

DISTRIBUTION OF AUTHORITIES OF FOREST MANAGEMENT THROUGH COMMUNITY JOINT FOREST MANAGEMENT PROGRAMS FROM THEORY OF LEGAL OBJECTIVES AND THE DEMOCRACY CONCEPT IN THE AREA

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Abstract

This paper aims to analyze and review policies and arrangements for the distribution of power or authority in forest management through the Collaborative Forest Management program. Furthermore, the policy of distribution of management authority will also be analyzed in terms of legal objectives, namely legal certainty, benefits and justice. Based on the results of the discussion it can be said; *First*, that normative arrangements and policies on forest management programs through the distribution of power or authority constitute a form of fulfillment of Law No. 41 of 1999 concerning Forestry, Government Regulation of the Republic of Indonesia about Forest Arrangement and Preparation of Forest Management Plans, and Forest Utilization, up to the Decree of the Directors of Perum Perhutani No: 268 / KPTS / DIR / 2007 concerning Guidelines for Managing Joint Forest Resources Plus (PHBM PLUS). *Second*, this policy of distribution of authority or power embodies the benefits of the law, when viewed from the principle that the law is for humans. *Third*, to create social justice, forest management with the community will help realize the spirit of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, not only for local forest village communities but also for more evenly distributed Indonesian society.

Keywords: Power Distribution; Authority; Community Forest Management; Legal Certainty, Use, Justice

INTRODUCTION

Article 1 number 2 of Act Number 41 of 1999 concerning Forestry as amended by Act Number 19 of 2004 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 concerning Forestry being the Law, defining forest as an ecosystem unit in the form of a stretch of land containing biological natural resources which are dominated by trees in the fellowship of

the natural environment which are inseparable from one another. Through this definition, forests are placed as living natural resources with the largest ecosystem center on land, as well as a center of life that needs to be maintained. Forests as the lungs of the world, also provide life not only for the ecosystems in it, such as flora, fauna, but also maintain the preservation of the earth and provide a good life for humans.

Indonesia as a country with a large biological potential, has the potential of

natural forest resources, is very necessary and then regulates the problems of forest protection and management arrangements for the sake of the national sustainability and potential of the archipelago. Forest potential also has benefits in the areas of environment, economy, social and culture. In the field of environment, it is in line with the previous discussion regarding the sustainability of flora, fauna and even humans. The economic potential, also owned forests remember what comes from forest management *sustainable* produce the potential of the wood industry, for example, is very large, this does not rule out the possibility of industrial potential, other forest products, even natural tourism, and so on. Social and cultural potential can also be reflected in the potential existence of village forest communities, communities around forests that have dependence on forests, and vice versa security and protection of forests also depend on the concern of communities around the forest.

Forest management in this case is then regulated by the Forestry Law, namely in Article 21 namely, related:

- a. forest governance and preparation of forest management plans;
- b. forest use and use of forest areas;
- c. forest rehabilitation and reclamation, and
- d. forest protection and nature conservation.

Next, in the explanation of the article, it was stated that "the forest is the mandate of the Almighty God, therefore forest management is carried out on the basis of noble character for the greatest prosperity of the people. Thus the implementation of each component of forest management must pay attention to the cultural values of the community, aspirations and perceptions of the community, and pay attention to the rights of the people, and therefore must involve the local community".

Based on the article and explanation, it can be concluded that the Forestry Law encourages forest management by involving local and surrounding communities, this is very much related to the concept of decentralization which was later adapted in the framework of forest management involving the community.

It was noted that starting in 2001, the Joint Community Forest Management Program (CBFM) began to be launched, and was refined in 2007 to become PHBM Plus. This program is intended so that the community around the forest participates in protecting the forest, which has a positive impact on the security of the forest ecosystem, and besides that, the community is also given space to manage forests, forest land to improve their welfare, and on the other hand have a positive impact better welfare.

The policies that are packaged in this program then need to be examined further, in the course of almost 18 years in the context of forest management in Indonesia. Including the community in each policy implementation is certainly expected to produce implementation in a field that is fast and on target. This is in accordance with the concept of policy implementation by the government or *governance*.

Miftah Thoha,¹ argues that the concept of governance is a democratic concept. Furthermore, Miftah Thoha said that the concept of governance which is well located to what extent the constellation between the three components of the people, the government and employers runs in a cohesive, harmonious, congruent and comparable manner. If the balance system between the three does not work well, various irregularities can occur.

Through the rule of law objective values, the author will analyze the distribution model of management authority in CBFM programs that have been implemented in the community around the forest in all corners of the archipelago.

DISCUSSION

The Legal Basis of Community Based Forest Management

¹ Miftah Thoha, 2010, "*Kepemimpinan dalam Manajemen*", Jakarta: PT. Raja Grafindo Persada, p. 91.

Law No. 41 of 1999 concerning Forestry categorizes the status of forests, namely state forest and rights forest. Article 1 number 4 of the law then defines state forest as forest which is located on land that is not burdened with land rights. Next, Article 1 number 5 defines rights forests as forests that are located on land that is burdened with land rights.

Based on the division of forest status, associated with community-based forest management, then the two statuses of the forest above have the potential of community-based forest management. In the status of state forests, community forest management is regulated later in Minister of Forestry Regulation No. P. 37 / Menhut-II / 2007 Jo No. P. 52 / Menhut-II / 2011, village forests regulated in Minister of Forestry Regulation No. P. 49 / MenhutII / 2008 Jo No. P. 53 / Menhut-II / 2011, community plantation forests regulated in Minister of Forestry Regulation No. P. 23 / Menhut-II / 2007 Jo No. P. 5 / MenhutII / 2008, and customary forests.

Whereas the relation to rights forest is in line with the existence of community forest practices, namely forests that are built and managed by the people, mostly on land owned or customary land; although some are on state land or state forest areas. Management of private forests or community

forests that involve the community as rights holders, but still facilitated by the Government, are regulated in the Government Regulation of the Republic of Indonesia Number 6 of 2007 about Forest Arrangement and Preparation of Forest Management Plans, and Forest Utilization, as amended by the Republic of Indonesia Government Regulation Number 3 of 2008 concerning Amendments to Government Regulation Number 6 of 2007 concerning Forest Arrangement and Preparation of Forest Management Plans, and Forest Utilization. Article 103 The Government Regulation then regulates, "The government, provincial government or district / city government in accordance with their authority, must develop rights forests through facilitation, institutional strengthening, and business systems", which in its explanation are stipulated that "including facilitation for development Forest rights, among others, can be in the form of assistance, guidance, training, counseling, provision of information, socialization, capital assistance and ease of service for the utilization of rights forest products, or other incentives".

Seeing from the management legal basis for state forests and rights forests or community forests, all of which regulate the division of authority between the government and the community, it certainly confirms the fulfillment of legal certainty in the CBFM

program (Collaborative Forest Management). Without a legal basis as a form of legal certainty, then forest management in Indonesia, especially for forests with state and private forest status, would not be optimal. Without regulatory legal certainty, the state-owned forest can be managed by the state without involving the community, while the forest with the status of forest rights, is managed by the community without contributing to the government in facilitating. If this happens, then the concerns of forest management may be "broken" by the government or vice versa, because there is no legal basis for supervision control between the two parties, it would be a scourge of forest management.

Currently, the PHBM (Community Forest Management) Program is based on the Decree of the Director of Perhutani Public Corporation No: 268 / KPTS / DIR / 2007 on Guidelines for Managing Joint Forest Resources Plus (PHBM PLUS). The most important point of the existence of legal certainty in supporting this CBFM program is where the legal basis of this program then applies the basic monitoring and evaluation of the performance evaluation of the Perhutani Perum and forest village communities in implementing CBFM.

Monitoring in the implementation of CBFM is carried out in the framework of

mentoring, escorting and observing the implementation of CBFM. This monitoring must be carried out continuously during the process by Perum Perhutani, LMDH, NGOs, and stakeholders. Evaluation is carried out with the intention of knowing the achievement of the results of CBFM implementation performance. Evaluation is done by comparing the results of the implementation with the targets set out in CBFM planning in each region.²

Distribution of Power of Forest Management with Communities in terms of Useful Aspects

In constitutional law, we recognize the separation and division of powers, both horizontally and vertically. Speaking regarding the distribution of power (*distribution of power*), we also recognize the existence of a vertical division of power between central government power and regional government.

Entered in the category of government affairs, the field of forest management is a field included in the category of elected government affairs, which is regulated in Article 12 number (3) letter d of Law Number 23 Year 2014 concerning Regional

Government, as amended by Law Number 9 In 2015 concerning the Second Amendment to Law Number 23 Year 2014 concerning Regional Government (Law on Regional Government). Regarding the definition of governmental affairs of choice, Article 1 paragraph 15 of the Regional Government Law states that "Preferred Government Affairs is Government Affairs that must be held by the Regions in accordance with the potential of the Region". Based on these definitions, it can be seen that the power of forestry management is power that is distributed or shared with regional governments based on regional potential, given that not all regions have the potential for natural forest resources.

Not only talking about the distribution of power to the regions, the problems of forest management policies are also related to the policies of the Ministry of Environment and Forestry of the Republic of Indonesia. In addition, the program is also from the Perhutani Republic of Indonesia Perum.

In this case, the Ministry of Environment and Forestry of the Republic of Indonesia,³ has a work program such as policy formulation, implementation of policies in the field of stabilization of forest areas and environment in a sustainable manner, management of conservation of natural resources and

² Pusat Kajian Hutan Rakyat (PKHR) Fakultas Kehutanan Universitas Gadjah Mada, " *Levelling the Playing Field Project*", Uni Eropa, kerjasama CIRAD, CIFOR, Fakultas Kehutanan UGM dan Perum Perhutani, p. 4., at http://www.cifor.org/lpf/docs/java/LPF_Flyer_PHBM.pdf, Accessed on July 13, 2019, at 11:45 WIB.

³ The Ministry of Environment and Forestry, in menlhk.go.id, accessed on July 13, 2019, at 11:57 WIB.

ecosystems, increased carrying capacity of watersheds and forests protection, sustainable production forest management, increased competitiveness of primary forest products industries, improved quality of environmental functions, control of pollution and environmental damage, control of climate change, control of forest and land fires, social forestry and environmental partnerships, and decreased disturbances, threats and violations law in the field of environment and forestry. Meanwhile, Perum Perhutani,⁴ as a body that also participates in forest management in Indonesia, is a State-Owned Enterprise in Indonesia which has the duty and authority to carry out planning, management, exploitation and protection of forests in its working area.

Seeing that the forestry sector has stakeholder agencies as observers of policy, as well as the implementation of policies, the discussion of the distribution of power between the central government and regional governments in the framework of forestry management becomes interesting. The Ministry of Environment and Forestry and Perum Perhutani which have its own policies, outside the policies of the regional government, in this case must be able to accommodate the intention or trustworthiness

⁴Perum Perhutani, in <http://bumn.go.id/perhutani/>, accessed on July 13, 2019, at 12.01 WIB.

of the distribution of power as an implication of the practice of democracy in Indonesia.

The program which later reflected the distribution of power and the implementation of democracy in the context of forest management in Indonesia, one of which was initiated by Perum Perhutani. One of the programs initiated was the Joint Community Forest Management (CBFM).

This CBFM program is a community forest management with the principle of *sharing*, equality and openness. The principle of sharing referred to in this program is the division of roles, responsibilities and factors of production (*input*), even to the distribution of results (*output*).⁵ CBFM as a Community Forestry policy one of which has a goal as Article 3 paragraph (2) letter (cd) SK No.268 / KPTS / DIR / 2007 concerning the PHBM Plus Guidelines, namely:

- c. Aligning forest resource management activities in accordance with regional development activities according to the conditions and social dynamics of forest village communities.
- d. Increasing synergy with Regional Governments and stake holders.

⁵ N. Khususiyah, "Pengelolaan Hutan Bersama Masyarakat (PHBM) di Das Kontu Malang: Pembelajaran Keberhasilan dan Kegagalan Program", *Prosiding*, dalam Seminar Nasional Agroforestri 2013, accessed at <https://www.worldagroforestry.org/sea/Publications/files/paper/PP0344-14.pdf>, on July 15, 2019, at 10.00 WIB.

Based on these provisions, it is clear that the objectives of the Perhutani program are not then independent by overruling regional authority or authority. Implementing CBFM programs through efforts to maintain and enhance synergy with the Regional Government is the right decision. CBFM that directly engages the community around the forest is a good effort to improve the welfare of the surrounding community, and on the other hand facilitates the performance of the FMU (Perum Perhutani) to preserve and preserve the forest.

The urgency of the synergy between Perum Perhutani and the Regional Government, in this case can also be viewed from Article 66 of Law No. 41 of 1999 which reads:

- (1) In the framework of the implementation of forestry, the government delegates part of its authority to the Regional Government.
- (2) The delivery of part of the authority referred to in paragraph (1) aims to increase the effectiveness of forest management in the framework of developing regional autonomy.

Democracy in the regions became increasingly visible with the provisions of CHAPTER X of the Forestry Law which regulates its relation to Community Participation.

The author is then interested in the provisions of Article 70 paragraph (3), which reads: "In order to increase the participation of the community, the Government and Regional Government can be assisted by a forum for observers of forestry". Based on the sound of the article, the Institute for Forest Village Community (LMDH) emerged, which was a forum for forestry observers born from indigenous communities around the forest. LMDH in this case is not only a forest observer who is obliged to participate in protection, but has the right to the potential of the forest, which is around his residence. These provisions have strong legality, judging from the provisions of Article 68 paragraph (3) of the Forestry Law which reads, "Communities in and around the forest have the right to receive compensation because of loss of access to the surrounding forest as employment to fulfill their living needs due to regional determination forest, in accordance with applicable laws and regulations".

The provisions of article per article in the Forestry Law, up to the program issued by the Perum Perhutani KPH, namely from the start of PHBM to the birth of a forum for observers of forestry which is realized by the existence of LMDH, shows the benefit side of the distribution of forest management power to the community. Although not as a whole, involving the community from the

consideration of policy formation to the implementation of the policy, it will produce and fulfill the legal objectives of benefit.

The usefulness of the law relates to the principle that the law is for humans, so the implementation and enforcement of the law must provide benefits or uses for the community. Good law is considered as a law that brings benefits to humans. In this case, the community will obey the law without the need to be forced to get benefits.⁶ Through this principle, forest management for humans, so as to include community participation, is a very appropriate effort in forest management.

The Concept of Justice in Constitutional Rights Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

Quoting what was written by Tata Wijayanta, "Justice is one of the basic values of human life and is a classic problem that has never been resolved completely. Justice is then interpreted as a constant and continuous division to give the rights of everyone",⁷ then justice in this case always intersects with the fulfillment of rights.

⁶ Fence M. Wantu., Oktober 2017, "*Antinomi dalam Penegakan Hukum oleh Hakim*", Jurnal Berkali Mimbar Hukum, Vol. 19 No 3, Yogyakarta, Faculty of Law, Gadjah Mada University, p. 395.

⁷ Tata Wijayanta, 2 Mei 2014, "*Asas Kepastian Hukum, Keadilan, Kemanfaatan, dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga*", Jurnal Dinamika Hukum, Vol. 14, No. 2, p. 221.

Measuring justice cannot be equated between one person and another, but measuring social justice with the aim of realizing social welfare, will be more easily defined. The author based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The article reads, "The earth and water and natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people". Based on the Article, the nature which includes forests can be a potential that can be explored for the greatest prosperity of the people and social welfare.

The distribution of power to the regions to manage the choice of the forestry sector, then programs that include the Regional Government and even the communities around the forest, are a manifestation of the fulfillment of social justice, in order to increase the prosperity of the people, especially for the people around the forest.

Legal policies or rules that give special attention to needs, social reality, ideal justice to eliminate welfare gaps, are ideal policies. Nur Hasan Ismail, stated that:

"Law (and also public policy) can be used as an instrument to organize social life in the community and its role is also needed in matters of forest resource management and its interaction, law is formed on the basis of an ideal world that wants to manifested by social

reality, ideal conditions contribute to the determination of goals to be achieved and ways and efforts that are considered effective in achieving it, while social reality provides a limit so that the determination of goals and desired ways still rests on the conditions and values that develop in society, without considering socially relevant, there will be social inequalities and a gap will emerge between the law and the reality in the community, giving rise to feelings that are unfair to the community because the law that is formed does not reflect the conditions and social values contained in the community.⁸

Distributing the power of forestry management to the regions, then to the surrounding forest communities to focus as observers as well as guardians of forest preservation through the LMDH forum as a manifestation of the CBFM program, is the answer to the ideals of social justice in the eyes of indigenous people. Looking at the existing social reality, including from the needs of the community, the distribution of power to the local community will further guarantee forest management based on community needs.

⁸ Nur Hasan Ismail, 2000, *Korelasi Hukum Akomodatif Terhadap Tingkat Akseptasi Masyarakat (Analisa Terhadap UU Kehutanan dari Perspektif Sosiologi Hukum)*, Pusat Studi Pengelolaan Sumber Daya Alam, Yogyakarta, p. 1.

In this case, what needs to be the focus of attention is the certainty of central supervision and program organizers, namely the Perum Perhutani KPH, so that the participation of the local forest village community does not become a boomerang. The purpose of this is, seeing Article 33 paragraph (3), means broader people's prosperity not only for certain communities, so it should, forest management programs together with local forest village communities, do not harm wider social interests and social justice. In other words, it is important to ensure that forest management does not only prosper the local forest village community, but also the Indonesian people as a whole.

CLOSING

The Joint Community Forest Management Program is a manifestation of the distribution of power or authority from the center to the regions, then includes the community, and reaches the local forest community. The Village Forest Society Institute is a forum for observers of forestry established in the context of local forest village-based community forest management.

The program fulfills the legal objectives, namely legal certainty when viewed from the legal basis of forest management with the community. In addition, it also fulfills the purpose of legal benefit and justice, seeing

that managing forest potential by looking at social reality and social needs, will be able to answer the goals of social welfare and public prosperity as much as possible.

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