



## **JURIDICAL REVIEW OF LEGAL PROVISIONS FOR THE IMPLEMENTATION AND UTILIZATION OF THE CONVERSION OF FOREST LAND INTO CAPITALISTS-ORIENTED PLANTATIONS**

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### **Abstract**

*This research aims to find out how the legal provisions for the implementation and use of land conversion into plantation forests are capitalistic oriented. This research uses a normative juridical research method with a type of approach, namely a statutory and regulatory approach and a conceptual approach. The legal materials used are primary, secondary and tertiary legal materials, obtained by conducting literature studies. The results of the research show that the conversion of forest land into plantation land is stated in Government Regulation Number 64 of 1957 concerning Forestry Deregulation, Law Number 5 of 1967 concerning Forestry and was later replaced by Law Number 41 of 1999. In its implementation the existing regulations It turns out that this has not been rooted in the legal ideology, social system and political system of the constitution, and the Basic Agrarian Principles regulations. It seems that the use of forests that is managed and oriented towards capitalists cannot be used as a measure of the government's success in economic development, considering that there are still many inequalities and problems that have occurred so far. Considering the negative impacts rather than the function of land which is increasingly expanding and wasted.*

**Kata kunci:**

*Ketentuan Hukum, Alih Fungsi Lahan, Perkebunan, Kapitalistik*

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**Abstrak**

Penelitian ini bertujuan untuk mengetahui bagaimana ketentuan hukum pelaksana dan pemanfaatan alih fungsi lahan hutan menjadi perkebunan yang berorientasi kepada kapitalistik. Penelitian ini menggunakan metode penelitian yuridis normatif dengan jenis pendekatan yaitu pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan yaitu bahan hukum primer, sekunder, dan tersier, diperoleh dengan melakukan studi kepustakaan. Hasil penelitian menunjukkan bahwa alih fungsi lahan hutan menjadi lahan perkebunan tercantum dalam Pertauran Pemerintah Nomer 64 tahun 1957 tentang Deregulasi bidang Kehutanan, Undang-Undang Nomor 5 tahun 1967 tentang Kehutanan dan kemudian digantikan dengan Undang-Undang Nomor 41 tahun 1999. Dalam implementasinya aturan yang ada tersebut, ternyata belum mengakar pada ideologi hukum, sistem sosial, dan sistem politik konstitusi, dan peraturan Dasar Pokok-Pokok Agraria. Pemanfaatan hutan yang dikelola dan berorientasi pada kapitalis nampaknya tidak dapat dijadikan tolak ukur keberhasilan pemerintah dalam pembangunan di bidang perekonomian, mengingat masih banyaknya ketimpangan-ketimpangan dan masalah yang terjadi selama ini. Mengingat dampak negatif alih fungsi lahan yang semakin meluas dan mengkhawatirkan.

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**INTRODUCTION**

The phenomenon of the issue of the essence of land or soil until now still continues to occur, even tends to increase and has a negative impact on the survival of humans who should get their rights to be able to live a prosperous life physically and mentally, have a decent and good place to live, and get a good and healthy living environment, in accordance with the mandate of the constitution of the Republic of Indonesia. Expectations to fulfill various desires and goals must be balanced with the role of the state as a policy maker, which must be responsive or populist<sup>1</sup>, in formulating national agrarian legal political policies.

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<sup>1</sup> Mahfud MD, 2011, Politik Hukum di Indonesia, Jakarta: PT RajaGrafindo, Persada, Edisi Revisi, Cetakan ke-4, hal. 31-32.

Referring to the regulation in Article 33 paragraph (1) which stipulates that the Indonesian economy is structured as a joint effort based on the principle of family and in paragraph (4) stipulates that the national economy is organized based on economic democracy with the principles of togetherness, efficiency, and justice, which can be interpreted to mean that economic development policies emphasize development based on a people's economic system. This system is a development model that places the people in a central position.

The direction of economic development should be aimed at increasing the economic capacity of the community as a whole by using the spirit of Article 33 of the 1945 Constitution of the Republic of Indonesia as its basis. The existence of general policies and legal politics must be based on efforts to build social justice for all Indonesian people. Where Indonesia is not an adherent of the liberalism system, but ideologically adheres to the prismatic system between individualism and collectivism with an emphasis on general and social welfare.<sup>2</sup> Prismatic values are placed as the basis for building laws whose elaboration can be adjusted to the stages of socio-economic development of the community concerned.<sup>3</sup>

The polemic of agrarian inequality and injustice that continues to occur until now is closely related to the conversion of forest land in various economic interests, both in terms of mining, plantations, and public housing. Spatial conflicts in forest areas are very high. Starting from mining, planting oil palm on land without permission. There are also millions of hectares of forest land that have not been cultivated, but the permits have been issued first. Specifically, for example in the Kalimantan region, many land conversion permits are problematic and have not received appropriate legal solutions to these problems. Not only that, there are other influences, such as the conversion of forests into non-forest areas, the loss of various types of life, and permanent forest damage.

The disclosure of the above problems shows that the applicable law has not worked optimally and has not even touched on essential issues. For example, the hierarchical arrangement between sectoral regulations and organic regulations is not organized: where the Forestry Law, in substance, still uses and contains the old way of thinking, namely in the agrarische wet 1870 model which in fact has been revoked since the Basic Agrarian Law came into effect. So in this case, the Forestry Law is almost entirely contradictory to the UUPA, as a result it is very susceptible to legal inconsistency. This legal problem is what gives rise to legal uncertainty (meaning, disobedience to legal principles). An indicator of this inconsistency is that several regulations can still be found that are not in line with other regulations. And this also confirms the existence of the ambivalence of the law.<sup>4</sup>

The existence of various inequalities above gives rise to symptoms of capitalism in the economic environment which slowly causes imbalances in the distribution of natural resources and sources of prosperity. The pattern of capitalist order has formed an exploitation system where the existence of workers is seen

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<sup>2</sup> Maryanto, "Urgensi Pembaharuan Hukum Indonesia berdasarkan Nilai-Nilai Pancasila", *Jurnal Hukum*, Semarang: Unissula, Vol. Xxv, No. 1 April 2011, hal. 428.

<sup>3</sup> Dyah Listyarini, "Prismatika Nilai Ekonomi dan Nilai Kepentingan Sosial sebagai Dasar Kebijakan Pembangunan Hukum Nasional" *Jurnal Asy-Syir'ah*, Vol. 42 No. 2, 2009, Yogyakarta: Universitas Islam Negeri, hal. 1.

<sup>4</sup> Sudi Fahmi, "Problematika Hukum dalam Bidang Kehutanan", *Jurnal Hukum Respublica*, Vol. 6 No. 1, 2006 pekanbaru: Universitas Lencana Kuning, hal. 55.

more as a complementary element of production to support high productivity. The existence of this is certainly not in line with constitutional economic democracy (UUD NRI 1945), which is the basis of the concept of justice in business that is desired to be achieved in sustainable development.

The utilization of forest land conversion for economic development oriented towards capitalism has actually long drawn criticism from various parties and economic experts. Like the founding fathers Muhamad Hatta, who stated, the capitalist system is based on the strong struggle to become stronger and the weak will be destroyed and powerless. Therefore, the implementation and utilization of forest land conversion must place the people as the subject and as the center of economic development activities. So that the creation of a people's economic system that requires the realization of, togetherness of ownership, togetherness of determining the direction of business, and togetherness in responsibility.

## **RESEARCH METHODS**

The research method used in this study is a type of normative legal research or known as doctrinal legal research, which is a process to find legal rules, and to answer legal problems or issues studied by reviewing library materials. This study uses a statute approach and a conceptual approach. The statute approach is used to analyze or review regulations related to implementing legal provisions and the utilization of forest land conversion into plantations that are oriented towards capitalism. The conceptual approach is used to provide views and legal doctrines as a basis for analyzing problem solving. The legal material collection technique used consists of primary legal materials, secondary legal materials, and tertiary legal materials obtained by conducting a literature study consisting of legal material instruments that have a direct relationship to implementing legal provisions and the utilization of forest land conversion into plantations that are oriented towards capitalism

## **RESULTS AND DISCUSSION**

### **Legal Provisions for Conversion of Forest Land to Plantations**

The rampant problem of converting forest land into plantations in Indonesia is actually not a new thing. In practice in the field, the conversion of forest land causes many problems, especially forest damage. Starting from the decreasing fertility of the soil, the carbon stored in the forest will be released into the atmosphere. Where the release of this carbon causes and increases the content of greenhouse gases, which traps the sun's heat in the atmosphere, thus impacting the earth's temperature which continues to increase. Conditions like this are the cause of climate change.

The occurrence of forest destruction can be ascertained, because of the degradation of climate change which will have a negative impact on the survival of the community, especially the impact on the shortage of food supply. Especially for peacocks who depend on their livelihoods on existing forest resources, but since the conversion of forest land into plantation land, they have difficulty finding and obtaining food that they have depended on forest resources, because the situation

has experienced deforestation and land degradation which has caused national and international concern.

The increasing extent of forest damage is due to the state policy that adheres to the ideology of forest management based on government-based forest management, which prioritizes the use of recessive law, this situation is certainly not expected. The basis or legal basis for the conversion of forest land into plantations is Law Number 5 of 1967 concerning Basic Provisions on Forestry (Sectoral Law), while previously there was government regulation (PP) No. 64 of 1957 concerning Decentralization in the forestry sector. So based on the PP, the Governor can grant a maximum logging permit of 10,000 hectares and the Regent 5,000 hectares. Granting of permits and authority is a task issued by the central government. This is certainly an opportunity for the New Order regime, by being able to grant permits to foreign companies to exploit natural forest areas, without considering the rights of local communities who depend heavily on their lives around the forest area. Finally, the policy contained in PP No. 64 of 1957 was revoked and replaced with PP No. 21 of 1970. So with the PP, the authority to grant forestry business permits is entirely in the central government. The central government's authority is a granting of forestry control permits that are centralistic in nature.

In relation to the above, law is a reflection and result of the ideals of the society concerned from time to time. The fundamentals of law are centered on moral and ethical values developed by humans in social life according to what is desired. The aspect of the usefulness of law is the achievement of order, then various social needs in society will be met, so that through the existence of the legal aspect the usefulness of law is truly felt and its usefulness in life and social relations.

The centralistic policy by the central government is very strong in the Forestry Law and the Government Regulation. Especially in the description of the state's right to control stated therein is not in line with Article 33 paragraph (3) of the 1945 Constitution. This can be seen from the provisions of Article 5 which determines several things. Such as, all forests in the territory of the Republic of Indonesia including the natural resources contained therein, are controlled by the state. Then, the state's right to control is contained in paragraph (1) which gives authority to determine and regulate the planning, allocation, provision, and use of forests in accordance with their function in providing benefits to the people and the state. In other words, to regulate forest management in a broad sense, such as determining and regulating legal relations between people or legal entities with forests and regulating legal acts concerning forests.

The substance of the regulation is clearly visible, specifically regarding the concept of the state's right to control forests, and not to mention its connection with the use for the greatest prosperity of the people. In addition, the concept of empowerment of the substance of the old law needs to be supported by community empowerment, which means trying to improve the dignity of all levels of society from poverty and backwardness. So that empowerment is a right to enable and make the community independent as a manifestation of legal protection and guarantee of constitutional rights that develop following the dynamics of the community's life itself.

Law No. 41 of 1999 concerning Forestry is a new regulation that ideally aims to initiate important changes in terms of forest control and regulation. The old regulatory paradigm is considered less dynamic, is considered less open to community aspirations and participation in managing forests, and less respectful of the existence of indigenous communities, customary rights, or existing local wisdom. However, over time, the journey of new regulations is inevitable, where ego-sectoralism is very clear and many problems arise. This is what hinders agrarian reform in the forestry sector.

Based on the analysis of the legal policy, it can be seen that clearly the legal provisions on the conversion of forest land into plantation land still tend to be rooted in the legal doctrine of capitalist liberalism, which greatly influences national agrarian legal politics. Thus, agrarian inequality has occurred because of the capital orientation by the government in the name of development, by legalizing the conversion of forest land into plantation or industrial areas, which of course leads to the pragmatist goals of the capitalist group.

### **Utilization of Conversion of Forest Land into Plantation Land**

The utilization of forests managed and oriented towards capitalism does not seem to be a measure of the government's success in economic development, considering the many inequalities and problems that have occurred so far. Especially in the decisions and policies on the use of forest land by capital owners to make plantation land. The freedom of investors in this case plantation entrepreneurs, to obtain forest land through the process of Forest Control Rights (HPH) concessions, Forest Product Collection Rights (HPDD) concessions, or Industrial Plantation Forest (HTI) concessions. Of course this causes the condition of forests in Indonesia to experience degradation, due to damage to forest resources that occurs due to uncontrolled exploitation and causes incalculable ecological losses.

The conversion of forest land or the use of forest land into plantations, as recommended in sectoral regulations (Forestry and Plantation Law), to capitalist interests through the concession process, needs to be and must be reviewed. Considering that this is a negative impact of land conversion, which is increasingly widespread and worrying. Referring to the view of critical legal theory, namely Law Number 41 of 1999 concerning forestry, and Law Number 18 of 2004 concerning plantations. Not in line with the ideology or teachings about values that are used as a paradigm for thinking frameworks, orientations, and legal ideals. Where the Forestry Law should be a sectoral regulation under the Basic Agrarian Principles (UUPA1960). It is not justified to make claims that most of Indonesia's land is under the control of the Forestry Law.

In accordance with the provisions of Article 13 paragraph (2) of the UUPA, it provides an explanation to require the government to prevent agrarian field efforts from organizations and individuals that are monopolistic. The Forestry Law and the Plantation Law ignore the principles of national economic law national human rights, such as ignoring the macro-political existence of the Indonesian economy which is built on the basis of collectivism. It does not limit the ownership of plantation entrepreneurs so that companies and their groups can have millions of

hectares. This situation is not in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution.

The problem that occurs in the utilization of forest land into plantation land, which is oriented towards capitalism legitimized by the Forestry Law, which is not rooted in the culture and customs of the Indonesian people. If seen in reality in Indonesia, there are many inconsistencies or inconsistencies in the rules under the 1945 Constitution and the Basic Agrarian Principles (organic rules) with sectoral laws. For example, in the Forestry Law which allows the conversion of forest land to investors to carry out its capitalist orientation through the process of granting concessions for the use of millions of hectares of forest land for plantations. Whereas

in the provisions of the UUPA it prohibits agrarian monopolies in Article 13 paragraph (2), and does not justify controlling/owning land beyond the maximum limit in Article 8. Even referring to the provisions of Article 33 paragraph (3) of the 1945 Constitution, it outlines that the paradigm of economic development must place the people as the subject and as the center of economic development activities.

The legitimacy of sectoral regulations such as the Forestry Law and the Plantation Law is substantially not rooted and guided by the expected philosophical and ideological foundations of law. The ideality of the law must lead to the disclosure of the legal doctrine that was created. So that the clarity and certainty of law on the use of forest land conversion into plantation land can be fair and can be felt by many parties. And can reduce the inequality of regulations that lead to a reduction in problems regarding the conversion of land.

## **CLOSING**

### **Conclusion**

Basically, the applicable provisions regarding the conversion of forest land to plantation land are stated in Government Regulation Number 64 of 1957 concerning Deregulation in the Forestry Sector, Law Number 5 of 1967 concerning Forestry and later replaced by Law Number 41 of 1999. In its implementation, the existing regulations have not been rooted in the legal ideology, social system, and constitutional political system, and Basic Agrarian Principles.

The utilization of forests managed and oriented towards capitalism does not seem to be a measure of the government's success in economic development, considering the many inequalities and problems that have occurred so far. Considering the negative impacts of land conversion that are increasingly widespread and worrying.

### **Recommendation**

The following are suggestions that can be given regarding the above research, including:

1. It is very important to regulate law enforcement supervision based on character values in the implementation of various regulations regarding implementing legal provisions and the utilization of forest land conversion into plantations that are oriented towards capitalism.
2. Substantially, the legitimacy of the current regulations is not rooted and guided by the expected philosophical and ideological foundations of law. The ideality of the law must lead to the disclosure of the legal doctrine that is

created. So that the clarity and certainty of the law on the utilization of forest land conversion into plantation land can be fair and can be felt by many parties. And can reduce the inequality of regulations that lead to reducing problems regarding the conversion of land.

## REFERENCE

- Dyah Listyarini, "Prismatika Nilai Ekonomi dan Nilai Kepentingan Sosial sebagai Dasar Kebijakan Pembangunan Hukum Nasional" *Jurnal Asy-Syir'ah*, Vol. 42 No. 2, 2009, Yogyakarta: Universitas Islam Negeri.
- Mahfud MD, 2011, *Politik Hukum di Indonesia*, Jakarta: PT RajaGrafindo, Persada, Edisi Revisi, Cetakan ke-4.
- Maryanto, "Urgensi Pembaharuan Hukuum Indonesia berdasarkan Nilai-Nilai Pancasila", *Jurnal Hukum*, Semarang: Unissula, Vol. Xxv, No. 1 April 2011.
- Marzuki, P. M. (2014). *Penelitian Hukum*. : Kencana Prenada Media Group.
- Purwendah, E. K. (2019). The Eko-Teocracy Concept In Disposal Settlement Of Oil Pollution In The Sea By Tanker Ship. *Ganesha Law Review*, 1(1), 14. <https://doi.org/https://doi.org/10.23887/glr.v1i1.15>
- Purwendah, E. K. (2020). Sea Protection From Oil Pollution By Ship Tanker. *Ganesha Law Review*, 2(1), 77. <https://doi.org/https://doi.org/10.23887/glr.v2i1.122>
- Purwendah, E. K., & Djatmiko, A. (2015). Peran Syahbandar Dalam Penegakan Hukum Pencemaran Minyak Di Laut Oleh Kapal Tanker. *Jurnal Perspektif*, 20(1).
- Purwendah, E. K., & Periani, A. (202 C.E.). Formulation Of Losses For Oil Pollution Due To Tanker Ship Accident In The Indonesian Legal System Value Of Justice. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 8(3).
- Purwendah, E. K., & Wahyono, D. J. (2022). Waste Bank As An Alternative To Community-Based Waste Management. *Jurnal Komunikasi Hukum (JKH)*, 8(2), 10. <https://doi.org/https://doi.org/10.23887/jkh.v8i2.47084>
- Purwendah, E. K., Djatmiko, A., Erowati, E. M., Triana, I. D. S., & Pudyastiwi, E. (2022). Ecological and Social justice as Basis on Marine Environment Protection and Preservation in The System of Indonesian Law. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, 7(2).
- Purwendah, E. K., Mangku, D. G. S., & Periani, A. (2019). Dispute Settlements of Oil Spills in the Sea Towards Sea Environment Pollution. *Proceedings of the First International Conference on Progressive Civil Society (ICONPROCS 2019)*. <https://doi.org/10.2991/iconprocs-19.2019.51>
- Sudi Fahmi, "Problematika Hukum dalam Bidang Kehutanan", *Jurnal Hukum Respublica*, Vol. 6 No. 1, 2006 pekanbaru: Universitas Lencana Kuning.