

Analysis Utilization of Forest Area for Palm Oil Plantation for Companies That Do Not Have a Decision Letter for Disclosure of Forest Areas Viewed From Law Regulation (Case Study: PT Kharisma Riau Sentosa)

Ahmad Redi^{1,2,*} Astrid Fahmadina¹

¹*Faculty of Law, Tarumanagara University, West Jakarta 11440, Indonesia*

²*Faculty of Law, Tarumanagara University, West Jakarta, 11440, Indonesia*

**Corresponding author. Email: ahmadr@fh.untar.ac.id*

ABSTRACT

Indonesia is a state law (*Rechtsstaat*), that's why the idea of law must be made commander in chief in the spirit of statehood. The government as a state operator has an important role in the utilization of forest areas for oil palm plantation companies, namely by conducting supervision and control of licensing as a preventive measure to avoid the occurrence of forestry crime and as a preventive effort so as not to cause adverse impacts on the environment. This is reflected in the legislation that gives the Government the authority to be responsible for overseeing and controlling the natural resources of the forestry sector based on statutory provisions. Licensing is carried out in the framework of administrative order, but the fact is the results of research on violations of licensing for the use of forest areas for oil palm plantations do not indicate that the Government, Regional Government and other relevant agencies carry out harmonious coordination in the implementation of supervision and control in accordance with statutory provisions, matters This clearly has violated the conceptual framework of the rule of law which requires the government to act in accordance with statutory provisions.

Keywords: *Utilization of Forest area, Supervision, Control, Environmental*

1. INTRODUCTION

State law or *Rechtsstaat* firmly formulate in foundation of the Indonesia constitution (UUD NRI 1945).[1] Republic of Indonesia is a based on law (*rechtsstaat*), not based on power (*machsstaat*) country.[2] As a state of law, Indonesia idealizes the law as commander in the spirit of state life. The 1945 Constitution of the Republic of Indonesia gives exclusive rights to the state to control the environment and natural resources to advance public welfare.

The control of natural resources contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia with the phrase:

"The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people"

Affirming two things namely "the right to control" and "the greatest prosperity of the people". These two phrases when related to the concept of the welfare state and the function of the state according to W. Friedmann is the 1945 Constitution of the Republic of Indonesia making the state a regulator and guarantor of the welfare of the community, then

the state must carry out supervision and special policy arrangements for the prosperity of the people.[3]

Indonesia is a country with abundant diversity of natural resources, one of which can be utilized for the forestry sector. In the last decade, there have been a number of problems in the use of forest areas, in particular Convertible Production Forest Areas (HPK) which can be reserved for development outside of forestry, one of which is plantations.

In accordance with the legal umbrella or umbrella act, especially licensing for the use of forest areas, namely Law Number 41 of 1999 on Forestry states that "every person is prohibited from using the forest area illegally".

The Forestry Law emphasizes the prohibition on activities in forest areas without having a permit from the Ministry of Environment and Forestry as the Minister who plays a role in the process of granting permits for the use of forest areas, specifically permits for releasing forest areas. In addition to being useful as an orderly administration, licensing is a preventive effort for pollution and environmental damage, because through a permit the government can set certain requirements that must be met by the owner of the activity.[4]

This is important considering that the legality aspect of utilizing forest areas is a crucial aspect for the management of Indonesia's natural resources and this unclear legality contributes to the loss of state revenue, causing pollution and environmental damage in the future. But in fact, forest crime

in Riau Province is still ongoing, according to investigative results Eyes on the Forest shows that there are oil palm plantation companies operating without permission to release the forest area.

Based on the facts, there should be a licensing procedure as regulated in the legislation, but on the other hand, in fact the oil palm industry / company continues to carry out its activities in the forest area without a permit, so it is necessary to examine the role of the Government / Regional Government in supervision and controlling licensing for the use of forest areas to avoid environmental pollution and damage in accordance with statutory provisions.

2. DATA AND METHOD

A. Data

As a normative legal research, the data used in this study are secondary data, collected through literature review. The main data are primary legal sources consisting of a hierarchy of legislation and related government regulations, and secondary legal sources consisting of books, legal journals and expert opinions.

The main regulations used in this study are the 1945 Constitution of the Republic of Indonesia, Law Number 41 of 1999 on Forestry, Law Number 32 of 2009 on Environmental Protection and Management, Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction.

B. Method

The data obtained were analyzed using a qualitative normative method, which is done by analyzing the validity of the truth so that conclusions are deductively formulated. Deductive method is done by going through the stages of thinking from things that are generally directed to the specific.[5]

3. ANALYSIS

A. The Government's Role in Supervising the Utilization of Forest Areas

1. Law Number 32 of 2009 on Environmental Protection and Management

a. Government Oversight

Regarding supervision, the UUPPLH grants authority to the Minister, Governor, Regent / Mayor in accordance with their authority, must supervise the observance of the person in charge of activities in accordance with statutory provisions.[6]

In the case of the supervision of the Minister, the Governor, the Regent / Mayor determine the Environmental Supervisory Officer (PPLH) with all the authority held when finding violations, PPLH can coordinate with the Civil Servant Investigation Officer (PPNSLH) and assisted

with further investigation by the Police Officer Investigator.

However, in fact in accordance with the Eyes On The Forest investigative report, questioning the poor licensing supervision both at the central and regional levels as well as other relevant agencies because it does not reflect harmony and cohesiveness as a preventive measure for violations of compliance with environmental responsibility.

b. Criminal Sanctions for the Government

There is a criminal provision in Article 112 of the UUPPLH if the government does not carry out supervision or has allowed the issuance of licenses in the environmental sector, resulting in pollution and environmental damage which is punishable by imprisonment or fines.

In this case the official referred to is the Minister, Governor, Regent / Mayor and other relevant agencies entitled and responsible for the supervision of businesses and / or activities in accordance with the provisions of the UUPPLH.

However, the results of the study, if adjusted to the information to several parties concerned, explain that supervision has been running, but up to now it is still in the process of indication so that it has not yet provided a report. quite effective and efficient in law enforcement of licensing provisions, so WALHI Riau said that the government failed to conduct surveillance.

2. Law Number 41 of 1999 on Forestry

a. Government Oversight

Forestry supervision is supervision of the compliance of the organizing and implementing apparatus with all provisions of the laws and regulations in the forestry sector.[7] Government / Regional Government has the authority to carry out: monitoring, requesting information and conducting inspection of forest management.[8]

Based on the power of the Forestry Law, the Minister or Governor or Regent or Mayor can delegate their authority to the Forestry PPNS.[9] The PPNS Forestry authority is more broadly regulated in the Law on Prevention and Eradication of Forest Destruction. The eradication of forest destruction will be carried out if it has obtained evidence / reports from the community as sufficient preliminary evidence for investigation.[10]

Referring to the results of the investigative analysis published by Eyes On The Forest, this is a form of forestry surveillance conducted by civil society, which should be used as sufficient preliminary evidence to be followed up by PPNS in coordination with the National Police to start investigations.

However, the fact is that the issuance of the Eyes On The Forest report does not make the government / local government and other relevant agencies conduct serious investigations to eradicate forest crime crimes committed by corporations.

b. Continued Efforts Through Laws

The purpose of the issuance of Government Regulation Number 104 Year 2015 is to support the acceleration of development outside forestry activities that can be carried out by simplifying the process of changing the designation and function of forest areas.[11]

PP 104 of 2015 regulates the HPK area that can be processed through the release of forest area with a maximum period of 1 (one) year since the enactment of the PP, it can submit applications for the release of forest area. PP should be used as a foundation by the government to supervise and take firm action against companies that use forest areas but do not submit applications for changes to the designation of forest areas as of the issuance of this PP.

The mechanism for releasing forest areas based on PP 104 of 2015 involves the Governor as the applicant or as the giver of the proposal to KLHK, and is assisted by the Regent / Mayor regarding the proposed forest area to become APL. This shows that the planning and monitoring system of forest use at the macro scale remains at the KLHK, while the proposed utilization and management at the site level will become part of the provincial authority.[12]

However, since this operational regulation was issued in 2015, the obligation to implement the proposed change of forest area designation as well as supervision of permits by the government apparently had no effect on PT Kharisma Riau Sentosa operating in the forest area without having a decree releasing the forest area from KLHK.

This case shows the indecisiveness and inconsistency of the government as law enforcement officers in overseeing compliance with licenses to act against violations committed by corporations, as required by applicable law.

B. Government's Role in Controlling the Utilization of Forest Areas

1. Law Number 32 of 2009 on Environmental Protection and Management

a. Control by the Government

In the protection and management of the environment the aspects of control and supervision are closely related and have integration therein.

In line with that, the government / regional government as well as other relevant agencies are obliged to work on prevention instruments in avoiding pollution and environmental damage, especially those carried out by companies. The spatial plan is one of 12 important prevention instruments, in accordance with Law Number 26 of 2007 on Spatial Planning, it is recommended that each province develop a Provincial to maintain harmony.[13]

Relating to the Provincial Residential the Governor as the head of the provincial autonomous region has an important role in changing the designation of forest areas for the province, as stipulated in Article 30 PP Number 104 Year 2015, that changes to the allotment of HPK areas for the province can be made based on a proposal from the Governor to KLHK, then the proposed changes are integrated by the Governor in the revision of the provincial spatial plan.

Within the scope of PP 104 of 2015 on changes to the designation of forest areas for the provincial area, the Governor holds full control for the control of forest pollution and / or destruction carried out by the company.

The Governor in proposing changes to the designation of forest areas must still consider environmental conditions, if an integrated team is found by KLHS showing the inadequacy of environmental carrying capacity and environmental capacity, the Minister has the right to reject proposed changes to the designation of forest areas based on the research results and recommendations of the integrated team.

Reflecting on these provisions, if the Governor of Riau Province has so far not submitted changes to PT Kharisma Riau Sentosa which is still in the HPK area through changes in the allocation of forest areas for the province by adjusting the Residential of Riau Province. This raises indications that the area of PT Kharisma Riau Sentosa has the potential to cause environmental impacts / risks, as well as showing the inadequacy of environmental carrying capacity and environmental capacity.

2. Government Regulation Number 45 of 2004 on Forest Protection

a. Site Level Control

The authority given by this PP to protect forest destruction, especially HPK areas, is in the hands of the Production Forest Management Unit (KPHP).[14] The duties and authority possessed by KPHP is the delegation of authority from the Governor for the implementation of forest protection in the region.

As the authority possessed by KPHP in carrying out forest management activities at the

provincial level, namely monitoring, evaluation and follow-up in protecting forest areas at the site level. The three activities are interrelated to be able to handle forestry crime in the field.

Monitoring and evaluation is an important activity for control or as a preventive measure. In accordance with the authority of the KPHP, monitoring activities are deemed mandatory for PT Kharisma Riau Sentosa because by conducting periodic monitoring and evaluating at the final stage of the activity. This can determine the steps or follow-up when knowing the number of violations in the forest area, especially the area of production forest that can be converted.

Without monitoring as a first step in protecting forest areas, no follow-up will be achieved as an improvement in the implementation of forest protection. Monitoring and evaluation as a result of the follow-up to these controls is essential for coordination between the central government through the regional government, so that the Regional Government such as the Governor or Regent / Mayor can report the follow-up of the control results to the Ministry of Environment and Forestry.

According to the Kasubdit PPH Sumatera, that there are several obstacles in dealing with forestry crimes, one of which is the weak supervision at the site level, especially in the production forest area carried out by the KPHP under the provincial government.

In line with forestry crime cases that are still rolling up to now and strengthened by the information from the informants above, it is very clear that in the context of control carried out by KPHP as an agency at this site level, it has weaknesses in terms of control, so the consequences of not properly exercising control will have an impact on the Government's follow-up in making decisions.

4. CONCLUSION

Based on this analysis, the government policy on supervision and control of licensing in the environment and forestry sector in Indonesia in its implementation is contrary to the provisions of the legislation, poor coordination makes it difficult to eradicate forest crimes in a consistent and integrated manner from the regions to the center.

This clearly deviates from the notion of environmental protection and management that requires integration in supervision and control in order to prevent environmental pollution and damage. As well as this clearly damages the

concept of the rule of law the Government should make the law a commander in the spirit of state life, and only the law is idealized for the Government to exercise its authority.

In terms of supervision of the use of forest areas, KLHK has the authority to conduct guidance and supervision of the implementation of national policies in accordance with the UUPPLH which is gradually for regional governments to site level agencies to improve performance and efficiency as the implementation of state control.

REFERENCES

- [1] Jimly Asshiddique, "Gagasan Negara Hukum Indonesia", *Majalah Hukum Nasional*, disampaikan dalam Forum Dialog Perencanaan Pembangunan Hukum Nasional, (Jakarta: BPHN Kemenkuham).
- [2] Diana Halim Koentjoro, *Hukum Administrasi Negara*, (Bogor Selatan: Ghalia Indonesia, 2004).
- [3] Tri Hayati, dkk, *Konsep Penguasaan Negara di Sektor Sumber Daya Alam berdasarkan Pasal 33 UUD 1945*, (Jakarta : Sekretariat Jenderal MKRI dan CLGS FHUI, 2005).
- [4] Sukanda Husin, *Penegakan Hukum Lingkungan Indonesia*, (Jakarta: Sinar Grafika, 2014).
- [5] Punaji Setyosari, *Metode Penelitian Pendidikan dan Pengembangan*, (Jakarta: Prenada Media, 2016).
- [6] Indonesia, Law Number 32 Year 2009 on Protection and Management Environment, (State Gazette of the Republic of Indonesia Year 2009 Number 140).
- [7] Indonesia, Law Number 41 of 1999 on Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167).
- [8] Indonesia, Law Number 41 of 1999 on Forestry (State Gazette of the Republic of Indonesia Year 1999 Number 167).
- [9] Indonesia, Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction. (State Gazette of the Republic of Indonesia Year 2013 Number 130).
- [10] Indonesia, Law Number 18 of 2013 on Prevention and Eradication of Forest Destruction. (State Gazette of the Republic of Indonesia Year 2013 Number 130).
- [11] Indonesia. Government Regulation Number 104 Year 2015 on Procedure To Change The Designation

And Fuction Of Area Of Forest , (State Gazette of the Republic of Indonesia Year 2015 Number 326).

[12] Bernadius Steni, Membedah UU Pemerintahan Daerah Yang Baru “Apa Yang Baru Dalam Pembagian Urusan Dan Kewenangan Pusat-Daerah Di Bidang Sumber Daya Alam?”, Institut Penelitian Inovasi Bumi, <http://www.inobu.org>.

[13] Muhammad Arif Setiawan, “Resolusi Sengketa Kolektif di Bidang Pertanahan Dalam Prespektif Hukum dan Sosial”, Jurnal Hukum Ius Quia Iustum, Vol.13 No.2 Mei 2006, Fakultas Hukum Universitas Islam Indonesia Yogyakarta.

[14] Indonesia, Government Regulation Number 45 Year 2004 of Forest Protection (State Gazette of the Republic of Indonesia Year 2004 Number 147).