

Protection of Indigenous Forests from Oligarchy Hegemony

Nur Aida¹ Muhani Jibi²

Faculty of Law, Universitas Islam Jakarta, East Jakarta City, Province of DKI Jakarta,
Indonesia^{1,2}

Email: nuraidah.dpb@gmail.com¹

Abstract

The form of government responsibility towards local wisdom values is ideally based on juridical and philosophical. Local wisdom is not seen as a mere cultural product, therefore the government's responsibility for the local wisdom values of indigenous and tribal peoples must be packaged as a comprehensive policy. The aim of this research is expected to be able to provide input to stakeholders, especially the Government and Customary Law Communities in completing the management of customary forest areas, so that justice and prosperity for indigenous peoples can be realized according to the needs of indigenous peoples. The method used in this research is descriptive evaluative research method, in which this study only describes the facts found in the field without making changes to each research variable. The results of the study, the ideal implementation of legal regulations must be adjusted based on the needs of the community. In building a customary forest scheme, Indigenous Peoples must be able to convince the Government and Traditional Leaders to show their ability, local wisdom and seriousness in protecting customary forest areas. Campaigns for customary forest schemes must be carried out systematically as sovereignty and dignity for the purity of identity independently in order to save customary forests and their potential. As long as the consequences of the policy are not detrimental to legal policy, then the customary forest management scheme developed by indigenous and tribal peoples can be justified. In conclusion, it is hoped that in the customary forest scheme there will be certainty in the process of transforming knowledge about traditional values with various local wisdoms and the utilization of agricultural products and the natural environment with a balance based on natural sustainability, without being controlled by oligarchic hegemony.

Keywords: Customary Forests, and Customary Law Communities.



This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)

INTRODUCTION

The social forestry policy issued by the government aims to improve people's welfare through an empowerment pattern and is still guided by the sustainability aspect. As a priority policy, this policy provides for the granting of legal rights to manage State forest areas to communities as stipulated in the ministerial regulation of environment and forestry no. P39/Menlhk/Sekjen/kum.1/10/2016 and number P.39/Menlhk/Sekjen/Kum.1/6/2017 contains Social Forestry and the working area of Perum Perhutani, in these regulations, it is regulated how the submission process forest use by the local community. In previous studies, it was stated that the community has the capacity to manage forest areas which generally have local wisdom, social capital and local knowledge as well as obstacles and the lack of benefits that the community obtains from social forestry policies. Not many researchers have researched how the community fights the hegemony of the oligarchs in protecting customary forests.

There are 5 (five) schemes offered in the social forestry policy, namely Village Forest, Community Forest, Community Plantation Forest, Customary Forest and Forestry Partnership. Communities that have implemented social forestry policies The amount provided by the Government for social forestry areas is 12.7 million Ha. The Directorate

General of Social Forestry and Environmental Partnerships of the Ministry of Environment and Forestry (KLHK) is responsible for the Social Forestry Area Preparation activities which have an activity target of increasing the area of community management areas. The target of these activities supports the first target of the PSKL program, namely increasing access to forest management by the community. Based on Government Regulation Number 23 of 2021 concerning Forestry Administration, Perhutansos is a sustainable forest management system implemented in State Forest Areas or Private Forests/Customary Forests implemented by local communities or customary law communities as the main actors to improve their welfare, environmental balance and social dynamics. culture. As of October 1 2022, the realization of Social Forestry achievements reached 5,087,754 hectares, according to the latest report from the Directorate General of Social Forestry and Environmental Partnerships (Ditjen PSKL), approximately 1,127,815 households and 7,694 SK units.

In detail, based on the realization per hutansos achievement scheme until 1 October 2022 are as follows: Village Forest with an area of 2,013,017.21 Ha; Community Forest (HKM) with an area of 916,414.60 Ha; Community Plantation Forest (HTR) with an area of 355,185.08 Ha; Forestry Partnership (KK), covering Kulin KK with an area of 571,622.38 Ha and IPHPS with an area of 34,789.79 Ha; Customary forests reach 1,196,725.01 HA (Determination of Indigenous Forests 108,576 Ha and Indicative; and Customary Forests 1,088,149 Ha) (see PSKL Menlhk: 2022).

When viewed from the number of areas reserved for social forestry and areas allocated to the community, the implementation of the social forestry policy is still far from the expectation. This raises the question, why has the social forestry policy not been utilized by the community? Even though it is clear that the purpose of issuing a social forestry policy is to resolve tenure issues and justice for local communities and indigenous peoples living in the forest and provide welfare for indigenous peoples. Considering that the policy was issued approximately 6 (six) years ago. As a form of government responsibility, it is necessary to carry out an evaluation of the policies issued so that the objectives of these policies can be realized properly and according to the expectations of the government and justice and welfare of the customary law community.

Government policy issued regulations regarding social forestry, in accordance with the provisions of article 2 paragraph (2) Pemmenhut No. P.83/2016 aims to resolve territorial and justice issues for local communities, and customary law communities living in or around forest areas in the context of community welfare and preservation of forest functions. (Tasya Moedy Agusti, etc: 2019). The social forestry area provided by the government totaling 12.7 million ha has not been managed optimally and consistently. There are many cases at the site level, after receiving a permit decree with a certain scheme, it turns out that it has not been followed up with management in accordance with the conditions set out during the permit application process.

The recipients of management permits face many obstacles, including not having sufficient funds/capital, the need for assistance/partnership from community organizations, and consultants for analysis and justification of the concession area intended for utilization. From this problem, how can customary law communities protect their customary forests from the practices of land brokers who manipulate the required documents on behalf of community groups, which in the end results from the management of the forest area only for a few people. Because of the consequences for the recipient of a forest management permit, this cannot be stopped, because the government will hold them accountable for the conditions and obligations of the community that were agreed beforehand..

RESEARCH METHODS

The method used in this research is descriptive evaluative research method, in which this study only describes the facts found in the field without making changes to each research variable.

RESEARCH RESULTS AND DISCUSSION

The provisions of Article 18B paragraph (2) of the 1945 Constitution which states "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the unitary state of the Republic of Indonesia, then article 28I paragraph (3) of the Constitution 1945 stated that cultural identity and the rights of traditional communities were respected in line with the times and were civilized and based on TAP MPR No.IX/2001 concerning agrarian reform and management of natural resources.

Decision of the Constitutional Court (MK) number 35/PUU-X/2012 regarding customary forests which cancels a number of paragraphs and articles governing the existence of customary forests in Law Number 41 of 1999 concerning Forestry. Customary forests are now officially legalized as belonging to indigenous communities, no longer belonging to the state. The recognition of the Constitutional Court's decision has brought a number of consequences, including the confirmation mechanism for the existence of indigenous peoples, the determination of customary forest area boundaries, and the division of authority between indigenous peoples and the state in forest governance.

The government implemented the Constitutional Court's decision by issuing a social forestry program. The social forestry program is a system of sustainable forest management within state forest areas or private forest/customary forest by local communities to improve welfare, environmental balance and socio-cultural dynamics. There are 5 (five) schemes offered in the social forestry policy, namely Village Forest, Community Forest, Community Plantation Forest, Customary Forest and Forestry Partnership. Communities that have implemented social forestry policies The amount provided by the Government for social forestry areas is 12.7 million Ha. based on the Indicative Map and Social Forestry Areas (PIAPS), which communities can submit for social forestry (Dimas Jarot Bayu: 2019).

Social Forestry Submission Process

Legal Basis

1. Constitutional Court Decision No. 35 of 2012;
2. Regulation of the Minister of Environment and Forestry No. P.83/Menlhk/Kum.1/10/2016 concerning Social Forestry;
3. Regulation of the Minister of Environment and Forestry (PermenLHK) No. 32 of 2015 concerning private forest;
4. Derdirjen No:P.1/PSKL/SET/KUM.1/2016 concerning Guidelines for Verification and Validation of Private Forests

Customary Forest Submission Requirements

1. There is a regional regulation that mentions the customary law community (MHA) concerned or a local regulation (umbrella) regarding the recognition of MHA;
2. There is a map of customary territories (attachment to the Perda or decree of the Regent by mentioning the MHA concerned);
3. Profile of MHA (name, leadership, history, customary law, social, economic and cultural);
4. Application letter to the Minister of LKH signed by the Head of MHA.

Provincial Government Authorities

1. Together with the district government, identify customary law communities living in forest areas;
2. Drawing up a regional regulation that recognizes indigenous peoples (MHA) or encouraging and facilitating the district government to draw up a regional regulation recognizing MHA;
3. Together with the district government, facilitate customary law communities to map their customary territories, in the event that regional legal products do not include maps of customary territories;
4. Facilitating customary law communities in submitting requests for determination of customary forests to the Ministry of Environment and Forestry (KHK);
5. Coordinate with the Directorate of Tenurial Conflict Management and Indigenous Forests (PKTHA), the Directorate General of Social Forestry and Environmental Partnerships (PSKL) and the district government in conducting verification and validation of customary forests.
6. The Directorate General of PSKL is tasked with: Providing services to private forest stakeholders;
7. Fulfill the rights of private forest holders;
8. Recognize and protect local wisdom;
9. Facilitate the sharing of benefits that are profitable and equitable from the utilization of genetic resources in private forests;
10. Facilitate institutional strengthening and capacity of private forest holders;
11. Prevent changes in the function of private forests and buying and selling of customary forests;
12. Facilitate technology development, capital assistance and marketing, as well as promotion of timber, non-timber forest products and environmental services;
13. Facilitating the development of social entrepreneurship (social entrepreneurship);
14. Facilitate obtaining Timber Legality certificates;
15. Together with the Minister of Environment and Forestry (LHK) provide incentives to private forest holders, in the form of: a. not collect forest resource tax (PSDH) for timber and non-timber forest products, as well as environmental service payment fees; b. provide recommendations for land and building tax relief; c. ease in obtaining business licensing services for the utilization of timber and non-timber forest products, as well as environmental services; d. ease in servicing the export of timber and non-timber forest products; e. acknowledgment of compensation for environmental services from business or utilization by third parties; f. provide recommendations for accelerating government programs that are in line with local wisdom.

Requirements for Submitting Social Forestry:

1. Village Forest (HD)
2. Community Forestry (HKm)
3. Community Forest (HTR)

Legal Basis

1. Government Regulation No.6/2007 in conjunction with No.3/2008 concerning Forest Administration and Preparation of Forest Management Plans and Forest Utilization;
2. Minister of Environment and Forestry No. P.83/Menlhk/Kum.1/10/2016 concerning Social Forestry;

3. Perdirjen PSKL No.P.14/PSKL/SET/PSL.0/11/2016 concerning Guidelines for Facilitation, Establishment and Working Procedures for the Social Forestry Acceleration Working Group (Pokja PPS);

Provincial Government Authorities

1. Together with the Directorate of Social Forestry Area Preparation (PKPS), the Directorate General of Social Forestry and Environmental Partnerships (PSKL), the Ministry of Environment and Forestry and other parties formed and mobilized the Working Group for the Acceleration of Social Forestry (Pokja PPS) at the provincial level;
2. Conduct social forestry outreach to the public and local communities living in and around the forest;
3. Identifying communities living in and around the forest;
4. Observing the indicative map of social forestry areas (PIAPS);
5. Facilitating local community requests regarding social forestry programs, namely: HPHD, IUPHKm, IUPHHK-HTR or Forestry Partnership in accordance with applicable laws and regulations;
6. Coordinate with the local PSKL Center or UPT assigned by the Directorate General of PSKL to verify community requests;
7. Including the social forestry program in the Regional Medium Term Development Plan (RPJMD);
8. Allocating a budget for the social forestry program in the Regional Revenue and Expenditure Budget (APBD);
9. Facilitating the granting of social forestry rights/permits to governors who have received a decree delegating authority to grant social forestry rights/permits from the Minister of Environment and Forestry;
10. Together with the Directorate General of PSKL, the Ministry of Environment and Forestry and/or other related Ministries/Institutions and the parties provide facilitation to holders of HPHD, IUPHKm, IUPHHK-HTR, Kemitraan Kehutanan and Adat Stakeholders including facilitation of: a. At the application proposal stage; b. Institutional strengthening; c. Capacity building including business management; d. Formation of cooperatives; e. Set the boundaries of the work area; f. Preparation of village forest management plans, business work plans for IUPHKm and IUPHHK-HTR as well as annual work plans for HPHD, IUPHKm and IUPHHK-HTR; g. Forms of forestry partnership activities; h. Financing; i. Post-harvest; j. Business development; k. Market. (Trail programme:2017)

There are many steps that must be passed in the requirements for submitting social forestry, therefore social forestry policies can be interpreted as a tool to reduce structural conflicts that label the government which tends to side with the interests of entrepreneurs, rather than indigenous peoples. Social forestry policies are solely policies for the benefit of the local community, investors, and the government's interest in increasing state revenues. As a result, what about the existence of customary law communities, whose local government has not yet made regional regulations. If there are no regional regulations for indigenous peoples, then the goal of social forestry to solve land tenure problems and justice for indigenous peoples is only a dream. Another problem arises, how can social forestry become a priority program for long-term regional development, if social forestry policies have not yet occurred in most provinces in Indonesia.

Massive Movement of Indigenous Forest Schemes

The boundaries of the area and location of customary forests can be seen in the provisions of article 1 letter f of Law No.41/1999 which states that customary forests are state forests located within the territory of customary law communities. When building a customary law scheme, it is hoped that there will be certainty in the process of transforming knowledge about traditional values with various local wisdoms. The massive movement for the customary forest scheme is sought to rely on: (1) Revitalizing the spirit of communal ownership, (2) Not being transferred to private ownership by members of the customary law community (3) Not selling/transferring ownership to people outside the village/traditional community (4) Building a visionary through preparing prime destination locations, and (5) inheriting customary assets by preparing good job opportunities for posterity [Khusnul Zaini: 2021].

Social forestry is a program whose implementation is complicated with high complexity. There are at least three pillars if social forestry is to achieve such a broad target: a) communities in and around forests who are willing and able to form farmer groups, b) readiness, ability and skills of forestry extension workers and social forest farmer assistants, and c) readiness, willingness, and ability of the government to facilitate (licensing, capital, marketing)

CONCLUSION

Local wisdom that is free from urban cultural contamination and government policy interventions on the grounds of growth and equity in the development of rural areas is an ideal scheme for indigenous and tribal peoples. Because indigenous peoples basically have proven traditional conservation strategies, because they can survive with their traditional ways and wisdom. By restoring existence and respecting their communal decisions is a wise step for the government. Limitation of life welfare to the prosperity version of indigenous peoples without having to be forced to adjust according to government policies with the constitutional mandate issued. In the customary forest scheme, it is hoped that there will be certainty in the process of transforming knowledge about traditional values with various local wisdoms and the utilization of agricultural products and the natural environment with a balance based on natural sustainability, without being controlled by oligarchic hegemony.

BIBLIOGRAPHY

- Agusti,Tasya Moedy dll:(2019) Implementasi Regulasi perhutanan Sosial yang bermanfaat bagi masyarakat sekitar Hutan, Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan
- Bayu, Dimas Jarot.(2019)Persoalan struktural dalam praktek Jurnalisme data di Indonesia (studi kasuspada Katadata.co.id)
- Keputusan MK No. nomor 35/PUU-X/2012 mengenai hutan adat
- Pengajuan Program Perhutanan Sosial Prhttps://programsetapak.org/wp-content/upload/2017/06/PS_So-Final_Hijau
- Undang-Undang Dasar 1945
- Undang-Undang No. 41/1999 tentang Kehutanan
- Zaini, Khusnul.(2021) Menghadang hegemoni oligarki, mitos di seputar socio eco politik, Yogyakarta: Nas Media Pustaka.