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RESEARCH ARTICLE

THE POLITICS SETTLEMENT OF LAND TENURE CONFLICTS DURING JOKOWI'S PRESIDENCY

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ABSTRACT

This study was prompted by the high rate of land tenure conflicts in forest areas. In the 2015-2020, a total of 10,000 conflicts were experienced in Indonesia, and a legal approach was used to conduct this normative study. Furthermore, the data collection was through literature and the legal norm method was used for analysis. The results showed that the government reduced the treatment of the conflict by establishing the Directorate of Customary Forest Tenure

Conflict Management institutions and legal products of Presidential and Ministerial Regulations. However, the forest land tenure conflict was not resolved during the Joko Widodo administration and was increased by 50 percent from the previous administration of President Susilo Bambang Yudhoyono. Meanwhile, this conflict can be resolved through the role affirmation of State Administrative Law in determining forest areas with legal certainty and justice. The assertion was conducted by enforcing this law against licensing violations and building integrated conflict resolution in creating legal certainty and equity.

Keywords: *Policy, Land Tenure Conflicts, Administrative Law, Forest Protection*

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INTRODUCTION

TERMINOLOGICALLY, tenure is defined as an arrangement related to ownership, access, control over land, trees, water, and other natural resources. Indonesia as a country is very rich in forest natural resources. This claim is consistent with Article 1 point 2 of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 on Forestry.[1] It states that a forest is an ecosystem unit in the form of a stretch of land containing biological natural resources dominated by trees in their natural environment and should be inseparable from one another. Furthermore, forest ecosystems as global sub-ecosystems occupy a strategic position, and as natural resources, many communities, states, and governments have an interest in them.[2]

The international community is increasingly focusing on global standardization of forest management practices, particularly environmental and economic issues. This relates to the dependence of 1.6 billion people on forests for their livelihoods. Since the dawn of civilization, humans have understood that the protection of basic natural commodities (soil, water, plants/forests, animals) is essential for long-term defense. Furthermore, forests are often an arena of conflict between various stakeholders, and Tenure Conflicts refer to various forms of disputes over claims for control, management, utilization, and use of the areas. This conflict often involves various parties, ranging from local to national, and even international scale.

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[1] Fitri Nur, Aini Prasetyo & Abdul Kadir Jaelani, *The Changing of Environmental Approval Administrative Law Perspective*, 2 J. HUM. RIGHTS, CULT. LEG. SYST. 191–208 (2022).

[2] Fatma Ulfatun Najicha et al., *The Conceptualization of Environmental Administration Law in Environmental Pollution Control*, 2 J. HUM. RIGHTS, CULT. LEG. SYST. 87–99 (2022).

In addition, conflicts in forest areas occur in almost all parts of Indonesia.[3]

Cumulatively, in the 2015-2020 administration of President Joko Widodo, there were 1,769 complaints of conflicts over forest tenure, covering an area of 807,177.6 ha and involving 87,568 families. The highest position of agrarian conflicts occurred in the plantation sector with 144 cases (35%). This was followed by conflicts in the property sector with 137 cases (33%), agriculture 53 cases (13%), mining 29 cases (7%), forestry 19 cases (5%), infrastructure development in 16 cases (4%), and coastal/marine in 12 cases (3%). Furthermore, about 60% or 83% of cases in the plantation sector occurred in oil palm. The Agrarian Reform Consortium Data for 2020 showed agrarian conflicts covering an area of 807,177,613 ha. Meanwhile, the largest percentage (73%) occurred in the plantation and forestry sectors with an area of 591,640.32 ha and 65,669.52 ha. This was followed by coastal/marine areas covering 54,052.6 ha, mining 49,692.6 ha, property 13,004,763 ha, and the last is infrastructure with an area of 4,859.32 ha.[4]

The conflict affected the peace, livelihood, and even the lives of involved parties. In addition, tenure conflicts in forest areas did not provide business certainty for permit holders and interfered with government performance. The Ministry of Environment and Forestry is currently running a program to accelerate the resolution through the establishment of the Directorate of Tenure Conflict Management and Customary Forests. This institution is one form of

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[3] William D. Sunderlin et al., *How are REDD+ Proponents Addressing Tenure Problems? Evidence from Brazil, Cameroon, Tanzania, Indonesia, and Vietnam*, 55 WORLD DEV. 37–52 (2014).

[4] Ida Aju Pradnja Resosudarmo et al., *Does tenure security lead to REDD+ project effectiveness? Reflections from five emerging sites in Indonesia*, 55 WORLD DEV. 68–83 (2014).

implementation in handling tenure conflicts with a target of 12.7 million hectares for five years.[5]

Furthermore, several statutory regulations and Constitutional Court decisions were also enacted such as Law Number 7 of 2012 concerning Social Conflict Handling; Constitutional Court Decision No.35/PUU-X/2012 concerning Judicial Review of Law No. 41/1999; The Constitutional Court's Decision No. 95/PUU-XII/2014 concerning Judicial Review of Law No. 18/2013 and Law no. 41/1999. There are also others, such as Minister of Environment and Forestry Regulation No. P.32/Menhut-Setjen/2015 concerning Private Forests; Ministry of Environment and Forestry Regulation No. 84/Menlhk-Setjen/2015 concerning Handling of Tenure Conflicts in Forest Areas; Regulation of the Director-General of Social Forestry and Environmental Partnership Number: P.1/PSKL/Set/Kum.1/2/2016 concerning Procedures for Verification and Validation of Private Forests; Regulation of the Director-General of Social Forestry and Environmental Partnership Number: P.4/PSKL/SET/PSL.1/4/2016 concerning Mediation for Handling Conflicts over Forest Tenures; Regulation of the Director-General of Social Forestry and Environmental Partnership Number: P.6/PSKL/Set/Kum.1/5/2016 concerning Guidelines for Assessment of Tenurial Conflicts and Customary Forests.[6]

However, the emergence of these institutions and statutory regulations did not end conflicts in forest areas but opened the way for acquisition through the land swap scheme, which is the exchange of land. In the forestry sector, this is performed by exchanging degraded forest areas with those outsides. Deforested areas are

[5] John F. McCarthy et al., *Land reform rationalities and their governance effects in Indonesia: Provoking land politics or addressing adverse formalisation?*, 132 GEOFORUM 92–102 (2022).

[6] Fatma Ulfatun Najicha et al., *supra* note 2.

exchanged for other land with good cover and high carbon stocks[7], and it is not a transparent or open policy for public participation. Furthermore, it does not explicitly regulate the certainty of land replacement. It demands changes to the land swap policy by allowing replacement areas that are not directly adjacent to forest areas. In the case of borrowing and using land, many parties do not return the borrowed forest area even though its validity period has expired. Therefore, many forest areas are neglected by permit holders.[8]

This policy causes a high intensity of conflict and penetrates locality boundaries through connectivity with various interested parties, both at regional and national levels (e.g., powerful political interests, political and economic mobilization), especially those with a large resource base, power, and constituency.[9] Therefore, this study aims to analyze and review the settlement policy of land tenure conflict in the Indonesian forest area during the era of President Joko Widodo.

This study is a normative legal research wich analyze and compare some laws and regulations concerning land tenure and forestry regulations in Indonesia, such as:

1. The 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945)
2. Law Number 5 of 1960 concerning Agrarian
3. Law Number 41 of 1999 concerning Forestry
4. Law Number 11 of 1967 concerning Mining Principal provisions

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[7] Ward Berenschot et al., *Anti-Corporate Activism and Collusion: The Contentious Politics of Palm Oil Expansion in Indonesia*, 131 GEOFORUM 39–49 (2022).

[8] Matthew Libassi, *Gold conflict and contested conduct: Large- and small-scale mining subjectivities in Indonesia*, GEOFORUM (2022).

[9] Abdul Kadir Jaelani & Muhammad Jihadul Hayat, *The Proliferation of Regional Regulation Cancellation in Indonesia*, 2 J. HUM. RIGHTS, CULT. LEG. SYST. 121–138 (2022).

5. Law Number 26 of 2007 concerning Spatial
6. Law Number 2 of 2012 concerning Land Procurement for Public Interest.
7. Law Number 7 of 2012 concerning Handling of Social Conflict
8. Minister of Forestry Regulation No P.39/Menhut-II/2013 as a follow-up to Government Regulation No 3/2008 on empowering communities around forests through a forest partnership.
9. Regulation of Minister of Environment and Forestry Number P.83/Menlhk/Setjen/KUM.1/10/2016 concerning Social Forestry.

The data were collected through literature study and document observation to provide a systematic, factual, and accurate description of certain features, characteristics, or factors in a particular population or region. It also applied a qualitative juridical analysis based on legal interpretation, reasoning, and argumentation.[10]

ANATOMY OF LAND TENURE CONFLICT IN INDONESIA

CONFLICT AS EMPHASIZED by Angel & Korf is a relationship that involves two or more parties with conflicting interests and goals. This definition is consistent with Johnson and Dunker's study, where it was defined as a disagreement between many interests, values, actions, or directions, and it is an integral part of life. The typology is inseparable from social action or the theory of action proposed by Talcott Parson. Parson provided an adequate basis and conceptual framework for social action theory in The structure of Social Action.

[10] Nur, Prasetyo, and Jaelani, *supra* note 1.

Furthermore, it was stated that social action is inseparable from the context of the surrounding relationships. Therefore, to design the government's juridical instrument for resolving forest area tenure conflicts, it is necessary to know the subject and cause of the conflict. Looking at the various forest tenure conflicts, the subjects can be mapped as follows:[11]

1. Conflicts between indigenous peoples and the Ministry of Environment and Forestry.
2. Conflicts between the community, the Ministry of Environment and Forestry, and the Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN).
3. Conflicts between transmigrant communities and indigenous/ local communities, the Ministry of Environment and Forestry, Regional Governments, and BPD.
4. Conflicts between migrant farming communities and the Ministry of Environment and Forestry and local governments.
5. Conflicts between village communities and the Ministry of Environment and Forestry.
6. Conflicts between land brokers, political elites, farming communities, the Ministry of Environment and Forestry, and the National Land Agency (BPN).
7. Conflicts between local (customary) communities and permit holders.
8. Conflicts between forestry permit holders and other permits, for example, in the fields of Natural Gas, Mining, Geothermal, Oil Palm Plantation, and others.

Two factors provoke land tenure conflicts in forest areas. The first is the application of a political forest framework and the

[11] Gustaaf Reerink & Jean Louis van Gelder, *Land titling, perceived tenure security, and housing consolidation in the kampongs of Bandung, Indonesia*, 34 HABITAT INT. 78–85 (2010).

territorialization of state control in the Forestry Law. Second, the incoherence in the Regional Spatial Plan with an economic growth orientation with Law Number 26 of 2007 concerning Spatial Planning oriented to conservation and people's welfare. The first stage of territorialization of state control is the determination of forest areas (political forests). In determining the political forest, it establishes the boundaries of the areas and determines the zone as well as implements a state-controlled forest management system.[12]

Furthermore, the state is alienating indigenous peoples and local communities from their communal forest lands. Through this process, the political regime developed a legal licensing system to grant access to forest management, private logging companies, and State-Owned Enterprises (BUMN), as well as plantation companies across the main islands outside Java. The political forest and forestry framework adopted by the New Order regime ignores the existence of a community-based resource management system developed by indigenous peoples and local communities. This framework also makes indigenous women marginalized.[13]

Law No. 41 of 1999 in place of Law No. 5 of 1967 adopts the framework of political forest and territorialization of state control. It includes customary law but categorizes it as part of the state forest, and it does not refer to claims made by indigenous peoples that customary forests existed long before the proclamation. Many conflicts today are the result of clashing concepts of "*ownership*" or *de facto* and *de jure* control over land and natural resources.[14]

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[12] Barid Hardiyanto, *Politics of land policies in Indonesia in the era of President Susilo Bambang Yudhoyono*, 101 LAND USE POLICY 105134 (2021).

[13] Anni Valkonen, *Examining sources of land tenure (in)security. A focus on authority relations, state politics, social dynamics and belonging*, 101 LAND USE POLICY 105191 (2021).

[14] Martin Roestamy et al., *A review of the reliability of land bank institution in Indonesia for effective land management of public interest*, 120 LAND USE POLICY 106275 (2022).

The existence of these two properties of ownership raises the issue of the legitimacy of claims to land or natural resources. Based on de jure claims, those that gain access to and control a plot of land, forest, and other natural resources use government permits and applicable laws to legitimize their ownership. This allows them to use state apparatus such as courts, soldiers, police, and politicians to defend and enforce claims in dispute, especially the community. On the contrary, those that control land and natural resources based on de facto claims, often do not know that their lands, forests, and natural resources are de jure claims by the state. Therefore, conflicts usually occur with companies that come later with permits from the government.[15]

The decision of Constitutional Court Number 35/PUU-X/2012 has corrected the error in the institutional practice of the Ministry of Forestry by affirming the highest constitutional norm. This includes the status recognition of customary law communities as rights holders, legal subjects, and owners of their customary territories. It confirms that Law no. 41 of 1999 is contrary to the 1945 Constitution, especially Article 18B: "*The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and following development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law*". The provision for reviewing the regional spatial plan every five years is a gap for the location permit issuer to avoid sanctions by refining violations of the regional spatial plan. Provincial and district/city governments prepare spatial plans that are not under the preparation guidelines, and incomplete data as a basis for the planning. This act is not

[15] Hilary Oliva Faxon et al., *Territorializing spatial data: Controlling land through One Map projects in Indonesia and Myanmar*, 98 POLIT. GEOGR. 102651 (2022).

coherent with the principles of conservation and people's welfare as mandated by Law No. 26 of 2007.[16]

The problems are triggered by the laws and regulations on natural resources. Furthermore, this regulation stands as a reference for the preparation and determination of the stewardship balance of land, water resources, air, and other natural resources. It is also the basis for space use which is only oriented towards economic development (pro-capital) and exploitative. This is not coherent with the principle of the social function of natural resources since it only prioritizes the fulfillment of the investor's interests and ignores both community and preservation (balance of production and conservation). Furthermore, Indonesia's spatial political landscape is not only colored by classic conflicts of interest between the government, the private sector, and the community. A sharper conflict occurs internally between government institutions, i.e., sector by sector, the sector with local government.[17]

Out of the 12 Natural Resources Laws (UU), only four proportionally prioritize taking sides with conservation and pro-people aspects, i.e., (1) UUPA, (2) Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems, (3) Law No. 23 of 1997 concerning Environmental Management, which was replaced by Law No. 32 of 2009 Environmental Protection and Management, (4) Law No. 26 of 2007 concerning Spatial Planning.[18]

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[16] Yvonne Kunz et al., *'The fridge in the forest': Historical trajectories of land tenure regulations fostering landscape transformation in Jambi Province, Sumatra, Indonesia*, 81 FOR. POLICY ECON. 1–9 (2017).

[17] Kristiani Fajar Wianti, *Land Tenure Conflict in the Middle of Africa van Java (Baluran National Park)*, 20 PROCEDIA ENVIRON. SCI. 459–467 (2014).

[18] Umi Muawanah et al., *Going into hak: Pathways for revitalizing marine tenure rights in Indonesia*, 215 OCEAN COAST. MANAG. 105944 (2021).

Laws and regulations concerning natural resources oriented towards economic growth are used as the basis for the government in developing exploitative space utilization programs. It ultimately led to conflicts between institutions in determining the space allocation for conservation and cultivation functions. At this period, there are still differences in the space allocation for protected and cultivated areas between the National, Provincial, Regency, and Consensus Forest Use Plans. Furthermore, general Explanation of Government Regulations No. 104 of 2015 concerning Procedures for Changing the Designation and Function of Forest Areas states that there are unresolved problems in the dynamics of development activities outside the forestry sector, especially plantations. This is due to differences in spatial designation, i.e., as a non-forestry cultivation area according to provincial and district/city spatial plans, and as a forest area based on the map.[19]

STATE'S RIGHT DOCTRINE ORIENTED ON LEGAL PLURALISM

ARTICLE 33 paragraph (3) of the 1945 Constitution states that Earth and water, as well as the natural resources they contained, are controlled by the State and used for the prosperity of the people. This article is defined as State's Right, a legal concept to give legitimacy to state control over land and natural resources, including forests. On the contrary, this concept is seen as Indonesia's success in formulating legal relations between the state and its citizens related to land and

[19] Nandang Sutrisno et al., *The Regulation of Defendant's Religious Identity in Court Decisions*, 10 BESTUUR 85–97 (2022).

natural resources. It replaced the colonial legal doctrine known as the Domein Verklaring Doctrine. However, this concept is also perceived as the cause of the wrong attitude of state institutions, such as having rights to land and natural resources.[20]

Article 2 of the Basic Agrarian Law explains four things related to the State's Right: (1) the scope of the right to control the entire earth, water, space, and natural resources; (2) the definition of State's Right as the authority to regulate the allocation, use, reserve and protection of land and natural resources as well as other matters related to the relationship and legal actions between citizens and land as well as natural resources; (3) affirming the purpose of the State's Right to achieve people's welfare and sovereignty in the context of an independent, sovereign, just and prosperous state of law; (4) implementation of the State's Right which can be reassigned to local governments and indigenous peoples.[21]

According to the Basic Agrarian Law, the State's Right aims to achieve people's welfare as stated in the language of Article 33 Paragraph (3) of the 1945 Constitution. However, concrete measures should be taken to assess the effort of the state in implementing the authority. This indicator is important to formulate due to the purpose of implementing the state's right to control the above. The Constitutional Court mentions four indicators, which are the benefit of natural resources for the people, the level of benefit distribution, the level of people's participation in determining the benefits, and respect for the people's rights in utilizing natural resources.[22]

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[20] Agus Raharjo et al., *The Legal Policy of Criminal Justice Bureaucracy Cybercrime*, 10 BESTUUR 98–111 (2022).

[21] Awaludin Marwan & Fiammetta Bonfigli, *Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia*, 10 BESTUUR 22–32 (2022).

[22] Anom Wahyu Asmorojati et al., *The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights*, 10 BESTUUR 43 (2022).

The indicator of respecting people's rights in utilizing natural resources indicates the unity of Article 33 paragraph (3) of the 1945 Constitution with 18B 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 under developments. society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the law." In addition to being enshrined in written legal regulations, the State's Right also recognizes the existence of unwritten customary law-oriented towards legal harmony and pluralism. However, the unification of law in a pluralistic Indonesian society will lead to injustice.[23]

The State's Right is coherent with historical law stating that the source of law is the soul of the community, and contains rules about people's living habits. Law cannot be formed, but grows and develops together with people's lives. Furthermore, the constitution was formed only to regulate public relations at the will of the community through the state. The right of the state embodied in written regulations and recognizing unwritten customary law is coherent with sociological jurisprudence. It states that "a good law is coherent and consistent with the lives in society." This formulation shows a careful compromise between written law as the needs of the community for legal certainty and living law. Furthermore, they are an appreciation of the important role of society in law formation and legal orientation. Eugene Ehrlich mentions the balance between formal and non-formal power (society) also between the role of formal (formed by the ruler) and living law. The norms of society were also distinguished in two, i.e., (1) norms of decision (legal rules) and (2)

[23] Monica Lengoiboni, Christine Richter & Jaap Zevenbergen, *Cross-cutting challenges to innovation in land tenure documentation*, 85 LAND USE POLICY 21–32 (2019).

norms of conduct (social rules other than legal, which arise as a result of the life of community members.[24]

LAND TENURE CONFLICTS IN INDONESIAN FOREST AREAS DURING THE ERA OF PRESIDENT JOKO WIDODO

THE LAND HOLDS a definite position in the life of the Indonesian people. It can be seen from the attitude in paying respect, as another name for the country "*homeland*". In a feudal order society like Indonesia, land does not only mean a commodity. Many Indonesians, from the peasants to the political elite, interpret it as a symbol of their social status. It is a socio-cultural root used as a symbol of self-existence, making land value more than just a price or as a commodity.[25]

Realizing the value and importance, the founders of the Unitary State of the Republic of Indonesia formulated land and natural resources in a concise but very substantial philosophical manner in the Constitution, Article 33 Paragraph (3) of the 1945 Constitution. It states: "*earth and water and The natural wealth contained is controlled by the state and used for the prosperity of the people*." However, some initial problems sometimes arise when the community is faced with unequal

[24] Malumbo Chipofya et al., *Local Domain Models for Land Tenure Documentation and their Interpretation into the LADM*, 99 LAND USE POLICY 105005 (2020).

[25] V. Kelly Turner, *The environmental consequences of residential land tenure in single family neighborhoods*, 114 LAND USE POLICY 105959 (2022).

perceptions and legal uncertainty regarding the issue of land ownership rights in forest areas.[26]

A forest area is an ecosystem unit in the form of a stretch of land containing biological natural resources. Furthermore, it is dominated by trees in a natural environment, and cannot be separated from one another. The management system should be implemented in an integrated manner by optimizing various forest functions (conservation, protection, and production) to achieve balanced and sustainable environmental, social, cultural, and economic benefits. However, considering the dynamics of development and community aspirations, it is possible to change the allocation of forest areas and their function as well.[27]

Overcoming these problems, the government of President Joko Widodo declared agrarian reform as one of the priority development agendas outlined in the Nawa Cita in Presidential Regulation Number 2 of 2015 concerning the 2015-2019 National Medium-Term Development Plan (RPJMN). The RPJMN sets a target for implementing the agrarian reform policy of 9 million ha. It consists of a policy of legalizing assets (land) of 4.5 million ha and land redistribution of 4.5 million ha. Furthermore, 4.1 million ha of land redistributed was obtained from forest area.[28]

The agrarian reform policy is only implemented through social forestry and land certification which is not accompanied by community participation. It is ideally designed to resolve conflicts over land tenure in forest areas. In addition, it is in the form of

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[26] Heather Huntington & Caleb Stevens, *Land Use Policy Taking stock of global land indicators : A comparative analysis of approaches for a globally consistent land tenure security measure*, 124 LAND USE POLICY 106376 (2023).

[27] Muawanah et al., *supra* note 18.

[28] Anne M Larson et al., *Forest Policy and Economics What is forest tenure (in) security ? Insights from participatory perspective analysis*, 147 FOR. POLICY ECON. 102880 (2023).

abandonment of land that used to be the main Cultivation Rights (HGU), and widespread agrarian conflicts. Both contribute and indicate the existence of inequality in land tenure and ownership, therefore requiring Agrarian Reform policies. Second, it is difficult to obtain access (inaccessibility) to land in forest areas, while the number of people living in it is very large and has access with various types of tenure, and third is the criminalization of residents in forest areas. The perception is different from that of the Ministry of Agrarian and Spatial Planning/National Land Agency. It considers that the urgency lies in the legal uncertainty of land rights, requiring certification.[29]

However, the agrarian reform policy mentioned above did not have a significant impact, considering that the rate of conflict over land tenure in forest areas during the Joko Widodo administration is increasing compared to the era of President Susilo Bambang Yudhoyono. Data from the Consortium for Agrarian Reform (KPA) calculates 1,308 agrarian conflicts during the era of President Susilo Bambang Yudhoyono (2010-2014). Meanwhile, in the era of President Joko Widodo in 2015-2019, there were 2,047 cases, or an increase of more than 50 percent over the last 5 years. Furthermore, KPA also released records of 279 agrarian conflicts covering an area of 734,239.3 ha throughout 2019. The number of people affected was 109,042 heads of families spread over 420 villages across all provinces.[30]

Other data from the Ministry of Environment and Forestry (KLHK) mentions 9,124 land conflicts during 2015-2019 in several sectors of plantations, transmigration, and forest areas. Moreover, Totok Dwi Diantoro's study mentions the results related to forest areas, where, the Faculty of Forestry UGM stated that out of 2.8

[29] Petir Papilo et al., *Palm oil-based bioenergy sustainability and policy in Indonesia and Malaysia: A systematic review and future agendas*, 8 HELIYON e10919 (2022).

[30] Sri Wahyuni, Dian Luthviati & Muhhamd Hayat, *The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen*, 10 BESTUUR 12–21 (2022).

million ha of oil palm plantations in forest areas, 35% are managed by the community, and the rest (65%) are controlled by corporations. Furthermore, conflicts in other forest areas can also be found related to mining. In 2011, the Corruption Eradication Commission (KPK) submitted 1,052 permits covering up to 15 million ha overlapped with forest areas. In addition, the Faculty of Forestry, Bogor Agricultural University (IPB) stated that at least 17.4 million ha of land tenure in forest areas until 2017, including mining and plantation permits.[31]

However, forest conflicts create an unfavorable climate and complicate efforts to manage sustainable resources, and this can be seen from a different perspective. First, from an economic point of view, the conflict resulted in the absence of incentives and business certainty in the forestry sector. Then, from a social point of view, it leads to claims over the area, which complicates forest management efforts. Third, from an ecological point of view, it threatens the carrying capacity of forest areas, leaving greater damage to resources.[32]

Conflicts over land tenure also have a counterproductive effect on increasing the movement and economic growth of many parties. As an indicator of the ongoing structural and fiscal reforms, economic growth is challenged by fluctuations in the global climate. Therefore, the national economy cannot be separated from the constitutional mandate as an agreed social contract.[33]

The economic constitution is seen in Article 33 of the 1945 Constitution, and the provisions concerning the field. Nyhart mentions 6 (six) legal influences in the development of economic life,

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[31] U.W. Prakasa, Satria, *Reduce Corruption in Public Procurement: The Effort Towards Good Governance*, 10 BESTUUR 33–42 (2022).

[32] Dewi Nurul Savitri, *Legal Policy on the Protection of the Right to Health during the Covid-19 Pandemic in France*, 10 BESTUUR 1–11 (2022).

[33] Zainal Arifin Mochtar & Kardiansyah Afkar, *President's Power, Transition, and Good Governance*, 10 BESTUUR 68–83 (2022).

and the first is predictability. The law should have the ability to provide a future picture of the current situation. The second is procedural capability, where the judiciary should work efficiently to get the maximum economic life. Third, legislation should be in line with the objectives of the state in the economic sector. Fourth is the balancing factor, where the legal system should become a force that provides a balance between conflicting values in society, and fifth is accommodation. Accelerated changes should essentially cause a long loss of balance, both in relationships between individuals and groups in society. Meanwhile, the last factor is the definition and clarity of status.[34]

AFFIRMATION OF STATE ADMINISTRATIVE LAW FUNCTION IN DETERMINATION OF FOREST AREAS WITH LEGAL & EQUAL CERTAINTY

THE FOURTH PARAGRAPH of the Preamble to the 1945 Constitution showed Indonesia as a legal state that adheres to the conception of welfare. As a legal state that aims to achieve general welfare, forestry operations should also comply with applicable laws despite being goal-oriented. The juridical instruments used by the government as the basis for forestry operations include laws and regulations governing natural resources, regional spatial planning, forest use agreements, and permits. Furthermore, fair forestry

[34] Fatma Ulfatun Najicha et al., *supra* note 2.

administration requires responsive government juridical instruments. Therefore, it should be participatory, transparent, and accountable. [35]

Permits as government instruments certainly have several mechanisms in their issuance. A State administrative decision in the form of a concrete, individual and final permit is issued by complying with the norms and rules stipulated in the Act. Furthermore, the Issuance of permits that eventually lead to conflicts is a manifestation of the incomplete process and procedures conducted. Therefore, the permit should be re-evaluated since the determination of forest area is a crucial issue in forestry administration. According to Law no. 41 of 1999 concerning Forestry jo. Government Regulation No. 44 of 2004 Forestry Planning, the gazettement of forest areas is conducted through several stages of designation, demarcation, mapping, and determination of forest area.[36]

The regulation of forest area designation should be responsive which can adapt in a responsible, selective way. It should emphasize substantive justice and have access to public participation to integrate legal and social advocacy. Based on the results of the gazettement of forest areas, the government should organize the management of forest areas, and it should include the activities to determine the function. This may be a satisfactory alternative answer since it can nurture (governing) natural resources through the regulation of aspects of control, utilization, and use in the form of consolidation of resources through a unified system for the benefit of the community. With the formulation of natural resource management policies as a system, it should reflect the various sub-systems of its builders such

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[35] Katherine Sievert, et.al, '*What's Really at "Steak"? Understanding the Global Politics of Red and Processed Meat Reduction: A Framing Analysis of Stakeholder Interviews*', 137 ENVIRONMENTAL SCIENCE AND POLICY, August 12–21 (2022).

[36] Yoon Young Chun, et.al, '*What Will Lead Asian Consumers into Circular Consumption? An Empirical Study of Purchasing Refurbished Smartphones in Japan and Indonesia'*, 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 158–167 (2022).

as social, economic, institutional, ecosystem, and legal sub-systems. Therefore, aspects of control, use, and utilization should be measured by various regime criteria of efficiency, stability, resilience, and justice. [37]

In developing stewardship, the activities of preparing and determining the balance of land, water resources, air, and other natural resources are conducted. It includes:

1. presentation of balance of change in use and utilization of land, water resources, air, and other natural resources in the regional spatial plan;
2. presentation of balance of suitability in use and utilization of land, water resources, air, and other natural resources in the regional spatial plan; and
3. presenting the availability of land, water resources, air, and other natural resources and determining the priority of their provision in the regional spatial plan.

The preparation of the stewardship balance of land, water, air, and other natural resources should pay attention to factors that affect their availability. This includes meteorology, climatology, geophysics, and water resources infrastructure, including drainage network systems and flood control. Furthermore, control of space use is an effort to realize orderly spatial planning. This is performed through the stipulation of zoning regulations, permits, provision of incentives and disincentives, and the imposition of sanctions. Licensing provisions are regulated by the Government according to their respective authorities under the provisions of laws and regulations.[38]

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[37] Carlos Eduardo Lourenco, et.al, '*We Need to Talk about Infrequent High Volume Household Food Waste: A Theory of Planned Behaviour Perspective*', 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 38–48 (2022).

[38] *Id.*

Space use permits that deviate from the regional spatial plan are canceled according to their respective authorities following the provisions. It will be considered null and void. Furthermore, permits that go through the correct procedure but are later proven not to be under the regional spatial plan will be canceled. For the loss caused by the cancellation, proper compensation can be requested from the permit-issuing agency. Furthermore, those that are no longer appropriate due to changes in the regional spatial plan can be canceled by providing appropriate compensation. When the authorized official issues a permit that is not following the spatial plan, maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs) will be required. In addition to criminal sanctions, the official may be subject to punishment in the form of a dishonorable discharge. Based on Law no. 26 of 2007 Jo. Law No. 32 of 2009, a model for spatial planning concerning sustainable development and environmental insight as shown on Figure 1. [39]

[39] Stephen A. Sutton and others, *'"Village" as Verb: Sustaining a Transformation in Disaster Risk Reduction from the Bottom Up'*, 137 ENVIRONMENTAL SCIENCE AND POLICY, 40–52 (2022).

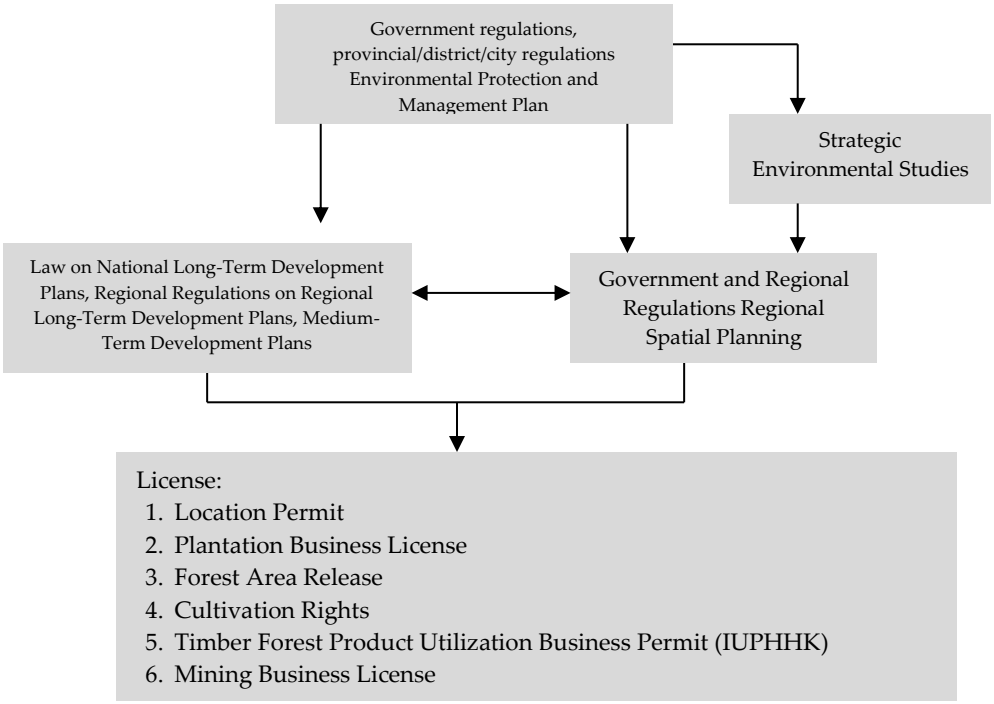

FIGURE 1. Environmentally Sustainable Development-Based Spatial Planning Model

Figure 1 showed the importance of interaction quality between components of humans and ecosystems. To build a unified society, it should begin with improving the quality of organic and mechanical interactions. This organic interaction is based on the quality of personal and collective relationships that are built on the autonomous awareness of community members to form a cohesive and strong society in solving any common problems. The quality of personal interaction can be built through dialogue following the principle of unconditional acceptance. Furthermore, mechanical interaction is built through rules and regulations. In this case, it can be through various regulations including forestry, and environmental protection

and management, or in other fields related to the sustainability of life. [40]

Habermas's theory of communication actions gave insight on forest areas determination arrangements to accommodate the interest of customary law communities. According to Jurgen Habermas' discourse theory (deliberative morality), communication without coercion is needed in every joint decision. This communicative action is determined by binding consensual norms and determines reciprocal expectations regarding behavior that should be understood and known by at least two acting subjects. Furthermore, the validity of social norms is based on the intersubjectivity of mutual understanding of intentions and is secured by common knowledge of obligations. Based on Habermas and the Principles of State Administrative Law, arrangements for the determination of forest areas can be constructed with legal certainty and justice[41] as shown on Figure 2.

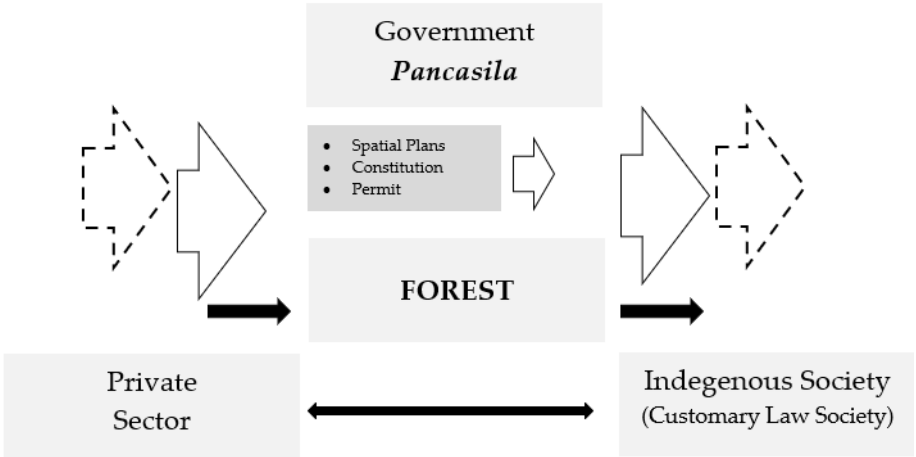

FIGURE 2. State Administrative Law Principle on Forenst regulation

[40] Li Li et.al, 'Urban Residents' *Acceptance of Recycled Water: An Improved Innovation-Decision Model Considering the Needs Satisfied and Social Characteristics'*, 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 1005–1017 (2022).

[41] Denis Arinabo, '*Unveiling the Role of Contextual Factors in the Evolution of Urban Floods in Sub-Saharan Africa: Lessons from Kampala City*', 137 ENVIRONMENTAL SCIENCE AND POLICY, 239–248 (2022).

The Figure 2 showed that the functional relationships between the government, including the Ministry of Environment and Forestry, the Ministry of Agrarian and Spatial Planning/National Land Agency, provincial and district governments, the private sector (plantation companies, forest industries, mining companies), and customary law communities. There is a technical relationship between the government, the private sector, the customary law community, and the forest which has its ideology. Meanwhile, the private sector has an individual ideology that maximizes profits since society has a communal ideology, which fulfills the necessities of life. The government's technical relationship with forests is based on Pancasila, synthesizing individual and communal ideologies. The position between the private sector and communal society is certainly not balanced in the socio-economic perspective and freedom. Based on Rawls's theory of justice, the law should side with the Customary Law Community with a low socio-economic position and limited freedom. Therefore, the government's juridical instruments can be used to provide legal protection for indigenous peoples. The Government's Juridical Instruments are in the form of regional spatial plans, laws, and permits.[42]

Based on the opinion of Dean G. Pruitt and Jeffrey Z. Rubin, the different perspectives of the government, private sector, and customary law communities regarding forest functions are difficult to overcome. This is because of the different meanings of forest due to aspiration related to rights. Furthermore, five basic strategies can be used to resolve conflicts between the three in the determination of forest areas, i.e., contending, problem-solving, yielding, inaction and

[42] Ahmad Siboy, et.al., *'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes'*, 2 JOURNAL OF HUMAN RIGHTS, CULTURE AND LEGAL SYSTEM 14–30 (2022).

withdrawing. Problem-solving involves identifying the problem that separates the two parties and developing a solution that satisfies both. The aspirations of this strategy implementers are maintained since they find a means of reconciliation with other parties.[43]

THE ENFORCEMENT OF STATE ADMINISTRATIVE LAW AGAINST LICENSING VIOLATIONS

P. Nicolai et al. emphasized that administrative law enforcement facilities contain supervision of government compliance with laws and decisions that place obligations on individuals. In addition, it also contains supervision of the implementation of sanctions authority. This claim is in line with Ten Berge's opinion that administrative law enforcement instruments include supervision and sanction enforcement. Furthermore, supervision is a preventive measure to enforce compliance, while sanctions are a repressive measure to enforce compliance.[44]

Enforcement of administrative law by using sanctions such as warnings, government coercion, revocation of permits emphasizes a compliance approach through threats (threats based) to realize holder compliance with laws and regulations. In the practice of administration, State Administrative Law has to supervise

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[43] Silaas Oghenemaro Emovwodo, *'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law'*, 2 JOURNAL OF HUMAN RIGHTS, CULTURE AND LEGAL SYSTEM 1–13 (2022).

[44] Ahmed Alengebawy et.al., '*A Comparative Life Cycle Assessment of Biofertilizer Production towards Sustainable Utilization of Anaerobic Digestate'*, 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 875–889 (2022).

compliance with the requirements in permits and statutory obligations (prevention/before the fact). In addition, the Ministry of Environment and Forestry should conduct a "*Step In*" in the form of Oversight (Article 73 Law on Environmental Protection and Management) and Second Line Enforcement (Article 77 Law on Environmental Protection and Management)[45]

Second Layer Supervision (Oversight) is conducted when there is a serious violation committed by the activity/business. Meanwhile, Second Line Enforcement is conducted when the local government intentionally does not apply administrative sanctions for serious violations. The types of administrative-legal sanctions are written warnings, government coercion, freezing, and revocation of environmental permits. The objectives are: Protecting the Environment from destruction; Tackling environmental destruction; Restoring the quality of the environment due to pollution and/or destruction; and providing a deterrent effect for the person in charge of the business. Meanwhile, the community has an important role in supporting the duties of the Central and Regional Governments in conducting supervision through the complaint mechanism. In addition, the public can file an administrative lawsuit referring to the State Administrative Procedural Law.[46]

THE MODEL OF INTEGRATED CONFLICT SETTLEMENT

LAW SHOULD BE PERCEIVED as a complete reality with a holistic approach that includes transcendental, social, and political orders. Tom Campbell stated that justice in the modern era no longer has

[45] Chipofya et al., *supra* note 24.
[46] Faxon et al., *supra* note 15.

priority over the economy since it has a wider and complex reach in current development. This is inseparable from the influence of the times that lead to a global system. Furthermore, the existence of conflicts involving several parties often stems from problems of justice. The rule of law, which is expected to provide a fair arrangement, only legalizes injustice in legal certainty since the settlement of forest area tenure conflicts is very important. Furthermore, building an integrated conflict resolution should be conducted by all stakeholders, including the Central Government, Provincial Government, Regency/City Governments, NGOs, Business World, People, Universities, Indigenous Law Communities to build mutual understanding and develop the region. [47]

This conflict settlement aims to achieve a prosperous society (just, prosperous, independent, and sovereign; realize the concern, ability, and active participation of the parties; Guarantee for Business Continuity; Increasing the carrying capacity and capacity of the environment and ecosystems, including maintaining forest and land productivity and protecting the Continuity of Local Indigenous Peoples). The requirement to build synergy in conflict management is conducted through communication, resources, commitments, and institutions through the Central Government, Provincial Government, City Districts, Business World, Universities, NGOs, Community, and others as well as the importance of establishing Conflict Desks at the Provincial, Regency levels /City. The institutional arrangement for conflict management at the Directorate of Conflict, Tenure, and Customary Forest Complaints is assisted by the Social Forestry and Environmental Partnership (PSKL) Center. This is located in 5 working areas, namely, Sumatra (Medan), Java,

[47] Stephen Nyabire Akanyange et.al., *'A Holistic Assessment of Microplastic Ubiquitousness: Pathway for Source Identification in the Environment'*, 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 113–145 (2022).

Bali, and Nusa Tenggara (Denpasar), Kalimantan (Banjarbaru), Sulawesi (Bili-Bili), Maluku, West Papua and Papua (Ambon). The establishment of Conflict Desks at the Provincial level was conducted but in very limited numbers. Furthermore, the functions of these institutions include collecting information related to conflicts (database); performing the analysis and screening (analysis function); community organizing (community organizing); emergency handling, and response. [48]

In handling conflicts, the Directorate of Tenure Conflict Management and Customary Forests should pay attention to the principles of legal certainty, socio-economic and ecological justice. Legal certainty in handling cases should be based on the provisions of laws and regulations. Socio-economic justice is implemented by giving access rights to the community to utilize forest areas following the Village, Community, Community Plantation, and Forestry Partnership schemes as well as other methods that are under the characteristics of case handling, creating ecological justice. Meanwhile, ecological justice (*ecocracy*) is the recognition of the forces of nature and life. It implies observing the limitations of nature, designing with nature, creating an ecologically sustainable system, respecting nature.[49]

In the end, good law can be a mechanism for the realization of the principle of equality in biotic and abiotic nature. It is a shared principle that each species, as well as the abiotic environment, are interrelated and even interdependent; the principle of justice in humans as well as the participation by interpreting the position and role in their relations with other species and the abiotic environment.

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[48] Andreia Santos, Ana Carvalho, and Ana Barbosa-Póvoa, *'A Methodology for Integrating the Characterization Factors Uncertainty into Life Cycle Assessments'*, 33 SUSTAINABLE PRODUCTION AND CONSUMPTION 1018–1030 (2022).

[49] Nur, Prasetyo, and Jaelani, *supra* note 1.

In this regard, John Rawls's ideas should also be considered because it is not easy to determine justice according to the objectives of the law. However, a fair procedure can be proposed to accommodate these basic principles since justice was called fairness.

Conflicts can be resolved when an understanding by prioritizing common interests based on communication, resources, commitment, and institutions is obtained. Its settlement estuaries are mediation and balance between access rights, village, community, community plantation, partnerships, and customary forests. Furthermore, legal certainty and ecological justice are prerequisites for the management of natural resources such as a forest. It is performed by encouraging the formation of conflict management institutions at the provincial, district/city, and site levels to obtain more effective and efficient results. In addition, it is also possible to develop examples of conflicts that were resolved to be implemented in other suitable locations.[50]

Conflicts are not only adequately handled but should also provide an understanding of the mechanism procedures according to applicable norms and rules. In addition, permits should be issued under applicable regulations. In Ethica Nichomacheia and Rethorica, Aristotle stated that the law has a sacred duty, which gives rights to everyone. Cicero further emphasized that law and justice are not determined by human opinion but by nature. The purpose of the law is achieved when the benefits can be felt by many parties (the greatest happiness for the greatest number of people). Meanwhile, the recommendations in resolving forest area tenure conflicts include :

1. The government should create regulations on natural resources, determination of forest areas, preparation of regional spatial plans (*RTRW*), Agreement Forest Use (*TGHK*), good norm, and good process licensing.

[50] Jaelani and Hayat, *supra* note 9.

2. The existence of institutions that specifically deal with tenure conflicts from the center to the lower site level.
3. Coordination of the highest leadership in each stratum.
4. Political will on the government regarding conflict resolution (initial mitigation)
5. To Higher Education, managing forestry is not enough from the technical aspect but involves non-technical that are no less important, such as law, social culture, economy, and others.
6. It is important for the Government to immediately draw up a typology of conflict.
7. The business world should develop the region, not building it, meaning to be part of jointly developing the region, for example, building public facilities, schools, places of worship, libraries, and others.
8. The community can be a good spearhead by implementing laws and regulations.

CONCLUSION

Finally, this study highlighted and concluded that the settlement of forest tenure conflicts is not yet optimal. It has become an important program of the Joko Widodo government in completing the agrarian reform through the establishment of the Directorate of Customary Forest Tenure Conflict Handling and legal products such as Presidential and Ministerial Regulations. However, these institutions and legal products are ineffective and overlapping. The settlement strategy shows two important points, concerning the agrarian issues and their management. It is a central and strategic issue for the

government and society that requires a serious commitment to strategic and implementable policies. This strategic policy in question involves all relevant stakeholders to be involved in one regulation. Furthermore, the regulation should cover all the duties, authorities, and obligations of the stakeholders, avoiding overlapping. Then, implementing policies allow them to be implemented under the principles of natural resource management, pre-existing laws, and regulations, as well as under conditions in the field as the object of the policy made. In addition, the resolution of conflicts over land tenure and forest areas is not yet coherent with the instruments of State Administrative Law in determining the areas with legal certainty and justice. Consequently, the quantity of forest area conflicts increased significantly on an annual basis. There were 10,000 conflicts recorded from 2015-2020 with a 50 percent increase during the reign of President Joko Widodo compared to the previous administration of President Susilo Bambang Yudhoyono.

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