

Basics Of Legal Authority Forest Management In Indonesia

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ABSTRACT

Administer or manage the forest is a very interesting activity and into the desire of many parties for fighting over. This is due to the forestry sector and the potential to bring a source of income. Conflicts of authority or claims that occur in the field of forestry for at least related to the legal instruments governing on division of authority. To prevent possible conflicts of authority in the field of forestry, need to be investigated and disclosed on the basic principles of authority. Resolving conflicts of authority and determine who has the most right to manage forests, not enough to simply rely on the creation of new rules, but must begin with the affirmation of principles law and "enforcement" law..

Mengurus atau mengelola hutan merupakan kegiatan yang sangat menarik dan menjadi keinginan banyak pihak untuk memperebutkannya. Hal ini disebabkan bidang kehutanan potensial mendatangkan dan menjadi sumber pendapatan. Konflik kewenangan atau klaim-klaim yang terjadi dalam bidang kehutanan selama ini setidaknya terkait dengan instrumen hukum yang mengatur pembagian wewenang. Untuk mencegah kemungkinan timbulnya perselisihan wewenang dalam bidang kehutanan, perlu diteliti dan diungkapkan tentang prinsip-prinsip dasar kewenangannya. Menyelesaikan konflik kewenangan dan menentukan siapa yang paling berhak mengelola hutan, tidak cukup hanya bersandar pada penciptaan aturan-aturan baru, akan tetapi harus dimulai dengan pengukuhan terhadap asas-asas hukum dan "penerbitan" hukum.

INTRODUCTION

Nowadays, the development of governance has entered the diversified views from areas that become the object of government affairs. Diversified areas of objects such government affairs complexity has spawned an elaborate, even sometimes be biased (Strike, Gao, and Bansal, 2006; Shaffer and Hillman, 2000; Asshiddiqie, 1996). As a result, problematic and difficulties arise in a variety of events and legal relations concerning a particular object or area. Legal relations as control of a particular object, relations rights and obligations, and the pull of authority, not infrequently even give rise to new and separate legal issues (Mansfield, 2007; Merrill and Smith, 2001). One of them relates to the implementation of government affairs in the field of forestry (Astawa, 2002).

The forestry sector is an area rich dimension and various aspects concerned in it, such as the environment, spatial planning, agriculture, natural resources, mining, and so forth. The diversity of aspects and dimensions of such property generally is regarded by many as a source of potential that can be explored, developed, and utilized (Simon, 2003). Therefore, it is natural that then many stakeholders feel it is important to have access and master source of the natural richness. In addition, the linkage of various aspects and fields in it has been enticing, inviting, and encourage various sectors and the "feel competent" to be involved or involved into the forestry sector with their respective interests (Buchy and Hoverman, 2000; Rametsteiner and Simula, 2003). This situation clearly raises other problems of legal relations and gave rise to various conflicts that are not simple. One of them, a conflict arises in the management authority or forest management due to the "attraction" of authority (Castro and Nielsen, 2001; Reed et al., 2009).

The authority is a concept in which terminology implies rights and obligations to do or do something (D'Almeida, Dolcetti, and Edwards, 2013; Donnelly, 2013). The concept of authority is important to distinguish, considering the daily reality often mixed with the concept of power (*macht*) which only represent the right to do or not done (Rosenau, 2007; Atmosudirdjo, 1997). Thus, in relation to the implementation of forestry, for example, the authority in this context should be understood implies rights and obligations to administer the affairs of forestry.

Conflicts of authority in the administration of forestry is marked by the emergence of various organizing authorities claim forestry between center and

local (Williams and Hardison, 2013; Nightingale and Ojha, 2013). Both central and local alike feel has authority in the administration of forestry according to their respective viewpoints. On the basis of the spirit of the widest possible autonomy is guaranteed by Act No. 22 of 1999 on local governance, feel competent in the administration area of forestry. Instead center declared as having authority in the administration of forestry, based on the legitimacy of Act No. 41 of 1999 on forestry.

Evaluated on a fundamental level, both theoretical-conceptual and pragmatic-empirical basis, these claims turned out has turned into a crucial issue with its vast dimensions and can grow in an uncontrolled manner (Angelsen, 1995). In fact, all parties have been stuck circle endless chain of conflicts of authority into a legal conflict. In the expansion of forest management issues in relation to local autonomy, in practice turned out to be, and are assigned to other parties. In this case, inevitably come into contact with other nuances such as political overtones and nuances of the business. As a result, forest management issues being laden with conflict of interest conflict of laws.

Conflict of law occurs when, in a conflict of authority, the parties made the law as a tool to justify, stuck in the pros and cons on a formal juridical level, by using reasons based on the logic of the law (George and Phillips, 2014; Haggard and Tiede, 2014). In case, this happens legal understanding that range in how the law is used as a tool or justification, not on what is legal and legal purposes. The law became a source of conflict and not to resolve the conflict.

Conflict can be a conflict of interest (authority) and value conflicts (Pfeffer, Schelhas, and Day, 2011; Lane, 2003). Conflicts of interest (authority) happens if there is competition and settlement through negotiation, and negotiation compromise is a win-win solution (Wollenberg, Anderson, and Edmunds, 2001). In contrast, the value conflicts that originated from their differing views on the meaning of a normative social objects (values, facts), then the solution should be through the application of the law to the facts that have been defined and the implementation of an impartial objective benchmark "win-lose solution" (Hidayat, 2016).

In conjunction with authority over forest management conflicts, debates and arguments should be changed from the level of the law, in the sense of the formal legalistic arguments that lie behind the law itself (Jong, Ruiz, and Becker, 2006). For the current, in conditions of transitional law of formal rules can't

be expected to resolve issues that arise as a result of reforms and transition. Actually, legalistic perspective is not sufficient to overcome the problems that develop in line with the development of modern life. While it is academic in Indonesia has been demonstrated that the rules of written law are more a product of the political configuration of the non-democratic (Mahfud MD, 1998), thus the various devices of legislation are felt to have the characteristics of an orthodox, repressive, or elitist, unresponsive and support the interests of the people and justice (Kusumah, 1996).

RESEARCH METHODS

Understanding the principles and normative law aspect is an understanding of the fundamentals and philosophical and legal principles (Leeuw and Schmeets, 2016) relating to forest management authority is to look wisely about the maintenance or management authority over forests (Pagdee, Kim, and Daugherty, 2006). These principles are available at a later stage and expected to color the formulation of legal norms in the field of forestry, and also can give birth to the formulation of a favorable settlement in any disputes or conflicts of authority in terms of forest management (Hidayat, 2016). In this connection, the material and research methods which decomposes under the research is basically developed further discussion of the principles or the principles of law according to the 1945 Constitution, legal aspects according to the legislation on local government as stipulated in Act No. 22 of 1999 and according to the Act No. 41 of 1999.

RESULTS AND DISCUSSION

IPrinciples of Law in the Right of State Control

At the most basic level, the drop-down authority in forest management in constitutional law, control of the state conceptions rights implicit in Article 33 Paragraph (3) 1945 includes after amendment, should be a principle of law as the foundation of the highest legal authority of the government in the implementation of forestry. The constitutional paradigm is important to describe the objective mind with regard to forest management authority or organization of forestry (Castro and Nielsen, 2001; Reed et al., 2009). In other words, if the forest management is the authority of the central government or including local authorities.

First of all, must be returned to the constitutional parameters of Article 33 Paragraph (3) of the 1945 Constitution, explicitly states that "earth and water and natural resources contained in it are controlled

by the state and used for the welfare of the people". This provision contains two phrases, the phrase "right to control the state" and the phrase "utilized for the welfare of the people". Both of these phrases could not separate from one another, because it is an integral and systematic and intact in the unity of meaning. "The right control of the state" is an instrument, while "utilized for the welfare of the people" is objectives. In other words, the words "right to control of the state" serves as a predicate or means, while the words "utilized for the welfare of the people" is a target or the conditions that must be achieved.

Right to control the state is a right that is both physical mastery to be used (*beheersdaad*), not right in terms of having (*eigensdaad*) transferable right to objectivity (Mansfield, 2007; Merrill and Smith, 2001). Therefore, the state should ensure the rights of control purposes utilized for the welfare of the people. In short, the right to control the state must always be measured by objective utilized for the welfare of the people. Both must be understood in a single concept intact in a sense, not to be read and understood in parts. As a single unit or integration of concepts it contains the basic thoughts that spawned obligation of the state (D'Almeida, Dolcetti, and Edwards, 2013; Donnelly, 2013):

1. Arrange and manage all forms of utilization of the land, water and natural resources contained in it, absolutely significantly to realize and increase the prosperity and welfare;
2. Protect and guarantee the rights of the people present in or on the earth, water and other natural resources that can be generated directly and enjoyed by the people;
3. Prevent any action from any party that will lead the people do not have the opportunity or lose the opportunity to enjoy the natural riches contained therein.

Based on these principles that right state control actually should more nuanced for acts that include organize, manage, protect, and prevent (Jong, Ruiz, and Becker, 2006; Pagdee, Kim, and Daugherty, 2006; Rametsteinera and Simula, 2003; Wollenberg, Anderson, and Edmunds, 2001). Organize means shaping the law or the rules relating to the ground at the same time also means determining the boundaries of the rights and obligations of the parties with an interest in the land. Manage indicates a full responsibility of the state to overshadow the nature of existence and the nature of the state. Protect it contains the sense of an attitude to maintain the value

of its continuity (sustainable). Prevent mean that the state has the powers of a preventive nature to avoid wear power, both physically and expediency.

In essence, the predicate organize, manage, protect, and prevent made to the concept of a comprehensive regional include comprehensive dimension to cover all aspects of the earth, namely, soil, water, and space including material properties of natural riches contained therein. The activities organize, manage, protect (protect and prevent) intended to create a condition to enjoy the benefits which, in turn, to achieve prosperity and well-being optimally (Hidayat, 2016). Orientation was all intended for and by the people as the pillar and main elements of the state structure is an absolute must have self of belonging and felt knew the significance of statehood.

At a deeper level, the concept of the right to control of the state to substantially contain the authority of the state (Angelsen, 1995), which is represented by the attitude of the government to follow (1) organize and conducting change, usage, inventory and maintenance of earth, water and air space; (2) define and organize legal relations between people with the earth, water and air space and; (3) define and organize legal relations regarding land, water and space.

The formula shows that for the next level of legal and operational government has the authority to carry out management or manage allocation and usage to determine the legitimacy of the legal status of those aspects of the earth, legal standing legal subject, and legal relations regarding the status change of the earth, as well as the legal relations between the legal subject with the earth.

The Principles of Act No. 41 of 1999 on Forestry

Earth is a system, because it can be ascertained logically forest is a sub-system of the earth. In governance of forest there are system management or maintenance of the system itself (Pagdee, Kim, and Daugherty, 2006). Thus, the management system related to forest areas and products, is part and sourced on the rules and principles of law as described in advance. That means forest controlled by the state in the context of legal arrangements related to the legal status of forest and legal relations on forests, arrangements in terms of forest management, power protection benefits of forests, and in the context of preventive efforts on preventing damage or forest degradation (Jong, Ruiz, and Becker, 2006). Important underlined that the state can only act as holder of public power or sheer governance (bestu-

urdaad), there should be no impression and the fact that the state has the forest.

Understanding the principles of law in Act No. 41 of 1999 on Forestry, more can be seen on the level normative formula in the legislation, as follows:

1. All forests in the territory of the Republic of Indonesia, including the natural resources contained in it are controlled by the state for the welfare of the people, and;
2. Forest tenure by the state referred to in paragraph (1) authorizes the government to:
 - a. arrange and manage everything related to forest areas and products;
 - b. establish the status of a particular area as forest or forest areas as non-forest areas, and;
 - c. regulate and establish legal relations between people and the forest, and regulate legal acts concerning forestry.

At first glance, the construction description formulation contained in Act No. 41 of 1999 do not have a fundamental difference with the description in advance, maybe even impress a kind of copy paste or repetition. However, still there is a difference in terms of norms lesser degree according to the theory of the norm ladder or hierarchy of legislation.

Further it must be understood that the rights of control over the state forest is a forest tenure by the state that is not a possession, but the state as an organizational entity the power to authorize the government to regulate and manage everything related to forest areas and products, assign or change the forest area and forest area status, regulate and establish legal relationships between people with forest or forest areas and products, and regulate legal actions concerning forestry (Wollenberg, Anderson, and Edmunds, 2001).

Based on the description in advance, it can be said that there are some principles or some general legal principles that must be followed and enforced in forest management (Simon, 2003), namely:

First, control of forests by the state not to be ownership. That is, the state not as the owner, but in its position as the holder of power, state authorize the government to regulate and manage everything relating to forests, forest and forest products as well as other matters relating to forests and forestry.

Second, the government authority (granted by the state) to control and manage matters relating to

forests and forestry is the authority that is attributive, because it comes directly from the Act No. 41 of 1999.

Third, the government-owned attributive authority is the authority that is autonomous, in the sense that the government is fully authorized to manage and take care of everything related to forests and forestry.

Fourth, the government's authority to regulate more the connotation that the government acted as regulator body authorized to make or define a set of rules in the field of forestry, including arranging or make rules relating to legal relations between the forest and the deeds of the law on forestry. Law relationship is meant here is the relationship between the legal subject (person) to the legal object (forest) that is legally created rights and obligations are reciprocal (Nightingale and Ojha, 2013). While the legal act (*rechtshandelling*) is the subject of legal action by the legal effect by specific legal norms (forestry), and emergence of the legal consequences it requires by law subjects the doer of the deed.

Fifth, the government authority for managing, organizing activities include:

1. Forestry Planning, which includes (a) the inventory, (b) strengthening of forest areas, (c) stewardship of forest areas, (d) the establishment of forest management area, and (e) the preparation of forestry plans.
2. Forest management, covering: (a) forest governance and prepare the forest management plan, (b) utilization of forests and forest use, (c) forest rehabilitation and reclamation, and (d) forest protection and nature conservation.
3. Research and development, education and training, as well as forestry extension (including funding and infrastructure);
4. Supervision.

Using these principles above clearly shows the central government's authority to regulate and manage the forestry sector (Astawa, 2002).

Principles of Law in the Context of Regional

An archipelago of religious reality marked by various regional specialties as well as social and environmental conditions are closely related to the preservation of forests and public interest that requires special management capabilities. Therefore, specifically with regard to the implementation of forest management in the area of a particular region may

be delegated to the regions (Buchy, and Hoverman, 2000; Williams and Hardison, 2013). In the context of Act No. 41 of 1999, enabled the area handed over some of its authority to deal with forestry matters, as stipulated in Article 66, as follows:

1. In management of the forest, the government has to give up some authority to local governments.
2. Implementation of the delivery part of the authorities referred to in paragraph (1) aims to improve the effectiveness of forest management in the context of the development of local autonomy.
3. Further provisions referred to in paragraph (1) and (2) regulated by government regulation.

The provisions of Article 66 can be considered as a legal basis, the transfer of some of its authority to the regions, which aims to improve the effectiveness of forest management in the development of regional autonomy (Astawa, 2002). This is in line with one of the basic electoral system of autonomy within a unitary state (i.e., Indonesia) are boost efficiency and effectiveness of the arrangements (*regelen*) and government organization (*besturen*).

Furthermore, in the context of the paradigm of regional autonomy, regional authority placed in the framework of broad autonomy as implied by Article 7 of Act No. 22 of 1999, as follows:

1. Regional authority includes the authority in all areas of government, except for authority in the field of foreign policy, defense and security, justice, monetary and fiscal, religion and authorities in other fields.
2. Authority of the other fields, as referred to in paragraph (1) shall include policies on national planning control macro national development, financial balance, the system of state administration and institutions the state's economy, development and empowerment of human resources, utilization of natural resources and strategic high technology, conservation and national standardization.

Thus, basically government affairs in the field of forestry can be a housekeeping area. In this connection, with respect to the clause "the authority of other fields", in line with Article 7 (2) the government set a number of matters not delegated to the regions, including forestry affairs. Through government regulation No. 25 of 2000 regarding government authority and provincial authority as autonomous region, assigned of 16 (sixteen) and plantation forestry affairs under the authority of the central and 18 (eighteen) under the authority of the provincial.

It means although the particular area/city has authority over forest management, it was not easy to determine the shape of its affairs, for approximately 34 affairs has been established as the central authority and the province. Rather, the region must creatively define and claim a regional authority in the field of forestry.

CONCLUSION

The basics of forest management authority in Indonesia first match principles or principles of law is constitutionally provided for in Article 33 Paragraph (3) of the 1945 Constitution in the nomenclature "right to control the state as much as possible for the

prosperity of the people". In this case, the principles contained setting, maintenance, protection (maintenance), and prevention. Further elaboration of normative foundations of forest management has been formulated in the substance of Act No. 41 of 1999 on Forestry, which is reflected in the concepts of planning, management, research and development, and supervision. In a more operational level, basic forest management authority came in the form of determining the legal status of forest, managed to change status of the forest, the legal relationship between people and forest, and the legal relations between subjects of law with regard to the forest. In the context of decentralization, it is possible forest management by local governments.

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