Indonesian Forest Management: Opportunities and Challenges

Arif[1], Suhaidi[2], Alvi Syahrin[2], Runtung[2]
[1]*Student of Doctoral Program, Universitas Sumatera Utara, Jl. Universitas No 4 Kampus USU, Medan, Indonesia*
[2]*Lecturer of Doctoral Program, Universitas Sumatera Utara, Jl. Universitas No 4 Kampus USU, Medan, Indonesia*

Keywords: Forest Management, Indonesia.

Abstract: Forest management in Indonesia is in difficult position. In other words, it is failed to maintain and realize harmony in forest functions in ecological, economic, social and juridical perspectives. There are some evidences which shown the failure such as people living around forest areas who have not enjoyed the benefits of forests, deforestation, and increased number of forest destruction. These situations inquire the responsibility of the state as the important actor for the fulfillment of people's welfare. Based on descriptive normative research on forest management in Indonesia which is part of a dissertation entitled *"Tanggung jawab Negara terhadap pengelolaan Hutan; Studi Kasus di Indonesia"*, this paper focus on the challenges and opportunities that arise in forest management. Furthermore, the study compared to the forest management in the Philippines.

1 INTRODUCTION

Forestry resources are one of the creations of Almighty God who has a very important role in maintaining the natural balance in the universe. In the forest all living things have been created both large and small, even those that cannot be seen with the eyes. In addition, there are also a number of plants that become expanses, which become a unified whole. This is a source of wealth that can be managed well, which is used to build nations and countries (Supriadi, 2011).

The fact is that it is different from expectations; various problems arise related to forestry management. One of them is the famous conflict that occurred in North Sumatra Province. Conflict between the people of *Pandumaan* Village and *Sipituhuta* Village in *Pollung* Sub district, *Humbang Hasundutan* Regency, North Sumatra was associated with claims by the community who called their group as indigenous people in the *Kemenyan* forest or *Hamijon* in Batak Language in the HTI concession area of PT Toba Pulp Lestari. *Hamijon* Batak Land has been famous for thousands of years in the international world. The issue of *Hamijon* is also a matter of identity that contains very rich historical and cultural values. *Hamijon* farmers have their own culture. Departing to the spear of *Hamijon*, for example, they must be holy in words and behavior. They, usually men, live for days on the *Hamijon* spear. They sing various kinds of songs about *Hamijon* while on the spear. In fact they send their children to college from the results of *Hamijon*. That is why the mothers told the Government Officials when they visited the Regent's Office regarding the resolution of this conflict, namely *"Asa boi pe hamu singkola timbo-timbo alani Hamijon do"* which can be translated as "Maybe you can go to high school because of *Hamijon*" (Simanjuntak, 2013).

This study will figure out four issues namely, Indonesian emergency forest intensive management, the law on forest management in Indonesia, devolution as an alternative to forest management in Indonesia, and forest management obligations from aspects of state responsibility and state liability.

2 RESEARCH METHODOLOGY

This research used legal research which analysed some regulations such as UUD 1945 and national regulation concerning Forestry, environmental and local government. Furthermore, data also supported by field study which conducted in North Sumatera Province and involved North Sumatera Forestry council (Dewan kehutanan Daerah Provinsi Sumatera Utara).

Arif, ., Suhaidi, ., Syahrin, A. and Runtung, .
Indonesian Forest Management: Opportunities and Challenges.
DOI: 10.5220/0010100817841790
In *Proceedings of the International Conference of Science, Technology, Engineering, Environmental and Ramification Researches (ICOSTEERR 2018) - Research in Industry 4.0*, pages 1784-1790
ISBN: 978-989-758-449-7

3 RESULT AND DISCUSS

3.1 Indonesian Emergency Forest Intensive Management

Forest management in Indonesia can be said to fail to maintain and realize harmony in forest functions in ecological, economic, social and juridical perspectives. Evidence of this failure can be seen in several facts. First, various benefits of the forest cannot be enjoyed by the community, especially those who live around forest areas, such as indigenous peoples and subsistence communities (having dependence) on forest resources (PP No 21/ 1970). Other evidence that shows the difficulty of accessing communities around forest areas to enjoy forest products is, at the beginning of forest management planning some indigenous peoples' rights to forests can be frozen in order to ensure the running of forest management. Although Government Regulation No. 21 of 1970 concerning Forest Management Rights and Forest Product Collection Rights is no longer valid, the fact that tenure conflicts between communities around forest areas and owners of various rights to forest management are still ongoing (PP No 21/ 1970). Various studies and studies have indicated that the problem of tenure conflicts that occurred in Indonesia originated from the legacy of Colonial policy in the Dutch East Indies period which then continued to the latest national policies. This suspicion stems from the belief that the concept of ownership policy or state ownership in the period of the Dutch East Indies continued until now and changes to the policy in the independence period have not gone well.

Secondly, since massive exploitation was carried out at the beginning of the New Order Government to date, Indonesia's forests continue to experience large amounts of deforestation. A lot of data shows the rate of forest destruction in Indonesia. Based on FAO estimates in 1990, Indonesia's natural forest area was around 107.5 million ha. This figure continued to shrink to 103.8 million ha in 1995. Subsequently in 2000 this forest area decreased to 96.6 million ha. It is estimated that by 2030 the size of Indonesia's natural forests will be around 84 million ha or only 40% (forty percent) of the entire land area of Indonesia (Galudra, 2006). The Ministry of Forestry as the official forestry data provider agency said that governance weaknesses have caused forest cover in Indonesia to continue to decline.

Thirdly, with such a high rate of forest destruction, it turns out that the contribution of the forestry sector to national economic growth does not show a positive significance, especially after the exploitation of forestry resources was carried out in the last 4 (four) decades. It was recognized that when the Law Number 5 Year 1967 concerning the Principal Provisions of Forestry was first implemented, in the beginning of the New Order Government, the forestry sector had a significant influence in the movement of the national economic growth. Almost four decades of forestry has grown and developed by making important contributions to the national development process which is reflected in the contribution to national growth. The role and contribution of Indonesia's forestry sector are among others in the form of foreign exchange contributions. Every year before the 1997 economic crisis, foreign exchange contributed from the forestry sector reached US $ 7-8 billion (Kemenhut & FAO, 1991).

3.2 The Law on Forest Management in Indonesia

The State's responsibility in forest management in Indonesia cannot be separated from the philosophy of the state's right to control forests and natural resources as referred to in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Through Law Number 41 of 1999 concerning Forestry, consistency of "state control rights" stated in Article 4, the state ensure that the greatest prosperity is for the people in managing all forests in Indonesian territory and sovereignty to: (a) regulate and manage everything related to forests, forest areas and forest products; (b) determine the status of certain areas as forest areas or forest areas as non-forest areas; and (c) regulating and establishing relationships between people and forests, and regulating legal actions concerning forestry.

The control of forests by the state continues to show the rights of indigenous peoples, as long as they are still in existence and acknowledged by their existence, and do not conflict with national interests. In its journey, the existence of Law Number 41 of 1999 was tested several times to the Constitutional Court to assess several provisions in the article - the article in Law Number 41 of 1999 concerning the 1945 Constitution of the Republic of Indonesia. The test is for example related to the definition of forest area in Article 1 number 3 and the examination of customary forest as state forest in Article 4 paragraph (3) and Article 67. Furthermore, to

complete regulation in the forestry sector, Law Number 18 Year 2013 concerning Prevention and Eradication of Forest Destruction is also established.

Forest damage such as illegal logging is a form of crime on forest resources that must be stopped based on Law Number 18 of 2013 concerning Prevention and Eradication of Forest Crime Acts. This law reflects the continuity of ecology, social functions of forests, unlicensed mining, and plantations without permits have caused state losses, damage to socio-cultural and environmental life, and increased global warming which has become a national, regional and international issue. This is related to the characteristics of forest destruction which has become a crime that has extraordinary, organized, and transnational impacts carried out with a sophisticated modus operandi, which threatens the survival of people's lives.

Seeing the threat of forest destruction that has continued since the issuance of the forest management policy by Law Number 5 of 1967 concerning Principal Provisions of Forestry up to the birth of Law Number 41 of 1999 concerning Forestry, amid strong efforts made by the government to protect forest resources, a management system is needed that can answer the three basic characteristics of the State's responsibility, namely the management of forest resources for the greatest prosperity of the people, forest management is guaranteed by the state, the people have the right to a clean and healthy environment, and the state prevents damage or pollution of forest resources.

One of the problems that arose as a result of the failure of the principle of state responsibility to be applied was the birth of the community's need for the true meaning of the phrase "controlled by the state" over natural resources, including forests. The Constitutional Court, through Decision Number 001-021-022 / PUU-I / 2003, provides an interpretation of the phrase "controlled by the state" in Article 33 of the 1945 Constitution:

The words" controlled by the state "must be interpreted to encompass the meaning of state control in the broadest sense which originates and comes from the concept of the sovereignty of the Indonesian people over all sources of wealth" earth and water and the natural wealth contained in the world ", including the meaning of public ownership. By the collectivity of the people on the sources of wealth in question. The people collectively constructed by the 1945 Constitution give the state the mandate to carry out policies *(belied)* and management actions *(bestuursdaad)*, regulations *(regelendaad)*, management *(beheersdaad)* and supervision *(toezichthoudensdaad)* for the greatest prosperity of the people.

The interpretation of the Constitutional Court with this understanding was also given by the Constitutional Court in the Constitutional Court Decision Number 3 / PUU-VIII / 2010 concerning the testing of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. In its ruling, the Constitutional Court concluded that the granting of Coastal Water Concession Rights (HP3) contradicted the right to control the state as referred to in Article 33 paragraph (3) of the 1945 Constitution which stated that supervision for the greatest prosperity of the people.

The decision of the Constitutional Court provides guidance on how to implement the concept of state control over natural resources. The state in control over natural resources has a function to make policies, management, regulation, management and supervision. Based on the consideration of the Constitutional Court in interpreting the meaning of "control by the state" of natural resources, obtained information that the 1945 Constitution of the Republic of Indonesia adheres to the understanding that "control by the state" is a collective decision of the Indonesian people to hand over the management of natural resources to the state as a consequence of the existence of a country that in the course of the history of the Indonesian nation has replaced similar state entities such as kingdoms, unions, villages and indigenous groups that have a long history of descending on natural resources.

The idea of rationalism, which developed in the 17th century, tried to explain the origin of the coming of state life. Starting from this understanding of rationalism, the 'social contract' is a construction in the realm of thought, with its function as a rationale, reason of existence about the existence of state life, and not as a description of an event in history.

On the principle, 'social contract' is a fiction, the result of theorizing in the realm of thought, that the formation of a state of life organization, along with its governmental institutions, comes from the rational willingness of the people to release some of their basic natural rights of freedom, for the sake of living jointly orderly. This social contract theory implies the existence of a moral basis for justification that the power of the state officials originates not from any source except from the consent of the people. The people's attachment to all forms of rules that are enforced by the officials of state power, thus, will be interpreted as an

attachment on the basis of their own sovereignty and agreement; here the concept of the limited freedom of the people by a force that is nothing more than the freedom of the people itself is freedom. They are for social contract, which is defined as freedom to reduce freedom to a certain extent (Wignisoebroto, 2013).

Departing from this reality, the Right to Control the State which subsequently raises the responsibility of the State to carry out natural resource management comes from the willingness of the community which in the historical perspective has existed before the State in its formal form exists as a construction of a public legal entity that carries out various state duties. Therefore, the implementation of the responsibility of the State should not overlook the existence of subsistence relations between indigenous peoples and communities in the vicinity of the forest with various forest resources.

It has been known by students of Indonesian forestry agrarian history that what is referred to as state forest was originally formed from claims of ownership by the colonial government over the areas designated as forests, including indigenous territories. People's access to indigenous territories whose origin is regulated by customary law is denied by forestry agencies formed by the colonial government. The people who opposed the ruling protested the inclusion of the country's forests and continued their access to their customary territories, then were criminalized (Wignisoebroto, 2013).

The co modification of forests and other natural resources at the global level, which works under a capitalistic market economy system, encourages the development of forestry capitalism in Indonesia. Close cooperation between state administrators and timber market players, from the colonial period to the present, is made possible by the procurement of large-scale forested land by government agencies through the provision of forestry concessions to large companies. State control of forests allows government agencies, from the Dutch Forestry Service to the Ministry of Forestry at present, to provide large-scale forested land (Rachman & Siscawati, 2014).

3.3 Devolution as an Alternative to Forest Management in Indonesia

The description of forest management in Indonesia in alternating national leadership, especially after the Reformation does not bring significant change. As a comparison, this paper can see what goes on in forest management in the Philippines. The Philippines implements the devolution method in managing its forest resources. This is done in various forms; First, the devolution program of forest management from the central government to the local government, the Integrated Social Forestry Program (ISFP). The program began in 1982 based on Presidential Letter of Instruction 1260. ISFP consolidated three previous people oriented forestry programs, the Family Approach to Reforestation (FAR), the Forest Occupancy Management (FOM) Program, and the Communal Tree Farming (CFP) Program held at 1973-1979. ISFP provides tenure security for people who occupy the forest occupants for 25 years. The provision of tenure security allows farmers who occupy state forest areas (government-owned forestlands) to be able to farm and enjoy the results without fear of being evicted, and encourage them to protect and promote sustainable agriculture and agro forestry. Second, devolution programs that provides protected area management (protected areas) to local communities with a term of 25 years. Local people have the right to use non-timber forest products (NTFP) such as rattan, bamboo. Third, the devolution program "Indigenous People's Right Act (IPRA)". Of the three programs, only the ISFP program, specifically the FOM and the second program, can be found relative to its equivalent in Indonesia, namely the establishment of a special purpose area (KDTK) given to farmers in Lampung's eye-cat resin (*repong*) garden by the Minister of Forestry Jamaludin. The IPRA program is relatively similar to the HA (customary forest) program in Indonesia that has not been implemented. Rights-giving programs through FAR, FOM, CFP, IPRA and KDTK, in recognition of the strength or power of the community to seize access. Fourth, CBFM (Community Based Forest Management) program. CBFM began in 1995 based on Executive Order 263 replacing people-oriented forestry.

Through this program the government (Department of Natural Resources and Environment) transfers its rights and responsibilities to local communities. The community gains access (on) and benefits (from) forest resources through the granting of tenure rights over forest land to the community for 25 years and can be extended for 25 years. The community is obliged to carry out rehabilitation, protection and conservation. Of the 0 ha area for CBFM in the 1980s and less than 1.0 million hectares in 1995, it currently covers more than 5.97 million hectares spread over 5,503 locations, and covers 690,691 households and 2,877 people's organizations.

Out of the total CBFM area, 4.90 million hectares under various forms of land tenure instruments, which are around 2.50 million ha (51%) under the CADC (Certificate of Ancestral Domain Claim), 1.57 million ha (32%) under CBFMA (Community-Based Forest Management Agreements), 0.63 million ha (13%) under CSC (Certificate of Stewardship Contract), and the remaining 0.196 million ha under CFMA (Community Forest Management Agreement), CFSA (Community Forest Stewardship Agreement), and others. The increase in area for CBFM was followed by a reduction in the area for large-scale forestry companies (TLA) from more than 10 million hectares held by 422 companies in 1973 to 584,000 hectares held by 15 companies (BAPPENAS, 2014). The four types of devolution are initiated by the government (state-initiated devolution). The main objective of devolution of CBFM state forest resource management in the Philippines is to improve or improve socio-economic welfare, social justice, and equitable access to forest resources, realize sustainable forest management, and promote healthy environment for the population. Its implementation has not produced satisfactory results, among others, namely: the local community continues to feel the insecurity of its CBFM, more than 1,000 CBFM permits are canceled by the government, CBFMAs have increased government control through restrictions on devolution to the submission of forest development and protection responsibilities to local communities , the quality of the forest has not improved, the community does not feel that it has gained income, the recipient of the program is not classified as a poor family, so the positive impact on community development has not yet occurred (Pulhin, Inoue & Enters, 2007).

In addition, there is no information yet on whether there is CBFM which is only on paper and not carried out in the field. However, the achievement of devolution programs in the management of state forest resources in the Philippines is better than in Indonesia. In the Philippines, the CBFM area reaches 20% of the total state forest area. The increase in the area for CBFM was followed by a decrease in the area for large-scale forestry companies. Timber license agreement (TLA) from over 10 million ha held by 422 TLA holding companies in 1973 to 584,000 hectares held by 15 companies (Pulhin & Dressler, 2009). Whereas in Indonesia until mid-2010 after almost 15 years, the implementation of the HKM program was only implemented in an area of around 400,000 hectares spread across NTB, Lampung, D.I. Yogyakarta, Bali, Bengkulu, Southeast Sulawesi and NTT. The area of HKM is very small compared to the area of production forest cultivated by large-scale companies (IUPHHK natural forests and plantation forests) covering an area of approximately 35 million ha. Most are limited to recognition or forced to recognize forest village community initiatives that open forests, in recognition of the power or power of the community to seize access.

3.4 Forest Management Obligations from Aspects of State Responsibility and State Liability

Indonesia is a sovereign country that carries out legal politics on the mastery of resources based on the principles of State Based Management for all potential natural resources as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which mentions the branches of production that affect the lives of many people controlled by the State. The Indonesian State makes this State Responsibility Principle a measure of how management of these resources is carried out.

Responsibility in English is referred to as responsibility which is defined as: The state of being answerable for an obligation, and includes judgment, skill, ability and capacity (Pulhin & Dressler, 2009). This definition can freely be interpreted as a statement of the ability to answer from the existence of an obligation which includes decisions, skills, abilities and capacities. Just like the definition of responsibility in English, even in Indonesian the word "responsibility" has to do with the word "answer." Being responsible means being able to answer if asked about the actions done. The person responsible can be asked for an explanation of his behavior and not only can he answer - if he wants to, but he must also answer. Responsibility means that a person cannot avoid being asked for an explanation of what he is doing (Black's Law Dictionar, 1990).

Besides the meaning of responsibility as described above, in the treasury of international law, State responsibility is a terminology that is always related to the ownership of sovereignty by a country. Furthermore, the obligation to replace the damage and loss of other parties is a character that indicates the existence of State Responsibility, as said by Malcolm N. Shaw. Similarly, if an international violation occurs, the State must take responsibility.

Besides the meaning of responsibility as described above, in the treasury of international law, State responsibility is a terminology that is always related to the ownership of sovereignty by a country. Furthermore, according to Malcolm N. Shaw who stated that State responsibility is a fundamental principle of international law, arising out of the nature of the international legal system and the doctrines of state sovereignty and equality of states. It provides that whenever one state commits an internationally unlawful act against another state, international responsibility is established between the two. A breach of an international obligation gives rises to a requirement for reparation (Bertens, 2004).

In this paper, the term State responsibility is distinguished from the term State liability. This difference is in line with the changing meaning of state responsibility over time. Furthermore, the existence of differences in terminology between State Responsibility and State Liability has the consequence of the categorization of the settings in the draft submitted by ILC on the principle of state responsibility to two parts, namely Primary norm and Secondary norm (Shaw, 1997). In its 1973 report, ILC distinguished this problem by placing the Primary norm as a norm of effectiveness, while Secondary norm as the application of sanction (Combacau & Alland, 1986).

The existence of differences in terminology between State Responsibility and State Liability can be seen further in various provisions of international law including those contained in Principle 21 and Principle 22 of the Stockholm 1972 Convention. In Principle 21 all activities carried out within the territory are under controlled of the state. Therefore, all natural resources in the territory are the responsibility of the state in accordance with the politics of the management of natural resources owned by the State.

The word responsibility in Principle 21 is a standard of behavior that must be met and obeyed by countries. Therefore, Principle 21 is more depicting the existence of the principle of State Responsibility, in other words, in Principle 21; this is what is meant by The Primary Norm. To realize the responsibility of the state, the state must develop cooperation to ensure the rights of victims of environmental damage carried out by the state which results in communities that are outside national jurisdiction, according to principle 22.

In Principle 22, the term liability is contained which a manifestation of responsibility is born as a result of failure in meeting the standards of behavior that have been established and should be obeyed by the state. This embodiment is in the form of compensation and recovery or improvement of circumstances as a result of the occurrence of environmental damage by the state within its jurisdiction but having an impact on the environment of other countries. Principle 22 is an arrangement for implementing sanctions or containing what is referred to as The Secondary Norm. Based on the description above, it can be concluded that the responsibility of the state is the responsibility of the state in terms of State Responsibility, which reflects a number of obligations undertaken by the Government of Indonesia in meeting various international standards, both legally binding and non-binding. In relation to environmental management and forest management, Indonesia, in its capacity as a member of the International Community, is a very active country, and in many instances is an initiator in efforts to save the global environment from the effects of damage and pollution, most recently related to global warming and climate change.

4 CONCLUSIONS

Forest management is a challenge for every country including Indonesia. At present, forest management in Indonesia can be said to fail to maintain and realize the harmony of forest functions based on various conflicts that arise between the Indonesian government and society. This forest management conflict was confirmed by the emergence of a legal polemic regarding forest management in Indonesia. In connection with this situation, state responsibility is an important factor to be studied in order to solve these forest management problems. Furthermore, the Philippines, a country in Southeast Asia that implements the devolution method in managing its forest resources is taken as learning material in forest management.

REFERENCES

Supriadi, 2011, *Hukum Kehutanan dan Hukum Perkebunan di Indonesia*, Sinar Grafika, Jakarta.

Simanjuntak, Bungaran Antonius, 2013, *Dampak Otonomi Daerah Di Indonesia, Merangkai Sejarah Politik dan Pemerintahan Indonesia*, Pustaka Obor Indonesia, Jakarta.

Peratuan Pemerintah Nomor 21 Tahun 1970 tentang Hak Pengelolaan Hutan dan Hak Pemungutan Hasil Hutan.

Gamma Galudra, 2006, Memahami Konflik Tenurial melalui Pendekatan Sejarah: Studi Kasus di Lebak, Banten, *WARTA TENUR, Vol 2.*

Directorate General of Forest Utilization Ministry of Forestry Governemnet of Republic of Indonesia – Food and Agriculture Organization of The United Nation, 1991, *An Agenda for Forestry Sector Development in Indonesia*, GOI-FAO, Jakarta.

Wignisoebroto, Soetandyo, 2013, *Pergeseran Paradigma dalam Kajian Sosial dan Hukum*, Setara Press, Malang.

Rachman, Noer Fauzi & Siscawati, Mia, 2014, *Masyarakat Adat Adalah Penyandang Hak, Subjek Hukum, dan Pemilik Wilayah Adatnya*, INSISTPress, Yogyakarta.

BAPPENAS, 2014, Makalah pada Focus Group Discussion, *Pengkajian Peran Sektor Kehutanan Dalam Pembangunan Nasional*.

Pulhin JM, Inoue M & Enters T, 2007, Three decades of community-based forest management in the Philippines: Emerging lessons for sustainable and equitable forest management. *International Forestry Review 9 (4).*

Pulhin JM & Dressler WH. 2009. People, power, and timber: The politics of community-based forest management. *Journal of Environmental Management 91(1).*

Black's Law Dictionary, 1990, St. Paul, Minn, West Publishing Co.

Bertens, K, 2004, *Etika*, PT. Gramedia Pusaka Utama, Jakarta.

Malcolm N. Shaw, 1997, *International Law*, Cambridge University Press, Cambridge.

Combacau, J & Alland, D, 1986, *"Primary" and "Secondary" Rules in the Law of State Responsibiliy : Categorizing International Obligation*, Netherlands Yearbook, Martinus Nijhoff Publishers.