

## DEVELOPING DEFORESTATION LAW TO ACHIEVE ECOLOGICAL JUSTICE

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### ABSTRACT

*Deforestation contains meaning that is very closely related to all situations of forest loss and the things that support it caused by human activities, both outside and inside forest areas. Permanent change from forested areas to non-forested areas caused by human activities. This study aims to analyze and develop the law of deforestation in realizing ecological justice. This study uses a sociological juridical approach. This research is a type of qualitative research with primary and secondary data used. Furthermore, the collected data were analyzed through qualitative descriptive. The theory used is the theory of ecological justice and the theory of legal development. The results of the study found that the substance of Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, still leaves 'concerns' about guaranteeing the sustainability of forest resources. The challenge for local governments is to reformulate policies and strategies that ensure sustainable forest management achieved. The enactment of Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, requires changes to forestry development policies in the regions. A number of 'homework' must be done by the local government so that forest resources can be managed sustainably. Thus, it is necessary to develop laws on deforestation in order to realize ecological justice through three main aspects, namely policies of strengthening local social systems, developing people's economies, and preserving forest resources.*

**Keywords:** Deforestation; Ecological; Law; Justice; Build;

### BACKGROUND

Deforestation is the conversion of forest areas into non-forest land uses and degradation that reduces the quality of forests such as plantations, urban areas, and industrial areas<sup>1</sup>. Deforestation contains meaning that is very closely related to all situations of forest loss and the things that support it caused by human activities, both outside and inside forest areas. Permanent change from forested areas to non-forested areas caused by human activities.<sup>2</sup>

Massive deforestation in Indonesia is mostly carried out by corporations that change land use from forests to industrial estate plantations, one of which is oil palm which can cause greenhouse gas emissions, worsen soil pollution, threaten biodiversity, and endanger biodiversity. the life of the people who live around and in the forest.

With the application of the principle of strict liability, massive deforestation can be suppressed because a corporation will stem its intentions and be much more careful in whatever it does, especially in environmental issues. There is no need to prove the element of fault on the principle of strict liability underlying the reason that the actions taken are mostly related to the right to the protection of the public interest of the community, therefore, facts that can be painful for the affected community are in accordance with the *adage res ipsa loquitur*, namely facts that speak for themselves so that is for the element of error in this case, there is no need for proof.<sup>3</sup>

The existence of deforestation which causes environmental problems that bring consequences for society and biodiversity threatened with harm, has shown that the principle of strict liability is very influential on the ensnaring of a corporation which does not heed the maintenance and protection of the environment. Therefore, the abolition of the phrase strict liability in the Omnibus Law will worsen the environmental situation in Indonesia

### RESEARCH METHOD

This study uses a sociological juridical approach. This research is a type of qualitative research. The data used are primary and secondary. Furthermore, the collected data were analyzed through qualitative descriptive.<sup>4</sup>

<sup>1</sup> Tejaswi, Giri, *Manual on Deforestation, Degradation, and Fragmentation Using Remote Sensing and GIS*, MAR-SFM Working Paper 5, 2007, p. 5

<sup>2</sup> Regulation of the Minister of Forestry of the Republic of Indonesia No. P.30/Menhut-II/2009 concerning Procedures for Reducing Emissions from Deforestation and Forest Degradation.

<sup>3</sup> Fadhli, Riza, Corporate Criminal Liability in Forest and Land Fire Crimes, *Renaissance Journal*, Faculty of Law, Islamic University of Indonesia Vol. 3 No. 2, 2018, p. 298.

<sup>4</sup> Anis Mashdurohatun, Eyrsa Setya Kurnia The Settlement Model Against Credit Agreements Between Creditors And Debtors, *IJLR: International Journal of Law Reconstruction*, Volume 4, Number 2, September 2020

## RESEARCH RESULTS AND DISCUSSION

Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 23 of 2021 concerning Forestry Implementation regulates specific matters and there are 'different' matters. One of the visible differences relates to social forestry. Previously, Asmin (2020) raised a number of substantive questions related to social forestry, and then the answers can be found in Government Regulation Number 23 of 2021 concerning Forestry Implementation.

In general, Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, describes the role of the government to encourage investment growth in the forestry sector. If we do a 'little' content analysis of a number of words or terms, the focus of Government Regulation Number 23 of 2021 concerning Forestry Implementation is to provide business opportunities in forest resource management. The Central Government 'gets' a strategic role in Government Regulation Number 23 of 2021 concerning Forestry Implementation. Local governments are expected to 'play' a role in the framework of action as 'representatives of the central government in the regions'. Table 1 describes the results of 'searching' a number of words or terms. Certainly, local governments need to reformulate policies and strategies to ensure sustainable forest management.

The substance of Government Regulation Number 23 of 2021 concerning Forestry Implementation, focuses on providing legal certainty in the form of permits and approvals. This is certainly good in law enforcement, however, the substance of Government Regulation Number 23 of 2021 concerning Forestry Implementation, still leaves 'concerns' about guaranteeing the sustainability of forest resources. The challenge for local governments is to reformulate policies and strategies that ensure sustainable forest management can be achieved. The enactment of Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, requires changes to forestry development policies in the regions. A number of 'homework' must be done by the local government so that forest resources can be managed sustainably.

Establishing a deforestation law in realizing ecological justice has three main policy aspects, namely strengthening local social systems, developing a people's economy, and preserving forest resources.

The first policy is strengthening the local social system. Local governments need to ensure that strengthening local social systems is a priority consideration in forest resource management policies. We cannot ignore that forest resources have been regulated according to the norms, values, beliefs and attitudes that developed in the local social system.<sup>5</sup> According to the systems approach, it is possible for local social systems to influence each other with the forest development system, so that both are subsystems that are part of the regional development system.

The second policy is the development of the people's economy. Local governments must be 'a little' smart to prioritize the development of the people's economy in managing forest resources. The economic base of the community needs to be considered in the management of forest resources. Inequality in resource tenure needs to be minimized and the fairness of the benefits of forest resources needs to be prioritized. This is possible in accordance with Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, especially by prioritizing social forestry. Social forestry management is able to move the local economy to improve the welfare of the community around the forest.

The third policy is to ensure the sustainability of forest resources. Investment acceleration is possible in accordance with the principles of forest resource sustainability. For sure, the integration of social, economic, and ecological interests in the formulation of regional forestry development policies can be initiated to achieve the goal of sustainable forest management. Things that need to be considered to ensure the sustainability of forest resources are:

1. Level of forest resources.
2. Consideration of biodiversity.
3. Forest health and vitality.
4. Production function.
5. Protection function.
6. Socio-economic function.
7. Legal, policy and institutional framework.

We can see the simplification of Business Licensing quite clearly in Law Number 11 of 2020 concerning Job Creation (UUCK), but we need to note that the bureaucracy that looks simple is also due to Law Number 11 of 2020 concerning Job Creation (UUCK). , this is not made in detail, where many further arrangements will be regulated in a Government Regulation which contains the Norms, Standards, Procedures, and Provisions (NSPK) for its implementation, including for matters related to forests and the environment. We can see the basic provisions regarding several forestry and environmental related provisions by transferring them to Government Regulations as a setback from the revised Law. Judging from the nature of the legislation, the process of drafting and amending Government Regulations will be much easier than the laws.

Therefore, essential matters should be first bound in the Law, and not in a Government Regulation. For example: Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) previously stated explicitly that the composition of the AMDAL Assessment Commission would include environmental agencies, relevant technical agencies, experts in the business field under review, experts on business impacts, representatives from potentially affected communities, and representatives from environmental organizations, while in Law Number 11 of 2020 concerning Job Creation (UUCK), the AMDAL Assessment Commission was changed to a Feasibility Test Team and only stated that it consisted of the Central Government, Government Regions, and certified experts, while community involvement is limited to the process of preparing the AMDAL document.

<sup>5</sup> Asmin, F., Darusman, D., Ichwandi, I., & Suharjito, D. (2017a). Social capital of parak and rimbo management in West Sumatra. *Journal of Tropical Forest Management*, 23(3), 140-149. DOI:10.7226/jtfm.23.3.140 2016; Ekawati and Nurrochmat, 2014, Relationship of social capital with the use and preservation of protected forests. *Journal of Forestry Policy Analysis*, 11(1), 40-53. <https://doi.org/10.20886/jakk.2014.11.1.40-53>

From the composition of the Feasibility Test Team, we can clearly see that there is a reduction in the involvement of non-government actors and the community in the process of evaluating the AMDAL document. Communities, especially Indigenous Peoples (MHA) are one of the important elements that need to be involved in every decision-making process related to forests and the environment because they are the ones who will feel the direct impact of the changes and they have been acting as "guardians" of our forests. every day through a variety of local wisdom. Meanwhile, for non-government actors such as environmental organizations, these actors often work at the site level, both to assist local communities and support government efforts to protect forests and the environment. The neglect of the involvement of these parties can reduce the considerations and relevant knowledge that is needed in the process of evaluating the AMDAL document.

We can see the loosening of licensing in relation to UKL - UPL, where Law Number 11 of 2020 concerning Job Creation (UUCK), amending the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) UU PPLH, Article 34 and in Article 22 point (12) which states that UKL - UPL will now only be used as a standard for implementing activities and no longer as a document that must be fulfilled first. It is sufficient to fulfill the UKL-UPL standard by compiling a letter of commitment to environmental management. The simplification and loosening of permits as mentioned above opens up a bigger gap for large-scale industrial entry into Tanah Papua which will trigger deforestation in the future.

Based on data from EcoNusa (2020) the deforestation rate in Papua is 30,944 ha/year in West Papua of 4,436 ha/year caused by land conversion by oil palm plantations and industrial forest plantations, Timber Forest Product Management Business Permits (IUPHHK)/logging and mining concessions . While the government relies on a moratorium on permits for oil palm plantations, with Law No. 11 of 2020 concerning Job Creation (UUCK), this provides an opportunity to open permits for investors, including land-based enterprises.

In fact, the existing environmental legal framework still leaves gaps in terms of regulations, policies, and law enforcement. As a result, it weakens the protection of the environment and creates legal uncertainty for the community. One of them is shown by the absence of Regional Regulations on Regional Spatial Planning (RTRW) in 20 provinces.<sup>6</sup> This fact is, of course, counterproductive to the government's high ambitions for development.<sup>7</sup> In fact, the RTRW must be owned by each region<sup>8</sup> because the RTRW functions to ensure the balance of human living space and the environment and has an important reference function for the preparation of documents such as environmental permits.<sup>9</sup>

Prior to Law Number 11 of 2020 concerning Job Creation (UUCK), the Government in Law Number 41 of 1999 concerning Forestry stated explicitly that forest areas were at least 30% of the area of river watersheds and or islands with a proportional distribution. However, Law Number 11 of 2020 concerning Job Creation (UUCK), abolishes the minimum forest area that is maintained. Certainly, the elimination of this minimal commitment creates a great opportunity to exploit the forest indefinitely which will disrupt the resilience of the availability of fresh water for communities living around forests and cities. If we look at Papua Province, Perdasi No. 23 of 2013 states that Papua will maintain 90% forest area and 60% protected area. Furthermore, the two provinces, Papua and West Papua, have stated their commitment to protect at least 70% of the land area through the Manokwari Declaration.

The provisions of Law Number 11 of 2020 concerning Job Creation (UUCK), this puts this commitment in a difficult position because, in the end, the commitment becomes of a very high standard compared to the commitment of the Central Government. Threats to deforestation can also be seen from the regulation that the Central Government in determining the area of the forest area to be maintained will also look at the Government's national strategic projects which are regulated in Government Regulations. With the elimination of this minimum area of forest, the minimal safety net to maintain deforestation rates no longer exists.

Therefore, academically, environmental law<sup>10</sup> has an important role to reflect and formulate strategies regarding development control and environmental protection through deepening of environmental law instruments such as setting standards, prohibitions and restrictions, licensing, environmental impact analysis.<sup>11</sup> Examination of various environmental instruments as well as practical studies, through public dissemination, can encourage the government to clear up the bias in infrastructure development, especially in activities that are short-term solutions and have a major impact on the environment and human rights towards more sustainable development.<sup>12</sup>

<sup>6</sup> Yeremia Sukoyo, Regions Don't Have Local Regulations on RTRW Barrier to National Development, <http://www.beritasatu.com/nasional/394911-region-not-have-perda-rtrw-benda-pembinaan-nasional.html>,

<sup>7</sup> Indonesia, Amendment to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects, Presidential Regulation Number 58 of 2017, (State Gazette of the Republic of Indonesia Year 2017 Number 119), Appendix. There are 248 National Strategic Projects listed in the Presidential Regulation. In addition to the National Strategic Projects, there are 37 infrastructures that are the Government's development priorities in the 2015-2019 period. The list of infrastructure can be seen at: Committee for the Acceleration of Priority Infrastructure Provision, Priority Projects: Latest Status of KPIP Priority Projects, <https://kppip.go.id/project-prioritas/>,

<sup>8</sup> Indonesia, Spatial Planning, Law Number 26 of 2007, (State Gazette of 2007 Number 68, Supplement to State Gazette Number 4725), Article 78 paragraph (4).

<sup>9</sup> Indonesia, Environmental Permit, Government Regulation Number 27 of 2012, (State Gazette of 2012 Number 48, Supplement to State Gazette Number 5285), Article 4 paragraph (2).

<sup>10</sup>Anis Mashdurohatun, Criminal Law Enforcement in the Field of Illegal Logging for Environmental Conservation and Countermeasures, *Journal of Law* Vol XXVI, No. 2, August 2011

<sup>11</sup> Donald K. Anton and Dinah L. Shelton, *Environmental Protection and Human Rights*, (New York: Cambridge University Press, 2011), p. 37-48.

<sup>12</sup>Jon Strand and B. Gabriela Mundaca, Impacts of Macroeconomic Policies on the Environment, Natural Resources, and Welfare in Developing Countries, chapter in Ramon Lopez and Michael A. Toman, *Economic Development & Environmental Sustainability: New Policy Options*, (New York: Oxford University Press), p. 100-1. A.Toman, *Economic Development & Environmental Sustainability: New Policy Options*, (New York: Oxford University Press), p. 100-1.

The legal theory of development initiated by Mochtar Kusumaatmadja regarding the function of law in national development which is described by the phrase "as a means of community renewal" or as "a means of development" can be briefly stated as follows: first, that law is a means of community renewal based on the assumption that the existence of order in the development or renewal effort is something that is desired or even deemed (absolute) necessary; second, that law in the sense of legal rules or regulations can indeed function as a tool (regulator) or a means of development in the sense of channeling the direction of human activity in the direction desired by development or renewal. Both these functions are expected to be carried out by law in addition to their traditional functions, namely to firm certainty and order.

In the context of legislation products through the process of establishing legislation in the field of environment and natural resources by the House of Representatives (DPR) and the government, a basic legal framework is needed as a means of community renewal. This framework is based on social changes (social of change) or social engineering (social engineering) adapted to the needs of contemporary society. It is designed in such a way in order to realize social justice (social justice). The dynamics of the community which always moves towards participation in the process of making policies and legislation, such as: public hearings, regional aspirations, and so on as input materials to be accommodated into policies in accordance with the will of the people. a formula that regulates in principle the country's economy that was built during the reformation period.

In the last three decades, the politics of national legal development has been directed towards adopting the ideology of legal centralism (legal centralism). This is consciously intended to support a development paradigm that is solely oriented towards pursuing economic growth (the economic growth development paradigm). The implication is that natural resources as the main capital for development are not managed in a sustainable way but are instead exploited to pursue economic growth targets. Therefore, the legal instruments used to support the paradigm of economic development as referred to above tend to be centralized, sectoral, sided with large investors (capital oriented), exploitative, and repressive in nature using a security approach.<sup>13</sup>

The legal thought of development which was initiated by Mochtar Kusumaatmadja during the New Order government has penetrated into the Outlines of State Policy (GBHN) in 1972. In the GBHN, legal development always orients the law as a means to reform society. The substantial content that was thick with the legal theory of development turned out to be difficult to apply at that time with the main cause being an authoritarian government, even though the legal character was responsive.

Environmental problems (environmental problems) in the heyday of legal-oriented development law theory as a means of community renewal are difficult to solve properly. This is due to the undeveloped legal culture of the community, as well as the low level of compliance of business entities and the community towards environmental instruments, regulations and permits. In order to encourage industry compliance with environmental regulations, the Ministry of Environment and Forestry (KLHK) implements the Company Performance Rating Assessment Program (PROPER). PROPER aims to encourage industry to apply green economy principles with criteria for evaluating environmental management system performance, energy efficiency, water conservation, emission reduction, biodiversity protection, B3 waste and non-B3 solid waste as well as reducing inequality. economy by implementing community empowerment programs.<sup>14</sup>

In the context of environmental law enforcement, those responsible at the central level are the Directorate General of Environmental and Forestry Law Enforcement (Gakum LHK), the Ministry of Environment and Forestry (KLHK). The Directorate was formed in June 2015 and has been tasked with effectively implementing law enforcement efforts. In addition to handling cases, KLHK also prevents criminal acts of forest product distribution and safeguards forest areas, which were carried out in 187 locations throughout Indonesia.

## CONCLUSION

In general, Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, describes the role of the government to encourage investment growth in the forestry sector. If we do a 'little' content analysis of a number of words or terms, the focus of Government Regulation Number 23 of 2021 concerning Forestry Implementation is to provide business opportunities in forest resource management. The Central Government 'gets' a strategic role in Government Regulation Number 23 of 2021 concerning Forestry Implementation. Local governments are expected to 'play' a role in the framework of action as 'representatives of the central government in the regions'. The substance of Government Regulation Number 23 of 2021 concerning Forestry Implementation, focuses on providing legal certainty in the form of permits and approvals. This is certainly good in law enforcement. However, the substance of Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, still leaves 'concerns' about guaranteeing the sustainability of forest resources. The challenge for local governments is to reformulate policies and strategies that ensure sustainable forest management can be achieved. The enactment of Government Regulation Number 23 of 2021 concerning the Implementation of Forestry, requires changes to forestry development policies in the regions. A number of 'homework' must be done by the local government so that forest resources can be managed sustainably. Thus, it is necessary to develop laws on deforestation in order to realize ecological justice through three main aspects, namely policies, namely strengthening local social systems, developing people's economies, and preserving forest resources.

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<sup>13</sup> I Nyoman Nurjaya, Natural Resource Management in Autonomy Perspective: A Review of Law and Policy, *Suloh Journal*, Vo. V, No. 1, (Lhokseumawe: Faculty of Law Unimal, April 2007), p. 1.

<sup>14</sup> [http://ppid.menlhk.go.id/siaran\\_pers/browse/943](http://ppid.menlhk.go.id/siaran_pers/browse/943), accessed DATE 25/20/2021.

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