

Study of Control and Utilization Rights of Forestry Results in Indonesia Viewed from Legal Aspect

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ABSTRACT

In the era of global economy, it appears that some demands for business to give more attention to the forest environments issues as a natural and economic resource of development. Forest is a property of Indonesia, in which its utilization and control must consider the environmental aspects and society welfare. The purpose of this research is to know the extent of forest management in Indonesia with all aspects of its legal protection, so that the control and utilization of the forest results can be done properly. The result of the research review shows that all regulations for saving Indonesian forests are not fully obeyed and the law enforcements in forest field are still beyond what is expected.

ABSTRAK

Dalam era globalisasi perekonomian, muncul tuntutan-tuntutan bagi dunia usaha untuk lebih memperdulikan masalah lingkungan hutan sebagai sumber daya alam dan sumber ekonomi pembangunan. Hutan merupakan kekayaan bangsa Indonesia yang pemanfaatannya dan penguasaannya harus memperhatikan aspek-aspek lingkungan hidup, kesejahteraan rakyat. Kajian penelitian ini bertujuan untuk mengetahui seberapa jauh pengelolaan hutan di Indonesia dengan segala aspek perlindungan hukumnya, sehingga penguasaan dan pemanfaatan hasil-hasil hutan dapat dilakukan secara baik. Hasil kajian penelitian menunjukkan bahwa segala peraturan untuk menyelamatkan hutan di Indonesia belum sepenuhnya dipatuhi dan penegakan hukum di bidang kehutanan masih jauh dari yang diharapkan.

INTRODUCTION

The use of natural resources in Indonesia as a source of society prosperity has been conducted as planned, rationally, optimally, responsibly according to the capacity of supporting power by optimizing its function and the balance of environment for the continuous development. The use of natural resource can be done safely, totally, efficiently and effectively. In relation to this, the development in forestry field faces many obstacles and challenges. One of them is environmental and human rights issue, which is the global issue affecting forest management in Indonesia. It includes the emergence of forest destruction

issue and the right of society inside and surrounds the forests. According to Yaman M,¹ forest management is described as follows: it is directed to the improvement of natural forest efficiency and productivity and the control of forest results in order to gain maximum additional point.

Basically, the basis of forest development in Indonesia is section 33, subsection 3, *Undang-Undang Dasar 1945*, which states that earth, water and natural resources contained in it are controlled by the country and are used largely for society prosperity (*bumi air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan sebesar-besarnya untuk kemakmuran rakyat*). Forest is one of the natural resources, in which with all its function it becomes very important for human life all the time and is needed to be utilized in a preservative way.

The control over forest and its results are organized by means of forest control pattern that guarantees maximum revenue for the country and are harmonized with the interest of the society which resides and lives in forest area. Because of the increasing number of population, forest utilization is being misused. The forest is diverted to farmland, residences and used for industrial purposes. On the other hand, the regulation concerning forest control is not perfect yet. For this reason, between the control and the utilization of forest is not a choice but a must, in which it is related to one another like both sides of the coin.²

The fundamental problem in forest control is nomadic farmland, which has become a socio-economic and socio-culture phenomenon in densed forest areas. The nomadic farming will damage environment if the number of farmers increases and the period of cultivation becomes shorter, and also the increasing accessibility of people around the forest.³ According to the tendency of variation in farming practice, Halruma⁴ categorized nomadic farmers into 4 groups: (a) nomadic farmers who have original residence, who live and stay in the farmland until the end of harvest season; (b) nomadic farmers as new comers outside the region who look for new place for farming; (c) nomadic farmer who opens the farmlands for other people who reside in other villages and town; and (d) farmers consisted of remote tribe who live and move along with their farmland, which are the least.

¹ M. Yaman, *Manajemen modern dalam pembangunan hutan*, Duta Rimba Perum Perhutanan, Jakarta, 1996.

² Moh. Saad, Sabaruddin, Amirullah, *Penguasaan hutan dan kelestarian lingkungan*, Seri Dialog Pembangunan Nasional, Banjarmasin, 1995.

³ Karta Subroto, *Lingkungan hidup*, Bumi Aksara, Jakarta, 1994.

⁴ Halruma, Jasa Abdullah Gotama, *Kontribusi sektor kehutanan dalam perekonomian nasional dan prospeknya di masa depan (Pandangan dunia usaha)*, Seri Dialog Pembangunan Nasional, Banjarmasin, 1994.

In order to fund the development, the forest property in Indonesia is a source of potential income. In this case, the problem is how to undertake an effort so that this forest property can be optimally utilised. For this reason, it needs forest area preservation by means of establishing legal regulation in the control and utilization right of forest results. The purpose of this research is to identify and to study the legal instruments used in protecting forest areas which covers the right of controlling and utilising of forest results, so that it can give legal assurance to all parties. The sources needed in this research include scientific review on the effort of controlling and utilizing the forest result, legal foundation, and another supporting data sources.

FINDINGS AND DISCUSSIONS

FOREST SHAPE IN INDONESIA

Forest as one of the natural resources is a gift from God the Great Unity. It has various benefits for the life of mankind, which are tangible and intangible benefits.⁵ While the width of Indonesian forest is estimated of 143 million hectare, consists of wild forest of 113 million hectare (64 million hectare of production forest, 30 million hectare of protection forest, 19 million hectare of conservation forest) and conversion forest of 30 million hectare, which is the third biggest rain forest after Brasilia and Zaire. If it is seen from the function based on the benefit, the Indonesian forest is categorized as follows: (a) fixed forest (113 hectare wide), utilized for timber production and is permitted for selective felling exploitation as the function of erosion prevention and for the sake of undisturbed environment. Production forest is still assigned to timber production and is permitted for selective felling exploitation or thorough felling under certain direction. Protection forest is assigned to land and water consumption, conservation forest is assigned to nature conservation (bio-diversity); (b) production forest of 30 million acre wide is assigned to forest terrain conservation for farming usage and is permitted for thorough felling exploitation.

Forest result management is needed for measuring target volume of tolerable forest felling each year, so that the forest preservation and its management can be guaranteed. The categorisation of forest result is grouped into two: (1) wide-based method, and (2) volume-based method.⁶

In this case, the wide of forest in Java Island area is shown in Table 1.

⁵ Pengurus Besar HMI, 1994.

⁶ David, 1966.

B. FOREST RESULTS CONTROL AND UTILIZATION

The concept of controlling preserved forests is limited in the sense that timbers in trades are derived from planted forests.⁷ The meaning of the preserved forest is that the thoroughly felled forests are then replanted as many trees as the felled one. Indonesia as a country, in which its natural properties are largely from forest results, chooses concept of preserved forests that brings about the two-function of the forest by integrating only the function of protection and the economic function equally.

Preserved forests concept which is thorough and integrated then becomes a standpoint in funding the development and the advancement of the forestry society. The utilization and management of forests are carried out by state business agencies and private business agencies in the form of forest control, and by means of principle of integrating equally the aspect of environment protection and economic aspect that keep increasing continuously. If we compare the forest management in New Zealand, almost all forests are taken over by

TABLE 1 Forest area in Java Island

KESATUAN PEMANGKU HUTAN (KPH)	Ha
Unit I:	
1. East Pekalongan	53.250
2. West Pekalongan	40.581
3. Pemalang	24.325
4. Balapulang	29.360
5. West Banyumas	62.275
6. East Banyumas	46.360
7. South Kedua	45.435
8. Magelang	42.644
9. Surakarta	38.174
10. Telawa	19.871
11. Gundih	30.107
12. Kendal	20.383
13. Semarang	29.099
14. Purwodadi	19.621
15. Pati	39.896
16. Mantingan	16.634
17. Blora	14.998
18. Randublatung	32.464
19. Cepu	33.058
20. Kebonharjo	17.669
Total	656.204

continued

⁷ Adhar Abbas, *Penerapan konsep hutan lestari dalam pembangunan berkelanjutan*, MPI, Jakarta, 1994.

TABLE I (Continued)

KESATUAN PEMANGKU HUTAN (KPH)	Ha
Unit II:	27.800
1. Padangan	50.100
2. Bojonegoro	17.689
3. Parengan	18.764
4. Jatirogo	33.045
5. Tuban	45.820
6. Ngawi	30.876
7. Madiun	37.932
8. Saradan	21.275
9. Nganjuk	21.281
10. Jombang	35.037
11. Mojokerto	31.924
12. Madura	22.558
13. Lawau ds	49.859
14. Kediri	112.279
15. Blitar	46.097
16. Malang	131.856
17. Pasuruan	52.468
18. Probolinggo	106.202
19. Jember	118.819
20. Bondowoso	93.736
21. South Banyuwangi	110.541
22. North Banyuwangi	75.754
23. West Banyuwangi	43.011
Total	1.335.173
Unit III:	
1. Banten	200.583
2. Bogor	86.975
3. Sukabumi	113.655
4. Cianjur	87.390
5. Purwakarta	60.183
6. North Bandung	27.023
7. South Bandung	71.988
8. Garut	104.366
9. Tasikmalaya	47.168
10. Ciamis	36.466
11. Majalengka	20.821
12. Indramayu	34.599
13. Kuningan	35.157
Total	978.365

Sources: Hasanu Simon, 2000

private institutions.⁸ These private institutions are the subject of certain duties, including the reforestation, maintenance, and marketing the forest result. The benefit for the government derived from these actions is compensated by the payment of land rental.

The management system runs well in New Zealand and it has increased the width of forest up to 1.3 million acres. The annual average income of New Zealand citizens reaches US\$ 16,000. With this income, the average people can live wealthy and the level of unemployment is still below 2%. In this condition, dependence toward the city, as what many rural areas in developing countries do, does not happen so that the city will be free from the security disturbance.

The ratio between numbers of the forest and the land size in some countries is presented in Table 2.

TABLE 2. The Ratio between number of the forest and the land size in selected countries.

Country	% Forest area from the land size
Britain	9,28
Netherlands	7,97
Belgium	21,00
(West) Germany	9,72
French	26,72
Italia	21,28
Indonesia	74,00

Source: Indonesian Forestry Community, 2001

The condition of forest area spreading per island is as follows:

TABLE 3. The Distribution of forest area per island

Island	Land size (x1000 Ha)	Forest Size (x1000 Ha)	%
Java & Madura	13,23	3,01	22,7
Sumatra	46,91	30,21	64,4
Kalimantan	54,83	44,97	82,0
Sulawesi	19,67	13,28	67,7
Maluku	8,57	5,53	64,5
Bali & Nusa Tenggara	9,79	6,37	72,5
Irian Jaya	41,07	40,63	98,9

Source: Inspectorate General of Forestry Department of RI

⁸ Sadhardjo Siswo Murtono, *Duta rimba*, Perum Perhutani, Jakarta, 1996.

C. LEGAL ASPECT OF FOREST CONTROL RIGHT IN INDONESIA

Karto Saputra⁹ describes that forest is a landscape, on which above its surface there are many kinds of plants of many sizes. The benefits of forest for human being are:

1. Source of wood and other forest result.
2. Source of natural balance and water preservation around it.
3. Source of living and farmland of various kind of plants, either around the forest or in the forest.
4. The public property. The utilization of forest is largely for society's prosperity and interest.

In describing Section 33 subsection 3 related to the natural resource in the form of forest, the legal foundation of its management is Undang-undang Ketentuan Pokok Kehutanan Number 5 Year 1967 and Law No. 5 Year 1990 about Bio-Natural Resources and its ecosystem that is the complement of Law No. 4 Year 1982 about the Principle of Natural Environment Management. Various implementation regulations of Law No. 5 Year 1867 are already published, including the following:

1. Government Regulation No. 22 Year 1967 jo Government Regulation No. 21 about Forest Result Retribution and Forest Control Rights Retribution;
2. Government Regulation No. 21 Year 1970 jo Government Regulation No. 18 year 1957 about Forest Utilization Right and Forest Exploitation Right;
3. Government Regulation No. 33 year 1970 about Forest Planning (in order to guarantee the maximum benefit from the forest and the forest preservation, it is necessary to make a forest planning that includes designation, provision, forest arrangement and utilization);
4. Government Regulation No. 28 Year 1985 about Forest Protection (that includes the protection of forest area, forest land, and protection against forest destruction, forest result, and the implementation of forest protection and its sanction).
5. Government Regulation No. 70 year 1990 about The Development of Industrial Plant Forest.

Other Law Regulations and President Decisions and further modifications through a series of Minister of Agriculture (before there is a Minister of Forestry) and Minister of Forestry, are also published.

⁹ Karto Saputra, *Teknologi konservasi tanah dan air*, Hal. 182, Jakarta, Bumi Aksara, 1985.

Law Foundation of forest utilisation is stated in Section 13 and 14 of Law No. 5 Year 1967 which basically regulates that the forest utilisation is conducted in such a way that from a group of forest, it can be derived the maximum production of forest result and it is conducted continuously by means of reforestation, land opening, building and other efforts. In order to achieve the determined target of production, exploitation, reforestation, and forest maintenance and other efforts are conducted based on working plan and safety and working enjoyment in the company in order to smooth the running of the company and to achieve the fair and prosper society. The holder of forest utilisation rights must keep the forest function and protect it by considering the requirements stated in the letter of decision of the related forest utilisation rights holder.

Recalling the importance of forest utilisation and in order to keep the forest preservation basis, the designation of forest utilisation right is accompanied with various requirements and duties to the rights holder. In order to give a legal foundation for the implementation of the designation of forest utilisation holder, it is necessary to be determined by Government Regulation No. 21 Year 1970 jo Government Regulation No. 18 Year 1975 about Forest Result Utilisation Rights and Forest Result Exploitation Rights. Basically, the designation of Forest Result Rights can only be given to the state company (Perjan, Perum, Persero, and Region Company) and national privates in the form of Corporation Limited, where all stocks are under the Indonesian citizens' ownership. Basically, Forest Utilisation Right is only given for selective felling for the sake of forest preservation, forest management and the marketing of forest result with the obligation of conducting reforestation naturally or artificially and its forest maintenance. Forest Utilisation Right is given for a period of maximum of 20 years and can be renewed if it is not in contradictory with the public interest, with amount of area wide of 100 Ha. Area division is arranged by 35 partitions that in practice, its management is 1 partition per year.

Government regulation No. 21 Year 1970 jo Government Regulation No. 18 Year 1975 regulates the requirements of the application of Forest Result Utilisation Rights and The Obligation of Forest Result Utilisation Rights Holder and the holder of Forest Result Exploitation Rights. This includes the obligation to pay the retribution of forest exploitation rights, retribution of forest result, as what is arranged in the Government Regulation No. 22 Year 1967 jo Government Regulation No. 21 year 1990 jo Government Regulation No. 18 Year 1975, which required to utilise the forest utilisation area based on the working plan of the forest utilisation and must also obey every constitution in forestry issued by the government according to the decision letter of Forestry Minister number 523/KPTS-II/1993 to protect and preserve the safety of each area of forest control rights, so each forest control right owner is obliged to establish forest protection system.

The forest control right can be achieved if the requirements are fulfilled and are not contradicted with common interest. This issue is regulated in the decision of Forestry Minister number 23/KPTS-II/1994 which contains the administration requirements and its apparatus for the application of the borrowing of forest control right, rules and evaluation of the application and other provisions. In the implementation of the forest control right, one regulation related with the guidelines of forest exploitation has been issued, which is regulated in the letter of decision of Forestry Minister number 76/KPT/Ekko/II/69 which includes forest planning, forest bordering and area assignment along with the forest mapping, forest inventory, capital inventory, trees categorization that sets the size of the tree that will be felled and the felling manner that guarantees maximum quality of timber and discuss the forest destruction.

CONCLUSION

Indonesia has forest area estimated stretched of 143 million acre, which consists of fixed forest of 113 million acre, production forest of 64 million acre, protection forest of 30 million acre, and conservation forest of 19 million acre. Forest as bio-natural resource needs a positive management and innovation for the preservation of its ecosystem and must be based on the benefit principle. For this reason, it needs a framework with all existing dynamics without ignoring the valid rules and regulations.

Indonesia chooses the preserved forest concept based on the characteristic and shape of the forest itself, which combines the two functions of forest by integrating equally the protection function and economic function. Indonesia has a very advantaging geographic position in the case of forest result marketing. But, it can also cause the danger on the forest natural resources which is related to the exploitation of forest that leads to the uncontrolled forest felling. For this reason, the government has constructed apparatus on law concerning forest control and utilisation for Indonesian society in general, and for the people living around the forest in particular. All regulations stated and formulated by the government can be enforced and obeyed by all parties, either the government officials or people in general, including the holder of forest utilisation right and forest exploitation right.

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