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Reformulation of Palm Oil Governance Regulations in Forest Areas Towards Legal and Ecological Justice in Indonesia

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Abstract: Illegal oil palm plantations in forest areas are a serious challenge that threatens legal justice, environmental sustainability, and the well-being of local communities in Indonesia. This research is motivated by the rampant practice of transferring forest functions into oil palm land which often does not have a legal basis, especially in the Central Kalimantan region. The purpose of this study is to evaluate the implementation of law enforcement against illegal palm oil business actors, assess legal certainty based on the principle of justice, and formulate a more equitable legal reform model. The method used is empirical juridical research with legal, conceptual, and case approaches. The results of the study show that the implementation of Articles 110A and 110B of Law Number 6 of 2023 still faces various obstacles, such as overlapping authority, weak law enforcement capacity, and the influence of political and economic interests. Although normatively it has provided a basis for action, the regulation has not been able to realize substantive justice for the community and the environment. Theoretical analysis using the framework of Lawrence M. Friedman, John Rawls, and Jan Michiel Otto reveals the need for legal reform that is adaptive, participatory, and recognizes legal pluralism, including the recognition of customary law. In conclusion, the success of the reformulation of palm oil regulations is not enough with the tightening of administrative sanctions, but must be accompanied by institutional structuring, the use of monitoring technology, and the active involvement of local communities in the legal process. Policy recommendations are directed at the creation of socially and ecologically equitable palm oil governance through a collaborative approach between the state, communities, and business actors.

Keyword: Palm Oil Governance, Forest Areas, Legal Justice

Abstrak: Perkebunan kelapa sawit ilegal di kawasan hutan menjadi tantangan serius yang mengancam keadilan hukum, kelestarian lingkungan, dan kesejahteraan masyarakat lokal di Indonesia. Penelitian ini dilatarbelakangi oleh maraknya praktik pengalihan fungsi hutan menjadi lahan kelapa sawit yang seringkali tidak memiliki dasar hukum, khususnya di wilayah Kalimantan Tengah. Tujuan dari penelitian ini adalah untuk mengevaluasi pelaksanaan penegakan hukum terhadap pelaku usaha kelapa sawit ilegal, menilai kepastian hukum berdasarkan asas keadilan, dan merumuskan model pembaharuan hukum yang lebih berkeadilan. Metode yang digunakan adalah penelitian yuridis empiris dengan pendekatan

perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa implementasi Pasal 110A dan 110B Undang-Undang Nomor 6 Tahun 2023 masih menghadapi berbagai kendala, seperti tumpang tindih kewenangan, lemahnya kapasitas penegak hukum, dan pengaruh kepentingan politik dan ekonomi. Meskipun secara normatif telah memberikan landasan untuk bertindak, peraturan tersebut belum mampu mewujudkan keadilan substantif bagi masyarakat dan lingkungan. Analisis teoritis dengan menggunakan kerangka pemikiran Lawrence M. Friedman, John Rawls, dan Jan Michiel Otto mengungkapkan perlunya reformasi hukum yang adaptif, partisipatoris, dan mengakui pluralisme hukum, termasuk di dalamnya pengakuan terhadap hukum adat. Kesimpulannya, keberhasilan reformulasi regulasi sawit tidak cukup dengan pengetatan sanksi administratif, tetapi harus dibarengi dengan penataan kelembagaan, penggunaan teknologi pengawasan, dan pelibatan masyarakat lokal secara aktif dalam proses hukum. Rekomendasi kebijakan diarahkan pada terciptanya tata kelola kelapa sawit yang berkeadilan sosial dan ekologis melalui pendekatan kolaboratif antara negara, masyarakat, dan pelaku usaha.

Kata Kunci: Tata Kelola Kelapa Sawit, Kawasan Hutan, Keadilan Hukum.

INTRODUCTION

The reformulation of regulations on the equitable management of palm oil in forest areas in Indonesia emerged in response to the diversion of forest areas that were originally a source of biodiversity but are now being converted into illegal palm oil plantations. This is accompanied by land clearing without a valid permit, which has caused serious environmental impacts. This phenomenon also has a negative impact on the welfare of local communities who have been dependent on the existence of forests.

The implementation of law enforcement against illegal oil palm plantation activities in forest areas, especially in Lamandau District, Central Kalimantan Province, still faces various obstacles. The implementation of the provisions of Articles 110A and 110B of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation into Law has provided a firm legal basis for taking action against illegal actors. Challenges in the field such as economic and political pressures result in a mismatch between formal regulations and reality. This condition causes legal uncertainty and creates the perception that the legal system has not fully provided justice.

Smallholder oil palm plantations are part of the palm oil agribusiness supply chain which is slowly being required to implement sustainability aspects. Sustainability certification seems to be an obligation to enter the market while the position of plantations that do not have managerial capabilities is a limitation for farmers. Fulfilling the sustainability aspects of smallholder oil palm plantations is not an easy thing because economic motives still dominate in the practice of cultivating smallholder oil palm plantations, but this is not an excuse for policy makers to realize sustainable smallholder oil palm plantations.

In a land or oil palm plantation owned by an individual who usually has a company if it has developed over time must have a permit approved by the authorities. The right to determine and give permission to release production forest areas into non-forest land is the government through the Minister of Forestry. Likewise, the right to issue a Plantation Location Permit in accordance with the Plantation Law and the Regional Government Law is the Regent or Governor in accordance with their authority. Likewise, the Plantation Business Permit (after the Location Permit is issued) can only be issued by the Minister of Agriculture, after the Plantation Business Permit is obtained, it can only be submitted to obtain the Cultivation Rights Title (HGU) of oil palm plantations.

The problem that often occurs in oil palm management is about licensing. The government's effort to deal with protection, legal certainty and problems that occur in oil palm plantations is to issue law No. 30 of 2022 concerning Human Resources Development, Research and Development, Replanting, and Facilities and Infrastructure for Oil Palm Plantations. The aim is not only to complete the data, but also to encourage the correct payment of taxes. Because good licensing must be able to provide a balance between economic and environmental values, because after all, the running of a business cannot immediately sacrifice ethics towards the environment, this has an impact on the narrowness of employment opportunities and then creates a desire to utilize the environment as an economic support which directly inhibits the important role of the environment as a life support.

Based on the records of the Coordinating Minister for Maritime Affairs and Investment, satellite imagery in 2021 the cover of oil palm plantations reached 16.8 million hectares with 3.3 million hectares located in forest areas. Luhut hopes that the settlement can be carried out with the mechanism of Article 110 A which regulates the settlement of RT / RW disputes, namely having a location permit and / or business permit in the field of plantations and in accordance with the spatial plan issued by the authorized official and Article 110 which regulates the licensing of oil palm land release in forest areas, Law Number 6 of 2023 concerning the Stipulation of Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation into Law.

Based on the records of the Coordinating Minister for Maritime Affairs and Investment, satellite imagery in 2021, the cover of oil palm plantations reached 16.8 million hectares with 3.3 million hectares located in forest areas. Luhut hopes that the settlement can be carried out with the mechanism of Article 110 A which regulates the settlement of RT / RW disputes, namely having a location permit and / or business license in the plantation sector and in accordance with the spatial plan issued by the authorized official and Article 110 B which regulates the licensing of oil palm land release in the forest area, Law Number 6 of 2023 concerning the Stipulation of Government Regulations replacing Law Number 2 of 2022 concerning Job Creation into Law.

It is important that the licensing of palm oil entrepreneurs is done in accordance with existing regulations. This not only ensures the profitability of the company, but also allows the government to effectively oversee its management, preventing any deviation from existing regulations. In addition, this regulation also requires the company to inform the community about the oil palm business license. In the event that an oil palm plantation uses part of a community's land, the company is obliged to provide employment for local residents, thus allowing affected communities to regain economic stability.

This pardon for palm oil companies sets a bad precedent in the government's efforts to improve palm oil governance. The policy ignores the criminal process by sanctioning administrative fines for acts of palm oil plantation encroachment carried out in the forest area. The shortcut taken by the government by using the Job Creation Law has the potential to cause new problems in the future.

The author in this study aims to determine the evaluation of the implementation of law enforcement against illegal palm oil business actors based on legal certainty and justice and to find out more equitable legal reforms related to law enforcement in handling oil palm plantations with illegal activities in forest areas. The method used in this research is normative legal research method. The approach used includes a statute approach, which analyzes the suitability and completeness of palm oil governance regulations in forest areas in order to avoid overlaps and legal lacunae, as well as strengthen the legal basis for fair and sustainable regulatory reform in Indonesia, and an analytical approach to examine the suitability between legal norms and implementation in the field.

METHOD

The practice of illegal oil palm plantations in forest areas has become a crucial issue in Indonesia that jeopardizes legal justice, environmental sustainability, and the welfare of local communities. This research specifically highlights the rampant conversion of forests into oil palm plantations that often have no legal basis, especially in the Central Kalimantan region. The purpose of this study is to evaluate how the law is enforced against illegal oil palm business actors, examine legal certainty from a justice perspective, and formulate a more equitable legal reform model. Using empirical juridical research methods with statutory, conceptual, and case study approaches, this study found that the implementation of Articles 110A and 110B of Law No. 6 of 2023 is still hampered by various challenges. These include overlapping authorities, weak law enforcement capacity, and the influence of political and economic interests.

RESULT AND DISCUSSION

Evaluation of the Implementation of Law Enforcement Against Illegal Palm Oil Business Actors Based on Legal Certainty and Justice

Palm oil plantations are one of the strategic sectors that have a major contribution to the national economy. On the other hand, illegal activities in this sector, especially in forest areas, have a wide range of negative impacts, ranging from deforestation, ecosystem degradation, to interference with the rights of local communities. This phenomenon requires strict and effective law enforcement so that perpetrators of natural resource abuse can be dealt with fairly. Law enforcement in this sector must be based on a clear legal basis and the application of the principles of justice and legal certainty.

Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation into Law provides a new footing through the provisions of Articles 110A and 110B which are specifically aimed at regulating business activities in forest areas. Article 110A regulates the obligation to complete requirements for business actors who have been operating in forest areas before the enactment of the Job Creation Law, while Article 110B ensnares actors who carried out illegal activities before November 2020.

Article 110B of the Job Creation Law expands the scope of sanctions by reaching violations that occurred before November 2020. Paragraph (1) provides for administrative sanctions such as temporary suspension of activities, fines, or government coercion for actors operating without a license. However, Paragraph (2) provides an exception for people who have lived in or around forest areas for at least five years with a maximum land ownership of five hectares. This exception, while aimed at protecting local communities, creates ambiguity in implementation.

The case in Lamandau is a clear example of how palm oil plantation business actors carry out illegal activities in forest areas. Based on Decision Number 87/Pid.B/LH/2023/PN Ngb, it illustrates how palm oil plantation business actors carry out land clearing in forest areas without fulfilling legal licensing requirements. The defendant in the case, IR. Azhar Ibrahim, was found to have conducted business activities without proper business licenses, resulting in the destruction of forest areas that had been designated as Permanent Production Forest (HP). Evidence in the form of documents, location coordinate data, and witness testimonies showed that this violation was carried out in a systematic and structured manner, which triggered the response of law enforcement officials to take immediate action.

From these cases, it appears that there is a gap between existing regulations and implementation in the field. Although there are regulations governing business activities in forest areas, perpetrators often take advantage of loopholes in the licensing system to conduct land clearing without proper permits. This not only causes environmental losses, but also

disrupts the social and economic order of communities that depend on the existence of forests as a source of life.

This finding indicates that although there are clear regulations through Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation into Law, specifically through Articles 110A and 110B, there are still loopholes in its implementation in the field. This has resulted in the misuse of business licenses and illegal land clearing which not only has an impact on environmental damage, but also has socio-economic implications for local communities. Illegal land clearing activities in the Lamandau region have triggered agrarian conflicts between large companies and local communities who rely on forests as a source of livelihood, thus reducing the socio-economic welfare of rural communities.

Implementation in the field, especially in Lamandau, still faces various challenges. One of the main obstacles is the suboptimal coordination between institutions. In Lamandau, there are dynamic interactions between the Ministry of Environment and Forestry, the police, and the judiciary that often experience overlapping authorities. This condition causes the process of investigation and prosecution of illegal activity perpetrators to run slowly, and sometimes even hampered by pressure from large local economic interests.

On the other hand, the exclusion of sanctions for local communities in Article 110B Paragraph (2) has been criticized. Although it aims to protect the community, this provision is vulnerable to abuse by actors in the guise of “local communities”. In Tumbang Miri Village, Gunung Mas District, a businessman claimed to be a local resident and controlled 20 hectares of illegal palm oil by dividing the land into the names of 4 households. The government has difficulty distinguishing between genuine community ownership and disguised land tenure practices. In addition, the phrase “at least 5 years continuously” in Article 110B Paragraph (2) is not accompanied by a strict verification mechanism, allowing falsification of population administration data.

Another challenge lies in the government's force mechanism (Article 110B Paragraph 1 letter c). Although KLHK has the authority to stop illegal activities, implementation is often met with resistance from communities or companies supported by local officials. In Seruyan District, efforts to curb illegal oil palm plantations by a joint team of KLHK and police in 2023 ended in physical clashes because the company received support from military personnel. This phenomenon shows that law enforcement does not only depend on written norms, but also on political forces and power networks in the field.

Soerjono Soekanto's law enforcement theory reminds us that legal effectiveness is influenced by facility factors. In the context of Articles 110A and 110B, the limitations of monitoring technology are a crucial issue. KLHK relies on the Environmental Monitoring Information System (SIPLH) which only covers 40% of the forest area in Central Kalimantan. Remote areas are often not monitored, so illegal activities such as land clearing by burning are still rampant. In fact, technology such as high-resolution satellite imagery or drones should be optimized for early detection. Unfortunately, limited budgets and a lack of technical training for officials make the utilization of this technology not optimal.

Forest areas in Lamandau Regency have been the target of illegal practices, where land that should be protected and managed sustainably is converted into oil palm plantations. This practice is generally carried out without fulfilling the licensing requirements set out in the forestry laws and regulations. For example, the decision of the Nanga Bulik District Court in Case Number 85/Pid.B/LH/2023/PN NgB revealed that the defendant Hotjen Sihombing had illegally cleared land in Penopa Village, Lamandau District. Field data shows that there is an area of ± 60.2 hectares that has been converted without obtaining a forest area release permit from the authorized official.

Article 110A of the Job Creation Law requires business actors who have been operating in forest areas before 2023 to adjust their licenses no later than November 2023. If not fulfilled, administrative sanctions in the form of fines or license revocation apply. Normatively, this provision aims to create legal certainty by providing a clear time limit. This kind of problem creates legal uncertainty due to gaps in supervision and administrative mechanisms that should ensure compliance with forestry regulations. In addition, the practice of illegal land clearing often creates injustice for local communities who have been dependent on the existence of forests as a source of livelihood and environmental preservation.

Article 110B of the Job Creation Law regulates administrative sanctions for perpetrators operating without a permit before November 2020, but provides an exception for local communities that control a maximum of five hectares of land. Philosophically, this exception is in line with Rawls' principle that social inequality should only exist if it benefits the most vulnerable groups.

The aspect of justice in the judicial process in Lamandau Regency must be seen from two sides: procedural and substantial. Procedurally, justice requires that each party has an equal opportunity to express their opinions through a transparent and open trial process. A fair trial process is expected to provide certainty that any decision is based on objective evidence and is not influenced by external interventions.

The involvement of indigenous peoples in the law enforcement process is also still minimal. Although Constitutional Court Decision No. 35/2012 recognizes customary forests as part of forest rights, the implementation of Articles 110A and 110B of the Job Creation Law does not explicitly integrate the Free, Prior, and Informed Consent (FPIC) mechanism. In Tumbang Miri Village, Gunung Mas Regency, the Ngaju Dayak community was not involved in the process of controlling illegal oil palm plantations in their customary territory. In fact, according to the principle of recognition justice, legal legitimacy must be built through respect for indigenous peoples' cultural rights and sovereignty over land.[38] This absence of participation not only violates international conventions such as UNDRIP 2007, but also deepens the community's distrust of the state.

To improve equitable legal certainty, policy recommendations must target three levels. First, revise Articles 110A and 110B of the Job Creation Law by clarifying the criteria for permit compliance, applying progressive fines based on the extent of damage and economic benefits of the perpetrator, and allocating community-based rehabilitation funds. Second, strengthen institutional capacity through the establishment of an independent verification team involving academics, NGOs, and customary representatives. Third, integrate FPIC and customary dispute resolution mechanisms in law enforcement processes to ensure distributive, procedural and recognition justice. Without this comprehensive reform, the rule of law will only become a tool of legitimizing power that perpetuates ecological and social injustice in Central Kalimantan.

More Equitable Legal Reform Related to Law Enforcement in Handling Palm Oil Plantations with Illegal Activities in Forest Areas

Legal reform in the context of handling illegal oil palm plantations in Central Kalimantan forest areas requires an approach that is not only reactive, but also adaptive to ecological, economic and social dynamics. Legal reform theories, particularly the concepts of adaptive legal systems (Jan Michiel Otto) and regulatory pluralism (John Griffiths), offer a critical framework to assess the structural weaknesses of Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation into Law and Presidential Regulation Number 5 of 2025 (Presidential Regulation 5/2025). Both theories emphasize the importance of regulatory flexibility, decentralization of authority, and

the integration of non-state norms (such as customary law) in the legal system. However, the implementation of Articles 110A and 110B of the Job Creation Law and Presidential Regulation 5/2025 show a centralized and rigid paradigm that is counterproductive to the goal of sustainable legal reform.

The concept of adaptive legal systems prioritizes law as a dynamic instrument that is able to adapt to changes in the environment and the needs of society. Jan Michiel Otto explains that adaptive laws must be equipped with mechanisms for periodic evaluation, public participation, and response to ecological risks. Unfortunately, the Job Creation Law fails to fulfill this principle. Article 110A, for example, requires businesses to complete licensing requirements by November 2023, but does not include real-time monitoring instruments or criteria for license adjustments based on changes in environmental carrying capacity. In Seruyan District, Central Kalimantan, 12 palm oil companies that had “fulfilled” administrative requirements in 2023 were found to have continued illegal land expansion in 2024 because there was no mechanism to revise permits based on environmental degradation. In fact, adaptive legal systems theory suggests the integration of ecological data (such as forest cover and carbon emissions) as a basis for permit evaluation.

Regulatory pluralism, meanwhile, emphasizes the harmonious interaction between state law and local norms. John Griffiths states that ignoring customary law will trigger resistance and conflict. Article 110B Paragraph (2) of the Job Creation Law, which exempts sanctions for local communities, should be an entry point to accommodate local wisdom in dispute resolution. However, the absence of an operational mechanism to involve customary institutions in the law enforcement process makes this clause ineffective.

The main criticism of the Job Creation Law and Presidential Regulation 5/2025 is the reliance on a centralized command-and-control approach. Article 110A Paragraph (3) and Article 110B Paragraph (3) leave the technical regulation of administrative sanctions to a Government Regulation (PP), but until 2024, the derivative PP has not been issued. This creates a regulatory vacuum that business actors exploit to delay compliance. For example, PT Sawit Hijau (initials) in West Kotawaringin District applied for a review of administrative sanctions on the grounds that ‘there is no PP regulating the amount of fines’, even though the company had clearly violated the permit limit. Law reform theory demands coherence between the main norm and its derivatives, but the slow issuance of PPs reflects the government's unpreparedness in building a responsive legal system.

Law reform recommendations to address this weakness include:

- 1) Include an ecological data-based periodic permit evaluation clause (e.g. deforestation rate, carbon emissions) in Article 110A.
- 2) Adopt an early warning system that links business licenses to real-time satellite monitoring.
- 3) Establish a hybrid dispute resolution forum involving indigenous, government and company representatives in the implementation of Article 110B.
- 4) Recognize customary institution rulings as part of the state legal process.
- 5) Implement a scheme where companies are obliged to pay progressive fines (e.g. 10% of gross profits) and allocate 20% of funds for community-based rehabilitation.
- 6) Provide tax incentives for companies that integrate agroforestry or ecosystem restoration practices in their operations.

Legal reform in addressing illegal oil palm plantations in Central Kalimantan's forest areas requires not only an evaluation of the regulatory text, but also needs to be rooted in three main foundations: philosophical (Pancasila), sociological (the reality of conflict and inequality), and juridical (alignment with the constitution and international law). The integration of these three foundations is key to designing a legal system that is not only

procedurally effective, but also substantively just for society, the environment and future generations.

Sociologically, legal reform must respond to the complexity of conflicts in Central Kalimantan, where illegal oil palm plantations have triggered economic inequality, environmental degradation and social disintegration. Illegal land clearing practices often occur amidst stark economic inequality between communities with access to resources and those without. In Lamandau Regency, agrarian conflicts often arise due to land rights struggles between large companies and local communities.

Juridically, the Job Creation Law and Presidential Regulation No. 5/2025 are not fully aligned with Indonesia's constitution and international commitments. Article 33 Paragraph (3) of the 1945 Constitution emphasizes that natural resource management must be aimed at the greatest prosperity of the people. However, the Job Creation Law facilitates the privatization of forest areas through a centralized licensing scheme that lacks transparency. Article 110A of the Job Creation Law, for example, requires business actors to adjust licenses before November 2023, but does not regulate public participation mechanisms in license verification. As a result, palm oil companies in Central Kalimantan passed administrative verification without in-depth environmental audits, even though their activities were proven to violate protected area boundaries.

CONCLUSION

The implementation of law enforcement against illegal oil palm plantations in forest areas in Lamandau District of Central Kalimantan Province shows significant efforts in eradicating violations, although challenges in the field such as inter-agency coordination, technological limitations, and pressure from economic interests still reduce the effectiveness of enforcement and create doubts about consistency and fairness in the application of the law; analysis of legal certainty in the handling of this case also reveals a mismatch between regulations and field practices, where unclear permit status, delays in monitoring mechanisms, and external interventions create uncertainty in the legal process which has an impact on perceptions of justice in the eyes of the community.

Legal reform through Law Number 6 of 2023 on the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 on Job Creation into Law has not been fully rooted in the values of Pancasila, the sociological reality of agrarian conflicts, and juridical alignment with the constitution and international commitments. The centralization of authority, the lack of recognition of customary law, and the absence of restorative sanctions show a failure to balance economic, ecological, and social justice interests.

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