

RECONSTRUCTION LAW RESOURCE MANAGEMENT COMMUNITY-BASED FOREST TOWARDS PROSPERITY OF THE PEOPLE IN JAVA - INDONESIA

Sigit Sapto Nugroho¹

Absori²

Harun³

Rahmanta Setiahadi⁴

ABSTRACT

The purpose of this study was to determine and analyze the management of the forest resources in Java both the policy level and in implementation because there has not yet touched the alignments aspect on people's welfare and find new theoretical concept, development/reconstruction of law and theory of management of community-based forest resources, as well as settings in future legislation that is effective, efficient and pro-prosperity of the people. This study uses the approach of socio-legal (socio-legal research) where, approach socio-legal view the phenomenon will not be solved by giving information about legal rule, but blends with the approach of another perspective qualitatively based on reality, to realize the goal of the law is establish order, justice and prosperity. Based on the results of Indonesia forests is known as one of the lungs of the world, has an area of ± 144 million hectares, in which ± 3 million hectares, is located on the island of Java, which is managed by Badan Usaha Milik Negara (BUMN) Perum Perhutani, Since the time of Dutch colonial rule to the present management of forest resources tend to use the paradigm of forest resource management based State solely managed to interest income and foreign countries, giving rise to poverty and conflict-decades of conflict between government and the community forest, and from the side socio-economic management of forest resources can not currently perceive benefits to realize the people's welfare because people are only seen as objects and not as subjects in the management of forest resources so that no positions are not balanced with the government. While concept reconstruction law forest resource management-based society to be built in the future directed to change substantially related to the policy management of forest resources in Java that do Perhutani with the intent and purpose in the organization of forest enterprises not only provide goods and services alone, but also to achieve prosperity of the people to maintain the balance of ecological, social and economic. To that should be developing ideas for introducing a new approach in the management of forest resources more community-based prosperity oriented local community known as the paradigm of forest resource management consistent community-based settings start at the level of legislation and implementation.

Keywords: Forest, community based, prosperity of the people

A. Introduction

Indonesia is known as a country that is very fertile and rich in natural resources, where for more than 3,5 century colonial times have taken advantage, not for the benefit of the people of Indonesia and more 70 years of independence have not been able to realize prosperity for all Indonesian people.

Desires and expectations of the founding fathers that the proclamation of independence has been achieved should bring a big change for Indonesia, namely the desire to immediately realize a just and prosperous society. These national goals can be observed in the formulation of the fourth paragraph of the Preamble of the 1945 Constitution of have clearly expressed among other things: "... .To promote the general welfare and to realize a social justice for all Indonesian people."

For the founding fathers looked very necessary to make changes in terms of acquisition and utilization of natural resources by assigning control of the state ideology of rights as stipulated in Article 33 paragraph (3) of the 1945 Constitution. In this case, the state can act as a public legal entity (*iure emperii*) nor act as private body (*iure gestiones*).⁵

Legally poured their ideology that earth, water and natural resources contained in it are controlled by the State and used for the maximum prosperity of the people in of the 1945 Constitution, it is expected that all the laws and regulations under it must reflect and is an application of the idea or ideal of law (*rechtsidee*) contained in Article 33 paragraph (3) of the 1945

¹ Studen of the Doctor of Science Degree Program in Law, Faculty of Law, Universitas Muhammadiyah Surakarta, Lecturer Faculty of Law, Universitas Merdeka Madiun.

² Professor in Law Science, Faculty of law, Universitas Muhammadiyah Surakarta.

³ Professor in Law Science, Faculty of law, Universitas Muhammadiyah Surakarta.

⁴ Lecture Faculty of Agriculture, Universitas Merdeka Madiun.

⁵ Adji Samekto et.l, 2015, *Membangun Politik Sumber Daya Alam Berbasis Cita Hukum Indonesia*, Fakultas Hukum Universitas Diponegoro dan Asosiasi Sosiologi Hukum Indonesia, Thafa Media, Yogyakarta, p.21,

Constitution. This view is by the principles of the welfare state, because the principle of the welfare state, the welfare state is formed with the purpose of the community.⁶

Indonesia forest area is known as one of the lungs of the world, is currently experiencing damage and *deforestation* has caused concern, both nationally and internationally.⁷ In indicative, forests and land were damaged and needed to be rehabilitated in a rapid, targeted, coordinated and sustained at national level according to the data in 2012, the extent of deforestation in Indonesia reached 840,000 hectares per year, exceeding the forest destruction in Brazil were only 460,000 hectares. The potential of these lands, \pm 3 million hectares, is located on the island of Java, which has been managed since 1892, or 122 years ago, the management at the recent developments made by Badan Usaha Milik Negara (BUMN) under the auspices of the Ministry of Forestry is Perum Perhutani.⁸

Management of forest resources in Java are legally managed by Perum Perhutani since 1972, the past few years are also having problems, namely the destruction of forests and *deforestation* quantity continues to increase sharply, especially since 1998 until now. Forest management in Java since the colonial era until now, it turns out in terms of socio-economic benefits can not be perceived in order to realize the greatest prosperity of the people.⁹ In addition, there are many conflicts between forestry and forest communities.¹⁰

Implementation of forest resource management issues facing both external that is population problems such as limited job opportunities, rural poverty, and problem that is internal that is feudalistic corporate culture and bureaucracy, as well as the professionalism of human resources. For that Perhutani as the management of forest resources in Java to be open in the face of these problems and make changes in the management of forest resources in a professional manner without compromising the role of the community forest area.¹¹

Based on the description of the background of the problems can be formulated as follows:

1. Why is the management of forest resources has not reached the prosperity of the people?
2. How does the concept of law reconstruction based forest resource management community will come to give the prosperity of the people?

B. Method

This study used a socio-legal approach (*socio-legal research*). With this approach, the law placed as a social phenomenon. Law is seen from the outside and hooking up with the reality of the behavior of individuals or communities in connection with the law. With the approach of *socio-legal* phenomenon will not be solved by giving information about legal rules, but blends with the approaches of other reality-based perspective. so as to realize the goal of the law is to establish order, justice and prosperity.¹² The study also qualitative, that analyzes the data in depth and comprehensive.¹³

With this approach, the law is expected to realize substantial justice. In ontological discussion departs from the understanding of the diverse real reality. Diverse reality it is the resultant of all beliefs, attitudes ways of thinking of the society, including the perception of the law. Therefore epistemologically there should be a deep understanding of the background of the action in society.

Based on the background and the subject matter described in advance in this study also uses qualitative research (*naturalistic*). Thus the stage is used in this study is a qualitative study basic considerations:

⁶ Bambang, Daru Nugroho, 2015, *Hukum Adat, Hak Menguasai Negara atas Sumber Daya Kehutanan dan Perlindungan terhadap Masyarakat Hukum Adat*, PT. Refika Aditama, Bandung, p. 15

⁷ Francisia, SSE Seda, 2014, *Dinamika Sumber Daya Alam, Negara Developmentalis dan Masyarakat*, UI Press, Jakarta, p. 72

⁸ Sigit Sapto Nugroho, 2017, *Hukum Kehutanan*, Kafilah Publishing, Surakarta, p. 78.

⁹ Sulistyarningsih, 2013, *Perlawanan Petani Hutan, Studi Atas Resistensi Berbasis Pengetahuan Lokal*, Kreasi Wacana, Yogyakarta, p. 7... see in Subadi dan Sigit Sapto Nugroho, 2012, *Model Mega Wana Agrowisata Kawasan Hutan Berbasis Pemberdayaan Potensi Lokal di Lereng Gunung Wilis Kabupaten Madiun Jawa Timur*, laporan Hibah Kompetensi Dikti, p. 1...see in Sigit Sapto Nugroho, 2014, *Model Pengembangan Desa Konservasi Berbasis Pendayagunaan Potensi Lokal Kawasan Lindung Lereng Gunung Wilis Kabupaten Madiun Jawa Timur*, Laporan Hibah Dosen Pemula Dikti, p. 3.

¹⁰ Sigit Sapto Nugroho, 2004, *Pengelolaan Sumber Daya Hutan Bersama Masyarakat (Studi Di Wilayah Kerja Perum Perhutani KPH Saradan Jawa Timur)*, Tesis, Universitas Brawijaya, Malang, p. 3

¹¹ Sigit Sapto Nugroho, 2017, *Op-Cit*, p. 116

¹² Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* 2005, Oxford and Portland Oregon, Hart Publishing, p. 1-20;... Marett Leiboff and Mark Thomas, *Legal Principle Theories In* 2004, Sidney Lawbook Co, p. 203-215; Phillip A. Thomas (Editor), *Socio Legal Studies*, Dartmouth Sidney, p.1-22,

¹³ Valerie J. Janesick 1994, *"The Dance of Qualitative Research Design, Methaphore, Methodoltry and Meaning"*, Handbook of Qualitative Research, ed: Norman K. Denzin and Yvonna S. lincold, Sage Publications, Inc, California, p , 212

- a. This study analyzes the management of forest resources according to the situation of community-based natural (*natural setting*).
- b. Researchers act as a research instrument.
- c. The study describes and provides interpretation of the data found in the field.
- d. The study analyzed a phenomenon found from the data in the field.
- e. The data were described in the form of a sentence, to obtain a detailed, complete and clear about the problem in the study.¹⁴

C. Discussion

1. Management of Forest Resources Not Achieve Prosperity People

Configuration law and ideology governing the control and management of natural resources in Indonesia is reflected in the formulation of Article 33 Paragraph (3) of the 1945 Constitution which states: "The earth and water and natural resources contained in it are controlled by the State and used for the greatest prosperity of the people."

Ideology as is a reflection of the articulation of values and norms as well as the configuration of state laws governing the acquisition and utilization of forest¹⁵resources, or an expression of the ideology that gives the authority and legitimacy to the state to control and manage forest resources in the country.¹⁶

Authority control and management of forest resources in Java is delegated to the Perusahaan Umum Kehutanan Negara (Perum Perhutani) based on Government Regulation Number 72 Year of 2010 Perum Perhutani. As a state-owned enterprise that is authorized commercialize and manage forest resources by using the principles of corporate management, are required to play at least three principal roles, namely as follows: (1). Mastery of forest area; (2). State forestry company; and (3). Institutions that conserve forests. To play the role of forestry not only include land tenure forests and timber and non-timber products, but also the supervision and control of the existence of forest farmers and forest workers are involved in the utilization of forest resources.¹⁷

Forest resources management paradigm today is a manifestation of the implementation of the management of forest resources-based state. Institutional form and its implementation is characterized by a centralized, single by department management, top-down approach, the orientation of the target, macro planning, tight budget, security approaches, and tend to apply more sanctions. While the method of management is characterized by: a rigid, single purpose, homogeneous, single-product, single silvicultural systems, such as an employer and labor relations.¹⁸ As a result, management practices of forest resources often are in a situation of conflict and the incidence of poverty.¹⁹

Looting forests are one form of reaction of the community to benefit forest products should be seen as a natural phenomenon. However, if the reaction looting has led to degradation and damage to the ecosystem it must soon find the solution, so as to provide welfare to the rural communities.²⁰ The increase in forest damage due to various factors many, but the core issue in the management of forest resources for prosperity issues + 21,6 million forest villagers who are still in poverty, this situation faced by managers in the development of forests in Java.²¹

According to the research community poverty problems related to the forestry sector in Java due to, among other things: (1) Perhutani policy of contract claim 2-3 years resulting in poor landless poor fixed when the contract finished work on the land; (2) forest and surrounding land so barren soil if planted with low production output and lead to people's income is also low; (3) a narrow land ownership; (4) the existence of illegal logging caused by inappropriate policies aligned to the community and law enforcement are weak so that people around the forest area lost their livelihoods; (5) the poor in Perhutani forest areas generally do not get a guaranteed minimum physical needs while access to forest resources are limited; (6) the poor in the area of the forest edge were not involved in the formulation of forest management decisions; (7) the tradition of celebration (donate) in society that caused a lot of spending money.

¹⁴ Nasution, S, 2003, *Metode Penelitian Naturalistik Kualitatif*, Tarsito, Bandung, p. 11

¹⁵ Barber, Charles Victor, 1989, *The State, The Environment, and Development : Genesis and Transformation of Social Forestry Policy in New Order Indonesia*, Doctoral Desertation University of California Barkeley, USA., p.34

¹⁶ Peluso, Nancy Lee, 1992, *Rich Forests Poor People*, University Of California Press, Barkeley-Los Angeles-Oxford, p. 11

¹⁷ Bambang Eko Supriyadi, 2013, *Hukum Agraria Kehutanan*, Raja Grafindo Persada, Jakarta, p. 103

¹⁸ Kartodihardjo, 2013, *Kembali Ke Jalan Lurus: Kritik Ilmu dan Praktik Kehutanan Indonesia*, Forci Tanah Air Beta, p. 19

¹⁹ Peluso, Nancy Lee, 1992, *Op-Cit*, p. 104

²⁰ Hasanu Simon, 2010, *Dinamika Hutan Rakyat Di Indonesia*, Pustaka Pelajar, Yogyakarta, p. 11

²¹ Rahmanta Setiahad, 2012, *Modal Sosial dalam Pembangunan Kehutanan: Penyelesaian Deforestasi dan Konflik PHBM*, Desertasi Ilmu Kehutanan Program Pasca Sarjana Universitas Gajah Mada Yogyakarta, p. 3

The strategy is built to reduce poverty issues related to forest resources must be no breakthrough on changes in forest resource management model. Breakthrough changes in forest resource management model of the new as a public asset should involve the major stakeholders (*main stakeholders*) is local government, the forestry and rural communities around the forest.

Efforts to reduce poverty related to the forestry sector should be conducted by: (1) increasing their bargaining position in the management of forest resources; (2) encourage their joint commitment between the community, local government and forestry in sustainable forest management, fair and democratic ; (3) the protection of the rights of the poor to benefit from forest resources; (4) encourage the participation of rural community in determining equitable forest management policies to maintain the principles of sustainability.

2. Reconstruction Law Concept Resource Management Community Based Forest Towards Prosperity

Management forest resources in Indonesia that have been happening is based on the concept of ideological control of forest resources by the State. The state is defined as the sole perpetrator of the management of forest resources in Indonesia. Everything is centralized policy so that the empirical level are less able to provide freedom for the role of local communities in managing their forest land of forest resources.²²

Departing from various shortcomings and weaknesses hence, the need for a paradigm shift based forest resource management of the State towards the management concept of community-based forest resource. Model-based forest resource management community puts community forest area is no longer a legal object but put as subjects of law in the management of forest resources in Indonesia.²³ One of the programs that run Perhutani is the CBFM Program based on the decree of the Supervisory Board Perum Perhutani No. 136 / KPTS/DIR/2001 on the Management of Joint Forest Resources and degree of Directors No. 268/KPTS/DIR/2007 on the Management of Forest Resources Collaborative Plus.

Management of community-based forest resources is based on the following²⁴ Principles: (a) justice and democratic; (b) openness and togetherness; (c) mutual learning and mutual understanding; (d) the clarity of rights and obligations; (E) a populist economic empowerment; (f) institutional cooperation; (g) participatory planning; (h) system and a simple procedure; (i) the company as a facilitator; (j) the suitability of the management with the character of the area.

Putting the people's active participation in all the wisdom to manage forest resources to make forest is not just a mere object of the economic development that generates foreign exchange, but the state will make the forest as a major component of development of society as a whole (ecosystem). Forests are not just as objects of exploitation of development, causing degradation of forests, but forests can create prosperity for the people of Indonesia, due to the optimization of community-based forest management will be able to reduce the rate of deforestation in Indonesia.²⁵

The problem that occurs is to change the paradigm, the question is, is the extent of state forest in Java Island can be maintained for the welfare of society? The question becomes reasonable for the authority managing state forests in Java Island is only awarded to Perum Perhutani, but there are restrictions on the authority. As stipulated in article 3, paragraph (4) of Government Regulation No. 72 of year 2010 which states in the management of state forests by the companies referred to in Article 3, paragraph (1) of Government Regulation No. 72 of year 2010 does not include activities that constitute a public authority.

The management only include: (a) the designation and establishment of forest areas; (b) the measurement of forest area; (c) leasing of forest areas; (d) the exchange of forest area; (e) changes in the status and function of forest area; (f) the provision of forest utilization license to a third party on forest management in the working area of the company; and (g) activities related to the Civil Service of Forestry investigator.

See the above facts, in fact there is a contradiction in terms of authority over forest management, because Perhutani will be dealing with the parties who has an interest in forest areas such as the Regional Head and other private (non-forest enterprises) which also has an interest in the forest area and the community.²⁶

²² Mora Dingin, 2014, *Bersiasat Dengan Hutan Negara*, Epistema Institute, Jakarta, p.20

²³ Maryudi, A, 2012. Restoring State Control Over Forest Resources Through Administrative Procedures: Evidence From a Community Forestry Programme in Central Java, Indonesia. *ASEAS – Austrian Journal of South-East Asian Studies*, 5(2), page 229-242...see in Panchanon Kumar Dhali, Jurgen Pretzsch, Klaus Romisch, Abdus Subhan Mollick, *People's Participation in Participatory Forest Management in the Sal Forests of Bangladesh: An Explorative Study*, *International Journal Of Social Forestry*, Volume 5, Number 1, June 2012.

²⁴ Rofi Wahanisa, Model Pengelolaan Hutan Bersama Masyarakat (PHBM), *Jurnal Yustisia*, vol.4 No.2 Mei 2015, p. 417-437

²⁵ Gunawan Wirardi, 2014, *Hutan Untuk Rakyat, Jalan Terjal Reforma Agraria di Sektor Kehutanan*, LKIS, Yogyakarta, p. 376

²⁶ Arupa, 2014, Mendorong Pengelolaan Hutan Lindung oleh Pemerintah Daerah di Jawa Timur, *Policy Paper*, USAID dan The Asia Foundation, September 2014, p. 7

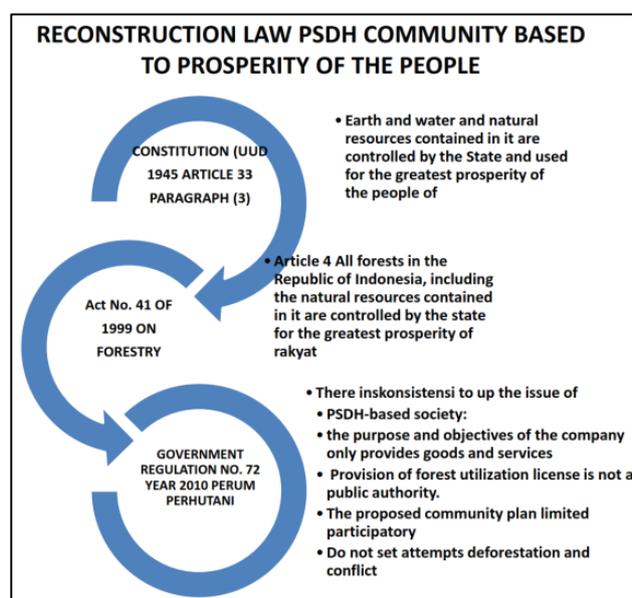
Another issue in the Government Regulation Number 72 of year 2010 on Perhutani not name a single sentence that mentions the management of forest resources with the community as an important part in the management of forest resources in Indonesia.

Overall the Government Regulation Number 72 of year 2010 consists of 4 chapters and 109 article, but there are only 11 articles regulating forest resource management issues remaining 95 chapters are arranged about the company's management as well as three chapters cover. It can be concluded substantially problem of management of community-based forest resources is not an important thing for the government.

Research shows that Perhutani still seems half-hearted in managing forest resources with the public by reason of the limited ability of human resources and only for the preservation of the company. In the implementation of society still regarded as an object that is not visible implementation of partnerships and community aspirations are not yet fully used as a basis for the preparation of forest management policies.

Program management of forest resources with the community is only used as a weapon for Perhutani to answer public demands that Perhutani bigger role in improving the welfare of communities around the forest in spite of the fact is not serious to implement.

The issue is more urgent happening in-consistency of the regulations governing the management of forest resources are among the provisions of Article 33 paragraph (3) of the 1945 Constitution, Act Number 41 year of 1999 on Forestry and Government Regulation Number 72 year of 2010 on forestry, this can be seen in the following chart:



Based on these results, the authors provide recommendations to the government to do a rethinking to answer the demands of change management model of community-based forest resources to realize the prosperity of the people is something that can not be negotiable. For the reconstruction of the law offered the writer to realize the management of community-based forest resources towards prosperity of the people can be seen from three aspects: economic, social and ecological aspects.

Economic aspects, among others: (1) forest land as an asset to improve the welfare of the people; (2) management of forest resources with forest resource management scheme with the community; (3) institutional between Badan Usaha Milik Negara (BUMN) managers and community forests are strictly regulated.

Social aspects, among others: (1) access to permit long-term reform; (2) forest resource management arrangements with communities strongly controlled; (3) Institutional collaborative supported various interested parties.

Ecological aspects, among others: (1) the structure of the biodiversity-rich ecosystems with multiple use forest land; (2) directed towards improving management capacity of the environment and closely monitored; (3) It has strong institutions in realizing the environmental carrying capacity.

Based on the research results Perhutani as the governing body of forest resources in Java must make changes in substance as follows: (1) the purpose and objectives in the organization of forest enterprises not only provide goods and services alone, but also to achieve prosperity of the people to keep balance ecological, social and economic; (2) need to make changes to the amendment of Government Regulation Number 72 year of 2010, insisting that the management of forest resources with the

public is a form agreed with the involvement of forest communities conducted openly and transparently; (3) The consistency of the legality of forest resource management settings based on the level of community legislation until the operating rules in the field so philosophical meaning set forth in the constitution of the Republic of Indonesia can be realized for the prosperity of the people.

D. Conclusion

1. Management of forest resources in Indonesia, especially in forested areas of the island of Java has not been touched aspects of people's welfare because the forest is still perceived as merely standing timber or timber and non-timber (*forest species*) and is oriented solely as a source of income and foreign exchange and not be perceived as a single ecological (*forest ecosystem*) which resulted in the issue of poverty in the forestry sector for forest communities tend to be objects of exploitation rather than as subjects of law involved in the management of forest resources so a weak bargaining position and a position that is not balanced with government ,
2. The new concept of the construction law of forest resource management-based society is directed at changes substantially related to the management of forest resources in Java that do Perhutani, namely: (1) the purpose and objectives in the organization of forest enterprises not only provide goods and services alone, but also to achieve destination prosperity of the people to maintain the balance of ecological, social and economic; (2) Confirm that the management of forest resources with the public is a form of state-run forest management Perhutani involving forest communities agreed in an open and transparent; (3) Consistency legality of forest resource management settings based on the level of community legislation through the field operational regulations.

E. Recommendation

The government should make changes to the amendment of Government Regulation Number 72 Year Of 2010 on Perum Perhutani by asserting that the object and purpose of the company is not only to provide goods and services but must prioritize the objectives for the prosperity of the people, affirmed the management of forest resources based on community as forms of forest management based openness and transparent for achieving development for the people's forest (forest for people) and synchronize with Act Number 41 year of 1999 on Forestry.

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Sigit Sapto Nugroho

Absori

Harun

Rahmanta Setiahadhi