

## SPATIAL PLANNING FOR MINING EXPLOITATION RIGHTS IN FOREST AREA

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### Abstract

*This study aims to analyze and criticize the application of sustainable development principles in forest spatial planning. The research method used is normative juridical research, and the approach used is the context and statutory approaches. The study results show that law in the primary sector must refer to sustainable development and people's welfare. Forest destruction cannot be considered a consequence of activities in this sector; it also reflects the failure of spatial planning in an area. The embodiment of spatial planning that can realize environmental preservation must lead to how the law exists in the community. The community around the forest area, as the leading actor, plays a crucial role in controlling and protecting the forest, and their involvement is vital for successful environmental preservation. An extraordinary, measurable, planned, and directed spatial arrangement is urgently and significantly needed. This is done so that the living environment is maintained and planned. Good planning is expected to lead to good spatial use, but this requires consistent management so that environmental sustainability remains aligned with spatial planning scenarios.*

**Keywords:** *spatial planning; exploitation rights forest areas; mining.*

### Abstrak

Penelitian ini bertujuan untuk menganalisis dan mengkritisi tata ruang dalam pinjam pakai kawasan hutan dalam hubungannya dengan prinsip-prinsip pembangunan berkelanjutan. Metode penelitian yang digunakan ialah penelitian yuridis normatif dan pendekatan yang digunakan adalah pendekatan konseptual, dan pendekatan perundang-undangan. Hasil penelitian menunjukkan bahwa hukum di sektor kehutanan harus mengacu kepada pembangunan berkelanjutan dan kesejahteraan rakyat. Kerusakan hutan tidak dapat dianggap sebagai konsekuensi dari kegiatan di sektor kehutanan, kerusakan tersebut juga mencerminkan gagalnya penataan ruang di suatu daerah. Perwujudan tata ruang yang dapat mewujudkan pelestarian lingkungan hidup harus mengarah kepada bagaimana hukum yang ada di masyarakat, karena masyarakat sekitar Kawasan hutan dapat menjadi aktor utama pengendali dan penjaga hutan itu sendiri. Atas dasar hal tersebut dibutuhkan penataan ruang yang terukur, terencana dan terarah yang bersifat *extraordinary*, ini dilakukan agar lingkungan hidup tetap terjaga dan terencana. Perencanaan yang baik diharapkan dapat mengarah pada pemanfaatan ruang yang baik, namun hal ini membutuhkan tata kelola yang konsisten agar kelestarian lingkungan hidup tetap sejalan dengan skenario penataan ruang.

**Kata Kunci:** pinjam pakai kawasan hutan; pertambangan; tata ruang.

## Introduction

Earth is a gift from God Almighty which the state must be grateful for, organized and managed responsibly, per the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads: "The land and waters and the natural resources contained in it shall be controlled by the state and utilised for the optimal welfare of the people". This article requires that every use and utilization of land, water and natural resources must be aimed at the greatest possible prosperity of the Indonesian people and cannot be contested as a basis and goal; for that, all problems and phenomena in the utilization of natural resources must return to their primary objective.

Forest areas are land under natural or planted trees, whether productive or not, and exclude tree stands in agricultural production systems and trees in urban parks and gardens. A hundred and twenty million hectares of Indonesia, or 64 per cent of the nation's entire area, is designated as the forest area. Most of Indonesia's remaining land area comprises non-forest areas or public land. The forest area is managed in three functions, namely: Production Forests cover a total area of 68.8 million hectares; Conservation Forests cover a total area of 22.1 million hectares; and Protection Forests, a watershed and catchment area that cover the remaining 29,6 million hectares.<sup>1</sup>

One of the phenomena that often causes problems is related to the exploitation rights of forest areas for mining, a classic phenomenon still ongoing. It requires the government's serious attention to find sustainable and environmentally sound solutions to integrating forestry and mining. "This problem will be related to the increasing area of forest that is no longer productive and will have an impact on decreasing state income in the Exploitation rights forest area."<sup>2</sup> However, policies on forest exploitation rights areas tend to be more dynamic, so many rules and guidelines have changed.<sup>3</sup> In addition, technical problems in issuing Exploitation rights permits for forest areas have never been resolved.<sup>4</sup>

"Currently, Exploitation rights forest areas have been growing because of technological developments, but instead, it has created destructive tendencies due to the high intensity of utilization coupled with a lack of understanding and concern for the function of the forest as a life support.

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<sup>1</sup> Ministry of Environment and Forestry, Republic of Indonesia, "The State of Indonesia's Forests, 2020", *Ministry of Environment and Forestry, Republic of Indonesia Report*, 2020.

<sup>2</sup> Ismail Bakrie Syaprudin and Legowo Kamarubayana, "Pinjam Pakai Kawasan Hutan Dan Realisasi Pemanfaatannya Oleh PT. Mahakam Sumber Jaya Di Kabupaten Kutai Kartanegara Provinsi Kalimantan Timur," *Agrifor: Jurnal Ilmu Pertanian Dan Kehutanan* 13, no. 1 (2014). p. 95.

<sup>3</sup> Kushartati Budiningsih, Sulistya Ekawati, and Handoyo, "Dinamika Kebijakan Penggunaan Kawasan Hutan : Sebuah Analisa Isi Perubahan Kebijakan Penggunaan Kawasan Hutan," *Jurnal Analisis Kebijakan* 3, no. 1 (2016). p. 19.

<sup>4</sup> Tutut Ferdiana Mahita Paksi, Suteki Suteki, and Tity Wahyu Setiawati, "Rekonstruksi Kebijakan Publik Tentang Izin Pinjam Pakai Kawasan Hutan Yang Berbasis Sustainable Development," *Diponegoro Law Journal* 6, no. 3 (July 2017). p.1

Undeniably, forests and forest areas are often the object of contention by various parties who wish to utilize them for their own needs.”<sup>5</sup>

Exploitation rights in forest areas should impact the broader community because the damage caused must be proportional to or less than the benefits obtained. However, the issue of forest exploitation rights is not only about exploitation; the sustainability of the forest must also be guaranteed.

Development in the forestry sector must be based on the principle of justice. The principle must be upheld per the mandate of Article 33 of the 1945 Constitution. This means that forestry natural resources in a fair manner must be able to provide welfare to the people. Article 33, paragraph (4) equally firmly states, "The national economy shall be conducted under economic democracy under the principles of togetherness, efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity. This article further emphasizes that the management of forestry natural resources must be based on the principle of justice, and then people's welfare is the result of justice.”<sup>6</sup> Justice and prosperity must be understood as society's spiritual and physical needs. From a legal standpoint, this shows how much potential the community can utilize. In other words, it shows how much the law can be implemented or achieve the desired results because reasonable regulations must be oriented towards the community's welfare.

The principle of justice must be interpreted as equality. John Rawls said that fairness is an agreement that can be accepted and supported by all groups that have equal liberty. Acceptance and support were not due to intimidation or pressure from certain parties.<sup>7</sup> Rawls's thoughts in modern law are currently reflected in sustainable development, which requires the support of all parties so that the formation of legal rules does not harm the environment and future generations, and of course, with the primary goal of all generations being able to enjoy nature and a healthy environment in balance without any frills.

The concept of forestry must guarantee that it protects what must be maintained, guarantees what must be guaranteed, and takes care of what should be treated. After the completion of the Exploitation rights permit for a forest area for mining, license holders must return the condition of forest areas to their original condition; this must be within the framework of the Forestry Law as the highest regulation in the forestry sector, it must be able to guarantee forest sustainability. The utilization of forest areas essentially provides space for other sectors outside of forestry to exploit and utilize the existing resources in forest areas for the prosperity of the people, which is the primary goal.

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<sup>5</sup> Syaprudin and Kamarubayana. p. 94.

<sup>6</sup> Bambang Daru Nugroho, *Hukum Adat: Hak Menguasai Negara Atas Sumber Daya Alam Kebutuhan Dan Perlindungan Terhadap Masyarakat Hukum Adat* (Refika Aditama, 2015). p. 118.

<sup>7</sup> John Rawls, *A Theory of Justice, Teori Keadilan, Dasar-Dasar Filsafat Politik Untuk Menujudkan Kesejahteraan Sosial Dalam Negara* (Pustaka Pelajar, Yogyakarta, cetakan ke, 2011). p. 5.

To carry out the concept of good forestry and under the established principles, spatial planning functions are also needed, as is the case in the Merangin Regency, which has great potential in mining activities and is one of the most significant sources of income in the Regency. Most of Merangin's revenue comes from the mining and forestry sectors; this can be seen from the amount of land and building tax levied; the forestry sector generates Rp. 3.159.389.234, the oil and gas mining sector generates Rp. 11.984.231.550, and the non-oil and gas mining generates IDR 6.472.059.019.<sup>8</sup> Considering the enormous potential, forestry and mining are two sides that can trap the Merangin District Government from an economic and sustainable perspective. For this reason, spatial planning is needed to accommodate the interests of present and future generations. Regions with great potential must rearrange the Regency Spatial Plan.

Similar studies have previously discussed Forest Exploitation Rights and the Realization of Their Utilization, conducted by Ismail Bakrie Syaprudin in 2014. This study is more about realizing the utilization of permits to borrow-to-use forest areas obtained by business entities.<sup>9</sup> Other research also discussed the reconstruction of forest area Exploitation rights permits for mining activities in Indonesia. Conducted by Gunardi et al. in 2021, it further examines the impact of conflicts between mining legal areas and forest areas in Indonesia.<sup>10</sup> Another study analyzed the sustainability value of managing post-coal mining landscapes in the area of borrow-to-use permits for forest areas. Written by Asef Kurniyawan Hardjana et al. in 2019, the study discusses appropriate policy strategies to improve their management, such as carrying out monitoring routines, policy interventions, and performance improvement.<sup>11</sup>

Based on these matters, the main objective of this research is to analyze regional spatial planning in forest area Exploitation rights activities and the vital role of forest area Exploitation rights in realizing environmental sustainability.

## Methods

Based on the identification of the problem described earlier, the research method used in preparing this research is normative juridical research, conducted studies on the principles of sustainable development. The study is also carried

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<sup>8</sup> Central Bureau of Statistics, "Merangin Dalam Angka Tahun 2021" (Merangin, 2021). p. 330.

<sup>9</sup> Syaprudin dan Kamarubayana, "Pinjam Pakai Kawasan Hutan Dan Realisasi Pemanfaatannya Oleh PT. Mahakam Sumber Jaya Di Kabupaten Kutai Kartanegara Provinsi Kalimantan Timur *Jurnal AGRIFOR (E-Journal)*. Volume 13, No. 1 (March 2014): p. 93-100.

<sup>10</sup> Gunardi, Ahmad Redi, and Luthfi Marfungah, "Rekonstruksi Izin Pinjam Pakai Kawasan Hutan Untuk Kegiatan Pertambangan Di Indonesia," *Era Hukum-Jurnal Ilmiah Ilmu Hukum* 19, no. 1 (2021). p. 238-255.

<sup>11</sup> Asef Kurniyawan Hardjana et al., "Strategi Kebijakan Yang Tepat Untuk Meningkatkan Pengelolaannya, Seperti Melakukan Rutinitas Pengawasan, Intervensi Kebijakan Dan Perbaikan Kinerja," *Jurnal Teknologi Mineral Dan Batubara* 15, no. 3 (2019). p. 159-178.

out at the level of legal synchronization of various sectors, including legal regulations related to forestry, mining, spatial planning, and the Omnibus Law of Job Creation. This study uses a statutory approach and a conceptual approach. The statutory approach in this study emphasizes legal products related to the use of forest areas, be it regulations in the environmental sector, forestry sector, mining sector, or spatial planning sector. So, from these regulations, the relevance of each statutory regulation in natural resources can be found. The technique for analyzing legal materials is interpreting various laws and reviewing literature on forest area spatial planning issues. This is done by examining the law as part of the legal system and linking it with other laws.

## **Results and Discussion**

### **Regional Spatial Planning in Forest Exploitation Rights Area**

Regional Spatial Plans (*Rencana Tata Ruang Wilayah*) must become a reference or guideline in preparing development plans and programs in each region in the medium and long term. Thus, the direction of each regional plan must be functional when presenting the development program. The presentation of the development program must be adjusted to the regional spatial layout plan; this is intended as a program guideline that must be implemented to achieve effective and efficient spatial planning.

It is necessary to address the development dynamics that occurred within five years after the ratification of the Regional Spatial Plans by revising the policies contained in the Regional Spatial Plans without having to change the plans that have been prepared for the next 20 years so that they can become a shield in saving the environment from environmental damage such as mining activities with a cultivation right and by the dynamics of the applicable laws and regulations.

Law Number 11 of 2020 *Juncto* Law Number 6 of 2023 on Job Creation which made changes to some of the contents in Law Number 26 of 2007 on Spatial Planning, and is currently used as one of the references for implementing spatial planning nationally, the current Job Creation Law needs to be synergized with the formation implementing regulations as an operational basis for implementing the provisions of the law, the current implementation of the Job Creation Law is related to various aspects, one of which is in the implementation of spatial planning as contained in Government Regulation Number 21 of 2021 article 1 paragraph 8 which states that: Spatial Planning is a system of spatial planning processes, Spatial Utilization, Control and Spatial Utilization. Under the provisions, every activity in the implementation must have 3 (three) aspects that must be carried out, namely planning, utilization and control.

Regional spatial planning must be accurate to provide direction for development and determine the mission and role of each region. In addition, regional plans must be able to become a reference for development programs or projects. Therefore, regional spatial planning must be a guideline for orienting investment locations that can become a source of regional income. For this reason, the system

is an inseparable unit as a spatial planning system in which space utilization and spatial management are used. It must be implemented in accordance with the principles of spatial planning in such a way that effective space utilization is expected.

Spatial planning problems often cause pressures due to increased spatial intensity, causing structural and functional imbalances in regional space. Both internal and external factors influence growth and development.

Spatial planning based on characteristics, carrying capacity, and environmental capabilities must be supported by appropriate technology to improve the harmony and balance of each subsystem in the forest area. This problem can improve the quality of existing space because managing one sub-system affects other sub-systems and can ultimately affect the entire national territory system. For this reason, the leading spatial regulations require developing a uniform system. This means that a national spatial planning policy is needed to integrate various policies on the use of forest areas in each region. Therefore, the development must be implemented by the central and local governments following the agreed spatial plans.

Weak spatial planning will greatly affect how the use of forest areas is carried out. "The perception in society should not be used as justification, which at any time there is a violation of spatial planning regulations it is normal, let alone to be feared. Because such as the use of land along the riverbanks, sidewalks, parks, and lands that should be free from activities for housing, trade, and so on are common sights."<sup>12</sup>

The implementation of spatial planning must pay attention to the conditions of various regions of Indonesia, which are diverse and vulnerable to multiple types of disasters but also full of potential high-value natural resources; in this regard, strong resilience is needed by integrating various human and artificial resources, economic, social, cultural, political, legal, defense and security conditions, environment, and science and technology as an integrated system that can guarantee the implementation of sustainable spatial planning.

Good forest area planning is expected to result in good spatial use so that intergenerational interests can be maintained through a pattern of forest sustainability with spatial planning balanced between investment and sustainability. However, this requires control measures through consistent planning so that spatial planning can follow the rules and expected scenarios. However, the policy of Exploitation rights forest areas for the mining sector plays a vital role in developing the economy and the availability of forest cover.<sup>13</sup> Therefore, every change in forest areas must be able to optimize the use of forest areas sustainably.<sup>14</sup>

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<sup>12</sup> Muhar Junef, Penegakan Hukum dalam Rangka Penataan Ruang Guna Mewujudkan Pembangunan Berkelanjutan, *Jurnal Penelitian Hukum De Jure (E-Journal)*, Volume 17, No. 4 (2017). p. 378.

<sup>13</sup> Dian Setiawan, D Nurrochmat, and Budi Kuncahyo, "Model Keberterimaan Kebijakan Penggunaan Kawasan Hutan Di Kepulauan Bangka Belitung," *Media Konservasi* 23, no. 1 (2018). p. 75.

<sup>14</sup> Dian Setiawan, D Nurrochmat, and Budi Kuncahyo, "Model Keberterimaan Kebijakan Penggunaan Kawasan Hutan Di Kepulauan Bangka Belitung," *Media Konservasi* 23, no. 1 (2018). p. 75.

Forest areas that are still preserved should not be affected by humans; extraordinary considerations are needed so that environmental preservation is maintained. For this reason, spatial planning needs to be optimized, as happened in Merangin Regency, as is the case in the Merangin Regency Regulation on Spatial Planning Merangin Regency Region 2022-2042 in Article 72 paragraph (3) allows the utilization of forest areas, environmental services, and the collection of non-timber forest products on the condition that they have a forest cultivation permit.

The local regulation will have juridical consequences in terms of its implementation, with the condition that it will become a loophole for investors who use spatial planning as one of the bases for obtaining exploitation rights permits. For this reason, the granting of such licenses must be carried out rationally and wisely.

### **Forest Exploitation Rights for Environmental Sustainability Realization**

In principle, the forest area can only be used for activities within the forest area, which can be carried out in all areas except nature protection forests and forest areas in the core zone and forest areas in the jungle zone found in national parks. However, Law No. 41 of 1999 on Forestry allows claims and use of forest areas for purposes other than forest development, as long as this is only possible in industrial forests and protected forest areas, with the condition that it does not change the primary function of forest areas which are carried out through an Exploitation rights permit for forest areas such licenses can only be issued by the Ministry of Environment and Forestry taking into account the area limitations, period and environmental sustainability (Article 38 paragraph (3) of the Forestry Law), "Implementation of mining activities in forest areas only benefits several parties and is not worth the risks environmental damage caused by mining activities".<sup>15</sup> Citing Kartodihardjo's opinion that the government still tolerates the holding of mining exploration in production forest areas and protected forests as stated in Article 38 of Law Number 41 of 1999, in the future situation of forest destruction in Indonesia, this article can cause additional forest damage in the future, if the economic interest in the utilization and management of mining remains a top priority for the central and local governments. Good forest governance is expected to be able to present the function of the forest.<sup>16</sup>

To perfect the arrangements in Law Number 41 of 1999 on Forestry, Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 on Forestry has become a Law, with the consideration that Law Number 41 of 1999 on Forestry does not regulate the continuation of existing mining permits or

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<sup>15</sup> Sulasi Rongiyati, "Kajian Yuridis Izin Pertambangan Di Kawasan Hutan," *DPR RI (E-Journal)* 4, no. 13 (2012). p. 2.

<sup>16</sup> Muhamad Muhdar, Mohamad Nasir, and Rosdiana Rosdiana, "Implikasi Hukum Terhadap Praktik Pinjam Pakai Kawasan Hutan Untuk Kegiatan Pertambangan Batubara," *Hasanuddin Law Review* 1, no. 3 (2015). p. 431.

agreements. This creates legal uncertainty when doing business in the mining sector in forest areas. This uncertainty occurs because, in the provisions of the law, there is no provision stating that permits or agreements in the mining sector located in forest areas that existed before the law's enactment are still valid. The absence of these provisions results in the status of permits or agreements that existed before the Act's enactment becomes unclear and can even be interpreted as no longer valid. This is reinforced by the provisions of Article 38 paragraph (4), which states explicitly that mining in protected forest areas is prohibited by open pit mining. These provisions should only apply after the enactment of the Law and should not be applied retroactively.

Therefore, at the local level, the issue of exploitation rights in forest areas begins with permits being issued, such as in Jambi Province, for mining and non-mining exploration surveys. There are currently 3 (three) companies holding these permits in the 2019-2021 range with the following details:

**Table 1. Exploitation Rights Permits for Forest Areas 2019-2021**

<b>Name of Company</b>	<b>Function</b>	<b>No Surat</b>	<b>Luas</b>
SKK Migas - Sele Raya Merangin Dua, PT	Gasop C-1 Well Exploration, Gasop D South-1 and Plans Road Access	SK.186/Menlhk/Setjen/PLA.0/4/2021	7.20
SKK Migas - Sele Raya Merangin Dua, PT	Belato-1 Well Exploration	SK.109/1/KLHK/2020	1.05
SKK Migas - Talisman East Jabung B.V. (Pan Orient Energy East Jabung Pte.)	Drilling of Anggun 1, Elok-1/Ayu-1, Cantik-1 and Bennu-1 Oil and Gas Exploration Wells and Development Road	SK.191/Menlhk/Setjen/PLA.0 /2/2019	97.95

Source: processed from the website [ppkh.menlhk.go.id](http://ppkh.menlhk.go.id)

Companies holding exploitation rights in Jambi Province are located in Sarolangun and East Tanjung Jabung Regencies, while in Merangin District, there are no mining exploitation rights in the forest area that must be made with the concept of environmental sustainability.

The Merangin District Spatial Plan for 2022-2042 has provided an overview of development in forest areas that have experienced a decline in function, it is necessary to carry out forest rehabilitation through reforestation, afforestation, maintenance, enrichment of plants and application of soil conservation techniques, reclamation in forest areas of former mining areas must be carried out by holders of mining permits in accordance with the stages of mining activities, the construction of public facilities and infrastructure permitted in a protected forest area is a maximum of 10% of the area of a protected forest area, land rights that already exist in protected forests are still respected and may still be controlled as long as the activities and their use comply protection function and carry out



conservative measures intensively, forest areas that overlap with geological protected areas in the form of groundwater basins must be protected to maintain the availability of groundwater, forest areas that overlap with disaster-prone areas with a high level of vulnerability high and medium areas cannot be converted into other designated areas, use of forest areas for activities as mentioned above can be carried out without changing the protection function and with strict supervision, use of forest areas for activities as mentioned above must be through Exploitation rights permit for forest areas or other mechanisms in accordance with applicable regulations.<sup>17</sup>

The planning above reflects that mining exploitation rights in forest areas cannot guarantee sustainable development in the forestry sector because the government and business entities need to rearrange the applicable laws and regulations. If this country views forests as life support, why do forests continue to be exploited and continue to experience deforestation? Thus, it can be concluded that the state failed to guarantee the existence of a forest function, whether as a conservation, protection, or production forest. Forestry law, as the legal basis for the forestry sector, has failed to provide justice for society because sustainable development is rhetoric and is still far from the expectations of the Indonesian people. Sustainable development in spatial planning for forest areas must describe reality, not just describe rhetoric. Legal rules must not only serve as a forum for interests.

Changes in forest areas for mining activities that are granted through exploitation rights licenses must be able to provide an actual legal picture because each article in the law is interrelated and can affect the regulations below. In this case, stated in Article 48 paragraph (5) Government Regulation Number 104 of 2015 on Procedures for Changes in Allocation and Alteration of Forest Areas, explains that changes affecting the biophysical or socio-economic conditions of the community are based on guidelines and criteria for environmental biophysical conditions so that awareness of all business actors is needed to minimize forest damage due to mining. Environmental damage from mining usually occurs in mine pits, acid mine drainage, and tailings waste, all three of which threaten the preservation of nature and existing forest areas.<sup>18</sup> For this reason, it is necessary to have planned reclamation activities. It is expected that ex-mining land can be used or utilized as agricultural land, plantations, and other forms so that the negative impacts of mining activities can be reduced and, at the same time, can increase people's income.<sup>19</sup>

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<sup>17</sup> Dinas Pekerjaan Umum Kabupaten Merangin, "Buku Rencana Tata Ruang Wilayah (RTRW) Kabupaten Merangin Tahun 2022-2042" (Merangin, 2021). p. VIII-28.

<sup>18</sup> Fatma Ulfatun Najicha, "Dampak Kebijakan Alih Fungsi Kawasan Hutan Lindung Menjadi Areal Pertambangan Berakibat Pada Degradasi Hutan," in *Proceeding of Conference on Law and Social Studies*, 2021. p. 6.

<sup>19</sup> Bastiana Rico Ferry Yuniarto, Windhu Nugroho, and Tommy Trides, "Studi Reklamasi Pada Lahan Izin Pinjam Pakai Kawasan Hutan Terhadap Bekas Lahan Tambang PT. Singlurus Pratama,

Meanwhile, Article 2, Government Regulation Number 104 of 2015 on Procedures for Changes in Allocation and Change of Forest Areas explains that Changes in the Allocation of Forest Areas and Changes in Function of Forest Areas are implemented to meet the demands of the dynamics of national development and the aspirations of the people while still being based on optimizing the distribution of functions and the benefits of Forest Areas sustainably, as well as the existence of forest areas with sufficient area and proportional distribution. The policies of the Ministry of Forestry, related sectoral ministries, and local governments regarding changes in the designation, function, and use of forest areas must be carried out based on the perspective of normative concepts and practical concepts described above. For the implementation and enforcement to run well, the executors must have wisdom, moral character, and a good personality so that in managing the potential of the remaining forest areas, they can be used optimally, sustainably, and responsibly. The final results expected from the management of the forest area in question will be one of the government's efforts to realize justice and prosperity for the greatest possible prosperity of the people, following the ideals and objectives of the founding of the State of Indonesia.<sup>20</sup>

Replacing the current Forestry Law should be a priority because apart from not being suitable to current forestry conditions, the problem of overlapping authorities has also become a new problem since the issuance of Law Number 23 of 2014 on Local Government. After all, a lot of authority has been returned to the central government, such as with forestry sector supervision, where previously, this authority was divided between central, province, and local administrations.

Legal development is an effort to uphold justice and order. It is expected to foster legal awareness and create a national legal system to implement national interests. Increased development efforts towards legal renewal in a directed and more integrated manner are necessary.

According to Joni, written regulations regarding forestry will have difficulty explaining the inability of other sectoral laws to reach them because laws in the forestry sector are potent regulations. Furthermore, according to Joni, the power possessed by this Forestry Law must play a significant role in inhibiting the rate of destruction and destruction of forests. Generally, policymakers from various sectoral agencies must operate according to the applicable provisions and require coordination so there is synergy, and it does not work alone. For the sake of the common interest, it is necessary to take steps proportionally and wisely to create continuity; this is done to realize synchronization and harmonization of various

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Kecamatan Samboja, Kabupaten Kutai Kartanegara, Provinsi Kalimantan Timur," *Jurnal Teknologi Mineral FT UNMUL* 5, no. 2 (2017): p. 16.

<sup>20</sup> Iskandar, *Hukum Kehutanan: Prinsip Hukum Pelestarian Fungsi Lingkungan Hidup Dalam Kebijakan Pengelolaan Kawasan Hutan Berkelanjutan* (Bandung: Mandar Maju, 2015). p. 312.

parties or between sectors, regions or regions so that all interests can be appropriately accommodated.<sup>21</sup>

Law Number 41 of 1999, as amended by Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 on Forestry, can also be seen as a regulatory product that better fulfils the practical needs of the government to save the Indonesian economy after the 1998 economic crisis. Whether we comprehend it or not, 1998 and 1999 had a one-year timeframe, meaning the Indonesian nation is still in a transitional period. Of course, the transfer of power is still in a context where the Indonesian people are still worried about economic development, human rights and the development of national law. Therefore, it is only natural that Law Number 41 of 1999 be reviewed, considering the current environmental and forestry development dynamics. Even though the provisions of the Forestry Law show a desire to save forests due to the massive industrialization of the New Order. However, fundamental matters related to forest control are still the domain of the state. In other words, profits belong to the state and business entities, destruction belongs to the forests, and poverty belongs to the people.<sup>22</sup>“The impact of the environment's inability to restore its condition is damage to the environment itself.”<sup>23</sup>

Law Number 41 of 1999, as amended by Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 on Forestry, was brought in not to correct mistakes that had been made by Law Number 5 of 1967. In the eyes of Law Number 41 of 1999, Law Number 5 of 1967 was only considered old, no longer following the demands of the times and therefore unable to become a legal basis for the forestry sector development. Law Number 5 of 1967 did not make any mistakes before. It's only getting limped along with the times.<sup>24</sup> Positive socio-economic changes that do not ignore the ecological and social systems that society depends on. Its successful implementation requires integrated policies, planning, and social learning processes, and legal politics depends on the community's full support through its government, social institutions, and business activities.<sup>25</sup>

Law Number 41 of 1999, as amended by Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning

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<sup>21</sup> *Ibid.* hlm. 163.

<sup>22</sup> Asep Ayat, “Hutan Desa Lubuk Beringin: Skenario Konservasi Kabupaten Bungo,” *Jurnal Kiprah Agroforestri* 3, no. 2 (2010). p. 3.

<sup>23</sup> Febrian Chandra, “Peran Pemuda Sebagai Agen of Change Lingkungan Hidup Dalam Rangka Mewujudkan Pembangunan Berkelanjutan,” *Jurnal Hukum STIH YPM* 3, no. 1 (2021). p. 6.

<sup>24</sup> Rikardo Simarmata, *Mengapa Undang-Undang Kehutanan Perlu Direvisi?, (Argumentasi Kritis Terhadap Dampak Penerapan Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan)*, (Jakarta, Koalisi untuk Perubahan Kebijakan Kehutanan, 2007), p. 3.

<sup>25</sup> Aca Sugandhy dan Rustam Hakim, *Prinsip Dasar Kebijakan Pembangunan Berkelanjutan Berwawasan Lingkungan*, (Jakarta, Bumi Aksara, 2009), p. 21.

Amendment to Law Number 41 of 1999 on Forestry, also recognizes that as one of the determinants of life support systems and a source of people's prosperity, the condition of forests tends to decline. However, this condition was not mentioned due to the enactment of Law Number 5 of 1967. There was no explanation about what caused the forest to decline. This condition seems to occur without a cause. There is a strong suspicion that the way Law Number 41 of 1999 as amended by Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 on Forestry explains its presence has influenced its perspective and orientation, which can be captured from its editorial formulations.<sup>26</sup>

This perspective and orientation ultimately impact the regulation of the use of forest areas. One of the efforts to maintain forest sustainability is to improve forestry sector development policies by paying attention to principles or rules that pay attention to the preservation of functions and benefits of forests, as well as opportunities and interests for current and future production (sustainable development). By reforming forestry sector development policies, it is hoped that forests will provide many benefits for more and more communities living around forests. Of course, realizing this problem requires law and order in society.

Fuller found that eight things must be done to create order in law: there must be rule of law (generality); laws must be announced (promulgation); the law does not apply retroactively (perspectivity); the formulation of the law must be precise (clarity); laws must be consistent and not conflict with other laws (consistency or avoiding contradictions); The law that is made must be able to be implemented (possibility of obedience); Laws may not be changed frequently (constancy through time or avoidance of frequent change).<sup>27</sup>

Fuller's thinking in spatial planning of forest areas is evident in the failure of the Mining, Spatial Planning and Forestry Law, where forest damage is considered one of the consequences of activities in the forestry sector; how can this rule be implemented if forests are allowed to be destroyed? It means the law was made, but it is unclear because it is shown to contradict the environmental principle, namely sustainable development.

Rules in spatial planning and forestry are essential for the survival of nature and humans, both the current and future generations. The development is useless without sustainability. Various investment interests will also reflect the direction in which natural resources are utilized; the law should pay more attention to the values of sustainable development by building pre-implementation concepts and post-use of natural resources. The government will never be able to return nature to its former state, but at least it can minimize the consequences. Nature's healing process needs time, but the demand never stops, so people need to be aware not to sacrifice the importance of forests as a support for life and pay attention to the

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<sup>26</sup> *Ibid*, p. 3-4.

<sup>27</sup> Lon L Fuller, *The Morality of Law*, (New Haven: Yale University Press, 1969). p. 46-79.

provisions on licensing as an instrument to prevent environmental damage.<sup>28</sup> "Environmental urgency can not only be seen from how the rules are enforced, but more than that, the regulation must also clearly contain the needed rules."<sup>29</sup>

Legal reform is urgently needed at this time. Sectors such as mining, forestry and spatial planning need to be formed with a balanced character. These legal reforms must be carried out to conform with the dynamics that are developing in the current reform era; before that, the community must be instilled with a sense of ownership, responsibility, commitment and a sense of service. This is important because people must realize the importance of forests for future generations. The mandate of every legal regulation in the forestry sector, which describes forests as one of the determining factors for life support systems, requires them to be maintained optimally and consciously in a sufficient area to keep their carrying capacity in the long term.

But for now, like it or not, the people can only wait for the government's choice regarding the use of forest areas: economic development or sustainable forest and sustainable development. If economic development is chosen, law enforcers must balance these two options. If economic development is a priority, then *the lex dura sed tamen scripta* will apply, which means that the law is strict, but like it or not, those are the rules.<sup>30</sup>

## Conclusion

Mining exploitation rights in forest areas are intended for the community's welfare, not only for the present but also for future generations. For this reason, spatial planning in each region must ensure that the available space guarantees the welfare of the present and future communities by balancing economic, ecological and protection tensions because the use of forest areas is expected to have an impact on the utilization of forest resources for economic growth while maintaining quality and environmental sustainability. Sustainable development based on forest sustainability is a capital for the progress of mining exploitation rights in forest areas because a balance between a prosperous society and sustainable forests is the principal obligation of the government, the business world, and the community. Present sacrifices by sacrificing forests as an economic value will have fatal consequences for future generations. On this basis, legal reform is urgently needed; sectors such as mining, mining and spatial planning need to be formed with the character of a balance between environmental carrying capacity and economic value.

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<sup>28</sup> Antonius Aditanyo Nugroho, "Analisis Putusan PTUN NO. 7/G/LH/2019/PTUN. BNA Antara Walhi Melawan Gubernur Aceh Atas Penerbitan Izin Pinjam Pakai Kawasan Hutan Untuk Pembangunan PLTA Tampur," *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019). hlm. 127.

<sup>29</sup> Febrian Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup," *Jurnal Ekopendia* 5 (2020): 103–10.

<sup>30</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Jakarta, Kencana, 2008), p. 140.

## Recommendation

Law Number 41 of 1999 as amended by Law Number 1 of 2004 on the Stipulation of Government Regulations *juncto* Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 on Forestry has not been sufficient to provide a legal basis for the development of Exploitation rights of forest areas for mining activities. Therefore, the government needs to replace the law to provide a legal basis for realizing the welfare of the Indonesian people. In addition to forestry development, particularly for mining activities in forest areas, it is necessary to emphasize that economic and environmental values are two equivalent values so that forests can still be enjoyed for various generations.

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