

# Judges' Considerations in Deciding Mangrove Timber Smuggling Cases

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## ABSTRACT

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Mangrove forests in Indonesia constitute 23% of the world's mangrove ecosystem. This has an impact on the high rate of mangrove production in Indonesia which triggers export smuggling. In fact, the prohibition on export smuggling has been regulated in Article 102A letter e of the Customs Law. Accordingly, this study aims to analyze the judges' considerations in deciding mangrove export smuggling cases. This doctrinal legal research applied a case approach and used secondary data obtained from library materials through literature study. The collected data were then analyzed deductively. Analysis of the verdict on mangrove export smuggling cases found that the judges' considerations had paid attention to the preservation of natural resources, but were not yet oriented towards the preservation of mangrove ecosystem, and the penalties applied were still minimum.

## Introduction

Indonesia has a mangrove area of 3,489,140.68 ha. This amount is equivalent to 23% of the world's mangrove ecosystem, from a total area of 16,530,000 ha.<sup>1</sup> Mangroves are used as raw material for charcoal and for other purposes.<sup>2</sup> In addition to the economic benefits, mangroves also provide ecological and social benefits, namely as alternative tourist attractions (ecotourism)<sup>3</sup>, prevent erosion/abrasion<sup>4</sup>, as a habitat for sea creatures (shrimp and fish)<sup>5</sup>, as raw materials for drugs (pharmaceutical preparations)<sup>6</sup>, as well as absorb and store carbon substances.<sup>7</sup> Besides, several products from non-timber forest products originating from mangroves can be used for alternative foods, drinks, soaps, and cosmetics.<sup>8</sup>

<sup>1</sup>Kementerian; Lingkungan Hidup dan Kehutanan, "Siaran Pers Nomor: 58/HUMAS/PP/HMS.3/03/2017 Miliki 23% Ekosistem Mangrove Dunia, Indonesia Tuan Rumah Konferensi Internasional Mangrove 2017," *Kementerian Lingkungan Hidup Dan Kehutanan*.

<sup>2</sup>Wahyudi, *Pemanfaatan & Pengelolaan Sumberdaya Mangrove Di Teluk Bintuni Papua Barat*, ed. Cecep Kusmana (Yogyakarta: Pohon Cahaya Semesta, 2019).

<sup>3</sup>Muhammad Arhan Rhajab and Nurdin, *Ekowisata Mangrove Solusi Alternatif Wisata Pada Masa Pandemi Covid 19: Desa, Insan Cendekia Mandiri* (Solok, 2021).

<sup>4</sup>Emi Karminarsih, "Pemanfaatan Ekosistem Mangrove Bagi Minimasi Dampak Bencana Di Wilayah Pesisir," *JMHT* 13, no. 3 (2007): 182-187.

<sup>5</sup>Mutria Farhaeni, "Komodifikasi Ragam Buah Mangrove Untuk Pemberdayaan Masyarakat Pesisir Di Desa Tuban, Kecamatan Kuta, Kabupaten Badung Bali," *Jurnal Studi Kultural I*, no. 1 (2016): 21-27.

<sup>6</sup>Masykhur Abdul Kadir et al., "Manfaat Mangrove Bagi Peruntukan Sediaan Farmasitika Di Desa Mamuya Kecamatan Galela Timur Kabupaten Halmahera Timur (Tinjauan Etnofarmakologis)," *Jurnal Enggano* 4, no. 1 (2019): 12-25.

<sup>7</sup>Sukirman Rahim and Dewi Wahyuni K. Baderan, *Hutan Mangrove Dan Pemanfaatannya*, ed. Marini Susanti Hamidun (Yogyakarta: DEEPUBLISH, 2017).

<sup>8</sup>Farhaeni, "Komodifikasi Ragam Buah Mangrove Untuk Pemberdayaan Masyarakat Pesisir Di Desa Tuban, Kecamatan Kuta, Kabupaten Badung Bali."

Due to the high demand and the expensive prices, there is a lot of mangrove illegal logging, trading, and even smuggling, especially in areas adjacent to Singapore and Malaysia.<sup>9</sup> In fact, acts of export smuggling have been prohibited in Article 102A of the Law of the Republic of Indonesia No. 17 of 2006 on Amendments to the Law of the Republic of Indonesia of 1995 on Customs, stating that “A person who: a. export goods without submitting customs manifest; b. intentionally notifies wrong type and/or volume of export goods in customs manifest as meant in Article 11A Paragraph (1) that results in un-fulfillment of state levies on export; c. loads export goods outside a customs area without permission of head of customs office as meant in Article 11A Paragraph (3); d. unloads export goods in customs area without permission of head of customs office; or e. transports export goods without being protected by valid documents in accordance with customs manifest as meant in Article 9A Paragraph (1), is penalized due to smuggling charges by imprisonment of at least 1 (one) year and maximum 10 (ten) years and monetary charge of at least IDR 50,000,000.00 (fifty million rupiah) and maximum of IDR 5,000,000,000.00 (five billion rupiah)”.

Due to the relatively high economic value, mangrove export smuggling continues to increase. On Thursday (04/02/2021), Riau Regional Office of Directorate General of Customs and Excise thwarted the smuggling of 5,700 mangrove timbers from Meranti Islands Regency, Riau Province to Malaysia.<sup>10</sup> On Friday (25/7/2021), Sub Directorate IV of Special Criminal Investigation Directorate of Riau Islands Police thwarted a smuggling attempt of 18,991 mangrove timbers to Singapore which were transported using 3 large motor boats. It was estimated that the total loss to the State is IDR 234 million. On Monday (18/10/2021), Marine Patrol Task Force of Directorate General of Customs and Excise of Riau Islands thwarted a smuggling attempt of 21,186 mangrove timbers to Malaysia. In 2021, the rate of mangrove timber smuggling has increased by 280%.<sup>11</sup>

The increasing number of mangrove smuggling requires efforts involving all relevant agencies (forestry, police, customs, navy, etc.)<sup>12</sup>. However, the application of criminal penalties and judges' considerations in smuggling cases greatly influence the enforcement of customs law, especially mangrove export smuggling. Hence, an analysis of judges' considerations in deciding mangrove export smuggling cases is needed. The rise of mangrove timber export smuggling has an impact on the country's economy and the availability of domestic mangrove timber commodities. Hence, knowing the factors triggering the rampant cases of mangrove timber export smuggling is crucial. One of the factors triggering mangrove timber export smuggling is the minimum criminal penalties applied so as to provide a low deterrent effect. Besides, the judge's considerations are not yet oriented towards the preservation of mangrove ecosystems in Indonesia.

## **Research Methods**

This doctrinal legal research applied a case approach and used secondary data obtained from library materials through literature study. The collected data were then analyzed deductively.

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<sup>9</sup>Wahyudi, *Pemanfaatan & Pengelolaan Sumberdaya Mangrove Di Teluk Bintuni Papua Barat*.

<sup>10</sup>FB Anggoro, “BC Riau Gagalkan Penyelundupan Ribuan Kayu Bakau Tujuan Malaysia,” <https://www.antaraneews.com/>.

<sup>11</sup>Romus, “DJBC Kepri Gagalkan Penyelundupan Ribuan Kayu Mangrove Ke Malaysia \_ Hukum,” <https://www.gatra.com/>.

<sup>12</sup>Aryuni Yuliantiningsih. “The Participation of Indonesia in Regional Fisheries Management Organizations (RFMOs): The Legal and Globalization Perspectives”. *Unifikasi : Jurnal Ilmu Hukum*.6.2. (2019): 137-145

## Results and Discussion

According to Baharuddin Lopa, smuggling is an act of importing, exporting, or transporting goods by not complying with applicable laws and regulations, or not fulfilling customs formalities stipulated by laws and regulations. *Douaneformaliteiten* are customs requirements to be completed in terms of importing or exporting goods, including inter-insular trade.<sup>13</sup> The General Indonesian Dictionary states that smuggling comes from the word “smuggle”. The word “smuggle” is defined as sneaking, shoving, entering surreptitiously or illegally. Meanwhile, smuggling is defined as importing goods illegally to avoid import duty or for prohibited goods.<sup>14</sup>

Moreover, in Black’s Law Dictionary it is stated, “smuggling is the crime of importing or exporting illegal articles or articles on which duties have not been paid.”<sup>15</sup> From an economic point of view, the criminal act of mangrove export smuggling is detrimental to state finances. Meanwhile, from a commodity perspective, it will affect domestic production and availability. Hence, efforts to overcome smuggling cases are crucially needed. However, in fact, eradicating timber smuggling completely in Indonesia is difficult due to several factors, including; 1) timber export permits are regulated by government agencies, such as ETPIK (Registered Exporter of Forestry Industry Products) and BRIK (Forestry Industry Revitalization Agency) which are APKINDO heirs; 2) complicated export bureaucracy; 3) export procedures require high transaction costs; 4) small and medium scale operators do not want to do this; 5) weak cooperation between agencies (forestry, police, customs, navy, etc.) to monitor and enforce the law; 6) limited bilateral cooperation; and 7) limited capacity to monitor the border area.<sup>16</sup>

Other factors contributing to the increasing mangrove exports smuggling cases are persons involved in illegal logging, the administrative disincentives, and the application of less stringent trade regulations in border areas.<sup>17</sup> Besides, the application of punishment and the judges’ considerations in case decisions can also contribute to the increasing mangrove exports smuggling cases. It is important as the judge’s decision is the climax of law enforcement process against a criminal case. The judges’ considerations contained in a decision must be based on sufficient evidence and the judge’s belief in the legal event. In addition to evidence and belief, judges are also required to consider social values to take fair decisions.

The judges’ consideration or *ratio decidendi* are the arguments or reasons used by judges to be taken into consideration in making a decision on a case. According to Rusli

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<sup>13</sup>Muhammad Hasanuddin, Helmi, Mispansyah. “Kebijakan Hukum Pidana pada Korupsi Dana Desa”. *Banua Law Review*, Vol. 5. 1, (12023): 1-21

<sup>14</sup>Konstansia Olgan Boa Mite, Sena Radya Iswara Samino, Ferdinandus Bate Dop. “Kajian Organologi dan Teknik Permainan Alat Musik Laba Bheto Di Desa Malanuzza Kecamatan Golewa Kabupaten Ngada”. *Jurnal Citra Pendidikan (JCP)*, Vol. 3 No. 2 (2023): 844-852

<sup>15</sup>Rizky Ramadhan Baried, Abdul Jamil. “Judge’s Attitude Towards the Mediator’s Recommendation Regarding the Bad Faith Party and Mediation Fees Issue”. *Jurnal Bina Mulia Hukum* Vol.7. 2 (2023): 261-271

<sup>16</sup>Hadlian Rilo Prabowo. “Penegakkan Hukum Pidana Dalam Menaggulangi Kejahatan Tindak Pidana Hasil Illegal Logging Berdasarkan Undang-Undang Nomor 18 Tahun 2013 Tentang Pencegahan Dan Pengrusakan Hutan”. *Dinamika Hukum* Vol.14, No.1, (2023): 147-169

<sup>17</sup>Lavita Raradanti, Mahzaniar Mahzaniar, Halimatul Maryani, Adawiyah Nasution. “The Role of Investigators Civil Servants of North Sumatera Province in the Framework of Activities of Illegal Logging Criminal Actions”. *Jurnal Ilmiah Advokasi* Vol 11 No. 01. (2023): 116-127

Muhammad,<sup>18</sup> judges' considerations are divided into 2 (two) types, namely: 1) juridical considerations – considerations based on juridical facts revealed in court and determined by law as matters that must be contained in a decision consisting of public prosecutor's indictment, evidence, and violated Article; and 2) non-juridical considerations – in the form of defendant's background, consequences of defendant's actions, and condition of defendant which are included in aggravating or mitigating considerations. The following table shows judges' consideration in case decisions.

Table 1. Judges' Considerations in Deciding Mangrove Timber Smuggling Cases

No.	Decision Number	Criminal Penalties	Judge's Consideration (aggravating)
1	158/Pid.Sus/2013/PN.Tbk	1 (one) year 6 (six) months in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 3 (three) months in prison	The defendant's actions resulted in immaterial losses to the state, namely the deforested mangrove forests could not withstand erosion and caused natural imbalances in coastal areas.
2	48/Pid.Sus/2015/PN.Tbk	2 (two) years in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 3 (three) months in prison	The defendant's actions resulted in immaterial losses to the state, namely the mangrove forests which function as a protection for the life support system became dysfunctional and deforested so that it could not withstand erosion as well as caused natural imbalances in coastal areas.
3	38/Pid.B/2017/PN.Bls	2 (two) years 6 (six) months in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 6 (six) month in prison	-
4	208/Pid.Sus/2017/PN.Tbk	3 (three) years in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 3 (three) months in prison	The defendant's actions can cause ecosystem imbalances.
5	255/Pid.Sus/2019/PN.Tbk	2 (two) years 6 (six) months in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 1 (one) month in prison	The defendant's actions harmed domestic production sector and other levies.
6	302/Pid.B/2021/PN.Bls	3 (three) years in prison and a fine of IDR 50,000,000.00 (fifty million rupiah), subsidiary 2 (two) months in prison	<ul style="list-style-type: none"> <li>▪ The defendant's actions can disrupt and damage environmental ecosystem;</li> <li>▪ The defendant's actions caused material losses to the state.</li> </ul>

Source: Directory of Supreme Court, 2022

From the decisions presented in Table 1, it is clear that none of the decisions apply rejuvenation measures that must be carried out by the defendant as a rehabilitation effort to preserve mangrove ecosystem. In fact, the criminal acts of smuggling, which previously started with illegal logging, will have an impact on the destruction of mangrove ecosystems and the loss of various species of flora and fauna. Besides, one of the decisions even did not

<sup>18</sup>Ismail Ismail, Robby Anugerah Lingga. "Analisis Yuridis Terhadap Tindak Pidana Pencurian Di Perkebunan (Studi Kasus Putusan Pengadilan Negeri Nomor 1032/PID.SUS/2021/PN.KIS)". *Ex-Officio Law Review*, Vol 2, No 1, (2023): 31-40

make mangrove exploitation an aggravating factor, as seen in Decision No. 38/Pid.B/2017/PN.Bls. Even though, in non-juridical considerations, the consequences of the defendant's actions are a matter of consideration that will aggravate the defendant. Further, the maximum penalty applied was 3 (three) years with an average fine of IDR 50,000,000.00 (fifty million rupiah). Even though Article 102A of the Customs Law states that export smugglers will be subject to imprisonment of at least 1 (one) year and maximum 10 (ten) years and a monetary charge of at least IDR 50,000,000.00 (fifty million rupiah) and maximum IDR 5,000,000,000.00 (five billion rupiah). Hence, it can be concluded that the above decisions apply minimum penalties.

These penalties will certainly have an impact on the number of mangrove timber export smuggling which continues to increase due to the low deterrent effect given to the application of criminal penalties. In addition, there is no action given to the defendant, such as an instruction to rejuvenate mangrove forests. In fact, this action is important for mangrove ecosystem because rehabilitation, such as reforestation/greening, aims to renew mangrove ecosystem so that it returns to its natural function.<sup>19</sup>

### **Conclusion**

None of the decisions applies rejuvenation measures that must be carried out by the defendant as a rehabilitation effort to preserve mangrove ecosystem. In fact, one of the decisions even does not make mangrove exploitation an aggravating factor for the defendant. Besides, the penalties applied are still minimum so that the deterrent effect given is low.

### **Suggestion**

The Supreme Court must provide training to judges at all levels of court to increase their capacity in dealing with environmental issues.

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<sup>19</sup>Jabalnur, Jabalnur, Heryanti, Sahrina Safiuddin, Nur Intan, Jumiati Ukkas, Muslimah Suciati, and Ramadan Tabiu. "Kemitraan Konservasi Di Hutan Mangrove Dalam Zona Pemanfaatan Tradisional". *Halu Oleo Law Review* 7, no. 1 (March 26, 2023): 52-65

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