal or negative things and can be assessed and felt by humans, either directly or indirectly by international countries. So far, international environmental law enforcement by providing direct sanctions to parties who do not carry out environmental protection obligations, especially in terms of preventing deforestation, has not been maximized or even does not exist, so that the imposition of criminal sanctions or fines is felt to be necessary for the future.

The organizing committee of the high-level conference, especially in the case of the environment, should have estimated and established a monitoring and control system as well as determining the resolution steps if in the future the agreed. The convention is not appropriately implemented. The system of monitoring and solving problems of violations of international conventions related to the environment should be built with high and robust credibility considering that forest use is under the sovereignty of a country's government and international law cannot interfere with the authority of a country. Conventions on the environment are basically vulnerable to be violated because such conventions require a strong will from the members, namely the leaders of the State. Meanwhile, the policies of each country related to forest management are different, both political interests international trade interests at the expense of forests. Moreover, the impact of losses from deforestation is not directly felt by humans as a human rights violation. The impact of deforestation will be felt by all human beings from various countries and all living things, especially land animals, with climate change and an increase in the earth's temperature due to increased carbon dioxide and reduced oxygen. However, the negative impact is not directly felt by humans, so in terms of applying sanctions for violations, international environmental law cannot be directly applied.

It is different from environmental cases in general, such as river or sea pollution or forest fires that impact sectors or several countries. Deforestation has a negative impact on all countries, all humans, and animals on earth. Hence, it is complicated to determine the lawsuit and determine the defendant. At the same time, the country that violates the treaty on environmental protection is not only one country, not only Indonesia or Brazil. To overcome these deficiencies, International Law should establish a specific measure in determining the management of forest land agreed upon by all member States and determine the size of the imposition of sanctions if there is a violation of the agreement.

International Efforts to Tackle Deforestation

Tracing the juridical steps taken by the international community in terms of overcoming the problem of deforestation can be seen from the worldwide movement to give greater attention to the environment, given the fact that the environment has become a problem that needs to be tackled together for the sake of survival in this world. Some efforts to protect forests have been conducted in several countries. The example is forest

¹⁸ Ahmad Maryudi, *Rejim Politik Kehutanan Nasional* (Yogyakarta:UGM Press, 2018),p.12

conservation in Canada by Boreal Canada's or multinational giant companies, such as DEkap and Unilever. They have changed policies on palm oil exploitation to help protect the forests in Indonesia and the Peatlands.¹⁹ International efforts to enforce international agreements, mainly contemporary deforestation, can be seen from the case of the Amazon Forest in Brazil, in the leadership of president Jair Messias Bolsonaro who was inaugurated in 2019. One of the opposing sides of Bolsonaro is that he is known as a pro-market president and less pro-environment, especially in the Amazon forest. In addition, Bolsonaro, who is also known as Tropical Trump (Hunter and Power 2019), immediately endorsed policies that were against forest conservation in business-oriented Brazil, as well as reduced budgets to the disbandment of institutions that were functionally at the forefront in preserving the environment, especially Amazon forest and surroundings.²⁰ There is no doubt that economic activity and investment are the dominant causes of severe impacts on the forest environment. Therefore, various groups agree that the problem of forest destruction can be overcome by including it in the economic system, especially trade. In subsequent developments, an international movement emerged to create environmental linkages with trade. In essence, it prioritizes efforts to balance the utilization of the economic values contained in forests with their ecological and socio-cultural arrangements. This effort is then linked to the availability of existing resources for future generations, so it is more commonly known as the concept of sustainable forest management.²¹

Policies that are considered too pro against the high market demand for agricultural products in Brazil, especially soybeans, and ignore ecology immediately received strong criticism from the international community. In August 2019, according to Casado's report, Germany also responded to the problems that occurred in Brazil by stopping donations that had initially been budgeted for conservation in Brazil. Like Germany, Norway responded to environmental problems in Brazil by stopping conservation donations in Brazil, on the other hand, the European Union. They responded by signing a new trade agreement with South America.²²

One of the international environmental organizations, Greenpeace, has been investigating the Amazon forest since 1998 in collaboration with several local communities in the Amazon. Cooperation owned by Greenpeace was also encouraged by the existence of facilities to increase the facilities and effectiveness of research. To increase the effectiveness and results of the research, Greenpeace divided its members into several satellite mapping teams in the Amazon. These teams are equipped with on-the-ground and aerial surveillance facilities to conduct detailed investigations.²³

Likewise, international organizations, especially the United Nations, continued to carry out conference activities related to tackling deforestation internationally, considering that forests were the world heritages for all human beings and living creatures. In

¹⁹ Anggraeni Arif, "Analisis Yuridis Pengrusakan Hutan (Deforestasi) Dan Degradasi Hutan Terhadap Lingkungan," *Jurisprudentie* 5, no. 2 (2016): 201, <https://doi.org/https://doi.org/10.24252/jurisprudentie.v3i1.3622>.

²⁰ M. R. Poerwantika, T. R. Hatami, "Deforestasi Amazon Pada Era Bolsonaro," *Journal of International Relation* 5, no. 2 (2021): 201, <https://doi.org/https://doi.org/10.32787/ijir.v5i2.205>.

²¹ Syprianus Aristeus, "Penerapan Ekolabel Dalam Produk - Produk Hutan," *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 425, <https://doi.org/http://dx.doi.org/10.30641/dejure.2019.V19.421-434>.

²² M. R. Poerwantika, T. R. Hatami, "Deforestasi Amazon Pada Era Bolsonaro," *Journal of International Relation* 5, no. 2 (2021): 213, doi:<https://doi.org/10.32787/ijir.v5i2.205>.

²³ Kartika Yustika Mandala Putri, "Diplomasi Greenpeace Dalam Menekan Deforestasi Amazon," *Jurnal Hubungan Internasional* 9, no. 1 (2016): 119, <https://doi.org/http://journal.unair.ac.id/download-fullpapers-jhi5693bb8714full.pdf>.

September 2019, at a meeting held under the auspices of the United Nations General Assembly, international donors agreed to provide Amazonian Countries through the Development Bank for Latin America (LAC) with a US\$500 million grant to combat forest fire preparedness and deforestation in Brazilian Amazon Forest. Through some treaties and conventions, the United Nations addressed the issue of forest conservation and management, based on the 'Rio Declaration on Environment and Development, adopted by the 1992 United Nations Conference on Environment and Development, held in Brazil. Three conventions related to the 'Rio Declaration' were simultaneously opened for signature: the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), and the Convention for the War on Desertification (CCD).²⁴ The United Nations Convention to Combat Desertification (UNCCD) defined desertification as the degradation of land in arid, semi-arid and sub-humid dry areas caused by a variety of factors, including climatic variations and human activities. In sustainable development, dry land referred to dry, semi-arid, and dry sub-humid areas and did not include deserts.²⁵

States and international organizations assisted Indonesia's efforts in enforcing Environmental Law. Several international organizations had a concern for helping Indonesia deal with the problem of illegal logging. These international organizations were the United Nations Environment Program (UNEP), the Center for International Forestry Research (CIFOR), the International Union for Conservation of Nature and Natural Research (IUCN), and the Asia Forest Partnership (AFP). AFP is one of the organizations that carry out its function as a forum to discuss forestry issues, especially the Illegal Logging issue.²⁶

As an indication of Indonesia's success in deforestation, Norway provided compensation in 2019. Based on a 2010 bilateral agreement with Norway regarding REDD+ (Reducing Emissions from Deforestation and Forest Degradation) with the contents of an agreement for emission reductions with efforts to create monitoring and limiting institutions new land uses, and enforce strict forestry laws. The Government of Norway paid the Government of Indonesia up to USD 1 billion. Viewed from satellite data of deforestation in Indonesia, this implementation continued to increase after the agreement, namely in 2011-2012. The cooperation in reducing deforestation increasingly bore fruit in 2019, namely, where the Indonesian people got the first payment with a long process, namely in a period of up to ten years.²⁷

4. CONCLUSION

International environmental law has been established and agreed upon as a legal basis since 1972, known as the Stockholm Declaration. The declaration gave birth to many international conventions governing environmental and biotic protection and gave birth to

²⁴ Ali Sadikin, "Analisis Hukum Internasional Terkait Deforestasi Dan Hak-Hak Masyarakat Adat Hutan Amazon Di Brazil," *Jurnal Hukum Dan Kenotariatan* 5, no. 3 (2021): 401-2, https://doi.org/http://repository.unhas.ac.id/id/eprint/6242/2/B012191066_tesis%201-2.pdf.

²⁵ Wiene Adriyana, "Bersama Mencegah Desertifikasi, 2020, doi:www.forestdigest.com.

²⁶ Riky Pinandra, "Upaya Asian Forest Partnership (AFP) Mengatasi Illegal Logging Di Indonesia," *eJournal Ilmu Hubungan Inter nasional* 8, no. 4 (2020): 721, doi:<https://ejournal.hi.fisip-unmul.ac.id/site/?p=3345>.

²⁷ Herpita Wahyuni & Suranto, "Dampak Deforestasi Hutan Skala Besar Terhadap Pemanasan Global Di Indonesia," *Jurnal Ilmiah Ilmu Pemerintahan* 6, no. 1 (2021): 157, doi:<https://doi.org/10.14710/jiip.v6i1.10083>.

many international organizations engaged in environmental protection. Although environmental protection has been carried out internationally for a long time and has been used as the basis of international law, many countries have ratified it. The enforcement of international environmental law was feeble. Weak international environmental enforcement was caused by inadequate supervision and control and strong authority based on state sovereignty over forest management and utilization which depended on government policies, and the system of settlement and imposition of fines that still originated from a lawsuit.

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