

# ILLEGAL LOGGING ENFORCEMENT: DYNAMICS OF PENAL SANCTIONS IN KEBUMEN COURT

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## **Abstract**

*This research investigates the multifaceted nature of criminal punishment, considering its purposes such as deterrence, retribution, rehabilitation, and the maintenance of societal order. Specifically focusing on Article 78, paragraph 15 of forestry law, which delineates penal sanctions, the study explores the application of confiscatory penalties in cases of forestry offenses, particularly illegal logging. The research centers on the practices of the Kebumen District Court in enforcing sanctions against illicit logging, examining the discretionary powers exercised by judges. Despite the existence of the 2005 Judicial and Court Management Technical Instructions governing evidence seizure in illegal logging cases which constrain judicial authority in sentencing. Adopting a non doctrinal research through interview to the judges and literature research as data collection. Those data are analysed qualitatively. the study reveals intricate challenges in penalty enforcement at the Kebumen District Court, encompassing imprisonment, fines, and the confiscation of forest products. Notably, disagreements among judges regarding adherence to Supreme Court guidelines highlight the complexities of balancing judicial autonomy with technical directives. The findings underscore the need for clarifying legal frameworks and enhancing judicial training to harmonize the application of penalties in forestry crime cases, thereby ensuring consistency and fairness in sentencing practices.*

**Keywords:** *Criminal Punishment; Forestry Crimes; Judicial Discretion; Supreme Court Guidelines; Illegal Logging; Legal Interpretation*

## **1. Introduction**

Kebumen's District Court provides a microcosm for understanding how legal frameworks apply to environmental offenses. One might learn how to navigate legal issues and balance punishment with rehabilitation and deterrents by studying how magistrates use discretion to punish illegal loggers. The research highlights the interpretative issues judges encounter when implementing Article 78 of Law No. 41 of 1999 on Forestry to forestry sector. The paper analyses the Kebumen District Court's practices to determine how judicial discretion affects forestry-related criminal proceedings. By examining legal provisions and judicial guidelines, researchers can identify environmental law enforcement patterns, problems, and reforms in Kebumen. This empirical approach informs policy measures to improve the efficacy and justice of forestry crime penalties and helps scholars discuss them.

Several researchers have already studied criminal law policy in the context of unlawful logging. An example is the study of Luca Tacconi et al.<sup>1</sup> in 2019, which focused on the correlation between law enforcement and deforestation. The study aimed to draw lessons for Indonesia based on Brazil's experiences. The Indonesian government has pledged to decrease deforestation and forest degradation emissions. Nevertheless, the nation confronts one of the most pressing challenges of illicit deforestation and unauthorized land clearance on a global scale.

In his 2021 study, Yuniar Ariefianto<sup>2</sup> examined the regulatory obstacles faced by Indonesia in combating international crime related to illegal logging. The study highlighted the intricate nature of this issue, particularly the involvement of law enforcement agents, which makes it challenging to eliminate the problem. The study utilizes a descriptive-analytic approach to investigate the transnational crime issues associated with illegal logging. It concludes that illegal logging can be classified as a transnational crime because it involves multiple countries in its preparation, planning, supervision, and resulting damages.

Erla Sari Dekiawati's<sup>3</sup> 2021 study on law enforcement regarding illegal logging in Indonesia focuses on the present and future obstacles and challenges associated with enforcing laws aimed at preventing and eliminating forest devastation. The study seeks to assess and improve the implementation of laws in forest conservation zones, focusing on aspects such as efficiency, effectiveness, public comprehension, philosophical underpinnings, and governmental responsibilities. G.M. Angga Satrya Wibawa et al.<sup>4</sup> research in 2023 focuses on analyzing illegal logging activities in Indonesia from the standpoint of Indonesian criminal law. The study attempts to describe the existing rules in Indonesian positive legislation about unlawful logging.

This research diverges from prior studies by examining the implementation of penalties for illegal logging by the Kebumen District Court and scrutinizing the magistrates' use of discretion in applying these penalties.

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<sup>1</sup> Luca Tacconi, Rafael J. Rodrigues, and Ahmad Maryudi, "Law Enforcement and Deforestation: Lessons for Indonesia from Brazil," *Forest Policy and Economics* 108 (November 2019): 101943, <https://doi.org/10.1016/j.forpol.2019.05.029>.

<sup>2</sup> Yuniar Ariefianto, "Challenge Indonesia's Regulation of International Crime in Illegal Logging," *Journal of Morality and Legal Culture* 2, no. 1 (2021): 28–36, <https://doi.org/10.20961/jmail.v2i1.62299>.

<sup>3</sup> Erla Sari Dekiawati, "Law Enforcement of Illegal Logging in Indonesia: Problems and Challenges in Present and the Future," *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (January 31, 2022): 47–68, <https://doi.org/10.15294/ijel.v1i1.56777>.

<sup>4</sup> G.M. Angga Satrya Wibawa, Moh. Muhibbin, and Budi Parmono, "Criminal Actions Of Illegal Logging In The Perspective Of Forestry Law," *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (July 4, 2023): 84–95, <https://doi.org/10.51749/injurlens.v3i1.55>.

## **2. Method**

This is a non doctrinal research which focus on law implementation and judges discretionary at the midst of rule contradiction . The study offer a thorough and inclusive analysis of the subject under investigation. The data are collected through interview through judges in Kebumen City to understand their perspective regarding the issue and also conduct literature research to find related theory, principle and concepts to analyze the issue. The collected information is meticulously provided in the form of a narrative. Applied data analysis is a qualitative approach in which data is interpreted and discussed based on criminal law doctrines, principles, and regulations.

## **3. Results and Discussion**

### **3.1. Development of the Understanding of Judicial Power: Analysis of the 1945 Constitution and Law Number 4 of 2004**

Implementing legal regulations established by legislative bodies may lead to infractions by community members. The judicial function of the community is activated at this juncture (function denotes responsibilities within a specific setting). The judicial function, or the judiciary's responsibility to society. The judiciary is constrained to function within society because the law is a norm agenda which pertains exclusively to societal behaviours. Montesquieu's theory impacts the function of the judiciary. The theory formulated by Montesquieu was titled "*La séparation des pouvoirs*" (the separation of powers)<sup>5</sup>.

As "*La bouche de la loi*" (the mouth or duct) of the law, a judge, according to Montesquieu, is merely an instrument that should not further strengthen the law <sup>6</sup>. The judge thus performs a passive role in comparison to the legislative body. The codification theory, also called the Codification Stream or the Legalism Stream, provides additional support for the notion that the judge's role is passive. According to this stream, all laws are methodically and comprehensively documented in the Law Book (Codex); therefore, the judge's responsibility is limited to applying the law<sup>7</sup>.

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<sup>5</sup> Mogens Herman Hansen, "The Mixed Constitution Versus the Separation of Powers: Monarchical and Aristocratic Aspects of Modern Democracy," *History of Political Thought* 31, no. 3 (2010): 509–31; Christoph Möllers, "Division of Powers: Traditions and Meanings," in *The Three Branches: A Comparative Model of Separation of Powers*, ed. Christoph Moellers (Oxford University Press, 2013), 0, <https://doi.org/10.1093/acprof:oso/9780199602117.003.0002>.

<sup>6</sup> George P. Fletcher and Steve Sheppard, *American Law in a Global Context: The Basics* (Oxford University Press, 2005).

<sup>7</sup> Gunther A Weisst, "The Enchantment of Codification in the Common-Law World," *Yale Journal of International Law* 25 (2000): 435–532.

According to van Apeldoorn, the judge's inert function is analogous to a subsumptive automaton<sup>8</sup>. Automaton refers to a self-operating machine that operates without human intervention; subsumptive is derived from symmetry, which means to position. Consequently, the judge is portrayed as an automaton that generates sustenance or drink upon submerging. A case is submitted to it, and an automatic conclusion (verdict) is generated when it is subjected to the law. As a result, the judge's work during the 19th century is not held in high regard.

The judge's function as a subsumptive automaton is consistent with the following three-part syllogism: Central argument: Clause 338 of the Criminal Code An individual who intentionally terminates the life of another is subject to a maximum incarceration sentence of 15 years. The minor premise is that A kills C. The conclusion is that A kills C. By the verdict, A is imposed a 15-year penitentiary term.

The view of the nineteenth century that the judge's sole responsibility is to conduct syllogisms is false, as the judge's job is more complex and straightforward. The law is not so straightforward; the causes of what constitutes murder must be determined; for instance, whether it was committed intentionally, in self-defence, after a collision, when stabbed, or out of jealousy. As a result free law school or free legal creation (*schopfung-suhepping-creation*) stream, emerged in opposition to Montesquieu's view and the codification stream.

Consequently, the free law school responds to two distinct forms of pressure. The codification theory posits that the law is comprehensively and methodically encapsulated within the Law Book (codex). Furthermore, it is a response to the judge's position being overly entangled with the law, which Montesquieu believed should be no more than the expression of the law. The free law school holds that not every law is enumerated in the codified law. Judges are also permitted to consult various other legal sources besides codified legislation<sup>9</sup>.

Other than the law, a location where judges may discover the law. Two hypotheses exist about this subject: natural law theory and sociological theory<sup>10</sup>. Those who subscribe to the sociological school of thought search for law in societal practices, actions, or customs. Meanwhile, those who adhere to natural law pursue law through the expansion of natural law regulations.

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<sup>8</sup> Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, no. 2 (May 25, 2014): 216–26, <https://doi.org/10.20884/1.jdh.2014.14.2.291>.

<sup>9</sup> H. L. A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review* 71, no. 4 (1958): 593–629, <https://doi.org/10.2307/1338225>.

<sup>10</sup> Deryck Beyleveld and Roger Brownsword, "The Practical Difference between Natural-Law Theory and Legal Positivism," *Oxford Journal of Legal Studies* 5, no. 1 (1985): 1–32.

Therefore, within the free law school, judges advocate for their status as creative parties who can influence the law. As justices are tasked with establishing the law in particular societies and situations, they are also the originators of the law.

Legislators establish abstract law, which pertains to universally applicable regulations. Conversely, judges establish concrete law concerning particular circumstances, cases, and parties<sup>11</sup>. Nevertheless, the free law school may occasionally exhibit an excessive or extreme inclination towards deviating from the law. Such an inclination could result in legal ambiguity and facilitate judicial arbitrariness. The judge's role during this period. The notion that the judge's role is merely automatic subsumption is no longer justifiable. Within the framework of contemporary criminal law, the prospect of punishment is relative. Even though a judge's verdict of murder does not inherently impose legal consequences on the perpetrator, such liability does not necessarily follow.<sup>12</sup>

### **3.2. The Penal System Regulated in the Criminal Act of Illegal Logging is Stipulated in Law Number 41 of 1999 Concerning Forestry**

About the punitive framework established in the Illegal Logging Criminal Act, which falls under Law No. 41 of 1999 concerning Forestry, specifically delineated in Article 78 paragraphs (1) to (12), it is evident that concurrent imprisonment and fines are imposed as penalties for illegal logging. Nevertheless, Article 10 of the Criminal Code states that criminal sanctions, imprisonment, and fines are classified within the same category<sup>13</sup>.

R. Soesilo places significant emphasis on the differentiation between primary and additional penalties. He asserts that in the case of a single crime or offense, only a single primary penalty may be imposed, and the cumulative imposition of multiple primary penalties is not permissible. Supplementary penalties reinforce the primary penalty; they cannot be imposed in isolation<sup>14</sup>.

P.A.F. Lamintang<sup>15</sup> further argues that the accumulation<sup>15</sup> of primary penalties, such as imprisonment accompanied by a fine or confinement with a fine, is not acknowledged under our

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<sup>11</sup> Richard H. Fallon, "The Rule of Law' as a Concept in Constitutional Discourse," *Columbia Law Review* 97, no. 1 (1997): 1–56, <https://doi.org/10.2307/1123446>.

<sup>12</sup> Kenneth W. Simons, "Is Strict Criminal Liability in the Grading of Offences Consistent with Retributive Desert?," *Oxford Journal of Legal Studies* 32, no. 3 (2012): 445–66.

<sup>13</sup> Dekiawati, "Law Enforcement of Illegal Logging in Indonesia."

<sup>14</sup> Heri Susanto, Ramlani Lina Sinaulan, and Mohamad Ismed, "Legal Certainty Regarding the Imposition of Criminal Extortion Sanctions Involving Community Organizations (ORMAS)," *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 2 (April 1, 2022): 37–54, <https://doi.org/10.55047/polri.v1i2.152>.

<sup>15</sup> P.A.F. Lamintang, *Hukum Penetensier Indonesia* (Armico, 1984).

Criminal Code. Nevertheless, this does not imply that accumulating primary penalties for a particular offence is prohibited under Indonesian Criminal Law.

As a result, the penal provisions outlined in Law Number 41 of 1999 about Forestry diverge from those of the Criminal Code in that they permit the accumulation of multiple primary penalties for a single offence. Judges have the authority to impose imprisonment and fines under these provisions<sup>16</sup>.

Regarding the punitive measures for supplementary offences, particularly the seizure of particular items as stipulated in Law Number 41 of 1999 concerning Forestry, it is obligatory rather than discretionary. This is apparent from paragraph 15 of Article 78, which states that the State may confiscate any forest products derived from transgressions and crimes, including the implements used in such conduct. Nevertheless, upon closer inspection of this provision, it becomes apparent that only forest products resulting from transgressions and crimes are subject to confiscation.

By Article 39, paragraphs (1) to (3) of the Criminal Code, the judge may declare seized particular items: items belonging to the convicted individual that were obtained or deliberately utilized in the commission of a crime may be declared seized. A declaration of seizure may also be issued in response to specific events or violations governed by regulations in the event of a conviction for a non-intentional crime or a violation.

Upon examining the wording of paragraph (1) of article 39 of the Criminal Code, it becomes evident that the legislation not only governs the disclosure of seized items utilized in criminal activities but also the disclosure of seized items obtained by the convicted individual through a crime. An inquiry emerges on whether the convicted individual must own items utilized in criminal activity. The response is affirmative; the convicted individual must own items declared as seized that were intentionally used to commit a crime.

An additional sanction, a declaration of seizure for items acquired via a criminal activity, constitutes a penalty and adheres to the principle that penalties can solely be directed at the convicted individual. Consequently, the intent of this penalty is not to deprive the offender of their wealth, particularly that which was acquired through criminal activity; rather, it is to seize the items utilized in the commission of the crime from their possession, thereby preventing their repurposing for subsequent offences.

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<sup>16</sup> Wibawa, Muhibbin, and Parmono, "Criminal Actions Of Illegal Logging In The Perspective Of Forestry Law."

Hence, the supplementary sanction of a declaration of seizure about instruments utilized in criminal activities serves as a deterrent rather than a punitive action. This viewpoint is corroborated by Hazewinkel-Suringa, who asserts that the objective is to reclaim the items above from the wrongdoer, thereby averting their subsequent misuse instead of eradicating the criminally obtained wealth.

Article 39, paragraph (1) of the Criminal Code defines "items owned by the convict" that may be declared as seized as those that may be declared as seized for the benefit of the State. The Supreme Court ruled on May 17, 1920 (N.J. 1920, page 598, W. 10583) that only those items directly utilized in committing a crime could be declared seized for the State's benefit. Nevertheless, the Supreme Court subsequently reversed this ruling.

The Supreme Court of the Republic of Indonesia has since adhered to this latter ruling, as demonstrated by its cassation decision on November 13, 1962, No. 125 K./Kr./1960, which states that a vehicle acquired by the petitioner using funds obtained through a criminal act attributed to him may be deemed acquired, even though it was not directly obtained from the crime, by the provisions outlined in Article 39 of the Criminal Code.

Several criminal provisions, internal and external to the Criminal Code, contain deviations that state items that may be declared seized, including those possessed by the convicted individual and those belonging to others utilized in committing a crime.

Declined items utilized in committing a crime and are subject to seizure may not necessarily belong to the convicted individual; however, such exceptions can be observed in criminal provisions. While the provisions above do not expressly mention items that can be declared seized that are not the convicted person's property, the phrase "can be declared as seized" encompasses such items within them.

Criminal provisions within the Criminal Code make it clear that property belonging to others may also be considered seized. For instance, Article 250 bis specifies the following: When imposing a penalty for one of the offences governed in this chapter: counterfeit currency, devalued or counterfeit state or banknotes, materials or tools that have been used to imitate or counterfeit state or banknotes.

Aside from the Criminal Code, there are instances where the stipulation that seized items used to commit a crime must belong to the convicted individual does not hold. For instance, such deviations can be observed in criminal provisions outlined in Emergency Law No. 7 of 1955 concerning Economic Crimes, specifically Article 7 paragraph (1) letter c. This law imposes an

additional confiscation penalty for movable and immovable property associated with the economic crime.

The aforementioned criminal provision, as stated in Article 7 paragraph (1) letter c of Emergency Law No. 7 of 1955, is also present in the criminal provision of Article 34 letter an of Law No. 3 of 1971 on Corruption Eradication. This provision further regulates that the confiscation of movable and immovable property associated with the corruption offence is imposed an additional penalty as determined under Criminal Code<sup>17</sup>.

As stated by Hazewinkel-Suringa, the additional sanction of a seizure declaration for particular items, initially intended to be a penalty, frequently transforms into nothing more than police destruction. Police destruction pertains to the disposal of hazardous items to prevent their unauthorized use by others. It is important to note that not all items declared seized to prevent illegal use are merely destroyed<sup>18</sup>.

Generally, a judge will order the destruction of items used to commit a crime, such as a knife used for murder, a chisel used for breaking into a safe, a forged letter used for fraud, and other items with low economic value. However, judges will declare items with relatively high economic value seized for the benefit of the State without an order for destruction. Items obtained or produced from a crime are generally declared as seized for the benefit of the State.

Suppose certain items were previously seized by investigators and presented as evidence in court by the public prosecutor. In that case, imposing an additional penalty as a declaration of seizure will not present a problem. Nevertheless, suppose the judge declares the items seized for the benefit of the State without having seized them by investigators or presented them as evidence in court. In that case, it may give rise to complications.

According to Article 41 of the Criminal Code, failure to surrender items not subject to confiscation or to pay the estimated value stated in the judge's decision will result in imprisonment rather than a declaration of seizure. The term of imprisonment ranges from a minimum of one day to a maximum of six months. For items worth seven rupiahs and fifty cents or less, the judge's decision specifies that the duration of imprisonment is reduced.

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<sup>17</sup> Erna Sukestini, Achmad Noor Fatirul, and Hartono Hartono, "Problem Based Learning with ICT Based with Learning Creativity to Improve History Learning Achievement," *Jurnal Pendidikan Dan Pengajaran* 53, no. 3 (September 28, 2020): 1–9, <https://doi.org/10.23887/jpp.v53i1.24127>.

<sup>18</sup> P.A.F. Lamintang and Franciscus Theojunior Lamintang, *Dasar-Dasar Hukum Pidana Di Indonesia* (Sinar Grafika, 2022).



In order to ensure adherence to the stipulations outlined in Article 41 of the Criminal Code, judges should take into account the rulings of the Hoge Raad dated November 4, 1929, N.J. 1929 page 1767, W.12051, and November 11, 1929, N.J. 1929 page 1769, W.12060. These decisions, among other things, stated that when a judge declares items as seized that are not subject to confiscation, they should not order the surrender of said items, require the convicted individual to pay the value of the items<sup>19</sup>.

The judge is limited to stipulating that the convicted person must serve imprisonment if they fail to return the items declared as seized or remit the assessed value of the items by the judge. The prosecutor possesses the authority to establish the deadlines for item surrender and payment of the assessed value of the items.

The imposition of an additional penalty in the form of a declaration of seizure of certain items may result in someone other than the convicted person being adversely affected. Pompe argues that a distinction must be made between a declaration of seizure of an item as a penalty and a declaration of seizure of an item as an action. In both cases, the aggrieved party has the right to express objections to the judge regarding such seizure. Pompe states: To answer the question of which means can be used by others to defend their rights, a distinction must be made between a declaration of seizure as a penalty, which is limited to items that belong to the convicted person, and a declaration of seizure as an action, where such limitations do not apply<sup>20</sup>. In both cases, interested third parties have the right to submit a letter of objection to the completed seizure, which usually leads to the judge's Declaration of the seized item. Regarding the Declaration of seizure of an item, which according to the law has been limited only to items belonging to the convicted person or to the extent that the rights of third parties based on good faith will be disturbed, then in my opinion, third parties who feel aggrieved by a court decision have the right to file a civil law seizure against the affected items. Otherwise, these third parties can only sue the convicted person by the provisions in Article 1365 of the Civil Code.

According to Noyon-Langemeijer, the property rights of third parties should not be infringed upon when the State declares seizure of an item unless the law expressly permits such seizure on items owned by others. As previously stated, Article 39 paragraph (2) of the Criminal Code merely

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<sup>19</sup> Lamintang and Lamintang.

<sup>20</sup> Andi Hamzah, *Asas-Asas Hukum Pidana* (Yarsif Watampone, 2005).

specifies that the forfeiture or Declaration of seizure, as defined in Article 39 paragraph (1) of the Criminal Code, may also be adjudicated when the criminal act is the subject of seizure<sup>21</sup>.

It is evident from the phrases “from the guilty person” and “placed under government supervision” in the formulation above of paragraph (3) of article 39 of the Criminal Code that the judge has not imposed a sentence on the offender of the pertinent criminal act. In light of this, one may inquire whether the Declaration of seizure of belongings outlined in paragraph (3) of Article 39 of the Criminal Code is still suitable to be considered an additional penalty.

The Declaration of Seizure of belongings has ceased to function as a penalty and is more accurately described as an action or a measure. However, there is an anomaly in the government’s explanation of the formation of Article 39 paragraph (3) of the Criminal Code, where it continues to state that “*zonder hoofdstraf geen bijkomende straf*”, which translates to “without a primary penalty, an additional penalty is impossible”<sup>22</sup>.

The government's explanation above reiterates Article 40 of the Criminal Code. Nevertheless, in contrast to the explanation of the establishment of Article 39 paragraph (3) of the Criminal Code, the government explicitly acknowledges in the explanation of Article 40 that the Declaration of seizure of particular items is not a penalty as intended in the Criminal Code.

In the explanation of Article 78 paragraph (3) of Law Number 41 of 1999, it is specified that “violations of Article 50 paragraph (3) letter d may subject the convicted person to additional criminal penalties in addition to imprisonment and fines”. The provisions above can also be construed to mean that for forestry offences defined in Article 78 paragraph (3), additional criminal sanctions may be imposed in addition to the mandatory penalties specified.

In Article 10, as one of the three types of additional punishments, “revocation of certain rights” is mentioned. “Certain rights” mean not all rights. It is impossible to revoke all of a person's rights because it would result in the person being unable to live. The rights that can be revoked are determined in this article, namely, the right to hold any position or specific positions. All positions mean the person is not allowed to hold any position, while specific positions mean only positions mentioned in the judge's decision. The positions referred to are tasks assigned by the state authority or part of the State to perform State or part of the state work. the right to enter the armed forces.

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<sup>21</sup> P. A. F. Lamintang and Theo Theo Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Nyawa, Tubuh, Dan Kesehatan* (Sinar Grafika, 2023).

<sup>22</sup> Sahuri Lasmadi, Elly Sudarti, and Nys Arfa, “Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice,” *Pandecta Research Law Journal* 18, no. 2 (2023): 352–74, <https://doi.org/10.15294/pandecta.v18i2.48568>.

Those who enter the armed forces are the military and conscripted personnel, army, navy, air force, and armed police officers. The right to active and passive voting rights for Central and Regional members and other elections are regulated by laws and general regulations. The right to be an advisor or ruler and to be a guardian, supervising guardian, curator, or supervising curator for others, not their children. Paternal authority, guardian authority, and imprisonment for their children. The right to perform certain jobs. Work means all work that is not state work, so private work, for example, trading companies, artisans, drivers, etc.

In the second paragraph of Article 35, the judge acts with great caution because there are positions that can only be easily revoked with the involvement of specific authorities, such as the Head of State, Ministers, and so on. In connection with this, it is essential for the judge, when punishing an employee, to seek the opinion of the relevant administration before dismissing the employee. If a person is sentenced to death or life imprisonment, the judge can impose the additional penalty of “revocation of certain rights” for life. Suppose a person is sentenced to temporary or imprisonment. In that case, the minimum duration of the revocation of rights is two years or a maximum of 3 years longer than the imprisonment imposed. If fined, the minimum duration of the revocation of rights is two years, and the maximum is five years. The duration is not counted from the day the punishment begins to be served, so the commencement of the punishment with the commencement of the duration of the revocation of rights does not occur simultaneously.

Based on the language used in Article 43 of the Criminal Code, it is evident that in order for the judge to make a public announcement of his verdict, he must specify in his ruling the manner in which the announcement is to be executed and the financial burden that the convicted individual shall bear for such an announcement. However, this provision is deficient in light of the circumstance where the convicted individual has already remitted the costs associated with the announcement.

### **3.3. Implementation of the Illegal Logging Sentence at the District Court of Kebumen**

The sentencing guidelines serve as a point of reference for judges when administering sentences, guaranteeing that the penalty is logical, proportionate, and equitable. These guidelines allow judges to consider various elements of the incidents, such as the gravity of the crime, how it was carried out, the attributes of the offender, typically their intellectual capacity, and the surrounding conditions and ambience during the commission of the unlawful deed. In this regard,

waypoints or control points that highlight the most salient aspects of the offender's conduct and each classification of the criminal act are required to aid in sentencing<sup>23</sup>.

Muladi, a member of the National Criminal Code Drafting Team, concluded that the following factors (which are reflected in the decision's considerations) ought to be contemplated prior to a judge imposing a sentence after conducting a comparative analysis of criminal codes across multiple nations: The culpability of the offender; The motive and objective of the criminal act; The execution method employed; The perpetrator's mental State; The perpetrator's life history and socio-economic circumstances; The perpetrator's post-criminal actions and conduct; The potential consequences of the punishment for the offender; The public's perception of the crime; The repercussions of the criminal act on the victim or the victim's family; and The determination of whether the criminal act was intentional.

These factors aid judges in determining the appropriate sentence, ensuring that it is proportionate and readily comprehensible to both the offender and the general public. Additionally, victim-related factors are thoroughly considered. Nevertheless, the principles above are by no means exhaustive. Judges may incorporate additional factors beyond those explicitly stated above but must incorporate the points above. Furthermore, the criterion for sentencing is regulated by the Concept of the National Criminal Code Draft Book I for operational purposes.

Concerning the execution of sentencing in cases involving illicit logging before the District Court of Kebumen, the following can be deduced from several subsequent rulings: The District Court of Kebumen issued Decision No. 193/Pid.B/2005/PN.Kbm, which imposed imprisonment, fines, and additional penalties in the form of pine wood confiscation (as a consequence of the offence). Nevertheless, the truck the defendants utilized to convey pine wood without the owner's consent was returned to the witness Lamkarta, as doing so was permissible under the law.

The High Court of Semarang affirmed the Decision of the District Court of Kebumen No: 193/Pid.B/2005/PN.Kbm. in its Decision No: 270/Pid./2005/PT.Smg. Nevertheless, the Supreme Court annulled the High Court of Semarang's Decision No: 270/Pid./2005/PT.Smg during the Cassation process with Decision No: 587 K/Pid/2006, particularly about the decision regarding the additional penalty of truck confiscation for transporting pine wood. The Supreme Court likewise seized the vehicle because the High Court (*Judex Factie*) erred in its legal reasoning. As stipulated in Article 78 paragraph (1) of Law No. 41 of 1999 about Forestry, the State is entitled

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<sup>23</sup> Michael H. Tonry and Richard S. Frase, eds., *Sentencing and Sanctions in Western Countries* (Oxford: Oxford Univ. Press, 2001).

to confiscate all forest products that are the consequence of criminal activities or violations. This includes tools and transport equipment to commission the crimes or violations.

The author believes that the reasoning employed by the Supreme Court in nullifying the High Court of Semarang's decision could have been more comprehensive. According to the author, the additional penalty provision found in Article 78 paragraph (15) of Law No. 41 of 1999 regarding Forestry is mandatory, particularly for goods obtained through forest crime and violation. However, it is discretionary regarding tools, including transport equipment, used to commit such offences or violations. This is due to the inclusion of the conjunction "and", which signifies that confiscation of tools and transport equipment used to commit the crime or violation may be imposed in addition to confiscation of all forest products resulting from the crime or violation, or the judge may impose confiscation only on forest products resulting from the crime or violation without penalizing them with confiscation of the tools and transport equipment used to commit the crime or violation.

The District Court of Kebumen rendered two decisions: Decision Number: 48/Pid.B/2007/PN.Kbm. and Decision Number: 126/Pid.B/2006/PN.Kbm. The judges of the Kebumen District Court imposed a fine as the primary sentence and confiscation of forest products and tools (including one truck, one HT device, and one vehicle registration book) obtained in connection with the offence. The State seized the transport tool due to its involvement in illicit forestry activities. Consequently, by the stipulations outlined in Law No. 41 of 1999 concerning Forestry, Article 78 paragraph (15) mandates the seizure of the vehicle for the State.

### **3.4. Judicial Freedom in the Imposition of Criminal Sanctions for Illegal Logging at the Kebumen District Court**

Muladi<sup>24</sup> argue, regarding judicial authority as an independent body, that judges in Indonesia are endowed with considerable discretion in determining the form of punishment (transport) they prefer under the positive criminal law. This pertains to applying alternative systems for administering criminal sanctions in the Criminal Code, where most offence formulations offer only two possible penalties, including imprisonment or fines. Certain offences carry mandatory sentences of imprisonment, confinement, or monetary penalties. In this situation, selecting one form of punishment precludes selecting another. Alternative and cumulative systems are employed in legislation not covered by the Criminal Code, such as Law No. 3 of 1971 and Law No. 9 of

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<sup>24</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit, Universitas Diponegoro, 1995).

1976. Furthermore, judges possess the authority to determine the severity of the punishment (strafmaat) and the freedoms above.

Judges can select an appropriate penalty from the prescribed maximum and minimum limits. Here, the issue is with the criteria. It has come to light that there are no provisions for this in our Criminal Code (*strafwet*). In this regard, the Criminal Code lacks general sentencing guidelines, which are legislatively established principles that judges must contemplate when determining an appropriate sentence. Existing regulations are limited to penalties. Concerning the matter of sentencing in cases involving illicit logging, it is imperative to scrutinize the publication of the Supreme Court's Guidelines on judicial and managerial technicalities, which were formulated during the National Working Meeting of the Indonesian Supreme Court held from September 18 to 22, 2005 in Denpasar, Bali. Two subjects were deliberated upon during this meeting: Judicial Management and Judicial Technicalities. About those above, the Supreme Court issued a directive urging judges and all tiers of the judiciary to apply the prescribed principles to resolve analogous challenges that may arise. Efforts are being made to establish legal certainty by creating a unified legal framework and conclusion.

The guidelines are established as follows, encompassing evidence in cases involving illegal logging: "The State is entitled to confiscate all evidence, including the tools utilized" (of an imperative nature). The evidence becomes the property of the State. It is, therefore, immune from seizure if a third party initiates civil litigation against it (Article 50 of Law No. 1 of 2004). The provisions of punishment outlined in Law No. 41 of 1999 regarding Forestry, which subsequently gave rise to concerns in judicial practice, are outlined in Article 78, paragraph 15. This paragraph provides that "all forest products resulting from crimes and violations, as well as tools including transport tools used to commit crimes and violations as referred to in this article, are confiscated for the State." The matter came to light after the September 22, 2005, publication of the Supreme Court's Guidelines on Judicial and Managerial Technicalities. These guidelines, among other things, emphasized the necessity for the State to seize evidence, including the instruments employed. The evidence becomes the property of the State. It is, therefore, immune from seizure if a third party initiates civil litigation against it (Article 50 of Law No. 1 of 2004). The author thinks that the meaning of Article 78 paragraph (15) of Law No. 41 of 1999 has been diminished by the Supreme Court's Guidelines, as the provisions in that paragraph (15) comprise alternative and cumulative sentencing provisions through the use of the words "and." The Supreme Court, however, desires that the sentencing provisions in Article 78 paragraph (15) of Law No. 41 of

1999 become cumulative sentencing provisions, as stated in the Supreme Court's Guidelines dated September 22, 2005. Therefore, about cases involving illegal logging, the Supreme Court's Guidelines dated September 22, 2005, have intervened juridically in the judge's discretion regarding sentencing for such cases.

However, in a normative sense, the legal authority of the guidelines cannot supersede the provisions of Law No. 41 of 1999 concerning Forestry. In light of their subordination to the law, the Supreme Court Guidelines lack legal force for justices in a hierarchical sense. Judge Bambang Sunanto., asserts that judges, particularly at the Kebumen District Court, hold the opinion that the technical guidelines of the Supreme Court on judicial and managerial technicalities in 2005 affirm the Supreme Court's authority to issue technical guidelines so long as they serve the purpose of directing courts under its jurisdiction. This opinion stems from the publication of the Supreme Court Guidelines on September 22, 2005. Moreover, according to Bambang Sunanto, if sentencing regulations are explicitly outlined in law and subsequent guidelines at a hierarchical level below the law offer content that deviates from the regulations stipulated in the law, then said guidelines may be set aside both technically and juridically.

#### **4. Conclusion**

The District Court of Kebumen has issued decisions involving imprisonment, fines, and additional penalties, such as the confiscation of pine wood. However, these decisions faced appeals, and the Supreme Court annulled part of them, particularly concerning the confiscation of a truck used for transporting pine wood, citing the provisions of Law No. 41 of 1999 on Forestry. Disagreements among judges in the District Court of Kebumen have arisen regarding the 2005 technical guidelines of the Supreme Court, with some judges arguing that these guidelines may interfere with the judges' authority in imposing sentences. The judicial freedom of judges has become a focal point of debate, especially concerning the extent to which the technical guidelines of the Supreme Court can override forestry laws. The conflict between Article 78 paragraph (15) of Law No. 41 of 1999 and the Supreme Court Guidelines poses challenges in maintaining the integrity of the legal system. Despite lower court judges feeling bound by the Supreme Court guidelines, there is a risk of misinterpretation and potential misuse of these guidelines, particularly in cases involving third parties unaware of their equipment being used for illegal logging. Consequently, the implementation of penalties for illegal logging in the District Court of Kebumen introduces complexity in legal interpretation and the application of technical guidelines.

## References

- Ariefianto, Yuniar. "Challenge Indonesia's Regulation of International Crime in Illegal Logging." *Journal of Morality and Legal Culture* 2, no. 1 (2021): 28–36. <https://doi.org/10.20961/jmail.v2i1.62299>.
- Beyleveld, Deryck, and Roger Brownsword. "The Practical Difference between Natural-Law Theory and Legal Positivism." *Oxford Journal of Legal Studies* 5, no. 1 (1985): 1–32.
- Dekiawati, Erla Sari. "Law Enforcement of Illegal Logging in Indonesia: Problems and Challenges in Present and the Future." *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 1 (January 31, 2022): 47–68. <https://doi.org/10.15294/ijel.v1i1.56777>.
- Fallon, Richard H. "'The Rule of Law' as a Concept in Constitutional Discourse." *Columbia Law Review* 97, no. 1 (1997): 1–56. <https://doi.org/10.2307/1123446>.
- Fletcher, George P., and Steve Sheppard. *American Law in a Global Context: The Basics*. Oxford University Press, 2005.
- Hamzah, Andi. *Asas-Asas Hukum Pidana*. Yarsif Watampone, 2005.
- Hansen, Mogens Herman. "The Mixed Constitution Versus the Separation of Powers: Monarchical and Aristocratic Aspects of Modern Democracy." *History of Political Thought* 31, no. 3 (2010): 509–31.
- Hart, H. L. A. "Positivism and the Separation of Law and Morals." *Harvard Law Review* 71, no. 4 (1958): 593–629. <https://doi.org/10.2307/1338225>.
- Lamintang, P. A. F., and Theo Theo Lamintang. *Delik-Delik Khusus Kejahatan Terhadap Nyawa, Tubuh, Dan Kesehatan*. Sinar Grafika, 2023.
- Lamintang, P.A.F. *Hukum Penetensier Indonesia*. Armico, 1984.
- Lamintang, P.A.F., and Franciscus Theojunior Lamintang. *Dasar-Dasar Hukum Pidana Di Indonesia*. Sinar Grafika, 2022.
- Lasmadi, Sahuri, Elly Sudarti, and Nys Arfa. "Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice." *Pandecta Research Law Journal* 18, no. 2 (2023): 352–74. <https://doi.org/10.15294/pandecta.v18i2.48568>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Prenada Media, 2017.
- Möllers, Christoph. "Division of Powers: Traditions and Meanings." In *The Three Branches: A Comparative Model of Separation of Powers*, edited by Christoph Moellers, 0. Oxford University Press, 2013. <https://doi.org/10.1093/acprof:oso/9780199602117.003.0002>.
- Muladi. *Kapita Selektta Sistem Peradilan Pidana*. Semarang: Badan Penerbit, Universitas



Diponegoro, 1995.

- Simons, Kenneth W. “Is Strict Criminal Liability in the Grading of Offences Consistent with Retributive Desert?” *Oxford Journal of Legal Studies* 32, no. 3 (2012): 445–66.
- Sukestini, Erna, Achmad Noor Fatirul, and Hartono Hartono. “Problem Based Learning with ICT Based with Learning Creativity to Improve History Learning Achievement.” *Jurnal Pendidikan Dan Pengajaran* 53, no. 3 (September 28, 2020): 1–9. <https://doi.org/10.23887/jpp.v53i1.24127>.
- Susanto, Heri, Ramlani Lina Sinaulan, and Mohamad Ismed. “Legal Certainty Regarding the Imposition of Criminal Extortion Sanctions Involving Community Organizations (ORMAS).” *Policy, Law, Notary and Regulatory Issues (Polri)* 1, no. 2 (April 1, 2022): 37–54. <https://doi.org/10.55047/polri.v1i2.152>.
- Tacconi, Luca, Rafael J. Rodrigues, and Ahmad Maryudi. “Law Enforcement and Deforestation: Lessons for Indonesia from Brazil.” *Forest Policy and Economics* 108 (November 2019): 101943. <https://doi.org/10.1016/j.forpol.2019.05.029>.
- Tonry, Michael H., and Richard S. Frase, eds. *Sentencing and Sanctions in Western Countries*. Oxford: Oxford Univ. Press, 2001.
- Weisst, Gunther A. “The Enchantment of Codification in the Common-Law World.” *Yale Journal of International Law* 25 (2000): 435–532.
- Wibawa, G.M. Angga Satrya, Moh. Muhibbin, and Budi Parmono. “Criminal Actions Of Illegal Logging In The Perspective Of Forestry Law.” *International Journal of Law, Environment, and Natural Resources* 3, no. 1 (July 4, 2023): 84–95. <https://doi.org/10.51749/injurlens.v3i1.55>.
- Wijayanta, Tata. “Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga.” *Jurnal Dinamika Hukum* 14, no. 2 (May 25, 2014): 216–26. <https://doi.org/10.20884/1.jdh.2014.14.2.291>.