



RESEARCH ARTICLE

Implementation Of The Conference In The Absence In Forestry Crime

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ARTICLE INFO	ABSTRACT
Received: Oct 16, 2024	<p>The research aims to analyze the nature of trial implementation In-Absence In the Forestry Crime Case in District Court Decision Number 954/Pid.Sus/2022/PN Mks which was confirmed by the Makassar High Court Cassation Decision Number: 66/PID.SUS/2023/PT MKS. The method combines Normative Legal research and Empirical Legal Research. The results of the study are effectiveness in law enforcement for forestry crimes through trials in absence namely that it is still less effective with several obstacles because statutory regulations are inadequate, the factor that perpetrators are legal subjects, individuals and/or cooperatives avoid the process of investigation, prosecution, court because they run away and enter the DPO and the whereabouts of the perpetrators are difficult to trace so that the investigation, prosecution and court processes become hampered and ineffective.</p>
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1. INTRODUCTION

The phenomenon of crimes against the environment and forestry in the form of illegal logging of forests requires preventive legal action to stop or at least minimize the continued development of this type of crime. The difficulty in handling the law in cases of environmental and forestry crimes is partly because the perpetrators do not only involve individuals, as is the case with other crimes but the subject of these crimes is mostly committed by corporations or carried out by more than one person.^[1]

Perpetrators of crimes against the environment and forestry, especially in cases of illegal logging (*Illegal logging*) are also known for their shrewdness in avoiding legal traps, which often hinder the process of investigating environmental and forestry criminal cases, one of the reasons is course these crimes are committed by people who have qualified intellectual and material abilities, multi-crime actors, both individuals and corporations, there is support for the involvement of certain individuals and certain groups who are involved either directly or indirectly in obstructing and preventing the enforcement of environmental and forestry laws.^[2]

The perpetrators seem "cunning and slippery" so a legal breakthrough is needed to catch the perpetrators of these crimes, one of which is by encouraging extraordinary law enforcement against the perpetrators by carrying out justice. *in absence* (a trial carried out without the presence of the suspect or defendant) although this trial can often be considered by people to be a form of violation of a person's rights to defend themselves in justice at every level (Investigation, Prosecution and Court Examination).

Law enforcement based on a sense of justice is the main foundation for the performance of law enforcement officials, including in the implementation of justice *in absence* to ensnare "recalcitrant" criminals. Various reasons were allegedly used by the perpetrators to be absent from the trial process, for example: the defendant reported that he was sick or was still in a state of depression

(psychological disorder). Conditions like this will hinder the progress of the trial and can be protected from a Human Rights (HAM) perspective.

Equal rights for every citizen is a form of guarantee that must be provided by the State and government both from a social aspect and from a law enforcement aspect. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD NRI) states that the State of Indonesia is a State of Law so it is a strong foundation for ensuring legal protection for every citizen. Equal rights for citizens are also contained in Article 4 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power.^[3]

A conference *in absence* is a trial that is held without the presence of the defendant and from a certain perspective can be considered a violation of the rights of citizens, especially those in conflict with the law. Trial *In-Absence* Its implementation has not been explicitly regulated according to formal provisions and the obligation for the defendant to appear before the court is also strengthened by the provisions in Article 154 paragraph 1 of the Criminal Procedure Code that the defendant must appear at the trial in a free state without any physical or mental obstacles.^[4]

The presence of a defendant who receives a direct examination by a judge is a form of protection for the defendant's right to defend himself before trial and to defend his rights and dignity as a citizen. Not being represented by the defendant in the trial is also a distinction between the provisions of the criminal procedural law and the civil procedural law where the person in the case or dispute can be represented by his attorney.

One of the exceptions to the principle of the presence of the defendant is in legal cases involving environmental and forestry crimes as contained in Article 51 Paragraph 1 of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction.

Article 51 Paragraph 1 Law Number 18 of 2013:

"If the defendant has been legally summoned but does not appear at the court hearing without a valid reason, the case can be examined and decided without the presence of the defendant."

Efforts to prevent and enforce law against environmental and forestry crimes from disturbances and threats of law violations such as illegal logging, forest encroachment, illegal use of areas,^[5] plantations and mining without permits in forest areas, burning of forests and land, pollution and destruction of forests, which are carried out by the Directorate General of Environmental and Forestry Law Enforcement (Ditjen Gakkum LHK) under the Ministry of Environment and Forestry whose duties include the Regulation of the Minister of Environment and Forestry, namely carrying out the formulation and implementation of policies in the field of environmental and forestry law enforcement in accordance with Article 482 of the Minister of Environment and Forestry Regulation Number 15 of 2021 concerning the Organization and Administration of the Ministry of Environment and Forestry, recorded from the 2015-2023 period, the Directorate General of Environmental and Forestry Law Enforcement handled 7,870 complaints, gave 3,028 sanctions administrative, and dispute resolution outside of court as many as 273 cases. Meanwhile, the Directorate General of Gakkum filed 33 civil lawsuits, 19 of which were inkracht, with compensation for LHK recovery of Rp. 20.79 T. Then, there are 1,487 LHK criminal cases filed under P.21. (*Data source <https://gakkum.menlhk.go.id/>*)

One of the UPT Centers for Security and Law Enforcement of LHK for the Sulawesi Region under the Directorate General of Gakkum LHK, which has the task of reducing disturbances and threats of violations of LHK law, in the Sulawesi region, has successfully handled 220 cases of environmental and forestry crimes from 2016 to 2023. P21 and has been completed and received final decisions from the 230 cases handled, and more than 5 cases of forestry crimes where the perpetrators fled, were not cooperative, avoided the legal process which is still being processed.

For perpetrators who run away, are uncooperative, and do not comply with summons from investigators, public prosecutors and courts properly and legally without valid reasons, legal efforts are being made to search for perpetrators by collaborating with the police and other related agencies by including them on the wanted list. and carry out arrest and detention efforts after being arrested by investigators for further processing. Meanwhile, the perpetrator, after carrying out search efforts

by visiting the residences concerned, tracing his whereabouts, and delivering a summons to the defendant through his family and government officials found out that the summons had arrived at the defendant's address, apart from that, law enforcement had announced several times that National Media and Local Media that the defendant has been included in the Wanted List (DPO) to surrender and/or if the public knows of the whereabouts of the suspect/defendant at the investigation, prosecution and court level, however the suspect/accused has not been found so efforts need to be made. extraordinary law by encouraging the resolution of forestry crime cases by holding In Absentia trials. Two cases of forestry crimes were recorded in the names of Defendant SUTARMI and Defendant TOTO SOLEHUDIN who fled and were on the People's Wanted List (DPO), were uncooperative, did not comply with the summons of investigators, public prosecutors and judges properly and legally according to statutory regulations and were resolved through the implementation of an In-Person Trial. Absentia at the Makassar District Court in 2022 received a judge's decision, but the prosecutor appealed to the South Sulawesi High Court. In 2023, he received a court decision that was more severe than the District Court and currently, the decision has been inkracht.

Challenges and obstacles in handling forestry crime cases include handling forestry crimes in Indonesia and facing various complex challenges. These cases include all forms of violations that damage forest ecosystems, such as illegal logging, forest encroachment, and burning of forests and land. Although efforts to tackle this crime continue to be made, several obstacles still hinder the effectiveness of law enforcement.^[6]

The mode of operation for carrying out illegal logging cases is that the location of the crime is in Papua where access is difficult and geographically difficult to reach and in this illegal logging activity the perpetrators take advantage of local community elements and/or the support of certain individuals to support illegal logging activities that are easily mobilized and mobilized, as well as attempts to intimidate and prevent officers from enforcing forestry sector laws, apart from that the legal process for perpetrators is still relatively low and has not provided a sense of justice and a deterrent effect for the perpetrators.

One of the defendants, Saudarai SUTARMI, has committed the same forestry crime twice. In 2017, the Defendant SUTARMI, was in legal proceedings until he received a Decision from the Jaya Pura District Court Case Number: 309/Pid.Sus/2017/PN.Jap, dated 31 October 2017, which found Defendant Sutarmi guilty of committing a criminal act due to his negligence in transporting, controlling or possessing timber forest products which are not accompanied by a certificate of the legality of the forest products as stated in the second indictment of the Public Prosecutor, by sentencing the Defendant SUTARMI to imprisonment for 6 (six) months with a reduced period for the defendant to serve temporary detention and a fine. amounting to IDR 10,000,000 (Ten Million Rupiah). In 2019, Defendant SUTARMI entered RESIDIVIS, or repeatedly committing a forestry crime and during the legal process, the person concerned ran away and entered the DPO or ran away during the legal process and was sentenced by a judge through the In Absnetia trial in 2022. This is one of the This is why legal decisions are light or do not provide a deterrent effect so that the perpetrator dares to repeat the same criminal act (recidivism), and apart from that there are efforts to obstruct the legal process from certain individuals who protect the perpetrator as well as the lack of facilities, infrastructure and operational support. Search for perpetrators who are included in the DPO for further processing.

To overcome these challenges, a comprehensive and collaborative approach is needed. Strengthening coordination between agencies, policy reform, increasing law enforcement capacity, and utilizing the latest technology are very important to increase the effectiveness of forestry law enforcement. Apart from that, empowering local communities through sustainable alternative programs.

On the other hand, the negative impact that arises from cases that are not resolved can give rise to new problems, such as evidence that has high economic value, the quality of which will quickly decline and the cost of securing the evidence will increase, and/or can result in state losses. An incomplete case creates legal uncertainty regarding the case, and the perpetrators can repeat the same actions in the future because it does not have a deterrent effect on the perpetrators who commit criminal acts. The handling of forestry criminal cases is a crime which is a crime *Extraordinary Crime*

or extraordinary crimes that requires legal breakthroughs starting from the investigation, prosecution and trial process. Regarding this matter, a legal breakthrough was carried out by conducting a trial *in Absence*.

One of the environmental and forestry legal cases relating to the implementation of justice *In the absence* it was reported that:

"Two suspects (An. Sutarmi and An. Toto Salehuddin) who own illegal wood from Papua will be tried in person. *in absence* because the suspects carried out uncooperative actions by not heeding the summons for examination so it was deemed appropriate for justice to be carried out *in absence* as a solution step".

The above news was also strengthened by the publication of court decision Number 954/Pid.Sus/2022/PN Mks which was confirmed by the Makassar High Court Cassation decision Number: 66/PID.SUS/2023/PT MKS, an. Defendant Toto Salehuddin, in whose decision the Judge considered that the defendant had been properly summoned several times but never appeared at all, the Panel of Judges thought that the trial process was still being carried out without the presence of the Defendant (*In the absence*). The handling of the Environmental and Forestry Crime cases mentioned above was resolved through In Absentia Trial, for two environmental and forestry cases in the names of Defendant Toto Solehudin and Defendant Sutarmi, this is the first time in Indonesia to be held in 2022, and can become jurisprudence in handling cases the same in the future.

One of the forestry crimes is illegal logging activities (*illegal logging*) is a crime that belongs to *extraordinary crime* which of course causes huge losses not only for you^[7]k Country on aspect only economically but also has a social impact so it needs to be seen that this crime is a form of crime against humanity and every perpetrator is obliged to receive appropriate legal punishment, to provide a sense of justice, legal certainty and a deterrent effect for the perpetrator in the future.

RESEARCH METHODS

Research can generally be classified into two types, namely empirical sociological (field) research, namely research carried out with an approach to the legal reality in society. This research is based on the existence of symptoms in the form of a gap between expectations (*the solen*) with the statement (*that be*) in the legal field. and normative research, namely research carried out with an approach to legal norms or substance, legal principles, legal theory, legal postulates and legal comparisons. In this research, the author combines the two types of research, namely in this type of research the researcher conducts research by combining the two types of Normative and Empirical research with a Qualitative approach as mentioned above in a study. This research was carried out in the South Sulawesi Legal Area, specifically at the Makassar High Court, Makassar District Court, Makassar District Prosecutor's Office, South Sulawesi High Prosecutor's Office and the South Sulawesi Regional LHK Security and Law Enforcement Center.

DISCUSSION

Implementation of the Conference *In-Absence* In Forestry Crime Cases

In essence, forestry crimes are regulated in Law no. 18 of 2013 concerning Prevention and Eradication of Forest Destruction (UU P3H). In this context, forestry crimes refer to various actions that damage, harm or illegally exploit forest resources.

Several types or typologies of forestry crimes include:

1. Illegal logging (*illegal logging*): Illegal felling of trees in forest areas without permission or with invalid permission.
2. Use of forest area without permission: Use of forest land for other purposes such as agriculture, mining or development without permission from the competent authority.
3. Forest encroachment: Illegal trespassing and occupation of forest areas by unauthorized parties.
4. Forest or land burning: Burning of forests to open new land (such as for plantations) which damages the environment and results in smoke pollution.

5. Illegal forest product trade: Trading forest products such as wood, rattan, or protected wildlife without permission or in a way that violates the law.
6. Forest destruction: Actions that result in forest damage such as careless cutting of trees, destruction of forest ecosystems, or destruction of vegetation.
7. Forgery of documents: Creating, using, or distributing fake documents related to forestry permits, distribution of forest products, or other activities related to forest resources.
8. Corporate involvement in forest destruction: Companies involved in unlawful activities in forest areas, such as clearing land without permits or misuse of forest permits.

Perpetrators of forestry crimes can be subject to criminal sanctions in the form of fines, prison sentences, and confiscation of goods used to commit these illegal acts. For data on the handling of forestry crime cases in South Sulawesi in the 2016-2023 period, I summarize several points based on the Ministry of Environment and Forestry (KLHK), the National Police, and related institutions that handle forestry issues.

1. Predominant Case Types

Forestry crimes in South Sulawesi during this period were divided into several main categories:

- a. Illegal Logging: This is the most common type of violation. Illegal wood felled from forest areas, both in Production Forest areas and Protected Forests, with a modus operandi that is always increasing and changing, such as laundering wood, using repeated wood transport documents and/or fake documents, avoiding paying PSDH and DR, carrying out illegal logging. legally, having a timber business permit but carrying out logging outside the permit or illegally as if taking or levying legal proceeds, buying, selling, or receiving deposits of forest products from illegal logging.
- b. Forest Encroachment: Clearing land for agriculture and plantations, mining without permits in forest areas. The perpetrators involved many parties or multiple actors, were organized and supported by certain individuals and involved community elements in this activity, especially in remote areas.
- c. Illegal use of forest areas: Development and use of land in forest areas for commercial activities without permission from.
- d. Forest Products Trade: Many forest products such as processed wood are sold without permits or with fake documents.

2. Operations and Law Enforcement

From 2016-2023: carrying out law enforcement efforts by carrying out forest security operations and forest product awareness activities, both functional operations and joint operations involving the Ministry of Environment and Forestry and the South Sulawesi Regional Police, the Prosecutor's Office, the TNI, the regional government and related agencies as well as NGOs and the community, recorded more than 105 times carrying out forest and forest product security operations in the South Sulawesi Province region

The results of this operation, it was successful in securing the perpetrators and evidence of illegal wood in forest areas and the distribution of forest products in Makassar City, and all districts became places for illegally transported wood to circulate in South Sulawesi province by securing illegal logging perpetrators, both individuals and corporations and individuals. -certain individuals who help commit, order to commit and/or participate in committing forestry crimes in forest areas and forest products for further legal proceedings.

Arrest perpetrators of illegal logging in forest areas involving organized actors, and the involvement of individuals who falsify documents for transporting forest products and activities to clear land illegally in production forest areas, protected forests and conservation forests in the districts of Luwu, Sidrap, Toraja, East Luwu. This case involves a network of perpetrators who use wood resulting from illegal logging for commercial purposes.

Joint operations with law enforcement succeeded in uncovering illegal timber trading syndicates in the Regencies of Gowa and Luwu, Wajo, Sidrap, Endrekang, Maros, Baru, Pingrang, North Tojara, Toraja, Bulukumba, Sinjai, Bone, Bantaeng, Jenepontor, Takalar and Makassar City and syndicates wood between provinces or between islands such as wood distribution from Papua Island, Java, Kalimantan.

The Forestry Criminal Crime Case attracted public attention and the handling of the case was extraordinary because it involved financiers and was organized and the perpetrator avoided the legal process by running away. This case started with the operation of the Gakkum LHK Team, together with Lantamal 6 of the Indonesian Navy in the dock area of Soekarno Hatta Port, Makassar. On January 5 2019 at around 11.00 WITA. The operations team found the cargo ship MV Strait Mas Jakarta, in the process of loading and unloading containers in the ship's hull, the KLHK Gakkum Operations Team then the Sulawesi KLHK Gakkum Center Investigators carried out a legal process involving the 6 Directors with evidence totalling 57 containers which contained Merbau wood which is suspected to be illegal, does not have a Certificate of Legality of Forest Products in the form of a SIPUHH ON LINE document, namely SKSHHKO (Certificate of Legality of Processed Wood Forest Products), where 4 perpetrators/suspects/defendants have received a judge's verdict and have been inkracht and have been prosecuted. Execution of the perpetrator and confiscation of evidence for the State. Meanwhile, the 2 perpetrators, Mr. SUTARMI a recidivist who committed crimes against Mr. SALAHUDIN TOTO HARTNONO, have escaped and is on the wanted list and the legal process is being carried out through a trial in absentia. Regarding the two suspects, the panel of judges at the Makassar District Court was confirmed by the decision of the South Sulawesi High Court to impose a criminal law in absentia on the defendant Salahuddin Toto Hartono, S. for 5 (five) years and a fine of Rp. 2.5 billion related to illegal wood. The convict Sutarmi is the Director of CV Rizki Mandiri Timber, owner of 29 containers containing illegal merbau wood with a volume of 579.00 cubic meters. Meanwhile, the convict Salahuddin Toto Hartono, S.Hut alias Toto was the Attorney General for the Director of CV Mevan Jaya as the owner of 3 containers of illegal merbau wood totaling 59.96 cubic meters. This wooden evidence was confiscated by the state.

Salahudin Toto Hartono lives on Jl. Raya Sarmi Rheapang Muaf Village, Nimbokrang District, Jayapura Regency, Papua Province. Meanwhile, Sutarmi lives on Jl. Pasir Sentani, RT 001/RW 001 Sentani Kota Village Subdistrict, Sentani District, Jayapura Regency, Papua Province.

In Absentia Decision on behalf of defendant Salahuddin Toto Hartono, S.Hut alias Toto, based on decision Number 954/Pid.Sus/2022/PN Mks. The In Absentia decision on behalf of the defendant Sutarmi Alias Bu Tarmi was based on decision Number 953/Pid.Sus/2022/PN Mks. The two decisions were dated December 12 2022 with Farid Hidayat Sopamena, S.H., M.H., as Chief Judge, and Franklin B Tamara, S.H., M.H., Yasri, S.H., M.H. each as Member Judge.

Responding to the In Absentia trial verdict against Mr SUTARMI and Mr TOTO SOLEHUDIN, this is the first In Absentia trial for forestry crimes in Indonesia and this will become the jurisprudence for forestry crimes in the future, it is hoped that it can also provide legal certainty, provide a sense of justice and provide a deterrent effect for the same perpetrators. In a press release on February 23 2023, the Director General of Law Enforcement of the Ministry of Environment and Forestry, Ratio Ridho Sani, said that the trial and verdict in Abstentia against Sutarmi and Toto Solehudin was the first to be carried out. This decision is history in environmental and forestry law enforcement. This decision of imprisonment and fines in absentia should be a lesson for perpetrators of environmental and forestry crimes. The Ministry of Environment and Forestry continues to be consistent and will not stop taking action and enforcing the law against criminals who have damaged the environment and forest areas and harmed the country. We will use all available instruments to have a deterrent effect. This law enforcement in absentia is proof of the government and state's commitment to protecting natural resources and national wealth from the threat of crime. Indonesia's natural resources must be maximized for the prosperity of the people.

The perpetrators of illegal logging forestry crimes were charged as intended in Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction as amended in Law No. 6 of 2023 concerning the stipulation of Perpu No. 2 of 2022 concerning job creation.^[8]

Data on handling cases of forestry crimes and environmental damage in 2016-2023 with a total of 2020 cases that have been P21 and received decisions from the Court sourced from the Center for Environmental and Forestry Security and Law Enforcement in the Sulawesi Region under the Directorate General of Environmental Law Enforcement and Ministry of Environment and Forestry Forestry can be seen in the following table:

No	Description	Case Typology	Cases resolved up to P21								
			2016	2017	2018	2019	2020	2021	2022	2023	TOTAL
1.	Case P21										
	Criminal act	Illegal Logging/ Illegal logging	2	8	18	28	30	34	16	16	152
		Encroachment	4	6	7	1	3	3	3	10	37
		TSL	1	4	4	3	1	-	2	6	21
		Illegal Mining	-	-	-	-	2	1	7	-	10
		Environmental damage	-	-	-	1	1	-	-	-	2
	TOTAL		7	18	29	33	37	38	28	32	220

Source; data on the handling of LHK cases from the LHK Gakkum Hall for the Sulawesi region 2023

The data above shows efforts to enforce the law for forestry crimes according to the typology of cases, where the most recorded cases were successfully processed by law and brought to court, namely cases of illegal logging or illegal logging with a total of 152 cases, secondly cases of forest encroachment or illegal use of areas, especially plantation activities and 37 cases of clearing forest areas without a valid permit, and 21 cases of criminal acts of hunting and trade in protected wild animals, and 10 cases of mining activities without a valid permit which can be prosecuted, and 2 cases of criminal acts of environmental damage. life.

From 2016-2023, environmental and forestry crime cases were handled more than 230 cases with details of 220 cases of LHK crimes that have been declared P21 and received Inkracht decisions, while 10 cases are still in the law enforcement process in 2024. The cases handled involve individual and corporate perpetrators, of which 7 cases were recorded involving corporate perpetrators and 213 cases of individual perpetrators. From the data from 230 cases handled, there

were also more than 15 people who had committed crimes who had fled to avoid the legal process, and efforts were made in collaboration with related parties to find and arrest the perpetrators of these crimes and it was recorded that 10 perpetrators were arrested and processed by the law until they received a verdict. , while the 5 perpetrators have not been found, so legal action has been taken for 2 of the suspects/defendants through the implementation of trials in absentia at the Makassar District Court in 2022, while the 3 perpetrators are still undergoing further legal proceedings, information data from interviews with several respondents. The results of the author's interview with responses, obtained information that the perpetrators who had been in legal proceedings for forestry crimes ranged from individual perpetrators and corporations and also involved politicians, officials and community elements who were involved in these activities either directly or indirectly. As a result of the interview, the author obtained information that in the process of enforcing the law on forestry crimes, there were obstacles and obstacles in carrying out the legal process, especially the presence of law enforcement officers, obstacles in the form of intimidation, obstruction, discrimination, and threats by both officers, their families and the institutions in charge. This case is to ensure that certain individuals do not take action against the perpetrators of these criminal acts so that the legal process against the perpetrators cannot be carried out properly. Perpetrators of Forestry Crime are generally organized and include Extraordinary crimes or extraordinary crimes which have a broad negative impact on environmental damage and people's lives from various fields, including political, social, cultural, economic, defence and security.

Based on the above, it is necessary to take firm action against forestry crimes and carry out legal measures both penal and non-penal measures to provide legal certainty, a sense of justice and a deterrent effect for the perpetrators and to create peace and order in society, especially to provide benefits in supporting sustainable development.^[9]

The essence of holding trials in absentia in forestry crime cases is to ensure that the law can still be enforced effectively and fairly, even though the defendant is not present. This trial aims to protect the public interest, the environment and society from the negative impacts of forestry crimes, as well as provide legal certainty and a deterrent effect for criminals who try to avoid responsibility.

In essence, holding trials in absentia in forestry crime cases is one of the legal remedies that can be taken when the defendant is not present at the trial. Trial in absentia is a court process where the defendant is not physically present in the courtroom, but the trial continues. This is usually done when the defendant flees or deliberately avoids legal proceedings.

Trial in absentia in forestry crime cases is a step taken to ensure that the law can still be enforced even though the defendant is not present. Despite various criticisms, especially regarding the rights of the accused, this procedure remains an important mechanism in efforts to eradicate criminal acts in the forestry sector.

CONCLUSION

Implementation of the conference *is absent* in forestry crime cases, although the presence of the suspect is very important in a trial, for certain reasons, in order to fulfill the community's sense of justice, the principles underlying the implementation of the legal system must be violated. Theoretically, breaking through this law can be justified and carried out as long as it is based on making legal discoveries (*right-finding*) on a matter for which the rules are not yet clear.

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