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A Legal Framework for Social Forestry Management that Provides Access Rights to Communities in Forest Resource Utilization

Edra Satmaidi
Faculty of Law, Bengkulu University, Indonesia
edra@unib.ac.id

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Abstract

This study aims to explore and establish a national legal framework that provides a legal basis for community access rights in the utilization of forest resources. This study emphasises the importance of shifting the paradigm from entirely state-based forest management, to community-based forest management that will strengthen state forest management. This research uses normative legal research methods with qualitative juridical analysis of legal materials. The results show that there is a strong legal framework both at the level of the constitution, Constitutional Court decisions, and laws and regulations, up to the level of technical regulations in the Minister of Environment and Forestry Regulation. Social Forestry policy and its implementation can provide legal certainty and justice for community access rights in forest resource utilization. However, Social Forestry in its implementation also contains a number of challenges that need to be addressed.

Keywords:
Legal Framework, Community Based Forest Management, Community Access Rights, Forest Resource Utilization

Introduction

Article 33, paragraphs 3 and 4 of the 1945 Constitution of the Republic of Indonesia contains the noble mandate that natural resources, including forests, are controlled by the state and used for the greatest prosperity of the people. Law Number 41 of 1999 concerning Forestry reaffirms that all forests within the territory of the Republic of Indonesia, including the natural wealth contained therein, are controlled by the state for the greatest prosperity of the people. The Forestry Law provides the meaning of state control over forests, namely: (1) regulating and administering everything related to forests, forest areas and forest products; (2) determine the status of certain areas as forest areas or forest areas as non-forest areas; and (3) regulate and regulate legal relations between people and forests, as well as regulate legal acts regarding forestry. Without forgetting that

forest control by the state still considers the rights of communities and customary law communities, as long as their existence still exists and is recognized and does not conflict with national interests.[1]

Based on the Forest Use Agreement (TGHK), the forest area is ± 122 million hectares or around three-quarters of Indonesia's land area,[2] divided into conservation forests, protected forests and production forests. Conservation forests are forest areas with specific characteristics, which have the main function of preserving plant and animal diversity and their ecosystems. Protected forests are forest areas that have the main function of protecting life support systems to regulate water management, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility. Meanwhile, production forests are forest areas that have the main function of producing forest products. Forest resource management adheres to the three main functions of the forest. Carrying out forest management activities that damage the main function of the forest is not permitted. In the sense that in conservation forests or protected forests, it is still possible to carry out cultivation/production activities of forest products as long as they do not damage the conservation or protected function. Likewise, production forests must still maintain the conservation and protective functions of the forest. It is not permitted to take wood or non-timber forest products from production forests without limits, thereby threatening the conservation and protective functions of these forests. The use of forest areas for non-forestry activities is also strictly limited and must meet certain requirements and procedures.

The onslaught of deforestation is a nightmare for sustainable forest management. Forest Watch Indonesia stated that the problem of deforestation is not just happening now. The deforestation rate was 300 thousand ha/year (1970s), 600 thousand ha/year (1981), and 1 million ha/year (1990). Recorded a record at the beginning of the implementation of the regional autonomy era with a deforestation rate reaching 3.51 million ha per year (1996-2000). Based on the results of Forest Watch Indonesia's analysis in 2020, deforestation decreased in 2018, 2019 and 2020 at an average rate of 227 thousand ha/year, which shows that around 680 thousand ha of forest was lost.[3] Data released by PPID of the Ministry of Environment and Forestry (KLHK) based on the results of monitoring Indonesian forests in 2020-2021 shows that Indonesia's deforestation rate can be

[1] See the provisions of Article 4 of Law Number 41 Year 1999 on Forestry
[2] Gutomo Bayu Aji dkk, *Stategi Pengurangan Kemiskinan di Desa-Desa Sekitar Hutan (Pengembangan Model PHBM dan HKm),* Laporan Penelitian (Jakarta: Pusat Penelitian Kependudukan Lembaga Ilmu Pengetahuan Indonesia, 2013), hlm. 2
[3] https://fwi.or.id/persoalan-deforestasi-di-indonesia-sebuah-polemik, accessed 5 March 2024, at 06.50

reduced significantly by 113.5 thousand ha. However, existing conditions show that only 88.3 million ha of forested land is within forest areas. [4]

The issue of deforestation and the reduction of forest area also coincide with the issue of neglecting the rights of village communities and indigenous communities in and around forest areas in forest management. Data from the Ministry of Environment and Forestry (2017) states that 25,863 villages are in and around forest areas inhabited by 25 million people, including 4 million indigenous people. 70% of the community living in and around the forest depends on the forest. As many as 10.2 million people in forest areas are not yet prosperous and do not have legal aspects in the management and utilization of forest resources.[5] Communities are in conflict over forest resource management with forest concession licence holders or state institutions because they are fighting for their rights to the forest. Conflicts over control of forest areas, one of which is caused by the lack of completion of forest area gazettement, need to be resolved immediately by considering aspects of improving community welfare.[6] Communities do not have legal certainty over access rights and rights to manage forests and utilise forest products. Whereas communities in and around forests depend on forest products for their livelihoods, forests are a living space for communities socially, economically and culturally.

Based on the condition of damage and even the reduction of forest areas and the poverty of people living in and around forest areas, according to Hariadi Kartodihardjo, the embryo comes from natural resource management, which has a direct impact in the form of conflicts, which then affect poverty and damage to natural resources.[7] The 8th World Forestry Congress in Jakarta in 1978, with the theme 'Forest for People, forests for Community Welfare, and Rejecting the Poverty of Communities in and Around Forest Areas. This aligns with Jack C. Westoby's statement that forestry is not about trees, it is about people. And it is about trees insofar as trees can serve the needs of the people.[8] However, forests for community welfare should be in line with the forestry principles resulting from the Earth Summit in Rio de Janeiro, Brazil, in 1992, which emphasised

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[4] https://ppid.menlhk.go.id/berita/siaran-pers/7594/pengendalian-deforestasi-dan-karhutla-di-indonesia.%202024, accessed 5 March 2024, at 08.00

[5] Agus Wiyanto, *Hutan, Manusia dan Dinamika Pengelolaannya*, (Bogor: Kementerian Lingkungan Hidup dan Kehutanan Badan Penyuluhan dan Pengembangan Sumber Daya Manusia Pusat Diklat SDM Lingkungan Hidup dan Kehutanan, 2022), hlm. 1-2.

[6] Siti Rakhma Mary Herwati dkk, "Menuju Penyelesaian Konflik Tenurial Kehutanan" (Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasiskan Masyarakat dan Ekologis (Huma), 2013), hlm. xiv-xv

[7] Hariadi Kartodihardjo, "Krisis Konflik Tenurial-PSDA Indonesia: Pembelajaran dari Dewan Kehutanan Nasional" dalam Eko Cahyono dkk (Ed), *Reforma Agraria Sektor Kehutanan, Ragam Masalah dan Tantangan,* (Bogor: PT. Penerbit IPB Press, 2018), hlm. 214

[8] Wiratno, "Perebutan Ruang Kelola: Refleksi Perjuangan dan Masa Depan Perhutanan Sosial di Indonesia", Rimba Indonesia: Indonesian Journal of Forestry, Volume 61 (Maret, 2018): 4, https://rimbaindonesia.id/wp-content/uploads/2020/03/MRI-Edisi-61.pdf

the importance of sustainable use of all types of forests to meet the socio-economic, ecological, cultural and spiritual needs of present and future generations.[9] The principle of sustainable forests and prosperous communities then became the guidance in forest management. The government shifted from merely involving the community to empowering the community by giving access to forest management to the community, from a state-based approach to a community-based approach called community forestry.[10]

Community-based forest management is a forest management scheme that gives space to forest villagers as the main actors. Local initiatives of community-based forest management have been going on for generations, such as Hutan Adat, Rimba Larangan, Rimba Pusaka,[11] Hutan Desa/Nagari/Marga, Hutan Ulayat, etc. As a scheme to empower communities living in and around forests: community forestry, forest village community development, social forestry and other terms, community-based forest management has been mandated by Law No. 41/1999 on Forestry. In the elucidation of Article 23, it is affirmed that forests as a national resource must be utilised as much as possible for the community so that it is not concentrated in a particular person, group of people or group. Forest utilisation must be distributed equitably through community participation activities so that the community is increasingly empowered and develops its potential.[12]

This study will analyse how the national legal framework provides the legal basis and legitimacy for Social Forestry Management and the challenges in its implementation.

Research Methods

The research 'Legal Framework for Social Forestry Management that Provides Access Rights to Communities in Forest Resource Utilisation' used normative legal research methods. Legal materials were collected from literature and legal document studies in laws and regulations related to forest management and community access to forest resource utilisation. Conceptual approaches and legislation were used in this study to provide a legal basis and legitimisation of the importance of community-based forest management. All relevant legal materials were then analysed in a qualitative juridical manner to conclude the study.

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[9] H. Joni, "Hukum Lingkungan Kehutanan", Pustaka Pelajar, Yogyakarta, 2015, hlm. 61-62

[10] San Afri Awang, *Politik Kehutanan Masyarakat* (Yogyakarta: Center for Critical Social Studies (CCSS) dan Kreasi Wacana, 2007), hlm. 9

[11] Adi Junedi, "PHBM Instrumen Pembangunan Masyarakat Desa Sekitar Hutan", dalam Sukmareni dan Herma Yulis (Ed), Sekelumit Kisah Lapangan Mendorong Pengelolaan Hutan Berbasiskan Masyarakat (Jambi: Komunitas Konservasi Indonesia WARSI, 2016), hlm. 1

[12] Hery Santoso dan Edi Purwanto, "Masyarakat, Hutan dan Negara: Setengah Abad Perhutanan Sosial di Indonesia (1970-2020)", (Bogor: Tropenbos Indonesia, 2021), hlm. 111

Results and Discussions

A. Constitutionality of Forest Resource Management

The 1945 Constitution regulates the relationship between the state, society and forests. This relationship is enshrined in Article 33, paragraph (3) of the 1945 Constitution, which states that the land and water and the natural resources contained therein (including forests) shall be controlled by the state and utilised for the greatest prosperity of the people. There are 2 (two) essential elements in this constitutional provision, namely the element 'controlled by the state'[13] and the element 'for the greatest prosperity of the people'[14]. These two elements become the soul of every exploitation of the earth, water and natural resources (hereinafter referred to as 'natural resources'). Any exploitation of natural resources must be linked to basic philosophical questions based on the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely whether the exploitation reflects control by the state and whether the exploitation will provide the greatest prosperity of the people?[15] Referring to Bagir Manan's opinion that the connection between the control of natural resources by the state for the prosperity of the people will realise the state's obligations in terms of: (1). all forms of utilisation of natural resources must significantly increase the prosperity and welfare of the community; (2) the state protects and guarantees all the rights of the people over natural resources (including the Ulayat Rights of customary law communities)[16] that can be produced directly or enjoyed directly by the people; (3) the state prevents any action from any party that will cause the people not to have the opportunity or will lose their rights in enjoying the natural resources.[17]

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[13] Makna negara menguasai atas hutan menurut UUK sudah harus dirubah sesuai Putusan MK No. 001/PUU-I/2003 dan Putusan MK No. 021-022/PUU-I/2003: (1) pengaturan (regeleendaad) yaitu dalam pengaturan kehutanan harus memperhatikan efisiensi berkeadilan, berkelanjutan, dan berwawasan lingkungan. Pengaturan kehutanan juga harus partisipatif dan memperhatikan penataan ruang. (2). pengelolaan (beheersdaad) (3). kebijakan (beleid). (4). pengurusan (bestuursdaad); (5). pengawasan (toezichthoundensdaad) yaitu perlunya pembinaan dan penegakan hukum kehutanan. Lihat Maria SW Sumardjono, "Perubahan/Revisi Undang-Undang Nomor 41 Tahunn 1999 tentang Kehutanan: Parsial atau Total", dalam Prosiding Seminar Nasional "Urgensi Perubahan Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan, Pusat Perancangan Undang-Undang Badan Keahlian Dewan Perwakilan Rakyat Republik Indonesia dan Fakultas Hukum Universitas Gadjah Mada, 2017, hlm. 102-103

[14] Tolok ukur "sebesar - besar kemakmuran rakyat " sesuai Putusan Mahkamah Konstitusi Nomor 3/PUU-VIII/2010 adalah: (1). adanya kemanfaatan SDA bagi rakyat. (2). tingkat pemerataan manfaat SDA bagi rakyat; (3). Tingkat partisipasi rakyat dalam menentukan manfaat SDA; dan (4). penghormatan terhadap hak rakyat secara turun temurun dalam memanfaatkan SDA. Lihat Maria SW Sumardjono, *Ibid.,* hlm. 103

[15] Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam", Jurnal Konstitusi, Vol. 12 , No. 12 (Juni, 2015), 402, https://doi.org/10.31078/jk12210

[16] According to Van Vollenhoven, Ulayat Rights (beschikkingrecht) reflects the relationship between Customary Law Community and their customary rights, to regulate, manage, and utilise land, including the management of natural resources within it, as well as decision-making related to land utilisation in the context of the social, economic, and cultural life of community around the customary land. See Jawahir Thontowi etc. in Gheovani Abdul Aziz etc.*The Right of Management Originating From Indigenous People Ulayat Land: A Curse or A Solution?,* Negrei Journal, volume 4, number 2, 2024, page 192.

[17] Bagir Manan dalam Ahmad Redi, *Op.cit.,* hlm. 408

After the Fourth Amendment of the 1945 Constitution, Article 33 paragraph (3) must be read within the framework of Article 33 paragraph 4, which states that the national economy is based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental perspective, independence, and by maintaining a balance of progress and national economic unity. Article 33 paragraph (4) includes the principles of sustainability and environmental awareness in the management of natural resources for the benefit of the national economy. These sustainable and environmentally sound principles must be considered and become 'legal principles' in the regulation and management of natural resources (including forest resources).

Article 33, paragraphs (3) and (4) of the 1945 Constitution contain a conservation perspective on the one hand and an economic perspective on the other towards natural resources. In the conservation perspective, humans will be careful in managing natural resources, considering that natural resources have a vital role in the survival of a society. Natural resources belong not only to the current generation but also to future generations. Natural resources are not only owned and utilised intergenerationally but also intergenerationally. Meanwhile, from an economic perspective, natural resources are economic commodities that must be utilised as optimally as possible so that natural resources become the engine of growth. Natural resources are orientated as capital by pursuing productivity in achieving economic growth.[18]

This is in line with the concept of Sustainable Development of the World Commission on Environment and Development (WCED) in its report 'Our Common Future' in 1987, where Sustainable Development is defined as development that meets the needs of the present without reducing the ability of future generations to meet their needs. From the perspective of sustainable development, the parallel problems of environmental degradation and lack of social and economic development must be addressed together.[19] The Johannesburg Declaration on Sustainable Development, 2002 emphasises the importance of integrating and balancing the social, economic and environmental pillars as the three pillars of sustainable development. [20] The concept of sustainable development is adopted in Law 41 of 1999 on Forestry which confirms that the implementation of forestry aims for the greatest prosperity of the people in an equitable and sustainable manner by ensuring the existence of forests with sufficient area and proportional distribution and optimising various forest functions including conservation functions, protection

[18] *Ibid.,* 403
[19] Marie-Claire Cordonier Segger and Ashfaq Khalfan, "Sustainable Development Law: Principles, Practices, & Prospects", (New York: Oxford University Press, 2004), 18
[20] Ibid, 29

functions, and production functions to achieve environmental, social, cultural, and economic benefits, which are balanced and sustainable.

The Constitutional Court, as the guardian of the Constitution and the soul and the highest interpreter of the Constitution, has given meaning to the Constitution about forest management through the Constitutional Court Decision in the case of Judicial review of the Forestry Law. There are 4 (four) Constitutional Court Decisions that correct the Forestry Law, as stated in the following table.

Table 1. Judicial Review of Forestry Law by the Constitutional Court

NO	CONSTITUTIONAL COURT DECISION	LEGAL CONSIDERATIONS AND CONTENT OF JUDGEMENT
1.	Case No. 34/PUU-IX/2011	Constitutional Court gave a new meaning to Article 4 paragraph (3) of Law No. 41/1999 so that it reads 'Forest tenure by the state continues to pay attention to the rights of customary law communities, as long as in reality they still exist and are recognised for their existence, community rights granted based on statutory provisions, and do not conflict with the national interest'. Therefore, in confirming forest areas, the government is obliged to include community opinions first as a form of control function over the government to ensure the fulfilment of citizens' constitutional rights in the form of property rights, customary rights, and other rights according to statutory provisions.
2.	Case No.45/PUU-IX/2011	In the Constitutional Court's judgement, it was stated that there is a difference in the definition provided in Article 1 point 3 and Article 15 of Law 41/1999. The definition in Article 1 point 3 of Law 41/1999 only states that 'Forest area is a certain area designated and or determined by the government to be maintained as permanent forest'. In contrast, Article 15 paragraph (1) of Law 41/1999 explicitly determines the stages in the process of gazettement of a forest area. Forest area confirmation is conducted through the following process: a. forest area designation; b. forest area boundary demarcation; c. forest area mapping; and d. forest area determination. Forest area designation is only one stage in the process of forest area gazettement.

		According to the Constitutional Court, the provision of Article 15 paragraph (2) of Law 41/1999, which states that the gazettement of the forest area is carried out by taking into account the regional spatial plan, takes into account the possibility of individual rights or customary rights in the forest area to be designated as forest area. If such a situation occurs, the government must remove personal or customary rights from the forest area to not cause harm to other parties, such as the community with an interest in the area to be designated as a forest area. Because forest area determination is the final process in a series of forest area confirmation processes, according to the Constitutional Court, the phrase 'appointed and or' contained in Article 1 point 3 of Law 41/1999 is contrary to the principle of the rule of law, as stated in Article 1 paragraph (3) of the 1945 Constitution. In addition, the phrase 'appointed and or' is not in sync with Article 15 of Law 41/1999. Thus, the inconsistency creates uncertainty about the fairness of the law as referred to in Article 28D paragraph (1) of the 1945 Constitution, which stipulates, 'Every person shall have the right to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law.'
3.	Case No. 35/ PUU-IX/2012	The Constitutional Court ruled that Hutan Adat (HA) are forests located within the territory of customary law communities is not interpreted as state forests located within the territory of customary law communities. In the Constitutional Court's consideration, Article 4 paragraph (3) of the Forestry Law must be interpreted more explicitly, namely that the state recognises and respects the unity of customary law communities and their traditional rights, in line with the intent of Article 18B paragraph (2) of the 1945 Constitution. The terms of recognition and respect for customary law communities in the phrase "as long as in fact they still exist and are recognised for their existence", should be interpreted as long as they are still alive and in accordance with the development of society. Customary law is generally unwritten law and living law because it is accepted, observed and obeyed by the community

		concerned and in accordance with and recognised by the constitution. With regard to the condition that as long as it still exists and its existence is recognised in reality, the Court held that in reality, the status and function of forests in customary law communities depend on the status of the existence of customary law communities. The possibility is that the truth still exists, but its existence is not recognised, or the fact does not exist, but its existence is recognised. If the reality is that the forest still exists but its existence is not recognised, this can cause harm to the community concerned. To prevent negative impacts, the 1945 Constitution orders the existence and protection of customary law communities to be regulated by law, thereby ensuring equitable legal certainty. This was a landmark decision that amended Article 1.6 of Law 41/1999 regarding the definition of Hutan Adat. The change is as follows: 'Hutan Adat (HA) are forests (the word state is omitted) located within the territory of customary law communities. The decision implies that the government must restore and recognise the existence of Hutan Adat (HA) that have already been designated or designated by the government as forest areas.[21]
4.	Case No. 95/PUU-XII/2014	*The Court declared Article 50 paragraph (3) letters e and i of the* Law 41/1999 *to be contrary to the 1945 Constitution and to have no binding legal force as long as it was not interpreted as 'excluding communities who live traditionally in the forest and are not intended for commercial interests.' The Court added phrases to Article 50 paragraph (3) letter e and letter i of the* Law 41/1999 *so that the norm reads Every person is prohibited from: ... e. cutting down trees or harvesting or collecting forest products in the forest without having the right or permit from an authorised official "excluding communities living traditionally in the forest and not intended for commercial purposes"; Every person is prohibited from:. ... (i) graze livestock in forest areas that are not specifically designated for that purpose by the authorised official "with the*

[21] Yance Arizona dkk, "Mengakiri Rezim Kriminalisasi Kehutanan, Anotasi Putusan Mahkamah Konstitusi Nomor 95/Puu-Xii/2014 Mengenai Pengujian Undang-Undang No. 18 Tahun 2013 tentang Pencegahan dan Pemberantasan Perusakan Hutan, dan Undang-Undang No. 41 Tahun 1999 Tentang Kehutanan", (Jakarta: Epistema Institute dan Aliansi Masyarakat Adat Nusantara (AMAN), 2015), hlm. 15

		exception of communities living traditionally in the forest and not intended for commercial purposes". *The Constitutional Court's legal consideration is the same for both norms, namely that the prohibition in Article 50 paragraph (3) letters (e) and (i) of the* Law 41/1999 *should not include people who live for generations in the forest who need clothing, food and shelter for their daily needs by cutting down trees and not for commercial purposes. Therefore, criminal sanctions cannot be imposed on them. This is because it would be paradoxical if, on the one hand, the state recognises communities that have lived for generations in the forest and need forest products, but on the other hand, these communities are threatened with punishment. Instead, the state must be present to protect these communities.* *This decision is a significant achievement in ending the criminalisation of communities living in the forest who have been managing and defending their territories. In addition, this decision emphasises that the criminal approach is the last resort that must be taken in resolving forestry tenure conflicts. Thus, in dealing with forestry tenurial conflicts, the government must take a persuasive social approach to obtain a peaceful solution.*[22]

Of the four Constitutional Court Decisions against the Forestry Law, two red threads are always consistent in the Constitutional Court's Decisions: improving forest and land governance and protecting communities, primarily indigenous peoples. Constitutional Court Decision No.95/PUU-XII/2014 must complement previous Constitutional Court decisions in correcting the Forestry Law. Specifically, this time, the correction is focused by the Constitutional Court on the criminalisation of communities living for generations in the forest who depend on the forest for their clothing, food and shelter.[23]

B. Constitutional Court Decision: Strengthening and Fulfilling Community Constitutional Rights in Forest Management

One of the fundamental amendments to the 1945 Constitution is the accommodation of human rights as constitutional content, which creates obligations for the state and government to respect, develop, protect and fulfil these human rights. According to Elisabeth Reichert, the amendments to the 1945 Constitution that contain human rights are generally understood as "rights which are inherent in our nature and without which we cannot live as human rights. David A. Shiman argues

[22] *Ibid.* hlm. 16
[23] *Ibid.,* hlm. 16-17

that human rights concept covers a wide range of aspects of human existence considered essential for life in dignity and security.[24] The results of the amendments to the 1945 Constitution contain human rights norms, including civil and political rights, economic, social and cultural rights, as well as collective rights as contained in Articles 28A-28J of the 1945 Constitution of the Republic of Indonesia.

Four Constitutional Court decisions on the judicial review of Law No. 41/1999 are related to economic, social and cultural rights as well as collective rights. Several norms in Law No. 41/1999 that the Constitutional Court judicially reviewed became constitutional norms containing aspects of human rights, and Law No. 41/1999 received constitutional strengthening in its implementation. What is the follow-up of the Constitutional Court's decision, both by the Parliament as the positive legislator (the institution authorised to form laws) and the Government (especially the Ministry of Environment and Forestry)? A question that the public is always waiting for the answer to.

As a follow-up to Constitutional Court Decision No. 35/PUU-X/2012, the Government, in this case the Minister of Environment and Forestry, has issued Minister of Environment and Forestry Regulation No. 32/Menlhk-Setjen/2015 on Hutan Hak (as replaced by PERMENLHK No. 21/MENLHKSetjen/KUM.1/4/2019 on Hutan Adat and Hutan Hak). The government included the provision of norm changes in the Law No. 41/1999 based on the Constitutional Court Decision Number 35/PUU-X/2012, which affirmed that Hutan Adat are no longer part of the State Forest, where the norm changes are contained in Article 1 number 6 and number 7 of PERMENLHK No. 32/2015 which states that Hutan Adat are forests located within the territory of customary law communities. Meanwhile, state forests are forests located on land that are not encumbered by land rights. State forests do not include Hutan Adat because Hutan Adat is forests that have been encumbered with land rights by customary law communities, so Hutan Adat is not state forests.

Although in the Constitutional Court Decision Number 35/PUU-X/2012 regarding the application of Article 67 paragraph (1), paragraph (2), and paragraph (3) of Law No. 41/1999 which stipulates 'The confirmation and elimination of Indigenous peoples shall be determined by

[24] I D.G. Palguna, Saldi Isra dan Pan Mohamad Faiz, "The Constitutional Court and Human Rights Protection in Indonesia", (Depok: PT. RajaGrafindo Persada, 2022), hlm. 59

regional regulations and further provisions shall be regulated in government regulations' has been rejected by the Constitutional Court, However, after the decision, the government should issue a Government Regulation regulating the mechanism for the confirmation and deletion of customary law communities as mandated by Article 67 paragraph (1), paragraph (2), and paragraph (3) which are considered constitutional by the Constitutional Court, because until now the Government Regulation governing this has not yet existed, even though the utilisation of Hutan Adat can only be felt by customary law communities when the recognition of customary law communities by the government.[25] Therefore, in the future, regional regulations and government regulations must be accelerated by the mandate of Article 67 paragraph (1), paragraph (2) and paragraph (3) of Law No. 41/1999, as well as forming laws at the national level regarding the recognition of indigenous peoples, so that indigenous peoples can enjoy the utilisation of Hutan Adat.[26]

The response to Constitutional Court Decision No. 45/PUU-IX/2011 can be seen in Law No. 18/2013 on Prevention and Eradication of Forest Destruction. The formulation of Article 1 point 2 of Law No. 18/2013 regarding forest areas is in accordance with Constitutional Court Decision Number 45/PUU-IX/2011, namely "Forest area is a certain area determined by the government to maintain its existence as a permanent forest." However, Article 1 point 3 of Law No. 18/2013 is considered inappropriate because it contains the norm "Forest destruction is the process, method, or act of damaging forests through illegal logging activities, use of forest areas without a permit, or use of permits that are contrary to the purpose and objectives of granting permits in forest areas that have been determined, that have been designated, or that is in the process of being determined by the Government."

The provision of Article 1 point 3 of Law No. 18/2013 contradicts Constitutional Court Decision Number 45/PUU-IX/2011, which states that forest areas are not areas designated by the government. After Constitutional Court Decision Number 45/PUU-IX/2011, a person should only be convicted if makes forest destruction in forest areas that have been designated by the government. In fact, the provisions of Article 110 letter b of Law No. 18/2013 confirm that forest destruction in forest areas that have been designated by the government before Constitutional Court Decision Number 45/PUU-IX/2011 can re-arrest a person who is currently carrying out a

[25] Adam Mulya Bunga Mayam dan Adelline Syahda, "Kepatuhan Penyelenggara Negara Terhadap Putusan Mahkamah Konstitusi (Analisis Terhadap Putusan Mahkamah Konstitusi Tentang Kehutanan, Perkebunan dan Pertambangan Tahun 2003-2016)", (Jakarta: Yayasan Konstitusi Demokrasi Inisiatif, 2017), hlm. 16
[26] *Ibid.*

forestry criminal case process because the provisions in Law No. 18/2013 apply.[27] Law No. 18/2013 ensnared many village communities in or around forest areas in criminal cases of 'destruction of forest areas' and received criminal sentences. Fortunately, Constitutional Court Decision No. 95/PUU-XII/2014 ended the drama of criminalisation of communities cutting down trees or harvesting or collecting forest products under the condition that the community lives for generations in the forest and is not intended for commercial interests.

Minister of Environment and Forestry Regulation No. P.83/MENLHK/SETJEN/KUM.1/10/2016 on Social Forestry is a legal breakthrough that contains legal substance that goes beyond regulation when higher laws and regulations (laws and government regulations) have not been enacted to implement the Constitutional Court Decision on the Forestry Law review. The content of PERMENLHK No. P.83/MENLHK/SETJEN/KUM.1/10/2016 contains what is mandated by 4 Constitutional Court decisions related to the review of Law No. 41/1999, which in essence, provides the constitutionality of legal community access rights as legal subjects in forest resource management and the right to obtain welfare from the utilisation of forest resources while maintaining forest sustainability. PERMENLHK No. P.83/MENLHK/SETJEN/KUM.1/10/2016 is revoked and replaced by Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management (hereinafter abbreviated as PERMENLHK PS). Social forestry is defined as a sustainable forest management system implemented in state forest areas or Hutan Hak/Hutan Adat implemented by local communities or customary law communities as the main actors to improve their welfare, environmental balance and socio-cultural dynamics in the form of Hutan Desa, Hutan Kemasyarakatan, Hutan Tanaman Rakyat, Hutan Adat, Hutan Hak, Hutan Rakyat, and Kemitraan Kehutanan.[28]

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[27] *Ibid.,* hlm. 17-18

[28] Article 1 points 1-4, 8-10, and 18 of the PERMENLHK PS explain the definition of Social Forestry, Hutan Desa, Hutan Kemasyarakatan, Hutan Tanaman Rakyat, Hutan Adat, Hutan Hak, Hutan Rakyat and Kemitraan Kehutanan. Hutan Desa (HD) is a forest area not burdened with a government permit, which is managed by the village and utilised for village welfare. by the village and utilised for village welfare. Hutan Kemasyarakatan (HKm) is a forest area whose primary utilization intended to empower the community. Hutan Tanaman Rakyat (HTR) is a plantation forest in Production Forest that is established by community groups to improve the potential and quality of Production Forest by applying a silviculture system to ensure the sustainability of forest resources. Ensure the sustainability of forest resources. Hutan Adat is forest located within the territory of the Customary Law Community. Hutan Hak is a forest located on land that is encumbered with land rights. Hutan Rakyat is forest located on land that is encumbered by property rights. Kemitraan Kehutanan's Agreement is a partnership agreement granted to holders of forest utilisation licences or holders of forest area use approval with partners/communities to utilise forests in partner/community to utilise the forest in protected forest area or production forest area.

C. Social Forestry: Hopes and Challenges for Sustainable Forests and Prosperous Communities

Social forestry manifests the balance between community welfare and environmental justice. The position of the forest in the view of the Indonesian people is based on the forest as a source of livelihood. The community directly feels the benefits of non-timber forest products, such as rattan, honey, fruits, and ornamental plants. Communities also feel the benefits of indirect value or the value of forest environmental services, such as water. [29] Social forestry management is based on the principles of: (a) not changing the status and function of forest areas; (b) utilisation of non-timber forest products; (c) sustainable community welfare; (d) legal certainty in management; (e) participatory in planning and decision-making; and (f) community as the leading actor in forest management.[30]

Basically, social forestry is part of the national policy on forest area management, which can be implicitly understood from the provisions of Article 3 letter d of Law No. 41/1999, which states that the implementation of forestry aims for the greatest prosperity of the people in an equitable and sustainable manner by increasing the ability to develop community capacity and empowerment in a participatory, equitable, and environmentally sound manner to create social and economic resilience and resilience to the effects of external changes. Furthermore, Article 23 of Law No. 41/1999 and its Explanation reaffirms that forest utilisation aims to obtain optimal benefits for the welfare of the entire community equitably while maintaining its sustainability. Forests as a national resource must be utilised to the greatest extent for the community so that it cannot be concentrated on a particular person, group or class. Therefore, forest utilisation must be distributed equitably through community participation activities so that the community is increasingly empowered and develops its potential. Optimal benefits can be realised if forest management activities can produce high-quality and sustainable forests.

Social forestry policy is the only policy since 71 years of Indonesia's independence. The embryo of this social forestry policy originated from Community Forestry based on Minister of Forestry Decree No. 622/Kpts-II/1995 on Community Forestry Guidelines. Normatively, the community-based forest management scheme now popularly called social forestry has been regulated in several

[29]Erina Pane, Adam M. Yanis and Is Susanto, "Social Forestry: The Balance between Welfare and Ecological Justice", (International Journal of Criminology and Sociology, Vol. 10, (2021), hlm. 75
[30] Desriko Malayu Putra dkk, "Pengelolaan Hutan Berbasiskan Kearifan Lokal", (Padang: ARIFHA, 2014), hlm. 4

separate Minister of Forestry Regulations (Permenhut) since 2007, namely (1) Permenhut P.37/Menhut-II/2007 jo Permenhut P.88/Menhut-II/2014 on Hutan Kemasyarakatan; (2) Minister of Forestry Regulation No. 49 of 2008 jo Permenhut P.89 /Menhut-II/2014 on Hutan Desa; (3) Permenhut P.55/Menhut-II/2011 jo Permenhut P.31/Menhut-II/2013 on Hutan Tanaman Rakyat; (4) Permenlhk P.32/Menlhk/Setjen/2015 on Hutan Hak (as replaced by Permenlhk No. 21/MENLHKSetjen/KUM.1/4/2019 on Hutan Adat and Hutan Hak); and (5) Permenhut P.39/Menhut-II/2013 on Kemitraan Kehutanan. However, in 2016, the regulation of the five schemes was integrated into one legislation, namely the Minister of Environment and Forestry Regulation Number P.83/MENLHK/SETJEN/KUM.1/10/2016 on Social Forestry. The development of national regulations regulates and stipulates the norms of Social Forestry through the Job Creation Law (now regulated in Law No. 6 of 2023) and Government Regulation No. 23 of 2021 on the Implementation of Forestry, thus increasing the level of regulation of Social Forestry which was originally only regulated in the Ministerial Regulation. Based on the provisions of the Job Creation Law and Government Regulation No. 23 of 2021, the Minister of Environment and Forestry Regulation No. 9 of 2021 on Social Forestry Management was stipulated as a replacement for Permenlhk P.83/MENLHK/SETJEN/KUM.1/10/2016 on Social Forestry.

The Social Forestry policy is outlined in the 2015-2019 Medium-Term Development Plan (RPJMN), which allocates 12.7 million hectares of community-managed areas or 10% of the state forest area. Referring to the experience of 2010-2014 and continuing in 2015 - July 2016, in reality, the Government was only able to hand over management rights and/or licences covering 200,000-300,000 hectares/year. The target of 12.7 million hectares or an average of 2.5 million hectares per year in the 2015-2019 period will not be achieved.[31] This condition is evident from the realisation of Social Forestry as of 31 December 2019 based on data from the Directorate General of Social Forestry and Environmental Partnership of the Ministry of Environment and Forestry of only 4,048,376.82 hectares, with 6,411 SK Units and for 818,457 Family Heads since the enactment of the PERMENLHK PS with details, as stated in the following table: [32]

[31] Wiratno, "Keberpihakan, Kepedulian, Kepeloporan, Konsistensi, Kepemimpinan Masa Depan Perhutanan Sosial di Indonesia", Makalah disampaikan pada Semiloka Nasional Hutan Indonesia, Reposisi Tata Kelola Hutan Indonesia untuk Mewujudkan Kedaulatan Pangan, Kelestarian Lingkungan, dan Kesejahteraan Rakyat, Hotel Sahid, Jakarta, 1-2 September 2016, hlm. 1-2

[32] Statistik Ditjen PSKL Tahun 2019 (Jakarta: Direktorat Jenderal Perhutanan Sosial dan Kemitraan Lingkungan Kementerian Lingkungan Hidup dan Kehutanan, 2020), hlm. 6

Table 2. Social Forestry Scheme and Development

Sceme Social Forestry	Area (Hectares)	Number of Decrees	Community Involved (Family Head)
Hutan Kemasyarakatan/HKm	743,406.82	1.603	189,562
Hutan Desa/HD	1,551,601.15	880	392,565
Hutan Tanaman Rakyat/HTR	352,351.68	2,951	56,062
Kemitraan Kehutanan			
a. Forestry Partnership Recognition and Protection (KULINKK)	424,940.10	848	123,537
b. Social Forestry Forest Utilisation Permit (IPHPS)	25,947.59	64	23,610
Hutan Adat	950,129.47	65	33,121
Total	**4,048,376.81**	**6,411**	**818,457**

Based on the data in the table above, it is known that the Social Forestry target achievement until December 2019 was only 31.9% of the 12.7 million hectares of forest area designated for Social Forestry areas. This means the Social Forestry target of 12.7 million hectares in 2019 has not been achieved even less than 50%. Based on 2023 data in an infographic published by the Directorate General of Social Forestry and Environmental Partnership of the Ministry of Environment and Forestry, it shows an acceleration in the last 5 years in all Social Forestry schemes with details of Hutan Desa 3,220,326.91 ha, Hutan Kemasyarakatan 1,248,741.63 ha, Hutan Tanaman Rakyat 363,924.08 ha, Kulin KK 563,095.84 ha, IPHPS 19,036.99 ha and Hutan Adat covering 1,374,256 ha. So, the total area of Social Forestry in 2023 is 6,789,381.10 ha or 53.46% of the 12.7 million hectares of forest area designated for Social Forestry areas. [33]

In fact, according to Wiratno, the implementation of the Social Forestry programme is a 'debt repayment policy' to villagers on the edge of state forest areas or even within state forest areas, which number 25,863 villages out of 72,000 villages across the country today. Communities are often stigmatised as 'illegal' for working in state forest areas without permission. Often, the community has to deal with law enforcement officials. Horizontal conflicts are frequently inevitable. The number and scale of tenurial conflicts are becoming increasingly large and complex.

[33] lihat Infografis Perhutanan Sosial tahun 2023 di http://pskl.menlhk.go.id/, diakses 17 April 2024, pukul 07.00 WIB

Customary law communities also face this in many places throughout the country. The provisional identification results show that the 12.7 million hectares of reserves will cover 9,800 villages or only 37.9% of the total villages on the edge of/inside state forest areas. Checking high-resolution imagery, only 10% of the 12.7 million hectares are still natural forest. Meanwhile, secondary forests account for 28%. Dry land agriculture (in Sumatera, it is sure that it is dominated by illegal palm oil) is more than 11%. This means that the allocation of management space for the community is the only space left. It can be said that this programme was almost started too late.[34] Although Social Forestry is a kind of 'Forest Pay Policy' for communities in and around forest areas, there is a lot of cynicism about the success of this programme. Is it true that the community can manage the forest sustainably? Is the granting of management access for up to 35 years able to increase the income of the community receiving the licence/rights? How can we ensure that those who receive permits/rights are the ones who deserve them (communities whose livelihoods are largely dependent on the forest and communities with very little or no cultivated land)? [35]

In the context of institutional structure, the main issue is that the process flow of application and approval of a Social Forestry activity proposal is still too long and centralised to the Minister of Environment and Forestry. Although there are exceptions for provinces that have included Social Forestry in the regional medium-term development plan or have a governor regulation on Social Forestry and have a budget in the local income and expenditure budget. The exception indicates the possibility of delegating the authority of the Centre to the Local Government, which is in accordance with the division of authority between the Centre and the Region according to Law No. 23/2014 on Local Government. The delegation of authority to the province cq. Governor can be strengthened as the main choice to replace the position of the Centre cq. Minister of Environment and Forestry.[36] In fact, considering that to streamline forest management, the entire forest area in Indonesia has been divided into a number of Kesatuan Pengelola Hutan(KPH),[37] it is not impossible that the approval of the application for Social Forestry concession rights and permits can be issued by the KPH head. This option makes sense because KPH are assumed from

[34] *Ibid.,* hlm. 3-4
[35] *Ibid.,* hlm. 3
[36] KpSHK, "Naskah Evaluasi Kebijakan KpSHK, Kebijakan Perhutan Sosial dalam Perspektif dan Kebutuhan Promosi Sistem Hutan Kemasyarakatan: Kritik terhadap Peraturan Menteri Lingkungan Hidup dan Kehutanan Nomor 83 Tahun 2016 tentang Perhutanan Sosial dan Usulan Percepatan Implementasinya", (Jakarta: KpSHK, 2017), hlm. 14-15.
[37] Article 1 point 39 of PERMENLHK PS explains that Kesatuan Pengelolaan Hutan (KPH) is a forest management area in accordance with the function and designation, which can be managed efficiently, effectively and sustainably.

the beginning to be able to determine the management space and to understand the characteristics of local communities and/or indigenous peoples who are candidates for Social Forestry management. Thus, the role of the Centre cq. The Minister of Environment and Forestry really functions at the level of policy formulation and control of activities at the field level. [38] Moreover, there is also a Regulation of the Director General of Social Forestry and Environmental Partnership Number: P.2/PSKL/SET/KUM.1/3/2017 on Guidelines for Guidance, Control, and Evaluation of Social Forestry.

In relation to social forestry aimed at resolving tenurial issues and justice for local communities and customary law communities located in or around forest areas in the context of community welfare and preservation of forest functions as affirmed in Article 2 paragraph (2) of the PERMENLHK PS, it will collide with the provision that HD, HKm and HTR allocations cannot be given in production forest and/or protected forest areas that have been encumbered with permits. In fact, many tenurial conflicts occur in production forest areas and/or protected forests that licences have encumbered. In other words, tenurial conflict resolution will only be handled through two schemes with relatively limited reach, namely partnership programmes and customary forests. This form of tenurial conflict resolution through the forestry partnership programme is considered very inadequate. At the field level, the resolution of tenurial conflicts is expected to take the form of permit cancellation or at least a more significant reduction in the size of the permit area.[39]

The biggest challenge lies in how to realise the mandate stated in the consideration of PERMENLHK PS that social forestry aims to reduce poverty, unemployment, and inequality in the management/utilisation of forest areas through efforts to provide legal access to local communities in the form of Hutan Desa management, Hutan Kemasyarakatan, Hutan Tanaman Rakyat, Kemitraan Kehutanan, or recognition and protection of customary law communities for community welfare and forest resource sustainability. Whether various Social Forestry activities after the legal permit or access can generate real income that can improve the community's welfare as Social Forestry actors. Is the state/government present in facilitating the development of sustainable forest management in the community? Field experience shows that the success of

[38] KpSHK, *Loc.cit*
[39] *Ibid.,* hlm. 18-21

Social Forestry is highly dependent on the coaching aspect (support and facilitation), starting from the planning stage, production stage, and coaching at the post-production stage. [40]

Normatively, the coaching aspect (support and facilitation) in social forestry is regulated in Article 9 of the PERMENLHK PS, which confirms that, to help accelerate access and improve the quality of Social Forestry Management at the provincial level, a Social Forestry Management Working Group (Kelompok Kerja Pengelolaan Perhutanan Sosial/Pokja PPS)) is established by the governor. The Pokja PPS consists of UPT, related technical implementation units in the Ministry of Environment and Forestry, provincial regional apparatus organisations in the forestry sector, KPH, regency/city governments, civil society, business actors; conservation cadres; and/or environmental and forestry volunteers. To accelerate access and improve the quality of Social Forestry management, the Pokja PPS is tasked with:

a. socialise the Social Forestry programme to Local Communities and related parties;
b. review the Indicative Map of Social Forestry Area;
c. assist in facilitating the application for Social Forestry Management Approval;
d. assist in technical verification of application for Social Forestry Management Approval;
e. assist in facilitating the settlement of social and tenurial conflicts of Social Forestry Management;
f. assist in facilitating the fulfilment of rights, implementation of obligations and compliance with provisions and prohibitions for holders of Social Forestry Management Approval and determination of Customary Forest status;
g. assisting the facilitation of area arrangement
h. assist in facilitating the preparation of Social Forestry Management planning;
i. assisting the facilitation of Social Forestry business development; and/or
j. assisting the implementation of guidance and control.

The Pokja PPS should facilitate, at the application proposal stage, institutional strengthening, and capacity building, including business management, cooperative formation, work area boundaries, business work plans, and annual work plans, forms of forestry partnership activities, financing, post-harvest, business development and market access. Through the Pokja PPS, the government also facilitates forest and land rehabilitation programmes or activities, soil and water conservation, biodiversity conservation, conservation-based community empowerment, sustainable forest management certification and/or timber legality certification. By using the Regulation of the Director General of Social Forestry and Environmental Partnership Number: P.2/PSKL/SET/KUM.1/3/2017 on Guidelines for Guidance, Control, and Evaluation of Social Forestry, these guidance activities should be carried out optimally so that Social Forestry

[40] *Ibid.,* hlm. 21

management can be carried out well by the community, providing a positive impact on improving the community's economy and protecting forest areas.

Among social forestry schemes, the Hutan Adat scheme seems complicated and full of dilemmas. Starting from the determination of the criteria used to determine whether indigenous peoples still exist, the choice of legal products recognising indigenous peoples and continuing to the stage of applying for forest rights by indigenous peoples. Customary Law Communities can apply for forest rights as stipulated in Permen LHK No. P.32/2015 on Hutan Hak (as replaced by Permen LHK No. 21/MENLHKSetjen/KUM.1/4/2019 on Hutan Adat and Hutan Hak), where the application requirement is that the Customary Law Communities have been established through regional legal products in the form of regional regulations or regional head decisions. Meanwhile, the Minister of Home Affairs has issued Permendagri No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities, which among other things mandates that the Regent/Mayor determines Customary Law Communities with a Regional Head Decree based on the recommendation of the Customary Law Communities Committee. This is a polemic; on the one hand, the Ministry of Environment and Forestry will only process applications for forest rights from Indigenous Peoples that have been established through local regulations, which takes a long time, while the social forestry programme is a priority programme that must be accelerated in the regions.[41]

In the condition that there is a conflict of norms regarding the determination of Customary Law Community among parallel/equivalent regulations (Minister of Environment and Forestry Regulation with Minister of Home Affairs Regulation), it becomes urgent to immediately ratify and stipulate the Indigenous Peoples Act into law as mandated by Article 18B paragraph 2 of the 1945 Constitution and Government Regulations governing the Procedures for the Recognition of Indigenous Peoples. Meanwhile, the submission and determination of Hutan Adat is technically operational as regulated in the Minister of Environment and Forestry Regulation. The Law and Government Regulation were not enacted, but PERMENLHK No. 9 of 2021 on Social Forestry Management (PERMENLHK PS) was born as the implementation of the provisions of Article 247 of PP No. 23 of 2021 on the Implementation of Forestry, which is the mandate of Article 36-29A of Law No. 6 of 2023 on the Stipulation of Peraturan Pemerintah Pengganti Undang-Undang

[41] Aisyah Lailiyah dkk, "Laporan Akhir Kelompok Kerja Analisis dan Evaluasi Dalam Rangka Penyelamatan dan Pengelolaan Kawasan Hutan", (Jakarta: Pusat Analisis dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, 2017), hlm. 58-59

(PERPPU) No. 2 of 2022 on Job Creation into Law. The PERMENLHK PS stipulates 5 Social Forestry Schemes, including Hutan Adat. However, the provision of Hutan Adat in the PERMENLHK PS still contains the same problem because it still requires the recognition of customary law communities in forest areas through Local Regulations (Peraturan Daerah). This requirement for recognising indigenous peoples through local regulations is a major obstacle to accelerating the determination of Hutan Adat's status.

Social Forestry issues at the site level are no less important and need to be solved and handled seriously in the future. Several things need attention in the HKm) scheme: (1) The community's meaning of the HKm programme is still understood as an opportunity to obtain land management rights within the forest area for farming activities. The orientation of HKm management by the community is still on short-term economic targets and not yet ecologically and economically sustainable; (2) In several HKm cases, farmers who have cultivated land above one hectare are unable to work their land intensively due to limited labour, lack of capital, low technology, and limited road access; (3) In the implementation of HKm, the community's farming system is still simple and subsistence, limited farming capabilities (more inclined to seasonal crops), management has not paid attention to post-harvest and marketing so that the added value is small; (4) The implementation of HKm has not been supported by an adequate budget from the Regional Government because HKm has not become a priority programme of the Regional Government so that the guidance and assistance provided is not optimal; and (5) HKm institutions that have been well designed have not been able to carry out their functions optimally due to the absence of continuous assistance. HKm assistance was only carried out at the beginning of the activity and released when the HKm Institution was not yet independent.[42]

In the Hutan Desa (HD) scheme, several things need to be addressed in the future, namely: (1) The ability of HD's Managing Institution (LPHD) and village institutions to manage HD for improving community welfare and conserving forests after obtaining HD management access rights. So, in the implementation of HD management, there are progressive, active, passive and even counterproductive; (2) HD work areas listed in Decree of HD's Management Right do not cover all areas of forest areas (for example, protected forests) within the village administrative area. In some cases, the HD working area only covers part of the forest area that has been deforested. On the other hand, LPHD is asked to be responsible if logging and encroachment occur in the

[42] Sulistya Ekawati dkk, "Bersama Membangun Perhutanan Sosial", (Bogor: IPB Press, 2020), hlm. 22-25, 96 dan 99

entire forest area within the village area; (3) Regulations do not allow HD access for areas that have been encumbered. In conflict situations, the authority of the village government is more effective in participating as the manager of forest areas encumbered by rights or certain KPH areas. There is no regulation on the HD partnership scheme, and (4) HD is not yet fully a village asset. The Village Government does not yet believe that HD is a sustainable source of income for the village. The Village Government has not made HD management activities one of the priorities funded through the Village Fund, despite the existence of Permendes PDTT Number 11 of 2019 concerning Priorities for the Use of Village Funds. The village has not even developed a Village Regulation on Village Forest Management.[43]

While in the Kemitraan Kehutanan (KK) scheme, several things need attention and handling, namely: (1) Forest managers and permit holders in the implementation of KK are faced with land conflicts; (2) KK implementation is faced with policy/regulatory issues related to institutional issues, partnership products, financing, rights and obligations, and profit sharing; (3) KK implementation is faced with technical problems in the field related to biophysical conditions, namely determining the location, distance, area, and products produced; and (4) KK implementation is faced with problems of social, economic and cultural conditions of the community related to, among others, dependence on forest resources, welfare levels and prevailing customs.[44]

Meanwhile, in the Hutan Adat (HA) scheme, there are conditions: (1) The number of claims of indigenous peoples demanding HA recognition; (2) Difficulties in verifying and validating Indigenous Peoples and HA; (3) The absence of operational guidelines related to the identification of Indigenous Peoples and HA; and (4) The most crucial thing after the determination of State Forest into HA is assistance so that local wisdom practices which are the prerequisites of indigenous peoples are maintained so that the ecological and economic objectives of the establishment of Customary Forests can be achieved.[45]

Finally, on the Hutan Tanaman Rakyat (HTR) scheme, several issues can be raised, namely: (1) The location allocated for HTR is in production forest areas with limited access and infrastructure, small area scale, and tends not to reach economies of scale, as well as high potential for land

[43] *Ibid.,* hlm. 45 dan 49
[44] *Ibid.,* hlm. 63-64
[45] *Ibid.,* hlm. 84

conflicts; and (2) Institutions that include human resources (quality and quantity), technology and regulations; and (3) Limited availability of funds for HTR investment (availability and access to capital).[46]

In implementing the Social Forestry scheme after the stipulation of the Decision on Granting Rights or Social Forestry Management Permit, there are four factual conditions: progressive, active-silence, passive-silence, and counterproductive, as happened in Hutan Desa.[47] First, the progressive Social Forestry Scheme has characteristics in terms of power/control, namely: (a) clarity of physical tenure boundaries (outer boundary, area zoning); (b) recognition of individual and collective rights; (c) management institution controls the entire village forest working area (information, activities, transactions); (d) management institution is organised and has good inward (local community and village government) and outward (external institutions) relations marked by many collaborations with external parties; village government supports the development of Social Forestry, for example by allocating Village Fund and the like for the benefit of Social Forestry progress.[48] Secondly, the Social Forestry Scheme is inactive if there has been an effort to improve the power, commodity, and culture sides but has not been able to implement the whole scheme due to constraints on initiatives and funds and has not been a top priority. Even though it has an active management institution that often gets an allocation of activities and facilitation from the government/KPH.[49] Third, the Social Forestry Scheme remains passive if there is no change in power, commodity, or culture after obtaining the Decree on Granting Rights/Social Forestry Management Permit. The management institution is usually formed only to fulfil the administrative requirements of the proposal. The institution's management has felt comfortable with the existing situation and doubts the benefits of implementing the social forestry scheme.[50] Fourth, the Social Forestry Scheme is counterproductive if: (a) the implementation deteriorates in terms of power, commodity and culture; (b) the working area is uncontrolled and deforested and converted; and (c) internal conflicts occur between members of the management institution or with the village government.[51]

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[46] *Ibid.*,hlm. 96 and 99
[47]Edwin Martin, "Bersama Membangun Perhutanan Sosial (Hutan Desa : Menghadirkan Negara dalam Tata Kelola Lokal)" (Bogor: Pusat Penelitian dan Pengembangan Sosial Ekonomi Kebijakan dan Perubahan Iklim, PT Penerbit IPB Press, 2020), hlm. 45.
[48] *Ibid.*
[49] *Ibid.*
[50] *Ibid*
[51] *Ibid*

Conclusion

There is a strong legal framework for social forestry at the constitutional level, constitutional court decisions, laws and regulations, and technical regulations in the Minister of Environment and Forestry Regulation. Social forestry can be interpreted as an effort to fulfil the constitutional rights of the community to obtain welfare through forest resource management. Social forestry has received a strong and comprehensive legal basis in Law No. 41/1999, Law No. 6/2023, Government Regulation No. 23/2021 and PERMENLHK PS. Social Forestry schemes, namely HD, HKm, HTR, HA, Hutan Hak, Hutan Rakyat and Forestry Partnership, are regulated in an integrated manner in PERMENLHK PS. These social forestry schemes have shown progress in achieving the 12.7 million hectares of social forestry area target. The Decision on Granting Rights and Approval of Social Forestry can provide legal certainty and justice for community access rights to utilise forest resources. Facilitating proposals and guidance from the PS Working Group and Local Government with regulatory and funding support can accelerate the target achievement and success in all social forestry schemes.

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