

## Legality of Community Agricultural Activities in Forest Areas based on Constitutional Court Decision Number 181/Puu-Xxii/2024

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**Abstract.** *Constitutional Court Decision Number 181/PUU-XXII/2024 opens up legal space for communities living in forest areas to engage in plantation activities, thereby creating new dynamics in Indonesia's forestry legal regime. This ruling has sparked debate because, on the one hand, it strengthens the protection of constitutional rights of the community, but on the other hand, it raises concerns about environmental sustainability and forest area governance. This study aims to analyse the legal implications of the ruling and the challenges of its implementation within the framework of forestry administrative law. This study uses a normative legal research method with a legislative and conceptual approach. The results of the study show that Constitutional Court Decision Number 181 / PUU-XXII / 2024 marks a paradigm shift in forestry management from a repressive approach to a more inclusive and equitable approach, emphasising the principles of proportionality, legal certainty, and recognition of the social reality of the community. However, the implementation of this decision faces serious challenges, particularly related to regulatory disharmony, limited administrative capacity, and the risk of environmental degradation. Therefore, forestry administration law reform is needed that emphasises the principles of legality, good governance, control of discretion, and integration of sustainable development principles so that the protection of community rights and forest conservation can be balanced.*

**Keywords:** *Constitutional; Development; Forest; Sustainable.*

### 1. INTRODUCTION

More than 1.6 billion people worldwide depend on forests for their livelihoods, either directly or indirectly. Among them, approximately 60 million indigenous peoples rely on forests as their primary source of livelihood. In addition, approximately 350 million people living in and around primary forest areas are highly dependent on forest resources to meet their basic needs and earn an income. In developing countries, around 1.2 billion people rely on agroforestry-based agricultural systems, which play an important role in maintaining sustainable land productivity and as a source of income (Marcus Colchester, 2006). Furthermore, more than 50% of Indonesia's land area is covered by forests. Forests maintain the balance of the world's ecosystems and prevent the disruption of the food chain in those forests. (Indriyanto, 2016)

Forest areas are specific areas designated and/or established by the Government to be preserved as permanent forests. Article 3 of Law No. 41 of 1999 concerning Forestry states that the implementation of forestry aims to achieve maximum prosperity for the people in a fair and sustainable manner by:

- a. ensuring the existence of forests with sufficient area and proportional distribution;
- b. optimising the various functions of forests, including conservation, protection and production, to achieve balanced and sustainable environmental, social, cultural and economic benefits;
- c. improving the carrying capacity of watersheds;
- d. enhancing the ability to develop community capacity and empowerment in a participatory, equitable, and environmentally conscious manner so as to create social and economic resilience and resilience to the effects of external changes; and
- e. ensuring equitable and sustainable distribution of benefits.

In accordance with the development of the implementation of Law No. 41 of 1999 concerning Forestry as amended by Law No. 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2004 concerning Amendments to Law No. 41 of 1999 concerning Forestry into Law, a constitutional review has been conducted on the definition of forest areas and in accordance with Constitutional Court Decision Number 45 /PUU-XI/2011, the phrase 'designated and/or' in Article 1 paragraph 3 of Law No. 41 of 1999 concerning Forestry as amended by Law No. 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2004 concerning Amendments to Law No. 41 of 1999 concerning Forestry into Law, has no binding legal force, so that since the Constitutional Court's decision was pronounced, Forest Areas have been interpreted as specific areas designated by the Government to be maintained as permanent forests (I Gusti Ayu Ketut Rachmi Handayani, 2009).

Following the Constitutional Court's Decision Number 181/PUU-XXII/2024 on the review of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law. The provisions of Article 17 paragraph (2) letter b in Article 37 point 5 of the Appendix to Law 6 of 2023, which regulates the prohibition of conducting plantation activities in forest areas without a business permit from the central government, do not apply to communities who have lived in the forest for generations and are not engaged in commercial activities.

Concerns about this issue are well-founded. Illegal forestry practices cause significant losses to the state due to the loss of potential tax revenue amounting to billions of dollars. In addition to damaging the ecosystem, these activities also threaten the sustainability of forests, which are a source of livelihood for many communities. The prevalence of law violations and corrupt practices in the forestry sector contributes to the weakening of the rule of law, hinders the inflow of legal investment, and creates unequal distribution of profits that favours certain groups with economic power and political access through bribery. In some cases, funds from illegal forestry activities have even been reported to be used to finance armed conflicts.(D. Kaimowitz, 2003)

## 2. RESEARCH METHODS

This research is normative legal research (doctrinal research) that aims to examine legal norms and legal principles related to Constitutional Court Decision Number 181/PUU-XXII/2024 and its regulation of community activities in forest areas. Normative legal research was chosen because the focus of the study lies in the analysis of positive law and legal doctrine, rather than empirical behaviour or practices in the field.

The approaches used in this study include a legislative approach and a conceptual approach. The legislative approach was carried out by examining various relevant laws and regulations, (Marzuki, 2005) including the 1945 Constitution of the Republic of Indonesia, Law No. 41 of 1999 concerning Forestry and its implementing regulations, as well as other laws and regulations related to forest area management and community rights. In addition, this study also examines Constitutional Court Decision Number 181 / PUU-XXII / 2024 as the main object of analysis to understand the legal considerations and their normative implications.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations and court decisions. Secondary legal materials consist of legal literature such as textbooks, scientific journals, research results, and opinions of legal experts. Tertiary legal materials are used as supporting materials, such as legal dictionaries and legal encyclopaedias.

The technique for collecting legal materials was conducted through library research. All legal materials obtained were then analysed using grammatical, systematic, and futuristic methods to draw prescriptive conclusions regarding the legal implications of Constitutional Court Decision Number 181/PUU-XXII/2024.

## 3. RESULTS AND DISCUSSION

### 3.1. The Legal Considerations of the Constitutional Court in Decision No. 181/PUU-XXII/2024

Forests are a vital natural resource that must be protected and preserved from various forms of damage, as they provide oxygen, absorb carbon dioxide for the climate, prevent natural disasters such as floods and landslides, preserve biodiversity, and support the economy through their resource potential. (Yanis Maladi, 2013)

Due to the importance of forest resources, their control must be exercised by the state and used for the greatest prosperity of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In relation to "controlled by the state", the Court has interpreted that the people as a collective, as constructed by the 1945 Constitution of the Republic of Indonesia, mandate the state to establish policies (*beleid*) and administrative actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for the purpose of maximising the prosperity of the people (vide, inter alia, Constitutional Court Decision Number 001-021-022/PUU-I/2003, pronounced in a plenary session open to the public on 15 December 2004, and Constitutional Court Decision Number 058-059-060-063/PUU-II/2004).

In the review of Constitutional Court Decision Number 181/PUU-XXII/2024, there is a

conflict of norms or inconsistency of norms that results in legal uncertainty regarding violations of the prohibitions in Article 17 paragraph (2) letter b, letter c, and/or letter d of the aforementioned Law as stipulated in Article 17A in Article 37 point 6 of the Appendix to Law 6 of 2023 with violations of the prohibitions in Article 17 paragraph (2) letter b, letter c, and/or letter e of the aforementioned Law as stipulated in Article 110B in Article 37 point 20 of the Appendix to Law 6 of 2023.

Article 17 of Law 6 of 2023 states that:

(1). Every person is prohibited from:

- a. carrying heavy equipment and/or other equipment that is commonly used or reasonably suspected to be used for mining activities and/or transporting mining products within the Forest Area without a Business Permit from the Central Government;
- b. conducting mining activities within the Forest Area without a Business Permit from the Central Government;
- c. transporting and/or receiving deposits of mining products originating from mining activities within the Forest Area without a Business Permit from the Central Government;
- d. selling, controlling, possessing, and/or storing mining products originating from mining activities within the Forest Area without a Business Permit from the Central Government; and/or
- e. purchasing, marketing, and/or processing mining products from mining activities within the Forest Area without a Business Permit from the Central Government.

(2) No person shall:

- a. bring heavy equipment and/or other tools that are commonly used or reasonably suspected to be used for plantation activities and/or transporting plantation products within the Forest Area without a Business Permit from the Central Government;
- b. conduct plantation activities within the Forest Area without a Business Permit from the Central Government;
- c. transporting and/or receiving consignments of plantation products originating from plantation activities within the Forest Area without a Business Permit from the Central Government;
- d. selling, controlling, possessing and/or storing plantation products originating from plantation activities within the Forest Area without a Business Permit from the Central Government; and/or
- e. purchasing, marketing, and/or processing plantation products originating from plantation activities within Forest Areas without a Business Permit from the Central Government.

Then, Article 17A states that individuals who have resided in and/or around the Forest Area for at least 5 (five) years continuously and who violate Article 17 paragraph (2) letters b, c, and/or d shall be subject to administrative sanctions.

According to the Legal Considerations of Constitutional Court Decision Number 181/PUU-XXII/2024, the exception to criminal sanctions (because only administrative sanctions are imposed) applies to individuals who have resided in and/or around the forest area for at least 5 (five) years continuously (Article 12A in Article 37 point 4 of the Appendix to Law 6 of 2023 and Article 17A in Article 37 point 6 of the Appendix to Law 6 of 2023), as well as the exemption from administrative sanctions for individuals residing in and/or around forest areas for at least 5 (five) years continuously with an area of no more than 5 (five) hectares (Article 110B paragraph (2) in Article 37 point 20 of the Appendix to Law 6 of 2023), provided that it is not for commercial purposes, constitutes a form of support for communities residing in and/or around forest areas.

### **3.2. Legal Implications of the Constitutional Court's Decision on Forest Area Regulation**

Constitutional Court Decision Number 181/PUU-XXII/2024 has significant legal implications for the forestry legal regime in Indonesia. This ruling marks a paradigm shift in forest area regulation, from an approach that is solely oriented towards state protection of forest areas to a more inclusive approach that recognises the existence and activities of communities that have long resided within them. By providing space for communities to cultivate gardens within forest areas, the Constitutional Court emphasises the importance of protecting citizens' constitutional rights to a decent livelihood and a sense of justice, as guaranteed in the 1945 Constitution of the Republic of Indonesia.(Obed Edotalino Sudiro & Slamet Suhartono, 2024)

Legally, the ruling has an impact on the validity and interpretation of norms in the Forestry Law and its derivative regulations, which have tended to be restrictive towards community activities in forest areas. Norms that criminalise community plantation activities without considering historical and social aspects are deemed inconsistent with the principle of substantive justice. Therefore, Constitutional Court Decision Number 181 / PUU-XXII / 2024 implies an obligation for lawmakers and the government to adjust forestry policies and regulations so that they do not conflict with the constitutional meaning as interpreted by the Constitutional Court.

The legal implications of this ruling also touch on the aspects of legal certainty and forest area governance. The ruling provides a legal basis for communities that have long depended on forest areas to obtain legal recognition and protection for their traditional farming activities. However, this ruling requires further regulation so that its implementation does not cause environmental degradation or abuse by certain parties. Implementing regulations are needed that can balance environmental protection, legal certainty, and social justice in forest area management.

Constitutional Court Decision Number 181/PUU-XXII/2024 explicitly establishes the principle of constitutionality as the primary benchmark in forestry regulations. The Court ruled that absolute restrictions on community plantation activities in forest areas have the potential to negate citizens' constitutional rights to work and a decent livelihood. Within the framework of the rule of law (*rechtsstaat*), restrictions on rights can only be justified if they are proportional, based on law, and oriented towards legitimate objectives. Therefore, this decision affirms the principle of proportionality as an instrument for testing forestry norms.

Based on the principle of social justice, the ruling corrects the structural inequality that local and indigenous communities have experienced in forest area management. The

previous forestry legal regime tended to give greater legitimacy to corporations through licensing mechanisms (Muklis Al'anam, 2025), Meanwhile communities that have lived in forest areas for generations are classified as lawbreakers. This situation contradicts the essence of Article 33 paragraph (3) of the 1945 Constitution, which places state control over natural resources for the greatest prosperity of the people, not merely for the economic interests of certain groups.(Destara Sati, 2019)

Constitutional Court Decision No. 181/PUU-XXII/2024 also reinforces the application of the principle of recognition in natural resource law. The Court essentially recognises the social and economic existence of communities that have long lived and carried out activities in forest areas as a legal fact that cannot be ignored by legislators. In this context, the law must not be ahistorical and detached from social reality, but must function as a means of fair and contextual social engineering.

Furthermore, in terms of the principle of legal certainty, this ruling demands the reformulation of norms that were previously vague and repressive. Provisions that automatically criminalise community activities without distinguishing between traditional subsistence practices and large-scale commercial exploitation have the potential to violate the principle of *lex certa*. Good legal norms must be formulated in a clear, rational and predictable manner so as not to cause fear and uncertainty among the communities subject to their regulation.

Recognition of gardening space for communities within forest areas cannot be separated from the principle of sustainable development. The Court does not intend to legitimise the free exploitation of forests, but rather demands a balance between ecological, social and economic interests. The precautionary principle must remain the basis for formulating derivative policies so that this decision does not become a justification for environmental destruction.

In terms of good governance, this decision encourages a change in the state's approach to managing forest areas from a centralised-repressive model to a participatory-inclusive model. The state is no longer positioned solely as a controller, but as a facilitator that ensures community involvement in the decision-making process. The principles of transparency, accountability and public participation are crucial in the implementation of this decision.(Muklis Al'anam, 2024)

Constitutional Court Decision Number 181/PUU-XXII/2024 also has implications for criminal policy in the forestry sector. The Court implicitly criticises the use of criminal law as the primary instrument for addressing structural and social issues in forestry. Excessive criminalisation of communities has the potential to exacerbate agrarian and forestry conflicts, so law enforcement should be directed more towards large-scale and organised forest destruction perpetrators.

This ruling affirms the function of the Constitutional Court as a negative legislator that not only invalidates norms but also establishes a new direction for constitutional interpretation in natural resource management. Constitutional Court Decision Number 181/PUU-XXII/2024 sets an important precedent in balancing state power, environmental protection, and the constitutional rights of the community. Therefore, the successful implementation of this ruling depends heavily on the commitment of policymakers to translate these constitutional principles into regulations and practices that are fair, sustainable, and oriented towards the welfare of the people.

### **3.3. Implementation Challenges and Their Impact on Environmental Sustainability**

The implementation of Constitutional Court Decision 181/PUU-XXII/2024 faces initial challenges in the realm of administrative legality, as many technical provisions in forestry and licensing regulations are still formulated in a generic manner or contradict the latest constitutional interpretations. In forestry administration practice, the principle of legality requires that every administrative action (permit, revocation, area designation) must have a clear legal basis. The absence or ambiguity of implementing norms opens up inconsistencies between central and regional policies and field practices, making it difficult to achieve uniform recognition of community gardening activities. Peter A. Akhihero, et-al "Applications of the Forestry Law in Forestry Management" (Benin City, 2006).

The challenges facing forestry policy in Indonesia can be summarised in several points, including: (S. Ramcilovic-Suominen & G. Epstein, 2012)

1. Contradictory forestry policies; unrealistic policies; burdensome bureaucracy.
2. Capacity of authorities, namely weak supervision and law enforcement and a lack of cooperation and coordination within and between sectors and institutions. Broad discretionary power allocation. Lack of conflict mediation capacity;
3. Corruption, namely corrupt monitors, corruption throughout the production process and organisational hierarchy;
4. Property/ownership, namely uncertain forest ownership and the issue of legal pluralism;
5. Market and trade, namely lost market signals and strong domestic/international demand. Lack of a market sensitive to legality (high demand for cheap timber and low demand for legal timber);
6. Economic incentives and disincentives, namely high individual incentives for non-compliance and low risk of sanctions;
7. Perception of legislative fairness, unfair legal design, enforcement and practice, and incompatibility with traditional rights and/or practices. Then marginalisation and weakening of local resources;
8. Forest culture, namely a large population and traditions of forest management and protection. Then a lack of long-term strategies/planning for forest resources;
9. Transparency and accountability, namely arbitrary decisions by government agencies;
10. Forest conflicts, namely conflicts and disputes over forestry;
11. Poverty and livelihood needs, namely the lack of alternative livelihoods and the inability to meet basic needs.

The principle of legal certainty faces the reality of pluralistic claims over land, overlapping spatial planning, corporate licensing, and indigenous peoples' claims, demanding complex administrative reconciliation. Forestry administration must

strengthen registration mechanisms, participatory mapping, and recognition of management rights to reduce conflict. Without systematic administrative procedures for historical verification and qualification of subsistence versus commercial activities, constitutional decisions risk becoming merely rhetorical.

The concept of administrative discretion provides flexibility for forestry officials to weigh local conditions, but that flexibility is prone to abuse if not accompanied by operational standards and oversight. Therefore, good governance requires limiting discretion through technical guidelines, objective criteria, and the principle of transparency so that decisions on granting or restricting gardening space are not determined by partial interests or administrative corruption.

Based on the concept of good governance, transparency, participation, and administrative accountability are the pillars of implementation. An inclusive licensing process, for example, includes public consultation and documentation of community approval. This is not merely political legitimacy, but a legal instrument to prevent degradation due to unmeasured activities. Forestry administration needs to integrate administrative complaint mechanisms and independent audits to follow up on violations and refine policies.

The principles of proportionality and precaution should be operationalised in the content of permits: restrictions on space, planting area quotas, or sustainable agroforestry practices can be made conditions of administrative permits. This places administrative authorities in a preventive regulatory role, not merely punitive, so that environmental risk management becomes part of the legalisation requirements for community activities.

The challenges of administrative supervision and monitoring are crucial, as institutional capacity (human resources, monitoring technology, budget) at both the central and regional levels is often inadequate to continuously monitor compliance and environmental impacts. Without a reliable spatial information system and effective administrative sanction mechanisms, licensing risks becoming a legalisation of degradation and a trade-off for actors with access to administrative corporatisation.

The concepts of co-management and delegation of authority should be made pro-implementation administrative options. Granting management roles to local communities that meet management standards can reduce bureaucratic burdens and increase ownership of sustainability practices. However, such delegation requires a clear legal framework regarding accountability, selection criteria, and mechanisms for evaluating community management performance so that it does not become a loophole for small- or large-scale illegal practices.

Bureaucratic resistance and economic interests will hinder the translation of decisions into concrete policies. Administrative reform requires legislative intervention and technical regulations that bind field officials. Without synchronisation of norms between forestry, agrarian, environmental and local government agencies, implementation will be fragmented and counterproductive to conservation goals.(Sony Hendra Permana & Firyal Nabihah, 2024)

Long-term environmental impacts depend on how administrative impact assessment aspects are integrated. Environmental Impact Analysis (EIA) or simplified forms of administrative environmental assessment for communities must include indicators of



agroforestry sustainability, carbon stocks, and biodiversity.(Suparto Wijoyo, 2012) If administrative assessments are merely formal and not data-based, their legitimacy is weak and they are unable to prevent practices that damage ecosystem functions.

Effective administrative solutions must combine the principles of forestry administrative law legality, *lex certa*, proportionality, precautionary principle, transparency, accountability, and participation in a regulatory package that includes: (a) criteria for legalising traditional activities; (b) technical requirements and environmental restrictions on permits; (c) a participatory registration and mapping system; (d) technology-based monitoring and audit mechanisms; and (e) strict and measurable administrative sanctions. Only through comprehensive and principled forestry administration can constitutional decisions be transformed into governance practices that protect citizens' rights while ensuring environmental sustainability.

#### 4. CONCLUSION

Constitutional Court Decision Number 181/PUU-XXII/2024 is an important milestone in the development of forestry law in Indonesia because it affirms that forest area management cannot be separated from the protection of the constitutional rights of communities that have long depended on forests for their livelihoods. This ruling signals a paradigm shift from a repressive and centralised approach to forestry towards a more inclusive and socially just approach, with the principles of proportionality, substantive justice and recognition of social realities as the basis for testing forestry legal norms. Juridically, the ruling requires serious adjustments to forestry administrative law, particularly in the formulation of policies on licensing, supervision, and control of community activities in forest areas. The principles of legality, legal certainty, controlled discretion, and good governance must be the main framework for the implementation of the ruling so as not to cause legal uncertainty or environmental degradation. Strengthening administrative instruments, such as participatory mapping, sustainability-based licensing standards, and effective administrative sanction mechanisms, are prerequisites for the consistent implementation of the ruling.

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