

## Reconstruction of Licensing Instrument Regulation as A Means of Protection and Control of Customary Forest Utilization Based On Ecological Justice Values

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### **Abstract**

Efforts to preserve forests are carried out in various ways to raise public awareness of the importance of forests for life. The objectives of this study are: 1) to analyze the regulation of licensing instruments as a means of protecting and controlling the use of customary forests that are not yet based on ecological justice values; 2) to analyze the weaknesses of the regulation of licensing instruments as a means of protecting and controlling the use of customary forests at this time; 3) to reconstruct the regulation of licensing instruments as a means of protecting and controlling the use of customary forests based on ecological justice values. The research uses a constructivism paradigm, normative legal approach, and descriptive type, relying on secondary data (primary, secondary, tertiary legal materials), with literature-based data collection and qualitative analysis. The results of the study are: 1) Regulation of licensing instruments as a means of protecting and controlling the use of customary forests is not yet based on ecological justice values, that there are scattered and unintegrated licensing patterns that cause licensing problems; 2). The weaknesses of licensing regulations for customary forests include: legal substance, no standard, integrative, comprehensive system; legal structure, NGO involvement is regulated but poorly implemented; and legal culture, sectoral egoism hinders coordination, making protection and control of customary forests ineffective; 3). Reconstruction of the regulation of licensing instruments as a means of protecting and controlling the use of customary forests based on ecological justice values consists of value reconstruction and norm reconstruction. The reconstruction shifts licensing regulations for customary forests toward ecological justice values, reforming both values and norms in Law No. 41/1999 (Article 1(6), 51(2)) and Ministerial Regulation No. P.21/2019 (Article 5) on customary law and forest rights.

**Keywords:** *Reconstruction; Regulation; Licensing Instruments; Forest Utilization*

## Introduction

Efforts to preserve forests are carried out in various ways to raise public awareness of the importance of forests for life. Forests will be threatened with destruction if the people living around the forest are not yet prosperous and are forced to destroy the forest to meet their basic needs. This is a problem that must be resolved by finding a model for forest management and protection, especially educational forests with the use of products (NTFPs). NFPs are natural resources that are very abundant in Indonesia and have very good prospects for development.

Environmental audits are a management tool carried out both internally and externally by business activities which are proactive efforts made consciously to identify environmental problems that arise so that they can be prevented.<sup>1</sup>

Various laws and regulations have mandated law enforcement as a form of concern about forest destruction, but until now there has been no improvement in law enforcement as a means of providing protection and management of forests in Indonesia. Until now the level of forest destruction in Indonesia is still ongoing. The Ministry of Environment and Forestry (KLHK) claims that deforestation in Indonesia in 2021-2022 was the lowest in history. However, civil society considers that the downward trend in deforestation rates is false, because an increase in deforestation rates is still possible in the coming years.

Based on data from the Ministry of Environment and Forestry as of January 2024, Indonesia's net deforestation in 2021-2022 was 104 thousand hectares. This number shows a decrease compared to the 2020-2021 period which reached 113.5 thousand hectares. The highest deforestation occurred in the period 1996 to 2000, amounting to 3.5 million hectares per year. Meanwhile, throughout the period 2002-2014 it was recorded at 0.75 million hectares per year, with the lowest point of the deforestation rate occurring in 2022 at 104 thousand hectares.<sup>2</sup>

Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 Concerning Customary Forests and Rights Forests, in Article 5 Paragraph 1 states that the Determination of Customary Forests is carried out through an application to the Minister by Customary Stakeholders. The procedure for submitting the determination of customary forests is regulated in more detail in the Regulation of the Minister of Environment and Forestry Number 9 of 2021 concerning Social Forestry Management (PMLHK 9/2021), as an implementing regulation of PP 23/2021. Article 66 paragraph (2) of PMLHK 9/2021 states the requirements for an application for the determination of customary forests referred to in Article 238 of PP 23/2021, namely: a) MHA identity in the form of an ID card containing the name of the MHA, the name of the MHA chairman and the domicile address of the MHA chairman, b) a map of the Customary Territory signed by the MHA chairman, c) Regional Regulations and/or decisions of the Governor/Regent/Mayor regarding the confirmation of the MHA, d) A Statement Letter signed by the MHA chairman containing an affirmation that the proposed area is within the customary territory and approval of the determination of the function of the proposed Customary Forest in accordance with the provisions of laws and regulations.<sup>3</sup>

According to the World Bank, if the condition of accelerated forest degradation and destruction is allowed to continue, it is estimated that the lowland forests of Sumatra will be destroyed by 2033, Kalimantan will be extinct by 2015 and Sulawesi will be extinct by 2015. One of the activities that contributes the most to forest destruction is the rampant practice of illegal logging. As an illustration, it is

<sup>1</sup>Nur Sulisty B Ambarini, Environmental Audit as a Manifestation of Corporate Social Responsibility in the Era of Economic Globalization", *Journal of Legal Issues, Diponegoro University* , Volume 40, No. 1, March 2011, p. 95.

<sup>2</sup>Ibid <https://fwi.or.id/klaim-deforestasi-klhk-berbeda-dengan-ngo/> accessed 14 January 2025

<sup>3</sup>Kenny Cetera, Harmony of Implementation of the Rules on Recognition of Indigenous Peoples' Rights to Manage Forests Against Pancasila Values, *Jurnal Keindonesiaan* , Vol. 01, No. 02, October 2021

currently estimated that around 75% of the wood circulating in Indonesia is the result of illegal logging activities.<sup>4</sup> As a result of uncontrolled forest destruction, the existence of Indonesia's forests is increasingly threatened by increasing forest destruction, which in turn will cause a reduction in natural resources and very significant ecological destruction. According to records from various Non-Governmental Organizations (NGOs) throughout 2000 to 2005 in Indonesia, every year between 2.1 to 3.6 million hectares were lost and/or damaged. This figure is equivalent to the loss or damage of around 13 football fields per minute.<sup>5</sup> Data on the rate of forest destruction varies depending on the results of analysis and calculations carried out in various different ways because the consolidation of forest areas in Indonesia has not been achieved.

Forest damage caused by fires according to the recapitulation of the area of forest and land fires (Ha) in the Sipongi data of the Directorate of Forest and Land Fire Control of the Ministry of Environment and Forestry on September 30, 2020, the area of forest fires that occurred was 274,375 Ha. When viewed from the area of forest fires this year, there has been a decrease compared to the data on the area of fires in Indonesia in 2019, which was 1,649,258 Ha.<sup>6</sup> The trend of forest fire data from year to year has indeed changed significantly. Of the 34 provinces in Indonesia, in 2020 East Nusa Tenggara became the province with the highest area of forest fires, namely 113,263 Ha, then followed by West Nusa Tenggara Province with a total area of forest fires of 26,958 Ha.

To ensure the best implementation of forest protection, the community is involved in forest protection efforts. Although in the Forestry Law basically divides the focus of forest protection based on forest type. Forest protection in state forests is implemented by the Government. Forest protection in private forests is carried out by the rights holders. Given the vast area of forest owned by Indonesia, it is possible for there to be a loss of control in monitoring forest damage. Article 7 of the Government Regulation of the Republic of Indonesia Number 45 of 2004 concerning Forest Protection explains the purpose of implementing forest protection to prevent and limit forest damage.

Forest protection projects must certainly get more opportunities, if the country wants to maintain the sustainability of forest functions. For example, China has shown seriousness in carrying out forest protection. With the establishment of the Natural Forest Protection Program (NFPP) and the Shelterbelt Development Program, it has contributed to most of the afforestation in the country. Through this program, China has become one of the fastest growing countries in forest resources in the world, with an increase of 4 million hectares on average per year.<sup>7</sup> However, the development of the forest function sustainability agenda has not always gone smoothly.

One of the functions of a permit is as an instrument of government control and supervision for the community, including the business world. A permit is a government tool that is preventive in nature, and is used as an administrative instrument to control community behavior. Therefore, the nature of a permit is preventive, because in a permit instrument, it cannot be separated from the orders and obligations that must be obeyed by the permit holder.<sup>8</sup> In addition, the function of a permit is repressive. A permit can

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<sup>4</sup>World Bank, “ *Results of the Detection and Suppression Workshop* ” organized by WWF and the Ministry of Forestry of the Republic of Indonesia, July 15, 2003, p. 4.

<sup>5</sup>Ministry of Environment, 2005, *Banking and Environment, Challenges in Achieving Sustainable Investment*, Taken from the writing of Fitriani Ardiansyah and Mubariq Ahmad, Investment Screening, Approach in Preventing Environmental Risks in Forestry and Plantation Sector Investment, Jakarta, p. 99.

<sup>6</sup> Directorate of Forest and Land Fire Control, Ministry of Environment and Forestry, <http://sipongi.menlhk.go.id/>, accessed June 30, 2024

<sup>7</sup> Jinzhuo Wu, Wenshu Lin, Xuanyi Peng, and Weiguo Liu, *A Review of Forest Resources and Forest Biodiversity Evaluation System in China*, Hindawi Publishing Corporation International Journal of Forestry Research Volum e 2013, Article ID 396345, 7 p. <http://dx.doi.org/10.1155/2013/396345>

<sup>8</sup>Siahaan NHT, 2009, *Environmental Law*, Pancuran Alam, Jakarta, p. 239

function as an instrument to overcome environmental problems caused by human activities that are inherent in the basis of a permit.

Based on the background description above, it is interesting for researchers to take the title:

**"Reconstruction of Licensing Instrument Regulation as a Means of Protection and Control of Customary Forest Utilization Based on Ecological Justice Values".**

### ***Research Methods***

The author in this study uses the constructivism paradigm, a paradigm that views that legal science only deals with legislation. Law as something that must be applied, and tends not to question the value of justice and its usefulness for society. Legal studies and their enforcement only revolve around what is right and what is not right, what is wrong and what is not wrong and other forms that are more prescriptive.

The type of research used in completing this dissertation is the descriptive analytical legal research method, namely research conducted by means of researching library materials (secondary data) or library law research<sup>9</sup>, then described in the analysis and discussion. The research approach used in this study is normative legal research. In this study, law is conceptualized as an empirical phenomenon that can be observed in real life.

The types of data used are primary and secondary data. To obtain primary data, researchers refer to data or facts and legal cases obtained directly through field research including statements from respondents related to the research object and practices that can be seen and related to the research object. This secondary data is useful as a theoretical basis for analyzing the main problems in this study.

### ***Discussion***

#### **1. Regulation of Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization is Not Yet Based on Justice Values**

Seeing the many environmental problems that occur in Indonesia, we must better understand the concept of environmental justice contained in the constitution as the basic law of Indonesia. Understanding Article H 28 Paragraph (1) and Article 33 Paragraphs (3) and (4) of the 1945 Constitution should be the basis for a broader study, not only the relationship between social justice and environmental justice but also with ecological justice. Andrew Dobson stated that social justice has a function to support the sustainability and sustainability of development. There will be a functional relationship, for example, when social justice tries to overcome the problem of poverty which will have an impact on increasing environmental sustainability. So if we look at it more deeply, the relationship between social justice and ecological justice also has a broader understanding besides realizing the rights to human welfare, it also pays more attention to the condition and sustainability of other creatures.

Explanation of Article 2 of Law 41 of 1999 concerning forestry, states that: Forestry management based on benefits and sustainability, is intended so that every forestry management implementation pays attention to the balance and sustainability of environmental, social and cultural, and economic elements.

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<sup>9</sup>Ediwarm an, 2010, *Monografi, Metodologi Legal Research*, Medan: Program Postgraduate Univ. Muhammad mad iy ah Su m a t e r a North, Medan, hlm. 24.

Forestry management based on people and justice, is intended so that every forestry management must provide equal opportunities and chances to all citizens according to their abilities, so that it can increase the prosperity of the entire people. Therefore, in granting authority to manage or permit forest utilization, monopoly, monopsony, oligopoly, and oligopsony practices must be prevented.

This also explains that the orientation of Law 41 of 1999 is the realization of environmental justice, where forestry management in Indonesia is intended to preserve environmental functions that can support human life itself. Through this, it is necessary that the basis for future forestry management uses the concept of ecological justice which is not only the eye makes humans the center of life. Cosmic studies need to be conducted, namely studying all living things, not only humans but also animals, plants and including landscape sustainability.

Ecological justice is a struggle to obtain environmental justice between generations, to save from the threat and impact of the crisis and the destruction of the environment and sources of human life. To obtain it, the right of every person to a good environment must be recognized. This emphasizes the importance of the state's responsibility to ensure the enforcement of environmental law. Efforts to realize the right to the environment are an important prerequisite for efforts to protect the sustainability of sources of life for the people. The right to the environment must also be accompanied by respect for other basic rights such as the right to political participation, the right to information, the right to self-determination, and the right to freedom of expression and opinion. Without all of that, the enforcement of the right to the environment, as a basic human right, will be impossible.

WALHI along with all elements of the people declared the Indonesian Environmental Political Platform in Jakarta, on December 13, 2017, conveying that Indonesia is currently in an ecological emergency that threatens the continuity of community and state life. WALHI National Executive Director Nur Hidayati said that WALHI assessed that so far the cause of the ecological crisis in Indonesia was the existence of a capitalist economic system strengthened by a neo-liberal and militaristic regime that views natural resources as commodities without ever considering the capacity and carrying capacity of the environment. This opinion was expressed because it appears that the government only delegates all control and management of natural resources to large-scale corporations. Often in the name of development and economic growth, people's economy is used as an object and often in practice the state actually legitimizes the practice of confiscation of land, water, and sources of life for the people, including forest resources.

To realize the mission of good forest management, the government launched a policy to establish Forest Management Units (KPH), as stipulated in Government Regulation Number 6 of 2007 concerning Forest Management and Preparation of Forest Management Plans and Forest Utilization which was amended by Government Regulation Number 3 of 2008 concerning Amendments to Government Regulation Number 6 of 2007. This policy is expected to encourage the realization of forest sustainability and community welfare, as well as accommodate the demands and interests of local governments. The level of forestry damage that occurred during that period was felt to be increasing so that the government decided to form Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. In its development, forestry management in Indonesia has also changed. Changes to these provisions are contained in Law Number 11 of 2020 concerning Job Creation (UUCK) where the law was made with the Omnibus Law system. In Paragraph 4 of the UUCK, specifically in Articles 35, 36 and 37, it contains changes to Law 41 of 1999 concerning Forestry as well as amending Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction. As a reference in implementing the provisions of the UUCK, the government issued Government Regulation No. 23 of 2021 concerning Forestry Implementation which was stipulated and ratified on February 2, 2021. If studied in depth, the provisions in the UUCK are a strategy in order to open up foreign investors to invest their capital in Indonesia.



Forests as part of national natural resources have an important meaning and role in various aspects of social life, development and the environment. In the Republic of Indonesia Law No. 41 of 1999 concerning Forestry, that forests, as a gift and mandate from God Almighty bestowed upon the Indonesian nation, are wealth controlled by the state, providing multi-purpose benefits for humanity, therefore it is obligatory to be grateful for, managed, and utilized optimally, and its sustainability maintained for the greatest prosperity of the people, for the present generation and future generations.<sup>10</sup> This is in line with Article 33 paragraph (3) of the 1945 Constitution which requires that the earth, water and natural resources contained therein be controlled by the state and used as much as possible for the prosperity of the people, so that the implementation of forestry always contains the soul and spirit of the people, is just and sustainable.

The existence of forests can be seen from the extent of their distribution, as an effort to defend the benefits and functions of forests. Based on BPS data,<sup>11</sup> the area of forests in Indonesia reaches 126,094,366.71 hectares. This forest area consists of conservation forests, permanent production forests, conservationable production forests, limited production forests and protected forests. Currently, forests in Indonesia are experiencing a lot of deforestation. It was recorded in 2017 (July 2016 - June 2017) that national deforestation was 479 thousand hectares, with details of 308 thousand hectares being forest areas and the rest being Other Use Areas (APL).<sup>12</sup> Many things affect the deforestation process such as forest and land fires or illegal logging.

The role of the community is very important, especially the community that has lived and interacted with the forest and utilized forest resources, one of which is customary forests in its management has been regulated in Law No. 41 of 1999 concerning Forestry. That means the government has a significant role in influencing policies on the existence of customary forests. Forests before the Constitutional Court (MK) decision on the definition of customary forests were included in state forests so that the community known as indigenous peoples did not get a decent place in a humane manner as people who should be upheld by law.

So far, customary forest management has been regulated through Law No. 41 of 1999 concerning forestry, in which customary forests are still included in state forests, so that management is still entirely in the hands of the state. After the Constitutional Court (MK) decision number 35/2012<sup>13</sup>, customary forests that have been in state forest areas have changed status from state forests to rights forests. Rights forests are forests located on land that is burdened with land rights.<sup>14</sup> This shows that the community has a responsibility in their forest areas. Previously, the government seemed to open the way for interested groups, especially in exploiting the natural forest for their benefit. With this new status, it indicates that ownership and exploitation of customary forests are in the hands of customary law communities. With the changes in regulations related to forest management, customary law communities have consequences in maintaining and protecting their forests. Forest areas that have been fully controlled by the state, today must share ownership with customary law communities, especially for forest areas that are designated as customary forests. This means that customary law communities legally receive recognition and respect to carry out their customary routines, especially regarding the management of customary forests.

The term “green constitution” in the cross-border development of state administration, especially in world countries, is actually not something new. It cannot be denied that in the Indonesian context, the

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<sup>10</sup>Law Number 41 of 1999 concerning Forestry

<sup>11</sup>BPS as of February 2017, <https://www.bps.go.id/subject/60/kehutanan.html#subjekViewTab3>, Accessed on July 19, 2024

<sup>12</sup>Ministry of Environment and Forestry, <http://www.menlhk.go.id/siaran-78-angka-deforestasi-tahun-2017-menurun.html>. Accessed on July 19, 2024

<sup>13</sup>Constitutional Court Decision Number 35/PUU-X/2012 concerning the Judicial Review of Law Number 41 of 1999 concerning Forestry.

<sup>14</sup>Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No.: P.21/ MenLHK-II/ 2015.

discourse of “green constitution” as a term has not been introduced for too long. However, for those who are active and socialize with various developments related to the dynamics of legal thought and state practices in the contemporary world, both through scientific journals and many new books, and through the internet, of course, they will not feel unfamiliar with the term “green constitution”. In the Indonesian context, the provisions regarding the green constitution can be seen in Article 28H paragraph (1)9 and Article 33 paragraph (4) of the 1945 Constitution, the right to obtain a good and healthy environment and good health services is a human right, therefore the 1945 Constitution is clearly very pro-environment, so that it can be called a green constitution. While the term constitutional ecology is an *ijtihad* from the author introducing the term green constitution, which in terms of meaning can both be interpreted the same. Lexically, the word ecology comes from Greek, *oikos* which means residence and *logos* which means science. Ecology is a study of the reciprocal relationship (interaction) between organisms (between living things) and between organisms (living things) and their environment. As a relatively new branch of biology, ecology becomes very important as a study material after humans have awareness of the environment and feel part of or are one of the components of their environment. In our constitution, the discourse around the concept of a green constitution, constitutional ecology and ecocracy can be said to be reflected in the idea of power and human rights as well as the concept of economic democracy in the 1945 Constitution. This means that this country also adheres to the concept of a green constitution with the assumption that the highest power or sovereignty is in the hands of the people, which is reflected in the concept of human rights to a good and healthy environment as referred to in Article 28H paragraph (1) of the 1945 Constitution, and is also reflected in the concept of democracy related to the principle of sustainable development and environmental insight, as emphasized in Article 33 paragraph (4) of the 1945 Constitution, is proof that the concept has been accommodated in the provisions of the Indonesian constitution. On the other hand, that awareness of the importance of ecological issues continues to grow from time to time, so that finally humanity discovers the reality that our ecosystem is not local, but also mondial and global. This is what happens with the phenomenon of global climate change and now environmental issues are so important to pay attention to because they are directly related to the sustainability of human life in the world, all nations are starting to unite and agree to jointly help control global climate change. Today, more and more terms are associated with the word green, such as green economy, green policy, green politics, green paper, green jobs, green collar jobs, green market, green festival, green infrastructure, green building and so on. And now the term green constitution is starting to be widely discussed in various countries in the world. In Jimly Ashiddiqie's view, related to the idea of the importance of a green constitution, environmental sovereignty and even the concept of a new model of democracy termed ecocracy. The term ecocracy can be used to complement the treasury of understanding reflected in the terms democracy (people's sovereignty), nomocracy (legal sovereignty) and theocracy (God's sovereignty) that have been known so far. Including the term ecocracy, it can be said that it is not a completely new term, since the end of 1990, this term has begun to be thrown out in various forums and mass media regarding environmental issues, as well as the term green constitution which since the 1970s this term has often been used to describe the relationship between something and the idea of environmental protection.<sup>10</sup> The constitutionalization of the environment in the Indonesian constitution itself has been carried out in the amendment to the 1945 Constitution, but not many parties have paid serious attention to this. Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution are proof that the Indonesian constitution is a Green Constitution. In the provisions of Article 28H paragraph (1) of the 1945 Constitution it reads: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to obtain a good and healthy environment and the right to obtain health services". Based on these provisions, it can be concluded that the right to obtain a good and healthy environment and good health services is a human right. Therefore, the 1945 Constitution is clearly very pro-environment. Meanwhile, Article 33 paragraph (4) of the 1945 Constitution reads: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency-fairness, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity". Thus, there are 2 (two) concepts related to the idea of the

ecosystem, namely that the national economy based on economic democracy must contain the principles of sustainability and environmental insight. This means that nature is recognized as having its own power and basic rights that must not be violated by anyone (inalienable rights). Nature is recognized as having its own sovereignty. Therefore, in addition to the people as humans who are considered sovereign, nature is also sovereign. This is what is meant by the principle of environmental sovereignty which is also contained in the 1945 Constitution. Thus we can say that the 1945 Constitution is also a Green constitution which is important to be realized and upheld in the state. Furthermore, Jimly Ashiddiqie said that<sup>11</sup> there are at least two main reasons why the concept of green constitution and ecocracy is very important to be understood by all components of the Indonesian nation; First, regarding the current condition of environmental sustainability which is very concerning, it is fitting that we lay down and strengthen the conceptual foundations regarding environmental issues and sustainable development with an environmental perspective. Second, the 1945 Constitution as the supreme law of the land basically contains basic ideas regarding environmental sovereignty and ecocracy whose values can be equated with the concepts of democracy and nomocracy.

Regulation of licensing instruments as a means of protecting and controlling the use of customary forests is not yet based on the value of justice that there is a pattern of licensing that is scattered and not integrated, thus causing licensing problems. The same thing was also concluded in one of the studies conducted by the Task Force for the Eradication of Legal Mafia (Satgas PMH) where it was identified that the trigger for licensing problems was the lack of integration of forestry sector licensing procedures with other sectors, weak transparency and community participation and the practice of corruption, collusion, and nepotism (KKN) in the licensing system.

## **2. Weaknesses of Current Regulation of Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization**

### **a. Weaknesses in Legal Substantive Aspects**

The weakness of the legal substance aspect is the regulation of licensing in Indonesia, there are no general provisions on a standard, integrative, and comprehensive licensing system. Meanwhile, licensing regulations are in various laws and regulations. So what happens is a misalignment between permits both horizontally, namely between sectors, such as between regulations in the forestry sector and regulations in the forest land user sector such as plantations and mining, as well as a vertical misalignment, namely central and regional, such as between regulations at the Government level, with regulations at the Provincial Government or Regency/City Government level. Meanwhile, the licensing authority related to forests lies with the various agencies which adds to the complexity of licensing at the implementation level.

### **b. Weaknesses in Legal Structure Aspects**

The weakness of the legal structure aspect is that the involvement of NGOs is regulated and guaranteed in policy documents both in the Regulation of the Minister of Environment and Forestry Number P.30/Menlhk/Setjen/PHPL.3/3/2016 concerning the Assessment of Sustainable Production Forest Management Performance and Timber Legality Verification for Permit Holders, Management Rights, or in Private Forests, which was updated with the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/10/2020 concerning the Assessment of Sustainable Production Forest Management Performance and Timber Legality Verification for Permit Holders, Management Rights, Private Forests, or Holders of Timber Forest Product Utilization Legality. With the enactment of several of the above policies, several parties consider the involvement of NGOs to be excessive, even more dominant in the policy-making process.



**c. Weaknesses of Legal Culture Aspects**

The weakness of the legal culture aspect, namely the sectoral ego culture in Indonesia, is one of the main problems. The idea of delegating permits to one institution places a high workload on the institution, especially for permits in the natural resource sector that require complex technical studies, as well as the potential for conflict with agencies that previously had the authority. In reality, local wisdom or the customs of traditional communities are more effective in utilizing and managing forests with the principle of preserving the forest environment they have.

**3.Reconstruction of Licensing Instrument Regulation as a Means of Protection and Control of Customary Forest Utilization Based on Ecological Justice Values****a.Comparison with Foreign Countries of Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization****1) United States of America**

Savannah River Site (SRS) The Savannah River Site is one of several government-owned sites operated within the U.S. Department of Energy's nuclear defense complex. As a controlled area with limited public access, it was established in the 1950s to produce nuclear raw materials such as plutonium and tritium. The development of nuclear mission-related activities in the SRS area occurs in several industrial areas including five nuclear production reactors. The nuclear production reactors consist of: a chemical separation facility; a heavy water extraction plant; a nuclear fuel and target fabrication facility; a tritium extraction facility; a waste processing, storage, and disposal facility; and various administrative support facilities.

A management plan for SRS has been developed for the next fifty years. In the near future, the main agenda is to improve environmental quality, clean up all waste on the site and properly manage waste generated by the use of SRS. Natural resource management is an integral component of the SRS area and is included in the Long-Term Comprehensive Plan. Specifically, the plan includes three main objectives in natural resource management, including: demonstrating excellence in environmental management; providing information essential to the continuation of every scientific development required by the Department of Energy; and providing a cost-effective, flexible and compatible program to support the SRS development mission.

The United States has been witnessing unprecedented growth in urban areas for decades. According to Nowak et al., between 1990 and 2000, the share of urban land area increased from 2.5% to a peak of 3.1%. The areas surrounding US cities still maintain an average tree cover of 27%, which includes millions of trees along streets, parks, riverbanks as buffer zones, and other public areas. Furthermore, Walton and Nowak predict that in the future, urban areas will continue to grow to cover up to 8.1% by 2050. The increase in urban forest area can be categorized as a geographic coverage. Sustainable forest resource management at the national level faces various challenges such as the influence of population growth and development pressures that also accelerate the loss of land for greening.

**2) China**

Premier Wen Jiabao emphasized at the first task force meeting in 2009 that forestry has a special role to play in addressing global climate change, and that China should develop forests as a strategic option in combating climate change. Several policies and actions were taken: First, the enhancement of the forestry sector was included in China's National Climate Change Plan and is voluntary as a mitigation activity to be implemented before 2020. The government set a target that by 2020 China's forest area and

reserve forest should be increased to 40 million hectares and 1.3 billion cubic meters respectively. Second, the 12th Five-Year Plan for National Economic and Social Development and the GHG Emission Control Work Plan require that new forest areas be increased by 12.5 million hectares, forest cover should increase by 21.66%, and protected forests should be increased to 600 million cubic meters. Third, implement the agenda in forestry mitigation, adaptation, and capacity building, and increase the allocation of funds for afforestation, forest management, forest fire prevention and pest control, and wetland protection and forest area restoration. Fourth, regions with favorable conditions are encouraged to launch CDM (Clean Development Mechanism) afforestation and reforestation projects. Given the domestic afforestation and greening initiatives for carbon sinks, regions are encouraged to explore pilot projects that include forestry in carbon trading pilots. They are also encouraged to launch policy research on intellectual property and forest carbon trading. They should actively cooperate with relevant departments to promote the national legislative process to combat climate change. Fifth, create technical solutions for forest resource investigation to meet the needs of data, methodology, and regulatory models for forest carbon monitoring systems, measurement, reporting and verification of forest carbon status, and submitting national-scale information. Sixth, develop forestry-related laws, improve law enforcement, further enhance forest rights reform, and explore equitable carbon sink rights and mechanisms for sharing related interests. Seventh, conducting research on seed selection during afforestation, adjusting forest stand structures, and protecting wild fauna and flora. Eighth, actively and constructively participating in climate change negotiations and promoting real bilateral and multilateral cooperation in the forestry sector.<sup>15</sup>

In late 2003, the Forestry Department of Guangxi Zhuang Autonomous Region and the World Bank jointly carried out a comprehensive forestry development and protection project in Guangxi. At that time, the World Bank was launching the BIOCF (BioCarbon Fund) Program. The project was a reforestation project in the Pearl River Basin of Guangxi in China to explore CDM reforestation technology, methods, and carbon trading mechanisms. The project, jointly funded by the government and international organizations, established afforestation agencies and farmers to cooperate in development. The forest lands used in the project were all degraded lands in remote areas, which were ecologically very vulnerable in the upper reaches of the Pearl River Basin. In order to encourage rural communities and households to plant trees in these areas, the Guangxi Zhuang Autonomous Region government offered support through policies and technical support. The World Bank's BIOCF also promised to purchase the future of forest carbon through contract buyers.

### 3) Canada

Canada as the second largest country has a history of forest change that varies. The most obvious history of forest change in Canada began in the 1700s during European colonization. Pine and spruce trees were cut for ship masts and much of the wood was exported to Europe, which was short of wood because many forests had been destroyed by war, industrial harvesting for fuel, and clearing for agriculture. There was a big momentum in the 1800s and early 1900s, namely the large-scale forest harvesting in British Columbia (BC) even though there was a gold rush in 1858-1865.

The Canadian Constitution grants provinces the authority to manage and control natural resources, including forests. The increasing complexity of legislation regarding forest management for multiple uses beyond timber supply reflects the growing public interest in forest management. In 1992, the first National Sustainable Forest Strategy was created, resulting in a National Forest Agreement Commitment signed by over 200 groups. The goal of this strategy is to maintain and enhance the long-

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<sup>15</sup> Hunfeng Wang, *Response to Climate Change by China's Forestry and Vision of Forest Carbon Market ( Forest Carbon Practices and Low Carbon Development in China )*, Beijing, Springer Nature Singapore Pte Ltd. and Peking University Press, 2019, P. 55-57.

term health of forests to sustain ecosystems for the benefit of all living things, both nationally and globally, while considering environmental, economic, social and cultural opportunities for the benefit of present and future generations.

The Canadian Forest Service (CFS), now part of the federal Department of Natural Resources Canada, has experienced budget and staff reductions in recent years. From 1995 to 1998, the CFS's annual operating budget dropped from \$219 million to \$93 million. In 1996, the Canadian Forestry Institute issued a statement stating that a strong federal presence must be maintained and that Canada's forests are such a critical issue that it does not want further budget cuts that would weaken the effectiveness of federal forestry management. In June 1995, British Columbia enacted the Forest Practices Code of British Columbia Act. While it introduced forest management provisions, the Ministry of Forests and the Ministry of Environment, Lands and Parks acknowledged that the code was not without its weaknesses. Environmental NGOs have highlighted several weaknesses in British Columbia's forestry practices. In 1996, 83 per cent of forest streams were clear-cut on both banks, a practice that is potentially environmentally damaging in ways that are generally permitted under the code. In theory, British Columbia has one of Canada's most sophisticated legal regimes designed to ensure sustainable forest management. The Ministry of Forests has taken a leading role in enforcing the Forest Practices Code. Its primary purpose is to help British Columbia's forestry industry achieve good forestry practices. While there have been significant improvements in forestry practices since the code came into effect, Forest Watch of British Columbia found that the Ministry of Forests has failed to identify some non-compliance with the Forest Practices Code, including a significant number of forest-related crimes that are currently under-reported.

For reference in other parts of Canada's forest areas, Ontario, a forestry compliance audit in the Algoma Highlands in northern Ontario found that logging activities were threatening waterways, damaging fish streams, and leaving piles of debris in remote areas. In 1998, an independent Ministry of Natural Resources (MNR) field investigation confirmed 10 specific forestry violations and recommended enforcement in three action cases. The Ontario Divisional Court declared the Elk Lake, Upper Spanish, and Temagami forest management plans to be without force and effect and found that the Ministry of Natural Resources had failed to comply with the Crown Forest Sustainability Act.<sup>16</sup>

#### **b. Reconstruction of Regulatory Values of Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization Based on Ecological Justice Values**

Reconstruction of the regulatory value of licensing instruments as a means of protecting and controlling the use of customary forests, which previously were not based on justice, is now based on ecological justice values.

#### **c. Reconstruction of Regulatory Norms for Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization Based on Ecological Justice Values**

To ensure the best implementation of forest protection, the community is involved in forest protection efforts. Although in the Forestry Law basically divides the focus of forest protection based on forest type. Forest protection in state forests is implemented by the Government. Forest protection in private forests is carried out by the rights holders. Given the vast area of forest owned by Indonesia, it is possible for a loss of control in monitoring forest damage.

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<sup>16</sup> Wynet Smith and Peter Lee et.al, *Canada's Forests At A Crossroads: An Assessment In The Year 2000* , Beacon Hill Communications Group Inc., Victoria, p. 76-84.

Based on the description above, a reconstruction table is presented as below:

Table 5.1.Reconstruction of Regulations Regulation of Licensing Instruments as a Means of Protection and Control of Customary Forest Utilization Based on Ecological Justice Values

No.	Construction	Weakness	Reconstruction
1	Law Number 41 of 1999 concerning Forestry article 1 Number 6 State customary forests located in the territory of indigenous communities	Has not provided benefits and justice to indigenous communities , customary leaders and users	Reconstruction of Law Number 41 of 1999 concerning Forestry Article 1 Number 6 by adding the words benefit and justice to indigenous communities, traditional holders and users, so that it reads: article 1 Number 6 State customary forests located in the territory of indigenous communities that provide benefits and justice to indigenous communities, customary stakeholders, and users.
2	Law Number 41 of 1999 concerning Forestry Article 51 Verse 2 Officials who are given special police authority as referred to in paragraph (1) have the authority to: a. conduct patrols/watches in forest areas or their jurisdiction; b. provide letters or documents relating to the transportation of forest products in forest areas or their jurisdiction; c. receive reports of criminal acts involving forests, forest areas and forest products; d. seek information and evidence of criminal acts involving forests, forest areas, and forest products; e. in the event of being caught red-handed, it is mandatory to arrest the suspect to be handed over to the authorities; and f. make reports and sign reports on the occurrence of criminal acts involving forests, forest areas and forest products.	Not yet acting firmly, professionally and based on the values of justice	Reconstruction of Law Number 41 of 1999 concerning Forestry, in Article 51 Paragraph 2, by adding the letter g to act firmly, professionally and based on the values of justice, so that it reads: Article 51 Verse 2 Officials who are given special police authority as referred to in paragraph (1) have the authority to: a. conduct patrols/watches in forest areas or their jurisdiction; b. provide letters or documents relating to the transportation of forest products in forest areas or their jurisdiction; c. receive reports of criminal acts involving forests, forest areas and forest products; d. seek information and evidence of criminal acts involving forests, forest areas, and forest products; e. in the event of being caught red-handed, it is mandatory to arrest the suspect to be handed over to the authorities; and f. make reports and sign reports on the occurrence of criminal acts involving forests, forest areas and forest products. g. act firmly, professionally and based on the values of justice.

3	<p>Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 Concerning Customary Forests and Rights Forests</p> <p>Article 5</p> <p>(1) Customary Forest designation is carried out through an application to the Minister by traditional stakeholders.</p> <p>(2) The application as referred to in paragraph (1) must meet the following requirements:</p> <p>a. the area of the Customary Law Community requested is partly or entirely forest;</p> <p>b. there are legal products recognizing Customary Law Communities in the form of:</p> <ol style="list-style-type: none"> <li>1. Regional Regulations for Customary Forests within State Forest Areas; or</li> <li>2. Regional Regulations or Regional Head Decrees for Customary Forests located outside the State Forest Area</li> </ol> <p>c. there is a map of the customary area as an attachment to the Regional Regulation or Regional Head Decree.</p> <p>d. in the process of compiling a map of customary areas as referred to in letter c, consultation with the Ministry of Environment and Forestry may be carried out; and</p> <p>e. the existence of a Statement Letter containing:</p> <ol style="list-style-type: none"> <li>1. confirmation that the proposed area is the applicant's customary area/customary forest; and</li> <li>2. approval is determined as Customary Forest with protection, conservation or production functions.</li> </ol>	<p>Not yet based on ecological justice</p>	<p>Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 Concerning Customary Law and Forest Rights, in Article 5 by adding the letter f based on ecological justice, so that it reads:</p> <p>Article 5</p> <p>(1) Customary Forest designation is carried out through an application to the Minister by traditional stakeholders.</p> <p>(2) The application as referred to in paragraph (1) must meet the following requirements:</p> <p>a. the area of the Customary Law Community requested is partly or entirely forest;</p> <p>b. there are legal products recognizing Customary Law Communities in the form of:</p> <ol style="list-style-type: none"> <li>1. Regional Regulations for Customary Forests within State Forest Areas; or</li> <li>2. Regional Regulations or Regional Head Decrees for Customary Forests located outside the State Forest Area</li> </ol> <p>c. there is a map of the customary area as an attachment to the Regional Regulation or Regional Head Decree.</p> <p>d. in the process of compiling a map of customary areas as referred to in letter c, consultation with the Ministry of Environment and Forestry may be carried out; and</p> <p>e. the existence of a Statement Letter containing:</p> <ol style="list-style-type: none"> <li>1. confirmation that the proposed area is the applicant's customary area/customary forest; and</li> <li>2. approval is determined as Customary Forest with protection, conservation or production functions.</li> </ol> <p>f. based on ecological justice</p>
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## Closing

## Conclusion

Regulation of licensing instruments as a means of protecting and controlling the use of customary forests is not yet based on ecological justice values, that there are scattered and unintegrated licensing



patterns that cause licensing problems; 2). The weaknesses of the regulation of licensing instruments as a means of protecting and controlling the use of customary forests currently consist of weaknesses in the aspects of legal substance, legal structure and weaknesses in the aspects of legal culture. The weakness of the legal substance aspect is that the regulation of licensing in Indonesia, there are no general provisions on a standard, integrative and comprehensive licensing system. The weakness of the legal structure aspect is that the involvement of NGOs is regulated and guaranteed in policy documents both in No. P.21 / MENLHK / SETJEN / KUM.1 / 10/2020 and the Republic of Indonesia Forestry Number P.21 / MENLHK / SETJEN / KUM.1 / 10/2020. The weakness of the legal culture aspect is that the sectoral ego culture in Indonesia is one of the main problems; 3). Reconstruction of the regulation of licensing instruments as a means of protecting and controlling the use of customary forests based on ecological justice values consists of value reconstruction and norm reconstruction. Reconstruction of regulatory values of licensing instruments as a means of protecting and controlling the use of customary forests that were previously not based on justice is now based on ecological justice values. Reconstruction of regulatory norms of licensing instruments as a means of protecting and controlling the use of customary forests based on ecological justice values in Law Number 41 of 1999 concerning Forestry, Article 1 Number 6, Article 51 Paragraph 2 and Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Law and Forest Rights, in Article 5.

## References

### Scientific Magazines/Journals

- Kenny Cetera, Harmony of Implementation of the Rules on Recognition of Indigenous Peoples' Rights to Manage Forests Against Pancasila Values, *Jurnal Keindonesiaan*, Vol. 01, No. 02, October 2021.
- Jinzhao Wu, Wenshu Lin, Xuanyi Peng, and Weiguo Liu, *A Review of Forest Resources and Forest Biodiversity Evaluation System in China*, Hindawi Publishing Corporation *International Journal of Forestry Research* Volume e 2013, Article ID 396345, 7 p. <http://dx.doi.org/10.1155/2013/396345>.
- Nur Sulisty B Ambarini, Environmental Audit as a Manifestation of Corporate Social Responsibility in the Era of Economic Globalization”, *Journal of Legal Issues, Diponegoro University*, Volume 40, No. 1, March 2011.

### Book

- Edi Warman, 2010, *Monografi, Metodologi Legal Research*, Medan: Program Postgraduate Univ. Muhammad Madyah Sumatera Utara, Medan.
- Hunfeng Wang, *Response to Climate Change by China's Forestry and Vision of Forest Carbon Market (Forest Carbon Practices and Low Carbon Development in China)*, Beijing, Springer Nature Singapore Pte Ltd. and Peking University Press, 2019.
- Sihaan NHT, 2009, *Environmental Law*, Pancuran Alam, Jakarta, p. 239.
- Ministry of Environment, 2005, *Banking and Environment, Challenges in Achieving Sustainable Investment*, Taken from the writing of Fitriani Ardiansyah and Mubariq Ahmad, Investment Screening, Approaches in Preventing Environmental Risks in Forestry and Plantation Sector Investments, Jakarta.

Wynet Smith and Peter Lee et.all, *Canada's Forests At A Crossroads: An Assessment In The Year 2000* ,  
Beacon Hill Communications Group Inc., Victoria.

### **Legislation**

The 1945 Constitution of the Republic of Indonesia.

Criminal Code.

Criminal Procedure Code .

Law Number 4 of 1982 concerning Basic Provisions for Environmental Management .

Law Number 23 of 1997 concerning Environmental Management.

Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry .

Law Number 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law Number 1  
of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law.

Law Number 32 of 2009 concerning Environmental Protection and Management.

Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number  
P.21/MENLHK/SETJEN/KUM.1/4/2019 Concerning Customary Forests and Rights Forests.

Constitutional Court Decision Number 35/PUU-X/2012 concerning the Judicial Review of Law Number  
41 of 1999 concerning Forestry.

### **Website**

Directorate of Forest and Land Fire Control, Ministry of Environment and Forestry,  
<http://sipongi.menlhk.go.id/>, accessed June 30, 2024.

Ibid <https://fwi.or.id/klaim-deforestasi-klhk-berbeda-dengan-ngo/> accessed 14 January 2025.

Rosari, M, 2018 Supreme Court Regulation changes traffic ticket hearing mechanism - ANTARA News.  
Retrieved July 11, 2018, from <https://www.antaranews.com/berita/606700/peraturan-mahkamah-agung-ubah-mekanisme-sidang-tilang>.

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