



**Juridical Review of The Legality of Business Use Rights
Designated by The Government to be Forest Areas (Study of
Tanjung Balai District Court Decision No.
04/Pdt.G/2020/PN.Tjb)**

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Abstract

Forest areas are certain areas designated by the government to be maintained as permanent forests. If an area can be said to be a forest area, it must go through four stages, namely designation of the forest area, arrangement of forest area boundaries, mapping of the forest area, and determination of the forest area. Regarding forest areas, it is regulated in Law No. 41 of 1999 concerning Forestry, Law No. 11 of 2020 concerning Forestry Cluster Job Creation, and Ministerial Decree No. 579/Menhut-II/2014, dated June 24, 2014, concerning Forest Areas of North Sumatra Province. This research was carried out through a descriptive type of normative research. Source of library research data, primary data. then analyzed using qualitative analysis. The research results show that the regulations regarding forest areas in North Sumatra province issued by the Ministry of Environment and Forestry have a lot of land that overlaps with land that has land rights such as cultivation rights. As happened in Tanjung Balai District Court Decision No. 04/Pdt.G/2020/Pn.Tjb, in its considerations, the panel of judges took into account the history of the issuance of the cultivation rights because the cultivation rights were issued before the letter of appointment of the forest area from the Ministry of Environment and Forestry.

Keywords: Forest; Cultivation Rights; Overlap; Ministry of Environment and Forest Areas.

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INTRODUCTION

Given the Choice of the Protected Court Number 45/PUU-IX/2011 dated February 21, 2012, there has been an adjustment of the meaning of Woods Region as managed in Article 1 Number 3 of Regulation Number 41 of 1999, where the Sacred Court erased the expression "assigned or potentially" so What is implied by the Backwoods Region in light of the choice of the established court is that it is not set in stone by the public authority to be kept up with as long-lasting woodland (Harahap, 2015). A region can be supposed to be a woods region if the backwoods region has first been gazetted by the pastor to give lawful sureness in regards to the status, capability, area, limits, and region of the woodland region (MARUDIN, 2023).

Cultivation rights (HGU) are a form of land right in Indonesia that gives the holder the right to cultivate land granted by the government. In the context of agrarian law, HGU is regulated by Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA), as well as its implementing regulations. However, a case occurred at the Tanjung Balai District Court that tested the legality of HGU when the government changed the status of the land to a forest area (Arba, 2021). Tanjung Balai District Court Decision No. 04/Pdt.G/2020/PN.Tjb is an interesting case study in understanding the dynamics of agrarian and forestry law in Indonesia. This case involves a dispute between the HGU holder and the government, where the government designated the HGU land as a forest area. This dispute raises questions about legal certainty and the rights of HGU holders (Rahadiyan Veda Mahardika et al., 2022).

In this juridical study, it is important to examine the legal basis and regulations governing HGU as well as the process of changing land status to forest area. UUPA is the main basis for regulating land rights, including HGU. On the other hand, regulations related to forestry, such as Law No. 41 of 1999 concerning Forestry, also have a significant role (Nurlinda, 2018). HGU is granted for a certain period, usually 25 to 35 years, and can be extended. This HGU is granted for certain purposes, such as agriculture, plantations, or fisheries. The process of granting HGU must go through a series of strict administrative and technical requirements, including permission from the National Land Agency (BPN) (Pratiwi, 2023).

On the other hand, changing the status of land to forest area is carried out by the government through mechanisms regulated in forestry laws and regulations. This process involves the identification, determination, and designation of forest areas, which must be subject to consultation and approval from various related parties, including land rights holders (Nilasari et al., 2017). One of the legal conflicts that emerged in the Tanjung Balai case was a clash between two legal interests: individual rights to land through HGU and public interests in forest conservation. This sparked discussions about the basic principles of agrarian and forestry law and how these two aspects can be harmonized (Mahdi et al., 2022).

The legality of designating forest areas on HGU land can be questioned in terms of legal procedures and substance. The procedure for determining forest areas must take into account the rights of pre-existing HGU holders. Legal substance must also consider legal certainty and the protection of existing rights (Guntur et al., 2019). In its decision, the Tanjung Balai District Court considered several legal aspects, including the validity of the HGU that had been granted and the government's authority to change the status of the land to a forest area. This decision is important as a precedent in assessing the limits of government authority and the rights of HGU holders.

One of the cases related to overlapping forest areas with land that already has land rights, in this case cultivation rights, occurred in North Sumatra in 2020, namely in Asahan Regency, Bandar Pulau District. This case began when accusations emerged from the public regarding PT. The sources of Sawit Makmur are indicated to overlap and are located in the designated forest

Kiki Ayu Lestari Tambunan, Muhammad Yamin, Zaidar & Tengku Keizerina Devi Azwar, Juridical Review of The Legality of Business Use Rights Designated by The Government to be Forest Areas (Study of Tanjung Balai District Court Decision No. 04/Pdt.G/2020/PN.Tjb) area. Even one of the community groups calling itself the Pasada Lestari Farmers Group stated that PT. Sumber Sawit Makmur is a community forest reforestation (HR) area ex-program of the 2006 National Forest and Land Rehabilitation Movement (GN-RHL) in the Aek Nagali Village area, Bandar Pulau District, Asahan Regency, North Sumatra. As a result of these unilateral statements from the Pasada Lestari Farmers Group, PT. Sumber Sawit Makmur finally filed a civil lawsuit with the Tanjung Balai District Court to obtain certainty regarding the status of the land with the right to cultivate and for the court to declare that the land with the right to cultivate is not a forest area, as registered in the Civil Case Register 04/Pdt.G/2020/PN.Tjb. PT. Sumber Sawit Makmur then withdrew the Pasada Lestari Farmers Group as Defendant, the Ministry of Environment and Forestry as Co-Defendant I, the North Sumatra BPN Regional Office as Co-Defendant II, and the Asahan Regency Land Office as Co-Defendant III.

RESEARCH METHODS

This type of research is normative juridical research. The nature of this research is descriptive analysis (Ariawan, 2013). The data collected for this research uses library research techniques. The data collection tool used in this research is a document study. All the data that has been collected is then inventoried, classified, and analyzed using qualitative analysis, namely data analysis that does not use numbers but is based on statutory regulations and literature. by grouping research materials into similar and related categories, then studying and analyzing the data logically and systematically so that it can produce conclusions that are useful for answering the problems in this research (Soekanto, 2007).

The data source used in this research is secondary data consisting of primary, secondary, and tertiary legal materials (Setyaningsih, 2008). Primary legal materials include relevant laws and regulations, such as Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), Law No. 41 of 1999 concerning Forestry, as well as related court decisions. Secondary legal materials used include scientific literature, journal articles, books, and previous research results discussing similar topics. Meanwhile, tertiary legal materials include legal encyclopedias, legal dictionaries, and other guides that support understanding and analysis of research (Muhammad Syahrur, 2022).

Data collection was carried out through library research, namely collecting and reviewing legal documents, scientific literature, and other relevant sources. This process includes the identification, collection, and selection of legal materials relevant to the research topic. Data analysis was carried out using a descriptive-analytical method, namely describing and analyzing the contents of statutory regulations and court decisions. The first step in this analysis is to identify relevant legal norms and examine how these norms are applied in the cases studied (Thariq, 2023).

RESULT AND DISCUSSION

Impact of Designation of Forest Area According to Applicable Legislation

Land control in forest areas emerged as a result of state claims over forest areas. Tenurial conflicts in forest areas occur due to differences in views regarding the control, use, and use of land and other resources in forest areas between communities and authorities or entities that have the legitimacy to manage forest areas (Chamdani, 2021). Efforts to resolve land tenure in forest areas are not easy to carry out because they are hampered by policies and regulations in the forestry sector, both directly and indirectly (Trumpi, 2023). Land control problems in forest areas arise due to claims to forest areas by the state. This pattern of forest control can be traced to colonial forest management, which tended to be centralized and oriented towards the

production and extraction of natural resources (SDA), but ignored the rights of local communities (Farid et al., 2022).

In essence, a forest is a unified ecosystem in the form of a stretch of land containing biological natural resources dominated by trees in a natural environment that cannot be separated from one another. The management system must be implemented in an integrated manner by optimizing various forest functions (conservation, protection, and production) to achieve balanced and sustainable environmental, social, cultural, and economic benefits. However, taking into account the demands of development dynamics and community aspirations, it is possible for changes in the designation of forest areas and changes in the function of forest areas (Nurlinda, 2018). To support and provide a legal basis for the above, the government issued Government Regulation Number 104 of 2015 concerning Procedures for Changes in Designation and Function Forest. A change in the designation of a forest area is a change in a forest area to a non-forest area, while a change in the function of a forest area is a change in part or all of the forest function in one or several forest groups to the function of another forest area. Changes in the designation of forest areas are carried out through exchanging forest areas or releasing forest areas. In this case, due to other needs intended for agrarian reform activities, the instrument used is the release of forest areas (Prasja et al., 2022).

Land control in backwoods regions arose because of state claims over timberland regions. Tenurial contentions in timberland regions happen because of contrasts in sees regarding the control and endless utilization of land and different assets in woodland regions among networks and specialists or substances that have the authenticity to oversee backwoods regions. Endeavors to determine land residency in timberland regions are difficult to complete because they are hampered by approaches and guidelines in the ranger service area, both straightforwardly and in a roundabout way. Land control issues in timberland regions emerge because of cases of backwoods regions being controlled by the state. This example of wood control can be followed by provincial backwoods executives, who would in general be unified and arranged towards the creation and extraction of regular assets (SDA), but disregarded the freedoms of neighborhood networks.

Fundamentally, wood is a biological system bound together as a span of land containing organic, normal assets overwhelmed by trees in a common habitat that can't be isolated from each other. The administration framework should be carried out in a coordinated way by advancing different woodland capabilities (preservation, assurance, and creation) to accomplish adjusted and manageable ecological, social, and financial advantages. Notwithstanding, considering the requests of advancement elements and local area yearnings, it is feasible for changes in the assignment of woodland regions and changes in the capability of backwoods regions. To help and give a legitimate premise to the abovementioned, the government provided Unofficial Law Number 104 of 2015 concerning Methods for Changes in Assignment and Capability Backwoods. An adjustment of the assignment of a backwoods region is an adjustment of a woodland region to a non-timberland region, while an adjustment of the capability of a woodland region is an adjustment of part or all of the woods capability in one or a few woodland gatherings to the capability of another backwoods region. Changes in the assignment of timberland regions are helped out by trading woodland regions or delivering backwoods regions. For this situation, due to the different requirements expected for agrarian change exercises, the instrument utilized is the arrival of wooded regions.

According to Article 19 of Government Regulation No. 104 of 2015, in conjunction with Minister of Environment and Forestry Regulation Number P.51, Menlhk, Setjen and Kum.1/6/2016 concerning Procedures for Releasing Convertible Production Forest Areas, forest

Kiki Ayu Lestari Tambunan, Muhammad Yamin, Zaidar & Tengku Keizerina Devi Azwar, Juridical Review of The Legality of Business Use Rights Designated by The Government to be Forest Areas (Study of Tanjung Balai District Court Decision No. 04/Pdt.G/2020/PN.Tjb) areas that can be released for development outside of forestry activities are convertible production forest areas (HPK) (Sarwani, 2023). HPK is a production forest area that can be set aside for development outside of forestry activities or used as replacement land for the exchange of forest areas and empty and mixed gardens.

Land control in a forest area includes land that has been controlled and utilized and/or has been given rights over it before the land plot is designated as a forest area or after the land plot is designated as a forest area (Labatjo & Sucipto, 2020). If the land has been controlled and utilized and/or has been given rights to the land by the land agency (BPN) by the type of land rights as regulated in Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, then the land is released from within the forest area through changes in forest area boundaries,¹⁴ through procedures as stipulated in the Government Regulation concerning Procedures for Changing the Use and Function of Forest Areas. Among the latest efforts in resolving land tenure in forest areas was the issuance of Presidential Regulation Number 88 of 2017 concerning the Settlement of Land Tenure in Forest Areas (Presidential Decree No. 88 of 2017) as a replacement for the joint ministerial regulation that regulates the same issue. Presidential Decree No. 88 of 2017 regulates several settlement options (NASIONAL, n.d.).

Legal Protection of Business Use Rights Holders Are In Forest Areas

Ownership of Cultivation Rights is of course related to legal protection for the holder or owner of the Cultivation Rights. Land control rights often involve legal disputes that are often experienced by the community. As a country based on the 1945 Constitution of the Republic of Indonesia, it provides protection for its citizens to own, enjoy, and possess. This is important to do considering that land is one of the main problems in Indonesia. The land granted under Cultivation Rights is state land. If the land granted in the Cultivation Rights is a forest area, then the granting of this right can only be carried out if the land is removed from its status as a forest area. Legal protection is a universal concept of a legal state. Legal protection is provided if there are violations or actions contrary to the law carried out by the government, whether the authorities' actions violate the law or the public must pay attention to them. National land law provides legal protection to land rights holders, stating that the use and control of land by anyone and for anything must be based on land rights provided by national land law.

The control and use of land are protected by law against interference by any party, whether fellow members of the community or even the authorities if the interference is not based on legal grounds. The execution of land enlistment was then controlled by Unofficial Law Number 10 of 1961 concerning Area Enrollment, which was refined into Unofficial Law Number 24 of 1997 concerning Area Enlistment. The arrangements in the PP intend that as long as the opposite has not been demonstrated, the actual information and juridical information remembered for the current proof should be acknowledged as right information, both in ordinary legitimate activities and in debates in court, as long as the information is as per what is expressed in the estimation letter and the land book being referred to. So after the option to develop is enrolled, the public authority gives an HGU authentication as verification of responsibility for land from the party applying. This land testament goes about as serious areas of strength and responsibility for freedoms.

Nonetheless, "solid" doesn't imply that the authentication is "outright." As a lawful outcome of enlisting land freedoms, all expressed in the declaration can be viewed as right as no other person can demonstrate the opposite. The arrangements of Article 32 of PP Number 24 of 1997, which require a time of 5 years before a case for the execution of privileges from the party who feels possession can be submitted, the length of the testament given is substantial, the land was

gained with honest intentions by the declaration holder, and the right holder constrains the land. The arrangements in this article require HGU holders not to simply possess it without enlisting it, and it isn't sufficient to enroll it without involving it. Be that as it may, they should involve the land, keep up with it, develop and enroll it. Furthermore, the holder of privileges should truly safeguard the items to which he has rights. This is because one of the targets of the UUPA is to set out the guidelines for legitimate sureness via area enlistment, which looks to give lawful insurance to genuine privilege holders.

KTUN is a composed assurance given by a state managerial office or official containing state regulatory legitimate activities given relevant regulations and guidelines that are concrete, individual, and last and lead to lawful ramifications for an individual or common legitimate element. Then, at that point, Regulation Number 30 of 2014 concerning Government Organization likewise deciphers KTUN as a composed assurance that additionally incorporates verifiable activities, choices of state organization bodies as well as authorities in the chief, authoritative, legal, and other state organization conditions. because of legal arrangements and general standards of good administration; last, from a more extensive perspective; choices that can lead to legitimate results; as well as choices that apply to local area individuals

CONCLUSION

The definition of forest area is based on Law Number 41 of 1999 concerning Forestry, which has been subject to judicial review with the Constitutional Court Decision Number 045/PUU-IX/2011 concerning Material Review of Article 1 Number 3 of the Forestry Law. The definition of a forest area is a certain area determined by the government to be maintained as a permanent forest. 2. That legal protection for holders of cultivation rights includes the rights of third parties that are currently protected by the state, based on the Regulation of the Minister of Environment and Forestry Number 7 of 2021 concerning Forestry Planning, Changes in the Designation of Forest Areas, and Use of Forest Areas, namely rights owned by the government, individuals or legal entities in the form of ownership or control of land acquired or owned based on the provisions of statutory regulations. Article 23 of the Minister of Forestry Regulation Number P.44/Menhut-II/2012 concerning the Confirmation of Forest Areas regulates that the settlement of third-party rights is carried out by the boundary delineation committee by inventorying and identifying the land, then land located along the boundary route can be excluded from boundary routes and land located within forest areas (enclaves) can be excluded from forest areas where the implementation of boundary arrangements is carried out separately.

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