

# LEGAL HARMONIZATION OF VILLAGE AUTHORITY ON FORESTRY MANAGEMENT

Agus Surono, Universitas Al Azhar Indonesia

## ABSTRACT

*The village Law No. 6 of 2014 concerning Villages emphasizes the principle of recognizing subsidiarity and recognition for villages based on the principles of diversity. The Village Law provides recognition and respect for the village, provides legal clarity and certainty regarding village status in the Indonesian state administration system. The authority granted in this Law provides a basis for villages to regulate and manage, and have rights to natural resources, including forestry at the village scale. Although normatively the village has the right to manage natural resources, in reality there is still a great effort for village stakeholders to be able to independently and comprehensively obtain the right to manage forestry natural resources. Legal protection for villages in natural resource management is an important factor because there are overlapping laws and village regulations with laws in the natural resources sector. This paper attempts to analyze the laws and regulations related to the village authority to manage natural forestry natural resources. Analysis of village rights is also compared with the regulations on forestry. The results of the study show that there are overlapping legal regulations in the forestry sector with laws and regulations in villages in the management of forestry natural resources. Accordingly, suggestions that can be raised by considering the conclusions are related to the three focus studies which are grouped into three problem identification as outlined in the conclusions can be stated in several recommendations. First, harmonization and synchronization of laws and regulations related to the forestry sector as stipulated in Law No. 41 of 1999 concerning Forestry and its derivative regulations with Law No. 6 of 2014 concerning Villages.*

**Keywords:** Village Law, Forestry Natural Resources, Forestry Regulations, Village Authority.

## INTRODUCTION

The Village Law No. 6 of 2014 emphasizes the principles of recognition and subdivision of villages and develops the principle of diversity. The Village Law provides recognition and respect for the existing Village with its diversity before and after the formation of the Republic of Indonesia, and provides clarity on the legal status and certainty of the village in the constitutional system of the Republic of Indonesia. The Village Law also emphasizes on: (1) the administration of village government; (2) implementation of development; (3) community development; (4) community empowerment based on state philosophy of Pancasila and the 1945 Constitution. Based on the Village Law, being the authority of the village is including authority based on the rights of origin, local authority with village scale, authority assigned by the government, provincial government, or district/city regional government. In the context of implementing this Law, there is an impetus for accelerating development in rural areas. One form of accelerating the implementation of development in the village is by strengthening village

governance, community empowerment, rural development and rural areas. However, there are several problems faced in the development and empowerment of rural communities, including low quality of human resources, low assets controlled by rural communities, limited alternative employment opportunities, low social services, increased degradation of natural resources and the environment, weak institutions and community-based organization. In addition, there are other problems, including weak linkages to economic activities, not optimal utilization of opportunities in the era of globalization and trade liberalization, the emergence of barriers to distribution and trade between regions, and weak cross-sectoral coordination in the development of rural areas (Aid, 2004; Cobo, 1986).

The Village Law provides strengthening of authority to the village to optimally utilize available resources and in accordance with local needs. To further strengthen this, the Ministry of Villages, Development of Disadvantaged Regions and Transmigration can determine the type of village authority in accordance with local situations, conditions and needs as stipulated in Article 34 paragraph 3 pp. No. 43 of 2014 (Wicaksono, 2018). The existence of Government Regulation No. 43 of 2014 as the implementing regulation of Law No. 6 of 2014 concerning villages confirms that development planning activities and assistance in development in rural areas must continue to be pursued. Furthermore, Law Number 6 of 2014 concerning Villages also provides a foundation for the Village to manage and regulate, as well as having rights to village-level natural resources, both natural resources in the forestry, plantation, mining and other natural resources sectors. Specifically regarding the village-level forestry natural resource sector, there are still problems of overlapping authority between the village government and the central government (compare with other cases, Yerezhepkyzy et al., 2017; Teleuyev et al., 2017; Ospanova et al., 2017). This is because the forestry sector is also included in the authority of the Ministry of Forestry with very centralized arrangements (Kleden et al., 2005).

Specifically regarding the village-level forestry natural resources, there are still problems of overlapping authority between the village government and the central government. This is because the forestry sector is also included in the authority of the forestry ministry with a very centralistic arrangement to prevent deforestation and forest use that are not suitable for utilization (Lynch & Talbott, 2001). The very centralistic arrangement regarding forest utilization licensing is based on the Minister of Forestry Regulation and the legislation derived from Law No. 41 of 1999 concerning Forestry. This law indirectly often raises tension in the implementation of forest regulation and use in rural areas. In terms of regulation, this regulation overlaps with the laws and regulations concerning Villages as stipulated in Law No. 6 of 2014 concerning Villages. Based on the above background, this paper focuses more on Village Legal Protection for the Forestry Natural Resources according to Law No. 6 of 2014 concerning Villages, by identifying the following problems. First, are laws and regulations relating to villages providing protection to villages to manage village-level forestry natural resources? Second, how is the village's authority over the right to manage the natural resources of the forestry sector according to the provisions of the legislation concerning the village? Third, are there overlapping legal regulations in the forestry sector with laws and regulations regarding villages in the management of forestry natural resources?

## VILLAGE ADMINISTRATION AUTHORITY ON RURAL NATURAL RESOURCES

Definition of village according to the provisions of Article 1 paragraph (1) of Law No. 6 of 2014 concerning Villages explains that villages are legal community entities that have territorial boundaries that are authorized to regulate and administer government affairs, the interests of local communities based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the system of state governance Unity of the Republic of Indonesia. The purposes of stipulating the Village regulation in Law Number 6 of 2014 as a further elaboration of the provisions referred to in Article 18 paragraph (7) and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are to:

1. Give recognition and respect for the existing village with its diversity before and after the formation of the Republic of Indonesia.
2. Provide clarity on the legal status and certainty of the village in Indonesia's constitutional system in order to realize justice for all Indonesian people.
3. Preserve and advance the customs, traditions and culture of the village community.
4. Encourage village initiatives, movements and participation for the development of village potential and assets for mutual welfare.
5. Establish a village government that is professional, efficient and effective, open, and responsible.
6. Improve public services for villagers to accelerate the realization of public welfare.
7. Enhance the social and cultural resilience of the village people to realize the village community that is able to maintain social unity as part of national security.
8. Promote the economy of rural communities and overcome national development gaps.
9. Strengthen the village community as the subject of development.

According to Law Number 6 of 2014 concerning Villages Article 18 village authority includes authority in the administration of village governance, implementation of village development, village community development, and empowerment of village communities based on community initiatives, origin rights, and village customs. And according to Article 19 of Law Number 6 of 2014 concerning Villages village authority includes: authority based on origin rights, village-scale local authority, authority assigned by the government, provincial government, or regency/city regional government; and other authorities assigned by the government, provincial government, or the government.

Based on this authority, it gives village authority to carry out village development by utilizing the potential of natural resources, including the forestry sector in the village. Village rights to natural resources, are also regulated and affirmed in article 371 paragraph (2) of Law No. 23 of 2014 concerning Regional Government, namely the Village has the authority in accordance with the provisions of the legislation concerning Villages.

Principles of village regulation as stated in the provisions of Article 3 of Law No. 6 of 2014 concerning Villages cover the following principles:

1. Recognition as the recognition of the right of origin.
2. Subsidiarity as the determination of local scale authority for the benefit of the village community.
3. Diversity as the recognition and respect for the value system that applies in rural communities.
4. Togetherness as the spirit to play an active role and work together with the principle of mutual respect between institutions at the village level and elements of the village community in building villages.
5. Mutual cooperation as the habit of helping each other to build a village.
6. Family as the habit of the villagers as part of a large family unit of the village community.

7. Deliberation as a decision-making process that concerns the interests of the village community through discussions with various interested parties.
8. Democracy as a system of organizing village communities in a system of government carried out by the village community or with the consent of the village community.
9. Independence as a process carried out by the village government and village communities to carry out an activity in order to meet their needs with their own abilities.

## **CONFLICT OF AUTHORITY IN FOREST RESOURCES MANAGEMENT**

Implementation of regional autonomy based on Law No. 32 of 2004 concerning Regional Government, as amended after the Government through Law No. 2 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Government Region Becomes Law. The regulation stipulates that government affairs which are the authority of the village include existing governmental affairs based on village origin rights, governmental affairs whose authority is handed over by the district/city, assistance tasks from the government and regional government, as well as other governmental affairs which are by law. The invitation was handed over to the village, the main problem faced in the development of conservation in Indonesia was the division of authority between the central and regional governments. Based on the applicable laws and regulations, conservation authority is still in the hands of the central government, even though there are many initiatives at the regional level regarding the regulation of the management of conservation areas that have not been accommodated by the central government.

The potential role of the region needs to be understood, because de facto the areas that are defined by the conservation function (and also other functions such as production and protection) are in the regional administrative area. People at the regional level really understand the actual conditions and needs for the best management. In addition, because conservation areas in the past are often not accompanied by adequate data and information. In conditions without authority, communicating the importance of conserving biodiversity with the interests of people's lives inside and outside the area becomes difficult to implement by the regions.

Conservation of living natural resources in Act No. 5 of 1990 is the management of living natural resources whose utilization is carried out wisely to ensure the sustainability of its supply while maintaining and improving the quality of diversity and value. The goal is to strive for the realization of the preservation of living natural resources and the balance of the ecosystem so that it can better support efforts to improve the welfare of the community.

In Law No. 41 of 1999 concerning Forestry, it is stated that conservation regulations are still the authority of the central government. This regulation shows clearly that there has been no decentralization in the field of conservation, even though many initiatives at the district and community levels can complement these conservation regulations. Centralistic management is exacerbated by the planning, regional structuring, protection and supervision processes and various other activities related to the management of convention areas which are often developed in a non-transparent manner by the central government to the authorities below or to rural communities living around the forest. In addition, local government and community support for forest conservation management is also quite low.

Conservation in the perspective of the Conservation Law No. 5 of 1990 is elaborated with various forms of area management which include Nature Reserve Areas (Nature Reserves and Wildlife Reserves), Biosphere Reserves and Nature Conservation Areas (National Parks, Grand

Forest Parks and Nature Tourism Parks). In the management of the three forms of this area there is no mention of the form of management carried out by the local government and the communities around the area. The community is only involved as participants to be given education and counseling about conservation. The concept of joint management with the community and the local government has actually been tried in several National Parks in Indonesia. Kayan Mentarang National Park, East Kalimantan for example, has developed collaborative management by involving the district and local communities for joint management through the Indigenous Peoples Forum (Sumardja, 1997).

Referring to the perspective contained in the regulation, there are several things at the regional and community level that need to be observed, especially for the central government to review existing regulations. First, rural communities around conservation areas are still less involved in joint management of conservation areas. Even considered as an enemy who always penetrates the region. Therefore the assumption must be given education and counseling about conservation.

Second, the pattern of incentives developed for joint management is not clear in its direction and purpose. The government only hopes that the community can help maintain the area without a clear agreement. If there are problems related to the area, the community feels that they are not responsible for the problems faced. Third, in the field there have been overlapping central regulations with the regions, especially during this decentralization period. Problems that arise are related to the management of the area, spatial planning and land use. The local government in the spirit of decentralization feels that it has to manage and utilize the area for the welfare of its people. In fact there have been overlapping laws and regulations in the forestry sector and laws and regulations regarding the village, especially concerning the authority of the village over the right to manage forest resources.

Fourth, the conservation activities can contribute significantly to the local government and the community in the form of Regional Original Revenue. In this regard, it is necessary to explain that there are several conservation activities that can contribute to local governments and local communities such as ecotourism, research affecting the community, and other similar activities (Fay & Sirait, 2003). The four problems mentioned above began to develop intensively after the era of regional autonomy. Ironically, the development of this issue is not matched by the willingness of the regions to improve conservation activities, but because they want to improve the development of their regions by maximizing their natural resources. The problems that arise at the regional level are related to conservation areas that are still managed by the center, among others: National Parks, Nature Reserves, Forest Tourism in this era of autonomy is increasingly widespread and severe related to the distribution of these powers. The emergence of different interests between the central government, local government and the community led to a prolonged conflict (Wulan et al., 2004). On the one hand the central government maintains a conservation area in accordance with its formation, while the regional party with the concept of development to improve the welfare of the community and the Region Own Source Revenue tries to release the area from the state forest area (Fuad & Maskanah, 2000). Meanwhile, people living in the vicinity of the area feel entitled to be able to enjoy the results of the region in the period of decentralization.

The existence of legal recognition at the Regional Government Level for the efforts made by the community in supporting conservation activities, shows the existence of regional policies to assist the community in carrying out conservation activities. The policy should be supported

and enforced by the Ministry of Forestry, which can provide input to the concepts of national forest management which are further elaborated by the regional governments as guidelines for implementation in the field. The Ministry of Forestry and local governments actually have the same basic conservation concept, namely providing protection and preservation of biodiversity and its ecosystem (Iskandar & Nugraha, 2004). From the aspect of utilization, the Ministry of Forestry provides limited use zones in conservation areas for the community. While the local government gives full authority to the community to develop local conservation areas with various management models and their designation. From the aspect of the policy approach, the Ministry of Forestry tends to act “*top down*” without regard to the needs needed in the field. This approach resulted in the emergence of problems in the conservation area, both with the local government and the community, including conflicts over the use of the area with the community and local government. While the local government is trying to develop a “*bottom up*” concept that gives people the authority to manage local conservation areas, which are likely to be forced to accommodate the community with the regulations they make.

### **LEGAL PROTECTION ON VILLAGE AUTHORITY IN THE MANAGEMENT OF FORESTRY NATURAL RESOURCES**

There are several legal frameworks as a form of protection of village rights over forest resources in the village scale, among others, can be regulated in the following laws and regulations. First, the 1945 Constitution of the Republic of Indonesia, precisely Article 18 paragraph (7) and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. that the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The provisions in Article 33 paragraph (3) of the 1945 Constitution constitute the basis of the State's policy to regulate the control, ownership, use and utilization of natural resources in the form of land and all forms of land and water utilization and the results obtained therein in order to significantly improve the prosperity and welfare of the people, protect and guarantee all the rights of the people, and prevent the people from losing or the opportunity of rights to the earth, water and its contents.

Second, Law No. 23 of 2014 concerning Regional Government. The Government through Law Number 2 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Regional Government Becomes Law. this law stipulates that government affairs which are the authority of the village include existing governmental affairs based on village origin rights, governmental affairs whose authority is handed over by the district/city, assistance tasks from the government and regional governments, as well as other governmental affairs which by regulation legislation is handed over to the village. As an implication, the autonomy possessed by the village government is very different from the autonomy that is owned by the provincial and district/city regions where the autonomy of the village is strongly influenced by its origin and customs, not based on the handover of authority from the government.

Third, Law No. 6 of 2014 concerning Villages. According to Article 18 of Law No. 6 of 2014 concerning Villages, village authority includes authority in the administration of village governance, implementation of village development, village community development, and village community empowerment based on community initiatives, origin rights, and village

customs. Furthermore, according to Article 19 of Law No. 6 of 2014 concerning Villages, village authority includes authority based on origin rights, village-scale local authority, authority assigned by the central government, provincial government, or regency/city regional government; and other authorities assigned by the authorities above it.

Furthermore, Article 1 point 9 of Law No. 6 of 2014 concerning Villages, stated that rural area is an area that has the main activities of agriculture, including the management of natural resources with the composition of the function of the area as a place of rural settlements, government services, social services, and economic activities. Furthermore Article 78 paragraph states that Village development aims to improve the welfare of the Village community and the quality of human life and poverty alleviation through the fulfillment of basic needs, the development of Village facilities and infrastructure, the development of local economic potential, and the sustainable use of natural and environmental resources.

Fourth, Law No. 41 of 1999 concerning Forestry. Article 3 letter, Law No. 41 of 1999 stated that forestry operations aim for the greatest prosperity of the people that is just and sustainable by: e. guarantee equitable and sustainable distribution of benefits. Article 23 of Law No. 41 of 1999 stated that the utilization of forests as referred to in Article 21 letter b aims to obtain optimal benefits for the welfare of all communities in an equitable manner while maintaining its sustainability (Riyatno, 2004).

Based on the provisions of the laws and regulations above, the implementation of the Government's policy on village rights over the management of forest and plantation resources for the village scale can be based on the provisions of Law No. 41 of 1999 concerning Forestry, although it does not explicitly regulate its form and mechanism, and what is the basis for the legal umbrella is it enough to be stated in the form of Village Regulations for cooperation with parties related to the forestry and plantation sector. Regarding village rights in managing village-scale forest resources as the implementation of UU No. 41 of 1999 concerning Forestry, the Government has issued Forestry Minister's Regulation No. pp. 89/Menhut-II/2014 concerning Village Forests. Referring to the explanation of Law No. 41 of 1999 concerning Forestry, especially in the elucidation of article 5, village forests are state forests located within the territory of a village, utilized by the village, for the welfare of the village community. Furthermore, in Government Regulation 6 of 2007 concerning Forest Management and Formulation of Forest Management Plans, village forests are defined as state forests that have not been subject to permits or rights managed by the village and for the welfare of rural communities. The basic principle of Village Forest is to open access to certain villages, specifically forest villages, to the state forests that are included in their territory.

The granting of village rights was first based on the Forestry Minister's Regulation No. pp. 49/Menhut-II/2008, concerning Village Forests, which was stipulated on 28 August 2008. This regulation was then followed by changes (Permenhut No. pp. 14/Menhut-II/2010 and Permenhut No. pp. 53/Menhut-II/2011), and finally amended by Forestry Minister's Regulation No. pp. 89/Menhut-II/2014 concerning Village Forests. In the Village Forest, management rights are permanently granted by the Minister of Forestry/Regional Government to the village institution with a period of 35 years and can be extended. Village Forest Licensing can be given in protected forest areas and also in production within the village administration area concerned. The determination of the village forest work area is carried out by the Minister of Forestry based on the proposal of the Regent/Mayor. In this case the right that can be granted is the right to use the Village Forest not the property rights with a permanent status in the state forest.

Regarding the village's rights to the management of natural resources in the forestry sector, in accordance with the authority possessed by the village based on the principle of recognition and subsidiarity as stipulated in Law No. 6 of 2014, the Village has the authority to regulate it in the Village Regulation concerning Village Rights to the Management of Village Natural Resources in the Forestry Sector. However, the problem is related to the determination of the village forest area according to Law No. 41 of 1999 concerning Forestry, pp. 6 of 2007 concerning Forest Management and Preparation of Forest Management Plans, as well as Forestry Minister's Regulation No. pp. 89/Menhut-II/2014, particularly those which regulate the determination of village forest areas are still the authority of the Ministry of Forestry. This is still a legal issue, both the issue of regulation as well as the licensing authority in managing/utilizing village-scale forest areas as the authority given to villages based on the principle of recognition and subsidiarity in Law No. 6 of 2014 concerning Villages.

### CONCLUSION

Legislation relating to villages as stipulated in Article 18 and Article 19 of Law No. 6 of 2014 concerning Villages has provided protection to villages to manage village-level forestry natural resources. Even this is also guaranteed in Article 18 paragraph (7) and Article 18B paragraph (2), Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Furthermore, village authority over village rights to manage natural resources in the forestry sector According to Article 18 of Law Number 6 of 2014 concerning Villages, village authority includes authority in the administration of village governance, implementation of village development, village community development, and village community empowerment based on community initiatives, origin rights, and village customs. Furthermore, according to Article 19 of Law No. 6 of 2014 concerning Villages, village authority includes: authority based on origin rights, village-scale local authority, authority assigned by the government, provincial government, or district/city regional government; and other authorities assigned by the government, provincial government, or the government. Based on the mandated authority in the above laws and regulations, giving the village the authority to be able to carry out rural development and rural areas by utilizing the potential of natural resources in the village in a sustainable manner, including the rights to natural resources in the forestry sector in scaladesa. The arrangement aims to create a source of livelihood in the village through the utilization of village-scale natural resources to improve the welfare of the community. It is also regulated and affirmed in article 371 paragraph (2) of Law No.23 of 2014 concerning Regional Government, namely the Village has authority in accordance with the provisions of the legislation concerning Villages. This means that village authority related to the development of rural areas and management and use of natural resources can be based on the authority mandated in Law No.6 of 2014 concerning Villages. This study shows that there are still overlapping regulations in the forestry sector as stipulated in Law No.41 of 1999 concerning Forestry and its derivative regulations with laws and regulations concerning the village as stipulated in Law No. 6 of 2014 concerning Villages, in the management of natural resources in the forestry sector, especially those that regulate regional authority over the natural resources of the forestry sector at the village scale by the village, including also regarding the granting of licenses for the management/utilization of village forests by village institutions. Besides that there is also no legal certainty in determining an area as a forest area or not a forest area which must be done



through the mechanism of forest area confirmation as stipulated in Article 14 and Article 15 of Law No. 41 of 1999 concerning Forestry jo Decree of the Constitutional Court No. 45 of 2011 concerning Judicial Review of the Provisions of Article 1 paragraph 3 of Law No. 41 of 1999 concerning Forestry, but to date nationally the new Government has established a national forest area of less than 20%, including also related to village forests.

Accordingly, suggestions that can be raised by considering the conclusions related to the three focus studies which are grouped into three problem identification as outlined in the conclusions can be stated in several recommendations. First, harmonization and synchronization of laws and regulations related to the forestry sector as stipulated in Law No. 41 of 1999 concerning Forestry and its derivative regulations with Law No. 6 of 2014 concerning Villages. Secondly, synchronization and harmonization of policies between the Ministry of Forestry sector and the Ministry of Villages, Transmigration and disadvantaged regions. Thirdly, it is necessary to formulate a technical guide immediately by the Ministry of Rural Affairs in the formulation of village regulations related to the village's rights to the management of rural forest natural resources.

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