

## Legal Analysis of the Forestry Sector from the Perspective of Legislation in Indonesia

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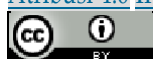
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### ABSTRACT

This research aims to identify government involvement in community activities using legal instruments in the form of permits. However, the permit does not end at the approval stage. Once permission is given, supervision is required, so clear rules are needed regarding who must be supervised. The research method used is normative legal research with a conceptual approach, namely the study of legal concepts such as legal sources, legal functions and legal systems. This research method is used to find conflicting supervisory regulations in the forestry sector. Others, namely Law Number 41 of 1999 concerning Forestry, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 23 of 2014 concerning Government Areas which may have different legal interpretations. In order for legal products to be a means of achieving sustainable forest development, these products must be designed in accordance with the nature of the forest itself. In other words, sustainable forest development must be based on will, awareness and political decisions. Then this will have no effect. This does not only apply to the current generation, but also to future generations.

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## **INTRODUCTION**

Article 33 paragraph (3) of the 1945 Constitution emphasizes that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. To fulfill the provisions of Article 33 paragraph (3) of the 1945 Constitution, Law Number 41 of 1999 concerning Forestry and Law No. 32 of 2009 concerning Environmental Protection and Management were issued. The preamble to Law Number 41 of 1999 concerning Forestry explains that forests, as a gift and mandate from God Almighty, bestowed upon the Indonesian nation, are wealth controlled by the State, provide multi-purpose benefits for mankind, therefore must be grateful for, managed and utilized optimally and its sustainability is maintained for the greatest prosperity of the people, for the present and future generations.

The government continues to strive so that development in the forestry sector can take place, for this reason supervision is needed, so that forestry development and utilization has a positive impact on society. The forestry sector has many regulations, in Article 62 of Law Number 41 of 1999 concerning Forestry it is stated that the Government, Regional Government and the community supervise the management and utilization of forests carried out by third parties.

The attachment to Law Number 23 of 2014 concerning Regional Government clearly states that the central government has the responsibility to supervise forest management. In this case it has also been explained that the attachment is an inseparable part of the regulations. Meanwhile, Law Number 32 of 2009 concerning Environmental Protection and Management states that environmental permits, which are one of the requirements for businesses in the forestry sector, in terms of monitoring environmental permits are carried out by the Minister, governor or regent mayor in accordance with their authority. supervising the compliance of the person in charge of the business and/or activity with environmental permits and Law Number 41 of 1999 concerning Forestry mandates that the Government, Regional Government and the community supervise the management and use of forests carried out by third parties. This is then based on government authority, Law Number 23 of 2014 concerning Regional Government has given attribution new authority in forestry matters to the central government, this is confirmed by Indroharto's opinion which states that the granting of new government authority is by a provision in statutory regulations, here a new government authority is born or created.<sup>2</sup> This means that Law Number 23 of 2014 has directly created a new government authority in the forestry sector.

## **LITERATURE REVIEW**

The problem of legal regulations above clearly refers to the problem of supervision in the forestry sector which can trigger conflict between each other and cause confusion and unrest in the regions, because the problem of supervision in Law Number 23 of 2014 concerning Regional Government has eliminated the authority of the Regency/City government to carrying out supervision in the forestry sector in the administrative area of the Regency/City

concerned, the result will be that supervision in the forestry sector is not optimal. Because success will depend greatly on the regulations implemented, when regulations regarding the delegation of supervisory authority in the forestry sector overlap, this will give rise to problems in the forestry sector, in this case industrial plantation forests and ultimately result in development not being carried out optimally and the *ius constituendum* (expected law) of the forestry sector has not been able to run well.

## **METHODOLOGY**

The research method in this writing uses a normative legal research type. Normative legal research takes the form of research on statutory regulations, contacts and legal values that live in society. This research refers to the positive law that applies in Indonesia so that there are solutions based on statutory regulations and forestry law concepts. The research approach used in this writing is through a conceptual approach and a statutory approach. This research approach is carried out by examining legal principles and theories related to forestry law.

## **RESULT AND DISCUSSION**

The Forestry Law is in contrast to Law Number 23 of 2014 concerning Regional Government, which withdraws forestry supervision to the central government, where in the attachment to this Law it is clearly stated that the central government has the responsibility to supervise forest management. This Regional Government Law can also create disharmony with Law Number 32 of 2009 concerning Environmental Protection and Management, because environmental permits are one of the requirements for businesses in the forestry sector, in terms of supervision of environmental permits carried out by the Minister, governor, or the regent/mayor, in accordance with their authority, is obliged to supervise the compliance of the person responsible for the business and/or activity with environmental permits.

In this case Law no. 41 of 1999 concerning Forestry regulates the authority to manage forest resources. Three substantive interpretations of the law lead to differences in the interpretation of authority claimed between the central government and regional governments. The critical issue is which law should be used if two different laws regulate the same area.

Thus, in referring to legal principles, it is clear that the authority for forestry supervision, in this case industrial plantation forests, must refer to specific basic laws, namely Law Number 41 of 1999 concerning Forestry and the more recent law Law Number 23 of 2014 concerning Regional Government. Meanwhile, Law Number 32 of 2009 concerning Environmental Protection and Management has a different substance because it generally relates to environmental permits. This is what then makes forestry supervision, especially industrial plantation forests, unable to run optimally. Then Van Zorge stated that to explain these regulations, there must be clear regulations implemented, which explain the authority of regional governments.<sup>8</sup> However, if you look more deeply into Law Number 41 of 1999 concerning Forestry, it must be

revised again to avoid multiple interpretations of supervision of authority between governments central government with provincial and district/city governments.

Regarding the issue of supervision in the forestry sector, the urgency of integrated monitoring and evaluation is to prevent violations and irregularities in the utilization and use of forest areas. Apart from that, based on the results of supervision and evaluation results, if violations and irregularities are found, repressive measures can be taken immediately. That's why integration is so important, considering the possibility of violations and deviations, not only in one service/agency, namely forestry, but also in other sectoral services/agencies, including local government, the business world, society and individuals. 9 Conditions like this then need to be addressed. By implementing transparent accountability, supervision of industrial plantation forests must continue to be carried out, because if errors are found in implementing sustainable forest management, the industrial plantation forest permits could be closed.

If we take an example from a smaller scope, such as in Jambi Province based on the 2012 Final Forestry Utilization Book, the total production forest area in Jambi is 1,312,190 ha and the area that has been utilized (decree has been issued) with an industrial plantation forest utilization area of 644,134 ha is 17 Units, with details PT. Wirakarya Sakti is the largest concession holder, namely 293,812 Ha based on Decree from the Minister of Forestry No.346/Menhut-II/2004. With such an area it is very necessary Supervision regulations are truly effective and efficient as well as regulations that do not give rise to multiple interpretations, so that consequences such as forest fires can be minimized.

For this reason, regulations regarding the supervision of industrial plantation forest permits must be able to provide guarantees that management of industrial plantation forests can be implemented, and ultimately achieve sustainable forest development, in the sense that it can be utilized by current and future generations, so that the National Medium Term Development Plan (RPJM) ) can be realized well and in the end the welfare of the people is the most important as the ideals and objectives of the founding of the Indonesian state. Meanwhile legal products in the forestry sector must be designed appropriately for the existence of the forest itself, so that legal products can become a means of achieving sustainable forest development. For this reason, sustainable forest development must be based on will, awareness and political decisions, this is which will then have implications not only for the current generation but also for future generations.

In connection with the monitoring issues in the above statutory regulations, it is necessary to emphasize the relevant principles in sustainable forest area management. And therefore, forestry policy must be directed at mainstreaming the legal principles of preserving forestry functions within the framework of sustainable development. The principle of justice must also be used as the main reference, such as the theory of justice put forward by Roscoe Pound, that justice can be seen in the concrete results that can be given to society. The result should be in the form of satisfying as many human needs as

possible with as little sacrifice as possible. John Rawls also stated that there must be fulfillment of basic rights or it must not take away basic human rights (the principles of Equal Rights and Economic Equality).

## **CONCLUSIONS AND RECOMMENDATIONS**

Licensing really requires supervision, because supervision is intended to avoid mistakes that might occur. This supervision is carried out when it is still a plan or in the event that it is still at the stage of obtaining a permit. In relation to statutory regulations regarding forestry supervision, the problem is that if supervision is not carried out or does not run optimally due to conflicting regulations, it will cause forest development itself to be hampered, and the impact will not only be felt now, but for future generations. Will also feel the impact of legislative regulations. Apart from that, the urgency of integrated monitoring and evaluation is to prevent violations and irregularities in the utilization and use of forest areas. Apart from that, based on the results of supervision and evaluation results, if violations and irregularities are found, repressive measures can be taken immediately.

## **FURTHER STUDY**

This research still has limitations so further research needs to be done on this topic "Legal Analysis of the Forestry Sector from the Perspective of Legislation in Indonesia".

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