

## Legal Failings Leave Illegal Loggers Unpunished and Certified in Indonesia

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*Illegal loggers in Indonesia's remote Papua region have largely evaded any meaningful kind of punishment and continue to operate unimpeded, in what a new report calls a failure by the country's legal system to crack down on the problem.*

That's the finding of a [forensic analysis](#) of enforcement actions and court cases between 2018 and 2020 by the London-based Environmental Investigation Agency (EIA) and its Indonesian partner, Kaoem Telapak. The two NGOs looked at instances of companies and company directors prosecuted for trading illegal timber, mostly the prized tropical hardwood merbau, in Papua, in Indonesia's far east.

Merbau (*Intsia bijuga*), also known as Pacific teak, is threatened with extinction in the region as a result of high volumes of exports to China, where it is sought after for use in flooring, furniture and musical instruments.

An estimated 50% of merbau timber exports go to China. One of the Indonesian companies in that supply chain, according to the EIA/Kaoem Telapak report, is PT Bahtera Setia. The company received merbau timber from 25 companies in Papua and the neighboring Maluku region, according to the NGOs; nine of those suppliers were caught up in law enforcement actions in 2018 and 2019.

PT Bahtera Setia, in turn, sold merbau to 49 companies in the cities of Surabaya and Gresik on Indonesia's main island of Java. EIA and Kaoem Telapak say they shared this finding with the Ministry of Environment and Forestry's law enforcement division, but no apparent action was taken against the 49 companies.

The lack of enforcement by the authorities is common, said Kaoem Telapak executive director Abu Meridian. He said the NGOs had identified at least 50 companies involved in the illegal timber trade from Papua, "but less than 10 firms have had their cases legally processed."



The island of New Guinea is split between Indonesia and Papua New Guinea.

## Court bottlenecks

The environment ministry's law enforcement division has ramped up its efforts to stop illegal logging and trading in recent years, Abu said, but the issue is with the courts, specifically the lack of clarity on whether these cases are being followed up with a criminal prosecution.

In the small number of cases where illegal loggers and traders have been put on trial and convicted, the punishment handed down doesn't reflect the severity of the crime, and therefore fails to act as a deterrent, he said. Furthermore, some cases are inexplicably missing from court records even in the event a suspect has been charged.

"It is frustrating that the ministry's law enforcement directorate-general is doing so much to crack down on those trading in illegal timber, but it seems that the courts are undermining so much of the work," Abu said.

The report singled out the case of Henoch Budi Setiawan, also known as Ming Ho, the owner of two companies implicated in the illegal logging trade. In October 2019, a court in Papua's Sorong district found Ming Ho guilty over the role of his companies in the illegal trade. The court sentenced him to five years in prison and ordered him to pay 2.5 billion rupiah (\$178,000) in fines. Officials also confiscated nearly 1,700 cubic meters (60,000 cubic feet) of merbau wood from his companies during raids in December 2018 and January 2019.

Ming Ho appealed the verdict all the way to the Supreme Court, which ordered that his sentence be cut to two years and that the state return more than 1,900 m<sup>3</sup> (68,000 ft<sup>3</sup>) of the illegal timber, worth roughly 23.2 billion rupiah (\$1.6 million) — or nearly 10 times the

fine imposed — be returned to Ming Ho.

The court's decision was widely criticized by activists, with the EIA and Kaoem Telapak pointing out that Ming Ho's case failed to meet any of the conditions in which seized assets may be returned to a convicted criminal. The NGOs also criticized the court system's lack of transparency, with the only document that was available being a summary decision of the case. The full, detailed verdict remains unavailable. This makes it impossible to understand how the Supreme Court justified its decision, they said.

"This lack of transparency, coupled with some seemingly irrational decisions by various courts, leads to the concern that many criminals are going unpunished or are having their punishments reduced with no explanation from the courts," said EIA senior forests campaigner David Gritten.

Grita Anindarini, a program director at the Indonesian Center for Environmental Law (ICEL), said Ming Ho's case set a bad precedent.

"When the evidence" — the seized timber — "was returned to the convict, it opened up the opportunity for the evidence to be circulated in the market," she said.



Deforestation outside of Manokwari, West Papua, Indonesia. Image by Rhett A. Butler/Mongabay.

### **Certification loophole**

Besides lenient verdicts, EIA and Kaoem Telapak also found inconsistencies in law enforcement, with some companies going unpunished even though their executives were found guilty.

In the few cases where timber trading companies were found guilty and ordered to cease operating by the courts, some continued to operate and hold certificates under Indonesia's timber legality verification system, or SVLK.

The system, first rolled out in 2009, aims to ensure all parties in the timber supply chain obtain their wood and timber products from sustainably managed forests and conduct their trading operations in accordance with existing laws and regulations. The SVLK certificate thus acts like a stamp of approval that a company follows the required chain of custody to ensure the timber in its supply chain is legal.

The analysis discovered that of the 21 companies found to be trading \$7.7 million worth of merbau timber during a string of operations by law enforcers in December 2018 and January 2019, eight were allowed to keep their SVLK certificates.

And of the 13 companies whose certificates were revoked, four soon obtained new certificates. They did this by repeating the registration process to get an SVLK certificate, but with a different independent assessor approved by the government, which either failed to check or overlooked the companies' track records.

As of last December, therefore, 12 of the 21 companies raided for illegal timber trading had a valid timber legality certificate allowing them to continue exporting.

EIA and Kaoem Telapak said these companies should have had their certificates revoked immediately upon being caught in the act of illegal trading. They also urged the government to stop executives and owners of these companies from being allowed to reapply for an SVLK certificate.

"The SVLK system has to be strengthened," Abu said. "If a company has been found guilty, audit agencies have to follow up on it."

The SVLK certificate is mandatory for companies operating in Indonesia to export timber, and has been [approved by the European Union](#) as the basis for importing timber into its market. Indonesia is the first country in the world to have its timber legality system recognized by the EU.

The EIA's Gritten said the findings show the SVLK system hasn't been able to completely stop the illegal timber trade, and that it needs to be continuously improved. The EIA and Kaoem Telapak have made some suggestions on how to strengthen law enforcement against illegal loggers, such as improving transparency and coordination among government agencies.

One deterrent measure that could go a long way to stamping out the crime is to add money laundering to the list of charges that suspects may face. Money laundering statutes are used primarily in fraud, corruption and financial crimes prosecutions, but can theoretically be applied in other cases, including the illegal timber trade. Money laundering charges carry much heavier penalties than illegal logging ones, but prosecutors in the cases analyzed in the recent report opted not to bring them, Abu said.

"Fines are not enough," he said. "We hope that the anti-money-laundering law can be used to return state revenue that has been lost [from illegal logging]."



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*Featured image: The Indonesian Ministry of Environment and Forestry's law enforcement team seized 100 cubic meters of tropical hardwood merbau as an evidence in a sting operation that arrested two illegal loggers in Raja Ampat district, West Papua province, Indonesia, on February 3, 2020. Image courtesy of [the Ministry of Environment and Forestry](#).*

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