



Basic Analysis of Judges' Considerations on the Difference between First Level Decisions and Cassation Level Decisions in Criminal Cases of Protected Forest Destruction

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Abstract

Cases of forest protection destruction often occur in Indonesia. However, only a small part of it gets attention. The focus of the research is on the differences in judges' decisions at two levels of court, namely the First Level Decision No. 11/Pid.Sus/2021/PN.Lht which acquitted and the Cassation Level Decision No. 2441K/Pid.Sus/2021 which sentenced the defendant to 1 (one) year and a fine of IDR 1 billion. The research method used is normative research supported by empirical data. The data sources used in this study consist of primary data supported by secondary data. The results of the study found that the Legal Considerations made by the Supreme Court Justice at the Cassation level, namely considering the Testimonies of Witnesses ignored by the Judge at the Lahat District Court, became a strong basis for sentencing the Defendant of the Protected Forest Destruction of the Issues and the absence of reasons for the Elimination of Criminal Charges that had been made by the Defendant to escape the clutches of the law for his actions. The implementation of the decision at the cassation level against the defendant, namely the Lahat District Attorney's Office has carried out a forced pick-up of the Convict to carry out the remaining detention period in accordance with the order from the Head of the Lahat District Attorney's Office to be handed over to the Lahat Regency Penitentiary.

Keywords: *Judge's Consideration; Difference in Decision; First Level Decision; Cassation Level Decision; Destruction of Protected Forest*

Introduction

Natural resources are an important commodity for the life of creatures on this earth. One of the natural resources possessed by the Indonesian state is forests. There are two important functions of forests, namely for human life and for the community's economy. Forests as an ecology are a source of the world's lungs that can absorb carbon dioxide from the air and return clean oxygen to humans. Meanwhile for the economy, forests have the economic potential to improve the community's economy as

a foreign exchange earner for the country (Purnomo et al., 2021). Therefore, we as Indonesian citizens are obliged to protect and preserve forests. The form of each person's obligations is stated in Article 67 of Law Number 32 of 2009 concerning Environmental Protection and Management, namely controlling pollution and/or environmental damage related to efforts not to allow environmental pollution or damage to occur (Hayatuddin dan Serlika, 2021).

Based on Article 6 paragraph (2) of Law Number 41 of 1999 concerning Forestry, where the central government divides forests based on their function, namely Conservation Forests, Protected Forests and Production Forests. Conservation Forests have an important role in producing clean water sources that humans need, industrial growth, agriculture and irrigation and so on, have an important role in the growth of the country's foreign exchange, have a role in food security, poverty alleviation, and have a role in protecting and as centers of biological wealth (Aldikora, 2012).

Protected Forest can also be interpreted as a forest whose existence is protected because it is useful in protecting the ecosystem. Protected forest areas have a role in maintaining ecosystem balance, biodiversity, and maintaining environmental resilience, unfortunately forest areas are often the target of illegal mining activities (Lario et al., 2024). To maintain the sustainability of protected forests, the government has issued Law No. 41 of 1999 concerning Forestry and Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction.

Production Forest is defined as a forest area that has a primary function as a producer of forest resources (Djajapertjunda dan Edje, 2021). The formation of Production Forest is based on Government Regulation (PP) Number 23 of 2021 concerning Forestry Implementation. The government plays an important role in licensing the use of Production Forest Areas as regulated in Article 3 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 9 of 2021 concerning Social Forestry Management concerning Social Forestry Management in Production Forests, approval can be given for the management of village forests, community forests, community plantation forests or forestry partnerships.

To protect forests from destruction, the government plays an important role, particularly in creating regulations in the form of laws and government regulations. The regulation must create rules that are prohibitive in nature and accompanied by sanctions in the form of imprisonment or fines. In articles 49 and 50 of the Forestry Law, there are prohibitions and sanctions for violations of forest destruction. The prohibition of forest destruction is intended to provide forest protection as its function (Husein, 2015).

Furthermore, in Article 84 and Article 85 of Law No. 18 of 2013 concerning Prevention of Forest Destruction. This article also prohibits anyone who commits a crime by entering heavy equipment or other equipment without permission from the authorized official, who will be sentenced to a minimum of 2 years and a maximum of 10 years in prison and a fine of at least 2 billion rupiah up to 10 billion rupiah.

In Indonesia, there are many cases of forest destruction. One case of forest protection destruction occurred in South Sumatra, namely in Lahat Regency. This case is related to a company engaged in coal mining, namely PT Lahat Pulau Pinang Bara Jaya (PT LPPBJ) which has a Mining Business Permit in Merapi Selatan District, Lahat Regency. This case began based on Report Letter Number: LP/A/0183/III/2020/Bareskrim dated March 31, 2020. Based on the report and the results of the police investigation, it was discovered that the company operating in Geramat Village, Merapi Selatan District, was suspected of encroaching on the forest by bringing heavy equipment and carrying out mining activities in the area, as well as damaging forest protection facilities and infrastructure. Therefore, Bareskrim Investigators at National Police Headquarters suspect that the Director of PT LPPBJ violated Article 89 Paragraph (1) in conjunction with Article 17 paragraph (1) of Law Number 18 of 2013 concerning Prevention and Eradication of Vandalism.

The case of protected forest destruction allegedly carried out by the Director of PT LPPBJ has been tried at the Lahat District Court in case no. 11/Pid.Sus/2021/PN.Lht and decided that the defendant had not been legally and convincingly proven guilty of committing a criminal act and acquitted the defendant from all charges from the public prosecutor. Based on this decision, the public prosecutor filed a cassation appeal against the Acquittal to the Supreme Court of the Republic of Indonesia.

As for the results of the decision at the cassation level in this case with Case No. 2441K/Pid.Sus/2021, which states that the Director of PT LPPBJ has been legally and convincingly proven guilty of committing the criminal act of carrying heavy equipment or other tools and transporting mining products in a forest area. The Panel of Judges at the cassation level sentenced him to 1 (one) year and a fine of IDR 1 billion with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month. Due to differences in judges' decisions at the two court levels, the researcher is interested in conducting an in-depth analysis of the legal opinions or arguments that are used as the basis for judges' considerations in deciding cases at each level and the implementation of decisions at the cassation level against the defendant.

Research Method

This type of research is normative legal research which is supported by empirical data. Normative legal research in research is to analyze and explain the basis of judges' considerations in district court decisions that conflict with decisions at the cassation level at the Supreme Court of the Republic of Indonesia. This study uses empirically supported normative research because it focuses on legal norms, applicable rules, and principles contained in laws and regulations, especially in examining legal considerations used by Judges in deciding cases. For empirical data, the study focuses on how the law is applied in society and the impact of the application of the law.

Normative legal research in this research is analyzing and explaining the basis of judges' considerations in district court decisions that conflict with decisions at the cassation level at the Supreme Court of the Republic of Indonesia. The normative system in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines.

This research uses a statutory approach and a case approach. The Legislative Approach is used to obtain a description of the analysis of legal regulations that regulate the basis of the Judge's considerations resulting in differences in First Level Decisions and Cassation Level Decisions. The case approach is carried out in cases related to the issues at hand which have become court decisions which have permanent legal force, especially those relating to criminal procedural law issues in cases of destruction of protected forests which have been decided at the district court level and at the cassation level. (Lahat District Court Decision No. 11/Pid.Sus/2021/PN.Lht vs. Supreme Court Decision No. 2441K/Pid.Sus/2021).

Discussion

1. District Court Decision No.11/Pid.Sus/2021/PN.Lht and the Judge's Considerations in Deciding the Case

The following is the Decision of the Lahat District Court No: 11/Pid.Sus/2021/PN. Lht for the Convict based on the indictment and demands of the Public Prosecution:

1. Declare that the Defendant has not been proven legally and convincingly guilty of committing the criminal acts as charged in the first indictment, second indictment and third indictment of the Public Prosecutor.

2. Release the Defendant therefore from all charges of the Public Prosecutor;
3. Order the Defendant to be released from detention immediately after this verdict is pronounced;
4. Restore the Defendant's rights in terms of ability, position, dignity and honor;
5. Determine the Evidence in the form of:
 - a. 1 (one) package of legalized photocopies of Report 4 and Budget (RKAB) of PT. Lahat Pulau Pinang Bara Jaya in 2019;
 - b. 1 (one) package of legalized photocopies of Report 4 and Budget (RKAB) of PT. Lahat Pulau Pinang Bara Jaya in 2018;
 - c. 1 (one) sheet of legalized photocopy of Certificate of Sampling And Analysis of PT. Lahat Pulau Pinang Bara Jaya;
 - d. 6 (six) legalized photocopies of the Approval Letter (RKAB) of PT. Lahat Pulau Pinang Bara Jaya number 540/361/desdm/iii-2/2018;
 - e. 1 (one) legalized photocopy of the Approval Letter (RKAB) of PT. Lahat Pulau Pinang Bara Jaya number 540/1534/desdm/iii-2/2018 dated December 26, 2018;

Returned to the Public Prosecutor to be used in the case of PT. LPPBJ;

6. Charge the Court Costs to the State

The judge's considerations in deciding the case based on the facts obtained in the trial and all the evidence presented in court, as follows:

- a. That the area or location of the mining business permit and mining activities of PT. Lahat Pulau Pinang Bara Jaya is outside the forest area;
- b. That in the trial, none of the witnesses presented explained that they saw the Defendant as an individual committing an act that fulfills the second element of the First indictment of the Public Prosecutor, namely the act of carrying out mining activities in the forest area and/or carrying heavy equipment or other equipment that is commonly or reasonably suspected to be used to carry out mining activities or transport mining products in the forest area;
- c. That all the evidence presented by the Public Prosecutor, none of which can show firmly and clearly the actions carried out by the Defendant as an individual, there was carrying out or even ordering another person to carry out mining activities in the forest area and/or bringing heavy equipment or other equipment that is commonly or reasonably suspected to be used to carry out mining activities or transport mining products in the forest area as the series of actions have been described by the Public Prosecutor in the description of his indictment;
- d. That on the other hand, the evidence presented in court was only able to show the facts of the forest damage incident with the existence of a road that crossed the Isau-Isau forest area along 1.3 KM and the conversion of part of the function of the Isau-Isau forest area to Community Plantations;
- e. That the Panel of Judges has ordered the Public Prosecutor to present all witnesses and experts who will support the Public Prosecutor's charges as contained in the case file, however, not all of the witnesses and experts were present in court as has been considered;
- f. That in order to obtain material truth in the a quo case, the Panel of Judges has also requested and asked the parties in this case to conduct an on-site examination or at the location where the forest destruction occurred in the hope that this can provide clarity in order to seek material truth for the resolution of the a quo case, however, until the reading of this decision was pronounced, the examination requested by the Panel of Judges had never been carried out for reasons as stated by the parties in the trial regarding the distance of the location and the rainy weather did not support the examination being carried out;

2. Legal Appeal for Cassation against District Court Decision No. 11/Pid.Sus/2021/PN.Lht

The Public Prosecutor filed a cassation appeal against the acquittal decision from the Lahat District Court. According to the provisions in Article 1 number (12) of the Criminal Code (KUHP), what is meant by a legal appeal is the right of the defendant or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the right of the convict to file a request for judicial review in the case and according to the method regulated in this law. As a right, of course this legal appeal is very dependent on the defendant or public prosecutor whether they will use it or not. If both the defendant and the public prosecutor can accept a decision handed down by the court, then they can not use the right in question. However, conversely, if the defendant or public prosecutor objects to a decision handed down by the court, then this right can be used in accordance with the applicable provisions.

According to Article 244 of the Criminal Procedure Code against an acquittal (*vrijspraak*), the Public Prosecutor cannot file a cassation appeal to the Supreme Court. However, in the development of Indonesian criminal justice practices, namely against the provisions of Article 244 of the Criminal Procedure Code, the Public Prosecutor can file a cassation appeal against an acquittal (*vrijspraak*) to the Supreme Court. This is based on the Constitutional Court's decision Number 114/PUU-X/2012 which decided that a cassation appeal can also be made for an acquittal. The Supreme Court took a firm stance on the prohibition of Article 244 of the Criminal Procedure Code on the prosecutor's cassation request, of course, it was not done rashly, without a clear legal basis and argument.

The Supreme Court in responding to the message of the Constitutional Court Decision dated March 28, 2013 No. 114/PUU-X/2012 also needs to be a reflection for judges so that they are not too quick to issue acquittals because it has revoked the phrase "except for acquittals" in Article 244 of the Criminal Procedure Code which is stated to be contrary to the 1945 Constitution. "Thus, acquittals are now freely corrected by the Supreme Court. With the Constitutional Court's decision in question, the public prosecutor has obtained legal certainty in filing an appeal against the acquittal verdict handed down at the first instance court.

This is in line with Article 253 paragraph (1) of the Criminal Procedure Code which states that the cassation level examination is carried out by the Supreme Court at the request of the parties to determine; whether it is true that legal regulations are not applied or applied properly, whether it is true that the method of trial is not carried out in accordance with the law, whether it is true that the court has exceeded its authority.

Therefore, Article 67 and Article 244 of the Criminal Procedure Code, the implementation of which is stated in the Decree of the Minister of Justice of the Republic of Indonesia No. M-14-PW.07.03 of 1983 concerning Additional Guidelines for the Implementation of the Criminal Procedure Code, have actually provided a guarantee of protection and legal certainty in accordance with the 1945 Constitution. Because, if there is a decision (acquittal) that does not fulfill a sense of justice, an appeal can still be filed.

3. Cassation Decision for Case No. No.2441K/Pid.Sus/2021 and the Judge's Considerations in Deciding the Case

The following is the Supreme Court Decision Number: 11/Pid.Sus/2021/PN.Lht:

JUDGE

1. Granting the Appeal from the Applicant/Public Prosecutor to the Lahat District Prosecutor's Office;
2. Canceling the Decision of the Lahat District Court Number. 11/Pid.Sus/2021/PN. Lht dated March 22, 2021;

JUDGING HIMSELF

1. Declaring the Defendant legally and convincingly proven guilty of committing the crime of "carrying heavy equipment or other tools and transporting mining products in a forest area;
2. Sentencing the Defendant therefore to 1 (one) year in prison and a fine of one billion rupiah with the provision that if the fine is not paid, it will be replaced with 1 (one) month in prison;
3. Determining that the detention period that has been served by the Defendant is deducted entirely from the prison sentence that has been imposed;
4. Determine the evidence in the form of:
 - a. 1 (one) package of legalized photocopies of Report 4 and Budget (RKAB) of PT. Lahat Pulau Pinang Bara Jaya in 2019;
 - b. 1 (one) package of legalized photocopies of Report 4 and Budget (RKAB) of PT. Lahat Pulau Pinang Bara Jaya in 2018;
 - c. 1 (one) legalized photocopies of Certificate Of Sampling And Analysis of PT. Lahat Pulau Pinang Bara Jaya;
 - d. 6 (six) legalized photocopies of Approval Letter (RKAB) of PT. Lahat Pulau Pinang Bara Jaya number 540/361/desdm/iii-2/2018;
 - e. 1 (one) legalized photocopies of Approval Letter (RKAB) of PT. Lahat Pulau Pinang Bara Jaya number 540/1534/desdm/iii-2/2018 dated December 26, 2018;

Returned to the Public Prosecutor to be used in the PT. LPPBJ case;

5. Charge the defendant to pay the court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah)

The Supreme Court Judge's considerations for his decision are:

- a. That the Public Prosecutor's cassation reason can be justified because the *Judex Facti* misapplied the law, acquitting the Defendant from all the Public Prosecutor's charges without carefully and precisely considering the facts revealed in court;
- b. That the Police have received a report from the Public and have conducted an investigation and inquiry into the report stating that they have committed damage and have brought heavy equipment into or through the protected forest, by sending a team whose members include Witness 1 and Witness 2, as well as from the Criminal Investigation Unit of the Indonesian National Police followed by representatives from the Environmental Service and Forestry Service of South Sumatra Province. The total number of Team members is 8 (eight) people;
- c. That the Team has visited the location of the Defendant's actions, namely in the Isau-Isau Protected Forest, Gramat Village, South Merapi District, Lahat Regency, South Sumatra, and has found a road to PT. LPPBJ is a company engaged in the coal sector, the Defendant as the Director responsible for the estimated length of the road is around 1.5 km and the Team has plotted 7 (seven) coordinate points, 3 of which are in the Isau-Isau Protected Forest and the Hauling road leading to PT. LPPBJ;
- d. That some information from the Community on the Hauling Road that crosses the Isau-Isau Protected Forest Area was made and has been used by PT. LPPBJ to carry heavy equipment to the mining location of PT. LPPBJ, however the Defendant denied the Public Prosecutor's charges as well as the Witnesses from PT. LPPBJ including Witness 3, Witness 4, Witness 6, Witness 7, Witness 11, Witness 16 and others, none of whom explained who made the Hauling Road in the Isau-Isau Protected Forest and did not know that PT. LPPBJ's heavy equipment had ever been brought through the road;
- e. That according to the statement of the 11th Witness from the South Sumatra Provincial Forestry Service, after checking the Hauling Road of the Isau-Isau Protected Forest, according to the

statement of the 17th Witness, the Head of Geramat Village since 2019 until now, explained that it is true that the Hauling Road is included in the Geramat Village area towards PT. LPPBJ according to the Community who opened the Hauling Road, it is suspected that PT. LPPBJ used heavy equipment to enter the Isau-Isau Protected Forest Area, When the Witness was shown the Road map leading to the Coal Company, it stated that the purple road from point B to point D and red from Point C to Point E towards PT. LPPBJ, the purple road from point B to Point D is the Hauling Road entering the Isau-Isau Protected Forest, then the Witness explained:

- f. The type of heavy equipment that has passed through the purple Road is an Excavator and the heavy equipment is heading towards PT. LPPBJ;
- g. The purple road from Point B to Point D was built around 2018 after being used several times, it was later discovered that the road was a protected forest, so a red road was built from Point C to Point E by PT. LPPBJ. 6. That based on the legal facts revealed in the Trial, the actions of the Defendant as Director of PT. LPPBJ have fulfilled the elements of the Public Prosecutor's indictment of violating Article 89 paragraph (1) Junto Article 17 paragraph (1) of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction;

Considering that based on the above considerations, the Defendant's actions have fulfilled the criminal elements in Article 89 paragraph (1) in conjunction with Article 17 paragraph (1) of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction as charged in the First indictment, therefore the Defendant has been proven guilty and sentenced to a criminal penalty.

4. Basic Analysis of Judges' Considerations in Deciding Cases at First Level and Cassation Level in Court Decision No.11/Pid.Sus/2021/PN.Lht and Cassation Decision No.2441K/Pid.Sus/2021

The judge's decision in the case regarding the destruction of protected forests in Case No. 11/Pid.Sus/2021/PN.Lht has a different decision at the cassation level. The judge who decided the case at the District Court considered that from all the statements of the Witnesses presented at the trial, they provided information regarding not seeing and hearing directly that the Defendant who acted on behalf of PT. LPPBJ as the Director who had ordered or committed the criminal act charged in accordance with the three charges of the Public Prosecutor. That most of the Witnesses presented at the Trial were mostly Witnesses whose statements were taken were Witnesses who had an employment relationship with the Defendant, so that the statements of these Witnesses were suspected of being to benefit the Defendant so that he would not be punished. Regarding the statements of these witnesses, the Judge as the Panel in the Trial needs to be doubted.

In this case, the Panel of Judges in Case Number. 11/Pid. Sus/2021/PN. Lht has been negligent in implementing the law, regarding the statement of the 14th Witness as a representative of the authorized Government under the duties and functions of the Forestry Service who went down and checked directly at the scene of the crime and plotted the Isau-Isau Protected Forest area and also surveyed it by finding mining activities near the Protected Forest, very close if the result of the mining activities carried out by the Defendant has damaged and used the Isau-Isau Protected Forest in order to gain profits from the Defendant's Company.

The Panel of Judges also ignored the statement of the 17th Witness as the Geramat Village Official who explained that since 2019 it was true that PT. LPPBJ had opened the Isau-Isau Protected Forest Hauling Road, considering that this Witness as the local Village Official who received a report from his residents regarding the use of the Isau-Isau Protected Forest as access for PT. LPPBJ to start its mining activities by opening and inserting heavy equipment and using the Isau-Isau Protected Forest.

The statements of Witnesses 14 and 17 are justified according to Indonesian Law even though the witnesses did not hear, see or feel it themselves (witnesses de auditu). This is regulated by the

Constitutional Court which has guaranteed the capacity and statements of Witnesses by issuing Decision Number 65/PUU-VIII/2010 which in the ruling emphasizes that witnesses in giving their statements do not always have to be what they heard, saw or felt themselves.

The considerations of the First Level Judge in imposing criminal sanctions on the Defendant must be based on the evidence presented in the Trial as regulated in the Criminal Procedure Code (KUHAP) in Article 184 paragraph (1) which states that the evidence to be able to ensnare the perpetrator of a crime for his actions can be proven by witness statements, expert statements, letters, clues or the Defendant's own statement and must not be ignored in the considerations of his decision (Hamzah, 2004).

5. Implementation of the Decision at the Cassation Level Against the Defendant

Based on the results of the interview with the Lahat District Attorney's Office and seeking information regarding the implementation of the Supreme Court's cassation decision as an institution representing the state to punish the convict, the Lahat District Attorney's Office has carried out a forced pick-up of the convict to carry out the remaining detention period in accordance with the order from the Head of the Lahat District Attorney's Office to be handed over to the Lahat Regency Penitentiary.

Conclusion

Legal considerations made by the Supreme Court Judge of Cassation who considered the statements of witnesses ignored by the Judge at the Lahat District Court became a strong basis for sentencing the Defendant for the Destruction of the Isau-Isau Protected Forest and the absence of reasons for the Elimination of Criminal Deterrence that the Defendant had made to escape the clutches of the law for his actions. Although based on Article 1 Number 26 of the Criminal Procedure Code, a witness is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a case that he himself heard, saw, and experienced. However, the testimony of the witness *de auditu* was accepted by the Supreme Court of the Republic of Indonesia based on Constitutional Court Decision No. 65/PUU-VIII/2010.

Implementation of the decision at the cassation level against the defendant, namely the Lahat District Attorney's Office has carried out a forced pick-up of the Convict to carry out the remaining detention period in accordance with the order from the Head of the Lahat District Attorney's Office to be handed over to the Lahat Regency Penitentiary. The cassation filed by the Public Prosecutor has also provided legal certainty to the defendant, because based on the Constitutional Court decision Number 114/PUU-X/2012 which decided that the cassation legal effort can also be made for an acquittal decision.

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