



# The Position of the National Forestry Board in Determination of Forest Area

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**Abstract.** This study aims to determine the position of the National Forestry Council in determining forest areas, to explain in detail the position of the forestry council in determining forest areas through forest management development policies in Indonesia and how the challenges of development in determining forest areas in forestry administration in Indonesia are. This study uses normative research methods with data sources in the form of primary and secondary legal materials. The study shows that the development policy of the forest management unit is crucial in determining the position of the forest management unit in relation to forest areas and promoting community development. The study shows that the development policy of the forest management unit is crucial in determining the position of the forest management unit in relation to forest areas and promoting community development. The policy is crucial in optimizing the management and utilization of potential climate management funds within the regional forestry sector at the province, district/subdistrict and management unit levels. The implementation of forest area determination in Indonesia faces several challenges, including limited human resources, insufficient support from the local government, discordant relations, social conflict, and contradictory economic interests.

**Keywords:** Forestry Council, Determination, Forest.

## 1 Introduction

The existence of the environment as a natural heritage cannot be denied having a strategic value for the survival of life on earth, including humans in it. Everyone is required to respect and appreciate one another in order to have and experience a healthy living environment [1]. Forests are one of the living environments that are directly related to humans. Forest is an ecosystem unit in the form of a stretch of land containing biological natural resources which is dominated by trees in their natural environment, which cannot be separated from one another.

Forest protection has now entered the realm of world (global) problems related to the function of forests in maintaining ecological balance that affects the global climate (global heat effect) which can threaten human safety in the world. Protecting forest areas and their environment so that the protected forest function, conservation function

and production function can be achieved optimally and sustainably is the goal of forest protection efforts [2]. However, in reality, the function of forests in maintaining ecological balance (including the global climate) is defeated by the economic function of forests as a source of livelihood for a group of people, as a means of accumulating capital (capital) for entrepreneurs (capitalists), and as a source of foreign exchange for the state.

One of the factors that contribute to accelerated forest destruction is the increase in population, the increase in population demands the fulfillment of food needs, firewood needs, carpentry wood needs, and residential areas [3]. Current and future forestry challenges include pressure on forest areas as a result of population growth, regional expansion, the need for investment development, forest degradation as a result of forest activities, forest fires, encroachment, forest utilization practices and the use of forest areas that have not been fully utilized. following the technical requirements that should be and so on. On the one hand, forest areas are required to be able to provide benefits for the welfare of the community while at the same time being able to perform its role as a life support. But on the other hand, there are still many people who live around forest areas who depend on the existence of forests as a source of livelihood to support their lives, so there is a need between these two great interests.

The weakness of forestry institutions at the field level, the fragility of the system for securing forest resources, and the granting of licenses without policies controlled by the government forestry institutions at the field level, the fragility of the system for securing forest resource assets, administration of have made forestry problems in Indonesia more complicated. Environmental management and conservation of natural resources in Indonesia need to be studied intensively because environmental management is impossible without legal regulations [4]. The government has issued a policy on the development of forest management units, which are organizations that work at the site level and are seen as an obstacle to the implementation of a sustainable forest management system in terms of economic function, social function and environmental function, which is equitable and achieves forest sustainability so that it can operate efficiently and in an optimal manner [5].

The implementation of forestry programs in the regions should not be separated from the programs and plans prepared and facilitated by the central government. Therefore, it is necessary to have effective communication and coordination supported by the division of roles and responsibilities of each in order to obtain synchronization between the center and the regions. The division of roles and responsibilities will work if there is a clear working relationship between each party. On the basis of these principles, it is worth examining the position of the Board of Forestry in defining forest regions.

## **2 Overview Theory**

In the discussion of legal theory, theory is intended to facilitate researchers, practitioners and the wider community to gain a better theoretical understanding globally and provide a global explanation of law [6]. In this paper, the theory used is the legal theory

of development and the theory of justice which is associated with several other discussions of legal theory. The theory of development that the author uses as a basis for discussion is used to make it easier to understand the intent and purpose of writing.

Considering that the present is a period of development, the presence of an ideal law as a substitute for a pluralistic and colonialistic legal order is highly anticipated to regulate and drive a series of major changes that occur in society, such as economic and technological development.

The presence of the ideal law is intended to overcome inertia (slackness) in national development. It is time to pay attention and get priority in national development. The ideal law is a legal order that is shaped and sourced from the national personality (religious and customary values). Nor is it a personality that hinders communication with the outside world.

Still need to be engineered or sanitized in accordance with the national consensus. The formation of an ideal law (national consensus) aims to abolish the classification and the population is subject to different laws (wanting to be subject to the same legal system). It is an indispensable tool in the development process.

Because the law is formed and implemented to ensure that any changes occur regularly, so that there is stability in national development. Changes that occur regularly can only be made through legal procedures, whether in the form of legislation or decisions of court bodies [7].

In essence, development has two meanings, the first can be interpreted as an effort to renew positive law itself, so that it is in accordance with the need to regulate and provide maximum service to the lives of the people concerned. And secondly, it can be interpreted that the law can be efficient and effective in life through development which is characterized by the sharing of changes that occur in society.

Considering that national development is a process characterized by a change, so that major changes involving all aspects of people's lives can move in an orderly manner, the law should be made the Commander of National Development. This means that the law is not only a tool of social control but must also function as a tool of community renewal (law as a tool of social engineering).

The law must provide space and movement for national development without losing its role as a tool of order and peace and as a means of community renewal. If the law is made as the Commander of National Development, then we, the Republic of Indonesia, will reach the state goal, namely a just and prosperous society based on *Pancasila*.

From a legal perspective, *Pancasila* is not just a state ideology, it is also the spirit of law enforcement and the life of the nation and state. In this context, the national statutory system places *Pancasila* as the source of all written laws and regulations [8].

In the context of a legal state, *Pancasila* has a position as a legal ideal (*rechtsidee*) which according to Bernard Arif Shidarta is an idea, initiative, creativity and thought regarding the law or perception of the meaning of law which contains three basic foundations, namely justice, usability and legal certainty [9].

Bernard Arif Shidarta explained that the legal principles of *Pancasila*, as the legal principles of Indonesia, include core values such as respect for humanity, national and archipelago wisdom, equality and feasibility, social justice, nobility, participation, and transparency in public decision [8].

According to Jimly Asshidiqie, the five precepts in *Pancasila* are the philosophical foundation of the ideology for the realization of four state ideals, namely: (a) the protection of the entire Indonesian nation and all shed Indonesian blood; (b) the promotion of the general welfare; (c) the education of the nation's life; and (d) the participation in the realization of a world order based on independence, lasting peace and social justice. [10] According to Jimly Asshidiqie, the placement of *Pancasila* as the *Staatsfundamentalnorm* was first conveyed by Notonagoro [11].

*Pancasila* is seen as a legal ideal (*rechtsidee*) which is the guiding star of law formation and law enforcement. This position requires that the formation of positive law is to achieve the ideas in *Pancasila*, and can be used to test positive law [12]. With the stipulation of *Pancasila* as the *Staatsfundamentalnorm*, the creation, enactment, and implementation of laws must reflect the values of *Pancasila*.

The limitations of the scope and dynamics of the law as written law encourage more legal discoveries to be made in resolving cases containing customary law issues in the community which are finally stated in the judge's decision. In addition, there is no law that specifically and explicitly regulates the application of norms and principles of customary law [13].

Gabrielia stated that in making a law it is necessary to have a unique view of life from a social group.

*“The second layer is society ethos, which is the whole costume and human attitude towards time, nature and works. The third layer is the core of culture, which is the society understanding, the way how society interprets their selves, their history, and their aims. Culture without core has not integrity”* [14].

What if the value of justice that grows in an indigenous community turns out to be contrary to national interests? Based on legal theory, there are habits that can deviate from the law, namely the so-called derogator habits. But not all laws can be deviated by custom. Only laws that are complementary in nature can be deviated. Therefore, the only mechanism that can be taken to recognize and strengthen the value of justice in a society that is contrary to written regulations that are imperative is the practice of justice (jurisprudence) by judges.

John Rawls has refined his principles of justice to be as follows: First, everyone has an equal claim to the fulfillment of compatible and equal rights and basic liberties for all, and the same political freedom is guaranteed by the same values. fair; Second, social and economic inequalities can be met on the basis of two conditions, namely: society. (a) attached to positions and positions that are open to everyone in the under conditions of fair equality of opportunity; and (b) the greatest benefit to the least advantaged members of society. The principles of justice presented by John Rawls are generally very relevant for developing world countries, such as Indonesia, for example. This relevance is getting stronger when most of the world's population living in Indonesia is still classified as a society of the weak living below the poverty line.

However, if it is observed long before the publication of Rawls's works on "social justice", the Indonesian people have actually planted the basis of their national and state life on the basis of social justice. Twice the term "social justice" is mentioned in the fourth paragraph of the Preamble to the 1945 Constitution. Thus, social justice has been

placed as one of the basic foundations of the goals and ideals of the state (*staatsidee*) as well as the philosophical basis of the state (*filosofische grondslag*) which is contained in the fifth precept from *Pancasila*. Justice is the basic norm of social relations in eliminating and preventing all forms of social alienation, all levels of human social relations. The term justice in principle, the fifth principle of *Pancasila* needs to be seen in relation to the term "only" in the second principle of *Pancasila*. Justice, means "to give him what I have and what I have. This is the social aspect of justice, because of one's relationship with others. Justice in the second and fifth principles of *Pancasila* is actually a national acknowledgment and consensus that all human beings are basically the same. No distinction and discrimination can be made on the basis of racial, religious, sexual, social and political background. All discrimination, whether implicit or explicit, is basically contrary to the concept of justice in *Pancasila* [15].

### 3 Discussion

#### 3.1 The Forestry Council's Role in Determining Forest Areas via Indonesia's Forest Management Unit Development Policy

With regard to the determination of forest areas so as to realize forest management development policies in Indonesia, the overall policy direction would be As a result, the conservative mainstream as the power holder will always face the intellectual community who have direct knowledge of field conditions and comparative knowledge of phenomena in other countries, so that they are present as critics of the agrarian policies being implemented along with its impact. which includes all stakeholders in the forestry sector who are members of the Indonesian Forestry Congress, seeking to increase their awareness and support various forms of efforts to implement these policies, either through the Forestry Council or various forms of institutions as well as other programs and activities, exchange information, share ideas and allocate time and resources so that the desired shared goals can be realized immediately.

It is known that the Regulation of the Minister of Forestry of the Republic of Indonesia Number: P. 44/Menhut-II/2012 concerning the Establishment of Forest Areas. This Ministerial Regulation is to implement the provisions of Article 16 paragraph (3) of Government Regulation Number 44 of 2004 concerning Forestry Planning, the criteria and standards for the determination of forest areas are stipulated by a Ministerial Decree; This Ministerial Regulation is a technical guideline for establishing forest areas. The process of forest determination is crucial, because it is related to community rights. The determination of forest areas is carried out through the following stages: a. designation of forest area; b. demarcation of forest area boundaries; and c. forest area determination.

Designation of forest area includes: a. provincial area; and b. certain areas partially. Partial designation of certain areas is the designation of non-forest areas into forest areas originating from:

- replacement land from the exchange of forest areas;

- land compensation from the permit of borrow-to-use forest area with land compensation;
- raised ground;
- voluntarily surrendered property; or
- land other than those referred to in letters a to do in accordance with the provisions of the legislation.

Regulation of the Minister of Forestry of the Republic of Indonesia Number: P.25/Menhut - II/2014 concerning the Committee on Forest Area Boundaries. This Government Regulation is an implementation of the provisions of Article 20 paragraph (3) of Government Regulation Number 44 of 2004 concerning Forestry Planning. Demarcation of forest area boundaries is an activity that includes making map of boundary routes, boundary erecting temporary, announcement of temporary boundary erection results, inventory, identification and settlement of third party rights, preparation and signing of minutes of temporary boundary demarcation and maps of boundary demarcation attachments, installation of signs. boundary and boundary measurement, mapping of boundary demarcation results, preparation and signing of official report on boundary demarcation and boundary demarcation map.

The Forest Area Boundary Committee is chaired by the Head of the Forest Area Consolidation Center. Members of the Forest Area Boundary Committee consist of the following elements: a. District/City Office in charge of forestry as secretary and concurrently member for production forest areas and protected forest areas, or Technical Implementing Unit in charge of conservation forest area affairs as secretary and concurrently member for conservation forest areas; b. Provincial Office in charge of forestry; c. Regency/City Regional Development Planning Agency; d. Regency/City Land Office; e. the related Technical Implementation Unit within the Ministry of Forestry; f. forestry housing if the forest area is the work area of forestry housing; and g. local sub-district head. With the arrangement of the boundary demarcation committee, the mapping of forest areas should not overlap with map data at the Land Office, and it can be known if there are third party rights in the area to be designated as forest area, so as not to cause tenure conflicts.

As for the implementation of forest area determination, it must have a forestry operator or council as the controller of the process of forest area determination. in this case it has been regulated in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number p.48/menlhk/setjen/kum.1/5/2016 concerning the National Forestry Council of the Republic of Indonesia. The purpose of establishing a forestry council is none other than to assist the Government in formulating, implementing and evaluating policy content, including new field findings in the forestry sector. Article 3 states that the vision of the forestry council is the creation of balanced participation in good forest governance in order to create a prosperous society and a sustainable forest.

Furthermore, Article 4 carries out the mission of the Forestry Council, namely: a. encourage the realization of effective forestry policies, so that effective forestry policies are realized and forest management is carried out in accordance with their functions; b.

encourage the realization of harmony in forestry development, so that harmonious relations are established between all stakeholders and guaranteed legal certainty, business certainty and community rights to forest resources; c. encourage the realization of professionalism in forestry development so that professional Human Resources (HR) are available and cooperation between parties is realized to defend the interests of national forestry; d. encourage the involvement of natural resource and environmental stakeholders within the scope of activities of the Ministry of Environment and Forestry.

The Forestry Council was established with the aim of achieving cooperation between the State, local authorities, communities, non-governmental organizations, educational and research institutions, the business community, the mass media and other institutions relevant to the vision and mission of the Forestry Council, in order to: carry out forest management in accordance with its tasks; establish harmonious relations between all participants; ensure legal certainty, business certainty and community rights to forest resources; provide professional human resources; and achieve cooperation between the participants.

### **3.2 Development Challenges in the Determination of Forest Areas in the Implementation of Forestry in Indonesia**

Uncertainty about the extent of forest cover is a major challenge to effective forest management in Indonesia. Currently, the estimated total forest area is approximately 130 million hectares, with only about 12% of the land having undergone demarcation (referred to as "bracelet demarcation"), covering an area of 14.2 million hectares. This lack of clarity has led to land disputes involving various parties with vested interests in the forest area. In fact, around 50 million people live in proximity to forested regions, and more than 33,000 villages are located adjacent to forested areas.

Uncertainty about forest boundaries affects indigenous peoples and local communities living in and using land and resources in forest areas, as well as institutions holding forestry licenses and the government. In addition, verification and reporting of forest boundaries at the field level is hampered [16].

The direction of regulation and focus is for all parties in the implementation, regulation, management and management of forest resources as well as the implementation of forestry development. The expected goal is that the problems and challenges of forestry development can be addressed immediately, so that sustainable forest management in order to obtain benefits fairly for the fulfillment of the needs of life and the welfare of the community can be realized immediately. The strategic issues that become challenges for Development in the Determination of Forest Areas in the Implementation of Forestry in Indonesia are as follows:

- The process of finalizing the provincial spatial plan revision in various provinces has not yet been completed which has caused conflicts between parties both vertically (Regional-Community Center) and horizontally (between sectors, between local governments and between communities) and the absence of legal guarantees for community life, certainty for small, medium and large scale businesses. The provincial spatial plan issue also causes problems in the management of conservation and

restoration areas, the implementation of forest rehabilitation and reclamation, as well as various forms of community empowerment efforts;

- Alternative solutions to spatial/forest/land spatial problems such as law enforcement, revision of laws and regulations, revision of decisions on location permits, recognition, respect and protection of indigenous peoples' rights and another locale, is very slow to run. This condition is mainly caused by the absence of national priorities in solving spatial/forest/land spatial problems. Besides, the law enforcement approach alone can be seen as denying the socio-political reality of the conflict, which actually stems from the problem of economic-social-law political policy itself;
- The definition of forest and forest area is often understood differently among parties or actors related to the forestry sector. The understanding of customary forest and forest management by the community is different from the perception defined by the government. Understanding of forest area classification is interpreted differently. Protected forest areas where there are no longer any plants tend to change their functions and not rehabilitate their forests so that their protected functions are maintained. Other use areas that are still heavily forested have never been seriously considered as permanent forest areas and will almost certainly be converted;
- Utilization of forest resources, the use of forest areas by mining, food and energy procurement, development of economic infrastructure, as well as the granting of plantation permits which are one and another are not coordinated and therefore do not synergize adequately, tend to add new conflicts so that it gives more uncertainty based business. natural resources and management space for other indigenous and local communities;
- Due to the weak provision of information, data, maps, and representatives who can state the interests of other indigenous and local communities, this has resulted in the weak capacity of indigenous and other local communities to participate in determining the legality of forest/land space/areas.

To establish legal certainty over forested areas, a gazettelement process for the designated zone is necessary. This process must encompass all steps, including the establishment of boundaries, mapping, and determination of forest areas.

All of these processes are towards a "legal and legitimate" forest area. The government through the Ministry of Forestry has regulated the process of determination of forest areas through various rules, including Government Regulation number 44 of 2004 concerning Forest Planning, Minister of Forestry Regulation Number P.25 of 2014 concerning the Committee on Forest Area Boundaries and Regulation of the Minister of Forestry of the Republic of Indonesia Number: P. 44/ Menhut-II/2012 concerning the Confirmation of Forest Areas concerning the Establishment of Forest Areas. However, these three regulations still have weaknesses.

Sometimes a new state forest area is a designation but a permit has been issued for a concession, even though it should only be at the stage of establishing that the forest has legal force and is only said to be state forest.

In the recommendations issued by the International Conference on Tenure and Forest Governance and Entrepreneurship recently, recommended the following:

- Strengthen the legality of forest areas.



- Strengthening the certainty of the rights of all parties to forest areas.
- Creating an effective system for accelerating the determination of forest areas.
- Encouraging the formation of integrated policies in the control of land and forest areas and coordination of authority between sectors related to the affairs of land and forest area control [17].

## 4 Conclusion

The Forestry Council was established with the aim of realizing collaboration between the State, the government, local government, local communities, non-governmental organizations, educational and research institutions, the business world, mass media, and other institutions that are relevant to the vision and mission of the Forestry Council, for: the realization of the policy efficient forestry; implementation of forest management in accordance with its function; the establishment of a harmonious relationship between all stakeholders; guaranteed legal certainty, business certainty and community rights to forest resources; the availability of professional human resources; and the realization of cooperation between parties. The implementation of forest area determination must have a forestry operator or council as the controller of the process of forest area determination. In this case it has been regulated in the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number p.48/menlhk/setjen/kum.1/5/2016 concerning the National Forestry Council of the Republic of Indonesia.

Uncertainty regarding the area covered by forests represents a significant obstacle to the effectiveness of managing Indonesia's forests. Out of the total 130 million hectare forest area, only approximately 12% of the demarcated area (14.2 million hectares) has been completed, which is referred to as the "intersection bracelet". Such ambiguity leads to tenure (land) conflicts with multiple parties that have an interest in the forest areas. There are at least 50 million individuals residing near forested regions, with over 33 thousand communities situated along the edges of these areas. The concern of uncertainty regarding the limits of the forests does not solely impact indigenous peoples or local communities who inhabit and utilize the land and resources within these forested regions, but also entities possessing forestry business permits and the government. At the field level, forest boundaries are often unclear and verification of official reports is difficult.

## 5 Suggestion

Prior to policy improvement and resolution of problems with forest/land areas so that evaluation and licensing procedures are implemented openly, to minimize overlapping or conflicts over the use and use of forest areas, the position of the forestry council can be implemented optimally. In this case, using the principles and main steps of FPIC (free, prior informed consent), as recommended by the Forestry Council, it is necessary to review its implementation.

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