

Direction of Political Configuration of Law Number 41 of 1999 on Forestry after Revision through Law Number 6 of 2023 on Job Creation

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ABSTRACT: This article analyzes the change in the direction of political configuration in Law Number 41 of 1999 concerning Forestry after the revision through Law Number 6 of 2023 concerning Job Creation. The main focus of the research is the impact of the revision on forest management and community welfare. Although the Forestry Law was designed to protect and preserve forests, its implementation in the field is often hampered by conflicts between indigenous peoples and investment interests. The revision of the Job Creation Law provides convenience in licensing for investors, but this has the potential to ignore environmental sustainability and the rights of local communities. This study uses a qualitative method with literature study techniques to evaluate the changes that occur in crucial articles in the Forestry Law. This study aims to analyze the change in the direction of political policy in Law Number 41 of 1999 concerning Forestry after the revision through Law Number 6 of 2023 concerning Job Creation. The results of the analysis show that this change not only affects the legal structure, but also creates inequality in access to forest resources between indigenous peoples and large entrepreneurs. The conclusions of this study emphasize the importance of indigenous peoples' involvement in forest management and the need for stricter regulations to prevent detrimental exploitation of natural resources. Suggestions for policy improvements are also proposed so that forest management can be carried out sustainably and fairly for all parties.

KEYWORDS: Political Configuration, Forestry Law, Revision of the Job Creation Law, Socio-Economic Impact

I. INTRODUCTION

As a country with abundant natural resources, Indonesia has regulations that are set to regulate and manage natural resources. One of the objects in this natural wealth is the Forest. The main regulation for forest management is Law Number 41 of 1999 Concerning Forestry. The existence of the Forestry Law is expected to be a basis for managing and preserving forests properly while also paying attention to the survival of the surrounding community. If we refer to the provisions in Article 5 paragraph (1) of the Forestry Law, then based on its status, the Forest consists of State Forests and Rights Forests which also include Customary Forests which are under the auspices of the state as the holder of the highest authority.¹

Although in writing the regulations in Indonesia are very systematic, in practice there are still gaps that can trigger conflicts. Based on data from Forest Watch Indonesia that: In the period 1990-2010 there were 2,585 cases of conflict in 27 provinces in Indonesia involving indigenous/local communities. Of the total cases of conflict, 1,065 were cases of conflict in the forestry sector and 563 cases in the plantation sector.² Other data from the Ministry of Environment and Forestry states that in the period 2015-2021 there were 2186 cases for which law enforcement efforts were attempted, the case data includes the following problems: Illegal logging, Illegal business activities and environmental damage.³

In 2020, the Government passed the Job Creation Law which revised various sectors, one of which was the environmental sector through the Forestry Law to encourage welfare through investment and increased economic activity. The existence of the Job Creation Law which focuses on improving the economic sector has an impact on the existence of forests and the environmental sector. This study will look at the direction of the political configuration of the Forestry Law after the Job Creation

¹Law Number 41 of 1999 concerning Forestry, Article 5.

²Forest Watch Indonesia, Portrait of the State of Indonesia's Forests 2009 - 2013, (Jakarta: Forest Watch Indonesia, 2014), p.xv, accessed from https://fwi.or.id/wp-content/uploads/2014/12/PKHI-2009-2013_update.pdf on November 11, 2024.

³Ministry of Environment and Forestry of the Republic of Indonesia, Status of Indonesian Forests & Forestry 2022: Towards FOLU Net Sink 2030, (Jakarta: Ministry of Environment and Forestry, 2022), p.85, accessed from https://statistik.menlhk.go.id/sisklhkX/assets/publikasi/file/00_FULL_SoIFo%202022%20B5_IDN_31.08.23_opt.pdf on November 11, 2024.

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Law. Based on the title, here is the formulation of the problem in writing this article

1. How has the direction of political policy changed in Law Number 41 of 1999 concerning Forestry after being revised through Law Number 6 of 2023 concerning Job Creation?
2. What are the impacts of the revision of the Job Creation Law on forest regulation and governance as reflected in the changes regulated in Law Number 41 of 1999?
3. What is the direction of the political configuration in Law Number 41 of 1999 concerning Forestry after the changes regulated in Law Number 6 of 2023 concerning Job Creation?

II. RESEARCH METHODS

The writing method used in this study uses a qualitative method with a literature study technique. This writing procedure adapts a development model in data collection, the author collects data using observation and literature study methods. The author has conducted observations of the current environment and social phenomena that are the objects of writing scientific papers. The data used in this writing are supporting data based on library information from various library sources such as electronic books, scientific journals, scientific research works, data from related agencies and, as well as articles from electronic media. Data analysis in writing this scientific paper uses a descriptive method technique. The information that has been obtained is then compiled, interpreted and analyzed to provide an explanation of the object of research.¹

III. DISCUSSION A. Basis for the Formation of the Forestry Law

1. Philosophical

The philosophical basis comes from Pancasila and Paragraph 4 of the 1945 Constitution which contains the objectives of the state. Forests must be utilized for the greatest prosperity and welfare of the people by using the principle of caution and still paying attention to the preservation and sustainability of environmental, social, cultural and economic elements so that the implementation and management of forests must be carried out in an integrated manner by paying attention to local wisdom and ecoregions.

2. Legal

Legally, the formation of the Forestry Law refers to the provisions of Article 3 paragraph (3) of the 1945 Constitution "The land, water and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people." The Forestry Law stands side by side with other regulations from Laws, Government Regulations, Regional Regulations and Constitutional Court Decisions.

3. Sociological

The implementation of forestry based on this Law is expected to aim for the greatest prosperity of the people that is just and sustainable by ensuring the existence of forests with sufficient area and proportional distribution; optimizing various forest functions including conservation functions, protection functions, and production functions to achieve environmental, social, cultural, and economic benefits, which are balanced and sustainable.²

B. Changes in the Direction of Political Policy in Law Number 41 of 1999 concerning Forestry After Being Revised Through Law Number 6 of 2023 Concerning Job Creation,

The forestry law was issued with Law Number 5 of 1967 and became the basis for forest governance in Indonesia with the aim of protecting forests and forest resources and utilizing forest products sustainably. The Forestry Law continues to develop and be revised over time to adapt to the needs and developments of the times so that it was revised into Forestry Law No. 19 of 1999 until the UUCK was issued in 2023 which changed 18 articles in the Forestry Law and added 3 new articles. Of the 18 articles that have changed, the author took 6 articles that have changed as a description of the direction of the political configuration of the Forestry Law after the Job Creation Law. The articles selected according to the author's analysis are crucial articles because they relate to the sustainability of forest resources and the expansion of permits for permit holders. These articles will have a major impact on investment and economic growth in accordance with the objectives of the Job Creation Law, but on the other hand, these articles contradict the philosophical, legal and sociological foundations of the Forestry Law.

¹ Sugiyono. (2017). Quantitative, Qualitative, and R&D Research Methods. Alfabeta.

² Academic Manuscript of Forestry Law, accessed through <https://berkas.dpr.go.id/puupolhukham/naskah-akademik/public-file/naskahakademik-public-12.pdf> on November 11, 2024, pp. 168-170.

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Article Number	Article Contents	Changes in UUCK
Article 18	The area of forest that must be maintained	Eliminates the provision that a minimum of 30% of the forest area must be maintained
Article 26	Utilization and use of forest areas	Changing the authority to grant business permits for forests to the authority of the central government
Article 27	Parties entitled to obtain forest utilization business permits	Expanding the scope of business licensing by changing Indonesian-specific private companies into general private companies.
Article 28	Types of forest utilization and granting of permits	The authority to grant permits is given to the central government
Article 29	Forestry Business Permit (paragraph 2) ³	Expanding the scope of business licensing by changing Indonesian-specific private companies into general private companies.

C. Impact of Regulatory Changes

1. Article 18

Previously, in the Forestry Law, there was a minimum limit that must be considered in carrying out forest exploitation to prevent deforestation and damage to other natural resources such as water, air and mineral content in the soil. In formulating this change, the government believes that determining the minimum limit of forest areas that must be maintained is no longer relevant because the area and needs of each province are different. The impact of not having a minimum limit on the area of forest that must be maintained will reduce the area of forest in Indonesia due to unlimited exploitation.

Indonesia as a tropical country with diverse geographical locations really needs a minimum area boundary that was previously stipulated in Article 18 of the Forestry Law. With the elimination of Article 18 which contains provisions on the allocation of 30% of forest areas for river basins and islands, it will disrupt the balance of water management and result in flooding, erosion, sedimentation and a shortage of clean water.

2. Articles 26 and 28

The author analyzes these two articles simultaneously because the changes have the same purpose, Article 26 paragraph (2) (utilization of protected forests) and Article 28 (utilization of business forests) which have been amended by the Job Creation Law to expand and facilitate the licensing process by business actors. From business permits (Forestry Law) to business permits with the authority of the Central Government. The Job Creation Law simplifies the licensing process by eliminating the licensing mechanism based on the type of forest listed in the Forestry Law. The licensing process only goes through one mechanism, namely business permits.

Although it provides convenience for business actors, these two articles can create inequality in the use of forest products by traditional communities and large entrepreneurs. The domino effect that occurs will make it easier for any party, especially those with capital and power, to apply for business permits in forest areas. Ease in the licensing process without considering ecological aspects will be very risky for environmental sustainability.

3. Article 27 and Article 29

These two articles are articles that regulate licensing and parties who can be granted permits. Both articles make it easier for foreign investors to invest. Before the changes to the two articles, the types of private companies that were allowed to utilize forest resources were private companies in the territory of Indonesia, but after the changes through the Job Creation Law, the definition of private companies was expanded and designated for foreign private companies. Opening up opportunities for foreign investors will create an imbalance in the utilization of forest resources by local communities and large entrepreneurs which increases the possibility of monopolies and unfair business competition. Local communities such as indigenous peoples utilize forest resources for their daily lives while large entrepreneurs view forests in terms of economic value, this will most likely encourage increased exploitation of

³ Op.Cit Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry.

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forest resources which will result in damage to forest habitats which will sacrifice the quality of life of local communities and the existence of forests and habitats in them.⁴

D. Direction Configuration Forestry Law (After the Job Creation Law)

Political configuration or political format in particular also influences the characteristics of a country's legal policy because legal policy is part of general policy. Influence configuration politics or political format towards legal policy is seen in the characteristics of a country's legal policy. First, political configuration or political format influences the policy of legal formation (*rechtsvorming*) as a guideline for the formation of laws. Second, political configuration or political format also influences the policy of law enforcement or the application of law⁵

The direction of the political configuration of a legal product can be authoritarian or democratic from that qualification, the character of the legal product that was born will also be seen, as well as the processes of political struggle between the actors and political institutions that they play. Indicators of a legal product being considered responsive or orthodox can be seen in the process of making, material, nature and function, and the possibility of its interpretation.⁶

1. Authoritarian Political Configuration

The influence of political power through the government's attitude and authority towards law and law enforcement can be a picture of the existence of intervention by personal interests that can complicate law enforcement and the achievement of justice for society.⁷ With the changes to the Forestry Law through the Job Creation Law, the Government as the highest authoritarian holder plays a dominant role with comprehensive intervention from the central government in the name of community prosperity without considering the circumstances and impacts that may arise.

E. Tribal Case Awyu and Moro

As an impact of the government's efforts to encourage investment through the UUCK, both the Forestry Law and the changes to the articles therein through the UUCK, when viewed from the perspective of economic development, it can certainly be said to be quite successful in encouraging investment in several customary forest areas in Indonesia, one of which occurred in South Papua. This case involved the Moro Clan and the Awyu Tribe who live in the Boven Digoel area, South Papua. The indigenous people sued the environmental permit from the oil palm plantation of PT Indo Asiana Lestari (IAL). The indigenous people rejected the plan to open 36 thousand hectares of forest by PT IAL. The lawsuits at the first and second levels were rejected so that the indigenous people held a protest in front of the Constitutional Court building, PT IAL had carried out excessive forest exploitation and had not carried out its obligations properly. The area of forest that was exploited was not halfhearted, namely: 36,094 hectares, or more than half the area of Jakarta, and was located in the customary forest of the Woro Clan - part of the Awyu Tribe. This can be a picture of how the state and forest utilization permit holders (in this case: PT Indo Asiana Lestari). The long struggle to maintain the existence of customary forests and preserve the sustainability of sago forests owned by indigenous peoples has now reached the cassation stage. Customary forests that are claimed as state forests provide ample space and opportunity to be utilized without being preserved, the weak position of indigenous peoples in the eyes of positive law also makes it difficult to fulfill their rights.⁸

IV. CLOSING

A. Conclusion

Based on the results of my analysis of the Forestry Law which is based on the state's objectives in the fourth paragraph and related articles in the 1945 Constitution, Legal theory: Formation of laws, Utilitarian Theory and Positivistic Theory, the author concludes that:

1. Weak position of indigenous communities

Although it is acknowledged, in the author's opinion, the recognition given is only a written formality, but in reality the State intervenes more in customary forests without considering the wishes of the customary community. This can be seen from the attached cases and others.

⁴ Ardiyanto Wahyu Nugroho, "Reading the Direction of Changes in Forestry Governance After the Issuance of the Job Creation Law," *Indonesian Journal of Environmental Law*, Vol. 7, No. 2 (2021): pp. 277-282.

⁵ Dr. Hotma P. Sibuea, SH, MH, *Legal Politics* (Jakarta: Krakatau Books, 2010), p.161.

⁶ Syamsuddin Radjab, *Political Configuration and Law Enforcement in Indonesia* (First Edition; Jakarta: Nagamedia Publisher, 2013), p.97.

⁷ Dr. Supraman Marzuki, *The Tragedy of Human Rights Law Politics* (Yogyakarta: Pustaka Belajar, 2011), p.147.

⁸ Project Multatuli, "The Awyu Community's Struggle to Save Lives: Refusing to Release Papua's Customary Forests to Palm Oil Companies," accessed from: <https://projectmultatuli.org/the-struggle-of-the-awyu-community-to-save-the-life-of-refusing-to-release-the-Papuan-customary-forest-for-palm-oil-oil-companies/>. November 11, 2024

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2. Regulation and implementation in the Forestry Law are not balanced

Even though there are regulations and even sanctions that should be the basis for forest utilization permit holders to carry out business practices, in reality there are still those who ignore and are negligent in maintaining forest sustainability.

3. There is no balance between Law and Politics

Existing legal regulations are clearly more biased and beneficial to certain parties compared to the community.

B. Suggestion

Based on the results of the analysis, the following suggestions are provided to be used as input or consideration.

1. Involving indigenous communities

In forest management, according to the author, it is better if forests are divided and legalized based on state forests and customary forests so that indigenous communities in particular can manage and maintain their forests in a participatory manner.

2. Tightening the implementation of a rule

Good regulations must be supported by good implementation. In investment matters involving forests and indigenous communities, the government should tighten regulations regarding the obligations and responsibilities of permit holders so that in utilizing forest resources there is no element of exploitation and if exploitation occurs, the government can act swiftly based on applicable laws to follow up on the case.

3. Limiting the types of investments

In the author's opinion, investment has a positive side by increasing economic turnover and development in a region, but it is better to limit the type of investment made based on what will not have an impact on long-term environmental damage.

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