

Local Governments' Responsibility In The Management Of Customary Forests: Special Autonomy Perspective

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Abstract: Utilization of forest and forest area can be adjusted with its main function that is conservation, protection and production. In order to maintain the sustainability of the main function and condition of the forest, rehabilitation and reclamation of forest and land are also carried out. The research is empirical research or commonly called non-doctrinal legal research. This research was conducted in the territory of Papua Province, Indonesia, precisely in Districts of Jayapura, Keerom, Sarmi and Nabire. The results show that the government's responsibility to improve the welfare of Papuan people from forest management has not been well realized and has not yet strengthened the fiscal capacity of government in Papua Province. Therefore, the government of Papua Province has regulated the management of customary forests by issuing and enacting the Special Regulation of Papua (*Perdasus*) No. 21 of 2008 on Sustainable Forest Management in Papua Province, and the policy of economic empowerment of communities in and around customary forests. Law enforcement of illegal logging practices is based not only on juridical approaches but also socio-political and socio-cultural approaches.

Index Terms: Forest, Local Government, Customary Forests, Special Autonomy

1 INTRODUCTION

Forest as one natural resource is a national development capital that should be utilized optimally. In its position as one of the determinants of the life support system, it has provided great benefits to mankind, therefore the existence of natural resources must be preserved, because forests have a strategic role as a global environment balancer. As above conception, Article 33 of the 1945 Constitution of the Republic of Indonesia as the constitutional basis of the nation has obliged that the earth, water, and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people. The implementation of forest management must always contain the soul and the spirit of fair and sustainable populist. Furthermore, the government is also given authority to issue permits and rights of control to other parties to conduct activities in the field of forestry (Zain, 1997). However, for certain matters of great significance, scale and wide impact, and strategic value, the government must pay attention to the aspirations of the people (Irwansyah, 2017). The reinforcement of customary forest tenure by customary law peoples can be clearly seen in the Decision of the Constitutional Court of the Republic of Indonesia Number 35/PUU-K/2012 in its legal consideration states that according to the Constitutional Court, the existence of customary law peoples, function and forest status (customary), forest tenure, as long as in reality there is still to be recognized its existence. Utilization of forest and forest area can be adjusted with its main function that is conservation, protection and production. In order to maintain the sustainability of the main function and condition of the forest, rehabilitation and reclamation of forest and land are also carried out.

In addition to restoring the forest quality as well as enhancing the empowerment and welfare of the peoples, so that community participation is the core of its success. The suitability of these three functions is very dynamic and the most important is that in utilization must remain synergy (Covey, 1990). To maintain the quality of the environment then in the utilization of forest as far as possible avoid conversion of natural forests that are still productive to be plantations forest. This means that development not only pursues external prosperity or inner satisfaction alone, but is a balance between the two. Thus, it can also be said that the utilization of natural resources for the welfare of the people pursued thoroughly and integrated with attention to the balance and sustainability of environmental functions and always take into account, the principles of sustainable development for the benefit of future generations. In a study of collaboration between the United Kingdom and Indonesia in 1998 indicated that about 40% of all logging activities are wild, with a value of up to 365 million US dollars. A more recent study comparing legal logging with domestic consumption plus exports indicates that 88% of all logging activities are illegal logging. Malaysia is a major transit point for illegal timber products from Indonesia (Colfer and Reksosudarmo, 2003). According to the Ministry of Forestry (2006), the area of damaged and non-functional forest has reached 59.6 million hectares from 120.35 million hectares of forest area in Indonesia, with the deforestation rate in the last 5 years reaching 2.83 million hectares per year. If such a condition is maintained, where Sumatra and Kalimantan have lost their forests, the forests of Sulawesi and Papua will experience the same thing. According to World Bank analysis, forests in Sulawesi are expected to lose in 2010. Illegal logging practices and forest exploitation that ignore sustainability lead to the destruction of forest resources, the destruction of community life and the loss of timber worth US \$5 billion, the State revenue is approximately US\$ 1.4 billion annually. These losses have not yet accounted for the loss of biodiversity values and environmental services that can be derived from forest resources (Suhendang, 2002). A research of Greenpeace noted that Indonesia' forest damage rate reached 3.8 hectares per year, largely due to illegal logging activities. The data of Forestry Research Agency show that the budget of 83 billion rupiahs per day as a financial loss due to

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illegal logging (Nurrochmad, 2005). The above explanation reflects the overlapping of policies between the Central- and Local Government or the overlap on authority caused by inconsistency or un-synchronization of laws and regulations related to the authority of natural forest resources management. This condition is exacerbated by the differences in policy orientation between the Central- and Local Government which will ultimately inhibit law enforcement (including criminal law enforcement) against illegal logging crimes. The eradication of illegal logging is a must to create a just and sustainable forest management system. Forest management should be guided by the balance of managing ecological functions, sustainable economic governance and social and cultural governance alignment. Therefore, the eradication of illegal logging and the circulation of forest products should be supported by all parties at various levels at the local, national, regional and international levels. Until nowadays, the eradication of illegal logging and circulation of illegal forest products has been conducted and continue to be improved both preventive and repressive by involving various competent and relevant parties. Operasi Hutan Lestari II, in order to eradicate illegal logging practices in Papua Province, which emphasizes the principle of justice enforcement, still needs further study. This phenomenon is accustomed to the low level of public confidence in the prevailing law and law enforcement; because the citizens know by themselves the selective action of law enforcement that gives space for illegal logging perpetrators to propagate customs with arbitrary, non-touch the law can beat it.

2 METHOD

The research is empirical research or commonly called non-doctrinal legal research. This is based on the notion that it examines the responsibilities of local governments over customary forests in a special autonomy perspective. This research was conducted in the territory of Papua Province, Indonesia, precisely in Districts of Jayapura, Keerom, Sarmi and Nabire. This is based on the consideration that these locations, the intensity of the problem of customary forest management is significant and complex.

3 LOCAL GOVERNMENTS' RESPONSIBILITY IN THE MANAGEMENT OF CUSTOMARY FORESTS

A State as one of the pillars of governance is all government apparatus including political and public-sector institutions. Private elements include private companies engaged in various fields and its informal sectors. While, the public elements are non-governmental, professional organizations, and others; in forest management these three elements must synergy to create a prosperous and just people by sustaining the sustainability of forest. Involvement of all elements in forest management is very good, but must be tailored to the roles and duties and capacities of each. During this, forest management in Papua Province has not yet increased the welfare of Papuans, especially customary law peoples, and has not yet strengthened the fiscal capacity of government in Papua Province. Forest in Papua Province is a creation and a gift of God Almighty, must be used wisely for the welfare of mankind, both present and future generations. Since the enactment of the Act No. 21 of 2001 on Special Autonomy for Papua Province, the State and Indonesian peoples recognize, respect the rights of customary law peoples of Papua over natural resources, including forest resources. Forest

management in Papua Province is conducted with the alignment, protection and empowerment of Papuan indigenous law peoples in order to achieve prosperity and independence within the Unitary State of the Republic of Indonesia. Forest management in the Papua Province is conducted through equitable and just partnership cooperation, keeping in mind the principles of environmental sustainability, justice, equity and human rights. Based on the above considerations it is deemed necessary to stipulate a Regulation of Special Area on Sustainable Forest Management in Papua Province. Talking about sustainable forest management should be preceded by community empowerment, although it can also be understood that sustainable forest management is one effort in empowerment. The authors believe that community empowerment is a prerequisite that must be fulfilled in the management of sustainable forest resources. It is based that the people who are helpless in giving stimulation of any kind, still will not be empowered in the case of community empowerment programs as raised by Perum Perhutani if the community empowered first then the various stimulation that there is any form will be utilized to improve productivity in the management of customary forest areas whose goal are improved welfare. Empowering the community is an effort to increase the dignity of the peoples that in recent condition is unable to escape the poverty trap and backwardness. In other words, empowering is enabling and establishing the community. According to Kartasasmita (1996) that community empowerment is an effort to enable and to create independence by encouraging, motivating and awakening awareness of its potential to be more efficient and effective. It can be interpreted that community empowerment is how to change the mindset of a person from feelings of inadequacy, cannot be able, can and very possible to make changes. The existence of enlightenment in the community around the forest will be strength and potential possessed to give a mutual awareness that the change to prosperity is a necessity. As a process, empowerment is a series of activities to strengthen the power or empowerment of weak groups in society, including the poor. As the purpose of empowerment refers to the condition or outcomes to be achieved by a social change, in which the community becomes empowered, has the knowledge and ability to meet the needs of life, self-confidence, able to convey aspirations, has livelihood, participates in social activities and independent in their life. In the process of empowerment, rather than making the community become more dependent on various programs that are charity, because basically everything that owned has to be generated on his/her own effort, the results can be exchanged with other parties. The problem of forestry is now increasingly complex. Problems and challenges in realizing forest sustainability and community welfare can no longer be approached only with technical solutions of forestry alone. Currently, the map of forestry issues has shifted from technical issues to economic, social problems and the impacts of forestry sector policies that are increasingly complex and should be addressed soon including in their management planning. Planning is made to achieve goals in an organization. It is a preliminary activity that must be done, before the main activities implemented. It is necessary because of the limited resources and available funding sources so as not to complicate in determining a choice of activities. Development planning can be defined as a process of formulating alternatives or decisions based on the

data and facts that will be used as material to implement a series of community activities, both physical (material) and non-physical (mental and spiritual), in order to achieve a better goal. While the regional development planning is a process of preparing the stages of activities involving various elements in it, for the utilization and allocation of existing resources in order to improve social welfare in a regional environment within a certain period. Customary forest planning is an effort to utilize the function of forest by creating activities that may affect the ongoing process, or create new processes, so that forests contribute the maximum to influence and improve the welfare of the community. From this definition, there are 3 (three) keywords: forest function; influence the process; and community welfare. This means that forests are part of a larger system that contributes to meeting and improving the welfare of the communities. The vertical position of forest planning requires consistent linkages from national, regional to operational levels. This is related to the function of the forest as a guardian of the environment and producer of many commodities that are needed by the wider community. Macro policies should be able to accommodate every local-interest otherwise operational activities should be in the context of the interests of the wider community as well as for a long period of time. Implementation of forestry programs in the regions should not be separated from programs and plans developed and facilitated by the central government. Therefore, effective communication and coordination is needed with the division of roles and responsibilities respectively so as to obtain synchronization between the center and the regions. The division of roles and responsibilities will work if there is a clear working arrangement between each party. Forest planning is an effort to utilize the function of the forest by creating activities that can affect the ongoing process, or create new processes, so that forests contribute the maximum to influence and improve the welfare of the community. From this definition, there are 3 (three) keywords: forest function; influence/create processes; and public welfare. This means that forests are part of a larger system so that its contribution to meet and improve the welfare of the community. The planning process is divided into two; bottom-up and top-down. Besides, there are also two planning models that are (1) planning that are determined directly by the center so that the local government is only the implementer or complement of the existing concept, (2) planning is a result of strengthening the local community by using the existing formal and non-formal mechanisms. Based on interviews it appears that the programs and activities proposed in the Forestry Plan of Papua Province have noticed the general directives in RKTN (Rencana Kehutanan Tingkat Nasional or National Forestry Planning). The program is then detailed into detailed directives through spatial and socio-economic analysis and seeks to fulfill the wishes of the community through public consultations. Land use directives, strategies and policies, as well as predetermined programs are general in nature to facilitate their elucidation in the planning under it. The conditions and characteristics of the regions (districts/municipalities) for each province have specificity, so to determine the following programs and activities the target should be discussed with the stakeholders in the region. Top-down and bottom-up planning apply only to conditions where there are several levels within government or agencies authorized to undertake a plan. In general, the two plans are combined, but there is still a dominant plan. If the top-down is dominant then the plan is called centralistic, while

when the bottom-up is dominant then the plan is called decentralist. The concept of forestry development plans in the region using a top-down planning approach model with respect to technical aspects, local potential both the potential of natural resources and human resources. Generally, indigenous peoples in Papua are small farmers who collect traditionally forest products (timber and non-timber) and cultivation shifting to meet their food needs. In the forest area, they also do hunting, either for own consumption or for sale. Commonly hunted animals are wild boar and deer. Forests are also a source of firewood and carpentry, traditional medicines. Some plant species that grow in the forest are used as food such as cassava leaves, papaya leaves, and young leaves and melinjo (*Gnetum gnemon*) for vegetables; bananas, taro, as food, etc. With the availability of timber resources in the existing forest in Manokwari, the potential for non-timber forest products such as rattan apparently has not been utilized by customary law peoples. In Governors' Decree No. 50/2001, the investor should pay the agreed amount, plus Rp. 289.215.300,00 for the volume of wood produced. However, the community even received a compensation of Rp. 50.000.000 as compensation for the cancellation of the cocoa plantation development. Both the District/Municipality Government and the Provincial Forestry Office admitted to having no complete record about the submitting of Kopermas to cut down a concession area. The clan members have no knowledge of the official forestry policy and are not involved in the process of applying for permission by the investor. Instead, the clan heads signed a direct agreement with a timber investor from Jakarta who had brought the letter of agreement without giving a copy to Kopermas. Then, the very poor community leader said that the clan members were unhappy with the outcome and that he felt had been deceived because the deals they had made were not met by investors. In general, this research found that investors manage the process of registration and operation of IPK-MA (administration, finance, logging and sales). There is little involvement of customary law peoples' partners on the matter. The large benefits received by Kopermas appear to be directly proportional to their level of involvement in overall forest management activities. In outline, indigenous law peoples do not have the technical skills required to carry out professional forest exploitation activities. They also do not have sufficient knowledge about sustainable forest management. Nevertheless, the research team found that in some cases transfer of knowledge between partners and Kopermas members. The owner of customary rights in all three concession areas involved in this study was appointed as the Head of Kopermas by a member of the clan who also owned the right to the land. As a result, knowledge transfer is limited to local elites, i.e custom leaders or customary rights owners, or educated community members (mostly from outside the village), who are appointed as Kopermas' employees. Kopermas' employees receive a salary of 5% of the production value. The results showed that the pattern of logging as conducted by the investor has resulted in damage to the standing stand (diameter more than 20 cm) of 57.61%, which consists of canopy damage (26.65%), stem damage (17.20%), and root damage (13.75%). The high intensity of residual stand damage to the Kopermas area is possible because logging is done without good logging planning as it has to pursue the production target for a short period of one year. Generally, management of concessions by partners (investors)

is less consideration of the forest ecological or the principles of sustainable forest management. Most investors also do not agree on a fair share of benefits for local communities. Such matters have led to the emergence of a negative view of the concession management system by Kopermas. The question now is why this new policy does not apply to all members of the community? And why do local people tend to be exploited by outsiders? To protect the local communities from irresponsible investors need to be done by building capacity and facilities at local customary institutional level (LMHA) and Kopermas. Community empowerment of customary right of customary forests in Papua is also a very important issue to protect their rights. In other words, it takes more time to build technical and organizational skills in local communities. Policies should also take into account the weak bargaining position and financial condition of the community by providing clear information on profit sharing mechanisms. Other problems that arise in relation to the emergence of small-scale forest concessions are overlapping land use and the development of conflicts between indigenous peoples and HPH owners or other legal permits holder. This is due to the lack of compilation of Forest Spatial Planning which incorporates elements of customary ownership.

4 LAW ENFORCEMENT OVER ILLEGAL LOGGING PRACTICES IN CUSTOMARY FOREST AREAS

Law enforcement is based not only on juridical approaches but also socio-political and socio-cultural approaches (Muladi, 1995). Investigation and prosecution play an important role in law enforcement in forestry crimes, investigators are law enforcement agencies who first know a criminal case of forestry, either knowing them or through reports. While the public prosecutor is a law enforcement agency that plays a role to prove in court about the crime of forestry that is accused. Given the crucial role of investigation and prosecution in law enforcement in Forestry crimes, one of the most important issues is the issue of synchronization within the sub-system of investigation and prosecution itself, structurally, substantially and culturally. According to Purbacaraka (1997), the work of the law is not only a function of legislation, but the activity of the bureaucratic implementation. The term law enforcement may be used for translation of "*rechtshandhaving*," which means "lawful" and "adhered" through a criminal justice system composed of police, prosecutors, courts and correctional institutions. There is a widespread misconception in various circles, namely that law enforcement is only through a court process. There is also a misconception, as if law enforcement is solely the responsibility of the law enforcement apparatus. Law enforcement is an obligation of the whole peoples and for that understanding of rights and obligations is an absolute requirement. Society is not a viewer of how law is enforced but they play a role in law enforcement. People who do not throw garbage in the river have come to enforce the law, because throwing garbage in the river is a violation. Regarding the term law enforcement, Rahardjo (1996) argued that the definition of law enforcement is a concrete implementation of the law in the daily life of society. In addition to terms law enforcement, there is a term law application but it seems the most commonly used term law enforcement. Such thoughts are reinforced by the customs of the people with the habit of calling law enforcers the police, prosecutors and judges. It is not called administrative officials that are appropriate to remember the

wider scope. Illegal logging is very impact on the state of ecosystems in Indonesia. Logging has an adverse impact on the surrounding community, even the world community. Losses caused by forest destruction not only damage the economic value, but also result in the loss of life. The impacts of illegal logging are as follows:

- (a) The impact that has begun to be felt today is at the rainy season the territory of Indonesia is often hit by floods and landslides;
- (b) Illegal Logging also resulted in a reduction of the spring water in the forestry area. Trees in the forests that used to be water absorber to provide a spring for the benefit of the local community are now consumed by illegal loggers;
- (c) Reduced fertile soil layers. The fertile soil layer is often carried by the flood that hit Indonesia. As a result the fertile soil is decreasing.
- (d) Illegal logging also impacts the destruction of fauna and flora, erosion, conflicts among communities, devaluation of timber prices, loss of livelihoods, and low state and local revenue from the forestry sector, excluding income from auctions of confiscated wood and wood findings related parties.
- (e) The most complex impact of the illegal logging is global warming which is now threatening the world in deep chaotic and fear (Gore, 2007).
- (f) The case of illegal logging that occurs everywhere, resulting in not only harms to the State, but also leads to harm to the survival of living things around which then impact on the occurrence of natural disasters (Mukhlis et al, 2010).

According to the Indonesian Forum for Environment (Walhi) illegal logging is a fact that is triggered by another fact. Concerned other facts can be several things, such as the huge need for raw materials for the wood industry, and paper. Imagine the paper industry needs at least 27.71 million cubic meters of wood annually, while the forest condition for industry can only supply 29.9 percent of its total needs. Surely this industry will continue logging activities on natural forests with annual demand reaching 21.8 million cubic meters. This condition in turn triggered the greedy desire of brokers to make illegal logging as one of the ways to extract profitable economic potential. This is even worsened by the weakness of law enforcement in the settlement of illegal logging cases due to the proliferation of corruption, collusion and nepotism practices that intertwine with the interests of law enforcement officers (even bureaucratic officials) at all levels of justice, ranging from police, prosecutors, to judges. As a result illegal logging is still rife in the Indonesian hemisphere and especially in the province of Papua. The handling of illegal logging must still be pursued until illegal logging activities stop completely before the loss of forest resources where there is a forest area but there are no trees in it. The handling of illegal logging can be done through a combination of preventive, repressive and monitoring efforts (detection). The most complex impact of this illegal logging is global warming which is now threatening the world in deep chaotic and fear, with natural disasters. The application of sanctions is not found in the articles of Act No. 41 of 1999 on Forestry, but illegal logging can be identified as acts or deeds of damaging forests as defined in Article 50 paragraph (2) and Article 78, as well as provisions in the Penal Code on vandalism, theft, smuggling, forgery, embezzlement, and tackling. But in the implementation of this law enforcement

has not been done optimally, because the intellectual actor of Illegal Logging is not entirely touched by the law. The model of customary forest management through governance where the State as a pillar collaborates with private elements includes non-governmental organizations to realize the community and justice by maintaining forest sustainability and must be adapted to their respective roles and duties and capacities. The pattern of partnership and openness in customary forest management is evident in the Decree of the Governor of Papua No. 50/2001 on Compensation, and Synergy between the Government of Special Autonomy and customary law peoples is realized through the establishment of Kopermas. It is just that this people-oriented economic policy is not accompanied by maximal coaching and improving human resources in customary forest management systems.

5 CONCLUSION

The responsibility of government to improve the welfare of Papuan people from forest management has not been well realized and has not yet strengthened the fiscal capacity of government in Papua Province. Therefore, the government of Papua Province has regulated the management of customary forests by issuing and enacting the Special Regulation of Papua (*Perdasus*) No. 21 of 2008 on Sustainable Forest Management in Papua Province, and the policy of economic empowerment of communities in and around customary forests. Law enforcement of illegal logging practices is based not only on juridical approaches but also socio-political and socio-cultural approaches. As a recommendation for further research, empirical facts prove that business actors (investors) in the field of forestry and indigenous peoples have not properly understood and correct the regulation of local government in the field of forestry either through Act No. 21 of 2001 and Special Regulation (*Perdasus*) No. 21 of 2008. Law enforcement of illegal logging practices in customary forest areas should be done transparently, wisely according to local wisdom and not discriminates, so it can create social justice in the utilization of customary forest products, as the application of welfare state theory and law enforcement.

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