

Can Legality Verification Combat Illegal Logging in Indonesia? Strategic Insights for Policy Makers and Advocates

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Authors: Erica Pohnnan¹ and Michael Stone²

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Issue

Illegal logging in Indonesia has been raised as a key driver in deforestation and degradation, leading to biodiversity loss, increased climate emissions, and poor forest governance. This paper explores the pathways through which strategists might travel to combat illegal logging. This paper will focus on one proposed mechanism for combating illegal logging in Indonesia: legality verification.

Problem Definition

With 98.7 million hectares of forest cover (Indonesian Ministry of Forestry 2012), Indonesia has the third-largest expanse of tropical forests in the world after Brazil and the Democratic Republic of Congo. However, high rates of illegal logging in Indonesia (Seneca Creek Associates 2004) and hundreds of millions of cubic meters of illegal exports (Obidzinski et al. 2007) have combined to cause extensive deforestation and cost the Indonesian economy from \$1 billion to \$5 billion (U.S.) per year (Seneca Creek Associates 2004; Human Rights Watch 2009). Although it is estimated that rates have declined from 80 percent in the early 2000s (Environmental Investigation Agency EIA and Telapak 2002) to 40 percent in 2009 (Lawson and MacFaul 2010), illegal logging remains one of the key challenges facing the Indonesia forest sector.

In response, the Indonesia government in 2009 created a new national legality verification system, *Sistem Verifikasi Legalitas Kayu* (SVLK), which domestic and international organizations now view as one of the most promising mechanisms for addressing illegal logging in Indonesia (Cashore and Stone 2013).

However, the degree and extent of successful implementation of legality verification will depend on the decisions made by policy makers and environmental practitioners in the coming years. This paper will

¹ Erica Pohnnan holds a master's degree (2012) from the Yale School of Forestry and Environmental Studies, ericapohnnan@gmail.com.

² Michael Stone is a Ph.D. candidate at the Yale School of Forestry and Environmental Studies, michael.stone@yale.edu.

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highlight the key strategic choices forthcoming and suggest potential strategies to ensure legality verification is successful in halting illegal logging in Indonesia.

The questions that inform this paper are twofold:

- How can transnational actors empower the SVLK to stop illegal logging in Indonesia?
- How can these efforts create synergies with existing domestic policies?

Background

Despite encouraging statistics demonstrating a decline in reported cases of illegal logging, the environmental, economic, and social impacts of the illegal timber trade remain widespread. Illegal logging is widely acknowledged to be one of most damaging and egregious cases of forest degradation and deforestation (Brown 2006; Kaimowitz 2005; Food and Agriculture Organization of the United Nations and Organization 2005). It results in significant loss of national tax revenue and generates illicit wealth that serves as a source of social conflict and fuels widespread corruption (Obidzinski et al. 2007) (See Table 1).

Table 1: Estimates of the extent of illegal logging in Indonesia

Source	Extent	Annual Loss	Years Covered
DFID 1999 ³	73%		1990s
Center for International Forestry Research 2004 ⁴	64-83%	\$1 billion	2000-2001
Seneca Creek Associates 2004	60%	\$0.6 - 3 billion	2003
Human Rights Watch 2009	50%	\$ 2 billion	2003-2006
Chatham House 2010 ⁵	40-61%		1997-2009

The first formal recognition by the government of Indonesia of the need to address the illegal logging challenge through legality verification came in 2002, when it founded the Badan Revitalisasi Industri Kehutanan (BRIK, Indonesian Institute for the Revitalization of the Timber Industry), which was charged with monitoring and verifying the legality of timber. To accomplish these objectives, BRIK was charged with issuing certificates of legality (Eksportir Terdaftar Produk Industri Kehutanan, or ETPIK) to export-oriented forest companies that included all required legal documents and transportation permits. However, many questioned whether this approach reinforced, rather than addressed, the problem of illegal logging by lack of standardization across cases (Brown and Stolle 2009), making it relatively easy to produce “black market” certificates (Colchester 2006). Critics suggested that issuing certificates of

³ DFID 1999. Roundwood supply and demand in the forest sector in Indonesia. Indonesia-UK Tropical Forest Management Programme. December 1999.

⁴ Tacconi, L., K. Obidzinski, and F. Agunget. 2004. Learning lessons to promote forest certification and control illegal logging in Indonesia. Center for International Forestry Research. Bogor, Indonesia

⁵ Lawson, Sam, and Larry McFaul. 2010. Illegal logging and related trade: Indicators of the global response. London: Chatham House.

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legality were little more than paper exercises with little intention to champion meaningful changes (Tacconi 2007).

As part of a Voluntary Partnership Agreement (VPA) with the European Union, the Indonesian government agreed to step up its efforts to counter illegal logging by completing a Timber Legality Assurance System (TLAS) in the form of the SVLK. The SVLK adopted an approach in which the Ministry of Forestry is not involved in any accreditation or auditing of legal compliance. Instead third parties audit compliance to Indonesian law (Luttrell et al. 2011). Third-party auditors are themselves also accredited by an Indonesian auditing company (EU-Indonesia FLEGT VPA Experts 2010). In addition to the formal third-party monitoring, the Indonesian government has created independent monitoring under the SVLK whereby civil society is empowered to submit objections (Government of Indonesia and EU 2011).

Discussion

1. Analytical Framework

Indonesia's struggles to eliminate illegal logging and institute legality verification have persisted for over a decade. Over this time period, a variety of different domestic and international pressures have been utilized to generate support for legality verification. In particular, the international pressures can be categorized into the four pathways which Bernstein and Cashore identify for transnational actors to impact domestic policy making (Bernstein and Cashore 2012). These pathways present both a framework for analyzing the prior efforts and for highlighting potential strategies that transnational actors can undertake to influence Indonesia in shaping the development of legality verification. In particular, the pathways are international rules, international norms and discourses, creation of or interventions in markets, and direct access to domestic policy processes.

a. International Rules

This category was at one time the major focus of transnational actors with efforts to agree to a global forest convention in 1992 being a key example. This pathway includes hard international law, such as the Convention on Biological Diversity (CBD) and the Kyoto protocol to the U.N. Framework Convention on Climate Change and also includes bilateral agreements such as the European Union's Forest Law Enforcement, Governance, and Trade (FLEGT) initiative. The FLEGT is in the process of agreeing to a series of voluntary partnership agreements (VPA) with key tropical forest countries, including Indonesia, to develop legality verification systems. Indonesia also has experience with the international rules pathway in the form of private efforts such as the Forest Stewardship Council (FSC) private certification or with international institutions such as participation in the World Trade Organization (WTO).

b. International Norms and Discourses

Broad principles of inclusiveness, transparency, and accountability have been crucial to the development of several forestry governance issues. For example, norms were key in the promotion of "good forest governance" as well as the concept of Sustainable Forest Management. These holistic

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approaches were largely driven by broadly shared ideas about what standards for forestry practice should entail.

c. Markets

The markets pathway consists of the “carrots and sticks” commonly associated with rewarding or punishing companies according to the sustainability of their corporate practices. This pathway includes boycotts; non-state market driven systems (NSMDs) of eco-labeling, such as the FSC; and legality verification. Certification and legality verification depend on third-party auditing to confirm that the timber was legally harvested. Legality verification reinforces domestic legislation instead of imposing outside standards.

d. Direct Access to Domestic Policy Processes

These processes utilize individual relationships among key actors or the direct provision of funds to government such as World Bank loans. Alternately, the use of stakeholder dialogue can be a mechanism of giving voice to marginalized individuals and groups to impact policy through directly communicating their concerns to key actors or government agents.

2. Legality Verification

By applying the “four pathways” framework to the case of illegal logging in Indonesia, we see that all four pathways were crucial in creating support for timber legality verification in Indonesia’s domestic policy process (see Table 2). Each pathway has played a different but crucial role, and the four pathways have combined to develop the SVLK. Accordingly, when thinking about the SVLK and its capacity to eliminate illegal logging, it will be valuable to consider future steps that can be undertaken to reinforce or further empower legality verification.

Table 2: Application of the four pathways framework to the case of timber legality verification in Indonesia

Pathway	Indonesia
International Rules	U.S. Lacey Act and EU Timber Regulation EU FLEGT VPA Process Public procurement policies of timber importing countries (Japan, Australia, New Zealand, UK)
Norms	Sustainable forest management Good forest governance Green public procurement
Market	Desire for market access Possibility of gaining market share from other not pursuing legality verification Realizing potential premium prices
Direct Access to Domestic Policy Processes	Civil society and bilateral donors have direct access to the policy making process through the multistakeholder process in

	developing SVLK
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The institution of the SVLK represents one of the most advanced legality verification systems presently in existence. Resulting from extensive negotiation in the VPA process, the Indonesian government and the multistakeholder group that developed the SVLK standard realized that there was a critical need for the SVLK to be credible (Cashore and Stone 2012). The pursuit of credibility fundamentally altered the design of the mechanism to include components that government would normally interpret as infringements on national sovereignty, such as third-party auditing and independent monitoring of implementation. These characteristics led the SVLK to adopt traits typical to market-based institutions as well as government-directed regulation. The SVLK has third-party auditing of compliance with laws set by the state. This unusual formation suggests that strategies for transnational actors to influence Indonesia to eliminate illegal logging domestically will likely also utilize multiple pathways of influence.

Presently legality verification in Indonesia is at a crossroads. It is gaining support, but the strength of its impacts remains unclear. For the purposes of this policy brief, we will compare several strategies designed to support long-term positive gains for protecting Indonesia's forests. These strategic options will focus on how the four pathways may be utilized for international actors to support the Indonesian government towards creating the strongest protections for Indonesia's forests. Accordingly, we will consider how these pathways can lead to linkages between the SVLK and forest certification and how good forest governance may potentially lead to better protections for Indonesian's forests.

Strategic Insights for Moving Forward

For analytical purposes, we present possible strategies in line with our suggestion that utilizing multiple pathways is likely to yield the most effective solutions.

Option 1: Norm Generation

With the SVLK being mandatory for all timber producers, it seems likely that this will aid in creating a certain baseline of management that is at least legally compliant. If one considers that Indonesia's forest laws are reasonably stringent on the books (McDermott et al. 2010), the key would be creating some sort of synergy between the existing required SVLK and the global norm of sustainable forest management. Yet it is also possible that such an explicit connection would lead to a ratcheting down of standards if legality is treated as a sufficient standard without any recognition of the role of sustainable practices and good forest governance. Accordingly, the question for linking the legality verification to sustainable forestry will hinge on whether there are legal requirements for forests area to be maintained. For example, there is currently concern about "conversion timber" in Indonesia, where forest conversion into palm oil is a major issue.

To further develop the norms of sustainable forest management will likely require a furtherance of some of the same historical trends that produced the SVLK. In a linkage to the international rules

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pathway, Indonesia willingly worked to create the SVLK largely due to the self-interested economic motives of gaining preferred access to the EU market. This suggests that a “carrot” market mechanism worked effectively and may work again. Accordingly, there is potential to tie forest certification, another positively market mechanism, into legality standards by allowing the participation of one certification’s auditing to have partial overlap of the other. Forest certification should not be replaced by legality verification because certification implies adherence to the strictest standards while legality verification should be tied to ensuring supply chains of basic compliance. However, if the act of being certified under legality verification can be used as a starting point to be built upon directly for forest certification, then it will make obtaining certification easier without any decline in the rigorousness of forest certification being applied.

Option 2: Foster Synergies with Good Forest Governance and SVLK

While certification proceeded slowly in the developing world, international agencies led by The World Bank have initiated approaches in line with the direct access to domestic policy processes pathway. Good forest governance efforts were addressed to underlying conditions that created governance gaps. The idea was to focus on building capacity and fostering learning within the countries directly to assist their own policy priorities for sustainable forest management. Accordingly, the UK and German development agencies and the European Commission undertook initiatives within the FLEGT that were new attempts to foster learning and improve capacity building (World Bank 2006; FLEG News 2007; The World Bank 2006; Food and Agriculture Organization of the United Nations and Organization 2005). The underlying norms of promoting good forest governance were widely shared, yet they still faced substantial challenges owing to limited resources, technical training, and corruption within Indonesia (Mayers et al. 2005; World Resources Institute 2009; Kanowski et al. 2011).

Good forest governance has primarily been pursued as part of the norms pathway by focusing on the holistic meaning of forest management. However, the SVLK seems intended to provide immediate synergy by tying in formal international rules. Creating an institution that ensures the compliance with domestic and international law covers at least part of the goals for good forest governance related to technical issues and corruption. Forest certification and the markets pathway seem to cover much of this compliance dimension in the first option. Yet simply having a separation of standards between the merely compliant and the best practices may not be sufficient to achieve sustainable forestry. Good forest governance is about ensuring a process that supports sustainable forest management consistently. To make such connections will require both the external and internal stakeholders involved to determine how good forest governance can empower the Indonesian government’s VPA. For example, one possible approach would be to use the “direct access pathway” to empower the SVLK by sending tax agents or technical officials from other countries’ forestry bureaus to partner with the Indonesian Ministry of Forests to identify ways to use the SVLK as a tool for exposing tax evasion or failure to comply with existing regulatory burdens. In this way, the direct access pathway could help the

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Indonesian government increase its revenues in such a way that is likely to help improve sustainable forest management as well.

While self-interest is a powerful motivator, it is only as durable as it is profitable. Good forest governance is a holistic process that seeks to ensure forestry is not merely a profitable enterprise, but also a moral enterprise that considers the greatest good of forests and peoples. To make this jump requires engraining these beliefs as deeply as possible. This kind of transformation is not easily achieved but is necessary to build durable, long-lasting solutions. Instead, this strategy should focus on the long-term effects of legality verification. If legality verification supports the restoration and long-term protection of forests at the same time as it proves healthy for the industry, then it becomes possible to intertwine these notions by having emphasis on one aid the other. Education and experience will be key drivers for this strategy, but the first step will be to demonstrate the tangible impacts on the forests that have resulted from legality verification. This means identifying areas that had illegal logging, documenting their condition, and using their change over time under improved forest governance to model the impacts of this policy change. This creates a visceral impact and provides testimony to the importance of good forest governance that goes beyond profit motives.

While Indonesia's struggles with illegal logging are well documented, the development of the SVLK as a counter to illegal logging is less well understood. Further research into the motivation and historical institutions that shaped the SVLK will be valuable for future action. Furthermore, ongoing research into the condition and effects of the SVLK will be needed to evaluate its impact and suggest new potential improvements. Research on these will both create better understanding as well as guide strategy to ensure Indonesia's forests are rid of illegal logging and are effectively protected from legal destruction as well. This paper has shown that by utilizing multiple pathways of influence, transnational actors can make linkages to existing domestic policy making efforts in Indonesia. Further understanding of the potential strategies available will aid transnational actors in joining Indonesians in protecting Indonesia's forests from illegal logging.

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