

Legal Harmonization of Red Program in the Protection of Forest Management in Indonesia

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Abstract--Southeast Asia is undergoing the expansion and intensification in forest conventions for oil palm plantations. The expansion of oil palm plantations is rapidly becoming a global phenomenon. The environmental impact of large oil palm plantations results in increased greenhouse gas emissions from deforestation and forest degradation. The world community is committed to saving the earth, so the presence of REDD+ as a mechanism that addresses the climate change problems caused by deforestation and forest degradation. Efforts to harmonize the law of REDD+ programs are pursued as an effort to address the complexity of forest management protection issues in Indonesia. Harmonization of law aims to realize harmony, conformity, balance fit among the norms in the legislation as a legal system within the unity of the framework of the national legal system.

Keywords: *harmonization, REDD+, protection of forest management*

I. INTRODUCTION

Forests have valuable assets especially related to ecosystem and environmental values whose properties are useful not only in a local or regional context but are a global issue, the question of all humanity on earth. Agree with Otto Soemarwoto, that forests can absorb concentrated carbon concentration in the atmosphere.[1] Carbon products caused by activities on earth, such as industry, vehicle fumes and oil burning can lead to climate change.

CO₂ in the atmosphere together with water vapour, nitrous oxide, methane have properties like glass that continue short-wave radiation or sunlight but absorb and reflect the long-wave radiation or radiation behind the radiated earth that is hot so that the earth's atmosphere is increasing.[2] can cause effects that increase the temperature of Earth's atmosphere. Being on the earth covered by these gases is like inside a greenhouse that is always hotter than the outside air temperature. These gases are called Greenhouse Gases.

The effects of greenhouse gases lead to global warming and climate change. Climate change according to Daniel Murdiyarso, is a global phenomenon triggered by human activities primarily related to the use of Fossil Fuels and land-use activities. Land use change or known as the transfer of forest functions causes the depletion of forest areas caused by natural factors and human factors.

Oil palm plantations in Southeast Asia are built on several types of primary forest land or secondary forest. The expansion of palm oil plantations was triggered by an

increase in global demand for palm oil in international markets to encourage further investment resulting in accelerating land acquisition.

Oil palm plantations in Indonesia are estimated at 9.4 million hectares where the most powerful expansion is underway. Each year approximately 600,000 hectares of land is cleared and expansion occur non-stop in Sumatera, Kalimantan, Sulawesi, and West Papuan. Oil palm expansion also occurs in Cambodia, Thailand, the Philippines and Vietnam, which have largely ignored the Environmental Impact Analysis.[3]

Forests are environmentally beneficial, they are the water regulator, the biodiversity reserve in it and the control of the climate balance. Indonesia's forest area of approximately 121 hectares occupies about 63.7% of its land area or about 3.13% of the world's forests, which is about 3.87 billion hectares.

Forests as climate controllers are felt to be beneficial after the rise of climate change and greenhouse gas emissions. Forests that can absorb and release carbon, but carbon are released into the atmosphere that causes global problems due to deforestation and degradation (forest destruction).

Contributing deforestation and degradation to global carbon emissions (18% -20% of greenhouse emissions), plus emissions from industrialized industrial wastes, add to the issue of global warming and increasingly visible climate change.[4]

REDD+ is a mechanism to respond to climate change caused by deforestation and degradation. The Republic of Indonesia plays an active role in encouraging the REDD+ program, which is committed to reducing carbon emissions by 26%. This is because the State of Indonesia is one of the countries with high deforestation rates, so to save forests for reduce emissions from lost and reduced forest.

REDD+ is a UN-supported world community project, centralized in Central Kalimantan, where Central Kalimantan is based on the Central Kalimantan Provincial Spatial Plan No. 8 Year 2003 is divided into 10,294,853.52 hectares of forest (66%) and non-forest area of 5,061,846.48 hectares (34%). The deforestation rate from 2011 to 2016 reached 486,241 hectares, on average per year reaching 159,319 hectares.

While the rate of forest degradation reaches 1.7 to 2.5 million hectares per year. The State of Indonesia has undertaken a moratorium on flying gaps, tree-lined tree planting, forest fires and peat land fires. It will be scientifically reviewed on the harmonization of REDD+ program law in forest management protection.

II. FINDINGS AND DISCUSSION

Sustainable development became a global issue when the United Nations World Commission on Environment and Development in its 1987 report entitled "Our Common Future" otherwise known as "*Brundtland Report*".[5]

Our common futures in essence propose a change of pattern of development from "conventional" which merely oriented on the economic aspect to "sustainable development" that simultaneously implement economic, social and environmental aspects to guarantee the future of the world and humanity better.

Article 1 number 3 of Law no. 32 of 2009 on Environmental Protection and Management, affirms that "sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into development strategies to ensure the integrity of the environment and safety, capacity, well-being and quality of life of present and future generations". The Government of Indonesia is committed to implement the pattern of sustainable development in the implementation of national development.

Forest as one of Sumer natural resources is an element of the environment. Natural resources contain many interests of society, government and state. According to Oekan S Abdoellah it is said that Indonesia is one country with the largest natural resources in the world. The World Bank estimates, in terms of natural resource wealth, Indonesia ranks number 9 in the world.[6]

Constitutionally natural resources are controlled by the State. According to San Afri Awang, it is said that: "to master natural resources means to exploit economic resources and economic assets means to have a vehicle to get the power.[7]

Vehicles acquire power regulated in Article 33 section (3) of the 1945 Constitution of the Republic of Indonesia.

Of the 1945 Constitution of the State of the Republic of Indonesia, this in Article 33 section (3) explicitly states that "the earth, water, and riches contained therein are controlled by the State". The notion of being mastered is owned, as provided in the LoGA in Article 3, essentially saying that:

- 1) The State as a power organization shall regulate the allocation and administration of natural resources for the public interest;
- 2) The government has natural resources; and
- 3) The government organizes the utilization of natural resources for equity and improves public welfare. Natural resources as mentioned in Article 1 point 9, are elements of the environment consisting of biological and non-biological resources that form the whole ecosystem unity.

Based on the environmental management policy, the use of natural resources must be harmonious, harmonious, and balanced with environmental functions. Consequently, policies, plans and/or development programs must be imbued with the obligation to conserve the environment and realize sustainable development

objectives. The law is the foundation on which government policies are based. In this connection there is a legal link and significance to the policy. The law is also a set of tools available to government to realize policy.

Policies are fixed decisions that are characterized by the consistency and repetitiveness of the behaviour of those who make and from those who comply with the decisions.[8]

The law according to E Utrecht is the set of rules (commandments and prohibitions) that take care of the order of a society and therefore must be obeyed by that society, thus the legal framework as the basis for policy in natural resource management becomes the place for efforts to integrate the conservation of biodiversity and environmentally sustainable development.[9]

The law that embodies natural resource management policy is Law no. 5 of 1990 on the Conservation of Biological Natural Resources and its Ecosystem. In article 1 number 18, it is said that the conservation of natural resources is the management of natural resources to ensure its wise and sustainable utilization while maintaining and improving the quality of its value and its diversity. Then in Law no. 5 of 1983 on the Exclusive Economic Zone, which in Article 1 letter d formulates that the conservation of natural resources is intended all efforts to protect and conserve natural resources.

The goal of conserving natural resources is to protect and conserve natural resources, while conservation of natural resources is only formulated in the word "every effort", as long as it targets "protection and conservation". While the protection and preservation which is the goal of conservation of natural resources shall mean any effort aimed at maintaining and maintaining the natural resources, as the Article 1 sub-paragraph e of the ZEE Law.

Law on Conservation of Biological Natural Resources and its Ecosystem is a legal basis ensuring legal certainty for the conservation of biological natural resources and its ecosystem which in Article 1 point 2 on Conservation of Biological Natural Resources and its Ecosystem says that the management of natural resources utilized is wise to ensure continuity of its supply by maintaining and enhancing the quality of its diversity and value. This formula is in line with the Law on Environmental Management Protection, where the conservation of natural resources is oriented to "management and utilization of biological natural resources". Natural resource management connotes harvesting natural resources with the responsibility of maintaining its sustainability, while exploiting uses exploits without thinking about its sustainability.

The legal policy of natural resource utilization is based on the preservation of the quality of natural resources, since it must be done "wisely". The word wise means that the utilization of natural resources must be positive with the direction of "natural resource management". Thus, both Law on Environmental Protection and Management and Law on Conservation of Biological Natural Resources and its Ecosystem, said that the conservation of natural resources as "natural resource management which

includes the utilization effort, structuring, maintenance, supervision, controlling, restoration and development of natural resources as stated in Article 1 number 2 and 11 Law on Environmental Protection and Management j.o Article 1 number 2 Law on Environmental Protection and Management.

To maintain the conservation of biological natural resources and forest ecosystems required seriousness in reducing emissions from deforestation and forest degradation. Deforestation is the conversion of forested land to become non-forested, whereas forest degradation is the destruction of forest ecosystems due to loss of part of forest cover, forest density.

Reducing emissions from deforestation and forest degradation (Reducing Emissions from Deforestation and Degradation, REDD) is an incentive scheme developed for communities and countries to protect their forests from activities that will increase carbon emissions due to deforestation and forest degradation. The harmonization of REDD+ law in forest management protection refers to the theory of the legal system, which includes:

- 1) Legal substance, harmonization of forest area management law through REDD+ program aimed at reforming forest protection and management policy which often lead to disharmony of legislation:
 - a) Understanding the meaning of permits to release forest areas will have an impact on the decision-making authority of the central government, but should be interpreted as controlling the impacts.
 - b) The legal certainty of the forest area will be related to the tenure rights and rights of forest area management
 - c) Effective administration licensing and law enforcement will have an impact on forest good governance that has an impact on the successful implementation of REDD + programs.
 - d) Effective coordination between government agencies in the drafting of legislation in order to create synchronization of legislation.
 - e) Effective and effective workplace culture change in order to realize good conduct in forest area management.
- 2) Structural bodies authorized to enact legislation should behave responsively to the management of forest areas, in order that local regulations developed by local governments support environmentally sustainable development.
- 3) Culture, the existence of legal awareness of all parties' government, employers and the community, where the fulfillment of welfare should not sacrifice understanding of forest area management.

Harmonization of forest area management in the change of allotment and function of forest area for oil palm plantation through global climate change mitigation of REDD+ program, are:

- 1) Philosophically.
In accordance with the philosophy of the state of Pancasila, with reference to the theory of Philipus M Hardjon, this formulates that elements or elements of the Pancasila State Law as follows:

- a) The harmony of the relationship between the government and the people based on the principle of harmony;
- b) Proportional functional relationship between state power;
- c) The principle of dispute resolution by consensus and justice is the last means;
- d) Balance between rights and obligations.[10]

Referring to the opinion of Philipus M Hardjon based on the precepts of the 5th "social justice for the Indonesian people" and Article 33 of the 1945 Constitution of the Republic of Indonesia, it is clear that the State of Indonesia adheres to the welfare state of the welfare state in which the state plays an active role in the management of environmentally sustainable forests. In accordance with the theory of justice from John Rawls, that justice in the management of forest areas can be interpreted as a balance between personal interests and common interests, which in the structure of the community of justice formulated and given as a result of the fulfilment of basic structure of a fair society. Related to the phenomenon of global climate change behaviour that is not environmentally friendly by exploiting the forest area resources in excess is not in accordance with its designation that impact on global warming.

2) Juridically

Forest area management arrangement as stated in Forestry Law, Environmental Protection and Management Act, Spatial Planning Law and Law on Regional Autonomy 2015, Minister of Forestry Regulation related to spatial arrangement, Government Regulation related to change of area and area function forest and Government Regulations related to the REDD+ program. The Regional Regulation of Provincial Spatial Plan of Central Kalimantan Province in its production procedure refers to the Law on Regional Autonomy and Spatial Planning Law, and hierarchically has been in accordance with the order of legislation, while the Forest Use Agreement based on the Ministerial Decree of Hierarchy is not included in the regulation of the law.

The Minister of Forestry Decree is beshikking not regaling. Beshikking is a unilateral legal action in the field of government conducted by a government agency based on delegate authority, real, individual and final. Beshikking includes a decree of decree and administrative decision of the State. Hierarchically, the ministerial decree does not mean higher than a regional regulation and it does not mean that the minister's decision can cancel the regional regulation. Given the autonomy law there are only levels of government namely central government, provincial government and district / city governments.

3) Sociologically.

Harmonize the understanding of the values, mind sets, and dogmatic sun-print norms implicit in the product of the law of a nation, because with different understandings causes different meaning in its implications. To harmonize the values and laws in the

community in the protection and management of forest areas as a community living space.

4) Economically.

Investment climate is still running despite the constraint of overlapping regulation of forest areas, for it needs to harmonize the extent of forest areas that are regulated in Regional Regulation with that set in TGHR. Investment of oil palm plantations is a source of local revenue and can absorb labour. Change changes in the use and function of forest areas through a REDD + program by implementing sustainable forest management and forest conservation involving the community can realize the forest's prosperity and the welfare of the people.

5) Culturally.

Forests are part of the life of the community, both indigenous peoples and local communities that have local wisdom and custom institutions that manage the management of forest areas wisely and sustainable. Changes in the allocation and function of forest areas regulated by customary institutions and local communities is a social order of society loaded with ethics and local conservation that exist in the community.

Harmonization of forest and non-forest area stipulation as stipulated in Article 19 of the Forestry Law stating that the process of changing the function of forest area must follow the stages, on the contrary 8 of 2003 on Provincial Spatial Plan mandates not require the stages as mandated by the Forestry Law, even just based on the Head of the Planology Agency that there is no legal protection.

According to the opinion of the author there is a mistake in the regulation for it needs to be harmonized, especially those related to the authority of the determination of forest and non-forest area between the central government and local government. The determination of forest and non-forest areas is established by the minister of forestry with hierarchical decision nomenclature in the legal structure of Indonesia including legislation.

Hans Kelsen argues that the norm is tiered and multi-layered in a hierarchical order in which the norms under which it applies, are sourced and based on higher norms, higher norms apply, apply, sourced and based on higher norms, and so on until the end of this "regressus" stops that cannot be traced back to a supreme norm called the basic norm (*grundnorm*).[11]

Hans Nawiasky developed the theory of the standard level of Hans Kelsen, who said that in addition to the norms are layered and tiered, the legal norms of a State are also in groups, consisting of:

- 1) Group I : Staatsfundamentalnorm
(Fundamental State norm)
- 2) Group II : Staatsgrundgesetz
(basic rules / principal country)
- 3) Group III : Formell Gesetz
(formal law)

4) Group IV : Verordnung & Autonome Satzung
(implementing rules and autonomous rules).

The legislation that is drafted in stages leads to synchronization of legislation. Synchronization is the alignment or harmonize the various laws that already exist and being prepared that set a particular sector. The purpose of synchronization is to realize the foundation of the arrangement of a particular sector can provide adequate legal certainty for the implementation of certain sectors efficiently and effectively, in order to avoid overlap, inconsistencies or conflicts in overlapping settings. Assembled with a hierarchical principle system, the process includes harmonizing all laws and regulations, either vertically or horizontally.[12]

The law can be used as a means for public policy to realize the goals that have been established through the political process. The law means either written or unwritten law known as the general principles of good governance. In relation to positive law, in Article 7 section (1) of Law no. Law No. 10 of 2004 on the Establishment of Regulations and Invitations as amended by Law no. 12 of 2011 determined the type and hierarchy of legislation, namely as follows:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) The Decree of the People's Consultative Assembly
- 3) Law/Government Regulation in Lieu of Law;
- 4) Government Regulation;
- 5) Presidential Regulation;
- 6) Local Regulations.

The unwritten law which forms the basis of public policy making is the Principle of Good Administration, which has been formulated by Koentjoro Purbopranotodan SF Marbun, covering:[13]

- 1) The principle of legal certainty;
- 2) Principle of balance (principle of proportionality);
- 3) Principle of Equality in making a decision (principle of equality);
- 4) The principle of carefulness;
- 5) Motivation principle for every decision (principle of motivation);
- 6) The principle of non-misuse of competence;
- 7) The principle of fair play;
- 8) Principle of fairness and fairness (principle of reasonable or prohibition of arbitrariness);
- 9) The principle of trust and responding to a reasonable expectation (principle of meeting raised expectation);
- 10) Principle nullifies the consequences of a deciding decision (principle of undoing the consequences of an annulled decision);
- 11)The principle of protection of the views of life or personal way of life (principle of protecting the personal may of life);
- 12)The principle of wisdom (sapientia);
- 13)The principle of public service (principle of public service).

The authority to make a decision is based on the principle of description as set forth in the administrative

law based on the delegation derived from the law. While the local regulations are included in the hierarchy of laws and regulations, which under the Regional Government Law, the authority to enact regulations is in the Central Government, Provincial, District and City Governments. Realizing harmonization with a clear legal system, especially the legal sector of State administration, the quality of professional human resources supported by the managerial of good governance organization.

III. CONCLUSION

REDD + is the first step towards realizing a stable earth climate in reducing emissions from deforestation and forest degradation due to the widespread activity of releasing forest areas into oil palm plantations. Harmonization of REDD + program law in forest management protection within the framework of national legal instruments that hierarchically lays Pancasila as a guide, guide, and value reference in the reform of the legal system.

The legal system is examined in substantial, structural and cultural components. Harmonization and synchronization of international regulations ratified so that the obligations of local communities, national, international and global.

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