



## LEGAL ANALYSIS OF THE ROLE OF THE NORTH SUMATRA ENVIRONMENTAL AND FORESTRY SERVICE IN DETERMINING FOREST AREAS

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### ABSTRACT

The certainty of forest area status is an important prerequisite for the realization of good forest governance. However, with the existence of procedural errors in determining forest areas in the past which have not been corrected until now, it has become one of the major obstacles to realizing the certainty of the forest area. This study uses a descriptive method through a normative approach (legal research) to obtain secondary data and an empirical approach (juridical sociological), to obtain primary data through field research. The legal regulations in determining forest areas by the North Sumatra Environmental and Forestry Service are regulated in Law Number 41 of 1999 concerning Forestry. Determination of forest areas by the North Sumatra Environmental and Forestry Service is a concept of forest management zoning to achieve optimal, sustainable, and equitable forest management in accordance with its main function and designation. To achieve these goals, KPH is expected to become an information center regarding the potential and threats to forest areas, changes, and socio-cultural conditions of communities in and around the forest.

### 1. Introduction

The Republic of Indonesia has declared itself a democratic state based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Indonesia is a state based on law." This means that Indonesia upholds the supremacy of law to uphold and position the law as the highest authority over all things, making the law the commander or commander-in-chief, protecting and regulating all citizens regardless of their status or position.

Indonesia's declaration of being a state based on law is not only contained in the 1945 Constitution of the Republic of Indonesia but also in two other constitutions that have been in effect in Indonesia: the 1949 Constitution of the Republic of Indonesia (RIS) and the 1950 Provisional Constitution (UUDS). The concept of Indonesia as a state based on law is enshrined in the Preamble, Paragraph 4, and the main body of the 1945 Constitution. Article 1 paragraph (1) of the 1949 RIS





Constitution states: "The independent and sovereign Republic of Indonesia is a democratic state based on law and in the form of a federation."

The concept of Indonesia as a state based on law in the 1950 Provisional Constitution is stated in Article 1 paragraph (1), which states: "The independent, sovereign Republic of Indonesia is a democratic, unitary state governed by law." This demonstrates that a state based on law is one based on law and justice for its citizens. All authority and actions of state apparatus or authorities must be based on law or regulated by law. Authorities or anyone else cannot act arbitrarily against any citizen.

The existence of forests is crucial for the life and livelihood of the Indonesian people and also for the world's citizens, so it is appropriate that forests be preserved. Forest management is highly dependent on the journey of human civilization itself and its perspective on forests.

Human society, as part of living beings, plays a crucial role in the sustainability and balance of ecosystems. An ecosystem includes living/biotic components (humans, animals, plants, microorganisms) and non-living/abiotic components (air, solar energy, water, soil, wind, temperature, light, minerals, and so on), all of which interact and are reciprocally connected, as are the relationships between these living beings. Both terrestrial and aquatic ecosystems exist in dynamic equilibrium.

Forests are renewable natural resources, meaning they are considered a renewable resource. They are stable ecosystems, with a balance between producers (green plants), consumers (herbivores and carnivores), and decomposers. If these three ecosystem components are not disturbed, the forest ecosystem will remain stable.

Forests are renewable natural resources, and therefore have the potential to provide unlimited natural resources, thus providing adequate environmental carrying capacity. Therefore, forest management and utilization must be carried out optimally and sustainably. Such management will ensure the continued existence of forest resources.

Forests, as multi-functional areas, are crucial for upstream development. Forest utilization is primarily directed toward environmental services (water storage and supply), air pollutant absorption, tourism services, and various faunal activities. Given the complexity of forest functions, the utilization of forest services requires greater consideration of ecological, economic, and socio-cultural aspects of the community. The concept of a state based on the rule of law (rule of law) utilizes law as a tool to prevent or deter arbitrary actions by both rulers and individuals. Law sets boundaries for individuals and rulers in all social interactions, protecting public order and justice, ensuring societal well-being. Therefore, without proper





and fair law enforcement, chaos and arbitrariness will arise in society, whether perpetrated by the state or by individuals.

Population growth, coupled with technological advances (the use of modern logging equipment such as chain saws and heavy timber transport equipment), has accelerated illegal logging, leading to the decline of vegetation, a key component of a forest ecosystem. This makes it difficult to meet the 30% target. Therefore, the government, specifically the Indonesian Ministry of Forestry, is working with communities to undertake reforestation efforts and provide training to raise public awareness of the importance of forests. This also includes improving forestry regulations. Through continuous efforts by the government and the community, forest damage can be minimized and a balanced forest ecosystem can be achieved.

Enforcement of environmental law can also be achieved through civil law. This method is unpopular in Indonesia due to the protracted court process. Nearly all civil cases are appealed to the highest court due to the persistent dissatisfaction of the losing parties. In fact, there is a tendency for people to deliberately waste time by constantly using legal remedies, even when the case is unfounded, and often proceeds to judicial review.

Enforcement of environmental law through civil law has often been hampered by difficulties in proving the law. Proving environmental cases requires highly skilled human resources and technology, making settlements complex, expensive, and lengthy. In handling civil environmental cases, legal issues often arise that are beyond the scope of existing laws and regulations.

Forest ecosystems, like other ecosystems, must be utilized by their inhabitants for the well-being of human life. Science and technology should assist humans in the sustainable, wise, and prudent use of natural resources. However, inappropriate, excessive, greedy, and arbitrary utilization methods disrupt the balance and even degrade forest ecosystems. Examples include logging without maintaining remaining stands, illegal logging, forest fires, encroachment, shifting cultivation, poaching, and the indiscriminate use of forests for non-forestry purposes.

Human greed has left behind wastelands, barren lands, grasslands, abandoned minefields, and even deserts. These, in turn, can leave damaged natural resources to future generations, making their lives miserable.

## 2. Research Method

This research is an empirical juridical study. Empirical research is conducted through fieldwork aimed at determining the conformity between provisions in laws and regulations and realities on the ground. This study relates to the





implementation of the duties and functions of the Binjai City Bappeda (Regional Development Planning Agency) in managing assets to formulate development planning and implementation in the Binjai City area.

In terms of its nature, this research is prescriptive, namely, it aims to study the objectives of law, values of justice, legal validity, legal concepts, and legal norms. Prescriptive research aims to provide an overview or formulate problems based on existing circumstances or facts.

In accordance with the problem formulation and objectives of this research, several approaches were used: the statute approach, the statute approach, and the conceptual approach.

Data analysis in this study used qualitative methods, by systematically describing the data in the form of sentences. Furthermore, the data analysis tools used were grammatical interpretation and systematic interpretation. Grammatical interpretation is carried out by analyzing the meaning of words or terms based on language, word order, or sound. Systematic interpretation is carried out by interpreting statutory regulations in relation to other legal regulations or laws.

### 3. Results And Discussion

The government's determination of forest areas is stipulated through Decree of the Minister of Agriculture Number 837/Kpts/Um/11/80 concerning the Criteria and Procedures for Determining Protected Forests and Decree of the Minister of Agriculture Number 683/Kpts/Um/8/81 concerning the Criteria and Procedures for Determining Production Forests, Protected Forests, and Conservation Forests. The parameters used are slope, soil type, and rainfall as the calculation criteria, with the following calculation method:

#### 1. Criteria for Determining Protected Forest Areas

The boundaries of protected forests according to Law Number 41 of 1999 concerning Forestry, Article 1, paragraph (8), state that protected forests are forest areas whose primary function is to protect life support systems to regulate water management, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility. According to Presidential Decree No. 32 of 1990 concerning the Management of Protected Areas, Article 8 defines protected areas as forest areas with slope, soil type, and rainfall exceeding a score of 175, or forest areas with slopes of 40% or more, and or forest areas with an elevation of 2,000 meters or more above sea level.

The concept of forest resource management is a social forestry strategy aimed at ensuring the well-being of the community. Forest management with a social forestry strategy is adapted to the characteristics of the forest land type, forest





function, watershed conditions, socio-cultural and economic conditions, local community institutions, including customary forests, and government administrative boundaries. This differs from conventional timber management systems, which have their own distinct characteristics.

The goal of forest management is not solely to produce lumber, but rather to utilize forest resources for all types of forest products that can be produced in various locations. The orientation of forest management has shifted from the pursuit of financial gain for companies to the interests and needs of the community, particularly those living in and around forests.

Unlike large-scale timber plantation management, which uses a company-class concept for a single forest area as a unit within a social forestry strategy, forest management varies according to the physical characteristics of the micro-region and social influences (management regimes), to maximize forest area productivity.

Forest resource management, according to Decree of the Chairman of the Supervisory Board of Perum Perhutani No. 136/KPTS/DIR/2001, is a forest resource management system carried out jointly by Perum Perhutani and village communities, or Perum Perhutani and forest village communities, with stakeholders, with a spirit of sharing, so that the shared interest of achieving sustainable forest resource functions and benefits can be realized optimally and proportionally.

According to Law Number 23 of 2014 concerning Regional Government, forest management is a management policy system oriented toward collaboration between companies and local governments in building partnerships with forest village communities and stakeholders. This is based on the principles of shared learning, mutual trust, and mutual respect for each other's roles in the context of forest resource management. This integration of economic, ecological, and social aspects is proportional, in accordance with the objectives of Law Number 41 of 1999 concerning Forestry.

The forms of forest management activities carried out by Perum Perhutani and the Regional Government with forest village communities and stakeholders include sharing in land use or spatial planning, sharing in time use, and sharing in the use of natural resource products, based on the principles of mutual benefit, mutual reinforcement, and mutual support.

Forms of forest resource management activities that can be managed collaboratively with communities include land-based activities (land-based)





carried out within forest areas and can be developed outside forest areas by utilizing land or space through planting patterns adapted to regional characteristics. Cropping patterns that are appropriate to regional characteristics are those that can develop the diversity of forestry, agricultural, plantation, livestock, and fishery commodities while optimizing the function and benefits of natural resources.

Forest resource management, according to Article 21 of Law Number 41 of 1999 concerning Forestry, includes the following activities:

1. Forest planning and preparation of forest management plans
2. Forest utilization and use of forest areas
3. Forest rehabilitation and reclamation
4. Forest protection and nature conservation.

Meanwhile, forest resource management, according to Decree of the Chairman of the Supervisory Board of Perum Perhutani Number 136/KPTS/DIR/2001, covers forest resource management. Yes, forests, including:

1. Preparation of forest resource plans
2. Utilization of forest resources and forest areas
3. Protection of forest resources and nature conservation, excluding forest rehabilitation and reclamation.

According to Law No. 41 of 1999 concerning Forestry, Article 3 stipulates that forestry management aims to maximize the prosperity of the people in a just and sustainable manner:

1. Ensure the existence of forests in sufficient area and proportional distribution.
2. Optimize various forest functions, including conservation, protection, and production, to achieve balanced and sustainable environmental, socio-cultural, and economic benefits.
3. Increase the carrying capacity of watersheds.
4. Increase the ability to develop community capacity and empowerment in a participatory, equitable, and environmentally conscious manner, thereby creating social and economic resilience and resilience to the impacts of external change.

Article 10 paragraph (2) of this Law regulates various forestry management activities, namely:

1. Forestry planning
2. Forest management
3. Research and development, research and training, and forestry extension.



In essence, the broad objective of forest management is to achieve the greatest possible benefits from forests, in a multi-purpose and sustainable manner, both directly and indirectly, in order to build a just and prosperous Indonesian society based on Pancasila.

Management of forest resources for the benefit of the community must be based on concrete considerations for current and future generations, and on biological and physical needs that can support these intergenerational needs. Forests are natural resources controlled by the state and used for the prosperity of the people. The Decree of the Chairman of the Supervisory Board of Perum Perhutani No. 136/KPTS/DIR/2001 states that the objectives of the PHBM are:

1. To increase the responsibility of companies, forest village communities, and stakeholders for the sustainable function and benefits of forest resources.
  2. To enhance the role of companies, forest village communities, and stakeholders in forest management.
  3. Aligning forest resource activities with regional development activities, in accordance with the conditions and social dynamics of forest village communities.
- Joint forest resource management with communities is intended to provide direction for forest resource management by proportionally integrating economic, ecological, and social aspects to achieve the company's vision and mission. Successful development in Indonesia is not solely determined by oil and gas, but also by natural resources in the form of forests. These natural resources are the capital of national development and therefore need to be optimally explored and utilized. This exploration must be carried out through modern forest management throughout Indonesia, so as to provide the greatest possible results for the prosperity of the people.

Forest management is not solely a government monopoly through state-owned enterprises; private sector involvement is also essential, expected to obtain and increase forest yields. This is emphasized in Article 28 paragraph (2) of Law Number 41 of 1999, which states: "Utilization of production forests is carried out through the issuance of business permits for area utilization, business permits for environmental service utilization, permits for utilization of timber forest products, utilization of non-timber forest products, permits for harvesting timber products, and permits for collecting non-timber forest products."

Article 29 of this law regulates the granting of business permits for the utilization of forest areas, as referred to in Article 28 paragraph (2) above, to individuals and cooperatives. Article 29 paragraph (2) regulates business permits for the utilization of environmental services, as referred to in Article 28 above, which can





be interpreted as extending to individuals, cooperatives, Indonesian Private Enterprises, and State-Owned or Regional-Owned Enterprises.

Forestry policy in any country must have a positive perspective on the proper management of forest areas. There are four pillars that must be underscored in a country's analysis:

1. Ecological integrity and sustainability, namely: examples of forest wealth in the country contain a fairly comprehensive list of various types of forests that must be protected to support the various environmental functions and services provided by forests.
2. Sustainable and equitable human use of forest products and services, namely, that a portion of the forest wealth is strictly protected or used only for scientific research, limited restoration of traditional flora and fauna, or eco-tourism that does not damage the environment.
3. Integrated management at the appropriate scale: forests are managed within a regional planning and management framework that takes into account surrounding human settlements, agricultural lands, and various economic activities.

In these decisions, In decisions regarding forestry management and policies, all stakeholders have the authority and right to information and participation. Decisions are made through ongoing dialogue. If a country fails to implement these four pillars and engages in destructive forest management, it will cause significant economic, social, and environmental losses.

Based on the foregoing, the role of the North Sumatra Environment and Forestry Service in the protection and management of forest resources is to protect forest areas from illegal logging practices. This is achieved through public complaints about illegal logging in forest areas.

The North Sumatra Environment and Forestry Service conducts inspections in forest areas affected by illegal logging. After inspecting the illegal logging practices reported by the community, the Forestry Service takes firm legal action against those involved in illegal logging in forest areas. In its protection and management, the service conserves forest areas, plants trees throughout the forest area, and protects the environment from illegal logging and encroachment. To safeguard and protect forest areas, the forestry services collaborate in monitoring them to prevent further encroachment and illegal logging. Forest resources must be preserved so that trees thrive, and abundant trees in forest areas can prevent flooding.





Much of this vast forest area is open access, serving as a competitive arena for various sectoral and community development interests. Establishing forest area status to prevent open access is a crucial prerequisite for good forest governance.

The path to forest area security still faces various obstacles. By the end of 2023, 85.37% of forest areas had been demarcated, but only 16.63% had been designated. This is due, in addition to technical and budgetary issues, to ongoing unresolved latent conflicts.

The conflict stemmed from the issuance of Decree of the Minister of Forestry Number 173/Kpts-II/1986 concerning the Designation of Forest Areas in North Sumatra Province as Forest Areas, which designated the entire administrative region of North Sumatra Province as forest areas. By 2023, 1,784,713 hectares of forest land had been released for non-forestry use, out of a total area of 9,036,835 hectares. However, none of the land was released for government offices, infrastructure, city and village centers, residential areas, or community cultivation. All of this was for large-scale plantations and transmigration land.

The phenomenon of widespread community claims to forest land after the reform era. Several sources of legitimacy have been cited, including customary rights, historical land use, and official land legality. Examining the legitimacy of the government's forest area gazette in North Sumatra Province, the study found that its legitimacy was weak due to the failure to resolve land claims and the apparent participatory nature of the boundary delimitation process.

The designation of forest areas in North Sumatra Province is inextricably linked to the historical context of socio-political dynamics at the national level, particularly during the transition of national leadership from the Old Order to the New Order. Early in its reign, the New Order faced a severe political and economic crisis. To address this situation, the New Order government took revolutionary measures to create political, security, and economic stability. This was achieved through policies to accelerate economic growth. This policy inevitably forced Indonesia to look outward, thus beginning an era of inventorying natural resources that could be immediately exploited. One such resource was forests, particularly natural forests located outside Java.

Simultaneously, the government prepared laws and their implementing regulations as the legal basis for investment. This led to the issuance of Law Number 1 of 1967 concerning Foreign Investment, Law Number 5 of 1967 concerning Forestry Principles, Law Number 6 of 1968 concerning Domestic Investment, and then Government Regulation (PP) Number 21 of 1970 concerning Forest Concession Rights (HPH) and Forest Product Collection Rights (HPHH).





In 1967, forest areas were identified for HPH permits. As a result, in the 1970s, the forestry sector contributed the second-largest foreign exchange after oil. HPH concessions, granted without auction procedures between 1967 and 1980, were awarded to 519 HPHs covering an area of 53 million hectares. By 1989, there were 572 HPH permits controlling 64 million hectares of Indonesia's production forests. In North Sumatra Province alone, in 1975, there were 27 recorded HPH units with a concession area of 2.65 million hectares. In 1977, this increased to 42 units with a total area of 4.21 million hectares. Then, in 1979, this increased again to 59 units with a concession area of 5.12 million hectares.

It was against this backdrop that the initial forest area gazettelement processes in Indonesia were undertaken. Lacking funds, human resources, and technology, the government gazetted forest areas on a macro scale, using maps without conducting an inventory and delimitation process in the field.

Research has identified two serious problems in the context of forest management budgeting: a lack of budget for forest management and the preparation of Forest Management Plans (RPHJP) that do not lead to budget allocations for forest management. Related to the lack of budget for forest management, the central government's budget allocation for forest management has indeed increased. Regarding the preparation of Forest Management Plans (RPHJP), forest management does not result in budget allocation for forest management because forest management budgeting planning has two approaches. These two approaches to forestry planning and budgeting are:

1. Planning based on the Forestry Plan (national, provincial, and district/city), which is then elaborated in the RPHJP and RPHJPD, as stipulated in Government Regulation No. 6/2007;
2. Planning based on strategic plans and ministerial work plans, as stipulated in Law No. 25 of 2004 concerning the National Development Planning System and Minister of Forestry Regulation No. P.28/Menhut-II/2006 concerning the Forestry Planning System.

These two approaches to FMU budgeting planning are not accompanied by a synchronization mechanism. As a result, the FMU RPHJP, the FMU's forest management planning document, does not receive budget allocation, because the budget allocation is based on planning documents based on the ministry's strategic plan and work plan. In this context, the allocation of the KPH budget tends not to be in accordance with the needs of each KPH as stated in the RPHJP and RPHJPD, because the budget provided for forest management is top-down in nature to implement activities that are part of the government's program or mandate at the central level.





## 4. Conclusion

Legal regulations governing the determination of forest areas by the North Sumatra Environmental and Forestry Service are regulated in Law Number 41 of 1999 concerning Forestry. The determination of forest areas by the North Sumatra Environmental and Forestry Service is a concept for forest management zoning to achieve optimal, sustainable, and equitable forest management in accordance with its primary function and designation. To achieve this goal, the Forest Management Unit (FMU) is expected to serve as a center for information on potential and threats to forest areas, changes in these areas, and the socio-cultural conditions of communities living within and around forests.

The authority of the North Sumatra Environment and Forestry Service in determining forest areas is to regulate and manage all matters related to forests, forest areas, and forest products in accordance with the concept of control over Natural Resources (SDA) as mandated by Article 33 of the 1945 Constitution.

The constraints faced by the North Sumatra Environment and Forestry Service in determining forest areas are the dualism of government policies, where on the one hand, they seek to protect protected areas and establish regulations to preserve them, but on the other hand, they open up opportunities for these protected forest areas to be exploited. There is a lack of harmonization of policies that can serve as a basis and reference for managing protected forests in the region, such as in the case of the designation and transfer of forest functions. There are inconsistencies between central and regional government policies and the failure of regional policies to refer to related regulations at the central level. This is evident in the case of a regional regulation that has been enacted being revoked because it conflicts with a higher-level regulation. There are overlapping and confusing policies for field implementers, such as those that occur in the process of using forest areas for development purposes outside of forestry.

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