



A guide to investigation and indictment using an integrated approach to law enforcement

Topo Santoso
Rosalita Chandra
Anna Christina Sinaga
Mumu Muhajir
Sofi Mardiah



A guide to investigation and indictment using an integrated approach to law enforcement

Topo Santoso

Rosalita Chandra

Anna Christina Sinaga

Mumu Muhajir

Sofi Mardiah

© 2011 Center for International Forestry Research
All rights reserved

ISBN 978-602-8693-63-9

Photos by CIFOR/Aulia Erlangga and Moses Ceaser/Enlight Storyworks

Santoso, T., Chandra, R., Sinaga, A.C., Muhajir, M. dan Mardiah, S. 2011 A guide to investigation and indictment using an integrated approach to law enforcement. CIFOR, Bogor, Indonesia.

CIFOR
Jl. CIFOR, Situ Gede
Bogor Barat 16115
Indonesia

T +62 (251) 8622-622
F +62 (251) 8622-100
E cifor@cgiar.org

Any views expressed in this publication are those of the authors. They do not necessarily represent the views of CIFOR, the authors' institutions or the financial sponsors of this publication.

Contents

Abbreviations	v
1 Introduction	1
2 Forestry crime	5
2.1 What are the drivers of forest degradation?	6
2.2 What is the range of crimes in the forestry sector?	7
2.3 How is forestry-related crime handled?	12
3 The ILEA model for handling forestry crime	17
3.1 ILEA instruments	17
3.2 ILEA components	20
3.3 What are the steps for handling illegal logging under the ILEA model?	22
4 Corruption and money laundering	27
4.1 Corruption crime	27
4.2 Money laundering crime	43
4.3 The ILEA approach to prosecuting forestry crime through anti-money laundering and anti-corruption laws	54
5 Case handling processes	63
5.1 The role of law enforcement institutions	63
5.2 Criminal procedures	67
5.3 Asset recovery: A special issue	79
6 Conclusions	81
7 References	83
Appendix: Relevant legislation	86

List of figures, tables and boxes

Tables

1. Classification of perpetrators of forest degradation (by roles played)	12
2. Classification of forestry sector businesspeople (by permit, area and raw materials)	13
3. Major crimes according to Law No. 41/1999 on Forestry	14
4. Minor crimes according to Law No. 41/1999 on Forestry	18
5. Steps in law enforcement using the ILEA model	30
6. Example corruption cases in forestry-related crime	35
7. Example money laundering cases in forestry-related crime	55
8. Types of forestry-related crime and anti-corruption and anti-money laundering approaches	62

Figures

1. Processes in handling forestry-related crime	19
2. The ILEA model	29
3. The fundamentals of money laundering	54
4. Laundering the proceeds of forestry crime	55
5. An example of the flow of money from illegal logging	56
6. KDI Account statements	59
7. Flow of forestry-related crime including corruption and money laundering, by perpetrator and method	61

Boxes

1. Key elements of Article 2 of Law No. 31/1999 in conjunction with Law No. 20/2001	81
2. Key elements of Article 3 of Law No. 31/1999 in conjunction with Law No. 20/2001	81
3. Key elements of Article 5, paragraph (1) (a) of Law No. 31/1999 in conjunction with Law No. 20/2001	82
4. Key elements of Article 3 of Law No. 8/2010	83
5. Key elements of Article 5 of Law No. No. 8/2010	84

Abbreviations

BPK	Badan Pemeriksa Keuangan, Supreme Audit Agency
BPKP	Badan Pemeriksa Keuangan, Finance and Development Audit Agency
DPR	Dewan Perwakilan Rakyat, Legislative Assembly
DPRD	Dewan Perwakilan Rakyat Daerah, Regional Legislative Assembly
FATF	Financial Action Task Force
GIS	Geographic Information Systems
HPH	Hak Pengusahaan Hutan, Forest Concession
HPHTI	Hak Pengusahaan Hutan Tanaman Industri, Industrial Plantation Forest Concession
ILEA	Integrated Law Enforcement Approach
KPK	Komisi Pemberantasan Korupsi, Corruption Eradication Commission
KUHAP	Kitab Undang-undang Hukum Acara Pidana, Criminal Code Procedures
KYC	Know your customer principle
MLA	Mutual Legal Assistance
PBI	Peraturan Bank Indonesia, Bank of Indonesia Regulations
PPATK	Pusat Pelaporan dan Analisis Transaksi Keuangan, Financial Transactions Reporting and Analysis Centre
RKT	Rencana Kerja Tahunan, Annual Logging Plan
SKSHH	Surat Keterangan Sah Hasil Hutan, Forest Product Transportation Permit

Authors

Topo Santoso is a lecturer at the Faculty of Law, University of Indonesia and director of the university's Djokosoetono Research Centre. He lectures on criminal law, history and comparative studies in criminal law, specification of criminal action in the criminal code, economic crime and anti-corruption and criminology. He completed his law degree in 1992 and earned a master's in law in 2000, both from the University of Indonesia, and was awarded a doctorate in 2009 from the University of Malaya. He has written 17 books and hundreds of articles in scientific journals and national media. He is a frequent guest speaker in seminars, workshops and other scientific forums.

Rosalita Chandra completed her law degree and a master's degree in economic law at the Law Faculty of the University of Indonesia. She began her career as a researcher in 2002 at the Center for Indonesian Criminal Justice Studies (Pusat Studi Peradilan Pidana Indonesia, PSPPI) and the Society for Democracy and General Elections (Perludem). Chandra is also active as a lawyer, consultant and expert on bankruptcy with the Azalea Law Office. Chandra lectures at various universities for courses in criminal law, economic crime and consumer protection law.

Anna Christina Sinaga has been a researcher with the Forests and Governance Programme at CIFOR since 2007. She completed her law degree at the Law Faculty of the University of Indonesia in 2003 and her master's in law at the Faculty of Law, Utrecht University, in 2005. The focus of her research includes legislative drafting, law enforcement, corruption and forestry, and the role of banks in law enforcement efforts that affect the forestry sector.

Mumu Muhajir is a programme manager for law and environmental justice at Epistema Institute. Previously, he researched natural resources law in Greenlaw (2006) and IHSA (2006–2007). Muhajir completed his law degree at the University of Gadjah Mada, Yogyakarta. In addition to monitoring legal aspects of natural resource management and environmental issues, he is active in lobbying and policy advocacy.

Sofi Mardiah has been an assistant researcher with the Forests and Governance Programme at CIFOR since 2007. She completed her bachelor's degree at the Faculty of Forestry, Bogor Agricultural Institute (IPB) in 2002 and her master's degree in natural resources management and environment from IPB in 2006. At CIFOR, her research focusses on financial analysis in the forestry sector, the role of banks in law enforcement efforts in the forestry sector, corruption and forestry.

Acknowledgements

This publication is the result of enthusiastic contributions and assistance from many parties. We thank to the Corruption Eradication Commission (KPK), the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) and the State Audit Board (BPK). Staff at all three agencies shared their experiences and gave valuable suggestions and critiques of earlier versions.

We are also grateful to legal scholars and practicing lawyers who gave us advice and suggestions by participating in focus group discussions to facilitate the development of these guidelines: Dr Yenti Genarsih from the Law Faculty of Trisakti University; Dr Eddy OS Hiariej from the Law Faculty of Gadjah Mada University; Dr Edi Setiadi from the Law Faculty of Bandung Islamic University (UNISBA); Dr Prabowo Bambang S., Dean Bram and Dr Surastini Fitriasih from the Law Faculty of the University of Indonesia; Erlin, state prosecutor from Sleman District; and Edy Wibisono who serves at the Cibinong District Court.

We also express our gratitude to our partners Riau Forest Rescue Network (Jikalahari) and the Institute for Law and Natural Resources (IHSA) in East Kalimantan. They contributed to developing the concept of an integrated approach to law enforcement.

We want to also thank Dr. Bambang Setiono for his involvement in this study. We recognise that efforts to stop illegal logging, corruption and money laundering in the forestry sector have yet to fully enforce the law or substantively help sustain Indonesia's forests. We hope this guideline can provide new inspiration to forest stakeholders who continue to untangle the complex threads of forest-related crime, law enforcement, corruption and money laundering in Indonesia.

This guideline was made possible through the generous support from the Ministry of Foreign Affairs of Norway.

Preface

Significantly increased rates of deforestation from the 1970s to the 2000s have brought pressure on law enforcement agencies to better enforce the law and prosecute forest crimes. Generally, criminal wrongdoing in the forestry sector is only prosecuted under the provisions of the Forestry Law. Several reports and results of studies suggest that these sanctions are ineffective in stopping crimes in the forestry sector because they only catch the petty criminals in the field. Meanwhile, the main actors who fund and plan large-scale illegal activities evade sanctions.

Illegal logging is a multidimensional crime addressed in several legal instruments in Indonesia, including the Forestry Law, the Anti-Corruption Law, the Anti-Money Laundering Law, the Environmental Law and the Law on Customs. The complexity and extent of the network of perpetrators of illegal logging require that law enforcement apply a more unified, integrated and comprehensive approach. This guideline introduces and describes such an integrated approach.

To respond to this issue, CIFOR conducted research to design effective integrated strategies to address the large-scale issues. The project, the Integrated Law Enforcement Approach (ILEA) encourages an integrated approach and specifically promotes the use of anti-corruption and anti-money laundering instruments to better prosecute forest crime. This book presents insights from the ILEA project to guide law enforcement officers in their efforts to combat crime in the forestry sector.

We prepared this nonbinding instrument to help Indonesia's law enforcement officers handle criminal cases in the forestry sector with a more comprehensive approach. Although primarily intended for law enforcement officials including civil servant investigators in forestry, police officers, prosecutors, corruption eradication commission (KPK) staff and judges, we hope that other stakeholders including NGOs and communities that depend on forests can also benefit.

1

Introduction



The need for improved enforcement of forestry law has grown as Indonesia's deforestation rate has increased significantly. During 1970–1990, the rate of deforestation was 0.6–1.2 million hectares a year (Sunderlin and Resosudarmo 1996). Another report shows a higher rate of 1.7 million hectares per year during 1985–1997 (FWI/GFW 2001). The latest data from the Ministry of Environment, based on the 'Report on Indonesia's Environmental Status 2006', states that the rate of deforestation was 1.19 million hectares per year in 2006 (Ministry of Environment 2006). Illegal logging is one of the greatest causes of deforestation. Laporan Telapak, an Indonesian campaign group, suggests that illegal logging accounts for 80% of the total logging in Indonesia (Tacconi *et al.* 2004).

The government has carried out a series of law enforcement operations in the field to combat illegal logging. During 2004–2006, the government conducted Sustainable Forest Operation (OHL) in Kalimantan, Papua and Sumatra. During OHL II in 2005, for example, the police processed 116 cases of illegal logging in Papua. However, the courts were unable to reach a verdict in most of these cases, as cases were dismissed during investigation and by the courts. Of the 116 cases brought during OHL II, only 88 continued to the Attorney General's Office. Moreover, of these 88 cases, 27 were brought to court, 13 resulted in sentences of 7–24 months and 14 cases were acquitted (ICW 2009).

Besides the small number of verdicts reached on cases of forestry crime, research by Indonesian Corruption Watch (ICW) in 2009 shows that those sentenced are mostly low-level perpetrators, such as truck drivers, farmers or field operators. This suggests that most of the financiers, government officials or other intellectual actors involved were not exposed, let alone punished (ICW 2009).

The failure of so many cases of forestry crime raises several questions: Have the judges made erroneous verdicts? Do the indictments contain weaknesses? Does the problem lie within the investigations? Or are these failures caused by a lack of community involvement, due to people's fear of standing witness?

Weak legal protection of the forests is also due, in part, to a tendency to use only one law: Law No. 41/1999 on Forestry. In that law the primary crime is illegal logging. Why is this mechanism so weak? One common reason is that having a permit is enough to escape the law. In other words, administrative processes provide an opportunity to cover up existing violations as they only emphasise formal aspects. Meanwhile, in criminal cases, the emphasis is on material fact. The potential for irregularities in issuing permits is substantial. Irregularities include: abuse of authority in issuing permits; granting inappropriate permits; utilising regulations and policies to destroy forests and cover up forestry crime; bribing government officials to issue permits; and companies providing facilities, such as cars, to law enforcement institutions, giving officials company shares, and splitting companies to secure concessions above allocation limits (Antasari April 22, 2010). One example is the case of Tengku Azmun Jaafar, who was found guilty of corruption in issuing permits to 15 companies in Kabupaten Pelalawan, Riau (Anti-Corruption Court 2008). The Adelin Lis case, in which the Supreme Court found him guilty of corruption (Supreme Court 2007: No. 2240), is also evidence of the need to use other legal instruments than Law No. 41/1999 to prosecute offenders who hold permits.

A more integrated and comprehensive law enforcement approach is required to combat forestry crime and secure better protection of our forests. This means an approach that does not rely solely on the forestry sector legal framework and law enforcement processes, but can use provisions from other related legal frameworks such as corruption and money laundering. For instance, using the provisions of Law No. 31/1999 on Eradication of Corruption could help in prosecuting illegal loggers. Expanding the means for gathering evidence and the rules for substantiation (including limited reverse

burden of proof) and improving investigative techniques for anti-corruption law enforcers can be effective, as in many cases illegal logging begins with various forms of corruption.

Similarly, use of Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering is also essential because its ‘follow the money’ principle enables tracing the origins of money to illegal logging. The legal framework on money laundering also regulates special litigation processes, means of proof, and techniques for tracing the origins of the proceeds of crime and hopefully revealing them. Furthermore, to process a money laundering case, it is not necessary to prove the predicate crime first (Law No. 8/2010)(all references for laws in this book can be found in Appendix 1).

The use of anti-corruption and anti–money laundering laws in the forestry sector is still new. Concerns have been raised that using these legal instruments will weaken the focus of investigation and prosecution of crimes in the forestry sector. However, this can be prevented by assessing each case to ascertain whether it concerns only forestry crime, or whether it is linked to corruption and money laundering.

Another concern in applying anti-corruption and anti–money laundering laws in the forestry sector is the doctrine of *lex specialis derogat legi generali*, which states that a law governing a specific subject matter (*lex specialis*) overrides a law that only governs general matters (*lex generalis*). In this case, the law on forestry is seen as *lex specialis* and the laws on corruption and money laundering as *lex generalis*. This suggests that forestry crimes should only be tackled using the forestry law, not other laws. It is key that forestry bureaucrats and law enforcement authorities from various institutions work together. Prosecutors must analyse which provisions are most appropriate for use, whether one or more provisions can be used, and whether the perpetrator(s) can be indicted singularly, alternatively, secondarily or cumulatively.

The above-mentioned concerns are only part of the challenge in using an integrated approach to forestry sector crime. In practice, four forms of indictment can be used. This is a positive approach that can be used in future.

It is clear that we must take an integrated approach to enforcing forestry law to better protect our forest from increasing damage. This book strives to provide this more comprehensive approach.

2

Forestry crime



This chapter gives a concise overview of forestry crime based on Law No. 41/1999 on Forestry. The discussion begins with an outline of the drivers of forest degradation and categories of violation of forestry law. This is followed by an overview of the parties involved in forestry crime and the roles they play. This chapter also discusses the approach normally used in handling illegal logging, using the forestry law. Other laws closely linked to forestry – such as anti-corruption and anti–money laundering laws – will be discussed in later chapters.

2.1 What are the drivers of forest degradation?

Factors driving forest degradation and illegal logging include (Suarda 2005:10):

1. economic crisis;
2. changes in the political order;
3. weak coordination between law enforcement authorities;
4. collusion, corruption and nepotism;
5. weak forest and forest product security systems;
6. cheap prices of illegal timber.

Based on its role, the perpetrators of forests destruction can be classified in Table 1.

Table 1. Classification of perpetrators of forest degradation by roles played

Perpetrators	Role
Local and migrant communities	Cutting down trees either in their own interests or to sell to timber businesspeople or capital owners
Capital owners (<i>cukong</i>) and business people	Facilitators ^a or recipients ^b of stolen wood, including being the masterminds behind the timber theft
Wood industry owners and concession holders	Timber thieves or recipients of stolen timber
Ships' captains ^c	Participating or assisting in timber smuggling or illegal logging
Government officials and authorities (military, police, forest rangers, forestry officers, customs officers, regional government officials, district council members, politicians)	Involved in corruption, collusion and nepotism with businesspeople, manipulating forest management policy or granting concessions that can lead to forest degradation
Foreign businesspeople	Timber buyers or recipients of stolen wood. Linked to cases of money laundering. Foreigners coordinate timber theft using local people who act as if they are timber businesspeople

Source: Nurdjana *et al.* (2005) and Hussein (2007)

a In material criminal law this role can be linked to conspiracy to commit forestry crime by giving or promising something, or by providing information, facilities or opportunities to others

b In general criminal law, as stipulated in Articles 55–57 of the Criminal Code, receipt does not come under provisions on 'participation' but is a crime in its own right (under Article 480 of the Criminal Code). As distinct from 'participation', receipt occurs after a crime is committed, in the case, for instance, of receiving stolen goods

c The involvement of ships' captains in cases of illegal logging shows that this process requires certain parties operating in the transport sector

Table 2. Classification of forestry sector businesspeople by permit, area and raw materials

Classification ^a	Explanation
White business people	Hold valid concessions (HPH/HPHTI) or industry permits. Parameters that can be measured include an annual logged-over area of 600 000 ha based on an annual logging plan (RKT) of 20 million m ³ and total annual installed capacity for a plywood industry of 10 million m ³ . As long as the business adheres to government permits and its official work area is based on general, provincial and district spatial planning maps, and until there is a revision of the types of legitimate forestry sector businesses, such businesspeople remain legitimate under the law.
Grey business people	Have business permits issued after 2001 that are valid in juridical terms, free from controversy and with no overlapping authority. However, many regulations issued during the reform era have overlapping authority, are deemed weak, and may be subject to annulment or judicial review.
Black business people	Involved purely in illegal activities and crimes such as cutting down trees in protection forest, illegal annexation of forest, timber theft and document falsification.

Source: Suarga (2005: 38)

a The terms used here are not juridical but sociological, understood in circles involved in forestry-related crime issues. Despite not being juridical terms, they remain important for mapping actors involved.

In the forestry sector, enterprises that use wood in their core business include:

1. timber concessions (HPH);
2. woodworking industries;
3. plywood industries;
4. furniture industries;
5. craftsmen or handicrafts makers;
6. industrial timber plantations;
7. pulp and paper industries. (Surgar 2005: 37)

These can be categorised into two groups for the purposes of preliminary investigations into forestry-related crime: (i) the forest concession group; and (ii) the industry group.

Forest exploration and exploitation can lead to forest degradation, affecting the physical or biological characteristics of the forest and preventing it from maintaining its natural functions. Acts that lead to such forest degradation can be categorised as forest crimes.

2.2 What is the range of crimes in the forestry sector?

According to Article 78, paragraph (13) of Law No. 41/1999 on Forestry, a number of actions are classified as forestry crimes. Table 3 presents actions classified as forestry crimes and violations.

Table 3. Major crimes according to Law No. 41/1999 on Forestry

Action	Article and norm	Sanctions
Damaging forest protection infrastructure and facilities	<p>Article 50 (1) All people are prohibited from damaging forest protection infrastructure and facilities.</p>	<p>Article 78 (1) Whoever <i>knowingly</i> violates the provisions of Article 50, paragraph (1) or Article 50, paragraph (2), shall be liable to punishment by imprisonment up to a maximum of 10 (ten) years and a fine up to a maximum of IDR 5 000 000 000 (five billion rupiah).</p>
Carrying out activities resulting in forest degradation	<p>Article 50 (2) Anybody who has received the licence of forest area use; the licence of utilising environmental services, the right of timber and non-timber forest product utilisation, the licence of timber and non-timber forest product collection; is not allowed to undertake any activities leading to forest damage.</p>	<p>As above</p>
Illegally occupying a forest area	<p>Article 50 (3) No person is allowed to: a. cultivate and/or use and/or occupy illegally a forest area;</p>	<p>Article 78 (2) Whoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3) letter (a), letter (b), or letter (c), shall be liable to punishment by imprisonment up to a maximum of 10 (ten) years and a maximum fine of IDR 5 000 000 000 (five billion rupiah).</p>
Encroaching on a forest area	<p>Article 50 (3) No person is allowed to: b. encroach on a forest area;</p>	<p>As above</p>

Table 3. Continued

Action	Article and norm	Sanctions
Cutting down trees in a forest area in contravention of provisions	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>c. cut trees within a radius or distance up to:</p> <ol style="list-style-type: none"> 1. 500 (five hundred) meters from the edge of a lake or a dam; 2. 200 (two hundred) meters from the edge of water sources and alongside rivers in a swamp area; 3. 100 (hundred) meters from alongside a river bank; 4. 50 (fifty) meters from the banks of a tributary; 5. 2 (two) times the depth of a ravine from the edge of a ravine; 6. 130 (one hundred thirty) times the difference between the highest and the lowest tide, measured from the coastline. 	As above
Burning forest either <i>knowingly</i> or as a result of negligence	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>d. burn the forest;</p>	<p>Article 78</p> <p>(3) Whosoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (d), shall be liable to punishment by imprisonment up to a maximum of 15 (fifteen) years and a maximum fine of IDR 5 000 000 000 (five billion rupiah).</p> <p>Article 78</p> <p>(4) Whosoever, due to negligence, violates the provisions of Article 50, paragraph (3), letter (d) shall be liable to punishment by imprisonment up to a maximum of 5 (five) years and a maximum fine of IDR 1 500 000 000 (one billion, five hundred million rupiah).</p>

continued on next page

Table 3. Continued

Action	Article and norm	Sanctions
Cutting down trees, harvesting or collecting any forest products within the forest area without holding any rights or licence issued by authorised officials	<p>Article 50 (3) No person is allowed to: e. cut trees or harvest or collect any forest products within the forest area without holding any rights or licence issued by authorised officials;</p>	<p>Article 78 (5) Whoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (e) or letter (f), shall be liable to punishment by imprisonment up to a maximum of 10 (ten) years and a maximum fine of IDR 5 000 000 000 (five billion rupiah).</p>
Receiving, buying or selling, receiving as an exchange, receiving as entrusted goods, keeping or possessing any forest products known or alleged to have been harvested from a forest area by illegal means	<p>Article 50 (3) No person is allowed to: f. receive, buy or sell, receive as an exchange, receive as entrusted goods, keep or possess any forest products known or alleged to have been harvested from a forest area by illegal means;</p>	As above
Open-cast mining in protection forest and unlicensed exploration/exploitation of mining materials	<p>Article 38 (4) Open-cast mining is prohibited in protection forest. Article 50 (3) No person is allowed to: g. undertake general investigation, activities, exploration or exploitation of mine materials within the forest area without the Minister's approval;</p>	<p>Article 78 (6) Whoever <i>knowingly</i> violates the provisions of Article 38, paragraph (4) and Article 50, paragraph (3), letter (g), shall be liable to punishment by imprisonment up to a maximum of 10 (ten) years and a maximum fine of IDR 5 000 000 000 (five billion rupiah).</p>
Carrying, controlling or keeping forest products without legal documentation	<p>Article 50 (3) No person is allowed to: h. carry, possess or keep forest products without legal documentation;</p>	<p>Article 78 (7) Whoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (h), shall be liable to punishment by imprisonment up to a maximum of 5 (five) years and a maximum fine of IDR 1 000 000 000 (ten billion rupiah).</p>

Table 3. Continued

Action	Article and norm	Sanctions
Bringing heavy loading equipment into a forest area, without legal authorisation	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>j. bring heavy equipment or other tools commonly used or will presumably be used for loading forest products into a forest area, without legal authorisation;</p>	<p>Article 78</p> <p>(9) Whosoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (j), shall be liable to punishment by imprisonment up to a maximum of 5 (five) years and a maximum fine of IDR 5 000 000 000 (five billion rupiah).</p>
Bringing equipment commonly used for felling, cutting and splitting trees, without legal authorisation	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>k. bring equipment commonly used for felling, cutting and splitting trees, without legal authorisation;</p>	<p>Article 78</p> <p>(10) Whosoever <i>knowingly</i> violates the provisions as referred to in Article 50, paragraph (3), letter (k), shall be liable to punishment by imprisonment up to a maximum of 3 (three) years and a maximum fine of IDR 1 000 000 000 (one billion rupiah).</p>
Discarding any inflammable material into a forest area which may cause forest fires or threaten the forest functions	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>l. discard any inflammable material into a forest area which may cause forest fires and threaten the existence and sustainability of forest functions;</p>	<p>Article 78</p> <p>(11) Whosoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (l), shall be liable to punishment by imprisonment up to a maximum of 3 (three) years and a maximum fine of IDR 1 000 000 000 (one billion rupiah).</p>

Table 4. Minor crimes according to Law No. 41/1999 on Forestry

Type	Legal basis	Sanctions
Grazing livestock without a permit	Article 50 (3) No person is allowed to: i. graze livestock within the forest area which is not assigned specifically by authorised officials for that purpose;	Article 78 (8) Whosoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (i), shall be liable to punishment by imprisonment up to a maximum of 3 (three) months and a maximum fine of IDR 10 000 000 (ten million rupiah).
Removing, carrying and transporting plants and wildlife species not protected by the law, from forest areas without legal authorisation	Article 50 (3) No person is allowed to: m. remove, carry, transport plants and wildlife species not protected by the law, from forest areas without legal authorisation.	Article 78 (12) Whosoever <i>knowingly</i> violates the provisions of Article 50, paragraph (3), letter (m), shall be liable to punishment by imprisonment up to a maximum of 1 (one) year and a maximum fine of IDR 50 000 000 (fifty million rupiah).

Discussions in this paper are limited to the forestry-related crimes classified in Table 3. In addition to classification based on Law No. 41/1991 on Forestry, forestry crimes can also be classified according to terms commonly used in discussing environmental issues including:

1. *Illegal logging* – a series of activities, from logging and timber transporting to processing and exporting without permits from government authorities, and therefore illegitimate, in violation of the law and considered acts that damage the forest (Suarga 2005: 15).
2. *Destructive logging* – the illegal cutting down of forests perpetrated by forestry companies with official government permits (as regulated by Article 50, paragraph (2) of Law No. 41/1999 on Forestry).

2.3 How is forestry-related crime handled?

Provisions in Law No. 41/1999 on Forestry outline the processes involved for law enforcers handling forestry crime. According to Criminal Code Procedures (KUHAP), parties that can investigate forestry crime include the police, forest rangers, and civil servants from the forestry office working under police coordination.

The outcome of any investigation will be forwarded to the state prosecutor to prepare an indictment for submission to a district court. A judge will then examine the case and reach a verdict in consideration of the provisions of Law No. 41/1999 on Forestry.

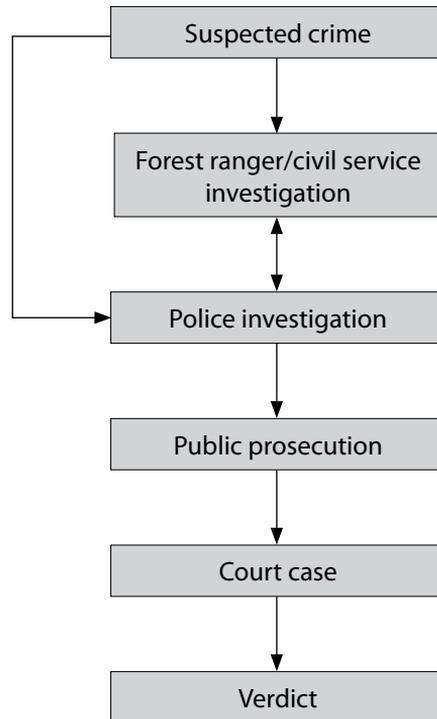


Figure 1. Processes in handling forestry-related crime

Source: Adapted from Yuliastuti (2006), based on Law No. 41/1999 on Forestry

Generally, forestry-related crimes are processed exclusively according to the provisions of Law No. 41/1999 on Forestry. Consequently, the subjects of such crimes are limited to individuals as perpetrators and/or managers from legal entities or enterprises linked to forestry crime.¹ Meanwhile, other links in the chain of forestry-related crime cannot be tried if law enforcers refer only to Law No. 41/1999. These include government officials authorised to issue permits, and businesspeople and capital owners indirectly linked to enterprises or legal entities violating forestry provisions.

In addition to the forestry law, other laws can be used to charge those involved in crimes in the forestry sector. For instance, Law No. 31/1999 on Eradication of Corruption can be used in the case of officials issuing certain letters, permits and documents to help others perpetrate illegal logging. Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering can also be used when people attempt to conceal the proceeds of illegal logging.

¹ According to Article 78, paragraph (14) of Law No. 41/1999 on Forestry, if a crime is committed by, or on behalf of a legal entity or enterprise, the legal proceedings and criminal sanctions should be imposed on the board of management, either individually or jointly, who shall be liable to punishment in accordance with respective sanction with an addition of 1/3 (one third) of the decided sanctions.

Evidence of forestry-related crime discovered by investigators in the field, such as illegally harvested logs, and transport equipment used to perpetrate forestry crime can be confiscated by the state. When seen as links in a chain, we must also question whether assets belonging to the perpetrator are the proceeds of forestry-related crime. This is done taking into account that the losses resulting from such crimes affect not only the public, but also the environment.

Sanctions imposed on perpetrators of forestry-related crime should include criminal and administrative penalties. Perpetrators should also be made to pay compensation for damage and resulting losses to the state, by paying for rehabilitation, forest recovery or other acts required. In considering deterrents to perpetrators in the chain of forestry-related crime, and the resulting environmental impacts upon the public, law enforcers can also apply the provisions of legislation other than the forestry law to acts of forestry-related crime.

Several laws can be applied to handling forestry crime, including:

- a. Law No. 20/2001 on Amendments to Law No. 31/1999 on Eradication of Corruption;
- b. Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering;
- c. Law No. 32/2009 on Environmental Protection and Management;
- d. Law No. 17/2006 on Customs and Excise.

In addition, draft laws on the eradication of illegal logging, and on state intelligence² are currently being deliberated, the substance of which is related to forestry crime. Later, this handbook will need to be adapted to include suggestions on how to use these draft laws in handling forestry crime.

This handbook will only discuss the handling of forestry-related crime through the application of anti-corruption and anti-money laundering laws. Public prosecutors applying these laws have been supported by the issuance of a circular from the Attorney General on applying anti-corruption law to forestry crime, and a circular from the Deputy Attorney General for General Crimes (Jampidum) (No. B-689/E/EJP/12/2004) on using cumulative indictments in cases involving a predicate crime and money laundering.

Despite the many efforts to control forestry-related crime, weaknesses remain and these must be rectified in the future. These weaknesses include:

- a. Only those perpetrators caught red handed are brought to trial.
- b. Many perpetrators are acquitted or given light sentences. A study conducted by Indonesia Corruption Watch (ICW) shows that of 205 forestry court cases monitored during 2005 –2008, 137 cases or about 67% were acquitted (ICW 2008). Another study also found that the perpetrators of forestry crime

² The draft law on state intelligence allows the use of information as preliminary evidence for beginning investigations.

were on average sentenced to one year imprisonment and had to pay a fine of 2–7 million rupiah.

- c. The court's verdicts did not fulfil society's sense of justice, since such light penalties were handed down for forestry crimes that had caused significant damage to the state.
- d. Recuperation of state losses through confiscation of the proceeds of crime is insignificant. In addition, the forestry law itself sets the maximum fine for forestry crime at only 10 billion rupiah. This amount is smaller than the amount of state losses usually caused by forestry crime.
- e. Officials involved, those who bribe officials, and the laundered proceeds of forestry crime remain untouched. This happens because the forestry law does not specifically address corruption and money laundering in the forestry sector. Provisions concerning corruption are stipulated in other laws.

Due to these weaknesses, forestry-related crimes should not be handled using only the forestry law, but also by using anti-corruption and anti-money laundering legislation. This issue will be discussed again in chapters 4 and 5.

3

The ILEA model for handling forestry crime

In order to overcome weaknesses in handling forestry-related crime, a new, more integrated approach to protecting our forests is needed. In 2003, the government of Indonesia decided to revise Law 15/2002 on Prevention and Eradication of the Crime of Money Laundering in 2003. The Center for International Forestry Research (CIFOR) took the opportunity to encourage the application of other legal instrument within the revised law, to catch the perpetrators of forestry crime. In the new law, Law No. 25/2003, forestry crimes was included as one of the predicate crimes of money laundering crime. In 2007, CIFOR's further recommended that Law No. 31/1999 on Eradication of Corruption likewise be used as a legal instrument in handling forestry-related crime. In 2010, Law No. 25/2003 became incorporated into Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering. This combined approach is known as the Integrated Law Enforcement Approach (ILEA). This model cannot be used effectively without the necessary instruments and components: an instrument constitutes the means or tools necessary to implement an integrated law enforcement approach, while a component refers to the institutions that play a role in this approach.

The conceptual bases of the ILEA model for handling illegal logging and other related crimes are described below. This model is different from the usual approach, which focuses on, or targets, illegal loggers using the forestry law framework and institutions involved in forestry. The ILEA model has greater scope and is expected to be more effective than the standard approach in protecting the forestry sector and state assets.

3.1 ILEA instruments

a. Asset recovery (Stolen Asset Recovery Initiative – StAR Initiative)

In tackling corruption, asset recovery mechanisms are essential. Increasing numbers of countries are attempting to recover assets from overseas, transferred by corrupt high-ranking officials beginning in the 1980s. Recovering assets is not an easy process as their forms have changed and have been purposefully concealed in established financial systems in industrialised countries. These efforts have pulled back the curtain on illicit financial processes, involving financial institutions and mediators (lawyers, accountants, real estate agents, etc.) from industrialised countries in facilitating the entry and concealment of dirty assets from corrupt officials in developing countries.

Asset recovery covers criminal and civil processes and activities in seeking, freezing and returning funds generated from activities deemed illegal in the state with rights over those assets. This process requires effective collaboration between countries. In addition to recovery, the use of returned assets must be monitored to ensure they are used for the welfare of people in developing countries.

b. Know Your Customer principle

Every service provider must apply the Know Your Customer (KYC) principle in order to effectively prevent money laundering. The principle is obligatory for both financial services providers and users of financial services as stipulated in Chapter IV, Second Section on Principle Implementation in Service User Recognition, Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering. According to Bank of Indonesia regulations (PBI) No. 3/23/PBI/2001 and PBI No. 5/21/PBI/2003, KYC is a principle applied by banks to:

1. know the identity of their customers (including customer profiles);
2. monitor customers' transactions;
3. report suspicious financial transactions to the Financial Transactions Reporting and Analysis Centre (PPATK).

The KYC principle was revised and amended with PBI No. 11/28/PBI/2009 on the Application of Anti-money Laundering and Countering the Financing of Terrorism Programmes for Public Banks, and perfected with Circular No. 11/31/2009.³

The high rate of forestry crime, particularly illegal logging, have led to forestry businesses being included on the list of high-risk businesses, and customers operating in the forestry and woodworking sectors are listed as high-risk customers. Accordingly, through KYC, banks are obliged to know their customers and monitor their transactions if they have concerns that the money they secure originates from illegal activities (Setiono and Husein 2005). With support from information systems, banks can effectively identify, analyse, monitor and provide reports on the nature of their customers' transactions, and meet their obligation to report suspicious financial transactions to the PPATK.

c. Politically exposed persons

'Politically exposed person' (PEP) is a new term in monitoring customers of financial institutions for the prevention of financial crime, particularly money laundering. The concept is currently being developed and is encouraged by the need to monitor more closely customers that might constitute a high risk to the reputation of the financial institution. The term 'politically exposed person' is generally associated with government officials in positions of power, well known to the public. In its guidelines, the PPATK defines PEPs as:

³ Since enactment of Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering, no change has been made to banking regulations which stipulate the KYC principle

‘...individuals entrusted with public functions in a foreign country, such as heads of state or government, senior politicians, senior government officials, court officials or military leaders, senior executives of state-owned enterprises, partisans, or functionaries of large political parties. A PEP’s business relationships with family members or close associates involves risking their reputation as well as his or her own. This definition does not include middle-ranking or junior individuals in the previous category. This applies to Indonesian and foreign citizens.’ (PPATK 2008)

This PEP mechanism, as proposed by the Financial Action Task Force (FATF), obliges financial institutions not only to conduct customer due diligence when dealing with PEPs, for instance in the form of KYC, but also to: (1) have an appropriate risk-management system for determining whether or not someone is a PEP; and (2) have the agreement of a senior manager before conducting business with anyone categorised as a PEP. These mechanisms vary on the ground, and some countries even include junior officials and politicians on their PEP list.

d. Mutual Legal Assistance

Illegal logging is a crime that crosses state borders and jurisdictions, so law enforcers need to collaborate with their peers in other countries to pursue perpetrators and return hidden assets. In addition to diplomatic channels, there is now a mechanism known as Mutual Legal Assistance (MLA).

MLA is a criminal law based mechanism for law enforcers in one country to provide legal assistance to law enforcers in another in response to a request for assistance. This assistance can take the form of apprehending and arresting a perpetrator, investigating and providing evidence of crime, returning assets, and surrendering perpetrators, which increases law enforcement capacity.

According to Law No. 1/2006 on Mutual Legal Assistance in Criminal Matters, particularly Article 57, there are currently three forms of MLA cooperation: (1) cooperation of two countries based on bilateral agreements; (2) cooperation based on regional MLA agreements; and (3) cooperation based on international agreements. MLA only becomes valid once each country has ratified an agreement.

e. Geographic Information Systems

Geographic Information Systems (GIS) are computer systems with the capacity to input, collate and analyse geographic data and are extremely useful for decision making (ESRI 1995). The most useful feature is the capacity of GIS to present spatial data supplemented with additional information. GIS can capture spatial data from maps or data attributes with geographic information. It can also transform maps from various scales and projections to standard scales so the results generated are also standard.

GIS applications are frequently used in agriculture and forestry land-use management, and in planning residential areas and their facilities. One usage linked to forestry is calculating locations, levels and rates of deforestation. Using GIS, we can easily and quickly conduct spatial analyses and monitor changes in forest cover. It can also be used

as an effective tool for gauging the extent to which forest is managed sustainably by parties with interests in forestry.

f. Estimating environmental and state losses

The ILEA model, in using anti-corruption and anti-money laundering laws, is closely linked to the size of state losses resulting from forestry crime. Therefore, it is essential to estimate the environmental and state losses resulting from deforestation and illegal logging. According to Wasis (in Ministry of Environment 2006), the costs of environmental degradation can be estimated by calculating the costs resulting from ecological damage, economic losses and the expenditure required for ecological recovery.

Ecological damage can be estimated from the ecological outcomes of forest and land degradation and calculated through the per-hectare costs of building reservoirs, water management, erosion management, soil formation, recycling nutrients, breaking down waste, biodiversity, genetic resources, and carbon storage. According to the elucidation of Article 32 of Law No. 31/1999 on Eradication of Corruption, the size of losses to the state is based on the findings of relevant institutions, namely the Supreme Audit Agency (BPK), and the Finance and Development Audit Agency (BPKP), from their appointed auditors (Wiyono 2006: 179).

3.2 ILEA components

a. Law enforcement institutions

Law enforcement institutions act as leaders in efforts to eradicate illegal logging, and due to their role in enforcing the law are the drivers behind such efforts. They have the authority to inquire, investigate and execute court decisions in a framework of integrated law enforcement. This component includes the police, public prosecutors, the Corruption Eradication Commission (KPK), judges and civil service investigators from the Ministry of Forestry. In the case of corruption eradication the KPK, for instance, has the authority to investigate assets belonging to suspects and confiscate them if the suspect is found guilty in court.

b. Financial Transactions Reporting and Analysis Centre (PPATK)

The PPATK is a key component in the ILEA model. As a financial intelligence unit, the PPATK processes data and provides information and analysis on suspicious financial transactions handed over by financial service providers. Law enforcement efforts against illegal logging have previously concentrated on pursuing wood theft, but with the ILEA model, which focuses on investigating the flow of money, the intelligence component is essential.

The PPATK's analyses of suspicious financial transactions can be used as the basis for law enforcement authorities to investigate parties involved in or receiving money from illegal logging schemes. It is these analyses that become the basis for law enforcers to identify the flow of funds from crimes in the forestry sector and those involved in those crimes.

c. Forestry-related sectors

The forestry sector acts as an information provider for law enforcers combating illegal logging. The Ministry of Forestry plays a principle role as the institution that manages forests and the natural resources they contain. Included in this component are the Ministry of Forestry, including other forestry institutions, forestry business practitioners, and forestry professionals, including lawyers working for forestry businesses.

The specific role of the Ministry of Forestry in this approach is to provide information on concessions and areas of forest, prepare spatial plans and concession work plans (for instance annual and 5-year felling allocations), and other information relating to forest management.

d. Audit agencies

These agencies provide information to law enforcers on indications of corruption in forest management, and estimate the resulting losses to the state. This component includes the BPK, the BPKP, ministerial inspector generals and appointed auditors.

e. Financial institutions

Financial institutions act as providers of information on suspicious transactions conducted by financial service providers or other goods or service providers. This component includes: the Bank of Indonesia; public banks; funding companies; insurance and broker companies; pension financial institutions; security companies; investment managers; custodians; trusts and the postal service as providers of the giro service; foreign currency traders; card payment service providers, e-money and e-wallet service providers; credit unions; commodity and futures traders; and money sender service providers. The goods and service providers include: property companies and agents; motor vehicle traders; gold and jewellery traders; art and antique traders; and auction houses.

These institutions can provide details of assets belonging to any person reported by the PPATK, or any suspect or indicted person. If requested by the law enforcement authorities, these institutions may freeze any assets thought to be the proceeds of forestry crime or corruption, as stipulated in Article 71 of Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering.

In relation to the KYC and Equator Principles,⁴ financial service providers also function as recorders and supervisors of customers who are either PEPs or are business practitioners in high-risk fields. In this specific function, financial service providers play an important role and should be included in the ILEA against illegal logging and other forms of forestry-related crime.

⁴ The Equator Principles are a set of voluntary guidelines that have been developed and adopted by banks and other financial institutions to identify and manage environmental and social issues in funding a project.

f. Civil society

Civil society plays an important role in the ILEA as a provider of information on forestry crime. This component includes nongovernmental, civil society and international organisations and donors. These institutions work in the fields of environment and forestry, and are frequently involved in advocacy of cases relating to illegal logging. These organisations are often able to provide GIS data, which is frequently an important aspect of investigating illegal logging cases.

3.3 What are the steps for handling illegal logging under the ILEA model?

Table 5 shows the steps that law enforcement authorities can take in using the ILEA model to prosecute illegal logging, through anti-corruption and anti-money laundering laws.

Table 5 sets out the more comprehensive approach we wish to offer in handling forestry-related crime. The laws used are not the forestry law alone, but the anti-corruption and

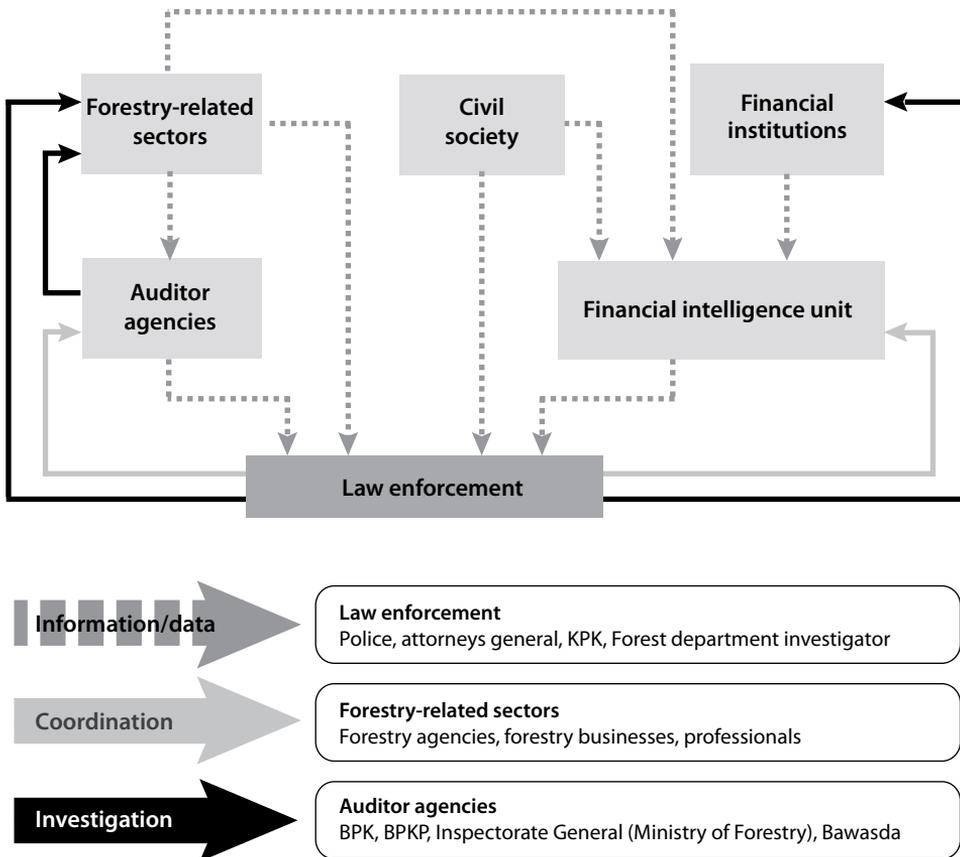


Figure 2. The ILEA model

anti-money laundering laws. This approach also opens the possibilities for using other suitable legal instruments.

Chapter 4 discusses aspects of corruption and money laundering, and focuses specifically on the substance of the two crimes that are stipulated in the laws. In its explanation of these two crimes, details are provided on their links to illegal logging, which is usually approached using only the forestry law.

Table 5. Steps in law enforcement using the ILEA model

Steps	Using only Law No. 41/1999 on Forestry	With ILEA	Means required
Gathering information	Information needed: the scale of the illegal logging activity, the volume of the illegal logs, the location (Components playing roles: civil society and forestry-related sectors)	Information needed: the location, the scale of the illegal logging activity, the volume of the illegal logs (Components playing roles :civil society and forestry-related sectors)	Supporting data such as photos of log piles, etc.
Inquiry/investigation of illegal logging and related crimes	Collecting evidence on illegal logging and identifying the suspects of the illegal activities (Components playing roles: law enforcement agencies)	Collecting evidence on illegal logging and identifying the suspects of the illegal activities (Components playing roles: law enforcement agencies, particularly the police)	1. Environmental damage assessments, including guidelines from the Ministry of Environment 2. Investigative audit in forestry
		Collecting evidence of corruption that might be linked to the related forestry service and identifying corruption suspects (Components playing roles: law enforcement agencies, particularly the KPK and public prosecutors)	List of politically exposed persons

Table 5. Continued

Steps	Using only Law No. 41/1999 on Forestry	With ILEA	Means required
Identification and analysis of financial transactions	Not undertaken	<p>Documenting all financial flows conducted or received by criminal actors identified by the auditing and law enforcement instruments</p> <p>(Components playing roles: financial institutions, banks, financial service providers and/or other goods/service providers)</p>	<p>Immunity to bank secrecy</p> <p>Referral to Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering</p>
		<p>Analysing all financial flows conducted or received by criminal actors identified by the auditing and law enforcement instruments</p> <p>(Component playing role: PPATK)</p>	PPATK
		<p>Collecting evidence on possible money laundering by related forestry services and timber industries and identifying the suspects of money laundering</p> <p>(Components playing roles: law enforcement agencies, the PPATK)</p>	<p>1. PPATK</p> <p>2. Know Your Customer principle</p> <p>3. Customer due diligence</p>

continued on next page

Table 5. Continued

Steps	Using only Law No. 41/1999 on Forestry	With ILEA	Means required
Tracing and temporarily suspending suspicious financial transaction and freezing the proceeds of crime	Not undertaken	Estimating and tracing the wealth that can be defined as proceeds of crime (Components playing roles: financial institutions, law enforcement agencies, the PPATK)	Asset tracing provided for in provisions of Law No.31/1999 on Eradication of Corruption Authority to temporarily suspend suspicious financial transactions provided in Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering
Indictment	Bringing the suspect to trial based on the evidence collected (Components playing roles: law enforcement agencies)	Freezing the proceeds of crime (order from the court) Temporary suspense of suspicious financial transactions by the PPATK (Components playing roles: Law enforcement agencies)	Authority to freeze assets provided for by provisions in Law No. 8/2010
Execution	Putting the convict in jail (Components playing roles: law enforcement agencies)	Bringing the suspect to trial based on the evidence collected (Components playing roles: law enforcement agencies, either public prosecutor or the KPK) Putting the convict in jail (Components playing roles: law enforcement agencies)	Stolen asset recovery provided for in Law No.31/1999 on Eradication of Corruption (Articles 18 and 32)

BPK = Supreme Audit Commission, ILEA = Integrated Law Enforcement Approach, KPK = Corruption Eradication Commission, PPATK = Financial Transactions Reporting and Analysis Centre.

4

Corruption and money laundering

4.1 Corruption crime

According to Transparency International, corruption is ‘the abuse of entrusted power for private gain’ (2011). This definition is also used by the World Bank (2011). In Indonesian law, the definition of corruption crime is spelled out in 13 articles in Law No. 20/2001 on Amendments to Law No. 31/1999 on Eradication of Corruption. Generally speaking, the definition of corruption in Indonesia is similar to that of Transparency International and the World Bank; however, the Indonesian definition also includes the element of state loss.

A number of factors contribute to widespread corruption: weak law enforcement (low probability of being arrested, charged and tried – in addition to the presence of a ‘legal mafia’), a bureaucratic administration that provides opportunities (permitting far-reaching authority, a chain link bureaucracy, etc.), low wages, salary divide, and poor ethics. Through Law No. 7/2006 on Ratification of the 2003 United Nations Convention against Corruption, Indonesia became a state party to this convention (UNODC 2004). The principles underlying the convention include: the responsibility of government to develop effective anti-corruption policies; the need to involve civil society in applying these policies; and the importance of international collaboration in making effective the steps recommended by the convention.

This convention has four vital elements for combating corruption: effective domestic anti-corruption legal infrastructure; international legal cooperation; the active support of people in countries involved; and the political will to make government anti-corruption strategies work.

Corruption prevention efforts can be undertaken by applying good governance, the island of integrity concept, performance-based management, minimising corruption in goods and services procurement processes, integrity pacts, creating public complaint mechanisms, strengthening audit agencies and auditors, strengthening regional governments in identifying political will and capacity to undertake local reforms, public service sector reform with a policy of one-stop services, establishing codes of ethics and codes of conduct, making information accessible to the community, mobilising the public through education and awareness raising measures, and investigative journalism.

The UNCAC calls on state parties to create, or consider creating, measures against various forms of corruption. Unfortunately the present anti-corruption legal framework in Indonesia has not fully incorporated the forms of corruption included in the UNCAC. The government should immediately create an anti-corruption framework that is in line with the UNCAC.

Forms of corruption to be included are: bribing public officials; bribing foreign public officials; public officials abusing public property; influence exchange; illegal self-enrichment; bribery in the private sector; private sector property embezzlement; laundering the proceeds of crime; concealing property resulting from crimes in the convention; and obstructing the course of justice. These forms of corruption are highly relevant to forestry sector in Indonesia and we hope inclusion will improve enforcement efforts.

The convention also regulates more advanced legal procedures such as: time limits for corruption; special provisions on extraterritorial jurisdiction; indictment and punishment for those involved in crimes in the convention; steps for freezing, confiscating and destroying the proceeds of crime; protection for witnesses and informants; and mechanisms to overcome bank confidentiality law.

4.1.1 Types of corruption in the forestry sector

In the forestry sector there are at least three types of corruption: corruption relating to the issuing of permits; corruption relating to monitoring and supervision of forestry business activities; and corruption relating to the monitoring of large-scale forestry enterprises (Santoso 2009). In relation to issuing permits, according to research by Indonesian Corruption Watch, there are four kinds of corruption: transactional corruption; investment corruption; kinship corruption; and defensive corruption (ICW 2004).

1. **Transactional corruption** is undertaken by public officials who have the authority to avoid 'losses' or secure 'profits', for instance, to evade taxes and other obligations. This form of corruption can also be carried out to facilitate illegal logging and timber smuggling (as legal or political protection).
2. **Investment corruption** is undertaken to secure forest concessions. For instance, a public official wanting to secure a permit or concession when they are the decision maker over the allocation of a forest concession.
3. **Kinship corruption** usually occurs when someone in power facilitates the provision of forest resources management licences to family members or close acquaintances.
4. **Defensive corruption** is undertaken to prevent particular parties from securing profits or forcing others to bear losses, for instance by engineering requirements to disqualify others from accessing forest utilisation rights (ICW 2004).

Table 6. Examples of corruption cases in forestry-related crime

Crime	Article	Case ^a
District Head grants HTI permit in forest with high potential trees (in contravention of regulations)	Article 3 of Law No. 31/1999 on Eradication of Corruption (losses to the state)	Pelalawan District Head grants HTI permits to 15 companies.
Cutting down trees outside the RKT area and paying DR and PSDH for less wood than has been cut down	Article 2 of Law No. 31/1999 on Eradication of Corruption (losses to the state)	AL ordered PT KNDI to cut down trees outside its RKT area and manipulated DR and PSDH payments.
A police officer received more than IDR 1.065 billion from timber companies alleged to be involved in illegal logging, but the payment was reported to the KPK	Article 12 B of Law No. 31/1999 on Eradication of Corruption (gratuities)	MR, a police officer, received more than IDR 1.065 billion from PT Marindo Utama and PT Sanjaya Makmur claiming this was a debt settlement. In fact, the money was a bribe to dissuade MR from investigating illegal logging cases against the companies
Accepting a bribe for converting a protection forest	Article 12 A of Law No. 31/1999 on Eradication of Corruption (bribery)	ANN was caught red-handed accepting a bribe from the Bintan District Secretary at the Ritz Carlton Hotel on 8 April 2008. He was thought to be the liaison between Commission IV of the DPR and Bintan District as the district sought to convert protected forest.

IDR = Indonesian rupiah, KPK = Corruption Eradication Commission, RKT = annual logging plan, HTI: Industrial Plantation Forest, DR = Reforestation Fund, PSDH = Forest Resource Provision

a. Some abbreviations in case descriptions in this table are used to disguise identities.

Sources: Adapted from various cases provided by Integrated Law Enforcement Approach Project (ILEAP) CIFOR. Complete data can be accessed at: http://www.cifor.cgiar.org/ilea/_ref/home/index.htm

4.1.2 Elements of corruption related to forestry crime

The forms of corruption discussed above can generally be applied to forestry-related crime, and can be addressed by various articles of Law No. 31/1999 on Eradication of Corruption, as is outlined below. To clarify the correlations between forestry-related crime and corruption, the substance of each article is explained.

a. Article 2, paragraph (1) of Law No. 20/2001 in conjunction with Law No. 31/1999

Anyone unlawfully enriching themselves and/or other persons or a corporation in such a way as to be detrimental to the finances of the state or the economy of the state.

Anyone means an individual person or corporation (based on Article 1, number 3).

Unlawfully means without the right (*zonder eigen recht*), or in contravention of another person's rights (*tegen eens anders recht*), or without legitimate reason or in violation of the law. Prior to Constitutional Court Decision RI No. 003/PUU-IV/2006 (25 July 2006), 'unlawfully' covered acts committed unlawfully in a formal and material sense, irrespective of whether they were regulated in legislation, but if those acts were considered reprehensible due to their unacceptability to society's sense of justice and social norms, they could be punishable acts. In this provision, the words 'in such a way as' before the phrase 'to be detrimental to the finances of the state or the economy of the state' show that corruption constitutes a formal offence, where it only needs to meet the definition of the stipulated acts and does not require proof that actual harm was done (based on the elucidation of Article 2). However, Constitutional Court Decision RI No. 003/PUU-IV/2006 (25 July 2006), states that the elucidation of Article 2, paragraph (1) contravenes the 1945 Constitution and is not legally binding, so the interpretation of this article depends very much on the judge's assessment. In practice, the Constitutional Court decision is not used as an absolute guideline by the Constitutional Court or its subordinates. So, in other words, the Constitutional Court decision does not immediately cancel the definition of corruption as being 'unlawful' in a material sense.

Enriching themselves and/or other persons or a corporation constitutes an attempt to garner wealth beyond one's earnings or become wealthier from an illegitimate source (Sukardi 2009: 74). Another definition of enrichment is an act carried out in order to become wealthier, whereas according to Tangerang District Court Decision No. 18/Pid/B-1992/PN/TNG (13 May 1992), enrichment is making a person who is not rich wealthy, or making a rich person richer (Wiyono 2006: 31).

Finances of the state means state assets in any form, separable or inseparable, including parts of state assets and rights and/or obligations that arise due to the control, management and responsibility of:

- officials in state institutions;
- a state-owned enterprise (Badan Usaha Milik Negara/Daerah, or BUMN/BUMD), foundation, legal entity or company that encloses state capital or third-party capital based on an agreement with the state.

Economy of the state means economic life ordered in a common effort, based on the principle of kinship, or an independent social effort founded on government policy in order to provide benefits, welfare and prosperity to the people (Sukardi 2009: 74–75).

b. Article 3 of Law No. 20/2001 in conjunction with Law No. 31/1999

Anyone enriching himself and/or other persons or a corporation abusing the authority, the opportunity, or other means at their disposal due to rank or position in such a way that is detrimental to the finances of the state or the economy of the state.

Anyone means an individual person or corporation (based on Article 1, number 3).

Enriching themselves and/or other persons or a corporation constitutes an attempt to garner wealth beyond one's earnings or become wealthier from an illegitimate source (Sukardi 2009: 74). Another definition of 'enriching' is getting rich, i.e. earning more than one spends; here it is apparent that 'enriching themselves and/or other persons or a corporation' constitutes the aim of a person committing an act of corruption (Wiyono 2006: 38).

Abusing the authority, the opportunity or other means at their disposal refers to Article 52 of the Criminal Code in which a civil servant violates a special official duty or employs the power, opportunity or means conferred upon them by their office, or employs ways and means or apparatus afforded by their office, and refers to Article 1, number 2, where a 'civil servant' is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Civil service positions can be seen in the elucidation for Article 17, paragraph (1) of Law No. 43/1999, which states that a rank is a position that shows the duty, responsibility, authority and rights of a civil servant in the organisation of the state. Another definition of authority, according to Article 53, paragraph (1), letter (b) of Law No. 5/1986 is a series of responsibilities, which apply to a rank or position of corruption offenders, to act as required in order that they can carry out their duties properly. The 'opportunity' in this article is a result of a weakness in the provision itself related to the rank or position of the perpetrator of corruption. What is meant by 'means' in this article is the work methods relating to the rank or position of the perpetrator of corruption.

Application of the word 'abusing' is broader in nature, as it constitutes a common term and is not detailed further in the elucidation of the article (Sukardi 2009: 77–78).

Due to rank or position indicates that the perpetrator is a civil servant in a particular position. Therefore, the act committed by the suspect must have a connection to their rank or position (Sukardi 2009: 78).

Finances of the state means state assets in any form, separable or inseparable, including parts of state assets and rights and/or obligations that arise due to the control, management and responsibility of:

- officials in state institutions;
- a BUMN/BUMD, foundation, legal entity or company that encloses state capital or third-party capital based on an agreement with the state.

Economy of the state means economic life ordered in a common effort, based on the principle of kinship, or an independent social effort founded on government policy in order to provide benefits, welfare and prosperity to the people (Sukardi 2009: 74–75).

c. Article 5, paragraph (1), letter (a) of Law No. 20/2001 in conjunction with Law No. 31/1999

Anyone rendering or promising something to a civil servant or state official so that person would perform, or not perform, an action in their position in contravention of their obligations.

Anyone means an individual person or corporation (based on Article 1, number 3).

Rendering or promising refers to the definition of ‘gratuities’ in the elucidation of Article 12 B, which means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means. The definition of ‘promise’ is to give hope of providing gratuities at a certain time and with certain conditions (Sukardi 2009: 80). Supreme Court Decision RI No. 145 K/Kr/1955 (22 June 1956) states that ‘rendering’ does not mean it has to be accepted, and based on Supreme Court Decision No. 39 K/Kr/1963 (3 August 1963), rendering does not necessarily have to take place when the civil servant or state official is on duty, but can also take place at their home.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions, including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

With the aim of is to carry out an act knowingly, willingly and in full awareness of the consequences. In criminal law ‘further aim’ (*bijkomend oogmerk*) does not need to be reached at the time a person has committed a crime (Lamintang 1984). This accords with Supreme Court (Mahkamah Agung Republik Indonesia – MARI) Decision No. 39 K/Kr/1963 (3 August 1963).

So that a civil servant or state official performs or does not perform an action in their position means through providing or promising something in order that the civil servant or state official does something in the interests of the provider or another person making the promise, whether it has been done or not, but it was found out first (Sukardi 2009: 87).

In contravention of their obligations means the act the provider wants or does not want contravenes the civil servant or state official’s obligations to carry out their duties (Sukardi 2009: 88).

d. Article 5, paragraph (1), letter (b) of Law No. 20/2001 in conjunction with Law No. 31/1999

Rendering or promising something to the civil servants or state officials in relation to something in contravention of their obligations, done or not done in their position.

Rendering or promising refers to the definition of ‘gratuities’ in the elucidation of Article 12 B, which means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means. The definition of ‘promise’ is to give hope of providing gratuities at a certain time and with certain conditions.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions, including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

With the aim of is to carry out an act knowingly, willingly and in full awareness of the consequences.

In contravention of their obligations, done or not done in their position means that a civil servant or state official has carried out the act in accordance with the provider's wishes, so the gift is rendered in return for the act (Sukardi 2009: 89).

e. Article 5, paragraph (2) of Law No. 20/2001 in conjunction with Law No. 31/1999

Civil servants or state officials accept gifts or promises.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Accepts a gift or promise refers to the definition of 'gratuities' in the elucidation of Article 12 B, which means 'payment' in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. 'Gratuities' includes that received at home or overseas either by, or without using electronic means. The definition of 'promise' is to give hope of providing gratuities at a certain time and with certain conditions.

f. Article 8 of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or someone other than a civil servant assigned permanently or temporarily to a position knowingly embezzles money or securities kept due to their position, or who allows money or securities to be taken or embezzled by another person or assists in such acts.

A civil servant, which includes state officials, is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Someone other than a civil servant is an individual or corporation.

Assigned permanently or temporarily to a position means through an official assignment letter or other form of explanatory letter, to undertake a particular position on either a permanent or non-permanent basis.

Knowingly means committing an act with knowledge, willingness and in full awareness of the consequences.

Embezzles money or securities kept due to their position, or who allows money or securities to be taken or embezzled by another person means, as stipulated in Article 372 of the Criminal Code on embezzlement, knowingly and unlawfully possessing anything, in whole or in part, belongs to another person, but is under their control for reasons other than crime.

Assists in such acts: as stipulated in Article 56 of the Criminal Code accomplices to a crime shall be punished if:

1. they knowingly aid in the commission of the crime;
2. they knowingly provide opportunity, means or information for the commission of the crime.

g. Article 9 of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or someone other than a civil servant assigned permanently or temporarily to a position knowingly falsifies books or registers specifically for an administrative audit.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Assigned permanently or temporarily to a position means through an official assignment letter or other form of explanatory letter, to undertake a particular position on either a permanent or non-permanent basis.

Knowingly means committing an act with knowledge, willingness and in full awareness of the consequences.

Falsifies books or registers specifically for an administrative audit means makes books or registers appear to be original. According to a Netherlands Supreme Court decision of 15 June 1931, a paper is considered false if it wrongly gives the impression that it has been made by the person affixing their signature at the bottom of it (Sukardi 2009).

h. Article 10, letter (a) of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or someone other than a civil servant assigned permanently or temporarily to a position knowingly embezzles, destroys, damages, or renders unusable goods, official documents, letters or registers used to convince or prove before an authorised official under their control because of their position.

A civil servant or state official is:

1. civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Someone other than a civil servant is an individual or corporation.

Assigned permanently or temporarily to a position means through an official assignment letter or other form of explanatory letter, to undertake a particular position on either a permanent or non-permanent basis.

Knowingly means committing an act with knowledge, willingness and in full awareness of the consequences.

Embezzles, destroys, damages, or renders unusable goods, official documents, letters or registers used to convince or prove before an authorised official under their control because of their position means negates the goods, official documents, letters, or registers, and their strength as proof before an authorised official.

i. Article 10, letter (b) of Law No. 20/2001 in conjunction with Law No. 31/1999

Allows another person to embezzle, destroy, damage or render unusable such goods, official documents, letters or registers.

Allows another person: As stipulated in Article 56 of the Criminal Code this means knowingly aids in the commission of the crime; or knowingly provides opportunity, means or information for the commission of the crime.

To embezzle, destroy, damage or render unusable such goods, official documents, letters or registers means knowingly causing the goods, official documents, letters or registers to be rendered unusable for their proper purpose.

j. Article 10, letter (c) of Law No. 20/2001 in conjunction with Law No. 31/1999

Helps another person to embezzle, destroy, damage or render unusable such goods, official documents, letters or registers.

Helps another person: As stipulated in Article 56 of the Criminal Code accomplices to a crime shall be punished if:

1. they knowingly aid in the commission of the crime;
2. they knowingly provide opportunity, means or information for the commission of the crime.

To embezzle, destroy, damage or render unusable such goods, official documents, letters or registers means knowingly causing the goods, official documents, letters or registers to be rendered unusable for their proper purpose.

k. Article 11 of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or state official who accepts a gift or promise despite knowing or having reason to suspect that the gift or promise was rendered because of the power or authority afforded by their position, or, in the provider's opinion, was rendered because of the power or authority afforded by their position.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Who accepts a gift or promise: A Netherlands Supreme Court verdict dated 25 April 1916 states that a gift means something of value, whereas a promise is something offered and will be fulfilled by the one making the offer (Sukardi 2009).

Accepts a gift or promise refers to the definition of gratuities in the elucidation of Article 12 B, which means 'payment' in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. 'Gratuities' includes that received at home or overseas either by, or without using electronic means. The definition of 'promise' is to give hope of providing gratuities at a certain time and with certain conditions.

Despite knowing or having reason to suspect that the gift or promise was rendered because of the power or authority afforded by their position, or, in the provider's opinion, was rendered because of the power or authority afforded by their position: A relationship between the provision and the authority of the person accepting it must be visible, whether or not there is a hope or possibility of reciprocity. From this stipulation, it is clear that the misdemeanour of the offender in Article 11 must be *dolus* or *culpa*, so Article 11 can be considered *pro parte dolus pro parte culpa* in nature (Sukardi 2009).⁵

I. Article 12, letter (a) of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or state official who accepts a gift or promise despite knowing or having reason to suspect that the gift or promise was rendered with the aim of persuading them to perform, or not perform an action in their position in contravention of their obligations.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a 'state official' as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

⁵ A crime that is deliberate and/or negligent.

Who accepts a gift or promise: A Netherlands Supreme Court verdict dated 25 April 1916 states that a gift means something of value, whereas a promise is something offered and will be fulfilled by the one making the offer (Sukardi 2009).

Accepts a gift or promise refers to the definition of gratuities in the elucidation of Article 12 B, which means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means. The definition of ‘promise’ is to give hope of providing gratuities at a certain time and with certain conditions.

Despite knowing or having reason to suspect that the gift or promise was rendered with the aim of persuading them to perform, or not perform an action in their position in contravention of their obligations: A civil servant or state official performs or does not perform an action in their position having been provided or promised something in order that the civil servant or state official does something in the interests of the provider or another person making the promise (Sukardi 2009: 87).

m. Article 12, letter (b) of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or state official who accepts a gift or promise despite knowing or having reason to suspect that the gift or promise was rendered as a result of, or caused by them performing, or not performing an action in their position in contravention of their obligations.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Who accepts a gift or promise: A Netherlands Supreme Court verdict dated 25 April 1916 states that a gift means something of value, whereas a promise is something offered and will be fulfilled by the one making the offer (Sukardi 2009).

Accepts a gift or promise refers to the definition of gratuities in the elucidation

of Article 12 B, which means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means. The definition of ‘promise’ is to give hope of providing gratuities at a certain time and with certain conditions.

Despite knowing or having reason to suspect that the gift or promise was rendered as a result of, or caused by them performing, or not performing an action in their position in contravention of their obligations: A civil servant or state official performs or does not perform an action in their position having been provided something in order that the civil servant or state official does something in the interests of the provider or another person making the promise.

n. Article 12, letter (e) of Law No. 20/2001 in conjunction with Law No. 31/1999

A civil servant or state official who, with the aim of enriching themselves or another person unlawfully or by abusing their position, forces someone to render something, pay, or accept payment with a deduction, or do something for them.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

Enriching themselves or another person: Enriching themselves and/or other persons or a corporation constitutes an attempt to garner wealth beyond one’s earnings or become wealthier from an illegitimate source (Sukardi 2009: 74).

Unlawfully means without the right (*zonder eigen recht*) or in contravention of another person’s rights (*tegen eens anders recht*), or without legitimate reason, or in violation of the law.

Abusing their position means doing something that contravenes the obligations of their post.

Forces someone to render something, pay, or accept payment with a deduction, or do something for them means they make or order another person by violence or threat to do something against their will.

o. Article 12 B, paragraph (1) of Law No. 20/2001 in conjunction with Law No. 31/1999

... gratuities to a civil servant or state official is considered to be bribery, if it relates to their position and contravenes their responsibilities or duties.

Gratuities means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means (based on the elucidation of Article 12 B).

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

... is considered to be bribery, if it relates to their position and contravenes their responsibilities or duties means doing something as a result of the gratuities that contravenes the obligations of their post.

p. Article 13 of Law No. 20/2001 in conjunction with Law No. 31/1999

Anyone who renders a gift or promise to a civil servant in consideration of the power or authority afforded by their position, or deemed by the provider to be afforded by their position.

Anyone means an individual person or corporation (based on Article 1, number 3).

Who renders a gift or promise: A Hoge Raad verdict dated 25 April 1916 states that a gift means something of value, whereas a promise is something offered and will be fulfilled by the one making the offer (Sukardi 2009).

Renders a gift or promise refers to the definition of gratuities in the elucidation of Article 12 B, which means ‘payment’ in a broad sense, including money, goods, discounts, recompense, interest-free loans, travel tickets, lodging, tours, free medical treatment and other facilities. ‘Gratuities’ includes that received at home or overseas either by, or without using electronic means. The definition of ‘promise’ is to give hope of providing gratuities at a certain time and with certain conditions.

A civil servant or state official is:

1. a civil servant as stipulated in laws on personnel;
2. a civil servant as stipulated in the Criminal Code;
3. someone receiving a salary or wage from state or regional finances;
4. someone receiving a salary or wage from a corporation which receives assistance from state or regional finances; or
5. someone receiving a salary or wage from another corporation that utilises capital or facilities from the state or society.

Whereas, a ‘state official’ as stipulated in Article 2 of Law No. 28/1999 covers state officials in the highest state institutions including ministers, governors, judges, state officials based on legislation, and state officials that have a strategic function.

In consideration of the power or authority afforded by their position, or deemed by the provider to be afforded by their position means rendering a gift or promising something so that a civil servant or state official does something in the interests of the provider or another person making the promise. The offender in Article 13 does not necessarily have to have an aim, it is sufficient that they know clearly what power or authority is afforded to the civil servant or state official.

q. Article 15 of Law No. 20/2001 in conjunction with Law No. 31/1999

Anyone who is attempting, or complicit in, or conspires to commit an act of corruption.

Anyone is an individual person or corporation (based on Article 1, number 3).

Attempting: As stipulated in Article 53 of the Criminal Code, this means the intention of the offender has revealed itself by the commencement of the act and the act is not completed only due to circumstances independent of their will.

Is complicit in: As stipulated in Article 56 of the Criminal Code, accomplices to a crime shall be punished if:

1. they knowingly aid in the commission of the crime;
2. they knowingly provide opportunity, means or information for the commission of the crime.

Conspires: As stipulated in Article 88 of the Criminal Code, conspiracy exists if two or more persons agree to commit a crime.

For a clearer look at the application of these articles in corruption related to forestry crime, see Chapter 5.

4.2 Money laundering crime

Money laundering involves disguising assets (income or wealth) so they can be used without being detected as the proceeds of illegal activities. Through money laundering, income or wealth originating from illegal activities is transformed into financial assets that appear to have originated from a legitimate source (Husein 2007: 4).

Generally, there are three processes involved in money laundering, which are carried out through banking institutions, real-estate businesses and money changers (Husein 2007: 5). These money laundering mechanisms comprise (BPK 2008):

1. **Placement** is collecting and placing the proceeds of crime in a bank or a place deemed to be safe for changing the form of the money to make it unidentifiable. Usually large sums of cash are divided into smaller amounts and deposited in various banks in several places.
2. **Layering** is an attempt to make tracing the origin of proceeds, their original characteristics and the name of their owner more difficult to determine. It involves banks or other institutions in countries where bank confidentiality makes tracing money more problematic. Layering can take the form of transferring money to other countries in foreign currencies, buying property, buying shares on a stock exchange, using money deposited in bank A to borrow money from bank B, etc.
3. **Integration** involves the collection and recombination of proceeds that have already passed through the layering stage to make them appear legitimate. At this stage proceeds are laundered, difficult to recognise as the proceeds of crime, and reappear as apparently legal assets or investments.

Below, a number of methods commonly used in money laundering are shown by type (BPK 2008):

a. Basic methods

1. The third-person method uses another person to carry out a particular act desired by the money launderer. Characteristics are: the third person is almost always real and not a false name used on documents; is usually aware of being used; is a trusted person who can be controlled; and has close relations with the offender allowing communication at any time.
2. The simple cover-business method is a continuation of the third-person modus, where that person is ordered to set up a business using assets that constitute criminal proceeds.
3. The simple banking method can constitute a continuation of i and ii above, but can also stand alone. Here cash is converted into cashiers' cheques, travellers' cheques, or other forms of deposits that can be quickly transferred and reused in asset purchases. This method leaves many traces in bank statements, cheques and other data leading to the customer, as well as traces of funds moving in or out, in transactions to individuals, or payments.
4. The banking and business combination method is conducted by a third party who controls a company, by depositing the proceeds of crime in a bank to exchange with cheques which are then used to buy assets or set up other businesses.

b. Economic methods

1. 'Smurfing' is where offenders use lots of associates (or 'smurfs') to break down large sums of money into smaller amounts below those deemed suspicious by banks, which are then used to purchase cashiers' cheques or travellers' cheques. Another method is to deposit money in smurfs' accounts and then withdraw it from another branch of the same bank in another city, or deposit it in the launderer's accounts in other places. These accounts are not in the launderer's own name, but could point to a company or account where the owner's name is concealed.
2. The skeleton company method is where the company does not carry out any activities at all, but is set up so that its accounts can be used to transfer money. Skeleton companies can be used for temporary placement before funds are transferred or reused. Skeleton companies can be interconnected; for instance, shares in company A might be owned by company B in another region or country, while some company B shares are owned by company A, company B, company C, and/or company D in another region or country.
3. The refinancing method is a variation of the banking and business combination method. For example, a money launderer surrenders the proceeds of a crime to a third party, who deposits some of those funds in bank B and some in a deposit account in bank C. The third party also borrows money from bank D, which he pays off using interest from the deposit account in bank C. Though money is lost in this process, as interest must be paid, the illegal money becomes a clean loan with its documentation in order.
4. 'Under invoicing' is a method where proceeds of crime are used to buy goods at prices higher than those stated on the invoice.
5. 'Over invoicing' is the opposite of under invoicing. Over invoicing is where no goods are actually purchased, but receipts are used as proof of purchase (fictional sales) as the seller and buyer are laundering money.
6. The repurchasing method is where an offender uses funds that have already been laundered to purchase something they already own.

c. Information technology methods

1. The E-business method is almost the same as the 'multi-level marketing' method, but uses the Internet.
2. The scanner method is a crime of money laundering with the predicate crimes of embezzlement and forgery of financial transaction documents.

d. Hi-tech method

This is a form of schematic organised crime where the key players are unknown to each other. Amounts involved are relatively small, but gathered together they cause huge losses. Known as the 'cleaning' method, this usually involves infiltrating a bank database.

Money laundering is becoming increasingly complex, crossing jurisdictional borders, using varied methods, using non-financial institutions, and reaching into other sectors. To anticipate these developments, the Financial Action Task Force (FATF) on Money

Laundrying has issued a set of international standards for preventing and eradicating money laundering and the financing of terrorism. Known as 'Revised 40+9', this is made up of 40 revised recommendations and 9 special recommendations, such as expansion of the Reporting Parties, which include jewellery and gold traders and motor vehicle traders (Elucidation of Law No. 8/2010).

Regional and international cooperation, through bilateral or multilateral forums, is essential in preventing and eradicating money laundering, so as to minimise the transfer of large value assets (Elucidation of Law No. 8/2010).

There have been positive developments in the handling of money laundering crime in Indonesia, which began with the ratification of Law No. 15/2002 on Money Laundering Crime, as amended by Law No. 25/2003. This is reflected in how anti-money laundering implementing agencies, such as financial service providers, are implementing their reporting obligations, financial intelligence unit (PPATK) are analysing suspicious transaction reports, and law enforcement agencies re following through on the PPATK report, investigating and prosecuting alleged perpetrators (Elucidation of Law No. 8/2010).

Yet further improvements are still needed. Existing laws and regulations on money laundering still allow different interpretations. Sanctions on perpetrators are often insufficient. Efforts to shift the burden of proof have been minimal. Limited access to information, narrow scope of reporting parties and the types of reports, and unclear duties and authorities of law enforcement agencies are some of the weaknesses that still need to be addressed (Elucidation of Law No. 8/2010). In order to address these weaknesses and comply with the international standards, Law No. 15/2002 on Money Laundering Crime needs to be replaced, as amended by Law No. 25/2003 (Elucidation of Law No. 8/2010).

The revised law requires:

- Redefinition of the meaning of issues related to money laundering crime;
- Completion of criminalisation of money laundering crime;
- Regulation of crime sanctioning and administrative sanctioning;
- Implementation of the know your customer principle;
- Expansion of reporting parties;
- Stipulation of reporting types by goods and/or service providers;
- Arrangement of compliance supervision;
- Granting of authority to reporting parties to suspend transactions;
- Expansion the authority of the Directorate General of Customs and Excise's on carrying cash and other payment instruments into or out of the customs area;
- Granting authority to the predicate crime investigator to investigate suspected money laundering crime;
- Expansion of the number of agencies which have the authority to accept PPATK analysis;

- Reorganisation of the PPATK;
- Expanding the PPATK's authority, including the authority to temporarily suspend a transaction;
- Reorganisation of the investigative process on money laundering;
- Regulation of confiscated proceeds of crime (Elucidation of Law No. 8/2010).

The definition of money laundering in Law No. 25/2003 is 'an act of placing, transferring, disbursing, spending, donating, contributing, entrusting, taking out of the country, exchanging or other such acts related to assets known or reasonably suspected by a person to constitute proceeds of crime, for the purpose of hiding or disguising the origins of assets as if such assets shall be legitimate' (Article 1, number 1 of Law No. 25/2003 on Amendments to Law No. 15/2002 on Money Laundering).

In Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering, the definitions of money laundering is broadened to include money laundering of proceeds from all criminal activities as specified in its Article 2.

4.2.1 Money laundering crime in the forestry sector

According to Article 2, paragraph (1) of Law No. 8/2010, the proceeds of crime are assets derived from:

- a. corruption;
- b. bribery;
- c. narcotics;
- d. psychotropics;
- e. smuggling of workers;
- f. smuggling of immigrants;
- g. banking offences;
- h. capital market offences;
- i. insurance offences;
- j. customs;
- k. excise;
- l. human trafficking;
- m. illegal arms dealing;
- n. terrorism;
- o. kidnapping;
- p. theft;
- q. embezzlement;
- r. fraud;
- s. counterfeiting of currencies;
- t. gambling;

- u. prostitution;
- v. taxation offences;
- w. forestry offences;
- x. environmental offences;
- y. maritime offences; or other offences for which the penalty that may be imposed is a sentence of 4 (four) years imprisonment or more, committed within, or outside the Republic of Indonesia where the offence is deemed a crime under Indonesian law;
- z. the crime as mentioned in Article 2 above, is a predicate crime, that is, a crime that leads to money laundering.⁶

Based on Law No. 8/2010, money laundering can be grouped into active and passive categories (Husein 2010). Active money laundering is when a person knowingly launders money, as stipulated in Article 3 and Article 4, as follows:

Article 3

‘Any person who places, transfers, switches, spends, pays, donates, deposits, takes abroad, changes the form, exchanges with currencies or securities, or other acts related to the assets which are known to him or can be reasonably suspected to be the proceeds of crime as intended by Article 2, paragraph (1) with the purpose of hiding or disguising the origins of the assets, because of the crime of money laundering, shall be subjected to a criminal penalty of a maximum imprisonment of 20 (twenty) years and a minimum fine of IDR 10 000 000 000 (ten billion) rupiah.’

Article 4

‘Any person who hides or disguises the origin, source, location, allocation, rights switching, or the real ownership of the assets known or can be reasonably suspected by him to constitute the proceeds of crime as intended by Article 2, paragraph (1) because of the crime of money laundering, shall be subject to a criminal penalty of a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 5 000 000 000 (five billion) rupiah.’

Based on Article 1, number 13 of Law No. 8/2010, ‘assets’ are all moveable and immovable objects, either tangible or intangible which have been acquired directly or indirectly.

The objective elements of Article 3 are the acts of placing, transferring, disbursing, spending, donating, contributing, entrusting, taking out of the country, exchanging or other such acts related to assets known or reasonably suspected by a person to constitute proceeds of crime. While the subjective elements are, knowing or reasonably suspecting the assets to constitute the proceeds of crime.

⁶ Predicate crimes are crimes that trigger or are the source of the money being laundered (definition taken from PPATK 2010).

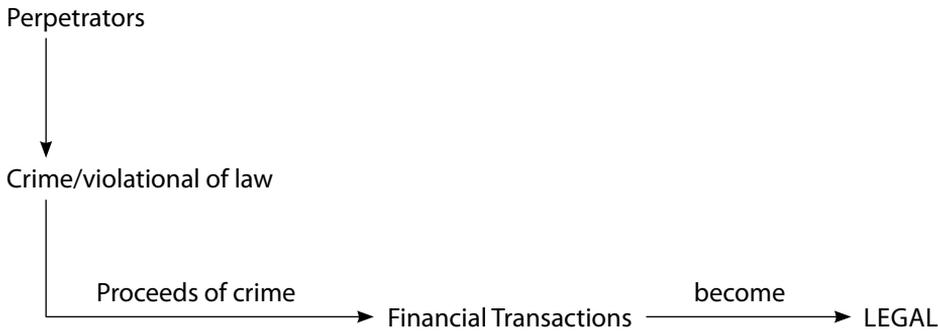


Figure 3. The fundamentals of money laundering

Source: BPK (2008)

In passive crime a person receives or controls the proceeds of money laundering. This is based on Article 5 of Law No. 8/2010, and relates to any person who receives or has power over:

- a. placements;
- b. transfers;
- c. disbursements;
- d. grants;
- e. donations;
- f. deposits;
- g. exchanges;
- h. used assets.

The objective elements of Article 5 are the acts of placement, transfer, disbursement, grant, donation, deposit, exchange or used assets known or reasonably suspected to constitute the proceeds of crime. The subjective elements, meanwhile, are knowing, or reasonably suspecting that the assets obtained constitute the proceeds of crime.

To cover a wider range of crimes, Article 6 also addresses money laundering crime conducted by corporations. Article 10 stipulates that any person who lives inside or outside the jurisdiction of the Republic of Indonesia that has been involved in trial, assistance, or conspiracy in conducting the crime of money laundering shall be subject to criminal penalty.

The articles above can be used for handling forestry-related crime involving money laundering, as is the case with the following tactics (Husein 2007):

- a. To expedite their business activities, perpetrators of illegal logging are thought to routinely deposit large bribes in officials’ and law enforcers’ bank accounts.
- b. In addition to local businesspeople, some of those involved in illegal logging are from Malaysia, who use the identities of Indonesians to open bank accounts, become company managers, and, subsequently, control those accounts and companies.

Table 7. Examples of money laundering cases in forestry-related crime

Crime	Articles in Law No. 8/2010
Depositing the proceeds of illegal logging transactions in a bank account	Article 3
Purchasing insurance policies with the proceeds of illegal logging	Article 3
Transferring the proceeds of illegal logging deposited with a financial services provider to a currency exchange, then converting them to foreign currency or vice-versa	Article 3
Moving the proceeds of illegal logging to other accounts with the same bank, in one's own or another name	Article 3, paragraph (1), letter (b)
Investing the proceeds of illegal logging in oil palm businesses (A case example is a forestry businessman in Northern Sumatra who invested the suspected proceeds of crime in an oil palm business)	Article 3
Investing the proceeds of illegal logging in resort or hotel businesses	Article 3

Source: ILEA Project

Forest-related crime case studies⁷

Other methods used in laundering the proceeds of forestry crime are illustrated in Figure 4.

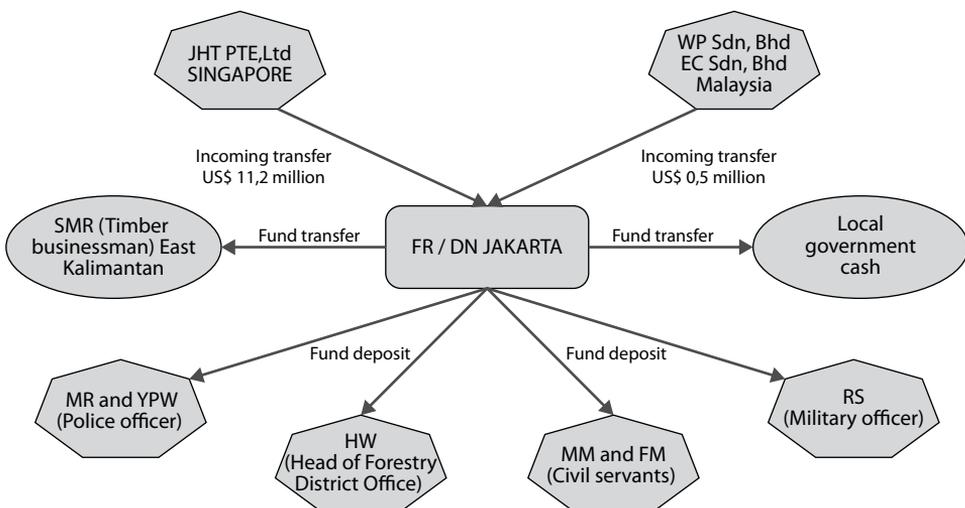


Figure 4. Laundering the proceeds of forestry crime

⁷ Some abbreviations that are used in this section are meant to disguise identities.

During 2001–2004, DN and WST (representing FR) were suspected of exporting processed wood to Malaysia and Singapore through PT SM Jakarta. This was detected from a transfer of US \$11.2 million from JHT PTE Ltd (Singapore) and US \$0.5 million from WP Sdn Bhd, EC Sdn Bhd, Ti Co and ST Co (Malaysia). Most of the money was transferred by DN and WST to SMR, a timber businessperson in Samarinda, regional government officials in Papua and the Papua Government Treasury.

In addition, DN and WST also withdrew US \$128 400 (IDR 1146 billion) and immediately deposited it in accounts belonging to police officers (MR and YPW), civil servants (MM and FM), a military officer (RS) and a forestry office official (HW). MR, who at the time was head of the criminal investigation unit, took no action against a company belonging to FR despite the company being suspected of illegal logging (PPATK 2007).

Below is another example that describes the flow of money from illegal logging. Based on Minister of Forestry and Estate Crops Decree No. 805/Kpts-IV/1999, a permit holding company secured a Forest Timber Product Utilisation Business (UPHHK) concession for approximately 58 000 ha in North Sumatra. The permit was granted

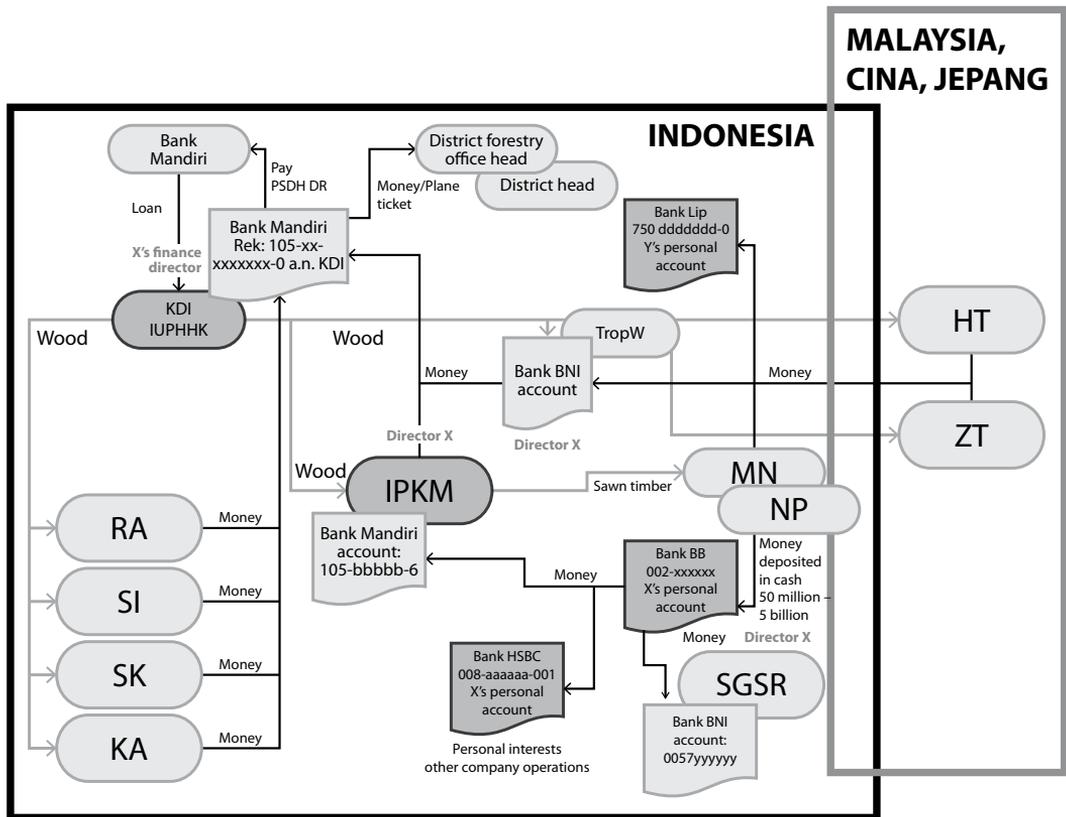


Figure 5. An example of the flow of money from illegal logging

Source: Eriantono and Setiono (unpublished)

for 35 years, from 1994 to 2029. The permit holding company's transaction profile is outlined in Figure 5 below:

The chronology for this case is as follows:

- KDI carried out logging activities based on a fictive LHC. KDI's planning division head made LHC recapitulation reports not based on field data for 2000–2002 under orders from the planning and production director.
- The planning division head then sent the recapitulation reports to the branch manager and the camp manager to be used as the basis for the cruising officer to prepare LHCs. The cruising officer then prepared and signed the LHCs without undertaking any timber cruising activities.
- The LHCs were then sent to the representative manager as material for annual work plan (RKT) proposals.
- KDI continued to log without implementing the Indonesian selective cutting and planting silviculture system (TPTI).
- KDI's IUPHHK RKT book was prepared by the planning and production director and signed by KDI's president director to acquire authorisation by the head of the North Sumatra Provincial Forestry Office and the district head for allocation of TPTI budget funds, but KDI failed to implement the TPTI silviculture system.
- Not adhering to the TPTI system meant that trees were cut down for forest products in the 2000 to 2005 period in violation of prevailing legislation, and some were cut down outside the annual work plan felling block, thus leading to forest degradation.
- According to experts from the Ministry for the Environment this led to damages of approximately IDR 200 trillion: IDR 95 trillion in ecological damage, IDR 47 trillion in economic losses and IDR 58 trillion for ecological restoration.
- KDI cut down trees outside the annual work plan (RKT) area. The RKT document had already established planned exploitation in the felling block and the budget associated with logging, but the IUPHHK holder, KDI, cut down trees illegally outside the RKT felling block.
- In the 2000 period, the permit holder cut down approximately 12,000 trees or around 30,000 m³ of *meranti*, kapok, *keruing*, *damar*, *resak*, *jelutung* and mixed non-dipterocarp species with chainsaws outside the RKT at coordinates 00° xx' xx,4" North and yy° yy' yy,4" East.
- Then, in 2005 approximately 12,000 trees or around 28,000 m³ of *meranti*, kapok, *keruing*, *damar*, *resak*, *jelutung* and mixed non-dipterocarp species were cut down at coordinates 00° zz' zz, 4" North and ww° ww' ww, 2" East.
- KDI transported timber with illegitimate Legal Forest Product Transportation Permits.
- The permit holder transported logs using pontoons pulled by tug boats using illegitimate Legal Forest Product Transportation Permits (SKSHHs) copied from the contents of fictive LHCs.

The fictive SKSHH documents were inconsistent with the physical condition of the logs in terms of species, number and volume. Because he was paid off, the P2SKSHH officer conducted no physical inspections of the logs in the log yard and immediately issued SKSHHs in accordance with KDI's request. Similarly, the head of the production management sub-office in the district forestry office signed and approved blank SKSHHs, which had already been signed by the P2 SKSHH.

- From 2000 to 2005, KDI paid Forest Resource Rent Provision (PSDH) and Reforestation Funds (DR) not on the logs he felled, but based on fictive LHPs. PSDH payments were transferred to the Pure PSDH Treasury account in the Central Forestry Building branch of Bank Mandiri (account number: 1020004204001), whereas DR payments were transferred to the Pure DR Treasury account in the Central Forestry Building branch of Bank Mandiri (account number: 1050001480700).
- KDI transferred the funds secured from log sales between banks. Most of the logs produced from KDI's IUPHHK were marketed or sold to a sawmill (IPHHK) belonging to M; KDI's mother company. In addition, some logs were sold to Malaysia, China, Japan and India, whereas domestic sales were to RA, SI, SK, KA and TR. Both international and domestic sales used log purchasing contracts with potential log buyers signed by X; KDI's finance director.

Payments for overseas sales used letters of credit (LCs), which were then cashed in Bank Mandiri, and the funds were immediately transferred to account No. 105–xx–xxxxxxx–0 belonging to KDI. Domestic sales, meanwhile, were paid either by cash or credit. Money from KDI's IUPHHK log sales to M's IPK were transferred by M to KDI's Bank Mandiri account after passing through X's personal accounts in Bank BB and Bank HSBC.

Transactions involving account No. 105–xx–xxxxxxx–0 belonging to KDI are detailed in Figure 6.

KDI's finance director did not know whether the funds used from Bank Mandiri account no. 105–xx–xxxxxxx–0 belonging to KDI, were in accordance with KDI's company statutes, but each time cash was drawn from the account, KDI's finance director had to sign the credit transfer or cheque being cashed.

- M's IPHHK transferred funds from processed timber sales through his personal account. The logs M's IPHHK bought from KDI's IUPHHK were then processed and sold to MN. The proceeds of processed timber sales to MN were deposited in personal account number 002.xxxxxx belonging to X in bank BB and account number 750ddddd-0 belonging to Y (X's sibling) in Bank Lip. Transaction statements show that money from MN entered the accounts from M's IPHHK timber sales to MN. The same statements show money going out to X's personal bank account (number 08-aaaaa-001) in Bank HSBC.
- Once X had received money from timber sales in his personal account in Bank BB No. 002.xxxxxx, the funds were transferred to SGSR account No. 0057yyyyyy

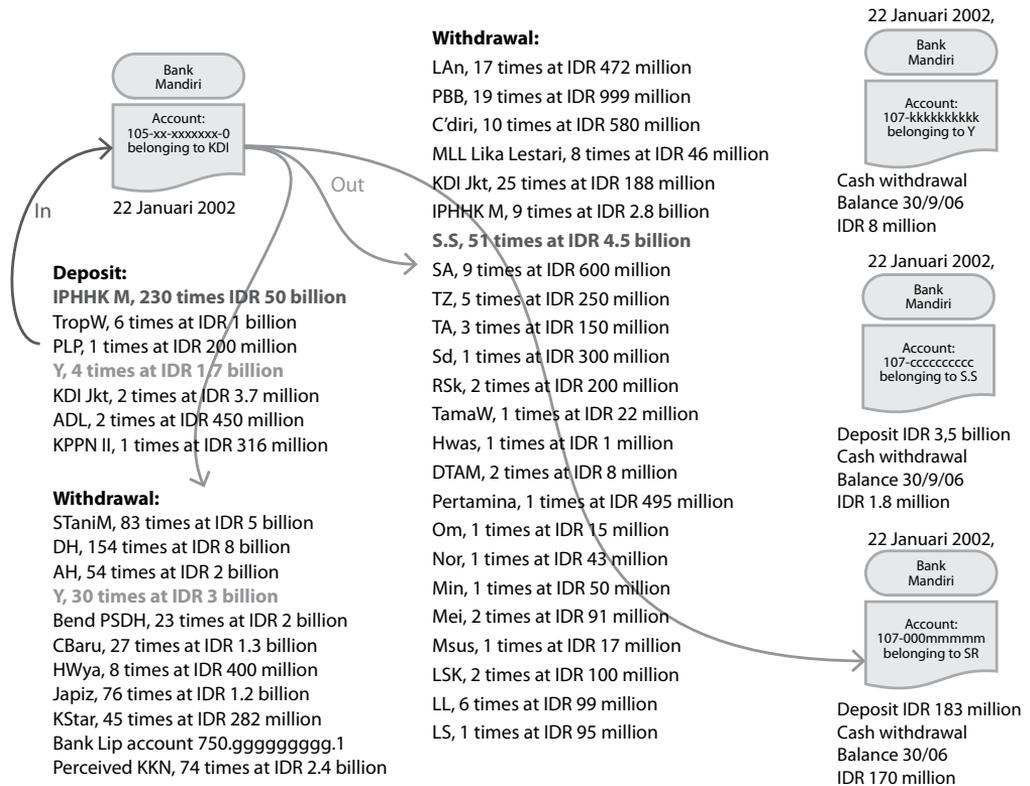


Figure 6. KDI account statements

Source: Eriantono and Setiono (unpublished)

Bank BNI, belonging to X and to account No. 105.bbbbb-6, belonging to M's IPHHK.

- The proceeds of logs sold from KDI's IUPHHK to M's IPHHK and processed into plywood, and subsequently sold to MN and NP, which were held in X's Bank BB account No. 002.xxxxxx were used for personal interests that had nothing to do with KDI activities.
- KDI secured a loan from Bank Mandiri (formerly BDN) for KDI working capital, using KDI's heavy machinery as collateral.
- KDI gave gifts of flight tickets to the head of the district forestry office and the district head.
- X; KDI's finance director and M's director gave flight tickets as gifts to the head of the district forestry office and the district head for forest timber product business processes in KDI's IUPHHK and M's IPHHK.

The above case is only one of many instances of money laundering in the forestry sector. Corruption and money laundering can occur at any time: from the issue of permits to the sale of timber. If we use anti-corruption and anti-money laundering legislation these crimes can be tackled as described below.

Firstly, during the permit issue process, corruption can occur if there is a transfer or flow of funds to the bank account of a state official with the authority to issue a logging concession. In such cases, the transfers are a form of bribe or gratuities to persuade the official to issue the concession in violation of regulations.

Secondly, corruption can also occur in the process of cutting down trees in the forest. The concession holder may give bribes or gratuities through bank transfers to the forestry civil servants or forest rangers tasked with monitoring the forest on the ground, so they turn a blind eye to illegal logging.

These actions can be substantiated by looking at the flow of funds and transactions involving large sums in officials' bank accounts.

Thirdly, corruption can occur during the process of transporting illegal timber or smuggling it overseas. In such cases, ships captains or crew give bribes or gratuities to customs officers to allow the illegal timber through.

Fourthly, after illegal logs are sold to their buyers, the proceeds are usually transferred in a series of transactions using various accounts at the same time, and involving several recipients (PPATK 2010).

4.3 The ILEA approach to prosecuting forestry crime through anti-money laundering and anti-corruption laws

The above case is only one of many instances of money laundering in the forestry sector. Corruption and money laundering can occur at any time: from the issue of permits to the sale of timber. If we use anti-corruption and anti-money laundering legislation, these crimes can be enforced, as described as Table 8.

From the above-mentioned forest-related crimes, a flow of the process in which corruption and money laundering can occur can be drawn as follows:

Figure 7 illustrates how forestry-related crime can involve other crimes as well. There are indications of corruption and money laundering beginning with government officials issuing permits for forestry sector businesses. This process includes regional legislative assemblies (DPRDs) passing pieces of legislation legitimising illegal logging.

Indications of corruptions, such as rendering of gifts, promises and gratuities to the authorities are apparent from the issue of permits right up to forest product management processes. During the permit issue process this can involve industry owners or concession holders, while ships' captains can be involved during transportation. Meanwhile, indications of money laundering include the flow of funds to bank accounts belonging to corrupt government officials.

Table 8. Types of forestry-related crime and anti-corruption and anti-money laundering approaches

Type	Law No. 41/1999 on Forestry	The anti-corruption law approach	The anti-money laundering law approach
Damaging forest protection infrastructure and facilities	<p>Article 50</p> <p>(1) All people are prohibited from damaging forest protection infrastructure and facilities.</p>	-	-
Carrying out activities resulting in forest degradation	<p>Article 50</p> <p>(2) Anyone who has received the licence of forest area use; the licence of utilising environmental services, the right of timber and non-timber forest product utilisation, the licence of timber and non-timber forest product collection; is not allowed to undertake any activities leading to forest damage.</p>	<p>With this crime it is possible to use instruments in the anti-corruption law:</p> <ul style="list-style-type: none"> • 'Anyone' is the subject of the law and can be an individual, legal entity or a business enterprise • The permit held by the subject of the law should be checked to determine whether or not it matches the land allocation and/or activities in the subject's operations. This is to identify indications of abuse of authority by officials granting permits, law enforcers in the field allowing activities to commence, and businesspeople bribing officials 	<p>With this crime it is possible to use instruments in the anti-money laundering law:</p> <ul style="list-style-type: none"> • Tracing assets and bank accounts belonging to offenders, and their origins, including the legality of other businesses belonging to the offender that could be used for laundering money • Examining links between the offender and Indonesian nationals overseas who might be helping to facilitate activities • Exploring the possibility that the offender is merely a puppet of a foreign timber businessperson

continued on next page

Table 8. Continued

Type	Law No. 41/1999 on Forestry	The anti-corruption law approach	The anti-money laundering law approach
Illegally occupying a forest area	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>a. cultivate and/or use and/or occupy illegally a forest area;</p>	<p>The possibility of bribery should be investigated, as should the rendering of gifts or gratuities to officials or local authorities who allow the offenders to continue</p>	<p>As above</p>
Encroaching on a forest area	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>b. encroach on a forest area;</p>	<p>As above</p>	<p>As above</p>
Cutting down trees in a forest area in contravention of provisions	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>c. cut trees within a radius or distance up to:</p> <ol style="list-style-type: none"> 1. 500 (five hundred) meters from the edge of a lake; 2. 200 (two hundred) meters from the edge of water sources and alongside rivers in a swamp area; 3. 100 (hundred) meters from a river bank; 4. 50 (fifty) meters from the banks of a tributary; 5. 2 (two) times the depth of a ravine from the edge of a ravine; 6. 130 (one hundred thirty) times the difference between the highest and the lowest tide, measured from the coastline. 	<p>As above</p>	<p>As above</p>

Table 8. Continued

Type	Law No. 41/1999 on Forestry	The anti-corruption law approach	The anti-money laundering law approach
Burning forest either knowingly or through negligence	Article 50 (3) No person is allowed to: d. burn the forest;	As above (in particular, officials that grant permits, and the officials responsible for monitoring in the field should be traced)	
Cutting down trees, harvesting or collecting any forest products within the forest area without holding any rights or licence issued by authorised officials	Article 50 (3) No person is allowed to: e. cut trees or harvest or collect any forest products within the forest area without holding any rights or licence issued by authorised officials;	As above	As above
Receiving, buying or selling, receiving as an exchange, receiving as entrusted goods, keeping or possessing any forest products known or alleged to have been harvested from a forest area by illegal means	Article 50 (3) No person is allowed to: f. receive, buy or sell, receive as an exchange, receive as entrusted goods, keep or possess any forest products known or alleged to have been harvested from a forest area by illegal means;	Examine whether forest products are being extracted or harvested illegitimately, and whether or not any officials or law enforcers are involved.	It is important to assess whether the offender knows or has grounds to suspect that the forest products or assets from those products, originating from a forest, were harvested illegitimately. Track back from the offender arrested to other offenders 'behind the scenes' to identify the channels used to launder the proceeds of illegal forest products.

continued on next page

Table 8. Continued

Type	Law No. 41/1999 on Forestry	The anti-corruption law approach	The anti-money laundering law approach
Open-cast mining in protection forest and unlicensed exploration/exploitation of mining materials	<p>Article 38 (4) Open-cast mining is prohibited in protection forest.</p> <p>Article 50 (3) No person is allowed to: g. undertake general investigation, activities, exploration or exploitation of mine materials within the forest area without the Minister's approval;</p>	As above	As above
Carrying, controlling or keeping forest products without legal documentation	<p>Article 50 (3) No person is allowed to: h. carry, possess or keep forest products without legal documentation;</p>	Attention must be paid to the possibility of documentation having been falsified, either by the offender or issued by an official without the authority to do so. Timber legitimacy documents must be checked to ensure they match the physical condition in terms of species, number and volume, and whether there are reasonable grounds to suspect bribery.	As above
Bringing heavy loading equipment into a forest area, without legal authorisation	<p>Article 50 (3) No person is allowed to: j. bring heavy equipment or other tools commonly used or will presumably be used for loading forest products into a forest area, without legal authorisation;</p>	As above (for officials issuing permits)	

Table 8. Continued

Type	Law No. 41/1999 on Forestry	The anti-corruption law approach	The anti-money laundering law approach
Bringing equipment commonly used for felling, cutting and splitting trees, without legal authorisation	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>k. bring equipment commonly used for felling, cutting and splitting trees, without legal authorisation;</p>	As above (for officials issuing permits)	
Discarding any inflammable material into a forest area which may cause forest fires and threaten the existence and sustainability of forest functions	<p>Article 50</p> <p>(3) No person is allowed to:</p> <p>l. discard any inflammable material into a forest area which may cause forest fires and threaten the existence and sustainability of forest functions;</p>		

Corruption is also apparent during supervision processes, involving law enforcers in the field, with bribes, gifts, promises and gratuities encouraging the authorities to turn a blind eye to illegal logging operations. Moreover, if it can be substantiated that funds are entering bank accounts in order that officials perform, or do not perform something in contravention of their position, then there are reasonable grounds to suspect money laundering.

Finally, once the illegally secured forest products are processed and sold, and the resulting proceeds are in bank accounts belonging to businesspeople, capital owners or foreign businesspeople, then money laundering has also occurred, even though they might be used for legal and legitimate activities.

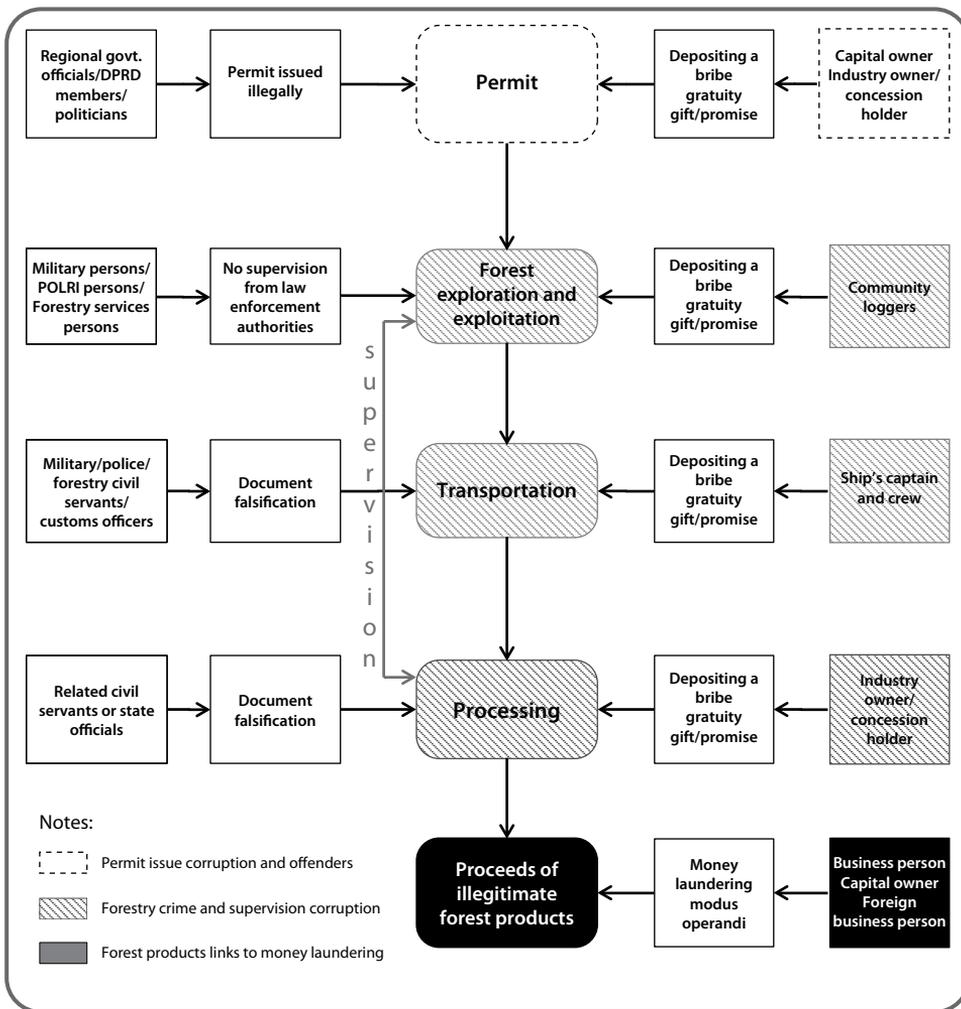


Figure 7. Flow of forestry-related crime including corruption and money laundering, by perpetrator and method

This chapter has examined corruption and money laundering in relation to illegal logging. It has also outlined the methods involved in these two crimes, and explained their elements and their links to certain activities in forestry crime. Hopefully, law enforcers will gain a clearer understanding that forestry-related crime, particularly illegal logging, is likely linked to other crimes of corruption and money laundering. We hope that this new understanding will encourage more comprehensive law enforcement efforts to overcome the various criminal methods used to deplete our forest riches.

Chapter 5 will discuss legal processes in terms of institutions and their procedures in criminal law.

5

Case handling processes

In using the Integrated Law Enforcement Approach (ILEA) to handling cases of suspected forestry crime – using anti–corruption and anti–money laundering laws – we must first understand all conditions that constitute a criminal action that must be met, as defined in the articles under which suspects can be indicted. This includes understanding the roles of law enforcement institutions, legal procedures and the application of legal articles in cases where court verdicts have already been reached. This chapter discusses aspects of legal procedures from investigation to substantiation.

5.1 The role of law enforcement institutions

This section will discuss which law enforcement institutions have the authority to handle forestry cases using an anti–corruption and anti–money laundering approach, and what their duties and responsibilities are.

5.1.1 Investigators, public prosecutors and judges using forestry law

According to Article 77 of Law No. 41/1999 on Forestry, those with the authority to investigate forestry crime are:

1. Indonesian police investigators with authority stipulated in the Criminal Code procedures (KUHAP)
2. Civil service officials whose range of duties and responsibilities cover forest management, with authority as stipulated in Article 77, paragraph (2) of the KUHAP to:
 - a. conduct investigations into the truth of reports or statements on crimes pertaining to forest, forest areas and forest products;
 - b. interrogate persons suspected of committing crimes pertaining to forest, forest areas and forest products;
 - c. check identity cards of persons inside a forest or within their legal jurisdiction;
 - d. conduct search and seizure of evidence of crimes pertaining to forest, forest areas and forest products in accordance with the provisions of prevailing legislation;
 - e. request statements and evidence from persons or legal entities in relation to crimes pertaining to forest, forest areas and forest products;

- f. arrest and detain under the coordination and supervision of Indonesian police investigators in accordance with the KUHAP;
- g. prepare and sign investigation reports;
- h. cease investigations if there is insufficient evidence of crimes pertaining to forest, forest areas and forest products.

The authority of the public prosecutor in handling forestry cases is based on the KUHAP. As stipulated in Article 77, paragraph (3), the Attorney General's Office has the authority to act as public prosecutor.

According to Articles 74 and 76 of Law No. 41/1999 on Forestry, judges in public courts (in accordance with *locus delicti*) play a role in resolving forestry disputes and investigating forestry crimes subject to indictments by the public prosecutor. The judge's duties and authority are carried out under provisions in the KUHAP.

The resolution of forestry disputes through the courts is intended to secure decisions regarding the return of rights, the amount of compensation, and/or certain actions that have to be taken by the losers of a dispute. In addition, courts can impose daily fines for the late implementation of certain actions.

5.1.2 Investigators, public prosecutors and judges using anti-corruption law

According to Article 11 of Law No. 30/2002 on a Corruption Eradication Commission (KPK), the KPK can only conduct inquiries, investigations and indictments involving corruption if they:

- a. involve law enforcement authorities, state officials, or other persons with links to corruption committed by enforcement authorities or state officials;
- b. secure the attention of, and cause unease in society; and/or
- c. involve state losses of at least IDR 1 000 000 000 (one billion rupiah).

If the requirements for the KPK to handle a corruption case are not fulfilled, then investigations will be conducted by police investigators and the indictment prepared by the state prosecutor. The indictment is then submitted to the judge in the district court for examination. The duties and authority of police investigators, public prosecutors and public court judges in corruption cases are based on provisions in the KUHAP.

Meanwhile, KPK inquirers, investigators and prosecutors are afforded special authority in conducting investigations and indictments as stipulated by Article 12 of Law No. 30/2002:

- a. monitor and record conversations;
- b. instruct relevant institutions to prohibit a person from leaving the country;
- c. request information from banks or other financial service providers regarding the finances of the suspect or accused under investigation;
- d. instruct banks or other financial service providers to block accounts belonging

- to the suspect, accused or other party under investigation thought to contain the proceeds of corruption;
- e. instruct the suspect's superiors to suspend them temporarily from their post;
 - f. request data on the wealth and tax payments of a suspect or accused from the relevant institution;
 - g. temporarily suspend financial transactions, trade transactions and other deals, or temporarily revoke permits, licences or concessions belonging to a suspect or accused, which, based on sufficient preliminary evidence, are related to the crime under investigation;
 - h. request assistance from Interpol Indonesia or law enforcement authorities in other countries to carry out searches, arrests and seizure of evidence overseas;
 - i. request assistance from the police or other relevant institutions to carry out arrests, detention, search and seizure in the corruption case under investigation.

5.1.3 Investigators, public prosecutors and judges using anti-money laundering law

Investigators, public prosecutors and judges handle money laundering crimes based on the KUHAP, with specific authority provided for in Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering. In addition to the law enforcement institutions above, the Financial Transactions Reporting and Analysis Centre (PPATK) is an independent institution established to prevent and eradicate money laundering.

Based on Article 40 of Law No. 8/2010, the PPATK has the following functions:

- a. prevention and eradication of the crime of money laundering;
- b. managing data and information gathered by PPATK;
- c. supervision of the reporting party's compliance;
- d. analysis or inspection of reports and information on financial transactions that indicate the crime of money laundering and/or other crimes referred to in Article 2, paragraph (1).

Under Article 41 of Law No. 8/2010, in carrying out its functions in preventing and eradicating money laundering crime, the PPATK has the authority to:

- a. request and obtain data and information from government and/or private institutions who have the authority to manage data and information, including from government and private institutions who receive reports from certain professions;
- b. provide a manual that defines suspicious financial transactions;
- c. coordinate efforts in prevention of the crime of money laundering with related institutions;
- d. provide recommendations for the government concerning efforts to prevent the crime of money laundering;
- e. represent the Government of the Republic of Indonesia in international organisations and forums related to prevention and eradication of the crime of money laundering;

- f. conduct anti-money laundering education and training programmes;
- g. promote prevention and eradication of the crime of money laundering.

According to Article 42 of Law No. 8/2010, in carrying out the function of data and information management, the PPATK also has the authority to create an information system.

In addition, in order to carry out the supervision of reporting party compliance, Article 43 states PPATK's authority as follows:

- a. to stipulate provisions and guidelines concerning the reporting procedure for the reporting party;
- b. to determine the categories of customers at potential risk for laundering money;
- c. to execute an audit of compliance or special audit;
- d. to report audit results to institutions authorised to supervise the reporting party;
- e. to give warning to the reporting party of violations of reporting obligations;
- f. to give recommendations to the institution who has the authority to cancel the reporting party's business licence; and
- g. to stipulate provisions for implementing the know your customer principle for the reporting parties who do not have regulating and supervisory institutions.

Finally, according to Article 44 of Law No. 8/2010, in order to carry out analysis, reporting and information inspection, the PPATK has the authority to:

- a. request and receive reports and information from the reporting party;
- b. request information from the institution or related party;
- c. request information from the reporting party based on the progress of PPATK's analysis;
- d. request information from the reporting party based on requests from law enforcement agencies or colleagues abroad;
- e. forward the information and/or the analysis results to the requester agency, locally or abroad;
- f. receive reports and/or information from the public concerning a suspicion of money laundering crime;
- g. request information from the reporting party and other parties related to the suspicion of money laundering crime;
- h. provide recommendations to law enforcement agencies concerning the importance of carrying out interception or bugging of electronic information and/or electronic documents in accordance with the prevailing laws and regulations;
- i. request the provider of financial services to temporarily stop all or part of a transaction known or suspected to constitute the proceeds of crime;
- j. request information on the progress of the investigation being conducted by the investigator of predicate crime and money laundering;

- k. conduct other administrative activities in the scope of PPATK's tasks and responsibilities in accordance with the provision of this law; and
- l. forward results of the analysis or investigation to the investigators.

5.2 Criminal procedures

This section will discuss the procedures involved in investigations, indictments and court trials, particularly covering substantiation, evidence, indictments and other issues related to forestry, anti–corruption and anti–money laundering legislation.

5.2.1 General procedures under the KUHAP

Legal procedures in the criminal justice system are regulated by the KUHAP under the following themes.

a. Investigation

Investigators are police officers or civil servants given special authority under the law to carry out investigations.

According to Article 7, paragraph (1) of the KUHAP, investigators are authorised to:

- a. receive reports or complaints from a person regarding a crime (Article 7);
- b. take first action at the scene of the crime (Article 7);
- c. order a suspect to stop and examine the suspect's identification papers (Article 7);
- d. carry out arrests, detention, search and seizure (Article 7 in conjunction with Article 131);
- e. examine and confiscate letters [Article 7 in conjunction with Article 132, paragraph (2), (3), (4) and (5)];
- f. take a person's fingerprints and mug shots (Article 7);
- g. call a person to be heard or questioned as a suspect or witness (Article 7);
- h. bring in any experts required to examine the case [Article 7 in conjunction with Article 132, paragraph (1) in conjunction with Article 133 paragraph (1)];
- i. cease investigations (Article 7);
- j. take any other actions in accordance with applicable law.

Investigations are a series of actions conducted according to procedures regulated in this law, to seek and collect evidence, to clarify the crime that has occurred and to identify suspects. Subsequently, investigators submit a case file to the public prosecutor [Article 8, paragraph (2) of the KUHAP].

b. Indictments

Once sufficient evidence has been gathered through the investigation process, the next step is indictment. A vital element, which requires careful attention from the prosecutor, is the details of the crime the accused is indicted under. These details are summarised

from the results of an examination of the investigation, in the form of an indictment letter. It is essential that the details in the indictment letter are consistent with, and in synchronicity with, the outcomes of the investigation examination. The indictment letter constitutes the foundation for the judge to determine during court proceedings whether or not the accused is found guilty.

According to Article 143 of the KUHAP, an indictment letter must fulfil the following requirements (Harahap 1988: 420):

- a. formal requirements, including:
 - the indictment letter being dated and signed by the public prosecutor;
 - the full name, place of birth, age or date of birth, sex, nationality, place of residence, religion and occupation of the suspect;
- b. material requirements, containing two elements that cannot be neglected:
 - an accurate, clear and complete outline of the indicted crime;
 - stating the time and place the crime was committed.

An indictment letter does not meet material requirements if (Harahap 1988: 421–423):

- it is not clear, i.e. if the elements of the alleged crime are not explained in detail or are incomplete, or if the specifics counts charged are unclear;
- an indictment letter contains contradictions and gives rise to doubt in the accused as to what acts they are being indicted for.

Indictment letters can take the following forms (Harahap 1988: 425–436):

- a. **General indictments:** prepared singularly or including only one indictment. These can apply to clear-cut crimes not involving complicity, *concursum*, alternatives or subsidiaries, so both the perpetrator and the crime are extremely clear and simple, and therefore require only a singular indictment.
- b. **Alternative indictments:** when indictments count each other out and provide a ‘choice’ to the judge or court to determine on which the accused should be brought to account in relation to the crime committed. Such indictment letters are intended to stop the offender from being released from legal responsibility, and allow the judge a choice to apply the law more appropriately. Generally, alternative indictment letters can only be applied if the crime comes under two or more articles where the patterns and characteristics of crimes are very close to each other, but the offences themselves do not give rise to *concursum idealis* or *concursum realis*.
- c. **Subsidiary indictments:** comprise two or more indictments prepared and lined up in order, from the most serious to the least serious offence. The second offence (subsidiary) is a replacement for the first (primary). Subsidiary indictments are usually used if the crime gives rise to a consequence, and the consequence comes under several provisions in articles covering crimes committed in similar ways.
- d. **Cumulative indictments:** are indictments where the offences in several indictments are combined. This is possible when:
 1. several crimes have been committed by the same person and investigations are not a hindrance to integration;

2. several inter-related crimes have been committed, by:
 - more than one person collaborating in crimes committed simultaneously;
 - more than one person at different times and places but constituting a conspiracy they had planned beforehand;
 - one or more people with the aim of getting something that will be used to commit another crime, or evade punishment for a crime.
3. several unconnected crimes have been committed, but one is related to another, and combination is necessary for the purposes of investigation.

c. Trials (substantiation and evidence)

Offences must be substantiated in an indictment. Below are several substantiation theories (Setyono 1996):

1. Conviction in time, is marked by the following:
 - a. Conviction without being based on evidence in laws, and based only on the judge's conviction, not linked to rules on substantiation, and surrendering everything to wisdom so the judge is deemed subjective.
 - b. In this system a judge can follow their conviction; what determines the manifestation of truth in this system is just a feeling as to whether a situation has been proven.
 - c. The judge's belief determines the manifestation of truth in this system.
2. A system of positive substantiation according to laws is marked by the following:
 - a. In this system, if proof has been used as stipulated in laws, then the judge must establish that a situation has been proven, even though the judge might feel sure that it is incorrect.
 - b. The judge still states that the case against the accused is not proven, even though the judge feels sure that the accused committed the offence.
 - c. An act cannot be punished unless it is based on the provisions of existing criminal legislation [Article 1, paragraph (1) of the Criminal Code].
3. A system of negative substantiation according to laws is marked by the following:
 - a. A combination of the positive substantiation system according to law and the conviction in time system.
 - b. *Negatief wettelijk stelsel*: the guilt or innocence of an accused is determined by the judge's conviction based on proceedings and legitimate evidence according to law.
4. A system of substantiation based on the judge's conviction considering logic and reason (conviction by reason) is marked by the following (Harahap 1993: 798):
 - a. A judge's conviction must be supported by clear reasons.
 - b. A judge is obliged to explain the reason behind their certainty as to a defendant's guilt.
 - c. A judge's conviction must have a sound and acceptable logical basis.

According to Article 183 of the KUHAP, judges are not allowed to impose punishments on a person unless they obtain at least two legitimate pieces of evidence that a crime was actually committed and the accused is guilty of committing the crime. Forms of evidence that investigators and prosecutors can submit are still guided by Article 184 of the KUHAP, which stipulates that legitimate evidence includes witness statements, expert statements, letters and statements from the accused.

In regard to burden of proof during court proceedings, Article 66 of the KUHAP stipulates that the accused is not burdened with the obligation of substantiation.

5.2.2 Provisions specific to the forestry law

Law No. 41/1999 specifies three aspects of how to handle infractions.

- Procedures in the forestry law are based on the KUHAP. Specific stipulations are that it allows the possibility of investigations being conducted by Ministry of Forestry investigators and forest rangers.
- Indictment letters in the indictment process can be singular or cumulative.
- Scientific evidence may be submitted in court, in addition to the general forms of evidence stipulated in the KUHAP. Scientific evidence in forestry cases can include satellite imagery, or samples of forest degradation requiring expert statements.

5.2.3 Stipulations specific to anti-corruption law

The following stipulations are specific to the anti-corruption law:

- Article 38, paragraph (1) states that a case can be examined and verdict carried out in the absence of the accused.
- Article 38, paragraph (5) and paragraph (6) states that in the event of the accused passing away before a verdict is passed and there being sufficient evidence against the accused, any items confiscated can be seized based on a judge's decision and cannot be subject to appeal.
- Article 40 overrides the provisions of the military justice law in any case of corruption in the military.

The following stipulations are specific to the Corruption Eradication Commission (KPK) law:

- Article 38 overrides Article 7, paragraph (2) of the KUHAP on the authority of civil service investigators.
- Article 47 states that prevailing provisions on seizure in other legislation are not valid based on this law.
- Article 50 states that investigations and indictments by the police and prosecutors must be reported to and coordinated with the KPK in the event of the KPK being informed in advance. In the event of the KPK carrying out an investigation, the police and prosecutors no longer have the authority to investigate the case.

Article 6 of the corruption court law specifies that the corruption court has the authority to examine cases relating to corruption and money laundering crimes in which the predicate crime is corruption. Crimes under another law are determined by the crime of corruption.

In addition to the KUHAP, evidence in corruption trials is also regulated under Article 26 A of Law No. 20/2001 in conjunction with Law No. 31/1999 on Eradication of Corruption.

Legitimate evidence as stipulated in Article 188, paragraph (2) Law No. 8/1981 on Criminal Code Procedures relating to corruption can be secured from:

- a. other clues in the form of information either expressed, sent, received or stored electronically or with an optical or similar device;
- b. documents, i.e. all recorded data or information that can be seen, read and/or heard that can be issued with, or without the aid of any means, either on paper, or any physical object other than paper, or recorded electronically, in the form of writing, sound, picture, map, design, photograph, or perforation with a meaning.

Article 188

(2) Clues as stipulated in paragraph (1) can only be secured from:

- a. witness statements;
- b. documents;
- c. statements from the defendant.

Elucidation of Article 26 A

Letter (a)

The meaning of 'stored electronically' relates, for instance, to data stored on microfilm, compact disc read only memory (CD-ROM) or write once read many (WORM).

The meaning of 'an optical or similar device' in this paragraph is not limited to electronic data interchange, e-mail, telegram, telex or facsimile.

Indictments are generally made in alternative or subsidiary forms.

In the process of proving a crime in court proceedings, the anti-corruption law adheres to systems of limited and balanced burden of proof. The accused can prove that they have not committed the crime of corruption. If they can prove this, it does not mean they are not proved to have committed corruption offences, as the public prosecutor is still obliged to prove its indictment.

5.2.4 Stipulations specific to anti-money laundering law

It is commonly believed that money laundering must follow from a predicate crime, thus, in order to process a money laundering case, the predicate crime must first be substantiated with a cumulative indictment. However, money laundering can be prosecuted alone based on the provisions of prevailing legislation and on evidence presented in court, as is explained in the elucidation of Article 3, paragraph (1) of Law No. 8/2010. In the case of assets suspected of being the proceeds of crime, the predicate crime does not have to be proved to begin investigations into money laundering (Attorney General 2009).

There have been about 18 money laundering trials where the predicate crime has not been proved beforehand (Attorney General 2009). One such case was that of money laundering against Tonny CM (cumulative indictment) in South Jakarta District Court (case No. 956/Pid.B/2005/PN. Jaksel) (Attorney General 2009). In preparing indictment files, public prosecutors handling cases of money laundering can select from several forms of indictment letter (Husein 2010):

- predicate crime and money laundering indictments prepared alternatively;
- predicate crime and money laundering indictments prepared cumulatively;
- predicate crime and money laundering indictments prepared separately and individually.

An example of a case with a cumulative indictment is that of DC, a church treasurer who opened a bank account without the knowledge of church staff, and used it to deposit the proceeds of abuse of authority over interoffice account reconciliation. The defendant was indicted under Article 2 in conjunction with Article 18, paragraph (1), letter (a) and letter (b), paragraph (2) and paragraph (3) of Law No. 31/1999 on Eradication of Corruption. As the defendant used the funds in the account in his own interests, he was also indicted under Article 3, paragraph (1), letter (a) and letter (c) of Law No. 8/2010 on Prevention of the Crime of Money Laundering.

An example of an alternative indictment is the case of AKP (alias HM) indicted under:

- Article 3, paragraph (1), letter (a) or (b) of Law No. 8/2010 on Prevention of the Crime of Money Laundering;
- Article 378 of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code in conjunction with Article 65 paragraph (1) of the Criminal Code;
- Article 372 of the Criminal Code in conjunction with Article 65, paragraph (1) of the Criminal Code.

At trial, the judge convicted AKP on the first indictment on money laundering.

This is an example of a subsidiary alternative indictment is the case of LHPP, alias Pau Pau, indicted with:

Firstly:

- Primary: Article 3, paragraph (1), letter (a) of Law No. 8/2010 on Prevention of the Crime of Money Laundering;
- Subsidiary: Article 3, paragraph (1), letter (c) of Law No. 8/2010 on Prevention of the Crime of Money Laundering;
- More subsidiary: Article 6, paragraph (1), letter (c) of Law No. 8/2010 on Prevention of the Crime of Money Laundering.

Secondly:

- Primary: Article 263, paragraph (1) of the Criminal Code in conjunction with Article 55, paragraph (1) of the Criminal Code;
- Subsidiary: Article 263, paragraph (2) of the Criminal Code in conjunction with Article 55, paragraph (1) of the Criminal Code.

Thirdly:

- Article 378 of the Criminal Code in conjunction with Article 65, paragraph (1) of the Criminal Code.

In addition to referring to the KUHAP, investigators, public prosecutors and judges must also follow the specifics of Law No. 8/2010 on Prevention of the Crime of Money Laundering (PPATK 2006):

- Investigators, public prosecutors and judges shall be authorised to order financial services providers to block assets of persons reported by the PPATK, a suspect or defendant, known or reasonably suspected to constitute the proceeds of crime.
- Investigators, public prosecutors and judges from a panel of judges in requesting information from financial services providers, shall be exempted from provisions in laws regulating bank secrecy and confidentiality of other financial transactions.
- A defendant must prove that his assets are not the proceeds of crime (reverse burden of proof). According to Article 35 of Law No. 8/2010 on Prevention of the Crime of Money Laundering, for the purpose of examination in a court, the defendant must prove that his assets are not the proceeds of crime. However, in money laundering cases, a defendant can only carry out reverse onus during trial and not during the investigation or indictment stages.
- Investigations and verdicts of a panel of judges can be carried out without the defendant being present [*in absentia*, Article 36, paragraph (1), (2) and (3) of Law No. 25/2003] in conjunction with Law No. 15/2002 concerning money laundering crime, which is also stipulated in Article 79, paragraph (1) of Law No. 8/2010.
- In the event that the defendant passes away prior to the judge's judgement being passed and if there is firm evidence that the person concerned committed the crime of money laundering, the judge can stipulate that the defendant's confiscated assets be seized for the state. This provision was regulated in Article 37, Law No. 25/2003 in conjunction with Law No. 25/2002 on Money

Laundrying Crime, which is reiterated in Article 79, paragraph (4) of Law No. 8/2010.

In addition, the following provisions also apply (PPATK 2009):

- If sufficient evidence is obtained during the examination of the defendant in court, the judge shall order the confiscation of assets known or reasonably suspected to be the proceeds of crime which have not yet been confiscated by the investigator or public prosecutor concerned (Article 34 Law No. 25/2003) in conjunction with Law No. 15/2002 on Money Laundering Crime). The same issue is stipulated in Article 81 of Law No. 8/2010 that in the event that sufficient evidence is discovered and that there are assets that have not been confiscated yet, the judge shall order the public prosecutor to execute confiscation of the remaining assets.
- In court, the name and identity of the reporting party must remain secret [Article 39, paragraph (1) Law No. 25/2003 in conjunction with Law No. 15/2002 on Money Laundering Crime, which is also regulated by Articles 83 and 85 of Law No. 8/2010].

Meanwhile, in relation to evidence, in addition to referring to the KUHAP, evidence is also regulated by Article 73 in Law No. 8/2010:

- a. items of evidence as referred to in the Criminal Code; and/or
- b. other items of evidence in the form of said, sent, received, or electronically recorded information with optical facilities or devices similar to optical tools and documents;
- c. documents as intended in Article 1, paragraph (16) of Law No. 8/2010:
Documents shall be data, records, or information that can be seen, read and/or heard, and that can be issued with or without the assistance of a facility, either on paper, any physical material other than paper, or those electronically recorded, including and not limited to:
 - a. writings, voice, or images;
 - b. maps, designs, photographs, or the like;
 - c. letters, signs, numbers, symbols, or perforations which have meaning or are understandable by those able to read or comprehend them.

5.2.5 Examples of application of the law in prosecuting forestry crime

Below are some examples of how articles in corruption laws have been applied in forestry crime cases, along with judges' considerations of the elements of those articles in verdicts with permanent legal effect.

Implementation of Article 2 above is apparent in the considerations of the Supreme Court judges' verdicts in the cases of AL (No. 68 K/PID.SUS/2008) and SAF (No. 380 K/PID.SUS/2007):

Box 1. Key elements of Article 2 of Law No. 31/1999 in conjunction with Law No. 20/2001

Anyone: in forestry crimes this can include villagers cutting down trees in the field, capital owners (*cukong*), businesspeople, sawmill owners or concession holders, government officials and law enforcement officers.

Unlawfully: in practice, this element is substantiated by looking into whether the act violates relevant legislation. For corruption to be substantiated, it is enough for it to fulfil the substance of the stipulated acts, not for it to give rise to consequences.

Enriching themselves and/or other persons or a corporation: is substantiated by the acceptance of money and/or returns for doing something, and transfer documentation and bank account statements.

In such a way that is detrimental to the finances of the state: by looking into whether there is any involvement of state assets.

Or the economy of the state: this can be substantiated by seeing that the criminal act is linked to state finances and/or state losses, through reports by relevant state institutions. In forestry cases, illegal logging is clearly detrimental to state finances in terms of tax revenue and losses resulting from forest degradation.

Box 2. Key elements of Article 3 of Law No. 31/1999 in conjunction with Law No. 20/2001

Any person in a forestry crime is a government official or law enforcement officer.

Enriching themselves and/or other persons or a corporation: see Box 1.

Abusing the authority, the facilities or other means at their disposal: doing something in violation of legislation.

Due to rank or position: this can be substantiated by a Letter of Nomination, terms of reference, and the responsibilities of offenders in their institutions. In the forestry sector, for instance, this could be regional government officials who issue logging permits inappropriate to RKT annual logging plans and accept payments.

Detrimental to the finances of the state or the economy of the state: see Box 1.

In the case of AL, ‘anyone’ was substantiated by the defendant as being the Director of Finance for PT Keang Nam Development Indonesia based on Article 1, paragraph (4) Law No. 1/1995 on Limited Liability Companies: ‘Directors are organs of a company responsible for a company’s interests and objectives and represent a company both inside and outside the court in accordance with provisions in statutes.’

Box 3. Key elements of Article 5, paragraph (1) (a) of Law No. 31/1999 in conjunction with Law No. 20/2001

Anyone: in forestry crimes can include villagers cutting down trees in the field, capital owners (*cukong*), businesspeople, sawmill owners or concession holders.

Rendering or promising something: this can be substantiated with bank transfers, gifts, donations and admissions.

To a civil servant or state official: in forestry crime this means government officials, Regional Legislative Assembly (DPRD) members and law enforcement officers; with transportation permits etc. as evidence.

With the aim of persuading them to perform, or not perform an action in their position: this can be substantiated by witness statements, defendant's admissions and recorded evidence, memos, etc.

In contravention of their obligations: in forestry crimes this includes making policies and/or granting permits that violate forestry and environmental regulations, and not monitoring or investigating suspicions of forestry crime in the field. This can be substantiated with issued permits, photos of degraded forest, bank statements etc.

In this case, despite the indictment being connected to the conduct of the company and directed at a legal entity, or corporation named Keang Nam Development Indonesia, the defendant AL, as an organ of the company, should be seen as the person responsible and subject to proceedings as the perpetrator of a crime committed on behalf of the legal entity (corporation). This also accords with Article 1, number 3 of Law No. 31/1999 on Eradication of Corruption, which states that 'anyone is an individual or corporation'.

Unlawfully is an obligation or prohibition stipulated by a written regulation and if it is not implemented then it results in a crime. In the case of SAF, this element was substantiated by the defendant having committed an unlawful act by issuing provisional agreements and agreement in principle decrees for several companies to clear forest and utilise timber in violation of Article 4 paragraph 2 of the Minister of Forestry and Estate Crops Decree No. 107/KPTS-II/1999 on permits for large-scale crops where one group in a province should only be granted 20 000 ha. The written evidence was reinforced by statements from witnesses.

Enriching themselves and/or other persons or a corporation was substantiated in the case of AL from calculations by experts from the Finance and Development Audit Agency (BPKP) from unlawful transportation of timber and the non-payment of Reforestation Fund (Dana Reboisasi) and Forest Resource Provision (Provisi Sumber Daya Hutan) levies. This is constituted as state assets acquired by the defendant at society's loss. In the case of SAF, this element was substantiated by the defendant's

clearance of 1 million hectares of forest for oil palm, in violation of prevailing regulations, thus enriching another person to the detriment of the state.

In such a way that is detrimental to the finances of the state or the economy of the state: In the cases of AL and SAF, this was substantiated from calculations of state losses made by the BPKP office in North Sumatra.

The content of Article 5, paragraph (1) (b), is the same as that set out in Box 3. The only difference is in the element ‘in relation to something in contravention of their obligations, done or not done in their position’. This element can be substantiated by looking at the flow of funds into bank accounts, tracing assets and official’s asset reports.

Using the ILEA model, forestry-related crime can also be prosecuted through the anti-money laundering law; boxes 4 and 5 examine the relevant articles.

Box 4. Key elements of Article 3 of Law No. 8/2010

Any person: in cases of forestry-related crime can be applied to capital owners (*cukong*) and businesspeople, timber industry owners or concession holders, as well as government officials and law enforcement officers receiving bribes.

Placing assets known or reasonably suspected to constitute the proceeds of crime with a provider of financial services, either on one’s own behalf or on behalf of another party.

Transferring assets known or reasonably suspected to constitute the proceeds of crime.

Disbursing or spending assets known or reasonably suspected to constitute the proceeds of crime.

Contributing or donating assets known or reasonably suspected to constitute the proceeds of crime.

Entrusting assets known or reasonably suspected to constitute the proceeds of crime.

Taking abroad assets known or reasonably suspected to constitute the proceeds of crime.

Changing the form of assets known or reasonably suspected to constitute the proceeds of crime.

Exchanging or otherwise employing assets known or reasonably suspected to constitute the proceeds of crime for currency or other marketable securities, **with the purpose of concealing or disguising the origins of assets known or reasonably suspected to constitute the proceeds of crime.**

Box 5. Key elements of Article 5 of Law No. 8/2010

Any person in a forestry crime could be a capital owner (*cukong*), businessperson, a timber industry owner or concession holder, or a government official or law enforcer accepting a bribe.

Receiving or controlling: this can be substantiated from the flow of funds, bank accounts, receipts, proof of surrender or proof of ownership.

Placing; transferring; disbursing; donating; contributing; entrusting; or exchanging or spending...

Assets: must be proven by the existence of objects or goods.

Known or reasonably suspected to constitute the proceeds of a crime: assets arising from a criminal act, without proving the predicate crime, and evidence that the proceeds originate from a criminal offence (Irman 2007).

The term ‘reasonably suspect’ in Article 5 means a condition which fulfils at least the knowledge, desire or purpose that indicates a violation of law in the time of transaction.

An example of the above-mentioned provision is Karawang District Court decision No. 448/PID.B/2008/PN.KRW in the case of AS. He was indicted under Article 3, paragraph (1), letter (c) of Law No. 15/2002 as amended by Law No. 25/2003 on Money Laundering, which contains the following elements:

1. any person;
2. who knowingly disburses or spends assets;
3. known or reasonably suspected to be proceeds of a crime;
4. either on their own behalf or on behalf of another party.

In their consideration, the panel explained the elements of this article as follows:

Knowingly disburses or spends assets: ‘knowingly’ means that an offender must know, be willing and aware of the consequences of the act, thus it is used to assess the offender’s subjective intention. In assessing intention as a subjective element we must consider objectivity relating to societal norms, so an act can be deemed to have been carried out knowingly if everyone accepts it that way.

Assets: according to Article 1, number 4 of Law No. 15/2002 as amended by Law No. 25/2003 on Money Laundering, are all moveable or immovable objects both tangible and intangible.

Known or reasonably suspected as proceeds of crime: this element should be seen in the context of Article 2, paragraph (1) and paragraph (2) of Law No. 15/2002 as amended by Law No. 25/2003 on Money Laundering.

Either on one's own behalf or on behalf of another party: relates to the second element, i.e. 'knowingly disburses or spends assets' in determining whether the acts of disbursing or spending assets were carried out on their own behalf or on behalf of another party.

5.3 Asset recovery: A special issue

In recent years, corruption eradication has been focused on three things: prevention, eradication and asset recovery. In the context of illegal logging and corruption linked to illegal logging, asset recovery has become an important issue. Failure to recover the proceeds of corruption can diminish the meaning of punishment brought against anyone convicted. Asset recovery is not easy because money can flow anywhere and offenders can launder it through several financial activities to hide proceeds of crimes. The problem is worsened when the financial safe havens are outside the borders of countries where the corruption took place (Pohan and Hiariej 2008).

In the context of Indonesia, there are several arguments regarding the importance of recovering these assets:

1. Indonesia is one of the most corrupt countries in Asia and the world, so the huge amounts of corrupt assets require not only indictment penalties for offenders, but also recovery;
2. Indonesia has ratified the United Nations Convention against Corruption (UNCAC) which has asset recovery as one of its fundamental principles;
3. Indonesia has already organised Mutual Legal Assistance (MLA) on the basis of reciprocity, so if we want our assets back from overseas, we must organise asset recovery in the same way; and asset recovery is one of the weaknesses in our country's corruption eradication efforts.

The mechanism of asset recovery is still weak (Pohan and Hiariej 2008). Indonesia is still drafting a law on recovery of the proceeds of crime, which will hopefully help support future efforts to recover such assets. With MLA and several agreements with other countries, asset recovery efforts will become more intensive.

In institutional terms, the Ministry of Legal Affairs and Human Rights is the central authority for receiving and sending overseas legal assistance requests. Law enforcement institutions and other organisations working with the central authority in trying to recover assets through MLA mechanisms include the police, prosecutors, the Corruption Eradication Commission (KPK), the Financial Transactions Reporting and Analysis Centre (PPATK) and the Ministry of Foreign Affairs. Institutions such as the KPK sometimes work directly with their counterparts in other countries to cooperate in recovering assets or requesting information on criminal offenders or assets.

6

Conclusions

Illegal logging is a multidimensional crime. It relates not only to forestry law, but also to anti-corruption, anti-money laundering, environmental and excise laws. This paper focuses primarily on forestry crime, corruption in the forestry sector and laundering of the proceeds of forestry crime.

This paper has discussed a number of important aspects of the Integrated of Law Enforcement Approach (ILEA) in the hope that it can provide insight and guidelines for law enforcers to overcome forestry-related crime. The approach is more comprehensive as it uses not only the forestry law, but also anti-corruption and anti-money laundering legislation. We hope this approach will afford greater protection to our forestry sector and protect our natural riches from various inter-related crimes.

There are a number of benefits to using the anti-corruption law to tackle illegal logging. Firstly, corruption is much easier to prove than illegal logging. Secondly, Indonesia has ratified the United Nations Convention against Corruption (UNCAC) and spearheads the Stolen Asset Recovery Initiative (StAR Initiative). Thirdly, state parties to UNCAC are obliged cooperate in eradicating corruption. Using UNCAC instruments, we can extradite foreigners involved in illegal logging.

Bearing in mind this book's concise and dense nature, we hope its users will supplement it with forestry, anti-corruption and anti-money laundering legislation as well as other relevant resources.

Despite its various limitations, we hope this book will be of benefit to law enforcers and others linked to law enforcement in the forestry sector, as well as those with an interest in this field.

We hope to improve this book by inviting inputs and constructive criticism from its users. We wish to express our gratitude to all those who have thus far provided input and assistance.

References

- Antasari 2010 Inilah 15 modus mafia kehutanan, 22 April. <http://antasari.net/inilah-15-modus-mafia-kehutanan> (29 March 2011).
- Anti-Corruption Court 2008 Decision No. 6/PID/TPK/2008/PN.JKT.PST. Indonesia.
- BPK 2008 Tindak pidana pencucian uang. Jaringan dokumentasi dan informasi hukum. Badan Pemeriksa Keuangan, Jakarta, Indonesia. <http://www.jdih.bpk.go.id/informasihukum/MoneyLaundrying.pdf> (29 March 2011).
- Constitutional Court 2006 Decision No. 003/PUU-IV/2006. Indonesia.
- Eriantono, D. and Setiono, B. 2009 (unpublished) Profil transaksi keuangan bisnis kehutanan: panduan bagi perbankan untuk penerapan prinsip *know your customer* (KYC) di sektor kehutanan. CIFOR, Bogor, Indonesia.
- ESRI 1995 Understanding GIS. Environmental System Research Institute, California, USA.
- FWI/GFW 2001 Potret keadaan hutan Indonesia. Forest Watch Indonesia, Bogor, Indonesia and Global Forest Watch, Washington, DC.
- Harahap, M.Y. 1988 Pembahasan permasalahan dan penerapan KUHAP Jilid I. Pustaka Kartini, Jakarta, Indonesia.
- Harahap, M.Y. 1993 Pembahasan permasalahan dan penerapan KUHAP Jilid II. Pustaka Kartini, Jakarta, Indonesia.
- Husein, Y. 2007 Bunga rampai anti pencucian uang. Books Terrace and Library, Bandung, Indonesia.
- Husein, Y. 2010 Rezim anti pencucian uang dan pemberantasan korupsi di Indonesia. Slide presentation at a KPK postgraduate lecture. Law Faculty, University of Indonesia, Indonesia.
- Indonesia Corruption Watch (ICW) 2004 Pola praktik korupsi dalam perizinan konsesi hutan. Indonesia Corruption Watch, Jakarta, Indonesia.
- Indonesia Corruption Watch (ICW) 2008 Kejagung harus prioritaskan uu korupsi untuk jerat illegal logging yang rugikan keuangan Negara. Press release, 14 August. <http://www.antikorupsi.org/antikorupsi/?q=node/13185> (11 March 2011).
- Indonesia Corruption Watch (ICW) 2009 Korupsi dalam pemberantasan illegal logging: analisis kinerja dan alternative kerangka hukum. Indonesia Corruption Watch, Jakarta, Indonesia.

- Irman, S. 2007 Praktik pencucian uang dalam teori dan fakta. MQS Publishing, Bandung, Indonesia.
- Karawang District Court 2008 Decision No. 448/PID.B/2008/PN.KRW. Indonesia.
- Lamintang, P.A.F. 1984 Dasar-dasar hukum pidana di Indonesia. Sinar Baru, Bandung, Indonesia.
- Ministry of Environment 2006 Panduan penghitungan ganti kerugian akibat pencemaran dan atau perusakan lingkungan. Ministry of Environment, Jakarta, Indonesia.
- Ministry of Environment 2006 Indonesia's environmental status year of 2006. Ministry of Environment, Jakarta, Indonesia.
- Nurdjana, I.G.M., Teguh, P. and Sukardi 2005 Korupsi dan illegal logging dalam sistem desentralisasi. Pustaka Pelajar, Yogyakarta, Indonesia.
- Pohan, A., Hiariej, E.O.S. 2008 Pengembalian aset kejahatan. Pusat Kajian Anti Korupsi Universitas Gadjah Mada, Yogyakarta, Indonesia.
- PPATK 2006 Proceedings of a money laundering law enforcement coordination meeting. Directorate of Law and Regulations, Jakarta, Indonesia.
- PPATK 2007 RUU tentang pencegahan dan pemberantasan tindak pidana pencucian uang. Presentation at the training at the Institute of Ekonomi Lingkungan Sumber Daya Alam (ELSDA), November. Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Jakarta, Indonesia.
- PPATK 2008 Pedoman identifikasi produk, nasabah, usaha, dan negara beresiko tinggi, bagi penyedia jasa keuangan, Vol. IV, Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Jakarta, Indonesia.
- PPATK 2009 Pedoman pemberian informasi tindak pidana pencucian uang di bidang kehutanan dan konservasi sumber daya alam hayati. Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Jakarta, Indonesia.
- PPATK 2010 Ikhtisar ketentuan pencegahan dan pemberantasan tindak pidana pencucian uang dan pendanaan terorisme. Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Jakarta, Indonesia.
- Santoso, T. 2009 Buku panduan eksaminasi publik atas putusan pengadilan. Partnership and Indonesian Center for Environmental Law (ICEL), Jakarta, Indonesia.
- Setiono, B. and Husein, Y. 2005 Fighting forest crime and promoting prudent banking for sustainable forest management: the anti-money laundering approach. CIFOR Occasional Paper 44. CIFOR, Bogor, Indonesia.
- Setyono, Y.A. 1996 Hukum pembuktian dalam perkara pidana. <http://staff.ui.ac.id/internal/131861375/material/HukumPembuktianPidana.ppt> (15 March 2011).
- South Jakarta District Court 2005 Decision No. 956/Pid.B/2005/PN. South Jakarta, Indonesia.
- Suarga R. 2005 Pemberantasan illegal logging optimisme di tengah praktek premanisme global. Wana Aksara, Banten, Indonesia.
- Sukardi 2009 Penyidikan tindak pidana tertentu beberapa ketentuan pidana di luar KUHP. Restu Agung, Jakarta, Indonesia.

- Sunderlin, W.D. and Resosudarmo, I.A.P. 1996 Rates and causes of deforestation in Indonesia: towards a resolution of the ambiguities. CIFOR, Bogor, Indonesia.
- Supandji, H 2009 Opening address at the workshop, Revealing and Proving Crimes by Tracing their Proceeds, Indonesian Attorney General Jakarta, Indonesia, 9 June
- Supreme Court Decision. 1963 Decision No. 39 K/Kr/1963. Indonesia.
- Supreme Court 1955 Decision No. 145 K/Kr/1955. Indonesia.
- Supreme Court 1963 Decision No. 39 K/Kr/1963. Indonesia.
- Supreme Court 2007 Decision No. 380 K/PID.SUS/2007. Indonesia.
- Supreme Court 2007 Decision No. 2240/Pid.B/2007/PN. Medan, Indonesia.
- Supreme Court 2008 Decision No. 68 K/PID.SUS/2008. Indonesia.
- Tacconi, L., Obidzinky, K. and Agung, F. 2004 Proses pembelajaran (learning lessons) promosi sertifikasi hutan dan pengendalian penebangan liar di Indonesia. CIFOR, Bogor, Indonesia.
- Tangerang District Court 1992 Decision No. 18/Pid/B-1992/PN/TNG. Indonesia.
- Transparency International 2011 Frequently asked questions about corruption. http://www.transparency.org/news_room/faq/corruption_faq (13 February 2011).
- United Nations Office on Drugs and Crime (UNODC) 2004 United Nations Convention against Corruption. UNODC, Vienna Austria. <http://www.unodc.org/unodc/en/treaties/CAC/index.html> (29 April 2011).
- Wiyono, R. 2006 Pembahasan undang-undang pemberantasan korupsi. Sinar Grafika, Jakarta, Indonesia.
- World Bank 2011 Corruption and economic development. <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm> (13 February 2011).
- Yuliasuti, E. 2006 Penegakan hukum terhadap tindak pidana perdagangan kayu ilegal dalam sistem peradilan pidana. Postgraduate thesis, University of Indonesia Law Faculty, Jakarta, Indonesia.

Appendix I: Relevant legislation

<http://indonesia.go.id/in/produk-hukum/undang-undang.html>

The Criminal Code

Law No. 8/1981 on Criminal Code Procedures (KUHAP). Republic of Indonesia State Gazette/1981 No. 76, Supplement to Republic of Indonesia State Gazette No. 3209.

Law No. 5/1986 on the State Administrative Court Republic of Indonesia State Gazette/1999 No. 77.

Law No. 28/1999 on Good Governance and Freedom from Corruption, Collusion, and Nepotism. Republic of Indonesia State Gazette/1999 No. 75, Supplement to Republic of Indonesia State Gazette No. 3851.

Law No. 31/1999 on Eradication of Corruption as amended by Law No. 20/2001 on Amendments to Law No. 31/1999 on Eradication of Corruption (Republic of Indonesia State Gazette/2001 No. 134, Supplement to Republic of Indonesia State Gazette No. 4150)

Law No. 41/1999 on Forestry (Republic of Indonesia State Gazette/1999 No. 167, Supplement to Republic of Indonesia State Gazette No. 3288)

Law No. 43/1999 on Primary Civil Servant Affairs. Republic of Indonesia State Gazette/1999 No. 169, Supplement to Republic of Indonesia State Gazette No. 3890.

Law No. 30/2002 on a Corruption Eradication Commission (Republic of Indonesia State Gazette/2002 No. 137, Supplement to Republic of Indonesia State Gazette No. 4250)

Law No. 25/2003 on Amendments to Law No. 15/2002 on Money Laundering (Republic of Indonesia State Gazette/2003 No. 108, Supplement to Republic of Indonesia State Gazette No. 4324)

Law No. 46/2009 on a Corruption Court (Republic of Indonesia State Gazette/2009 No. 155, Supplement to Republic of Indonesia State Gazette No. 5074)

Law No. 8/2010 on Prevention and Eradication of the Crime of Money Laundering (Republic of Indonesia State Gazette/2010 No. 122, Supplement to Republic of Indonesia State Gazette No. 5164)

Significantly increased rates of deforestation in Indonesia from the 1970s to the 2000s have brought pressure on law enforcement agencies to better enforce the law and prosecute forest crimes. Generally, criminal wrongdoing in the forestry sector is only prosecuted under the provisions of the Forestry Law. Several reports and results of studies suggest that these sanctions are ineffective in stopping crimes in the forestry sector because they only catch the petty criminals in the field. The main actors who fund and plan large-scale illegal activities persistently evade sanctions.

Since Illegal logging is in fact a multidimensional crime, several legal instruments in Indonesia can be used to prosecute the perpetrators, including the Forestry Law, the Anti-Corruption Law, the Anti-Money Laundering Law, the Environmental Law and the Law on Customs. The complexity and extent of the network of perpetrators of illegal logging require that law enforcement apply a more unified, integrated and comprehensive approach. This guideline introduces and describes such an integrated approach.

CIFOR conducted research to design effective integrated strategies to address the large-scale issues. The project, the Integrated Law Enforcement Approach (ILEA), encourages an integrated approach and specifically promotes the use of anti-corruption and anti-money laundering instruments to better prosecute forest crime. This book presents insights from the ILEA project to guide law enforcement officers in their efforts to combat crime in the forestry sector.



www.cifor.org

www.ForestsClimateChange.org



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS



Center for International Forestry Research

CIFOR advances human wellbeing, environmental conservation and equity by conducting research to inform policies and practices that affect forests in developing countries. CIFOR is one of 15 centres within the Consultative Group on International Agricultural Research (CGIAR). CIFOR's headquarters are in Bogor, Indonesia. It also has offices in Asia, Africa and South America.

