

REFLECTIONS OF LAW OF FORESTRY TOWARDS THE EXISTENCE OF VILLAGE FOREST IN BALI PROVINCE

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ABSTRACT

Forests and all resources contained therein are choice and an alternative to seeking the welfare. The existence of forests, become concern and consideration various interests (government, civil society, private sector). In Indonesia especially in Bali, some villagers whose lives around the forest, still depend on the forest. The increasing variety interests of the forest, so it must create law that is able to accommodate all interests. Forestry law is not always compatible with local law and local wisdom. Management of village forest in Bali also still faces complex problems, for example the implementation of forest villages in a number of villages in Bali. With examine empirical law, the implementation of forestry law will be observed on the existence of village forest in Bali.

Keywords: Law of Forestry, Village Forest, Local Wisdom, Welfare.

Introduction

Village Forest managements in Bali are still hampered by a variety of complex problems. Permits in the village forest management in a village forest in Jembrana Regency unrealized, although it has gained positive response from the Ministry of Forestry through the Minister of Forestry Number. P. 49/Menhut-II /2008 on Forest Village. There are 23 villages proposed to manage the village forest.

Forests are an integral part of human life system. Forests cover about 30 percent of the land surface of the earth (about 4 billion hectares) (William Boyd: 2010, p. 10). Approximately 70% of all terrestrial animal and plant species live in forests and forests are critical in preserving species of animals and plants (Jessica Owley & Stephen J. Tulowiecki: 2012, p. 4). Forests have multiple functions that are essential for human well-being (Lloyd C. Irland: 2010, p. 20). Forests also provide a wide range of valuable products such as wood. In addition, forests provide a number of ecological benefits (Alice Booher Johnson: 2010, p. 2).

When forests become an option to seek welfare, the various approaches used to get the best solution. Forests become a competitive platform in the middle of various interests (public, private, state, government) (San Afri Awang: 2003, p. 4) who want to take precedence. Based on the hypothesis becomes a reflection, when village forest in Bali are faced with issues of cultural, ecological, economic and legal. Several previous studies have also showed the complexity of the forest area. Caritas Woro Murdiati Runggandini on his dissertation entitled "Reconstruction of Local Wisdom to Establish Sustainable Forestry Law (Study of Indigenous People of Kajang and Tenganan Pengrinsingan). Thus reflecting the application of forest laws need to be harmonized in the existence of village forest in Bali.

This study aims to assess the role of the legal system of forestry towards village forest in Bali, as well as village forest use for the welfare the village community.

Law of Forestry in Indonesia

Forestry in Indonesia is set in Law No. 41 of 1999 on Forestry. In the preamble of the Law No. 41, 1999 stated that:

- (a) that the forest, as a gift and the mandate of God Almighty bestowed upon the people of Indonesia, is a wealth controlled by the State, giving the benefit banquet for mankind, hence must be grateful, managed, and utilized optimally, and preserved for the people's welfare, for the current generation and future generations;
- (b) that the forest, as one of the determinants of life support systems and resources of the people, tend to deteriorate, therefore, its existence must be maintained optimally maintained carrying capacity in a sustainable manner, and taken care of noble character, fair, wise, thoughtful, open, professional, and accountable;
- (c) that sustainable forest management and global insight, must accommodate the dynamics of the aspirations and community participation, customs and culture, as well as the values of a society based on national norms.

Furthermore, in the explanation of Law No. 41 Years 1999 explained that:

Forests as a grace and mandate of God Almighty bestowed to the nation of Indonesia is a natural wealth that is priceless must be grateful. The gifts given to him, is seen as a trust, therefore forests must be managed and utilized with a noble character in the context of worship, as the embodiment of gratitude to God Almighty.

Forest as a national development capital has tangible benefits to the lives and livelihood of the Indonesian nation, whether ecological, social, cultural and economic, in a balanced and dynamic. Forests should be managed and maintained, protected and

sustainably utilized for the welfare of the people of Indonesia, both the current generation and future. In his capacity as one of the determinants of life support systems, forests have been of great benefit to mankind, therefore, must be preserved.

Forests have a role as a counterweight to the global environment, so its association with the international community to be very important, to support the national interest. In line with Article 33 of the Constitution of 1945 as the constitutional basis which requires that land, water and natural resources contained in it are controlled by the state and utilized for the benefit of the people, the administration of forestry always contains the soul and the spirit of democracy, equitable and sustainable.

Therefore, the implementation of forestry has to do with the principle of benefit and sustainable democracy, justice, solidarity, openness and integration with noble character based and accountable. Forest tenure by the State is not a possession, but the member State authority to the government to regulate and manage everything related to forests, forest areas and forest products; establish areas or change the status of forests and forest areas; regulate and establish legal relationships between people in the forest or forest land and forest products, and regulate legal actions concerning forestry.

Furthermore, the government has the authority to issue permits and rights to other parties to do the work in forestry. However for certain things that are very important, large-scale and wide-ranging impact and strategic value, the government must pay attention to the people's aspirations through the approval of the House of Representatives. To maintain the balance of the fulfillment of the environmental benefits, social and cultural benefits and economic benefits, the government establishes and maintains adequate forest area in the watershed or island with a proportional distribution.

In order for the implementation of the forest management achieve the objectives, government and regional governments must supervise forestry. Community and or individuals to participate in monitoring the implementation of forestry development, either directly or indirectly so that people can know the forest use plan, utilization of forest products and forestry information.

According to Article 2 of Law No. 41 Years 1999, declared the implementation of forestry has benefits and sustainable principles, democracy, justice, solidarity, openness, and integrity. Furthermore, Article 3 of Law No. 41 of 1999 stipulates that: Forest governance aiming for the greatest prosperity of the people are equal and sustainable to: a) ensure the existence of the forest with an area sufficient and proportionate distribution; b) optimizing the various functions of forests that includes the functionality of conservation, protection functions, and production functions to achieve the benefits of environmental, social, cultural, and economic, which is balanced and sustainable; c) increase the carrying capacity of the watershed; d) increase the capacity and capability to develop community empowerment participatory, equitable, and environmentally-friendly so as to create social and economic resilience and resistance to due to external changes; and e) ensure the fair distribution of benefits and sustainable.

Based on the Forestry Law, can be analyzed that, where forests have an important function. Should be optimally utilized with regard to sustainability.

Status of Forest and Village Forest

Under Article 5 of Law No. 41 of 1999 regulates the distribution of forests by their status include:

- (1) Forest based on its status consists of: a. state forests and, b. owned forest (*hutan hak*);
- (2) State Forest as referred to in paragraph (1) letter a, may include *adat* forest;
- (3) The Government shall determine the status of *adat* forests as referred to in paragraph (1) and (2); and forests are set along by the reality of indigenous people's pertinent is still there and acknowledged.
- (4) Where in the developments of indigenous communities' pertinent no longer exists, and then the rights of indigenous forest management return to the Government.

In the explanation of Article 5 Paragraph 1, of Law No. 41, 1999, explained that:

State forests may include *adat* forest, are state forests that be transferred to indigenous communities (*rechtsgemeenschap*). The indigenous forests previously called traditional forest lands, forest clan, seigniorial forests, or other designations.

Forests managed by indigenous people included in the definition of state forests as a consequence of their rights of control by the state as an organization of authority all the people at the highest levels and principles of the Unitary Republic of Indonesia.

With the inclusion of *adat* forest in terms of state forests, does not abolish the rights of indigenous communities throughout the reality is still there and acknowledged, to perform management operations. State forests managed by the village and used for the welfare of the village called the village forest. State forest utilization primarily intended to empower people called community forestry. Owned forest (*hutan hak*) exist on the land subject to property rights, commonly called community forests.

Article 6 of Law No. 41 of 1999 on Forestry set three forest functions and authority of the government in establishing forest by function, stipulated that:

- (1) Forest has three functions, namely: a) conservation function, b) protection functions, and c) the production function.
- (2) The government set the forest based on the following main functions: a) conservation, b) protected forest, and c) production forest.

The development of the current status of the forest that, before the forest based on its status consisting of state forests, *adat* forests and owned forests (*hutan hak*). In 2012 the *adat* forest is a forest located in the area of indigenous peoples. Initially based

on Law No. 41 of 1999 on Forestry, adat forest is a state forests located in the area of indigenous peoples. With the Constitutional Court Decision No. 35/PUU-X/2012, the *adat* forest is not part of the state forests.

Village Forest

Government Regulation No. 6 of 2004 *jo* Government Regulation No. 3 Year 2008 on Forest Management and Forest Management Planning and Forest Utilization, has mandated that in order to get the benefits of forest resources in an optimal and fair, conducted community empowerment through capacity building and providing access for increased welfare.

Empowerment of local communities are meant, can be done through village forest, other than through the Forest Society and Partnership. Based on Government Regulation the notion of village forest is “state forest managed by the Village used for the welfare of the village.” It means that rural communities through the village institutions can become major stakeholders in managing and benefiting from state forests. Manage to have a wider scope, not just use forest resources are there but more responsible for the preservation of life functions as a buffer.

The Ministry of Forestry has developed operational policies, namely the Minister of Forestry Regulation No. 49 /Menhut-II/2008 on Village Forest. The village forest policies are basically intended to encourage economic empowerment of forest communities as well as accelerate forest rehabilitation efforts. Village Forest as mandated by the Regulation of the Minister of Forestry of the above, the State forest management by the Institute of village utilized to the welfare of village. Village Forest Policy has given new hope to encourage sustainable forest management based on the villagers.

In the Minister of Forestry No. P.49/Menhut-II/2008 has set the principles in the management of the Village Forest, among others:

1. The village Forest is the state forest areas which serves as protection forests and production forests with the criteria or not encumbered any rights or permits and are within the administrative area of the village concerned.
2. Village Forest Areas designated by the Minister of Forestry on the proposal Regent/Mayor upon request the head of village.
3. Rights of village Forest Management given to village institutions formed by village (village community) through village regulations.
4. Village Institution is a community institution defined by Village Regulation.

Tracing the existence of Village Forest in Bali

The forest area in Bali based on Bali Forestry Agency records reached 130 thousand hectares and is divided into three forest management unit (*KPH/Kesatuan Pengelolaan Hutan*) which KPH west Bali, KPH Central Bali and KPH East Bali. In an effort to preserve the forests, the Forest Service is targeting Bali in the next 10 years all villages around the forest area in Bali has adopted forest conservation efforts in *awig-awig* (customary rules).

Based on an inventory of Bali Forestry Agency, there are about 300 villages whose territory is directly adjacent to the forest. From the data obtained in this study, there are some problems in the field, until now unsolved. Among other issues raised in the region of West Bali KPH (Jembrana) and KPH East Bali. A number of villages in Jembrana Regency requested that village Forest Management permits could immediately be issued by the Governor (the same problem is also faced KPH East Bali). Problems due, permits the establishment of village forest areas that were previously issued by the Ministry until now did not run. At the Bali Post newspaper also reported that the village demanded forest management rights. This was revealed during a working visit of Commission III of the DPRD-Bali along the Bali Provincial Forestry Department, presenting the head of village who previously received permission determination village forest, at the village office Tukadaya, District Melaya, Jembrana (Pos Bali 2015).

Lack of management permits from the Governor due to some constraints into consideration. One of them, about the necessity for the establishment of village-owned enterprises (BUMDes), as a direct manager of forest in the village which has not been set up. The most prominent obstacle in the village forest management is not preparedness of the village itself. So careful consideration in the process.

Decentralization of forestry development is inseparable from the dynamics and development of regional autonomy in Indonesia. Forest management is centralized so far has brought excesses that are not favorable for the conservation of nature and the environment and social systems in the regions. In line with the spirit of regional autonomy that has been implemented in the administration of the current government it is necessary also the decentralization of forest management. With the decentralization of forestry is expected to answer a variety of problems in forest management experienced during this time. Through the decentralization of forestry to do the planning and establishment of forest management regulations more specifically according to the characteristics of each region. It is undeniable diversity in Indonesia, which also has consequences for forestry arrangements. It is possible to be involved, active participation and it provides adequate authority for the region (governments, communities, and businesses) in the planning, establishment and management of the forest regulation.

The Setting of Village Forest for the Village Welfare

Village forest is one alternative or choice of long-term funding source for village autonomy in order to improve welfare. In this context, the village forest setting strived to harmonize balance the various aspects of culture, economy, and ecology.

The choices of business, commodity and institutions or business units in its management must be considered by the plans careful. Not only in the short-term economic scale but also long-term effects. That effort requires the calculation of estimated economic

value through the sharing of benefits which is fair enough. The market is healthier and open in a decentralized system of village forest potentially make to people's lives. In the long term, the forest also serves for the ecology. Thus, in its governance factors management professionalism is an absolute requirement.

Based on the research results, some important things in the filing and management of village forest capable responsive to aspects of culture, ecology, economics and law, it is necessary to consider the following matters:

- (a) The certainty of long-term management area.
This aspect is very dependent on the active participation of government in providing determination of forest areas (legal aspects). Certainty warranties, so the plans that will be done in the area can be run with the maximum, their access to the region, the absence of interference and obstacles related to territorial. Determination of taking into account aspects of culture, ecology, the economy became the main requirement determination.
- (b) Mechanisms for resolving conflicts and disputes in a holistic manner. Mechanisms for resolving conflicts and disputes be one contributing factor. In general, a very long conflict and dispute settlement process. So the village forest management are expected to operate to its full potential will be hampered implementation. Mechanisms that can accommodate all sorts of aspirations, holistic.
- (c) Policies that promote and protect the security of management rights and long-term forest enterprises.
- (d) Forestry business certainty with regard to the economic development of the village forest scheme. Elements such as capital, local knowledge, access to information, the development of commodity and market.
- (e) Human Resources. The capacity of human resources a central support in the framework of village forest management. For village forest development of human resources managers and qualified technical escort the basic needs. Governments should adopt policies in the long term and put the the village community as human capital, invested in the form of giving specialized training, education village forest management. Regeneration strong as village forest strengthens capital as an asset to prosper.

Conclusion

Existence of the village forest is inseparable from the legal system settings. Legal substances village forest setting must always be responsive to the dynamics of society and the values that develop, unification is not the substance of the final arrangements, but continue to proceed. The legal structure plays a significant role, good local governance is an absolute requirement, in some cases, the filing of village forest management at the Forest Management Unit showed political pull influenced the region delays execution determination. Policy options should be placed in the context of the achievement of the people's welfare. Culture of the people is also very involved in village forest management, by reflecting on the forest in Bali that has diverse functions, should be a reference for decision makers able to synergize the patterns between maintaining the patterns and adaptive trait in order to achieve the welfare of the the village community. Based on the research results, some important things in the filing and management of village forest capable responsive to aspects of culture, ecology, economics and law, it is necessary to consider such as; the certainty of long-term management area, mechanisms for resolving conflicts and disputes in a holistic manner, policies that promote and protect the security of management rights and long-term forest enterprises, business certainty with regard to the economic development of the village forest scheme, and the capacity of human resource

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