

Conference Paper

Social Forestry Policy Post the Job Creation Law Promulgation: Is This the Answer to Materialize Sustainable Forest Development?

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ABSTRACT

The enactment of The Job Creation Law (JCL) affects various national regulations in Indonesia, one of which is forestry regulation. The Social Forestry Program, which was previously governed under a Ministerial Regulation, is now incorporated in the JCL. The JCL amends Indonesian National Forestry Law in its Articles 29 (a) and (b). The integration of the Social Forestry Program is asserted to have provided legal certainty and improvement towards the economy of the Forest Village Community, acknowledging their direct participation in managing the forest. Meanwhile, the alignment of the Social Forestry Program and the materialization of sustainable forest development is diminished. Thus, this paper aims to analyze which law models fit to strengthen the Social Forestry Program and Sustainable Forest Management (SFM) enforcement. This paper is an empirical research juridical research that is participatory. It includes discussions and interviews conducted with several related parties. In the collection of the legal materials, the authors use the method of inventory and documentation which are complemented by interviews and Focus Group Discussion (FGD). This study uses the statutory, conceptual as well as case approaches. This research finds that the ease of conducting investment encouraged by the JCL conflicted of various Indonesian environmental protection goals. For instance, the risk-based approach used in the environmental permit generates another loophole for both the SFM and the Sustainable Development Management (SDM) goals at any level. The discussion in this research is restricted by the national concept of the Social Forestry Program, which is merely regulated at the ministerial level, thus affecting the development of this study. Moreover, the authors pursue discussions with the affected community and relevant regional boards to redress the limited and less-updated supporting data available.

Keywords: Job creation law, policy, social forestry, SDGs, sustainable forest development

Introduction

Globally, the world has a total of 4.06 billion hectares (ha) of forest area in 2020. Indonesia is ranked 8th with a total of 92.133.000 hectares (ha) of forest area (FAO, 2020). The forest management activity up to this point is more oriented towards economic growth. This fact leads to the marginalization of the people living in and around the forests in Indonesia. The concept of the trickle-down effect or growth for equity isn't necessarily able to improve people's welfare. As a result, economic injustices occur and cause the welfare among the forest communities, especially between the people who have access to benefits from the forest (forest entrepreneurs and local elites) and the disenfranchised communities who have restricted access to yield the benefits of the forest.

To respond to the problems mentioned above, a solution method is required through a community empowerment approach (prosperity approach). The community empowerment approach changes the paradigm of forestry development from timber-based forest management to community-based forest management. This approach is implemented by the Ministry of Forestry through the Social Forestry Program. The Social Forestry Program is imposed both inside

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and outside the forest area. In the forest area, the program is conducted through community forestry activities (Social Forestry); Forest Village Community Development (FVCD) or *Pengembangan Masyarakat Desa Hutan (PMDH)*; Joint Forest Management (JFM) or *Pengelolaan Hutan Bersama Masyarakat (PHBM)*; Community Plantation Forest (CPF) or *Hutan Tanaman Rakyat (HTR)*, etc. Meanwhile, on the outside, the program is carried out through community forest development.

The concept of the Social Forestry Program is ideal to empower the participation of the forestry community, including the community welfare and the ecological sustainability of the forest area. The JCL, enacted in 2020, finally incorporates this concept to become part of the Forestry Law Section Act. However, the formulation of the related articles can be interpreted in a manner that potentially harms the goals of Social Forestry. For instance, the potential harm which can occur are the practice of monopoly management from big capital owners and the domination of foreign investors which would gradually eliminate the communal principle of the Social Forestry Program. Moreover, if the government fails to establish the types of rights applicable to the Social Forestry Program, the effort to balance ecological and economic sustainability will be more challenging. With the approach of the JCL, the permit is restricted solely to those who are directly affected, meanwhile, some areas of the program include protected areas that affect both the surrounding and wider communities. A model of social forestry regulations which reflect the SFM and SDM is required to overcome the potential problems mentioned above.

This paper is compiled to find a regulatory model which can optimize the consistency of the Social Forestry Program with the principles of SFM and SDM. Therefore, the Social Forestry Program can assist to materialize the achievement of the Sustainable Development Goals (SDGs) 2030. To do so, this study first analyzes the development of social forestry in Indonesia as well as its potential. Secondly, the authors discuss the ideal concept to implement the SDGs principles in the Social Forestry Program in Indonesia. The results of the second part of the discussions are then formulated to propose an ideal regulatory model for the development of Social Forestry in Indonesia.

Material and Methods

This research applies a combination of legal research approaches, which are the statute approach, case approach, and conceptual approach. Authors define the theoretical concepts at the beginning of each discussion, taken from statutes, laws, and regulations representing doctrinal methodology and statute approach. Moreover, this study also uses empirical methodology by analyzing qualitative data to support the discussion. Secondary data support is provided through interview sessions with the authority of the social forestry program and related institutions. Reports and journals of law are also utilized to support the empirical approach in this writing which strengthens the theoretical basis for designing a model regulation.

Results and Discussion

Current Sphere of Indonesian Social Forestry

According to Law No. 41 of 1999 concerning Forestry, the community must be included in SFM. Direct forest management by the community is regulated in community-based forest management policies, such as Community Forests (Permenhut No. 37 of 2007), Village Forests (Permenhut No. 49 of 2008), Community Plantation Forest (SK Menhut No. 49/Kpts-II/1997). It is explained as follows:

1. Community Forest

Community forest based on Permenhut No. P. 37/Menhut-II/2007 is a State forest that is intended to empower local communities. For an area to be designated as social forestry, it shall be considered as production forests or protected forests which are not burdened with other rights or permits and is a source of livelihood for the local community. In this case, the Social Forestry provides legal certainty on the status of managed land for people

who need it. Neither ownership is attached to the permits, nor the change in function, transferrable permits, and land status. In the case of transfer of land tenure between members in the group and/or family (children and siblings), it can be conducted through familial deliberation and group approval.

2. Village Forest

State forests that can be managed by rural communities are called Village Forests. The determination of the Village Forest work areas is conducted by the Minister of Forestry based on the recommendation of the regent/mayor who also grants those permits. To manage the Village Forest, the Village Head forms a Village Institution under the said village organization. No ownership status may be attached to this management. It is also prohibited to transfer or pledge, as well as change the status and function of the forest area.

3. Community Plantation Forest (*Hutan Tanaman Rakyat* or HTR)

This program is closely related to forest area affairs, in this case, production forest. The community plantation forest has the following characteristics: (1) It is not a compact area, but is scattered; (2) The form of business is in the form of planting trees or a combination with other farming businesses, such as food crops/seasonal, plantation, fishery, etc.; (3) The sustainability of community forests depends on the need for land for farming settlements and the sustainability of its management and handling, for instance, cultivation, maintenance, harvesting, and marketing.

Until March 2021, social forestry occupancy has only reached 4,500,293, 8 hectares through 6,892 SK permits or PS rights. This involved approximately 929,892 households with the following composition: Village Forests [1,706,326.15 hectares], Community Forests [820,318.81 hectares], Community Plantation Forests [354,202.68 hectares], Forestry Partnerships divided into Recognition and Protection Forestry Partnerships [441,209.75 hectares] and Social Forestry Forest Utilization Permit [30,579.49 hectares], and Customary Forests [1,147,657.00 hectares] (Ismi, 2021).

Implementation of SDGs in Forest Management in Indonesia

To date, the Government of Indonesia has reviewed policies and taken corrective actions to improve the sustainable management of forests and their ecosystems. In essence, the principle of sustainable development in forestry areas can always be pursued by incorporating these principles into every forest management and utilization activity in Indonesia. Of the total 17 SDGs recognized and stipulated in the UN general assembly, only SDG 15 clearly states the importance of sustainable development in terrestrial ecosystems, which in this case includes forest ecosystems. In general, the realization of the SDGs principles is reflected through the implementation steps on the establishment of Forest Areas with specific purposes. Article 108 of the Government Regulation Number 23 of 2021 concerning the Implementation of Forestry (GR 23/2021), divides the types of forest areas for specific purposes into 3 (three) parts, which include: a) Forest areas with special purposes; b) Forest area with special management; or c) Forest area for food security. Furthermore, a specific analysis will be carried out regarding concrete actions in achieving sustainable development goals in terms of forest area management in Indonesia, especially in forest areas with special management. Through this analysis, it is possible to identify the role of social forestry in contributing to the achievement of the SDGs in Indonesia.

In fact, at present, social forestry arrangements have been strengthened by the enactment of the JCL which changes the provisions of the Forestry Law. The amendments are the addition of Article 29A and Article 29B in the Forestry Law section. To further strengthen the Social Forestry regulation, GR 23/2021 is enforced. The pivotal points of social forestry regulation in the Government Regulation highlighted that Social forestry can be established in Forest Areas with Special Management (*Kawasan Hutan Dengan Pengelolaan Khusus* or KHDPK) which is managed

by state-owned enterprises (Perhutani). According to Perhutani, forests are categorized as follows:

Table 1. Category of forest according to Perhutani

Functions	Alternative Form of Consent
Protected forest	Village forest, community forest, and/or Forestry Partnership
Production forest	Community forest, community plantation forest, and/or Forestry partnership
Conservation forest	Conservation partnership

The Social Forestry Management permits can be granted to a. Individual; b. Forest farmer groups; and c. Cooperative Institution (Article 209 of GR 23/2021). Integrated with the Government Regulation, there is also the Minister of Environment and Forestry Regulation No. 9/2021 (MEFR 9/2021) to further regulate the concept of social forestry in Indonesia. However, some articles of this regulation remain potentially against the SDGs principles.

Implementation of SDGs in forest areas with special management

The determination of Forest Areas with Special Management is carried out for a. Social Forestry; b. Structuring of Forest Areas in the Framework of Inauguration of Forest Areas; c. Use of Forest Areas; d. Forest Rehabilitation; e. Forest Protection; or f. Utilization of Environmental Services.

The SFM is represented in the ways of the community benefiting the forest areas whether from plantation, protection, or rehabilitation activities. Outside the plantation or timber-based cultivation, the community can also benefit the natural resources using the pattern of a) agroforestry; b) wana mina (silvofishery); c) livestock color (silvopasture); and d) livestock farming (agrosilvopastoral) which is entirely in line with the concept of sustainability by considering environmental sustainability and optimizing yields that are beneficial to the community. Thus, it is expected that the SDGs goals, especially points 1, 2, 3, and 15 can be realized at once.

The arrangement of forest areas through the establishment of forest areas is pivotal to legally securing the rights holder of forest areas. Also, this clearly states the exact location and areas to be exploited by the permit holders. Once the determined area is clear, people may also utilize the areas for development if the utilization is still relevant to Article 91 Paragraph (2) of GR 23/2021. Taking into consideration that the development purposes must be consistent with the forest areas' function and status.

Both forest rehabilitation and protection program can be benefited the community, and permitted businesspersons also utilize the forest areas granted the social forestry permit or license. The protection relies more on preventive efforts whereas rehabilitation is more repressive. The rehabilitation of forest areas is also supported by other activities such as technology development; fire prevention and control; security and protection; as well as other activities regulated in GR 26/2020. The series of forest rehabilitation activities are intended to carry out forest restoration so that its existence is maintained to be optimally managed in the future. The protection concept is applied to all forest management categories. This forest protection also plays a vital role in preserving the forest and supporting the creation of a sustainable forest ecosystem.

The permit holders are allowed to utilize and exploit the resources of the forest areas for environmental services. It can be conducted in the Protection Forests, Production Forests, and

Conservation Forests. The activities cover the use of water flow, water utilization, nature tourism, biodiversity protection, environmental restoration, and carbon sequestration or storage. This is what ultimately supports the achievement of the forest SDGs, as well as the utilization of environmental services related to water use which has an impact on SDGs 6: ensuring the availability and management of clean water and sustainable sanitation for all.

Social forestry policy models to promote the realization of the 2030 SDGs

The current social forestry policy based on GR 23/2021 and MEFR 9/2021 has been broadly directed toward achieving the goals of the 2030 SDGs. The key to the success of social forestry is that the community must become the main element to restore the prior forests' function, namely as a protector from the ecological and economic side. On the other hand, regulatory factors also play a pivotal role. With sufficient awareness and knowledge of the community, supported by adequate regulations, the goal of sustainable forest development which is a manifestation of the SDGs can be achieved.

There are several criticisms of the substance of GR 23/2021 as well as the MEFR 9/2021 which should be analyzed and responded to by the Government to construct regulations that bring benefits to all parties. The criticism, analysis, and recommendations are described in the following table:

Table 2. Analysis and Recommendation

Article	Analysis	Recommendation
Article 112 GR 23/2021	The determination of social forestry areas in the KHDPK area, especially in the Java area, has not been regulated in detail. These provisions have fundamental consequences, especially regarding the transition of forest status and its assets from Perhutani to the Government.	A Ministerial Regulation that specifically regulates KHDPK shall soon be formed, especially in the Java region.
MEFR 9/2021	There is no article regarding principles in social forestry management as regulated in Permen LHK 83/2016.	Add new articles regarding the principles of social forestry management in the Ministerial Regulation, including a. Justice; b. continuity; c. legal certainty; d. participatory; and e. accountable.
Article 6 (1) MEFR 9/2021	Nomenclature of Permits as output from the Government turns into approval or stipulation. However, there is no specific definition of approval/assignment.	Add definition of approval/assignment in General Terms.
Article 62 ayat (1) MEFR 9/2021	The determination of customary forests which originated from state forests is contrary to the Constitutional Court Decision No. 35/PUU-X/2012.	Revise this article.

To be continued...

Article 195 MEFR 9/2021	There is no explicit provision regarding the financing of social forestry which originated from loans for financing forest development, village funds, and forest and land rehabilitation funds as regulated in Permen 83/2016. Whereas since the enactment of the Village Law, each village has received village funds from the APBN which can be used for the benefit of the village community, including forest management. The provisions regarding village funds should still be included because this is also in line with the spirit of the village in realizing the SDGs in the village, in this context especially related to forestry development in the village area.	Add an elucidation of Article 195 point c, one of which is village funds.
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Conclusion

The concept of social forestry is thriving in Indonesia despite remaining far from the set target. The enactment of JCL which aims to support social forestry is a benefit that shall be supported by consistent implementations to achieve the core objective of social forestry. By supporting social forestry through Law enactment, Government Regulation as well as Ministerial Decrees, the government has been striving to achieve the SDGs thus far. However, according to the new concept of permit nomenclature in GR 23/2021, the government shall set precautionary efforts to guarantee that the goals of SDGs can be obtained by 2030. The precaution can be started by revising the regulation using the proposed analysis. The authors also believe that this research requires further study. The authors expect that future research may discover a detailed proposal for amending the Social Forestry regulations to be consistent with global goals.

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