ROAD TO IMPROVING FOREST GOVERNANCE IN INDONESIA:

Initial Assessment on the Implementation of the Joint Regulation on the Multi-Door Approach to Address Natural Resources and Environment-related Crimes in Forest Areas and Peatlands

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Food and Agriculture Organization of the United Nations

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Photo: Abdul Situmorang

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EXECUTIVE SUMMARY

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Initial Assessment of the Implementation of the Joint Regulation on the Multi-Door Approach to Address Natural Resources and Environment-related Crimes in Forest Areas and Peatlands

In many countries, including Indonesia, law enforcement of natural resource-related crimes has not effectively served as a deterrent to perpetrators. Instead, ineffective law enforcement enables the continuation of illegal activities in forest areas such as illegal logging, mining and plantation activities without appropriate forest area conversion or encroachment permits. Illegal practices in forest areas are not easily addressed or eradicated because they are linked to a spectrum of other forest management problems and illegal activities. Such issues include bribery, lack of transparency in forest management, and barter of permits in exchange for funding support to run as a regent or governor, among others. The lack of effective forest governance has contributed Indonesia's dubious ranking among countries with the highest deforestation and degradation rates in the world, linked to habitat destruction for protected and endangered flora and fauna, a risk of preventing the use of mega-biodiversity for the welfare of society and the state, as well as rising greenhouse gas emissions and significant loss of government revenues. High level political acknowledgement and commitment to address these challenges has prompted Indonesia to design a National REDD+ Strategy and related REDD+ policies and measures

To address and remedy the ineffectiveness of law enforcement as a particular underlying driver of deforestation and forest degradation, the Government of Indonesia launched the innovative "Multi-Door Approach to Address Natural Resources and Environment-related Crimes in Forest Areas and Peatlands" (the "Multi-Door Approach") in December 2012. The Multi-Door Approach seeks to establish coherence between the inquiry, investigation and prosecution of forestry crimes. It encourages

> "Instead, ineffective law enforcement enables the continuation of illegal activities in forest areas such as illegal logging, mining plantation activities without appropriate forest area conversion permit, as well as plantation activities without forest conversion or encroachment permits.


Photo: Abdul Situmorang

law enforcement agencies to assess and prosecute environmental crimes along with corollary crimes such as corruption, money laundering and taxation crime, and to prioritize crimes committed by corporations or corporate actors. Following a MoU, a Joint Regulation, signed by the Ministry of Forestry, Ministry of Environment, the Attorney General's Office, the Police and the Financial Transaction Analysis and Reporting Center now governs inquiry, investigation, prosecution and legal remedy related to natural resources and environment- related cases. The regulation stipulates that each law enforcement agency shall apply, utilize, and adhere to the accompanying Case Management Guidelines.

To examine the effectiveness, efficiency, institutionalization, adaptability and sustainability of the Multi-Door Approach, an initial assessment of the implementation of the joint regulation was undertaken in 2015, using a combination of quantitative and qualitative data collection methods. The analytical framework includes processes related to the inquiry, investigation, evidence, case briefing, pre-prosecution, prosecution, verdict and legal remedy pertaining to natural resources and environment-related crimes.

The findings of this Initial Assessment demonstrate positive effects in terms of increased awareness of and a higher number of cases which were tried successfully under the Multi-Door Approach, including an increase in investigations targeting specific corporations or specific leaders of corporations. However, court sentences tend to continue to be probations and relatively light fines, which do not provide a deterrent to the perpetrators. However, the implementation of the joint regulation on the Multi-Door Approach is now slowing down, with each law enforcement agency carrying out investigations and inquiries separately. Challenges include the internalization and implementation of the guidelines on the Multi-Door Approach, administrative constraints, low availability of funds to cover costs, and a lack of a proper coordination mechanism.

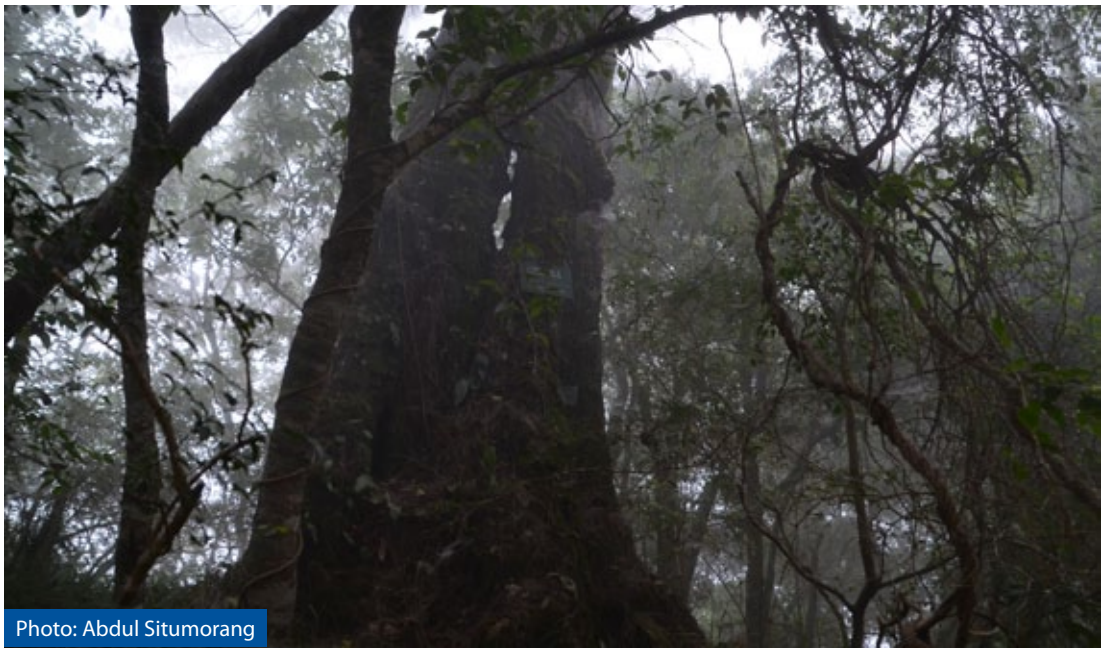


Photo: Abdul Situmorang

To remedy this situation, the initial assessment provides several recommendations based on the findings, namely to:

- Designate a lead agency for the joint regulation. Two options could be considered: the Ministry of Environment and Forestry to take the lead (using the Constitutional Court Verdict No. 18 of 2014) or the Forest Degradation Prevention Institute.
- Incorporate the Multi-Door Approach into the performance indicators of units or directorates as an incentive to properly address and make use of this approach at all levels
- Improve the content of the joint regulation, so that it serves as a system of reward when adhered to, and that there are consequences if it is neglected
- Revitalize signatories' commitment, with the joint development of a roadmap to renew the commitment of the leadership
- Provide adequate human resources and funding for effective implementation, such as skilled human resources and competencies coupled with adequate funding available to cover required travel, investigation and coordination costs (among others)
- Redefine and enhance coordination between government agencies and institutions to ensure that the approach is being applied consistently throughout each step in the process: from collecting evidence through inquiry, investigation including relevant hearing(s), pre-prosecution, prosecution, indictment, and also execution of court's decision
- Separate the functions of law enforcement and services to avoid conflicts of interest
- Consider the inclusion of trans-boundary cooperation as part of the multi-door approach, as forestry crime has strong international links outside of Indonesia, especially with transit and destination countries for illegal timber. Several institutional partners should be considered to support such inclusion.

Background

In many countries, including Indonesia, law enforcement of natural resource-related crimes has not effectively served as a deterrent[1] to the perpetrators.

> Ineffective law enforcement thus acts as a driver of deforestation and forest degradation in Indonesia

Ineffective law enforcement enables the continuation of illegal activities in forest areas through illegal logging, mining activities without forest area conversion permit, plantation activities without forest conversion and encroachment permits[2]. Ineffective law enforcement thus acts as a driver of deforestation and forest degradation in Indonesia[3]. Illegal practices in forest areas are not easily addressed or eradicated because they are linked to a spectrum of other forest management problems and illegal activities[4]. These issues include bribery[5], lack of transparency in forest management, and barter of permits in exchange for funding support to

[1] See Training Manual on Forestry Crime Investigation through Anti-Corruption and Anti-Money Laundering Approach, IWGFF, PPATK, UNODC, 2012, session 1, page 39. Obstacles that exist in the handling of forest crime, among others: (1) weak institution, forest tends to become a common property, resulting in overexploitation; (2) the current judicial system is not effective in dealing with IL (illegal logging) and IT (illegal trade) because IL & IT are trans-boundary crimes; (3) weakness of the judicial system; (4) multi-interpretation of regulations in the forestry sector and other related areas; (5) the low moral integrity of law enforcement officials; (6) the lack of coordination among law enforcement agencies; (7) investigation, prosecution and conviction in court do not provide deterrent effect and "real effect" to the public.

[2] See Combating Forestry Crime Half-Heartedly, Indonesia Corruption Watch, 2012, page 1-4.

[3] See the Indonesian Forest Governance Index 2014, page 116. Some of the modus operandi of illegal activities in the forest areas are also visible. In the early stages, most of the illegal activities began with tree felling and use of timber or illegal logging. Following illegal logging, the next activity is clearing land for agriculture and plantation commodities. Usually the land clearing uses fire or burning. At first, the land cleared is of small-scale, subsequently it is converted into medium and large scale plantations.

[4] See Training Manual on Forestry Crime Investigation through Anti-Corruption and Anti-Money Laundering Approach, IWGFF, PPATK, UNODC, 2012, session 1, page 26. Such as Illegal Logging and Illegal Timber Trade, whereby the modus of operandi are: bribery, abuse of authority, misappropriation of documents, smuggling, logging and transportation without permit.

[5] See Guidelines on Investigation and Application of Corruption Law against Forestry Crimes, Indonesia Corruption Watch, 2012, page 33. In connection with the issuance of licenses, concessions or even a recommendation, companies give a sum of money, a promise, facilities or infrastructure of any kind to state officials to smoothen the process. See also "Towards better Forest Governance for REDD+ in Indonesia: An Evaluation of the Forest Licensing System", 2015.


Foto: Hertab

run as a regent or governor[6].

Most importantly, forestry crimes are also influenced by the limited capacity of law enforcement such as inadequate number of forest rangers in relation to the area that they are meant to monitor, as well as inadequate number of human resources in courts (staff and judges) in relation to the volume of claims and cases received for handling (only about 10% of the forest crime cases received by courts were handled and concluded in 2014)[7]. This limitation also includes the lack of an effective approach to the enforcement of various forms of forest crimes. For example, law enforcement officials only apprehend field perpetrators, while the individuals or corporations financing the crimes often go unprosecuted or unpunished; illegal logging also involves "fencers" – intermediary companies that may or may not have official permits; many perpetrators go unpunished because of the loopholes in the law. In addition, the majority of illegal logging activities involve corrupt officials.

As a result, the total rate of deforestation over the last 19 years has reached 16 million ha and 40 million ha forest areas have been degraded. Deforestation and forest degradation

6 See the Local Government Judged Not Ready to Fund Simultaneous elections in 2015, can be accessed through http://tinyurl.com/okby7y9Executive Director of the Society for General Elections and Democracy (Perludem) Titi Angraini states that the Election Commission in South Nias has proposed funds worth Rp 39 billion, and has not been approved by the local government; Gunung Sitoli, North Sumatra, the Commission has proposed a IDR13 billion, and approved 23 percent; while in Madina, North Sumatra, the Commission proposed IDR25 billion and has not been approved. See Election Commission: Budget for Karawang Election may exceed IDR100 billion, can be accessed through http://tinyurl.com/oy5d7k3See Regional Development Funds may be siphoned to the elections, can be accessed through http://tinyurl.com/px7ezhoElection needs may use up between IDR50 billion to 100 billion.

7 See findings on law enforcement capacity in the *Indonesian Forest Governance Index 2014* supported by UN-REDD: http://tinyurl.com/FGI-Indonesia

Photo: Abdul Situmorang

contribute to the deterioration of the environment, such as habitat destruction for protected and endangered flora and fauna, while also representing a risk preventing the use of mega-biodiversity for the welfare of society and the state. In addition, deforestation and forest degradation contribute to rising greenhouse gas emissions which has prompted the government to design a National REDD+ Strategy and related REDD+ policies and measures.[8]

From the state revenue side, forestry crimes cause significant loss of government revenues. KPK (2014) estimated that the government has lost about US$9 billion overall due to poor forestry management in Indonesia. Human Rights Watch (2014) estimated the loss of government revenue from the forestry sector to be as much as US$ 2 billion per year from illegal logging and inadequate forest management alone. The Ministry of Forestry (2013) itself predicted a loss of as much as 273 trillion Indonesian Rupiah - equivalent to US$27 billion - caused by 727 non-compliant plantations and 1722 non-compliant mines in seven provinces.

Assessments by KPK, Human Rights Watch, and Ministry of Forestry indicate significant state loss from the forestry sector. This is also highlighted in the 2015 Forest Governance Index, which reveals that the current handling of forest crimes is still far from optimal despite the various efforts underway. The longer the inaction, the more difficult it is to address natural resources related crimes in the forest area.

[8] See the Indonesian Forest Governance Index 2014 Page 4

Photo: Abdul Situmorang

Multi-Door and Integrated Law Enforcement Approach

Photo: *Buku Nota Kesepahaman & Peraturan Bersama*

To address and remedy issues of weak law enforcement, the Government launched the "Multi-Door Approach to Address Natural Resources and Environment-related Crimes in Forest Areas and Peatlands" (hereinafter referred to as the "Multi-Door Approach") as one of the breakthroughs for handling natural resources and environment related crimes (NRERCs) in forest areas and peatlands.

A significant step in the process to establish the Multi-Door Approach was marked by the signing of a Memorandum of Understanding (MoU) on 20 December 2012 between the Ministry of Forestry, Ministry of Environment, Ministry of Finance, the Attorney General, the Chief of Police and Head of Financial Transaction Analysis and Reporting Center on Improving

Photo: *Buku Nota Kesepahaman & Peraturan Bersama*

Law Enforcement Cooperation to Support Sustainable Natural Resources Management in the framework of implementation of REDD+. Facilitated by UKP4 (President's Delivery Unit for Development Monitoring and Oversight) and the REDD+ Agency, the MoU seeks to ensure that Natural Resources and Environment Related Crimes (NRERCs) in the forest area are handled in a more coordinated fashion and lead to enhanced and more severe and strict sentences. **The Multi-Door Approach can be understood as law enforcement authorities working together over a series of combined crimes using various regulations, including regulations related to the environment, forestry, mining, taxation, money laundering, corruption, agriculture and taxation**[9].

The Case Management Guidelines for the Multi-Door Approach were elaborated to guide the implementation of the MoU. The Ministers, the Attorney General, the Chief of Police and the Head of the Financial Transaction Analysis and Reporting Center (FIU) have all agreed to use the Multi-Door Approach Guidelines, undertake coordination when needed and exchange information on a regular basis in order to optimize the handling of criminal cases. They also agreed to increase the number of staff and judges and to improve their knowledge of natural resources and environment related cases.

[9] The multi-door approach is a similar structure to the INTERPOL National Environmental Security Task Force (NEST). The NEST ensures a coordinated multi-agency response to tackle environmental crime. While some environmental crime issues can be addressed by a single agency, in most cases an effective response requires the knowledge and expertise of multiple agencies working together. By creating a team of experts, each with specialized skills, a NEST could ensure that all criminal activities are addressed. NESTs centralizes efforts against environmental crime, ensuring a coordinated, cooperative and collaborative response that avoids duplication of efforts, ensures the efficient use of resources, and facilitates intelligence, capacity, and capability exchange among agencies. For more information please visit: http://tinyurl.com/EnvironmentalCEC

Box 1: The Joint Regulation

The joint regulation governs the application of the multi-door approach in the inquiry, investigation, prosecution and appeal process of natural resources and environment related cases. The emphasis in each step is briefly described as follows:

Inquiry[1]*: the joint regulation emphasizes the importance of seeking and finding criminal offenses in the natural resources and environmental sectors and linking these with other criminal offenses i.e. money laundering, taxation, and corruption crimes. There are two important components: collecting evidence and testimony, as well as applying internal standard operating procedures which reflect the Multi-Door Approach.

Investigation[2]*: in the handling of criminal offenses related to natural resources and environment (in addition to referring to the Criminal Procedure Code and other regulations) emphasis should be given to the "modus" of each crime while the Police Investigation Report (BAP-Berita Acara Pemeriksaan) needs to provide special protection for whistleblowers and witnesses.

Pre-prosecution[3]*: the investigative attorney should inform the police investigator and civil servant investigator and encourage cooperation when the case is linked to other crimes so relevant investigators are aware of each other's work. At this stage, coordination between relevant investigators, prosecutors and experts becomes crucial to understanding the full scope and scale of the crime. At this stage, coordination between relevant investigators, prosecutors and experts becomes crucial to understanding the full scope and scale of the crime.[4]*

Prosecution[5]*: emphasizes the preparation of the indictment letter by developing a case matrix, coordinating with investigators on the different types of charges and coordinating with the Attorney General's Office.

Coercive measure[6]*: includes seizure at prosecution level, detention and coordination with investigators and experts before presentation of evidence

Presentation of evidence: the process includes putting forward witnesses and experts and officials associated with the offense of a corporate actor.

Decision[7]* and Legal Remedy[8]*: includes coordination with investigators and experts, action of the public prosecutor when a criminal act is proven guilty and oversight over land to be confiscated by the state.

Filing criminal charges: involves coordination between the public prosecutor and the investigative attorney, incriminating and mitigating circumstances, calculation of the loss to the state and society, analysis of corporate assets, confiscation of evidence, consideration of additional criminal charges and elaboration of the legal argument.

[1]* Criminal Procedure Code, Law No. 8 of 1981, Article 1 point 5. Inquiry is a series of actions of the inquiry officer to determine whether alleged criminal acts may be investigated in the manner stipulated in this law.
[2]* Criminal Procedure Code, Law No. 8 of 1981, Article 1 paragraph 2. Investigation is a series of actions of the investigator in the manner set forth in this law to search for and collect evidence to shed light on the crime that occurred and to find the suspect.
[3]* Criminal Procedure Code, Law No. 8 In 1981, Article 14, paragraph b. The public prosecutor has the authority to hold a pre-prosecution if there are any deficiencies in the investigation with regard to the provisions of Article 110 paragraph (3) and (4), by providing guidance to improve the investigation.
[4]* Law of the National Police, Law No. 2 of 2002, Article 1 point 11. Civil Servant Investigators are specific civil service officials who are designated as investigators and have the authority to conduct criminal investigations within the scope of the law.
[5]* Criminal Procedure Code, Law No. 8 of 1981, Article 1 paragraph 7. Prosecution is an act of public prosecutor to transfer a criminal case to the authorized district court in the manner set forth in this law requesting for the case to be examined and decided by the judge in a trial.
[6]* Complete Law Dictionary, Rocky Marbun, et al, 2012, page 322. Coercive measures of law enforcement officers are in the form of arrest, detention, search, seizure and hearing in order to carry out the judicial process.
[7]* Criminal Procedure Code, Law No. 8 1981, Article 1 point 11. The court decision is a statement of the judge pronounced in an open court, which can be either a conviction or acquittal from all charges, in the manner set forth in this law.
[8]* Criminal Procedure Code, Law No. 8 1981, Article 1 point 12. Legal remedy is the right of the accused or the public prosecutor to reject the decision of the court by submitting an appeal or petition for judicial review in the manner set forth in this law.

Photo: Abdul Situmorang

MULTI-DOOR APPROACH MILESTONES

- Signing of the MoU: December 2012
- Elaboration of Case Management Guidelines: Dec 2012-May 2013
- Signing of the Joint Regulation: May 2013

Following the signing of the MoU, officials of the Ministry of Forestry, Ministry of Environment, the Attorney General's Office, the Police and the Financial Transaction Analysis and Reporting Center signed a joint regulation on 20 May 2013(see Box 1) to address natural resources and environment related crimes using the Multi-Door Approach. The joint regulation stipulates that each law enforcement agency shall apply, utilize, and adhere to the Case Management Guidelines.

The Multi-Door Approach seeks to establish coherence between the inquiry, investigation and prosecution of forestry crimes. It responds to the observation that law enforcement agencies often work in silos. The approach is expected to:

- Minimize the possibility of perpetrator's "escape" from more severe sanction due to the application of only one regulation or law.
- Sanction the "mastermind" or person financing the crime and to ensure corporate accountability in order to provide a deterrent effect and maximize returns on state losses from NRERCs .

The overall purpose of the Multi-Door Approach is to develop an integrated law enforcement system, based on the principle of justice between generations and to preserve the environment as a source of life of all living creatures.

Initial assessment on the Multi-Door Approach

Framework

The Multi-Door Approach is a wide-reaching and to some extent a "pioneering" policy in the Indonesian context and within law enforcement tied to forest and natural resources crime. James E. Anderson wrote that "public policy is an act to address a problem or issue in society and the act is carried out and followed by the stakeholders". One form of public policy act is a regulation that binds and forces groups in society to for example act in accordance with mutually agreed norms that benefit or protect society as a whole. In public policy discourse, both the design process and the actual implementation of a public policy are equally important for its success in the long run. An inclusive public policy design and decision-making process often leads to more relevant inputs, as well as a higher degree of sustainability due to more realism in goal setting and preparation for implementation[10].

"The Multi-door Approach is a wide reaching and to some extent a "pioneering" policy in the Indonesian context and within law enforcement tied to forest and natural resources crime.

In the past two decades, emphasis on assessments and measurements of the impact or the implications of a public policy against its initial goal(s) (and even assessing whether the impact of the policy went beyond the goal) has increased. The UK for example developed the concept of "regulatory impact assessment" which is now "mainstream" within the mandate of regulatory agencies[11]. The purpose of assessing policies is for policy- and decision makers to:

- Demonstrate the performance of the public policy itself (or lack thereof), thereby assessing whether there are any gaps in the form of either deficit or positive outcomes between the

[10] See Institute for Government, 2011: http://tinyurl.com/BetterPolicyMaking

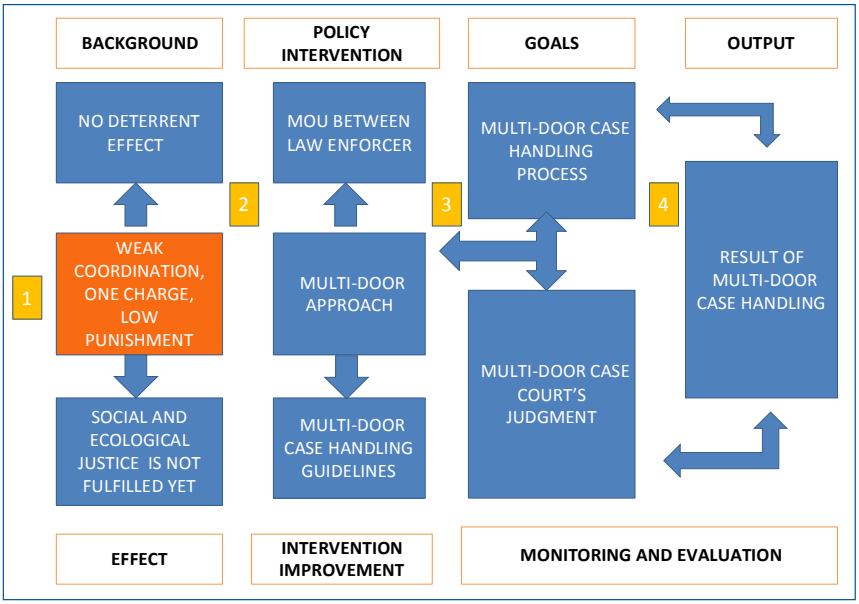
[11] See *Regulatory Impact Assessment: Towards Better Regulation?*, 2007, page 1. Regulatory impact assessment (RIA) is a method of policy analysis, which is intended to help policy makers in the design, implementation and monitoring of the improvement of the regulatory system, by providing a methodology to assess the possibility of the consequences of the proposed regulations and the actual consequences of the regulation.

original purpose for which the policy was formulated and the achievement of its stated objectives.

- Determine whether and how to implement small corrections, considerable changes, or to altogether revoke the policy if and when the policy is not fulfilling its intended objective.
- Inform a discussion on an alternative implementation strategy when needed in order to improve the effectiveness of the policy.

The process to implement a public policy is far from simple. Eugene Bardach[12] stated that making a general policy and making it look good on paper is hard. It is even more difficult to make a regulation that can accommodate many interests. But the most difficult part is to implement the regulation to the satisfaction of all stakeholders. Therefore, successful implementation is to a large degree determined by communication where the decision makers understand what needs to be done and what resources are required to achieve this, what kind of leadership should be in place and that the bureaucratic "work force" is well informed. With this understanding and conviction the Multi-Door Approach framework was developed.

ASSESSMENT FRAMEWORK



Purpose of the Initial Assessment

The initial assessment of the implementation of the joint regulation on the Multi-Door Approach seeks to evaluate[13]:

[12] See Bardach, Eugene, 2012. A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving, 4th Edition 4th Edition, Los Angeles. Sage and Copress

[13] As the new regulation is only implemented over the last two years, the type of formal evaluation used is not a summative evaluation. Summative evaluation is an attempt to explore the impact of a policy or program compared with the initial goal within a specified period, and usually in a fairly long period of time. The most suitable type of evaluation is formative evaluation because it compares the goals and achievements continuously, so there is no need to wait until the end of a period. Therefore, this assessment is framed as an initial evaluation due to the short period of implementation.


Photo: Abdul Situmorang

1) **the effectiveness of the Multi-Door Approach thus far**, i.e. implementation against the objectives of the regulation signed by the ministers and heads of agencies. This assessment therefore assumes that the objectives and targets of the joint regulation are an appropriate basis for measuring its benefit or value.
2) **its efficiency**, or more precisely the cost-efficiency related to costs incurred versus objectives achieved.
3) **its institutionalization** through policy-uptake and ownership within each institution
4) **its adaptability** to reality, i.e. how it adapts to internal and external changes affecting its sustainability, but also the nature of the challenges faced.

Associated with the conceptual framework, the initial assessment began to explore a) whether the content of the guidelines has been implemented seriously and b) the current impact of the implementation of the joint regulation.

The implementation of the joint regulation is highly dependent on the capacity to coordinate between law enforcement agencies. This includes both ***vertical coordination*** among investigators, investigative attorneys, prosecutors, experts and leaders of the respective law enforcement agency as well as ***horizontal coordination*** within the respective law enforcement agencies. In addition, the effective implementation of the joint regulation is heavily influenced by **institutional support** such as improved internal regulations of each law enforcement agencies, financial support and improvement in the quality of investigators, investigative attorney and prosecutors. The most important factor may be their integrity and their commitment to implement the joint regulation.

Data Collection Methods

A combination of quantitative and qualitative data collection methods were used in the initial assessment. For the quantitative approach, a survey using purposive sampling was used. A set of closed questions was prepared and drafted by a small team comprising representatives of UKP4, the Attorney General's Office, the Criminal Investigation Department - Police Headquarters as well as a number of experts. Closed questions were compiled based on the conceptual framework in order to get a structured view of the respondents related to the implementation of the multi-door approach.

The survey instrument was tested on several potential respondents, both at the Attorney General's Office and within the police force from October to December 2014. Several improvements were made after the testing, especially on the formulation of questions and terminologies, with the view to making the questions easier to understand. Data was then collected on 17 December 2014.

To gain a more comprehensive understanding of the respondents and informants, a number of discussions were held. Focus group discussions were held and prosecutors and investigators from the target areas were invited. A number of topics and open questions were prepared to guide the discussions. Focus group discussions with experts and drivers of the Multi-Door Approach in the respective law enforcement agencies were also conducted. Discussion on the roles of expert witnesses and decision analysis was also conducted to assess the effectiveness of the Multi-Door Approach and its initial impact.

The results of the findings and analysis were then discussed in focus group discussions and in-depth interviews with several actors that took place from June to September 2015[14]. The aim of these discussions was to examine whether the findings and analysis are in line with reality, collecting different viewpoints and tracing if there are any additional documents and previous studies that can also be used as a reference. Focus group discussions and interviews were also used to identify and develop a number of recommendations that are feasible and would have a far-reaching impact if and when implemented.

[14] Interviews and discussions were conducted with Erni Mustikasari, SH, MH - Prosecutor at Directorate of Other General Crimes / Junior Attorney for General Crimes at the Natural Resouces task force, Attorney General's Office, Indro Sugiarto, SH, MH, - Member of Multi-Door Approach Drafting Team, Attorney General's Reform Team, and now Commissioner of Prosecutorial Commission, Sukma Violetta, SH LL.M., - Member of Multi-Door Approach Drafting Team and Supreme Court Reform Team, Police Colonel Sandy Nugroho, SIK., SH, MH, - Head of Subdirectoratel of Specific Crime Directorate, Criminal Investigation Division, Col. Nurworo Danang - Head of Subdirectorate III of Specific Crime Directorate, Superintendent Harjanto Kartiko Putro – Head of Unit V Sub Directorate III of Specific Crime Directorate, Prof. Dr. Hariadi Kartodihardjo, Dr. Sunaryo, Himsar Sirait, SH Ministry of Environment and Forestry, Drs. Ratio Ridho Sani, M.Com., MPM. - Director General of Enforcement of the Ministry of Environment and Forestry, and Ir. Novrizal Tahar, M.Si. – Secretary of Directorate General of Law Enforcement of Ministry of Environment and Forestry- Mas Achmad Santosa and Yunus Husain

Findings

Positive results

The overall effectiveness of the Multi-Door Approach was given a score of 50 (on a scale of 1 to 100) by investigators from the police, ministries and the prosecutors. Considerable progress was noted in a number of areas, such as increased awareness and knowledge on the importance of considering other related crimes when investigating forestry crimes. Several skill enhancement trainings are found to help in implementing the guidelines.

The resource persons expressed that **coordination between investigators and prosecutors is also getting stronger**. The collection of evidence in the field involving investigative attorneys and prosecutors with the support of the REDD+ Agency allowed the investigator to collect relevant evidence. It also helped the prosecutor to understand the nature of the crime itself, by seeing the material evidence and the extent of environmental damages *in situ*. Most importantly, this joint activity developed conducive communication between investigators and prosecutors in handling natural resources crimes in forest areas and peatlands.

A facilitation meeting to bring in a number of experts to jointly provide a scientific explanation that a forest fire case was not caused by nature but because of deliberate actions and was carried out systematically and massively, helped investigators and prosecutors to more effectively collect evidence, including clues with initial evidence of other alleged crimes. All these, according to the respondents and informants, saved time in the case handling process from the gathering of evidence through to when the case is transferred to the court. This is demonstrated by a number of priority cases used to test the guidelines.

Although not all the results are satisfactory, several cases show a positive trend as demonstrated by the *Rawa Tripa* (Aceh) and *Labora Sitorus* (West Papua) cases. In the case of *Rawa Tripa*, prosecutors filed charges of ecological recovery while in the case of *Labora Sitorus*, the defendant was not only prosecuted for illegal logging but also for money laundering from illegal activities. As a result, the judge granted "the full scope" of charged filed by the prosecutor.

Challenges

The toughest challenge is the institutionalization of the guidelines on the Multi-Door Approach. Institutionalization (whether agencies have "internalized" the approach and use it actively on a regular basis) was not found to be strong as it requires a number of regulatory changes in each institution. In addition, other institutional elements to support the uptake, such as financing and administration, are simply not in place. For example, the Police only plans for 10 NRERC cases annually in their budget, a highly inadequate number considering the total number of cases that need to be handled overall.

It is also a challenge to implement administratively. For example, a limited budget is allocated for car rental to collect evidence in the field whereas field conditions may require that the investigator rent a special four-wheel-drive vehicle in order to pass through certain areas. The rental price for the four-wheel-drive exceeds the allocated car rental budget leaving the investigators unable to rent an appropriate vehicle and collect the required evidence, all due to the current administrative procedures. If the investigator chooses to rent the expensive but necessary four-wheel-drive vehicle, he or she will have to decrease the number of working days devoted to the case in order balance the total expenditure within the total budget available. This has implications on the time and quality of the collection of evidence. In other words, **the collection of evidence in natural resources criminal cases is costly; without adequate financial support, it is very difficult to obtain evidence that is sufficient and irrefutable in court**. Furthermore, the investigator or prosecutor often has to invite or bring in additional experts along for the collection of evidence whereas the allocation of funds is most often limited to the investigator or prosecutor alone.

The cost of evidence collection in the field is often seen as an opportunity for corporations to offer four-wheel-drive transportation to the investigators. Businesses are often willing and indeed able to finance the collection of evidence, laboratory studies and test results of samples in the field. This allows businesses to show, honestly or not, that the crime was never committed. This is particularly relevant for cases related to forest fires, which can occur due to natural influences or by intentional arson.

Businesses have also been said to bring in expert witnesses and pay them to testify in their favor[15]. In fact, the results of discussions with expert witnesses revealed that **a number of businesses are willing to pay expert witnesses *not* to testify**. This clearly makes the alleged crime even more difficult to prove in court.

Inquiry

In the implementation of the joint regulation, inquiry was framed as an effort to seek and find events related to criminal offenses and natural resources related crimes and uncover the linkages with other crimes, namely money laundering, taxation, and corruption. There are two important components in the investigation under examination in this report: a) collection of evidence and testimony and b) internal standard operating procedures which reflect the Multi-Door Approach.

[15] This is based on experts discussion conducted by PGA Project, UNDP Indonesia Sep-Nov 2014

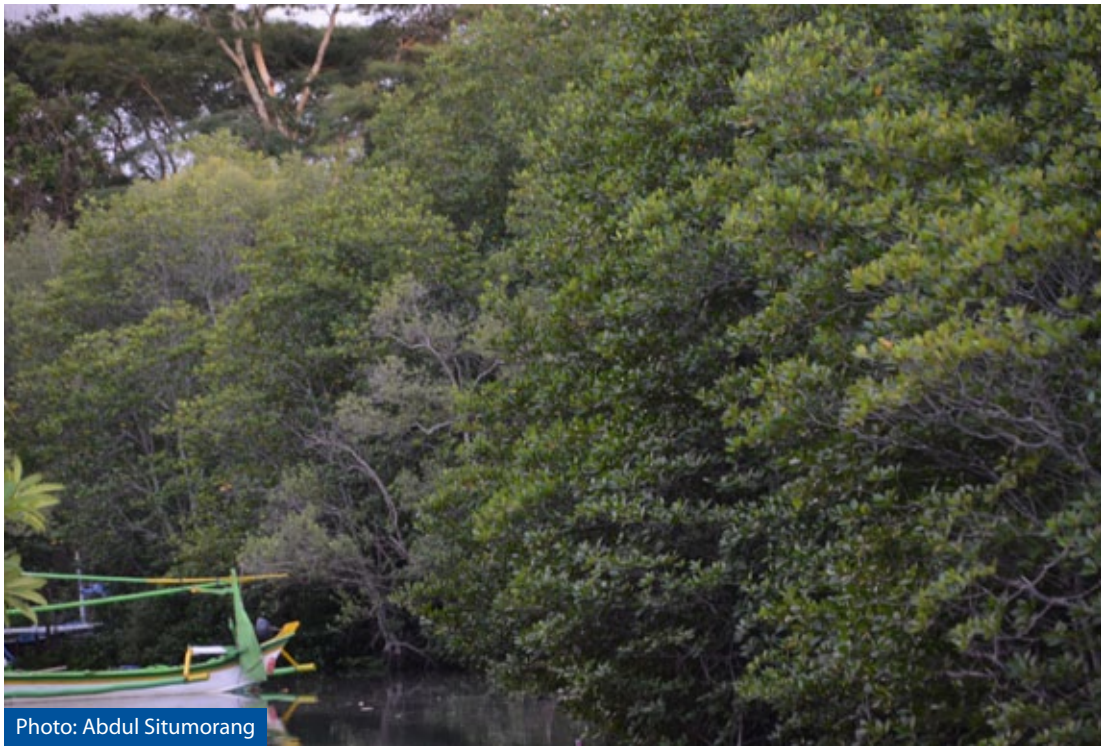


Photo: Abdul Situmorang

Management of information and complaints/reports.

The Multi-Door Approach guidelines require that a specific standard operating procedure (SOP) is applied to govern investigation of natural resources-related cases. This is necessary because the nature of these case differs from crimes in general. Natural resources and environmental crimes in forests and peatlands rarely stand alone and require a specific technique and management of evidence.

The assessment revealed that **the specific Multi-Door Approach SOP is not yet available to the police force**, who still use a general SOP. A Task Force for handling natural resources and environmental crimes has not been established. However, the police themselves reported that they understood their own SOP and how to follow up reports/complaints or information about alleged criminal acts in forest areas.

Joint inquiry: In assessing complaints on alleged natural resources crimes in forest areas and peatlands, the police do not always involve civil servant investigators of the Ministry of Forestry or Ministry of Environment. When they uncover a crime, the police investigate by themselves and do not involve others. Thus, the police and investigators of Ministry of Forestry and Ministry of Environment never carry out a joint inquiry.

As revealed by the survey of the police investigators, 45 percent claimed they never planned a joint inquiry. This is consistent with the responses about whether coordination with the civil servant investigators was made to conduct a joint inquiry. 45 percent said that they coordinated with civil servant investigators, 18 percent of the respondents reported that they never coordinated with civil servant investigators.

Review of information and complaints from the public. Similarly, when investigators from the police were asked whether they involved civil servant investigators when studying the findings of alleged criminal acts related to natural resources, 45 percent reported that they did not always do that and 45 percent even claimed they never involved civil servant investigators at all. For those who involved civil servant investigators, when asked whether they will follow up with a joint inquiry, none of the respondents said that a joint inquiry plan was drawn up. This is consistent with previous responses that describe the handling of complaints from the public or the initial information of alleged criminal acts.

The results of the assessment show that the recommendations to develop a special SOP for handling natural resources and environmental crimes, involve civil servant investigators in the initial findings and develop a joint inquiry plan have not been followed up in practice so far. The crimes are handled individually. According to the police, even when other related crimes are detected, the inquiry remains under the authority of the police investigator.

In practice, this implies that coordination and joint planning is not required beyond the police investigator and moreover there is no written obligation to do so, according to the existing internal SOP. This finding illustrates that the joint regulation has not been implemented consistently. When it is applied, as indicated by a small proportion of respondents, it is due to the role of UKP4 and the REDD+ Agency which facilitate the coordination and preparation of the inquiry plan based on complaints of alleged crimes in forest areas and peatlands. It is clear that the role of institutions that can facilitate joint coordination becomes important to ensure effective implementation of the integrated law enforcement.

A similar situation also occurs within ministries and local government work units with the authority to conduct an inquiry in the forest area. Their internal SOPs have not been changed although informal directives are given to investigators to inform the civil servant investigators if there are other allegations in a case being investigated.

Preparation for inquiry. 72 percent of the respondents claimed to have experts already identified by police investigators whereas 27 percent claimed that they were not always identified. The investigators also revealed that coordination with the civil servant investigators, prosecutor's office and expert witnesses was not always carried out. In fact, 45 percent responded that they never did that. In other words, the police conduct their own inquiries and do not involve prosecutors, civil servant investigators and expert witnesses. Interviews with several sources revealed that even if coordination between law enforcement agencies was carried out, coordination was relatively informal and never led to a clear division of tasks in the investigation.

In the preparation process, the investigators revealed that the necessary documents such as environmental permits, forest conversion permits, borrow to use permits, decrees on forest conversion and spatial documents from customs were identified. More specifically, 64 percent said that necessary documents were always identified and 36 percent said that they were not always identified. However, the investigators said that they always identified the location and evidence of the criminal offenses. 91 percent said that they always identified the locations,

objects and evidence related to the criminal offenses. In other words, the locus and identification of material evidence are the first priority, while the documents (such as environmental permits, forest conversion permits, borrows to use permits, forest release and relevant spatial documents) are identified later. Investigators also identified the need for funding of personnel, equipment and infrastructure such as recorders and GPS in the investigation process.

The results of document reviews were not always discussed together with the civil servant investigators, prosecutors or experts. Only 18 percent said that they discussed the results with civil servants, prosecutors and experts. With regard to the collection of evidence in the field, police investigators do it by themselves even when there are allegations of other crimes. Results of evidence collection in the field are not always discussed with civil servant investigators and prosecutors. If at all, the numbers are very small. Results of evidence gathering and initial information are not always successful in identifying potential suspects, individual, corporation or corporate administrators. Only 27 percent reported that they were able to identify the suspect(s) and 18 percent reported that they were unsuccessful. In other words, further effort is needed in order to solve the cases and identify perpetrators of the relevant crime.

An internal case briefing to change the status of an inquiry into a criminal investigation does not involve cross directorate working units such as the Directorates of Special Crimes, Corruption, and General Crime. In other words, case briefings are generally held within one unit and as such silos are being kept. This also applies to the involvement of civil servant investigators, prosecutors and experts, where 36 percent reported that they were not always involved and 45 percent reported that they were never involved. Again, case briefings are in practice conducted within the relevant unit itself and this unit does not involve other investigators nor prosecutors.

These results indicate that the recommendations of the joint regulation about identifying relevant documents (such as permits, evidence collected and interrogation reports), locus/ crime scene, witnesses, and experts as well as the collection of evidence and testimonies have not been implemented nor followed up in practice. The guidelines clearly state that the relevant civil servant investigators, expert witnesses and prosecutor should be involved in identifying the document, locus, witnesses, and experts as well as in determining the findings of the collection of evidence and testimony. The guidelines also state that police investigators are encouraged to involve relevant civil servant investigators, prosecutors and experts during case briefings to change the status of an inquiry into an investigation.

The purpose of the joint regulation is to avoid overlapping inquiries, divide inquiry tasks with other investigators or other directorates when there are allegations of other crimes and also to integrate feedback from the prosecutor so that case will not be returned repeatedly during the transfer process. In other words, the guidelines have not been implemented and majority still use the existing internal guidelines of the police, ministries and local government work units who have the authorities to conduct investigations.

Investigation

Investigation of forest crimes is based on the Criminal Procedure Code and is to be conducted by a Police Investigator, Forest Police and Civil Servant Investigators of the Ministry

of Forestry under the coordination of police investigator[16]. In accordance with the procedure, the investigator should submit a warrant initiating an investigation to an investigative attorney (P-16 attorney) at the prosecutor's office. At this stage, the investigator in the Police Department has analyzed and concluded that the evidence and information gathered is sufficient to declare that the crime has occurred, and the suspects have been identified. The Multi-Door Approach guidelines recommend a number of steps that should be carried out by the investigator. This initial study seeks to identify to what extent these guidelines are being implemented.

In the preparation phase, investigators do not always inform the investigative attorney (P-16 attorney) of the possibility of other crimes which are under the jurisdiction or are being investigated by other directorates (of the police department and civil servant investigators, for example) because there is no obligation to do so in the existing internal SOP of the police. However, in some cases, respondents reported that the investigators informed the P-16 attorney of involvement with other directorates or authorized civil servant investigators who were investigating other aspects of the same case. Therefore, other directorates or other authorized investigators are not always involved in collecting evidence.

In the context of coordination with the P-16 attorney, the assessment reveals that investigators always coordinate with the P-16 attorney and the majority of investigators actively ask for guidance from P-16 attorney, although the case files have not been formally transferred to P-16 attorney. According to the respondents of this study, 54 percent claimed that the P-16 attorney always provided instructions/ guidance, while only 18 percent said that the P-16 did not provide guidance to the investigator, based on the experience of investigators over the years.

The investigators reported that they often found it difficult to obtain permit documents from the Ministry of Forestry or National Land Agency. Difficulties were also encountered by investigators in the ministry or local government work unit to obtain permit documents from different directorates of the same ministry and local government work unit.

87 percent of the respondents reported that obtaining permit documents was not easy. Only 9 percent declared that it was very easy. In addition, companies did not always provide the documents requested by investigators, with more than 50 percent of the respondents claiming that it was not easy to obtain the documents. This condition was caused by several factors such as paper-based permit management, or permits not yet registered in a database, as well as the fear of being implicated if the permit process did not comply with the rules. It was not recorded that the suspect tried to hinder investigators from gathering evidence.

In addition, **identifying experts from universities who could support investigators in providing information on natural resources crimes being investigated is still an obstacle**. While nine percent reported that it was very easy and 36 percent claimed it was easy, 18 percent reported it was neither difficult nor easy, and 27 percent of the respondents reported that it was not easy. This also occurred when investigators identified experts from government agencies both at central and local levels. The investigators said that experts who were identified always conducted preliminary discussions before their statements were taken. However, the investigators did not involve the prosecutors during the preliminary discussion.

[16] See Combating Forestry Crime Half-Hearted, Indonesia Corruption Watch, 2012, page 22

Photo: UNDP Indonesia REDD+ Project

The difficulty in identifying experts is due to the fact that the availability of technical and legal experts from universities, research institutes and government has not been mapped. The experts could provide their opinions to strengthen the legal construction and the formal and material evidence against the incident and criminal liability. Yet, based on the initial assessment of currently known experts in the field, the number is very limited and their integrity is questionable because several experts have been shown to give contradictory testimonies on the same case. Furthermore, there are no guidelines on the category of experts who may be called on to provide information.

In the context of establishing a corporation as a suspect in the investigation process, a majority of the investigators showed concerns: 18 per cent said there were always obstacles, 45 percent said sometimes there were obstacles and only a minority (36 percent) said there were never any problems. On the contrary, 64 percent of the investigators claimed that there were no obstacles in establishing state officials as suspects provided that there was sufficient evidence.

These findings indicate that the principles of the Multi-Door Approach have not been implemented in the investigation phase. Investigators still work individually, not involving other directorates or relevant civil servant investigators. There is coordination with the Prosecutor but it is done bilaterally, rarely involving experts or investigators and civil servant investigators who are conducting parallel investigations related to the same case. If coordination is carried out, it is influenced by the existing internal standards rather than by the Multi-Door Approach.

The good news is that investigators do not have difficulties in establishing individuals within the corporation or the corporation itself as a suspect. Investigators also revealed that

they did not have difficulties when establishing state officials as suspects. In this context, the content of the guidelines has been implemented by the investigators.

Coercive Measures, Evidence, and Case Briefing

The respondents reported that **arrest, detention, and search were not always performed**. In contrast, timber, heavy equipment, boats, barges, plantations, mines in forest areas, mining products, and crops are always seized by the investigators. If they are not seized, it is often heavily influenced by practical considerations such as inadequate evidence storage area, as the investigators are indeed responsible for protecting the evidence once seized. The respondents also reported that seizure warrants were not easily obtained from the district court: 27 percent reported that it was not easy, 45 percent reported that it was neither easy nor difficult and only 27 percent reported that a seizure warrant was easy to obtain. More importantly, none of the respondents indicated that it was very easy to obtain.

Before a case file is submitted to the P-16 Attorney, a case briefing is generally carried out by the investigator and the P-16 attorney. Only 9 percent reported that they did not carry out this briefing and it was suspected that this was because the investigators were very confident of the evidence and the sanction in question. However, the case briefing is conducted internally by the investigator and does not necessarily involve the relevant civil servant investigators and the P-16 attorney. More precisely, 27 percent reported that they did not always involve them and 36 percent reported that the briefing was never attended by neither civil servant investigators, P-16 attorney, nor experts. Conversely, when the investigative attorney and experts were involved in the case, they always provided their opinions and advice to the investigators.

In the context of coordination at the investigation level, investigators from the police revealed that 36 percent always signed coordination reports made by the P-16 attorneys and 45 per cent claimed that they did not always sign the reports. In fact, 18 percent said they never signed it. This coordination is necessary in order to fulfill the instructions of the attorney and, according to the respondents, the coordination is performed formally (where the majority is a combination of formal and informal coordination).

In terms of the instruction of the P-16 Attorney, the views of the investigators were divided into two main "groups". 36 percent reported that these instructions were easy to understand, while the majority, (the remaining 64 percent), reported that it was not always easy to understand. This answer is consistent with the question about whether there are instructions from the attorney that are difficult to fulfill by the investigators. The majority reported it was neither easy nor difficult, which indicates that there were difficulties but that the instructions could still be fulfilled. But some also reported that it was difficult to fulfill the instructions of the P-16 attorney.

Furthermore, filing is done separately – i.e. by each unit or agency - when the case investigation is carried out by various directorates - Directorate of Special Crimes, Directorate of Corruption, General Crime Directorate, Regional Police and the District Police. This study also found that nine percent of respondents answered that they did not know how the filing is handled, while nine percent did not answer this question at all. Conversely, when case investigation was conducted jointly with other civil investigators, only one case file is used.

Photo: UNDP Indonesia REDD+ Project

Nonetheless, 27 percent of respondents reported that the investigation was filed separately and 27 percent stated that they did not know.

These findings are somewhat positive news, but also point to the challenges of implementing the multi-door approach. The first challenge is that if no one is detained or arrested, there is no deterrent effect and the suspect may even cover up or eliminate the evidence. However the finding that indicates that the investigator always seizes the evidence as suggested in the guidelines is positive and, although not always easy, investigators generally obtain a seizure warrant from the court. Investigators also conduct a case briefing along with the P-16 Attorney before the file is submitted to the prosecutor's office. As suggested in the guidelines, the weight and quality of the briefing is better when it also involves experts and investigators.

In the context of case filing, the multi-door approach guidelines do not require a single case file or separate case files, and the investigators have followed the guidelines. It should be noted that if the files are merged, the charges should be arranged cumulatively not alternatively. The good news is that the investigator and the prosecutor coordinate with each other, although not one hundred percent of the time, and instructions are always provided by the P-16 attorney and they are relatively easy to understand. This is also in line with the recommendations of the guidelines.

Pre-prosecution

According to the P-16 attorneys, after receiving a warrant to commence investigation (SPDP), 53 percent reported that they always coordinated with the investigators and 30 percent

reported that they did not always coordinate with the investigators. When questioned further, the P-16 attorneys responded that they would coordinate further only if the case was not clear. When the case is clear, the P-16 attorneys do not generally undertake coordination. When coordination does take place, it is carried out in various ways, such as through formal meetings, non-formal conversations via phone or e-mail, or during the preparation of the coordination report.

The P-16 attorneys gave varying responses when asked whether they reminded police investigators about the Multi-Door Approach. 23 percent reported that they consistently reminded the police, 30 percent reported that they did not always remind them, 15 percent never reminded them, while and the remaining 30 percent did not know or did not answer. Attention needs to be given to those who never reminded the police investigators, did not know and did not answer. In fact, the guidelines encourage the P-16 attorneys to always remind the investigators about their approach in handling cases of natural resources crimes in forest areas and peatlands.

The reasons why the P-16 attorneys did not remind the investigators needs to be explored. Is this because the P-16 attorneys never received a warrant for commencing investigation (SPDP) from the police investigators, while civil servant investigators handled different aspect of the same case? If so, this reflects that police and civil servant investigators still work separately even though the guidelines require the investigators to work together.

Related to submission and examination of the case file, a majority of the prosecutors (over 76 percent) reported that most of the files received do not always follow their instructions. The public prosecutors also reported that when the files were prepared following their general instructions, as much as 23 percent were incomplete or given P-19 status meaning that the files were returned to be completed. 15 percent of the prosecutors reported that they were always complete or given P-21status - a notification that the file is complete, another 15 percent reported that they were not always complete, and most of the prosecutors did not provide an opinion. This was due to the public prosecutor's reluctance to share information.

The public prosecutors reported that in cases where the files were incomplete, it was because they did not fulfill the material requirements (54 percent). 38 percent did not fulfill the formal and material requirements and 8 percent did not fulfill the formal requirements[17].

[17] See http://download.portalgaruda.org/article.php?article=109359&val=1030. Case file of the investigation can be said to be complete if it has met the following requirements:
a. Formal completeness
A case file of the investigation is complete when it contains, among others:
1. Identity of the suspect as mentioned in Article 143 paragraph (2) letter a of the Criminal Code.
2. Warrant from the Chief Judge of the local District Court permitting search and seizure (Article 33 and Article 38 of the Criminal Procedure Code).
3. Investigators / Assistant Investigator must meet the requirements as specified in the Regulation of the Minister of Justice No.M.05.PW.07.04 1984.
4. Special Permit from the Chief Judge of the local District Court for examining letters, Article 47 of the Criminal Procedure Code.
5. Report/complaint.
6. Official report as referred to in Article 75 of the Criminal Procedure Code, during the examination of suspects, arrest etc. and signed by the authorized signatory.
b. Material Completeness: A case file is materially complete when the case file has met all requirements and can be transferred to the court. It consists of among others items of evidence as provided for in Article 183, 184 Criminal Code, clear, accurate and complete description of the alleged criminal act including the time and location where the

Photo: UNDP Indonesia REDD+ Project

Furthermore, investigator's ability to understand the instructions of the P-16 attorney varies. 46 percent reported that the instructions were fairly easy to understand. 23 percent reported that they were easy to follow, and conversely 23 percent of the civil servant investigators reported that the instructions were not easy to understand, especially civil servant investigators from the Ministry of Environment.

Related to the completion of the case file, 69 percent of the respondents reported that prosecutors and investigators always undertook coordination, while another 30 percent claimed the opposite. This was because, as mentioned previously, the file was already more or less complete. Most coordination activities were in the form of non-formal coordination (38 percent) and formal coordination (23 percent), while the rest was a combination of formal and informal coordination activities. The purpose of the intensive coordination was also supported by the Attorney General's Circular Letter No. 4 of 2009 on Minimizing Rejection and Resubmission of the Case File. The majority reported that they were aware of the circular while 23 percent of the respondents did not answer.

In reviewing a case file, the P-16 attorney reported that the public prosecutor was not always involved (46 percent). 23 percent reported that the public prosecutor was always involved, and 23 percent reported that the public prosecutor was never involved. Based on the multi-door approach guidelines, the involvement of the public prosecutor is not required. However, in the context of management of evidence, the P-16 attorneys reported that they always provide instructions on seizure of evidence. With regard to the seizure of corporate

crime was committed, as referred to in Article 143 paragraph (2) letter b of the Criminal Procedure Code.

Photo: UNDP Indonesia REDD+ Project

assets, instructions were not always given (as reported by 46 percent of respondents), whereas 38 percent reported that instructions were provided.

The significance of the above findings is as follows:

- Coordination is carried out informally by the P-16 attorney and this is consistent with what is reported by the investigators. Therefore, coordination is done in accordance with the multi-door approach guidelines although the procedures applied are the prosecutor's office internal SOP.
- In the submission of case files, initial coordination does not guarantee that the case file will be immediately declared complete. Ideally, the investigator should follow the instructions of the P-16 attorney before the file is submitted to the prosecutor's office so that the file is declared complete (P-21 status).
- Case files are often incomplete and do not meet the material requirements. The requirements are related to completeness of information, data, facts, and necessary evidence to prove the crime, for example construction of the charges (articles). Whereas the investigators claimed that they are aware of the laws and regulations on natural resources and environment related crimes. This problem may be addressed by involving experts. Involving experts may also reduce the number of cases returned.
- Related to corporations and corporate officials, the prosecutors understand the criminal liability concept of corporate subjects in line with the Multi-Door Approach[18]. However,

[18] See Lu Sudirman and Feronica, Corporate Criminal Liability in Indonesia and Singapore, page 296, Mimbar Hukum Volume 23, Number 2, June 2011. According to Article 88, Article 116 subsection (1), and Article 118 of Environmental

to prove corporate liability is not easy. Corporations and corporate employees are two different legal subjects although the legal acts may be the same. Imprisonment only applies to corporate employees, while corporations can be fined and/or be subject to additional penalty. The weakness of the Forestry Law is that it does not regulate corporate accountability, and as such the resulting legal action against perpetrators and indemnification of state loss is far from ideal.[19]

The prosecutors give instructions to the investigator regarding the return of forest land to be restored according to its original function. In reality, however, no forest land has been returned to the state.. Related to the seizure of company assets, there is no specific regulation indicating seizure of a company's assets in the Environmental Law while in the context of a civil lawsuit (lawsuit against companies for burning the forest, for example) the company's assets can be seized.

Prosecution

Preparation of the indictment letter. In the preparation of the indictment letter, 53 percent of respondents reported that they always prepared a criminal case indictment matrix.[20] 38 percent reported that they did not always prepare a matrix and only 8 percent reported they never prepared a matrix. When the prosecutors received the case files of two or more criminal acts from police investigators, the indictment letters were not always prepared cumulatively or alternatively. This was mentioned by 61 percent of the respondents. 30 percent reported that indictment letters were prepared cumulatively and the rest reported that indictment letters were prepared alternatively.

Varying responses were obtained when the public prosecutors were asked how the indictment letter was prepared after the case file was received from different investigators (police investigators and civil servant investigators). Generally, the charges are not combined into one indictment. The survey results show that number of respondents who reported that they did not know, hesitated or did not answer was also quite high, reaching 46 percent. This shows a great variety of interpretations and that the guidelines are not effective in providing instructions to the public prosecutor regarding preparation of the indictment letter using the Multi-Door Approach.

In determining the types of charges that will be drawn up, most of the P-16[21] attorneys (64 percent) did not involve the police and civil servant investigators who handled the case.

Protection and Management Law, it can be concluded that:
- The proving of environmental crime adheres to the principle of absolute accountability which means that the offense element does not need to be proven by the plaintiff as a basis for payment of compensation.
- A new business entity can be prosecuted if the environmental crime is committed by, for, or on behalf of a business entity.
- Criminal sanctions will be imposed on a business entity which is represented by an employee who is authorized to represent the company inside and outside the court in accordance with the laws and regulations.

[19] See Guide for Investigation and Application of Anti-Corruption Law on Forestry Crimes, Indonesia Corruption Watch, 2012, page 26.

[20] A criminal case indictment matrix is a format or flow chart describing criminal acts along with the articles violated, elements of criminal acts, facts of criminal acts done and evidences.

[21] P-16 attorney is an investigative attorney.

This is also the case with the involvement of experts. 76 percent of the respondents reported that they never involved experts and only 23 percent reported that they occasionally involved experts in establishing the types of charges.

In the context of money laundering crimes, the public prosecutor claimed that the indictment was always prepared cumulatively. When the offenders were corporations and corporate officials, 64 percent of the respondents reported that the case files were always transferred simultaneously. 38 percent reported that they were not always transferred simultaneously. When the police and civil servant investigators were not able to find evidence, most prosecutors, 61 percent did not detain the suspect or the evidence. Only 7 percent did it.

From the above findings, there are two positive aspects worth mentioning. Firstly, the prosecutors consider environmental aspects in preparing the indictment and secondly, if there is money laundering, charges are established cumulatively, for example in the case of *Labora Sitorus* in West Papua province. Although not many, several prosecutors still argued that the indictment could be made alternatively, considering the type of charges for which there is the strongest evidence. Meanwhile, the multi-door approach guidelines emphasize that all criminal offenses must be proven. Alternative indictment only requires a prosecutor to prove one indictment.

In the context of the preparation of an indictment letter, the fact that if one of the cumulative charges is not proven then the charge will need to be appealed cannot be used as an excuse to avoid preparing more than one indictment, especially when theoretically possible. The reluctance to prepare cumulative indictment letters fearing that the charge may not be proven and the unwillingness to appeal if it is not proven constitute a serious challenge and disincentive to the Multi-Door Approach. As a result, in the preparation of the indictment letter, the Multi-Door Approach guidelines have not been fully implemented.

Coordination with the prosecutor at the District Prosecutor's Office

In the preparation of the indictment letter, the P-16 attorney does not always involve the prosecutor at the district prosecutor's office who will hear the case. In fact, fifteen percent reported that they never involved the prosecutor, and 46 percent reported that they occasionally involved the prosecutor. This indicates that the involvement of prosecutors in the district prosecutor office is very low.

The respondents claimed that prosecutions were carried out separately when case files of companies and company employees were received separately. Regarding indictment letters that should have been arranged cumulatively but were prepared individually, 46 percent of the respondents reported that this practice still continues, 30 percent reported that they had previously done so, 8 percent reported that they occasionally used this practice and 8 percent reported that they often used this practice. This is comparable to those that reported to have never carried out this practice.

In preparing the indictment letter, the prosecutors always consider the best settlement, especially in the interest of natural resources and environmental preservation (76 percent). Only 8 percent of the prosecutors reported that they did not always intentionally consider this. This, in turn, means that the protection of natural resources is systematically taken into account.

Photo: UNDP Indonesia REDD+ Project

The public prosecutors also constantly undertake prior coordination with the P-16 attorneys, particularly regarding the construction of the charges. Nevertheless, several public prosecutors do not undertake such coordination because the charges are considered quite clear and they feel that coordination is not required.

The above findings imply the following: during the preparation of the indictment letter, the prosecutors often do not discuss the types of charges with the investigators or civil servant investigators or experts, although such discussion would support them to apply the most appropriate charges. A Central Kalimantan case may serve as an example. Investigators used more than one law as the basis for their case, while, the prosecutor only prepared one indictment. This was disappointing and discouraging for the investigator, especially because no explanation was offered as to why only one charge was applied. Furthermore, the involvement of prosecutors in the district prosecutor's office where the trial will take place is still limited although the prosecutors themselves are the ones who will participate during the trial.

Presentation of evidence

69 percent of the respondents indicated that the public prosecutor did not always have a meeting with the police or civil servant investigators before the presentation of evidence in the trial. 15 percent respondents reported that this meeting always took place. 15 percent reported that it was never held. The public prosecutor, on the contrary, always organized an initial meeting with witnesses and experts before being presented to the trial. This was mentioned by 61 percent of the respondents. 23 percent reported that the meeting was not always held. The

fact that the public prosecutor held preparatory meetings with experts before being presented to the court is encouraging as this practice is also recommended by the Multi-Door Approach guidelines.

Based on the experience of the public prosecutor, the attendance of witnesses and experts during the trial is very low. 24 percent reported that witnesses and experts were not always present. Only 15 percent of the respondents reported that they were always present. Based on discussions with experts facilitated by UNDP Indonesia, the absence is caused by limited funding allocation and the lack of remunerations for experts - compared to remunerations offered by companies. Experts are also often mistreated during trials. Furthermore, trials are relatively often rescheduled, which in turn affects experts' availability to ultimately provide their inputs, views and findings during trial.

Filing criminal charges

In the context of filing criminal charges, 54 percent of the respondents reported that the public prosecutor did not always coordinate with the P-16 attorney, and this was expressed by 54 percent of the respondents. In fact, 23 percent reported that there was never any coordination and only 23 percent reported that they always coordinated with each other. The Multi-Door Approach guidelines recommend that public prosecutors coordinate with P-16 attorneys or investigative attorneys because they are most familiar with the case. On the other hand, the P-16 attorneys in the Attorney General's Office and the High Prosecutor's Office should take an active role in communicating with the public prosecutor. In other words, they should not wait until they are needed or contacted by the public prosecutor to initiate contact and coordination.

In filing criminal charges, the public prosecutor always considers various forms of state and ecological losses in evaluating environmental damages. The public prosecutor's practice is found to be in accordance with the Multi-Door Approach guidelines (i.e. recovering state and ecological losses), even though, based on findings presented earlier in this report, it is not always followed by the seizure of state assets.

The public prosecutor reported that the defendant's willingness to restore the environment to its original state is one of the considerations that can alleviate the criminal charges. This is in line with the aim of implementing the Multi-Door Approach, which does not only seek to imprison people and impose penalties on corporations, but also to ensure environmental protection and restorations. On the other hand, the public prosecutors expressed that they seldom or never discussed the response of the suspect with experts.

When filing charges, the public prosecutor did not consider the decisions taken in similar cases, whereas the implementation of the Multi-Door Approach seeks to avoid disparity in criminal charges. Therefore, similar cases should be taken into consideration. This finding indicates that the Multi-Door Approach guidelines have not been used.

In a positive contrast, the public prosecutors use state and ecological losses due to environmental damage as a consideration in filing criminal charges. This is in line with the implementation of the Multi-Door Approach which seeks to recover state and ecological losses through law enforcement. This means that the Multi-Door Approach guidelines are being implemented by the public prosecutors. Furthermore, the public prosecutors also analyze

Photo: UNDP Indonesia REDD+ Project

company's assets in filing charges against the corporation, a practice that is in line with the Multi-Door Approach.

To sanction and recover ecological losses, the public prosecutor pursued confiscation of the evidence so that the natural resources and the environment can be restored to their original functions. The public prosecutors also stated that the indictment included additional penalties to restore the environment.

Verdict and Legal Remedy

The results of this study show that the execution of the verdict is not always coordinated with the national police investigator or the civil servant investigator handling the case. Whereas the guidelines recommend prior consultation and case briefing. This can be seen in the case of PT. Kahayan Agro Lestari. The verdict to secure the land was not coordinated between the police, the forestry ministry or the finance ministry while the guidelines clearly state that coordination must be undertaken so that confiscated land may be returned to the state.

The results of this study also indicate that legal remedy, such as an appeal or cassation, does not involve a coordination process with the police or civil servant investigators. Furthermore, the materials of the appeal and cassation are not discussed with experts. According to the guidelines, the materials of the legal remedy should be discussed with experts.

Despite the above facts, a positive finding is that the public prosecutor will file an appeal or cassation if a crime is proven guilty, but the verdict orders the land to be returned to the

BOX 2: The Adelin Case, Multi-door Approach Story

Finance Director of PT Keam Nam, Adelin Lis, was accused of or participating in acts of corruption together with the President Director, Director of Production and Planning and several other people related to the company. In the corruption charge, Adelin Lis was alleged to know about the company's forest exploitation in Sungai Singkuang – Sungai Natal, Mandailing Natal District, in North Sumatra. She was indicted of various charges, namely (1) ordering the employees of PT Keam Nam to conduct logging outside the area set in the Annual Work Plan (RKT), which was illegal and resulted in losses to the state, (2) abusing her authority, (3) deliberately engaging in activities that lead to the destruction of forests, (4) intentionally cutting trees or collecting forest and timber produce without permit (5) allegedly receiving, buying or selling, exchanging, storing or possessing forest products obtained illegally.Va

Various regulations were violated: Law 31 Year 1999 jo; Law No. 20 of 2001 on Corruption Eradication; the Penal Code; Law no. 41 Year 1999 jo; Law No. 19 Year 2004 concerning Amendment to Law No. 41 of 1999 on Forestry; and Government Regulation No. 45 of 2004 on the Protection of Forests. At first, the indictment was filed to the Medan District Court, but Adelin Lis was acquitted, because the judge considered that the logging carried out outside the concession to be only an administrative violation, not a criminal offense. The Public Prosecutor then appealed to the Supreme Court. In its decision, the Supreme Court decided that Adelin Lis was proven legally and convincingly guilty of corruption and forest crime. The Supreme Court convicted her to 10 years imprisonment, a fine of Rp 1 billion (equivalent to approximately USD 1 million with I USD= Rp10,000), subsidiary 6 months in prison and to pay restitution of state losses jointly and severally with the Managing Director of PT Keam Nam, Director of Production and Planning of PT Keam Nam and several other people involved in the crime in the amount of Rp 119 802 393 040 (equivalent to approximately USD 2.9 million)

Source: The case of Adelin Lis, can be accessed through http://preview.tinyurl.com/AdelinLisCase-Cifor; Guidelines on Investigation and Application of Corruption Law against Forestry Crimes, Indonesia Corruption Watch, 2012

BOX 3: Successful Implementation of the Multi-door Approach through the Kalista Alam case, Post-MoU

On June 10, 2014, the Public Prosecutor filed an indictment against PT Kallista Alam with a single charge namely clearing land by burning on a continuing basis, whereby such action is liable to criminal sanctions under Article 108 jo. Article 69 paragraph (1) letter h, Article 116 paragraph (1) letter a, Article 118, Article 119 of Law No. 32 of 2009 on Environmental Protection and Management and jo. Article 64 paragraph (1) of the Penal Code. In the prosecution, the public prosecutor requested that the judges declare PT Kallista Alam guilty and to impose criminal penalties against the defendant, represented by the Director Subianto Rusid, with a fine of Rp 3,000,000,000. In a criminal case with Case No. 131 / Pid.B / 2013 / PN.MBO, the panel of judges lead by Arman Surya Putra, SH, MH adjudicated as claimed in the prosecution ie PT Kallista Alam was proven guilty and imposed a criminal fine of Rp 3,000,000,000.

In addition indicting the corporation, the public prosecutor also sued the Director of PT Kallista Alam namely Subianto Rusid with Case No. 132 / Pid.B / 2013 / PN.MBO. Subianto Rusid was imposed a prison sentence of 8 months and a fine of Rp 150,000,000 subsidiary 3 months imprisonment, as the verdict of the judge stated that Subianto Rusid committed the crime of continuously neglecting his obligations as a plantation permit holder in accordance with the subsidiary charge.

Later, in a different case namely Case No. No. 133 / Pid.B / 2013 / PN.MBO, the public prosecutor also sued Ir. Khamidin Yoesoef who served as Estate Development Manager of PT Kalista Alam. Khamidin Yoesoef was charged as the mastermind for clearing land by burning on a continuing basis. The act was punishable under Article 108 jo. Article 69 paragraph (1) letter h jo. Article 116 paragraph (1) letter b of Law No. 32 of 2009 on Environmental Protection and Management and jo. Article 64 paragraph (1) of the Penal Code. Against Khamidin Yoesoef, the judges imposed 3 years imprisonment and a fine of Rp 3,000,000,000 subsidiary 5 months imprisonment as charged by the public prosecutor.

Source: Directory of the Indonesian Supreme Court Ruling

Photo: UNDP Indonesia REDD+ Project

company. If the defendant is proven guilty, the land should be returned to the state, not to the company. The stance of the prosecutor as the executor of the verdict is also very clear when the defendant, whether a corporation or an individual, does not pay the fine. The public prosecutor, in cooperation with the asset seizure officer, will track and auction the asset on behalf of the state if the company is not willing to pay the fine.

However, there is lack of oversight for confiscation of lands by the state. The public prosecutor reported that the lack of monitoring is due to cost constraints, lack of inspectors and lack of oversight mechanism. As budget and inspection and oversight mechanisms are not available, the land is entrusted to the defendant. The problem is that this condition hinders the execution of the decision as the land management is still under the dependent. In this context, the Multi-Door Approach guidelines have not been implemented.

Analysis of Findings

The findings of this initial assessment demonstrate that the Multi-Door Approach Guidelines have not been fully implemented by all agencies or institutions. This, in turn, has implications on the performance, stability and adaptability of the Multi-Door Approach.

As far as performance, criminal cases are still handled by respective law enforcement agencies. In the context of investigations and inquiries, coordination between the police and the civil servant investigators has not run optimally. The case management data of the Criminal Investigation Department till October 21, 2014 are as follows:

	Illegal Logging			Illegal Mining			Plantation			Total
	2012	2013	2014	2012	2013	2014	2012	2013	2014	
Number of cases	1161	1011	487	46	403	86	13	4	2	3213
Number of suspects	1253	1157	512	89	546	123	15	5	2	3702

During the period between 2012 to 2014, there were 3.213 cases with a total of 3.702 suspects, these figures do not include forestry and environmental cases handled by the Ministry of Environment during the year 2014 to 2015. Over the past two years, the Ministry of Environment and Forestry handled 113 cases, namely: 59 illegal logging cases, 20 encroachment cases, 27 wildlife criminal cases, 2 cases of

> “The findings of this initial assessment demonstrate that the Multi-door Approach guidelines have not been fully implemented by all agencies or institutions. This, in turn, has implications on its performance, stability and adaptability.

mining without permits and 5 forest fires[22]. The fluctuation in the number of cases from year to year may be tracked to obtain a more systematic explanation. As shown in the matrix, there is a sharp decrease in illegal logging and illegal mining cases between 2013 and 2014.

Out of 3.213 cases handled by the police and 113 cases handled by KLHK, only a small portion used the multi-door approach. Most cases targeted perpetrators in the field using a single law and the law enforcers did not apply the "follow the money and follow the suspect" principle.

As discussed above, the Multi-Door Approach assesses natural resources and environment related crimes in terms of corollary crimes such as corruption, money laundering and tax evasion, and also seeks to prioritize crimes committed by corporations or corporate actors. In this sense, the Multi-Door Approach has not been fully implemented. This is because the cost to conduct inquiry, investigation and prosecution to prove of a case with a multi-law dimension is high and the process requires a different approach, a wider range of competencies, as well as additional time.

Adequate funds are needed to collect data in the field, invite experts (to help establish a valid sampling method, interpret findings and provide testimony in the inquiry, investigation and presentation of evidence in the trial processes) and facilitate coordination meetings and case briefings. Based on the experience of the former REDD+ Agency in Indonesia, the funds needed to handle a forest fire case involving corporate actors were approximately 300 million Indonesian Rupiah (equivalent to USD30,000). Furthermore, flexibility is needed in the budget management.

However, there is a positive trend in targeting corporations or corporate actors in forest fire cases with heavy sentences. Ministry of Environment and Forestry does not only use the criminal code, but also the civil code, to ensure deterrent effects to corporations which clear forest land by burning and do not undertake fire prevention measure in their areas. In the *Mekar Bumi Hijau* case, Ministry of Environment and Forestry sued the corporation for USD 70 billion for causing forest fire and pollution. The trial is ongoing. In addition, the Ministry of Environment and Forestry is investigating 149 forest permit holders and 147 palm oil plantation permit holders for clearing lands by burning.[23]

The performance of the Multi-Door Approach is greatly influenced by its institutionalization in the respective law enforcement agencies, ministries and agencies. The first step would be for the Multi-Door Approach guidelines to be adopted formally and used as a reference in improving case handling SOPs in the respective law enforcement agencies or ministries and agencies.

Formal adoption of the guidelines is necessary so that the joint regulation is not only limited to an MoU, but is incorporated in the respective institutions. The application of these guidelines requires adjustment of budgetary allocations, improvement of human resources competencies (capacity building) as well as a coordination mechanism.

Although not all elements of the Multi-Door Approach were applied, the approach has

[22] Quoted from Istanto in detikNews, 2015, "There are 90 forest crime cases throughout 2014-2015", accessed through http://news.detik.com/berita/2959017/ada-90-kasus-pidana-kejahatan-kehutanan-sepanjang -2014-2015.

[23] See more at: http://berita2bahasa.com/berita/01/01310409-dirjen-penegakan-hukum-klhk-quot-kasus-lingkungan-adalah-extraordinary-crime-quot#sthash.wF75et4g.dpuf and Tempo Magazine 21-27 edition 2015.

Photo: UNDP Indonesia REDD+ Project

encouraged law enforcement officers to target corporate actors. In other words, corporate accountability is intensively pursued. In the case of forest fires, law enforcement agencies (Bareskrim, September 2015) investigated 10 companies suspected of forest and land fires. Of the 10 companies, *PT.JJ in Rohil Riau* has achieved a P-21 status (meaning that the case file is complete) and is ready to be taken to court. The company is suspected of committing arson and neglecting 1.000 ha of lands. Nine other cases are still under investigation, as shown in the table below:

Table 1: Alleged forest and land fire cases under investigation

No	Suspect	Burnt Area	Status	Hotspot 2013-2015	Location
1	PT RUJ	966 ha	P-19	458	Rohil
2	PT BBHA	30 ha	P-19	57	Bengkalis
3	PT SG	1.200 ha	P-19	436	Dumai
4	PT SPM	1.500 ha	P-19	1.012	Bengkalis
5	PT SRL	1.000 ha	P-19	1.262	Bengkalis
6	PT TKL	500 ha	P-19	107	Siak
7	PT BNS	50 ha	P-19	50	Inhil
8	PT LI	1000 ha	P-19	13	Pelalawan
9	PT TF	400 ha	P-19	221	Siak

Qualitatively, the Multi-Door Approach has brought a new awareness of the need to explore and make use of a number of laws when handling natural resources-related crime in the forest area. The Kalista Alam and Labora Sitorus cases (see Box 2) exemplify how natural

Photo: UNDP Indonesia REDD+ Project

resources-related crimes can be targeted with multiple laws and coordinated between law enforcement agencies in an effective manner.

Another qualitative improvement is that investigations targeting corporations or leaders of corporations are increasing. The police investigated a number of criminal offenses in forest areas - mainly plantation activities without conversion permit from 2012 to 2014. Of the twelve cases, all lead to the leadership of the company as suspects[24]. In 2015, there is an increment of forestry related crimes particularly forest and land fires cases investigated by Ministry of Environment and Forestry and the Police from 2 cases involving corporations in 2012 to more than 296 cases involving corporations. The judges imposed penalties from IDR250 million to 2 billion or equivalent to USD 19,230 to USD 153,846 with USD1=IDR 13,000. However**, most of the sentences were probations.** In fact, only two cases were sentenced to one year (or longer) imprisonments, three cases were not investigated further due to lack of evidence and one case was acquitted. **The numerous probations and light fines have yet to provide a deterrent effect** to the perpetrators and restore losses of the state and the public.

[24] Nine cases were in Central Kalimantan, one case in West Kalimantan and two were in Riau

The Suspects of Forest Fires Burning

Year	No	Corporate Suspects	Legal Status	Owner Corporate Suspects	Legal Status	Individual Suspects	Legal Status	State Official Suspects	Status
2012	1	PT Kalista Alam	Represented by Subianto, this company has been Sanction for Rp 3 billion.	Ir Khamidin Yoesoef	Three years in jail and Rp. 3 billion penalty				
	2	PT. Surya Panen Subur (SPS)	SPS IS WAITING FOR THE VERDICT in criminal court at Pengadilan Negeri Meulaboh, Aceh and Civil Court at Pengadilan Negeri Jakarta Selatan						
TOTAL		2 CORPORATIONS		1 OWNER CORPORATION		NO DESCRIPTION		NO DESCRIPTION	
2013	1	PT.BHS – perkebunan sawit,	to meet prosecutor requirement						
	2	PT. BBH – HTI;	to meet prosecutor requirement						
	3	PT. LIH/PT. PA – perkebunan sawit	to meet prosecutor requirement						
	4	PT. JJP - perkebunan sawit	to meet prosecutor requirement						
	5	PT. SPM – HTI	to meet prosecutor requirement						
	6	PT. SRL – HTI	to meet prosecutor requirement						
	7	PT. BUKIT BATU HUTANI ALAM	Suspect						
	8	PT. RUAS UTAMA JAYA	Suspect						
	9	PT. SEKATO PRATAMA MAKMUR	Suspect						
	10	PT. RUJ – HTI	to meet procecutor requirement						
TOTAL		10 CORPORATIONS		NO DESCRIPTION		NO DESCRIPTION		NO DESCRIPTION	

Year	No	Corporate Suspects	Legal Status	Owner Corporate Suspects	Legal Status	Individual Suspects	Legal Status	State Official Suspects	Status
2014	1	PT. DRT (IUPHHK-HA)	No further process						
	2	PT. SPA (IUPHHK-HT)	No further process						
	3	PT. RUJ (IUPHHK-HT)	No further process						
	4	PT. SPM (IUPHHK-HT)	No further process						
	5	PT. SRL Blok IV (IUPHHK-HT)	No further process						
	6	PT. RRL (IUPHHK-HT)	No further process						
	7	PT. NSP (IUPHHBK-SAGO)	No further process						
	8	PT. SG (IUPHHK-HT)	No further process						
	9	PT. SSL (IUPHHK-HT)	No further process						
	10	PT. SRL Blok III (IUPHHK-HT)	No further process						
	11	T. TFDI (perkebunan sawit) di Kabupaten Siak	In the stae of investigation the process has been called off due to unclear owner of the land						
	12	P PT. SGP (HTI) di Kabupaten Dumai	In the stae of investigation the process has been called off due to unclear owner of the land						
	13	PT. TKWL (perkebunan sawit) di Kabupaten Siak	In the stae of investigation the process has been called off due to unclear owner of the land						
	14	PT. SRL Blok V (IUPHHK-HTI)	No further process						
	15	PT Bumi Mekar Hijau	In trial						
TOTAL		15 CORPORATIONS		NO DESCRIPTION		NO DESCRIPTION		NO DESCRIPTION	

Year	No	Corporate Suspects	Legal Status	Owner Corporate Suspects	Legal Status	Individual Suspects	Legal Status	State Official Suspects	Status
2015	1	PT RPP di Sumatra Selatan	Determined as the suspect	Mastur Aka. Asun (Direktur PT. Kurnia Subur) laporan kejadian Nomor: LK-03/ PPNS-LH/02/2011, tanggal 25 Februari 2011	Suspect has been arrested				
	2	PT BMH di Sumsel	Determined as the suspect			11 supects at Polda Riau	Initial investigation		
	3	PT RPS di Sumsel	Determined as the suspect			16 suspects at Polda Riau	Case Files complete step 1		
	4	PT LIH di Riau	Determined as the suspect			2 suspects ar Polda Riau	Case Files complete P21		
	5	PT GAP di Kalimantan Tengah	Determined as the suspect			24 suspects at Polda Riau	Case file complete step 2		
	6	PT MBA di Kalimantan Tengah	Determined as the suspect			2 suspects at Polda SumSel	Step 1, Files complete P21		
	7	PT ASP di Kalteng.	Determined as the suspect			2 suspects at Polda SumSel	Step 2, Case files complete		
	8	PT. BBS (perkebunan) di Kalbar	Administrative sanctions; Government Coercive			27 suspects at Polda Sumsel	Determined as the supect		
	9	PT. KU (perkebunan) di Jambi	Administrative sanctions; Government Coercive			30 suspects at Kalimantan Tengah	Suspect		
	10	PT. IHM (Hutan Tanaman Industri) di Kaltim	Administrative sanctions; Government Coercive			6 suspects at Polda Jambi	Files complete step 1		
	11	PT. WS (Hutan Tanaman Industri) di Jambi	Administrative sanctions; Government Coercive			4 suspects at Polda Jambi	Case file complete step 2		
	12	PT. SBAWI (Hutan Tanaman Industri) di Sumse	Administrative sanctions; Freezing permit			27 suspects at Polda Jambi	Determined as the supect		

Year	No	Corporate Suspects	Legal Status	Owner Corporate Suspects	Legal Status	Individual Suspects	Legal Status	State Official Suspects	Status
2015	13	PT. PBP (Hak Penguasaan Hutan) di Jambi	Administrative sanctions; Freezing permit			14 suspects at Polda Kalteng	Investigation		
	14	PT. DML (Hak Penguasaan Hutan) di Kaltim	Administrative sanctions; Freezing permit			19 suspects at Polda Kalteng	Case Files complete step 1		
	15	PT. RPM (perkebunan) di Sumsel	Administrative sanctions; Freezing permit			24 suspects at Polda Kalteng	Case file complete step 2		
	16	PT. Mega Alam Sentosa (Hutan Tanaman Industri) di Kalbar	Administrative sanctions: Land cultivation permits revoked			64 suspects at Polda Kalteng	Determined as the supect		
	17	PT. Diera Hutan Lestari (Hutan Tanaman Industri) di Jambi.	Administrative sanctions: Land cultivation permits revoked			10 suspects at Polda Kalbar	investigation		
	18	PT Tempirai Palm Resources	Administrative sanctions: Freezing permit			12 suspects at Polda Kalbar	Case Files complete step 1		
	19	PT Waringin Agro Jaya di Sumatera Selatan	Administrative sanctions: Freezing permit			4 suspects at Polda Kalbar	Case file complete step 2		
	20	PT Langgam Inti Hibrindo di Riau	Administrative sanctions: Freezing permit			25 suspects at Polda Kalbar	Determined the suspect		
	21	PT Agro Tumbuh Gemilang Abadi	Determined as the suspect			4 suspects at Polda Kalsel	Investigation		
	22	PT Ricky Kurniawan Kertapersada	Determined as the suspect			3 suspects at Polda Kalsel	Case Files complete step 1		
	23	PT Wira Karya Sakti di Jambi	Investigation process			12 suspects at Polda Kalsel	Determined as the suspect		

Year	No	Corporate Suspects	Legal Status	Owner Corporate Suspects	Legal Status	Individual Suspects	Legal Status	State Official Suspects	Status
	24	1. PT. WAJ di OKI; 2. PT. KY; 3. PT. PSM; 4. PT. RHM; 5. PT. PH; 6. PT. GS; 7. PT. RED; 8. PT. MHP; 9. PT. PN; 10. PT. TJ; 11. PT. AAM; 12. PT. MHP; 13. PT. MHP; 14. PT. SAP; 15. PT. WMAI; 16. PT. TPR; 17. PT. SPM; 18. PT. GAL; 19. PT. SBN; 20. PT. MSA	Investigation			12 suspects at Polda Kaltim	Determined as the supect		
	25	PT Tebo Alam Lestari	Determined as the suspect						
TOTAL		44 CORPORATIONS		1 OWNER CORPORATION		354 INDIVIDUALS SUSPECTS		NO DESCRIPTION	

Note:
Data from several sources

Foto: Abdul Situmorang

Conclusions and Recommendations

Direction of the Multi-Door Approach in the Future

The implementation of the joint regulation on the Multi-Door Approach is slowing down. The initial assessment showed that considerable work is still needed to deliver promising results. Currently, individual law enforcement agencies no longer refer to the joint regulation. This does not, however, mean that each law enforcement agency does not handle natural resources related crimes in forest areas and impose heavy penalties.

Several elements can be used to support the above statement. Coordination meetings between law enforcement agencies to discuss priority cases were found to no longer take place, whereas one of the key principles of a Multi-Door Approach is the deliberate coordination between law enforcement agencies and related institutions. Based on a number of empirical studies and observation, crimes related to natural resources and environment are often accompanied by other types of crime. Therefore, the limitations of one regulation can be offset by the simultaneous application of other regulations - to prevent the perpetrators from getting away or receiving a lighter sentence compared to the overall severity of the crime. Once a law enforcement agency identifies other types of crime that are outside its jurisdiction, based on the joint regulation, the agency must inform and coordinate with the relevant agencies.

> “The implementation of the joint regulation on the Multi-door Approach is slowing down. The initial assessment showed that hard work is still needed in order to deliver promising results.

Therefore, synergy between law enforcement agencies is a necessity, in addition to cooperation with non-governmental organizations, media and other stakeholders. Coordination difficulties can be bridged by the fact that the joint regulation has been signed by all of the

Photo: Riswan Andika

participating institutions. What seems to be needed now is the initiative of one law enforcement agency to facilitate the much needed coordination meetings for each case.

Rasio Ridho Sani, Director General of Law Enforcement of Ministry of Environment and Forestry argued that the agency itself remains committed to implement the Multi-Door Approach and compliance audit. A special unit is being formed[25]. This could boost the handling of criminal cases in natural resources and environmental sectors. From the numerous cases of forest and land fires, KLHK focuses on dealing with two big cases. The first case is the burning of 20,000 ha of forest and land area in Ogan KomeringHulu, in South Sumatra Province. KLHK sued *PT. Bhumi Mekar Hijau* for IDR2.6 trillion or equivalent with USD 200 million with USD1=IDR 13,000 in damages and IDR5.2 trillion or equivalent with USD 400 million with USD1=IDR 13,000 for recovery costs. The second case is the burning of 1,000 ha of forest and land area in Rokan Hilir Riau. KLHK sued *PT. Jatim Jaya Perkasa* in North Jakarta District Court[26]. The first multi-door

[25] Tempo Interactive, July 7, 2015

[26] See Issues of Handling Environmental Cases, What does the Ministry of Environment Say?, 2015, can be accessed through http://www.mongabay.co.id/category/hutan/page/5/ The results of discussions between the actors of Multi-Door Approach like Mas Achmad Santosa, Yunus Husain, Harimuddin, Rhino and Ratios Ridho Sani-Director General for Law Enforcement KHLK and Novrizal Tahar-Setditjen Law Enforcement KLHK on 2 September 2015 saw that (1) professional civil servant investigators need to be prepared. They do not need to be large in terms of number but they must be reliable. There are some 1300 investigators at KLHK. The data needs to be reviewed to see how many are still active, have sufficient capacity and high integrity, so that large numbers do not become a burden. As an illustration, if 2-3 people handle one case, then every year there are 433 cases that could be dealt with - either large or small cases; (2) The technical guide on multi-door approach needs to be reviewed and improved because weaknesses were found and it is not "handy" for use by investigators. The Illegal Fishing Task Force is trying to fix it so that it could be applied in the handling of marine crime to not only target the illegal activity but also tax embezzlement and money laundering; (3) three or four "Targeted cases" every year is necessary to provide a deterrent effect. These cases should reflect the category of "big fish" cases; (4) licensing compliance audit needs to

Photo: UNDP Indonesia REDD+ Project

coordination meeting for this case was held in September 2015.

Policy Recommendations

Clearly, the fact that the joint regulation has not been institutionalized and adopted does not allow inquiry, investigation, and prosecution to be carried out in a more coordinated manner. Each law enforcement agency more or less still carries out investigations and inquiries on their own without coordinating with other and relevant offices, ministries or agencies. A relatively high number of penalties were imposed, while many of them were minimal in nature.

Several offenders avoided penalties, which significantly reduces the potential deterrent effect of the Multi-Door Approach. Corporate liability for recovery of state loss, including the tax sector, is still minimal. Turning this around could have a positive effect on the reduction of emissions from forest and peatlands. Therefore, to get back "on the right track" and maximize on the above potential, this assessment provides ten policy recommendations:

1. **The need for a lead agency for the joint regulation**

   With institutional changes in 2014 and early 2015[27], there is currently no agency responsible for coordinating the Multi-Door Approach. This condition seriously hampers further

be done as an instrument of administrative law enforcement and also to detect criminal offense. Instruments which had been used by UKP4 can enrich compliance instruments used by KLHK today; (5) Law Enforcement coordination in the implementation of multi-door approach will be continued and will be led by KLHK. Coordination between the leadership level such as between Minister of Environment and Forestry, the Attorney General, Chief of Police, Chief of PPATK (FIU), the Chairman of the Judicial Commission will be followed by meetings between echelon 1 and echelon 2 officials. It is beyond the needs of coordination on the handling of a case; (6) a network of civil society groups needs to be established; and (7) strong public relations need to be developed.

[27] UKP4 dissolution and REDD+ Agency integration into Ministry of Environment and Forestry

implementation. To ensure progress, the Government of Indonesia should undertake one of the following options:

- The first option is for the Ministry of Environment and Forestry to take the lead. Based on the decision of the Constitutional Court No. 18 2014, Minister of Environment and Forestry (MOEF/KLHK) has the authority to coordinate the handling of environmental cases as regulated by Law No. 32 of 2009 on Environmental Protection and Management. The decision also requires the police, prosecutors, ministries and authorized agencies to coordinate with each other when investigating environmental crimes. In this case, KLHK can coordinate the relevant parties on a regular basis to ensure efficient communication between them, especially when indications of other crimes are detected.

- The second suggested measure is through the establishment of a Forest Degradation Prevention Institute (P3H). Under Law No. 18 Year 2013, the Government is instructed to establish an institution to handle cases of forest crimes in the forest area. In fact, this law opens opportunities to investigate government officials who are negligent and cause forests degradation and State losses. This institution should have a sufficient number of investigators from the police, prosecutor's office and the Ministry of Environment and Forestry. With the benefit of being located under the same roof, the institute will be more likely to effectively coordinate between different law enforcement agencies. It can also play a role in coordination with other relevant agencies such as PPATK (*Pusat Pelaporan dan Analisis Transaksi Keuangan*/ Center for Financial Transaction Reporting and Analysis), KPK and Taxation Agency if there are other indications.

Both options show a very relevant role for the Ministry of Environment and Forestry (MOEF) as an institution that facilitates coordination between law enforcement agencies dealing with natural resources and environmental crimes in the forest area. Based on its mandate, MOEF has an interest in using law enforcement instruments to protect forests from illegal and destructive activities that cause harm to the state and society.

This study also found that relevant authority alone is not enough. It needs to be backed up by a leading figure in the relevant agency or institution who can bring together a number of law enforcement agencies, backed by a strong technical team, as well as a change of the bureaucratic mind-set and culture. In other words, law enforcement agencies need to be approached pro-actively so as to acknowledge them. In addition, the Multi-Door Approach and coordination between law enforcement agencies need to be acknowledged by the leadership of each institution, so that the staff will be able to genuinely undertake the coordination needed on a regular basis.

2. Incorporate the Multi-Door Approach into performance indicators

The initial assessment indicated that the Multi-Door Approach has not been integrated into performance-based indicators of units or directorates. This fact diminishes the incentives for each institution to implement it. It would be much more effective if the Multi-Door Approach

Photo: KKI Warsi

was incorporated as one of the performance indicators of the signatories of the MoU and the joint regulation.

3. **Improve the content of the joint regulation**

   Although the regulation requires each signatory to follow it, the regulation itself does not incentivize active participation by each signatory institution. Thus, it would be meaningful to establish a system of reward when adhered, but also with a set of possible consequences if neglected. As it is a joint regulation, it should be binding for each signatory, which is not the case currently. The reluctance to adopt this regulation demonstrated by the handling of natural resources related cases being pursued in "silos" – sector by sector - benefits only the perpetrator and not the state nor affected stakeholders.

   In terms of improving seizure of evidence, the joint regulation has not set an effective way to oversee evidence in the form of plantation or mines allegedly used in contravention with the regulations or causing damage to the environment. There are concerns of evidence being tampered with or, at minimum, not monitored. Furthermore, when the defendant is found "not guilty" in court, the defendant can sue for compensation from the state. This includes the cost of bringing evidence such as trucks, excavators and other heavy equipment to the nearest police station from faraway places.

4. **Revitalization of signatories' commitment**

   The initial assessment shows that a number of articles in the regulation are far from being implemented across the board. This reflects a limited commitment by the signatories, among

others. Three underlying reasons for this lack of commitment should be addressed. Firstly, the draft of the joint regulation was not assessed prior to signing, especially in terms of the implications and adjustments that would be necessary within each institution. Secondly, there is no joint road map for the institutionalization of the regulation, whereas, this is needed as a guide for internal adjustments at the respective institutions. Thirdly, the leadership of each signatory organization - such as at the Police Criminal Investigation Division, the Law Enforcement Deputy of the Ministry of Environment, Conservation Directorate General of the Ministry of Forestry and the Prosecutor's Office of the Attorney General's Office - has shown limited commitment.

5. Provide adequate human resources and funding for effective implementation

The findings highlight the current lack of skilled human resources and competencies coupled with a lack of adequate funding support, and also suggest the need to appropriately address this in order to successfully implement the Multi-Door Approach. It includes capacity building for judges to increase their technical skill on forestry related crimes. This fact is recognized by the respondents from the Attorney General's Office and the Police. The main challenge is human resources and funding. Natural resources-related cases do not occur in Jakarta or provincial cities, but in remote and inaccessible areas, often requiring multiple modes of transportation (flights, motor vehicles and boats), which translates to considerable costs if cases are to be properly reached, investigated and prepared. When looking at all the needs dealing with one case and coupling that with the overall demand, the findings are clear in highlighting that funding available does not meet the standard cost of funding needs for effectively handling all cases in the field.

6. Redefine and enhance coordination

Successful implementation of the Multi-Door Approach also require regular and intensive coordination among law enforcers, experts and agency/ institution staff. This coordination is crucial from the very onset of handling a case and especially in collecting evidence, during the inquiry, the investigation including relevant case briefing(s), the pre-prosecution, the prosecution, the indictment, the court decision and the execution of the court decision. Coordination does not only involve civil servant investigators or work units of the police and experts. It also requires the *willingness* of each party to allocate time and costs to bring in investigators from the local level - or experts if the case is handled by a number of law enforcers and not all of them are based in the same location. For example, a case may be handled by local civil servant investigators, central civil servant investigators and police department at central level. If the coordination is carried out in Jakarta and it involves personnel from Papua, it is cost intensive and require a lot of time from people/ staff involved. It is to a certain extent possible to coordinate through means of communication that do not always require travel, such as Skype or teleconferences, provided that the infrastructure and culture allow for this.

Photo: Hertab

Vertical coordination should be undertaken through oversight coordination meetings (discussing the handling of the entire case ranging from preliminary findings, the collection of evidence and information, inquiry, investigation) and technical coordination meeting (discussing case priority and technical problems in the field). Horizontal coordination should be undertaken among civil servant investigators, police investigators, prosecutors and ministries and agencies in the handling of the initial findings, information collection, inquiry, investigation and prosecution. Needs for information and experts as well as data base should be mapped. Cooperation with respective ministries and agencies related to crimes in the field of taxation, money laundering and customs should be developed.

It was also emphasized that not all those involved with law enforcement are 'angels' – rather, some references were made to "crooked officials" whose integrity may be questionable. If during information collection stage[28], new allegations are revealed to untrustworthy officials in other law enforcement agencies, there is a possibility that the information may be leaked to the suspect.

Apart from the lack in effective coordination found, the joint regulation does not regulate the flow of information nor sanctions if a law enforcement official reveals confidential aspects

[28] See Annex of Regulation of the Minister of Environment of the Republic of Indonesia Number 11 Year 2012 on Guidelines for Investigation of Environmental Crimes. Information collection is a series of actions of civil servant investigator to seek and find an alleged criminal act in the field of environmental protection and management in order to determine whether or not an investigation may be carried out in the manner stipulated in the law

of a case. Existing provisions could be used, but the flow of information and sanctions for leaking case handling process information needs to be reflected and included in the joint regulation to provide appropriate guidance and/ or measures when detected.

8. Separate the functions of law enforcement and service

A more fundamental solution is the need for a change in the structure and function of each institution with a dual function – i.e. both providing services and enforcing the law as it is more difficult for the leader of that institution/ agency to avoid a conflict of interest. Therefore, law enforcement functions in each ministry should be considered transferred to a Criminal Investigation Agency, independent of the police. This is driven by the fact the police also provide public services in addition to representing the state and public in handling criminal, civil and administrative cases.

Thus, the respective ministries and agencies only focus on providing public services in accordance with the laws and regulations. The law enforcement role is taken by the Special Agency for Criminal Investigation. This is the only agency that has the authority to enforce administrative, civil and criminal laws in addition to specialized agency such as KPK which only focuses on corruption eradication and does not provide services such as licensing to the public.

9. Include trans-boundary cooperation as part of the multi-door approach

The Multi-Door Approach should incorporate the INTERPOL National Central Bureau in Jakarta, to ensure information-sharing between countries and international coordination of cases. INTERPOL can support the following:

- INTERPOL can assist in the secure exchange of information
- Offer 24/7 support to policing and law enforcement
- Assist in the identification of crimes and criminals, for example by the publication of the INTERPOL Notices: international requests for cooperation or alerts allowing police in member countries to share critical crime-related information
- Assist with capacity building and research
- INTERPOL can assist Indonesia in investigations with a transnational aspect by the deployment of an INTERPOL Investigative Support Team (IST).

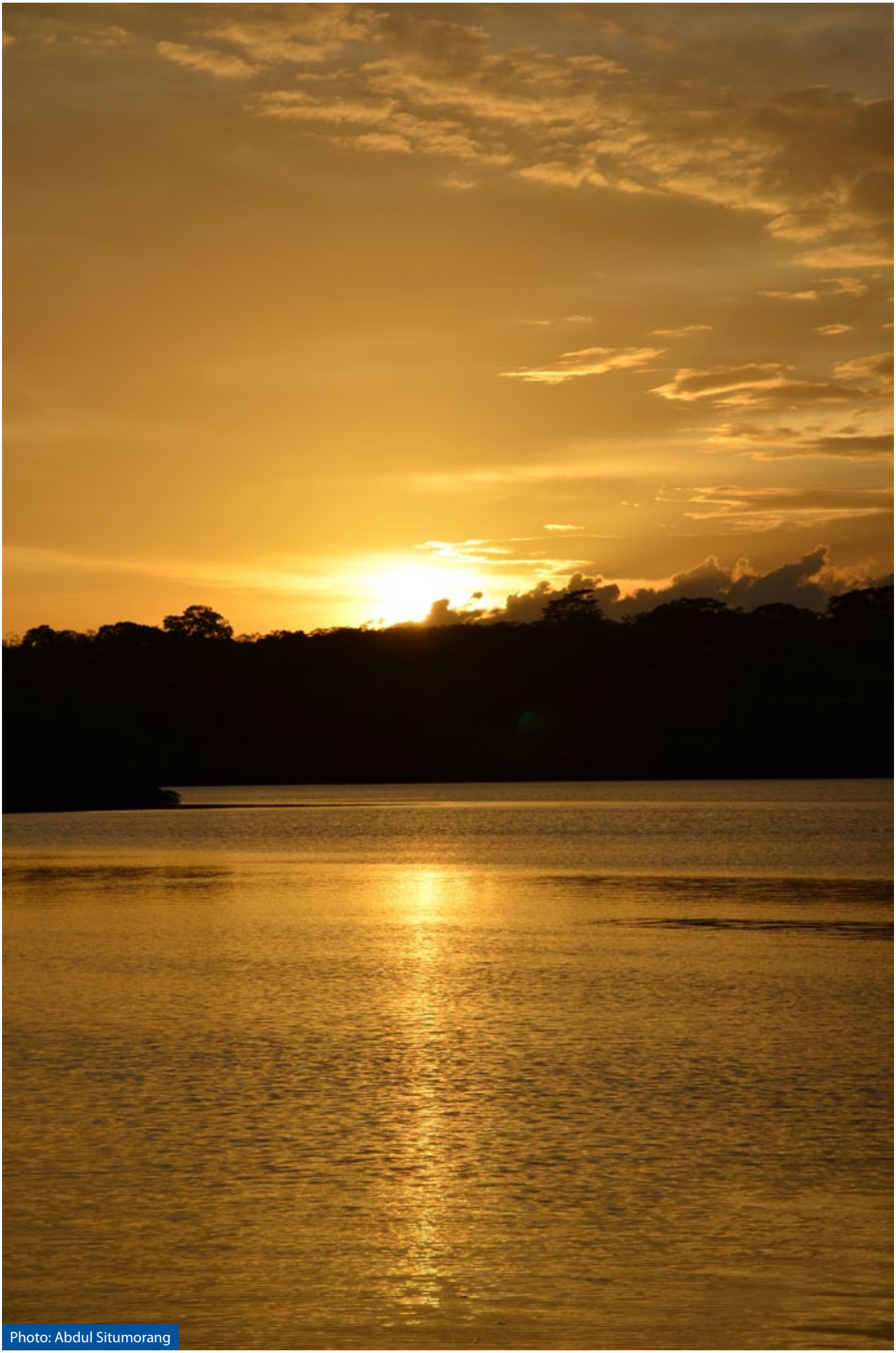


Photo: Abdul Situmorang

Photo: Abdul Situmorang

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