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LEGAL STATUS OF LAND RIGHTS IN FOREST AREA CLAIMS POST CONSTITUTIONAL COURT DECISION NUMBER 34/PUU-IX/2011

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ABSTRACT

The formulation of the problem in this research is how the government should implement the Constitutional Court Decision regarding forest control by the state in protecting the constitutional rights of affected citizens. This research uses a form of normative legal research with a statutory regulatory approach related to the process of determining an area or land as a forest area. The result is that the state's claims to areas that have customary law rights must be protected, respected and fulfilled by the rights of customary law communities; as long as the rights of customary communities actually exist and their existence is recognized. Constitutional Court Decision No. 34/PUU-IX/2011 revised Article 4(3) of Forestry Law No. 41/1999, impacting subsequent forestry legislation, like Law No. 11/2020. It upholds indigenous community rights, granted based on statutes and without national interest conflicts. If such rights exist, the government must first negotiate fair settlements with rightful holders. Thus, these communities rights are granted based on the provisions of statutory regulations invitation and does not conflict with national interests according to the Constitutional Court Decision.

A. INTRODUCTION

The state is unable to protect property rights and legal rights over property under its control; the state arbitrarily seizes land-related rights by decree, which violates the constitution and human rights.[1] The urgency of this study requires regulators to consider all aspects of the constitution and other

[1] Muhammad Risky Surya Pratama, Arum Ayu Lestari, and Rimas Intan Katari. " Fulfillment of the Rights of Indigenous Peoples by the State in the Customary Forest Sector." *Jurnal Hukum Ius Quia Iustum* 29, no. 1 (2022):197.

similar provisions to ensure the synchronicity and consistency of the implementation of the constitution and to ensure that citizens' rights are not violated.[2] All people must protect themselves, their families, their honor, their dignity, and the property they control and be protected from the threat of fear that they are doing what their human right is. You have the right to information, and everyone has the right to personal property, and no one can arbitrarily take over that property right.

The extent of Indonesia's forests – approximately 118 million square hectares consisting of production forests, protection forests, and conservation forests – must be utilized optimally for the prosperity of the people. Forests, as a national wealth, have a strategic function in meeting the needs of society, so they need to be regulated by the state. Therefore, the concept of ownership determines the social structure of society.[3]

The concept of state control originates from the sovereignty of the Indonesian people over all sources of wealth owned, which means collective public property carried out by the state to realize optimal people's prosperity through policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthhoudensdaad*) as stated in the Ruling of the Constitutional Court Number 3/PUU-VIII/2010 concerning the Review of Law Number 27 of 2007 concerning the Management of Coastal Zone and Small Islands against the Constitution. This achievement can be determined through four indicators: benefits, equity, people's participation, and respect for the rights of the hereditary people in utilizing natural resources.[4] From the forestry sector, the mandate of Article 33 paragraph (3) of the 1945 Constitution is specifically (*lex specialis*) regulated in the Forestry Law. In the context of control and management of forest resources, Article 4 paragraph (1) of the Forestry Law states that all forests within the territory of the Republic of Indonesia, including the natural wealth contained therein, are controlled by the state for the greatest prosperity of the people.[5]

De Rover says boundary rights are claims against third parties that depend on community needs, including those related to land use. Efforts to

[2] Indah Nuari Annisa and Sapto Hermawan. "The Urgency of Strengthening the Rights and Participation of Indigenous Peoples in Realizing Sustainable Management of Customary Forest." *Kanun Jurnal Ilmu Hukum* 23, no. 3, (2021): 406.

[3] Khairuddin and M. Yazid Fathoni. "Tinjauan Yuridis Terhadap Pengelolaan Hutan Oleh Masyarakat Di Kawasan Geopark Rinjani." *Private Law* 3, no. 1, (2023): 140.

[4] Tobroni, Faiq, and Izzatin Kamala. "The Common Access as Pro People Management of Natural Resources (An Analysis of Decision Number 3/PUU-VIII/2010 about Judicial Review of Law 27/2007)." *Constitutional Review* 2, no. 1 (2016): 129-158.

[5] Oding Affandi et al. "Institutional analysis of forest governance after the implementation of Law Number 23/2014 in North Sumatra Province, Indonesia." *Forest and Society* 5, no. 2 (2021): 304. See also, Chou, Cynthia. *The Orang Suku Laut of Riau, Indonesia: the inalienable gift of territory* (London: Routledge, 2009), 76.

change land use will affect property rights and power over common land, including the potential loss of indigenous peoples' rights to land, forests, and non-forest areas. Thomas Aquinas emphasized that the distribution of goods and services to the community as a subject of natural rights, legal rights (social rights), is valid if it is based on natural rights as a source of positive rights arising from such distribution as constitutionally guaranteed delivery of services and goods to citizens; As a rule of law, all actions (power) of the state are subject to law and subject to its jurisdiction because the law is regulation, supervision, control, and implementation of the entire life of the nation and state.[6]

Regulations related to the control of land rights in each country vary according to the philosophical, juridical and sociological aspects of the society as well as in Indonesia, where since the enactment of the basic agrarian law number 5 of 1960 called agrarian reform control and transfer of land rights can create a sense of justice and balance in society.[7] As Aquinas said, just laws are laws that are made based on laws made by legislatures and serve the public interest. Therefore, the plaintiff has the right to appeal to the Constitutional Court as a party who feels aggrieved over forest ownership as stipulated in the law.[8]

Investor disputes in terms of land often involve customary lands and forest areas, so an equilibrium is needed but still by the constitutional mandate, as well as achieving efficiency and optimizing sustainable development by the agrarian reform program. The existence of land regulations is expected to provide legal certainty regarding community ownership rights and the realization of orderly land administration - policies and transfer of land rights.[9] Therefore, the formulation of the problem in this research is that the analysis of state control over forests must continue to pay attention to land rights through gazetting forest areas.

B. METHODS

The research uses normative juridical research with a statutory regulation approach; this research uses both primary and secondary legal sources related to forestry and regulations related to land. The specification of the research used is descriptive-analytical research. The legal research method

[6] The 1945 Constitution of the Republic of Indonesia, Article 28G Paragraph (1), Article 28H Paragraph (4) and 28 I Paragraph (4)
[7] Darwin Ginting. "A Comparison of the Ideal Agrarian Reform Law to Be Implemented in Indonesia." *Jurnal Wawasan Yuridika*. 6, no. 2, (2022): 197.
[8] Victor Juzuf Sedubun. "Establishment of Regional Regulations Concerning Human Rights Defenders in the Environmental Sector by Indigenous Communities." *Bina Hukum Lingkungan* 7, no. 1, (2022): 22.
[9] Iwan Permadi. "Constitutionality of the Existence of Land Banks in the Management and Control of Land by the State." *Jurnal Usm Law Review*. 6, no 1, (2023): 291.

used in this research is normative legal with the approach used to conduct a legal review of the provisions of the Constitutional Court Decision on the protection of land rights, whether regulated in the Basic Agrarian Law, the law on the Court Constitution, Forestry Law, and relevant regulations under it. The legal materials used are primary legal materials and secondary legal materials. Primary legal materials can come from legal sources in the form of statutory regulations related to forestry, agrarian and spatial planning laws. At the same time, other secondary data are obtained from literature studies that are relevant to the object of research. Analysis of the research results was carried out using a normative juridical study of statutory regulations as follows: 1. Law Number 41 of 1999 concerning Forestry; 2. Law Number 18 of 2004 in conjunction with UU/39/2014 concerning Plantations; 3. Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction; 4. Law Number 11 of 2020 concerning Job Creation; 5. The decision of the Constitutional Court Number 91/PUU-XVIIl2020, it is necessary to make improvements by replacing Law Number 11 Year 2020 concerning Job Creation;6. Government Regulation in Replacement of Law Number 2 of 2022 concerning Job Creation Law Number 6 of 2023 concerning Stipulation of Government Regulation in Replacement of Law Number 2 of 2022 concerning Job Creation.

C. RESULTS AND DISCUSSION

The social forestry program is the government’s effort to reduce the level of land tenure conflicts by communities in forest areas.[10] So that people can carry out forest management by agrarian reform activities. The designation of protected forest areas through Government Regulation of the Republic of Indonesia number 44 of 2004 concerning Forestry Planning is an effort to preserve the ecosystem and biodiversity of the natural environment and communities in forest areas while still fulfilling community economic activities that are environmentally sound and managing forest areas sustainably.[11]

Based on the figure below, it appears that the area of oil palm plantations in 2017 is fourteen point three million hectares, with production reaching thirty-seven million eight hundred tons, while the composition of land ownership where the private sector dominates up to fifty-four point nine percent of the total land area or an area of seven million seven hundred thousand hectares, five million six hundred thousand hectares of land owned

[10] John F. McCarthy and Kathryn Robinson, eds. *Land and development in Indonesia: Searching for the people’s sovereignty* (Singapore: ISEAS-Yusof Ishak Institute, 2016), 34.

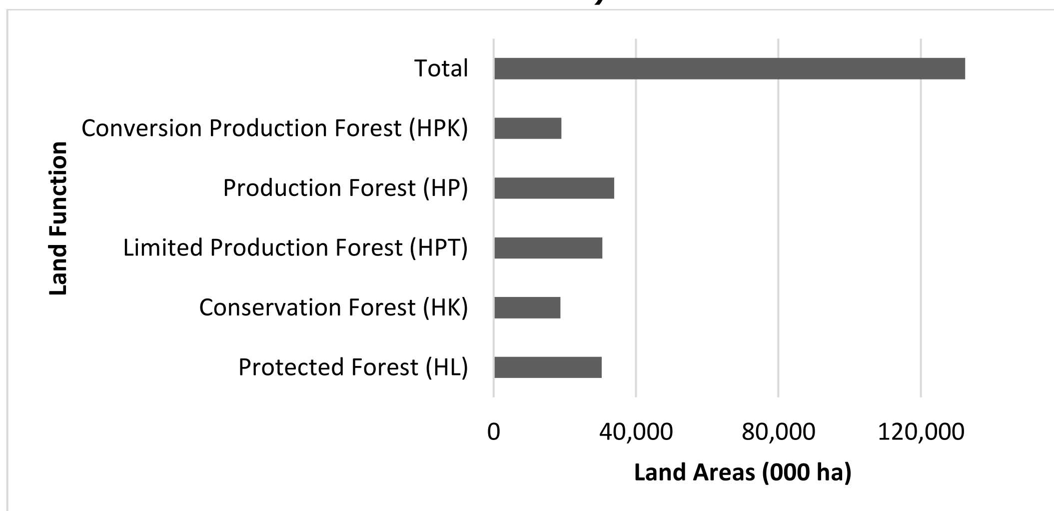
[11] Hadhika Afghani Imansyah, Rahayu Subekti, and Purwono Sungkowo Raharjo. “Ruislag Forestry Land Becomes the Owner of Residents as an Agrarian Reform Effort for Residents Affected by Disasters.” *Jurnal Pacta Sunt Servanda*. 4, no. 1, (2023): 169.

by the people or forty percent of the total oil palm area while five percent is owned by SOE's.[12] The area of the forest area is shown in Figure 1.

Figure 1: Land Area and Production of Oil Palm Plantations in Various Provinces.

Areas (Million Ha)	Protas (Ton/ha)	Prod (Million/ Ton)
14,03	3,55	37,8

Figure 2. Distribution of Forest Land Areas based on Consensus Forest Use (TGHK - 1984)



The overlap of plantation land with forest areas inspired the Directorate General of Forestry to form a map of agreement in 1981, which involved interested agencies, namely the Ministry of Agriculture, the Ministry of Public Works, and the Ministry of Home Affairs. The agreement aims to determine forest areas and their functions as well as the conversion of land for non-

[12] Lukas R. Wibowo et al."Penyelesaian tenurial perkebunan kelapa sawit di kawasan hutan untuk kepastian investasi dan keadilan." Working Paper 247 (Bogor, Indonesia: Pusat Penelitian Kehutanan Internasional (CIFOR), 2019), 22.

forestry purposes. The map, called Consensus Forest Use (Tata Guna Hutan Kesepakatan/TGHK) occurred in 1984, and was manifested in the forest area divided into several forest functions, as shown in Figure 2.

The land area based on the agreement is used as a reference in policies related to the conversion of forest areas into non-forest functions, both convertible production forest (HPK) functions. The regulation that regulates the conversion of forest areas for economic purposes – including for oil palm plantations – but still maintains environmental sustainability, namely Decree of the Minister of Agriculture no. 764/Kpts/Um/10/1980. Presidential Instruction No. 1/1986, plantation development combined with the transmigration program, known as PIR-TRANS, made for the development of plantations through investment introduced in 1977 with the Plantation Pattern in collaboration between entrepreneurs and small farmers called Integrated People's Nucleus Plantation (PIR) with the purpose of land clearing and community backwardness through job openings.[13] The increase in investment in the oil palm plantation sector, accompanied by the increasing area of plantations, cannot be separated from the role of government policy in encouraging expansion. Until now, the area of oil palm plantations in forest areas continues to increase in line with government policies to become the world's largest producer and exporter, beating Malaysia. Conversion of forest areas into oil palm plantations through release so that the area of oil palm originating from forest areas becomes 38.6%. The area of oil palm plantations as of 2018 is as follows.[14]

The palm oil commodity's attractiveness and the increase in oil prices on the global market provide an opportunity for greater pressure on forests, resulting in reduced forest areas. The Constitutional Court is one of the judicial authorities referred to in the 1945 Constitution of the Republic of Indonesia.[15] Law Number 24 of 2003 concerning the Constitutional Court states that the Unitary State of the Republic of Indonesia is legal based on Pancasila and the Law The 1945 Constitution of the Republic of Indonesia aims to realize an orderly, clean, prosperous and just national and state life system. The Constitutional Court, as one of the judicial authorities, has an important role in efforts to uphold the constitution and the principles of the rule of law in accordance with its duties and authorities as stipulated in the 1945 Constitution of the Republic of Indonesia. The existence of the Constitutional Court is a mandate from the provisions of Article 24C paragraph (6). The 1945

[13] Ahmad Gelora Mahardika. "Potensi Penyimpangan Hukum Dalam Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020." *Jurnal Hukum Ius Quia Iustum* 27, no. 2, (2020): 264.

[14] Mahardika Mahardika. "Potensi Penyimpangan Hukum Dalam Peraturan Pemerintah." *Jurnal Hukum Ius Quia Iustum*. 27, no. 2

[15] Law Number 24 of 2003 concerning the Constitutional Court.

Constitution of the Republic of Indonesia needs to regulate the appointment and dismissal of constitutional judges, procedural law, and other provisions concerning the Constitutional Court.

The Constitutional Court is one of the judicial authorities, in addition to the Supreme Court, as referred to in Article 24, paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This means that the Constitutional Court is bound by the general principle of administering independent judicial power, free from the influence of other institutional powers in upholding law and justice.[16]

With the existence of the Constitutional Court, it is hoped that every citizen who feels that their constitutional rights have been impaired can submit an application to the Constitutional Court by submitting an application. An application is a request submitted in writing to the Constitutional Court regarding a. [17] judicial review of the 1945 Constitution of the Republic of Indonesia; b. disputes over the authority of state institutions whose powers are granted by the 1945 Constitution of the Republic of Indonesia; c. dissolution of political parties; d. disputes about general election results; or e. opinion of the DPR that the President and/or Vice President is suspected of having violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or no longer fulfills the requirements as President and/or Vice President as referred to in the Law - The 1945 Constitution of the Republic of Indonesia. The position of Constitutional Court is one of the state institutions that exercise independent judicial power to administer justice to uphold law and justice. [18]

Petitioner's application in the Constitutional Court Decision Number 34/PUU-IX/2011, which argues that the provisions of Article 4 paragraph (3) of Law Number 41 of 1999 concerning Forestry, which states forest control by the state, still takes into account the rights of indigenous and tribal peoples, as long as the reality still exists and its existence is recognized, and does not conflict with national interests. The Petitioner submits in his petition that forest control by the state continues to pay attention to the rights of indigenous and tribal peoples, insofar as they still exist and their existence is recognized, land rights that have been encumbered by rights based on law and do not conflict with national interests.[19]

The Petitioner argues that the absence of recognition of land rights that have been encumbered by rights based on the law, is detrimental to the Petitioner. Apart from the concrete cases faced by the Petitioners as described

[16] Law Number 24 of 2003
[17] Law Number 24 of 2003, Article 1 Number 3
[18] Law Number 24 of 2003, Article 2
[19] Constitutional Court Decision Number 34/PUU-IX/2011, p., 45.

in their petition, the Court can justify the substance of the arguments in the Petitioners' petition. According to the Court, in certain areas, rights may be attached to land, such as property rights, building use rights, business use rights, and other rights over land. Such rights must receive constitutional protection based on Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Therefore, forest control by the state must also pay attention to such rights in addition to the rights of customary law communities which have been contained in a quo norm.

Changing the function of land in forest areas is influenced by, one of them, population change and needs resulting in land conversion – deforestation.[20] Conversion of land into settlements, infrastructure, harvesting of timber products for industry, plantations, agriculture, animal husbandry, and other considerations, thus changing the landscape and fragmentation of forest areas that change the function of ecosystems and destroy biodiversity.[21]

The enactment of the Job Creation Law has raised problems with the legal status of customary forests. The status of customary forest in the Job Creation Law is classified as state forest.[22] Due to the status of customary forests as part of state forests and the consequences of state control rights, indigenous peoples and traditional rights to forests in their customary territories feel marginalized and even neglected by the state.[23] Moreover, if the reason is intended for the public interest or social functions of society, the Omnibus Law will hurt customary landowners and boost deforestation. Besides that, the potential for injustice arises where the usufructuary rights in law to all stipulate an HGU extension period of up to 90 years, then the strict liability of the perpetrators of environmental damage is eliminated, and the authority of the TUN Court is lost in deciding to cancel the permit that has been issued.

The status of customary community land rights that have been registered and then the government designates the area as a forest area is detrimental to indigenous peoples because there is no legal certainty and neglect of legal protection for people who already have rights over the land so

[20] Barbara J. Kanninen. "Bias in discrete response contingent valuation." *Journal of environmental economics and management* 28, no. 1 (1995): 115.
[21] Carl Lewis Kapitarauw, Christian S Imburi, and Matheus Beljai. "Spatial Analysis of Deforestation in the Arfak Protected Forest Area in Manokwari Regency." *Jurnal Kehutanan Papuasia*, 9, no. 1, (2023): 109.
[22] Mohammad Zamroni and Rachman Maulana Kafrawi. "Perlindungan masyarakat hukum adat di wilayah pesisir pasca berlakunya UU Nomor 11 tahun 2020 tentang cipta kerja." *Perspektif Hukum* (2021): 235.
[23] Fence Wantu et al. "The Existence of Mediation as a Form of Environmental Dispute Resolution After the Implementation of the Job Creation Law." *Bina Hukum Lingkungan* 7, no. 2, (2023): 267.

that the community can be harmed by not being able to take advantage of these land rights.[24]

The legal status of state forests and customary forests are, of course, two different things.[25] State forests based on state control rights have a general position (general law), and the position of the government is based on Article 2 paragraph (2) of the UUPA. Meanwhile, customary forest and its customary rights or traditional rights have a special position (a special law) and what applies is customary law by Article 5 of the UUPA. What this means is that the right to control the state does not apply in the law on the rights of customary law communities and their ulayat rights or traditional rights, although it is still possible for the functional relationship between the two to be regulated independently. Thus, government policies based on state control rights for state forests and customary forests must be different. As a follow-up to the Constitutional Court Decision No. 34/PUU-IX/2011, it is necessary to have the role of all elements of society and stakeholders participate in giving authority to the community to enjoy their rights in carrying out community survival. Tochid said that the owners of original rights to land are Indonesian citizens who are descendants of the original land properties where the nature of the land is a matter of life and human life which is a unity.[26]

Examine further the Constitutional Court Decision No. 34/PUU-IX/2011, which places customary forest in the category of private forest, indicating the MK's carelessness in making decisions, apart from the controversy regarding the role of MK as a negative legislator which cancels the norms of law because it is declared contrary to the provisions of the constitution. The Constitutional Court's decision seems to be stuck in the provisions of the norms in the Job Creation Law. When referring to the provisions of the 1945 Constitution, the right to control the state is found in Article 33 paragraph (3), then traditional rights are recognized as in Article 28I paragraph (3), then it is also regulated related to the protection of citizens' property rights as in Article 28H paragraph (4).

The purpose of regulations related to land is to realize people's prosperity, in the sense of happiness, prosperity, and independence, in society optimally and to realize an independent, sovereign, just, and prosperous legal state of Indonesia (Article 2 Paragraph 3 UUPA). The conception of national

[24] Chairul Fahmi and Muhammad Siddiq Armia. "Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms." *Journal of Southeast Asian Human Rights* 6, no. 1 (2022): 5.

[25] Bambang Wiyono. "Kedudukan Hutan Adat Pasca Putusan Mahkamah Konstitusi Nomor 35/Puu-Ix/2012 Dan Hubungannya Dengan Pengelolaan Hutan Di Indonesia." *Aktualita (Jurnal Hukum)*. 1, (2018): 60.

[26] Hendra Sukarman and Wildan Sany Prasetiya. "Degradasi Keadilan Agraria Dalam Omnibus-Law." *Jurnal Ilmiah Galuh Justisi* 9, no. 1, (2021): 17.

land law governing tiered tenure over land, where the BAL regulates as follows:

1. Whereas the national agrarian regulation regulates the right of the nation as the highest tenure right which covers the entire territory and covers all the eternal people which is the parent of land tenure rights which have two aspects, namely public and civil according to the provisions in Article 1 Paragraph 1-3 of the UUPA.
2. The public right of the state in controlling land rights is solely to carry out the functions and duties and obligations of the state in managing land, as well as being a regulator of land rights including the implementation of distribution and maintenance and supervision including space.
3. Determine and regulate legal relations between people and legal actions concerning earth, water, and space. The state has the authority to plan the supply and use of land for various purposes (Article 14 UUPA jo. Law Number 26 of 2007 concerning Spatial Planning which previously revoked Law Number 24 of 1992 concerning Spatial Planning) besides that the state obliges rights holders to land to carry out soil maintenance, including increasing fertility and preventing its damage (Article 15 UUPA). Obliging citizens to work and cultivate their land actively by preventing extortion (Article 10 UUPA).
4. The state also has the authority to determine land rights that can be granted to Indonesian citizens, either individually or jointly with other people, or to legal entities, in addition to regulating limits on the area of land tenure either by individuals or legal entities (Article 7 jo Article 17 UUPA)
5. Regulates the implementation of land registration throughout the territory of the Republic of Indonesia (Article 19 UUPA jo. PP No. 24 of 1997 Concerning Land Registration).
6. Arrange the implementation of the transfer of land rights.
7. Regulate settlement of land disputes in both civil and state administration through formal and non-formal courts.
8. The regulation also regulates the customary rights of customary law communities. In addition to the civil aspect, customary rights also have a public aspect. The ulayat rights of customary law communities are regulated in Article 3 of the UUPA, namely: Bearing in mind the provisions in Articles 1 and 2 of the implementations of ulayat rights and similar rights from customary law communities, as long as in reality they still exist, they must be in such a way that they are by national and state interests based on national unity and may not conflict with laws and other higher regulations.

The indicator of the existence of customary law community customary rights is that there is a group as a customary law alliance, has an area that is jointly owned by the residents as well as the existence of customary rulers who are recognized and respected by the members of the customary law community concerned, carry out daily activities as executors of rights customary.[27] Furthermore, the Basic Agrarian Law (*Undang-Undang Pokok Agraria*/UUPA) classifies it as such, namely in Article 2 paragraph (2), customary rights as in Article 3, and other individual land rights as regulated in the provisions of Article 16 juncto Article 53. Observing the logic of thinking built into the constitution and the UUPA, customary forests should be placed and positioned as separate types of forest different from private forests and state forests because of their communal (group) ownership. However, the Constitutional Court, in its decision, classified it into the category of private forest. This is a special concern for the Constitutional Court to pay more attention to the provisions related to land rights in the national land system so that all existing laws and regulations are harmonious and do not overlap. After the issuance of the Constitutional Court Decision, there was a shift in the position of customary forest, from what was previously part of state forest to being part of private forest. The shift in the position of customary forests certainly has a good impact on the community. Communities no longer face rules that discriminate against or override community rights. The state as the authority holder of the right to control the state, its authority is limited according to the extent of the contents of the authority covered because the Constitutional Court's decision No. 34/PUU-IX/2011 is an important decision because it changes the old understanding in Indonesia about the politics of environmental law. In this sense, forest and forest area are two very different things. A forest is an ecosystem unit in the form of a stretch of land containing biological natural resources dominated by trees in their natural environment, which cannot be separated from one another. At the same time, forest areas are certain areas determined by the government to maintain their existence as permanent forests (forest areas that will be maintained as forest areas, consisting of conservation forests, protected forests, limited production forests, and permanent production forests).

Forest Areas in Forestry Legislation

The legal position of land rights in this paper is deliberately linked to forest areas, bearing in mind that 2/3 of the land area in Indonesia is included in forest area claims, which are the authority of the Minister of Environment

[27] St. Nurjannah. "Undang-Undang Pokok Agraria (Uupa) sebagai Induk Landreform." *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 3, no. 2, (2014): 193.

and Forestry, while 1/3 of the land area is land that is managed. by the Minister of Agrarian Affairs and Spatial Planning/National Land Agency and other Ministries/Government Agencies.[28]

Rig-regarding Forest areas has been regulated in Law Number 5 of 1967 concerning Basic Forestry Provisions and Government Regulation Number 33 of 1970, 1982 to 1986 throughout Indonesia throughout Indonesia.[29] The philosophical basis of the Decree of the Minister of Agriculture is that forests, as natural resources that are the wealth of the nation controlled by the state, need to be protected, managed, and utilized sustainably and optimally according to their function and purpose as much as possible the welfare of the people through national development.[30] It is hoped that in each province, a Forest Affirmation and Stewardship Plan has been prepared. It has received approval from various agencies related to land use and utilization in the province.[31] To obtain legal certainty for the designation of forest areas, it is necessary to prepare plans for the Consolidation and Administration of Forests in each province.[32]

The Decree of the Minister of Agriculture, in his dictum stipulates First: to designate a certain area of forest in the province. Second: Order the Director General of Forestry to measure and align forest area boundaries in the field. It can be seen from the second dictum that the main problem is that the implementation is not yet optimal, so conditions in the field become a lot of problems because, indeed in determining forest areas, there are already regional regulations through the law on regional government.

After the issuance of Law Number 24 of 1992 concerning Spatial Planning, the dynamics of changes in spatial use have occurred in provinces that have issued Decrees for the Determination of Forest Areas. From 1993 to 1994, provinces and districts/cities had provincial regulations governing provincial spatial plans. In the Regency/City there is already a Regency/City Spatial Plan by the regional dynamics that occurred at that time.[33] The Decree of the Minister of Agriculture, which is used as the basis for the work, has been

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[28] Ari Rakatama and Ram Pandit. "Reviewing social forestry schemes in Indonesia: Opportunities and challenges." *Forest policy and economics* 111 (2020): 102052.

[29] Edi Purwanto et al. "Agroforestry as policy option for forest-zone oil palm production in Indonesia." *Land* 9, no. 12 (2020): 531.

[30] Arsad Ragandhi et al. "Why do greater forest tenure rights not enthuse local communities? An early observation on the new community forestry scheme in state forests in Indonesia." *Forest and Society* 5, no. 1 (2021): 159.

[31] Ahmad Maulana Anha and Hardianto Djanggih. "Implementasi Perlindungan Hukum Hak Atas Tanah Terhadap Penetapan Kawasan Hutan." *Journal of Lex Philosophy (JLP)* 4, no. 2 (2023): 221.

[32] Moira Moeliono et al. "Social Forestry-why and for whom? A comparison of policies in Vietnam and Indonesia." *Forest and Society* 1, no. 2 (2017): 78.

[33] Rodd Myers et al. "Claiming the forest: Inclusions and exclusions under Indonesia's 'new'forest policies on customary forests." *Land Use Policy* 66 (2017): 205.

elaborated by considering other interests and the dynamics of development outside the forestry sector.[34] So that the designation of land use in forest areas appears as plantation land, transmigration, agriculture, and others that have been agreed upon through a Joint Decree (SKB). Since the beginning, the Forestry Service realized that the decree on the Determination of Forest Areas allowed it to be used for non-forestry purposes because the Decree of the Minister of Agriculture concerning the Determination of Forest Areas, almost 100% of each province was designated as a forest area.[35]

Forest area gazettement activities did not immediately become a priority at that time, so the dynamics between 1993 and 1998 saw a lot of land use guided by the Spatial Planning Law and Regional Regulations concerning RTRWP and Regional Regulations regarding RTRWK/K which are indeed spatial legal doctrines.[36] "forestry" is part of the substance regulated in Spatial Planning. The Spatial Planning Law continued until 2007 after being replaced by Law Number 26 of 2007. The authority of Regency/City Regional Governments during the Reformation period was also very full according to the Regional Government Law at that time, namely Law Number 22 of 1999 concerning Regional Government.

Regional Spatial Planning in line with Law Number 41 of 1999 concerning Forestry Related to Forest Areas

Law Number 41 of 1999 concerning Forestry regulates the arrangement of Forest Area Gazettement, whereby the government in establishing forest areas is based on a forest inventory. Forest area strengthening activities are carried out to provide legal certainty over forest areas. The strengthening of forest areas is done through the following process: a. designation of forest areas; B. arrangement of forest area boundaries; c. Forest area mapping; and d. determination of forest area.[37] Determination of forest areas is a preparatory activity for the confirmation of forest areas, including in the form of: a. making a map of allotment which is an indication of the outer boundary; b. making temporary boundaries equipped with cross-borders; c. construction of boundary ditches in vulnerable locations; and d. announcement of plans for forest area boundaries, especially in locations bordering private land. Forest

[34] Sulistya Ekawati et al. "Policies affecting the implementation of REDD+ in Indonesia (cases in Papua, Riau and Central Kalimantan)." *Forest policy and economics* 108 (2019): 101939.

[35] Larry A. Fisher et al. "Managing Forest conflicts: Perspectives of Indonesia's forest management unit directors." *Forest and Society* 1, no. 1 (2017): 8.

[36] Ahmad Maryudi et al. "What do forest audits say? The Indonesian mandatory forest certification." *International Forestry Review* 19, no. 2 (2017): 170.

[37] Ernan Rustiadi and Thomas Oni Veriasa. "Towards inclusive Indonesian forestry: An overview of a spatial planning and agrarian perspective." *Jurnal Manajemen Hutan Tropika* 28, no. 1 (2022).

area determination is carried out by taking into account the regional spatial layout plan.[38]

Often the debate about the meaning of with due regard to this spatial plan is ignored by forestry regulation drafters and law enforcement officials. Whereas the word pays attention is imperative (obligation), not facultative (option) because the Spatial Planning Law, which forms the basis, is correct according to law. As a follow-up to the provisions of Chapter IV of Law No. 41 of 1999 concerning Forestry related to Forestry Planning, Government Regulation Number 44 of 2004 concerning Forestry Planning has been issued. In PP, Forestry Planning is defined as the process of setting goals and determining activities and tools needed in sustainable forest management to provide guidelines and directions to ensure the achievement of forest management objectives for the greatest prosperity of the people in a just and sustainable manner.

In this government regulation, the following important meanings have been given: Forest area gazettement is a series of activities for determining, demarcating, mapping, and determining forest areas to provide legal certainty over the status, location, boundaries, and area of forest areas. From the point of view of laws and regulations in the forestry sector, forest area confirmation carried out by the Minister is to provide legal certainty regarding the position, function, location, boundaries, and area of forest areas. The implementation of forest area confirmation is carried out based on the results of a forest inventory. Forest area confirmation is carried out through the following process stages: a. designation of forest areas; b. Arrangement of forest area boundaries; c. Forest area mapping; and d. Determining Forest areas.

A Ministerial Decree stipulates the determination of criteria and standards for the confirmation of forest areas. Government regulations also stipulate the meaning of determination of forest areas, which is carried out as the initial process of a certain area becoming a provincial forest area and certain regional forest areas in part. The Minister determines provincial forest areas by considering the Provincial Spatial Plan (*Rencana Tata Ruang Wilayah Provinsi*/RTRWP) and/or alignment of TGHK with RTRWP.

The next process after the determination of the forest area is the Forest Area Boundary Determination Activity. Based on the allocation of forest areas, the boundaries of forest areas are set. The stages of implementing the boundaries include the following activities:[39]

a. Temporary stakes are erected;

[38] Kevin Muhamad Lukman et al. "Indonesia Provincial Spatial Plans on mangroves in era of decentralization: Application of content analysis to 27 provinces and "blue carbon" as overlooked components." *Journal of Forest Research* 24, no. 6 (2019): 341.

[39] Government Regulation Number 23 of 2021 concerning Forestry Implementation.

b. Announcement of the results of erecting temporary boundary stakes;
c. Inventory and settlement of third-party rights along boundary lines and within forest areas;
d. Compilation of Minutes of Acknowledgment by the community around the upper boundary line as a result of making temporary boundary markers;
e. Making Minutes of Temporary Boundary Marks accompanied by Temporary Boundary Mark Maps;
f. Installation of border posts equipped with cross-borders;
g. Mapping the results of boundary delineation;
h. Making and signing Minutes of Demarcation of Boundaries and Boundary Maps, and report to the Minister with a copy to the Governor.

The Forest Area Boundary Committee determines forest area boundaries. The Forest Area Boundary Committee is formed by the Regent/Mayor. Elements of membership, duties and functions, procedures, and work procedures of the Forest Area Boundary Committee are regulated by a Ministerial Decree.[40]

The Minister determines the Forest Area based on the Forest Area Boundary Notice and the Forest Area Boundary Map that has been equipped with bracelets. Government Regulation Number 10 of 2010 was issued concerning Procedures for Changing the Allocation and Function of Forest Areas. This Government Regulation regulates the functions of forests, which consist of the following:[41]

1. A conservation forest is a forest area with certain characteristics, which has the main function of preserving the diversity of plants and animals and their ecosystems.
2. A nature reserve forest area is a forest with certain characteristics that has the main function of being a conservation area for plant and animal diversity and its ecosystem, which also functions as a life support system area.
3. A nature conservation forest area is a forest with certain characteristics, which has the main function of protecting life support systems, preserving the diversity of plant and animal species, and the sustainable use of living natural resources and their ecosystems.
4. A hunting park is a forest area designated as a hunting tourism spot.

[40] Hunggul YSH. Nugroho, Andrew Skidmore, and Yousif A. Hussin. "Verifying Indigenous based-claims to forest rights using image interpretation and spatial analysis: a case study in Gunung Lumut Protection Forest, East Kalimantan, Indonesia." *GeoJournal* 87, no. 1 (2022): 403.

[41] Government Regulation Number 10 of 2010 concerning Procedures for Changing the Designation and Function of Forest Areas.

5. A protected forest is a forest area that mainly protects life support systems to regulate water management, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility.
6. A production forest is a forest area that has the main function of producing forest products.
7. A permanent Production Forest is a forest area with slope class factors, soil type, and rainfall intensity after each multiplied by a weighing number that has a total value below 125, excluding protected forest areas, nature reserve forests, nature conservation forests, and parks hurry.
8. Limited Production Forest is a forest area with slope class factors, soil type, and rainfall intensity after each multiplied by a weighing number which has a total value between 125-174, excluding protected forest areas, nature reserve forests, nature conservation forests, and hunting parks.
9. Convertible Production Forest is a forest area spatially reserved for development other than forestry activities.
10. A permanent forest is a forest area that will be maintained as a forest area consisting of conservation, protection, limited production, and permanent production forests.
11. A change in forest area allocation is a change of forest area to a non-forest area. The release of forest area is a change in the allocation of production forest area that can be converted into non-forest area.

It is possible to change the allocation and function of forest areas to meet the demands of the dynamics of national development and the aspirations of the people while still being based on optimizing the distribution of functions, the benefits of forest areas sustainably and sustainably, and the existence of forest areas with sufficient area and proportional distribution. Changes to the designation of forest areas can be made of part or for the province.[42]

The Government Regulation has also regulated the release of Forest Areas. The release of forest areas can only be done in production forests that can be converted. Even in production forest areas that can be converted, release cannot be made in provinces where the forest area is less than 30% (thirty percent), except by way of exchanging forest areas. The release of production forest areas that can be converted was carried out without going through research by the Integrated Team because production forest areas that can be converted are forest areas that are reserved spatially for development

[42] Rodd Myers. "Claiming the forest: Inclusions and exclusions under Indonesia's 'new'forest policies on customary forests." *Land Use Policy* 66 (2017): 205.

purposes other than forestry activities, which are determined based on research results. By central and regional teams, as well as across sectors, in coordinating forest areas and provincial spatial planning.

The consequence of the existence of Law Number 41 of 1999 concerning Forestry and Government Regulation Number 10 of 2010 concerning Procedures for Changing the Allocation and Function of Forest Areas, which must be "with due regard" to regional spatial planning plans, is a legal product related to permits. Based on statutory regulations. Spatial Planning Invitation and its derivatives are legal according to law because the Provincial RTRWP and Regency/Municipal RTRWP are guaranteed legal protection.

Even the Attorney General in providing legal considerations at the request of the Minister of Forestry, has issued a Circular Letter of the Attorney General of the Republic of Indonesia No. B. 072A/A/Gp.1/09/2010 addressed to the Minister of Forestry of the Republic of Indonesia Number: B.072A/A/Gp.1/09/2010 dated 21 September 2010 Concerning: Request for Legal Consideration of Inadequate Utilization of Forest Areas also provides input related to law enforcement in the forestry sector. Following up on the request for Continuing Legal Considerations on the Utilization of Forest Areas from the Minister of Environment and Forestry to the Attorney General's Office. In this case, the Attorney General's Office recommends the following:

a) Settlement of overlap between RTRWP and Forest Areas must be resolved through Out of Court channels,
b) It must not be detrimental to investors because it has resulted in human empowerment in the business environment,
c) Entrepreneurs who already have permits must be legally protected because of good faith,
d) For peace to be carried out, it can be mediated by state attorneys, and it is agreed to be resolved through an out-of-court route, thus leading to a win-win solution,
e) If there are business activities that have nothing to do with the policies stipulated based on regional regulations, law enforcement must be firm,
f) Legal breakthroughs by developing policies that accommodate plantations in forest areas and their management have resulted in no integration between the Forestry and Plantation Law.

The differences in space allocation mentioned above result in different references in space utilization, thus creating uncertainty in space utilization. Differences about the use of space must be resolved with the provisions in Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004. With the enactment of Law Number 26 of 2007 concerning Spatial

Planning which revokes Law Number 24 of 2007 2007 of 1992 concerning Spatial Planning, the Spatial Plan for the area that has been determined based on Law Number 24 of 1992 concerning Spatial Planning must be adjusted through space utilization adjustment activities by Law Number 26 of 2007 concerning Spatial Planning. Utilization of space that is not by the spatial plan must be adjusted to the spatial plan through space utilization adjustment activities.

So that all plantation business activities whose permits are issued by the Regional Government are guided by the Provincial Spatial Plan, which was stipulated before the enactment of Law Number 26 of 2007 concerning Spatial Planning but based on Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 the area is a forest area with a production forest function, the permit holder is required to apply for a change in the designation of the forest area to the Minister. Government Regulation Number 104 of 2015 concerning Procedures for Changing the Allocation and Function of Forest Areas has changed the definition of convertible production forest. A convertible Production Forest is an unproductive and productive Production Forest area that spatially can be reserved for development other than forestry activities or can be used as replacement land for Forest Area Exchange. Convertible production forest is also not included in the permanent forest category. The definition of Permanent Forest is a Forest Area whose existence is maintained as a Forest Area, consisting of Conservation Forest, Protection Forest, Limited Production Forest, and Permanent Production Forest.[43]

Transitional Provisions Chapter IV, in PP 104, also accommodates plantation business activities. Plantation business activities whose permits are granted by the regional government based on provincial or district/city spatial plans stipulated by regional regulations before the enactment of Law Number 26 of 2007 concerning Spatial Planning and based on the applicable spatial plans are still by applicable regulations. Previous spatial plan but based on Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Stipulation of Government Regulations in place of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry Become Law, the area according to the latest map of the Forest Area: a. is a Convertible Production Forest area, which is processed through Forest Area Release; or b. area fromPermanent Production Forest and Limited Production Forest, which are processed through Forest Area Exchange within 1 (one) year at the latest from the enactment of this Government

[43] Andi Setyo Pambudi. "The development of social forestry in Indonesia." *The Journal of Indonesia Sustainable Development Planning* 1, no. 1 (2020): 57.

Regulation, may apply for the Release of Forest Areas or Exchange of Forest Areas to the Minister. [44]

In the case of plantation business activities whose permits are granted by the regional government based on provincial or regency/city spatial plans stipulated by regional regulations before the enactment of Law Number 26 of 2007 concerning Spatial Planning and based on the applicable spatial layout. Remains by the previous spatial plan but based on Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Stipulation of Government Regulations in place of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 regarding Forestry to become law, the area According to the latest Forest Area map is a Forest Area with a conservation and/or protection function, which is allowed to continue its business for 1 (one) main cropping cycle.[45]

Explanation of Government Regulation Number 104 of 2015 confirms that developments in the implementation of Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Stipulation of Government Regulation in place of Law Number 1 of 2004 concerning Amendments to Laws Law Number 41 of 1999 concerning Forestry Becomes Law, a constitutional review has been carried out on the meaning of Forest Areas and according to the decision of the Constitutional Court Number 45/PUU-IX/2011 that the phrase raised and or in Article 1 point 3 of Law Number 41 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning Stipulation of Government Regulations in place of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry to become Laws which do not have binding legal force applies, so that since the Constitutional Court decision was pronounced Forest Areas are interpreted as certain areas determined by the government to maintain their existence as permanent forests. Changes to the designation and function of Forest Areas are carried out through the mechanism of partial changes or changes to provincial areas. Changes in part of the designation of Forest Areas are carried out through Forest Area Exchanges or the release of Convertible Production Forest areas. The Exchange of Forest Areas is carried out in Limited Production Forests and Permanent Production Forests.

D. CONCLUSION

According to the Constitutional Court Decision No. 34/PUU-IX/2011 dated 16 July 2012, this Constitutional Court decision changes the provisions

[44] Dodik Ridho Nurrochmat et al. "Transformation of agro-forest management policy under the dynamic circumstances of a two-decade regional autonomy in Indonesia." *Forests* 12, no. 4 (2021): 419.

[45] Laely Nuhidayah, Peter J. Davies, and Shawkat Alam. "Resolving Land-Use Conflicts over Indonesia's Customary Forests." *Contemporary Southeast Asia* 42, no. 3 (2020): 372.

of Article 4 paragraph (3) of Law Number 41 of 1999 concerning forestry, which was not considered in its drafting laws and regulations in the forestry sector, including Law No. 11 of 2020 concerning the Making of Forestry Clusters, and fulfilling the rights of indigenous peoples, as long as they still exist and their existence is recognized, community rights are granted based on statutory provisions and do not conflict with national interests. In this case, if community rights exist in that area, be it customary community rights, property rights, or other rights, then the government is obliged to make a fair settlement first with the right holders.

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