



## Application of Elements of Criminal Acts of Plantation Land Clearing in National Park Areas by Investigators of the South Coast Police Crime Squad

Ryki Yovrizal<sup>1\*</sup>, Susi Delmiati<sup>1</sup>

<sup>1</sup>Ekasakti University, Padang, Indonesia

\*Corresponding author: [rikiyovrizal1979@gmail.com](mailto:rikiyovrizal1979@gmail.com)

### Article Info

#### Article History

Revised : 2023-12-15

Accepted : 2024-04-06

Published : 2024-01-15

#### Keywords:

Crime; Land Clearing;  
National Park

### Abstract

The South Coast Police Crime Squad conducted an investigation into the crime of carrying out plantation activities without ministerial permission in forest areas. The difficulty of the South Coast Police Detective Investigator is to implement 'Elements in forest areas'. This happened because of the unclear boundaries of the National Park forest area. In the investigation process, the Investigator applied the provisions of Article 17 paragraph (2) letter b Juncto Article 92 paragraph (1) letter a of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction as Police Report Number: LP/25/A/II/2019/ Res-Pessel dated February 12, 2019. The application of the elements of the criminal act of clearing plantation land in the National Park area consists of subjective elements and objective elements. The subjective element is a person, then what is meant by everyone in this article is the perpetrator as a person who can account for his actions and the objective element is that his actions are unlawful, namely: "Elements intentionally, elements carrying out plantation activities, elements without the permission of the Minister and elements nature forest area". According to investigators, the suspect's actions have fulfilled the formulation and elements of Article 17 paragraph (2) letter b Juncto Article 92 paragraph (1) letter a of Law Number 18 of 2013.

## INTRODUCTION

Forests have a very important position and role in supporting national development. This is because the forest is beneficial for the greatest prosperity and welfare of the Indonesian people. In accordance with the mandate of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 that: "Earth, water and all natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The purpose of the article is that natural wealth is intended for the welfare of citizens, including in this case forests which are one of the state assets that can support national development.

Indonesia has a forest area of approximately 144 million ha, the forest area is detailed into production forests covering an area of 49.3 million ha, protected forests covering an area of 39 million ha, and conservation forests and other forests covering an area of 29.0 million ha.<sup>1</sup> Regarding the determination of this forest, it is the authority of the Minister of Forestry in accordance with PP Number 44 of 2004 which states that the Minister determines forest areas based on the Minutes of Forest Area Boundary Planning and forest area boundary maps. If such

<sup>1</sup> Salim H.S, *Fundamentals of Forestry Law*, Sinar Grafika, Jakarta, 2011, p. 1

a large forest is managed and utilized properly, it will have a positive impact in supporting the development of the nation and state. However, based on data released by the United Nations Organization, namely the *Food and Agriculture Organization (FAO)* in 1991 it was stated that damage in Indonesia for industrial interests covered an area of 1,314,700 ha per year. When presented, damage averages 1.2% per year. It can be estimated that in less than 84 years Indonesia's tropical forests will be depleted.<sup>2</sup>

Forest destruction in Indonesia is estimated to be between 600,000 ha to 1.3 million ha per year while forest and land destruction has reached 43 million ha per year. In general, this is due to the occurrence of large-scale exploitation in an unsustainable and ecological-minded manner for forest resources both for the purposes of extracting forest products, clearing plantation land and for other purposes such as mining.<sup>3</sup> The problem of forest and land destruction as described above is exacerbated by forest and land burning activities as a result of land clearing activities through burning. The burning of forests and land has caused haze pollution, which contributes to *global warming* and *climate change*, which in turn gives its own burden of disruption to forest ecosystems.

Unsustainable and ecologically unsustainable use of forests and land can be caused by several factors, including legal, human, law enforcement, and so on. This section is intended to reveal the legal factors of forest and land resource use and other forms of human activities that contribute to forest and land destruction.<sup>4</sup>

In the past three decades, Indonesia's forests have been under great threat as the amount of destruction has increased sharply from decade to decade. From the decade of the 80s to the decade of the 90s, the increase in forest destruction reached an increase of 100 percent. Based on data from the Ministry of Forestry, Indonesia's forest destruction in 2003 has reached 43,000,000 hectares per year out of a total of 120,350,000 hectares. Indonesia's land resources both within forest areas and outside forest areas are also under serious threat in Pelita VI (early 1999/2000), the Government of Indonesia announced that critical land in Indonesia has reached 23,242,681 hectares. 35% of the total degraded land occurs within forest areas and 65% occurs outside forest areas.<sup>5</sup> The quantity of degraded land is likely to continue to grow in the future as the Government was only able to rehabilitate 1,700,861 hectares of critical rights for the 1999-2002 fiscal year. This is exacerbated by conditions where the above rehabilitation capabilities can only be implemented by 701,944.<sup>6</sup>

Seeing the phenomenon and from some of the serious threats above, if allowed to continue greatly impact the survival of life for future generations, one of these damages, has occurred in one of the world's important tropical forest areas located in the *Bukit Barisan Selatan mountain* chain, the area is called Kerinci Seblat National Park (TNKS) which is a type of Nature Conservation Conservation Forest.

TNKS was designated as a National Park based on the Decree of the Minister of Forestry No. 192/KPS-II/1996 of 1996 with an area of 1.386 million ha. This area covers 4 provinces namely West Sumatra, Jambi, Bengkulu and South Sumatra and 25% of them are in West Sumatra. There are no less than 436 villages whose areas are directly adjacent to this area. This area has become very important in the ecosystem of the island of Sumatra and for that in 2004 this area has been listed by the UNESCO World Heritage Commission into the World Heritage Site as a Cluster Mountainous Tropical Rainforest Heritage Site of Sumatra (TRHS) along with Gunung Leuser National Park (TNGL) and Bukit Barisan Selatan National Park (TNBBS).

---

<sup>2</sup> *Ibid*, p. 2

<sup>3</sup> *Ibid*, p. 3

<sup>4</sup> Sukanda Husin, *Environmental Law Enforcement*, Sinar Grafika, Jakarta, 2020, p. 132

<sup>5</sup> *Ibid*, p. 133

<sup>6</sup> *Ibid*, p. 134

TNKS forest management activities into plantation/agricultural land carried out by individuals or indigenous peoples by encroaching and burning, often causing serious impacts, this also happens in the TNKS forest of South Pesisir Regency, precisely in Kenagarian Kambang, Lengayang District. The results of the author's observations in the field currently the number of people in Lengayang District who depend on their livelihoods by farming in the forest of TNKS Lengayang District is very large, people open land traditionally using tools in the form of machetes, machetes and hoes, namely by cutting trees, cutting down shrubs which are then stacked for burning. The average area of land owned by the community in the TNKS area  $\pm$  1.5 Ha and planted with Jengkol plants, nutmeg, bananas and gambier.

Based on the results of taking coordinate points by the TNKS using GPS (*Global Positioning System*) proves that the plantation land is included in the TNKS forest area, so that people who farm at the TNKS location are suspected of carrying out illegal plantation activities in the forest area as referred to in Article 92 paragraph (1) letter (a) of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (PPPH Law), namely:

Individuals who intentionally carry out plantation activities without the permission of the Minister in the forest area as referred to in Article 17 paragraph (2) point b shall be punished with a prison sentence of not less than 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp. 1,500,000,000 (one billion five hundred million rupiah) and a maximum of Rp. 5,000,000,000 (five billion rupiah).

Then in Article 17 paragraph 2 letter (b) it is stated that:

Everyone is prohibited from carrying out plantation activities without the Minister's permission within the forest area.

Based on the above phenomenon, TNKS forests must be conserved sustainably by, in addition to stopping encroachment, illegal logging, stopping forest burning activities, which will greatly have a negative impact on environmental sustainability such as floods, landslides, droughts, and air pollution that can cause misery for the community.

Although in Indonesia there are many laws and regulations that prohibit forest encroachment and destruction, in reality on the ground, the law enforcement process has not run properly and forest encroachment still occurs. Efforts to overcome and deal with the problem of forest encroachment are very important to be the attention of all parties in order to solve various problems that occur because this concerns the interests of many parties so that the problem is multidimensional.

Based on the legal phenomenon mentioned above, the author is interested in conducting research on the application of elements of criminal acts of plantation land clearing in national park areas by investigators of the South Coast Police Secretariat.

## RESEARCH METHODS

This research is a legal research with analytical descriptive research specifications, namely research that describes the application of elements of criminal acts of plantation land clearing in national park areas by investigators of the South Coast Police Secretariat. The main approach used is the normative juridical approach, by conducting research on legal rules related to the application of elements of criminal acts of plantation land clearing in park areas. Supported by an empirical juridical approach, by conducting research to see the working of these legal rules in practice at the South Coast Police Crime Squad in the investigation process.

## DISCUSSION

### Application of Criminal Elements of Clearing Plantation Land Within the National Park Area by Investigators

The criminal act of clearing plantation land in the National Park Area is regulated in the PPPH Law, where Article 92 paragraph (1) point a contains criminal provisions against individuals who deliberately carry out plantation activities without the Minister's permission in the forest area as referred to in Article 17 paragraph (2) point b, namely Everyone is prohibited from carrying out plantation activities without the Minister's permission in the forest area. The formulation of the article has changed after the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law).

#### Article 92 paragraph (1)

Individuals who intentionally carry out plantation activities without a Business License in the forest area as referred to in Article 17 paragraph (2) point b; and/or sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and/or a fine of at least Rp1,500,000,000.00 (one billion five hundred million rupiah) and a maximum of Rp5,000,000,000.00 (five billion rupiah).

#### Article 17 paragraph (2) point b

Everyone is prohibited from carrying out plantation activities without a Business License from the Central Government within the forest area.

The amendment to Article 92 paragraph (1) of the Job Creation Law is only on the words "without the permission of the Minister" which is changed to "without a business license". Article 92 paragraph (1) uses *administrative penal* law (application of criminal law in the field of administrative law violations) with an alternative cumulative nature due to unlawful acts in the administrative realm, namely related to licensing enforced with criminal sanctions. Administrative criminal law is the embodiment of the policy of using criminal law as a means to enforce administrative law. In addition to Article 92, in the Job Creation Law, precisely Article 110B paragraph (1) also regulates plantation crimes with the application of the *ultimum remedium principle*.

#### Article 110B paragraph (1)

Any person who commits an offense as referred to in Article 17 paragraph (1) letter b, letter c, and/or letter e, and/or Article 17 paragraph (2) letter b, letter c, and/or letter e, or other activities in forest areas without having a Business Permit carried out before the enactment of this Law shall be subject to administrative sanctions, in the form of:

- a) temporary suspension of business activities;
- b) payment of administrative fines; and/or
- c) government coercion.

The crime of carrying out plantation activities without the permission of the Minister in the forest area as regulated by Article 17 paragraph (2) point b is qualified as a special crime, namely a crime that is outside the codification of the Criminal Code and is qualified as a formal crime. It is said to be a formal crime because it refers to the phrase "everyone is prohibited from carrying out plantation activities without the permission of the Minister in the forest area" which emphasizes the prohibition of an act or there is no need for a certain consequence of the act as a condition for solving the crime, but solely on the act

To find out whether an act in a legal event is a criminal act, an analysis can be made on whether the act has fulfilled the elements stipulated in a certain criminal law article provision, therefore conformity or compatibility must be made of each element or events of the event / case to the elements of the alleged offense. If it turns out to be suitable, it can be determined

that the event is a criminal act that has occurred for which criminal liability can be held criminally to the subject of the perpetrator. However, if any of these elements are absent or not proven, it must be concluded that the criminal act has not occurred or has not occurred. This is because it may have already taken place but it is not an act prohibited by law against which a criminal offence is threatened. It is also possible that an action has occurred in accordance with the formulation of the action in the article concerned but there is no fault on the part of the perpetrator and/or the action is not unlawful.

Based on the PPPH Law, the scope of forestry crime contains objective elements and subjective elements, in the case that the author raised in this study has indeed materially fulfilled several elements of forestry crimes. Among them, the first is the fulfillment of the element "Individual person/everyone". As a legal subject of an individual / every person in question is a person who has committed a criminal act and can be accounted to him in this case is a suspect who has fulfilled a criminal act based on evidence in the form of witness statements, suspect statements supported by evidence that has been confiscated, In this case the legal subject is a person naturally not a legal entity. This is proven by the perpetrator acting on his own behalf not on behalf of a legal entity.

The results of the research that the author has done that law enforcement in this case is very prone to *conflic* of interest (conflict of interest) because only a few people are made suspects in this case while the person who sold the land has not been investigated or determined as a suspect. Then, based on the suspect's statement, the number of people who farm in the TNKS area is approximately 130 (one hundred and thirty) people, of course, so that there is no conflict of interest and the principle of equality before the law, all people who farm in the TNKS location must be made suspects.

If the Satreskrim investigators really carry out criminal law enforcement against all communities (130 people) who farm in the Nagari Kambang TNKS area, Lengayang District, in the author's opinion, it will also cause new problems such as complaints and demonstrations from community residents, because most of the land has been completed and the community has been working on the land for a long time. So it is necessary to find the best solution to solve the problem.

The application of the elements of the criminal act of clearing plantation land in the TNKS area objective elements are unlawful acts, namely:

#### **a. Elements intentionally**

The suspect actually knew that his plantation was in the TNKS area, this could be proven when the person concerned had met directly and heard an explanation from the TNKS Officer in 2016 who explained that his plantation was included in the TNKS Forest area but the suspect still carried out plantation activities in the TNKS Forest area so that thus the suspect could be said to want and be aware of such actions and/or their consequences.

#### **b. Elements of carrying out plantation activities**

Based on the facts found and supported by existing witness statements along with clues in the form of evidence that has been confiscated, namely the Nagari Kambang Customary Decree document regarding the approval of Nagari customary land supervision Nagari Customary Density Nagari Kambang and the Land Sale and Purchase Letter dated August 18, 2016 used as a basis by the suspect to be able to cultivate and cut down TNKS forests to be used as plantation land, and also the evidence seized in the form of 1 (one) hoe and a machete is a tool or object used by the suspect for cultivation, slashing to be used as plantation land in the form of local crops including coffee, jengkol, bananas, nutmeg, gambier, durian, and sweet skin and the establishment of a field hut / stopover hut.



### c. Elements without the permission of the Minister

Based on the results of the examination of witnesses and expert statements as well as the suspect's statement and supported by the evidence found, that the plantation activities carried out by the suspect did not have permission from the Ministry of Forestry to carry out plantation activities in the TNKS Forest area, based on the Nagari Kambang Customary Decree Number: 75 / SK / KAN-KBG / 2012 concerning the Approval of Nagari Customary Land Supervision Nagari Customary Density at the location of Bukit Kecrabang Kampung Kulam Kenagarian Kambang, Lengayang District, South Pesisir Regency covering an area of approximately 1.5 hectares, and a land sale and purchase letter of approximately 2 hectares from party I for Rp. 10,000,000 (ten million rupiah) dated August 18, 2016 which is within the TNKS area cannot be recognized/used as a basis for opening plantation land in the TNKS forest area. However, with the enactment of the Law, namely in Article 110B paragraph (1) which also regulates plantation crimes with the application of *the ultimum remedium* principle where the activities of opening plantation land in the TNKS forest area carried out by the suspect were before 2020 (before the passing of the Job Creation Law), thus the author argues that if the case will later go to trial in Court, The judge can decide the case by granting administrative sanctions in the form of temporary suspension of business activities, payment of administrative fines and/or government coercion to suspects in accordance with Article 110B paragraph (1) of the Job Creation Law.

### d. Elements in the forest area

Based on the teachings / theories of material acts that are considered as the place where the crime occurred (*locus delicti*) is a place, where the prohibited and threatened acts are committed, in other words, *the place where the crime occurred* (*locus delicti*) is a place, where the perpetrator committed material acts from the criminal act, in this case it is in the Kerinci Seblat National Park area located in Nagari Kambang, Lengayang District, South Pesisir Regency. The results of the examination of witnesses and expert statements after taking coordinate points and supported by evidence found that the coordinate points at the location of the suspect's field were included in the TNKS Forest area in accordance with the Decree of the Minister of Forestry and Plantations Number: 901 / Kpts-II / 1999 dated October 4, 1999 concerning the Determination of TNKS Areas

Based on the results of research that has been discussed in the previous chapter, it can be concluded that the application of elements to the criminal case of opening plantation land in the National Park Area by investigators at the South Coast Police Crime Squad which is known to have occurred on Tuesday, December 11, 2018 at approximately 14.30 WIB at the TNKS Forest Area in Lengayang District, South Pesisir Regency if we refer to Article 17 paragraph (2) point b and Article 92 paragraph (1) letter a of the PPPH Law, it is indeed appropriate and meets the elements of the alleged article.

The application of criminal elements against perpetrators who commit unlawful acts in the form of arbitrarily encroaching on forests and clearing plantations/plantations without permission from the minister has violated Article 92 paragraph (1) letter (a) *juncto* Article 17 paragraph (2) letter (b) of the PPPH Law. And of course it can be concluded that the event is a criminal act that has occurred and can be held accountable to the Subject or perpetrator, where the perpetrator of opening plantation land in the National Park forest area without the permission of the Minister is considered an act against the law.

Basically, laws and regulations are made with the aim of bringing order to society in accordance with Otong Rosadi's opinion in his journal entitled Natural Law, Pancasila and Legal Principles in Law Formation in Indonesia which states that fair laws and regulations must carry out the mission of prospering the community which is the purpose of the formation of

laws and regulations. To be able to form such laws and regulations, natural law in this case the nation's morals must be the philosophical basis in its formation.<sup>7</sup>

With the enactment of the Job Creation Law, it can be used as an alternative solution by investigators of the South Coast Police Secretariat to solve the problem of land clearing in the TNKS area because the Job Creation Law regulates plantation crimes with the application of the *ultimum remedium principle*, namely in Article 110B paragraph (1) which basically explains that other activities in forest areas without having a Business Permit were carried out before the enactment of the Copyright Law Work under 2020 is only subject to administrative sanctions, in the form of: temporary suspension of business activities, payment of administrative fines and/or government coercion.

### **Obstacles Faced by Investigators of the South Coast Police Crime Squad in the Application of Criminal Elements of Clearing Plantation Land in the National Park Area**

Based on the results of the research which refers to the process and mechanism of solving criminal matters according to KUHAP, the settlement of matters against the perpetrators of the forestry crime action is carried out covering 3 (three) stages, as follows:

1. Examination stage at the investigation level
2. Stage of prosecution (settlement of matters in the D.A.)
3. Termination stage in court hearing.

Law enforcers carry out their respective functions and duties in accordance with their rules and authorities, by ensuring that the alleged articles are fulfilled by criminal elements. For the examination stage at the investigation level, it is carried out by the police by collecting evidence through the examination of witnesses, experts and suspects and also looking for evidence clues then set forth in the case file which will be sent to the Public Prosecutor. After the Case File is declared complete (P-21) by the Prosecutor, it will proceed to the examination stage in the Court.

In law enforcement, the obstacles encountered by the South Coast Police Detective Investigator can be divided into two, namely juridical obstacles and non-juridical obstacles. When viewed from a juridical point of view, the obstacle faced by the investigators of the South Coast Police Crime Squad in applying the criminal element of clearing plantation land in the Kerinci Seblat National Park Area in Lengayang District, South Pesisir Regency is that it is difficult to prove the element "in the forest area" because based on the statements of the perpetrators and <sup>8</sup> witnesses from the perpetrators when asked for information by the Investigator does not recognize the land that was cultivated and used The field/plantation is included in the TNKS area, the perpetrator states that the land or land is included in the customary land of the Nagari Kambang Customary Density of Lengayang District. Based on the statement of the Chairman of KAN (Nagari Kambang Customary Density, there is a customary document called Tambo (Nagari Kambang Monograph) in 1822 in Nagari Kambang customary law which reads "*Ka rimbo babungo kayu Ka batang aia babungo pasiah Ka paddy babungo rice Ka lauik babungo karang from Ombak nan badabuah to bukik nan bakabuik*" which explains that the activities of farming communities with territorial boundaries starting from the seaside to the hilly area. Then the Chairman of KAN Kambang Kec. Lengayang did not know from where and to what extent the boundaries of the customary land of the Kambang nagari with the TNKS area and according to the Chairman of KAN Kambang since serving as Chairman of the KAN from 2013 there has been no TNKS party conducting socialization and guidance to the community who carry out cultivation / plantations in the Kambang nagarian area related to the boundaries of the Kambang nagari customary land with the TNKS Area, So

<sup>7</sup> Otong Rosadi, *Natural Law, Pancasila and Legal Principles in Law Formation in Indonesia*, Journal of Legal Dynamics, Master of Law Ekasakti University Padang, Vol. 10 No. 3 September 2010

<sup>8</sup> Interview with Investigator at the South Coast Police Crime Squad on June 19, 2023.

that to be proven the elements of the article, investigators must conduct more intensive investigations / investigations to be able to prove the elements in the forest area.

Although TNKS is located in four provinces, namely Jambi Province, South Sumatra, Bengkulu and West Sumatra and is centered in Kerinci Jambi Province, according to the theory of consequences that must be considered *locus delicti* is the place, where the consequences of criminal acts occur. So that the investigator who has the right to handle the case is the South Pesisir Police Detective Unit or West Sumatra Police Investigator because *the locus delicti* is in the TNKS area in Lengayang District, South Pesisir Regency.

In the author's opinion, the difficulty or obstacle faced by the investigators of the South Coast Police Crime Squad to prove elements in forest areas is indeed natural because it cannot be denied anymore because of limited land for farming/gardening so that people will look for new land to grow crops but do not pay attention to which ones can be cultivated and which ones are not. With the existence of a National Park in Nagari Kambang, Lengayang District, which has been determined by a Decree from the Minister of Forestry which is worked on by the community, of course, this cannot be tolerated, the Kerinci Seblat National Park must often go to the field to check, mark the boundaries of the area and tell the community which boundaries of the TNKS area must not be damaged. Local communities must also comply and should not arbitrarily clear land in forest areas because if left unchecked it will have an impact on the survival of the flora and fauna in it. So law enforcement carried out by the South Coast Police is in accordance with the existing legal rules, only the Court will determine whether communities that have already opened fields or plantations within the TNKS area need to be punished or there are other solutions such as forestry partnerships where people can still farm in the area but cannot increase the area of gardens or still maintain the preservation of the existing ecosystem on the land aforementioned.

In addition to obstacles in the application of the above criminal elements, investigators also encounter obstacles in the investigation process and the collection of evidence needed, including:

1. There is a Public Prosecutor's guidance (P-19), namely how the provisions that must be carried out by the TNKS so as not to cause a *conflict of interest* because there is a disparity in treatment between suspects and local community residents who also own land in the TNKS area. The Public Prosecutor also suggested to investigators to facilitate a meeting between the Nagari Kambang Customary Density and the TNKS to discuss the boundaries of the TNKS forest area, related to land tenure by the suspect and local community members who own/control/use the land as done by the suspect then a Consolidated Minutes were made to clarify the direction of the TNKS forest area in any zone cannot be submitted for forestry social/conservation. The Public Prosecutor said in directive P-19 that if it is proven that other than the suspects, many residents use the TNKS forest area and cannot be resolved by guiding the applicable provisions on social forestry and conservation, then all residents whose land is included in the TNKS forest area are made suspects.
2. The Public Prosecutor's guidance is that the location of the land cultivated by the suspect is within the TNKS rehabilitation zone, so the prosecutor argues whether social forestry/forestry partnerships can be carried out as stipulated in the Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number: SK.4865/MENLHK-PKTL/REN/PLA.0/9/2017 concerning Indicative Maps and Social Forestry Areas, and refers to Presidential Regulation Number 88 of 2017 concerning the Settlement of Deep Land Tenure Forest Area. Against this clue, the investigator of the South Coast Police Secretariat has sent a letter requesting expert information to the Head of the Management Division of TNKS Region II West Sumatra in Padang to ask for information from experts who are competent and have special expertise in the field of Social Forestry and Forestry Partnership, and the letter from the investigator was replied by the Head of the Technical



Conservation Division of the Kerinci Seblat National Park Center which basically stated that the TNKS Center and its staff is incompetent / does not have special expertise in providing expert information in terms of Social Forestry, Forestry Partnership and Presidential Regulation Number 88 of 2017 concerning the settlement of land tenure in forest areas, and suggests to the Investigator to ask for assistance from the Sumatra Regional Social Forestry and Environmental Partnership Center in Medan, North Sumatra Province. And the Investigator has sent a letter to the Sumatra Regional Environmental Partnership Social Forestry Center in Medan, but until now there has been no reply to the letter to the investigator so that until now the instructions from the Public Prosecutor have not been fulfilled by the Investigator.

3. The old Chairman of Nagari Kambang Customary Density who issued and signed the Nagari Kambang Customary Decree Number: 75 / SK / KAN-KBG / 2012 concerning the approval of Nagari customary land supervision Nagari Kambang Customary Density which was used as the basis by the suspect to open plantation land at the TNKS location because the person concerned had died so it is not known how the process of the Nagari Kambang Customary Decree was issued.
4. The location of the suspect's plantation land far in the middle of the forest is also an obstacle for investigators to investigate, process the crime scene and to measure the area of land / cultivation / plantation encroached by each suspect, it takes approximately 5 hours for investigators to get to the crime scene location, which is 2 hours by vehicle and 3 hours on foot.
5. There were no witnesses who saw the suspect directly carrying out plantation/cultivation activities such as planting local crops in the TNKS area, so other strong clues are needed to prove that it is true that the suspect is farming at the location while other people who are also farming at the location are reluctant to give information and try to avoid and leave their land temporarily when they see TNKS officers who come to the location To patrol the forest, TNKS officers only find land that has been planted with local plants, and after the TNKS officers leave, the farming community will return and carry out their activities again to farm / garden in the TNKS forest area.
6. There is a difference of opinion between the investigator and the Public Prosecutor regarding the fact that all residents whose land is included in the TNKS forest area are made suspects so as not to cause a *conflict of interest* because there is a disparity in treatment between suspects and local community residents who also own land in the TNKS area. In this case, the South Coast Police Detective Unit Investigator worked based on reports from TNKS officers who patrolled and found several community people who were clearing plantation land at the TNKS location, then after being obtained by TNKS officers, they checked the coordinates whether they entered the TNKS forest area. If it is included in the TNKS area, then on the basis of reports from TNKS officers, investigators go to the field to check directly to the location whether plantation activities in forest areas really occur without permits.

In order to create effectiveness, all components of the system must work integrally in the sense that one subsystem must also pay attention to other subsystems as a whole. Or it can be argued that the system will not work systematically if the relationship between the police and the prosecutor's office, between the police and the court, the prosecutor's office and the prison and the law itself. The absence of functional relationships between these subsystems will create vulnerabilities in the system resulting in fragmentase and ineffectiveness.<sup>9</sup>For this reason, in handling this case, good coordination between investigators and the Public Prosecutor is needed so that there is equality of perception in law enforcement, if necessary to carry out a

---

<sup>9</sup> Ali Zaidan, *Op. Cit*, hlm. 162

joint case title, if there is no good mutual coordination between the prosecutor and the police, it will certainly complicate the investigation process of the case itself.

In order for there to be legal certainty for the case reported by the TNKS regarding the opening of plantation land in the National Park area, the case must be brought to trial in Court by the Public Prosecutor and provide an opportunity for the judge to examine and decide the case, even though the Job Creation Law has regulated the *ultimate remedium* in Article 110B concerning penalties in the form of temporary suspension of business activities; payment of administrative fines; and/or government coercion but who has more right to determine the sentence is of course the judge.

## CONCLUSION

The application of elements by the South Coast Police Detective Investigator in the case of the crime of opening plantation land in the National Park area consists of subjective elements are individuals and not legal entities, this is proven by the perpetrator acting on behalf of himself and not on behalf of a legal entity, carrying out plantation activities within the National Park area and can be accounted to him. Objective Element is that the action is unlawful, namely: "Elements intentionally, elements carrying out plantation activities, elements without the permission of the Minister and elements in forest areas, evidenced by 2 (two) pieces of evidence by investigators as referred to in Article 184 of the Criminal Procedure Code, namely: Witness Statements, Expert Statements, Instructions, Letters and Statements of Suspects / Defendants.

The obstacle faced by investigators in applying the criminal element of opening plantation land in the National Park area is the difficulty of proving the element "in the forest area" because based on the statements of the perpetrators and witnesses from the perpetrators when asked for information by the Investigator did not recognize the land cultivated and used as fields / plantations included in the TNKS area, the perpetrators stated that the land or land entered the land ulayat Nagari Kambang Traditional Density, Lengayang District. In addition to obstacles in the application of the above criminal elements, investigators also encountered obstacles in the investigation process and the collection of evidence needed, including: a) The existence of instructions from the Public Prosecutor (P-19) so that all residents whose land is included in the TNKS forest area are made suspects; b) Letter from the investigator to the Sumatra Regional Environmental Partnership Social Forestry Center in Medan regarding the request for expert information in the field of Social Forestry and Partnership Forestry has so far received no reply; c) The Chairman of KAN Kambang who issued and signed the Nagari customary land supervision agreement letter which was used as the basis by the suspect for farming in the forest area has died so that the investigator has difficulty / obstacles in tracing the process of issuing the letter; d) The location of the suspect's plantation land far in the middle of the forest is also an obstacle for investigators to conduct investigations; e) There are no witnesses who directly saw the suspect carrying out plantation/plantation activities in the TNKS area; f) There is a difference of opinion between the investigator and the relevant Public Prosecutor so that all residents whose land is included in the TNKS forest area are made suspects so as not to cause a *conflict of interest*.

## REFERENCES

- Aries Budi Widodo and Mahagiyani, *Bankruptcy Analysis and Risk Mitigation in Plantation Companies*, Journal of Plantation Management (JPP), Vol. 3, Number 1 March 2022.
- Hajriyanti Nuraini, Nadia Astriani and Yulinda Adharani, *"Administrative Penal Law in Environmental Law Enforcement After the Promulgation of the Job Creation Law"*, Journal of Master of Law Udayana, Vol. 11, Number 3 September 2022.

- Muhammad Hirsandy Surgana, *Law Enforcement Against Corporate Crime in the Forestry Sector in Riau Province*, Master of Law Program at the Islamic University of Indonesia, Yogyakarta, 2015
- Otong Rosadi, *Natural Law, Pancasila and Legal Principles in Law Formation in Indonesia*, Journal of Legal Dynamics, Master of Law at Ekasakti University Padang, Vol. 10 No. 3 September 2010.
- Salim H.S, *Fundamentals of Forestry Law*, Sinar Grafika, Jakarta, 2011,
- Satjipto Rahardjo, *Law Enforcement Issues*, Citra Aditya Bakti, Bandung, 2006.
- Subhan, *Analysis of Forest Damage in Gunung Leuser National Park Forest Area Region VI Besitang National Park Management Section*, Master of Law Program Postgraduate Program of the University of North Sumatra, Thesis, 2010.
- Sukanda Husin, *Environmental Law Enforcement*, Sinar Grafika, Jakarta, 2020,
- Tolib Effendi, *Criminal Justice System; Comparison of Components and Processes of Criminal Justice Systems in Several Countries*, Pustaka Yustisia, Yogyakarta, 2013.
- Tongat, *Fundamentals of Indonesian Criminal Law in the perspective of renewal*, Malang, UMM Pres, 2012.
- Widartiningsih, *Forestry Crime: Involvement and Accountability of Forest Policy Operators*, Setara Press, Malang, 2014.