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OVERLAPPING PROSECUTORIAL AUTHORITY BETWEEN THE TASK FORCE OF THE PREVENTION AND ERADICATION OF FOREST DESTRUCTION AGENCY IN LAW NUMBER 18 OF 2013 AND PUBLIC PROSECUTORS IN THE CRIMINAL PROCEDURE CODE

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ABSTRACT
Forests in Indonesia need to continue to be preserved from the activities of companies or companies that use forest areas illegally, and the activities of organized individuals who carry out illegal enforcement activities (illegal logging) that continue to occur every year. Efforts to preserve forests have been realized in Law No. 18 of 2013 on the Prevention and eradication of forest destruction, which has authorized the Institute for the Prevention and Eradication of forest destruction to conduct investigation activities up to the investigation of criminal acts of forest destruction as ketntuan Article 56 paragraph 1, and in the eradication of destruction htuan institute can form a task force as an implementing element. The task force implements the eradication of strategic forest destruction from investigation to prosecution throughout the territory of the unitary state of the Republic of Indonesia, including the customs territory at the command of the head of the institution and or deputy in accordance with Article 55 paragraph 5. Prosecution Authority the task force contains legal implications with other laws and other institutions that have Prosecution Authority.

KEY WORDS
Overlapping, prosecutorial, authority, forest destruction.

The forests of Indonesia represent one of the natural resources and support systems for human life possessed by the Indonesian nation, which needs to be continuously preserved sustainably. Their management must align with the constitution of the Unitary State of the Republic of Indonesia and cannot be separated from the concept of natural resource management as stipulated in Article 33, paragraph (3) of the 1945 Constitution, which states: "The land, water, and natural resources contained therein shall be controlled by the state for the greatest prosperity of the people".

In addition to economic benefits, the sustainable utilization of forest resources is expected to achieve environmental, social, and cultural benefits. The goal is to advance the prosperity and welfare of the Indonesian people, with the hope that fair distribution will occur in utilizing the potential of forest resources from the current generation to future generations.

Various efforts have been made by the government to preserve forests and prevent forest degradation. These efforts include:

- Cross-sectoral coordination in preventing and eradicating forest destruction;
- Meeting the resource needs of forest security apparatus;
- Incentives for parties contributing to forest preservation;
- Mapping forest areas or geographic coordination as the juridical basis for forest area boundaries.

These policy measures are strategic steps to reduce forest degradation; however, they have not proven effective in protecting and preserving forests. Currently, activities such as illegal logging, unauthorized mining, and unauthorized farming persist, leading to a reduction in forest area.

In response to this situation, legal and political measures to address forest preservation and prevent forest degradation are expected to establish criminal acts of forest destruction as legal subjects. Legal subjects here imply that criminal sanctions can be imposed for activities that harm forests. This is necessary considering that crimes can be committed not

only by individuals but also by corporations or legal entities, including fraud, insurance fraud, tax evasion, misleading advertising, smuggling, environmental destruction, among others.

According to records, deforestation and degradation persist. Based on data from the Directorate General of Forestry Planning and Environmental Governance (PKTL) of the Ministry of Environment and Forestry, monitoring of Indonesian forests in 2019 showed that the total forested land in Indonesia is 94.1 million hectares or 50.1% of the total land area. Of this, 92.3% or 86.9 million hectares of forest are within forest areas. Net deforestation from 2018 to 2019, both inside and outside forest areas, was 462.4 thousand hectares. This figure is derived from gross deforestation of 465.5 thousand hectares minus reforestation of 3.1 thousand hectares. The highest deforestation occurred in secondary forest classes, totaling 162.8 thousand hectares, with 55.7% within forest areas and the rest, 44.3%, outside forest areas. Indonesia experienced a 5.2% increase in net deforestation from 2018 to 2019.

One of the causes of deforestation and degradation of Indonesia's forest resources is the practice of illegal logging. Illegal logging activities involve legal violations resulting in excessive exploitation of forest resources, leading to deforestation and forest destruction. These violations can occur at every stage of timber production, including logging, transportation of raw materials, processing, and trade, and may even involve unlawful means of accessing forests, violating customs regulations, financial administration rules such as tax evasion and money laundering.

To address this situation, efforts must be made to combat illegal logging, and the enactment of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction represents the government's effort to address this crime. As mandated by this law, an institution for the prevention and eradication of forest destruction has been established, expected to effectively combat illegal logging offenses in accordance with Article 11 of Law Number 18 of 2013.

According to Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, the institution for the prevention and eradication of forest destruction should have been established within 2 (two) years from the enactment of Law Number 18 of 2013 on August 6, 2013. However, to date, the government has not responded to the presence of this institution by issuing a Presidential Regulation, or the President has not issued a Presidential Regulation regarding the establishment of the Institution for the Prevention and Eradication of Forest Destruction. The issuance of the Presidential Regulation is intended to delegate further regulatory authority directly to Government Regulations (PP), Presidential Regulations (Perpres), Ministerial Regulations (Permen), or Provincial Regulations as needed. If the Law determines so, the implementing regulations of the Law have the same legal status as Government Regulations (PP), which formally have a hierarchical position directly below the Law.

An objective analysis of the authority of the institution for the prevention and eradication of forest destruction is crucial for law enforcement against illegal logging and forest destruction crimes. This institution is expected to understand and solve problems effectively, thereby benefiting the wider community. Therefore, the regulation of the authority of the institution for the prevention and eradication of forest destruction forms the basis for the legitimacy of establishing task forces within the institution to prevent and eradicate forest destruction, which has not been effectively implemented due to the lack of regulation in the form of a Presidential Regulation.

The regulation of the tasks and authority of the institution for the prevention and eradication of forest destruction regarding prosecution in Law Number 18 of 2013 has resulted in overlapping jurisdiction (conflict of jurisdiction) with prosecution by Public Prosecutors outlined in the Criminal Procedure Code and Law Number 16 of 2014 concerning the Indonesian Attorney General's Office. Furthermore, regulations regarding the tasks of Public Prosecutors are stipulated in Law Number 18 of 2013. In the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code, the tasks of prosecution by public prosecutors cannot be carried out by task forces because the Criminal Procedure Code, as a legal procedural guide for the implementation of Law Number 18 of 2013, does not regulate it. This conflict of jurisdiction will undoubtedly have legal implications.

The above conditions will result in overlapping jurisdiction in prosecuting cases of forest destruction with other institutions, and the tasks and authority of prosecution by task forces will render the law enforcement function of the institution for the prevention and eradication of forest destruction ineffective in combating forest destruction because there is no clear regulatory basis regarding the regulation of this institution in forming task forces related to prosecution actions. This is related to the function of prosecution authority conflicting with the authority held by prosecutors as regulated in the Criminal Procedure Code, resulting in deviations from the principles of utility and effectiveness, clarity of legal formulation, legal certainty, and deviations from the principle of dominus litis, where prosecutors are the controllers of the case and the principle of a single prosecution system with the Indonesian Attorney General's Office in Law Number 16 of 2004, which in practice adheres to the functional differentiation of investigators and public prosecutors, also known as functional differentiation.

METHODS OF RESEARCH

The methodological approach employed in this study is juridical-empirical, aimed at exploring the relationship between law and society and the factors influencing the implementation of law within society, serving as primary data. Secondary data is obtained indirectly through library research. The research specifications entail an analysis to delineate the applicable laws related to legal concepts and positive laws concerning the primary research issues. Based on both primary and secondary data, identification, classification, and validation are conducted; qualitative data analysis is then performed, with the results presented in the research report.

RESULTS AND DISCUSSION

The clarification regarding the duties of the task force as the implementing element of the Institution for the Prevention and Eradication of Forest Destruction under Law Number 18 of 2013 can only be realized if the regulation concerning the existence of the Institution for the Prevention and Eradication of Forest Destruction is detailed in a presidential regulation, as mandated by Article 55 paragraph 6 and Article 111 paragraph 1 of Law Number 18 of 2013. However, in reality, the regulation regarding the position of the Institution for the Prevention and Eradication of Forest Destruction has not been established in a presidential regulation.

Generally, a presidential regulation functions to regulate specific matters to address existing issues in society. Besides this general function, a presidential regulation also serves specific functions according to the type of legislation and the purpose of the legislation established by the President to execute higher-level legislative commands or in the administration of governmental power. Hence, it is necessary to distinguish between a Presidential Regulation and a Presidential Decree. A Presidential Decree is considered a legal norm that is individual, concrete, and has a one-time effect. According to Law Number 12 of 2011 as amended by Law Number 15 of 2019 on the Formation of Legislation, Article 1 number 6 states that a Presidential Regulation is legislation established by the President to execute higher-level legislative commands or in the administration of governmental power. Legislation is a written regulation containing legally binding norms formed or established by state institutions or authorized officials through procedures specified in the legislation.

Regarding the institution for the prevention and eradication of forest destruction as mandated in Law Number 18 of 2013, it is regulated in Article 56 paragraph 1 subparagraphs a and b, which state that the institution tasked with prevention and eradication of forest destruction as referred to in Article 54 paragraph (1) has the duties of: conducting investigations and criminal investigations into forest destruction; carrying out administrative investigations and criminal investigations into forest destruction cases.

Further regulations regarding prosecution and forest destruction, which are strategic, have not been formulated. This situation does not align with the intention of Article 5

subparagraph f regarding the principles of forming legislation in Law Number 12 of 2011 as amended by Law Number 15 of 2019. It explains that the "clarity of formulation" principle means that every legislation must meet technical requirements for drafting legislation, systematic organization, word or term choice, and clear and understandable legal language to avoid various interpretations in its implementation.

The definition of prosecution according to the Indonesian Criminal Procedure Code (KUHAP) is the action of the public prosecutor to refer criminal cases to the competent district court according to the law, with a request for examination and judgment by the judge in a court hearing. Technical explanations regarding prosecution related to the work of the Public Prosecutor in the prosecution stage, including additional examinations, pre-trial, suspect examinations, evidence acceptance and examination, detention suspension, detention defense, detention, case referral to court, summoning of witnesses, experts, defendants, convicts, and responsibility for suspects and evidence, and the preparation of criminal charges are provided. Therefore, actions of the public prosecutor that are unrelated to the activity of referring cases to court, such as the issuance of decisions to stop prosecution, are also exclusive to the public prosecutor and not granted to other institutions.

The determination of the authority of the Institution for the Prevention and Eradication of Forest Destruction as stipulated in Article 54 paragraph 1 subparagraph a, and Articles 55 paragraph 4 and 5, is inconsistent. If applied, it would lead to injustice in criminal proceedings. This inconsistency does not align with Law Number 15 of 2019 regarding the principles of forming legislation. Consequently, decisions made by the Institution for the Prevention and Eradication of Forest Destruction in forest destruction enforcement may be annulled due to jurisdictional, procedural, or substantive defects, resulting in legal consequences as stipulated in Article 70 of Law Number 30 of 2014.

The implications of the legal product of the Institution for the Prevention and Eradication of Forest Destruction under Law Number 18 of 2013 regarding prosecutorial authority cannot be implemented because the institution does not have prosecutorial authority. Based on Article 9 paragraph 3 of Law Number 30 of 2014 on Government Administration, it is stipulated that government agencies or officials in making decisions or actions must indicate or refer to the provisions of legislation as the basis for their authority and decisions.

Legitimacy Law number 16 of 2004 explicitly regulates that the institution of the Public Prosecutor's Office has independence and autonomy in exercising state power in the field of prosecution. The position of the Public Prosecutor's Office as a government institution exercising state power in the field of prosecution and being an institution under the executive authority implies, on the one hand, the prosecutorial authority in prosecuting, which in turn involves judicial power. State power is exercised independently.

Law number 16 of 2004 concerning the Indonesian Attorney General's Office regulates various authorities that can be exercised by the prosecutor's office, including:

- Article 30, paragraph (1) letter a regulates: In the criminal field, the prosecutor's office has the duty and authority to carry out prosecution;
- Article 35 letter a, regulates: The Attorney General has the duty and authority to determine and control law enforcement policies and justice within the scope of the duties and authorities of the Prosecutor's Office.

In addition to the provisions of Law Number 16 of 2004 concerning the Indonesian Attorney General's Office, the authority of the prosecutor's office is also regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), as regulated in the following provisions:

- Article 14 KUHAP gives the public prosecutor the authority, under letter g, to conduct prosecution;
- Article 137 regulates: The public prosecutor is authorized to prosecute anyone accused of committing a criminal act within its jurisdiction by referring the case to the competent court;

- Article 140 paragraph (1) regulates: If the public prosecutor believes that prosecution can be conducted based on the results of the investigation, they shall promptly draft an indictment;
- Article 140 paragraph 2 of the KUHAP explains the referral of cases by the public prosecutor, or by the authority delegated to refer cases, which is the public prosecutor within the Attorney General's Office. The KUHAP does not regulate task forces empowered to refer cases to the court;
- Article 143 paragraph (1) regulates: The public prosecutor refers cases to the district court with a request for immediate trial accompanied by the indictment.

In essence, the function of the prosecutor's office as a prosecuting institution is regulated by the provisions of the KUHAP and Law Number 16 of 2004 concerning the Indonesian Attorney General's Office. However, the prosecution functions carried out by the prosecutor's office differ between the Prevention and Eradication of Forest Destruction Agency and public prosecutors, which are also stipulated in Law Number 18 of 2013. The mention of public prosecutors and the authority of public prosecutors in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction can be explained in several articles as follows: Article 9 Investigation, investigation, prosecution, and trial proceedings in cases of forest destruction crimes are conducted based on applicable criminal procedural law, unless otherwise specified in this Law. Article 32 of the Prevention and Eradication of Forest Destruction Agency as referred to in Article 29 notifies the commencement of an investigation and submits the investigation results to the public prosecutor after coordinating with the Investigator of the Indonesian National Police. Article 35 The public prosecutor is authorized to request information from banks about the financial condition of suspects or defendants. Article 35 regulates the following:

- For the purpose of investigation, prosecution, or trial proceedings, investigators, public prosecutors, or judges are authorized to request information from banks about the financial condition of suspects or defendants;
- Requests for information to banks as referred to in paragraph (1) are submitted to the Head of the Financial Services Authority;
- The Head of the Financial Services Authority must fulfill the request as referred to in paragraph (2) within a maximum of 3 (three) working days from the date the request letter is received;
- Investigators, public prosecutors, or judges are authorized to request banks to block the savings accounts of suspects or defendants suspected of being the result of illegal logging during the investigation, prosecution, and/or trial process;
- In the event that sufficient evidence is not obtained from the examination of the suspect or defendant, at the request of the investigator, public prosecutor, or judge, the bank's management must lift the block.

Article 36 stipulates that for the purpose of investigation, prosecution, or trial proceedings, investigators, public prosecutors, or judges are authorized to:

- request wealth and taxation data from suspects or defendants from related units;
- request assistance from the Financial Transaction Reports and Analysis Center to investigate suspect financial data;
- request relevant agencies to prohibit someone from traveling abroad;
- designate someone as a suspect and include them in the wanted list; and/or;
- request the leader or superior of the suspect to temporarily suspend the suspect from their position.

Article 39 letter c mandates the public prosecutor to refer the case to the court no later than 25 (twenty-five) days from the completion of the investigation. Article 51 paragraph 2 stipulates that decisions rendered without the presence of the defendant are announced by the public prosecutor on the court notice board, local government offices, and/or notified to the defendant or their attorney. Finally, Article 52 paragraph 1 mandates that cases of forest destruction must be examined and decided by the district court within a maximum of 45 (forty-five) working days from the date of receipt of the referral from the public prosecutor.

The provisions in these articles affirm that all prosecutorial powers are vested in the public prosecutor at the prosecution level, and no provisions are found regarding task forces until the prosecution process. In various countries, criminal policy for investigation and prosecution is under the authority of the Attorney General (in the Netherlands, for example, it falls under the Public Prosecution Service, commonly abbreviated as OM). Considering the function of this policy (which can easily be equated with the gateway to the criminal justice system), it is logical. It is the Prosecutor's Office that ultimately decides which cases will be brought to open court proceedings for adjudication. (The adjudication stage is the examination stage in court proceedings before the pre-adjudication stage and after the post-adjudication stage (Reksodiputro, 2020). Presidential Decisions regulating the prevention and eradication of forest destruction institutions have not been issued to date, while Article 111 paragraph 1 of Law Number 18 of 2013 explains that institutions for the prevention and eradication of forest destruction as referred to in Article 53 must have been established no later than 2 (two) years from the enactment of this Law. This condition is one of the factors causing suboptimal prosecution actions in forest destruction crimes between the prevention and eradication of forest destruction institutions and the Public Prosecutor's Office. Thus, legal implications can be determined regarding the inconsistency between the tasks of the Prevention and Eradication of Forest Destruction institutions and the tasks of task forces as implementing elements of the Prevention and Eradication of Forest Destruction institutions, related to prosecution duties, whereas prosecution actions should be within the domain of the Attorney General's Office as stipulated in Law Number 16 of 2004 and also in the provisions of the KUHAP. Legal implications arising from this legislative ratio include the uncertainty of prosecution authority and overlapping jurisdictions. The regulation of the tasks of the task forces of the prevention and eradication of forest destruction institutions has disregarded the principle of the single prosecution system; the prevention and eradication of forest destruction institutions and the Public Prosecutor's Office are separate entities, so friction in carrying out investigation and prosecution policies is inevitable. Coordination and supervision functions are difficult to implement in strategic forest destruction cases because Law Number 18 of 2013 does not include parameters regarding strategic forest destruction, only mentioning organized forest destruction. Furthermore, implications on prosecution actions contradict criminal procedural law.

CONCLUSION

Regarding the Legal Implications of the Regulation of Prosecutorial Authority by the Task Force of the Prevention and Eradication of Forest Destruction in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, it can be understood that:

- There is a conflict of prosecution norms between prosecution by the task force acting as public prosecutors, and prosecution by public prosecutors/prosecutors at the Prevention and Eradication of Forest Destruction Agency acting as public prosecutors in accordance with the provisions of the Criminal Procedure Code (KUHAP) and Law Number 16 of 2004. This leads to deviations from the dominus litis principle and the single prosecution system principle, which are inconsistent with the Theory of Jurisdiction and Legal Theory. The resulting indictment documents in the form of referral of a case to the Court become ambiguous and there is no legal certainty regarding prosecutorial authority because they are created and compiled without being based on valid authority, resulting in a mix of authorities when analyzed with Law Number 30 of 2014 concerning Government Administration and may lead to jurisdictional disputes and abuse of authority;
- There is no legal certainty in the event of tree felling in forest areas, the application of provisions between Law Number 19 of 2004 and Law Number 18 of 2013, creating a legal loophole for judges to apply the lightest punishment for the defendant, using the principle of in dubio pro reo. This may result in contra legem decisions, where judges make decisions contrary to the applied law or the law under which the defendant is

charged in order to achieve truth and justice. Legal products of the Prevention and Eradication of Forest Destruction Agency in Law Number 18 of 2013 related to prosecutorial authority cannot be implemented because the Prevention and Eradication of Forest Destruction Agency does not have prosecutorial authority, and prosecution actions contradict criminal procedural law because they are conducted without guidance from procedural law regulated in the Criminal Procedure Code (KUHAP).

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