

***JURIDICAL STUDY ON SOCIAL FORESTRY
BEFORE AND AFTER JOB CREATION LAW*****Wihelmus Jemarut¹ Kornelia Webliana B² Andi Chairil Ichsan², dan I Gusti Agung Andriani¹**

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Abstract

Social forestry is a governmental program having been initiated since 1995 and newly getting serious attention through the Minister of Living Environment and Forestry's Regulation No. 83 of 2016. However, the issuance of Job Creation Law in 2020 has changed many things related to the regulation of social forestry law. This article will conduct a juridical study using legal comparative approach on social forestry before and after the issuance of Job Creation Law. The result shows that: Firstly, Social Forestry after the issuance of Job Creation Law is regulated firmly through some laws from law, Government Regulation and Minister Regulation. In this case, it is different from the condition before the issuance of Job Creation Law. Secondly, the stipulation of customary forest is governed in Government Regulation and the Minister's Regulation with the right of stipulation given to the Minister of Living Environment and Forestry. Thirdly, following the issuance of Job Creation Law, legal access to social forestry management can be undertaken by an individual. Fourthly, the license of social forestry before the issuance of Job Creation Law was governed in the Directorate General's Regulation, while that after is governed in the Minister's Regulation.

Keywords: *Forestry Law; Social Forestry; Job Creation Law*

INTRODUCTION

Stockholm Conference in 1972 produced two big schools of thought in the constructionist paradigm: developmentalism and environmentalism. The first group is the one exalting economic development as the human development center. Meanwhile, the second group is the one

defending environment often echoed by the activists of living environment. The environment should be conserved (Attfield, 2005). As a result, very few resolutions of Stockholm Conference 1972 are implemented (Siahan, 2004).

Considering this, United Nations established World Commission of

Environment and Development (WCED) in 1987. This group was established to conduct a study on the alignment of development paradigm and environment protection. This group produced a document entitled *Our Common Future* in 1987. In this document, a sustainable development concept is produced. Simply, this document wants to encourage the development that pays attention to human wellbeing in the present and in the future (Rangkuti, 2012).

In Indonesian context, the paradigm of sustainable development also becomes a critique against the paradigm of New Order development (Puteri and Rani¹, 2020). President Soeharto is also called *Bapak Pembangunan* (Father of Development). It confirms that the high economic development orientation in Soeharto era. It is this physical development that ignores social, environment, and cultural aspects that is called development with developmentalism paradigm. It is an imbalanced development approach leading to environment, social, and cultural damages (Muthmainnah, Mustansyir and Tjahyadi, 2021). M. Faishal Aminuddin (Aminuddin, 2022) describes *developmentalism* as a new form of colonialism in economic field extending to other aspects.

Social forestry is the government program to manage forest applying sustainable development paradigm (Puspitasari, Saragih and Navalino, 2019). The objective of current program is to enable the forest management to improve the community wellbeing, to maintain the balance of environment and the social-cultural dynamic in forest region (Direktorat Jendral Perhutanan Sosial dan Kemitraan Kehutanan, no date). Historically, the social forestry program has been initiated since 1995

through the Ministry of Forestry's Decision Number 622/Kpts-II/1995 about Guidelines of Social Forest. Nevertheless, this program has just attracted the government's attention significantly in 2016, leading to the issuance of the Minister of Living Environment and Forestry's Regulation Number 83 of 2016 about Social Forestry operated through the Central Government's Medium-Term Development Plan of 2015-2019 (Kementerian Lingkungan Hidup dan Kehutanan, 2020).

In 2020, the government issued Law No. 11 of 2020 about Job Creation. This law amended many previous regulations and combined them into one regulation. One of regulations amended is the Law No. 41 of 1999 about Forestry as amended with Law No. 19 of 2004 about the Stipulation of Government Regulation in lieu of the Law Number 41 of 1999 about Forestry as the Law Number 41 of 1999 about Forestry constituting the legal foundation of social forestry regulation in 2016. This substitution of legal foundation underlies the substitution and or the amendment of derived regulation about social forestry. Although the Law No. 11 of 2020 about Job Creation (*UU Cipta Kerja*) has been revoked and substituted with the Law No. 6 of 2023 about the Stipulation of Government Regulation in lieu of the Law No. 2 of 2022 about Job Creation as the Law (thereafter, called Law No. 6 of 2023), the article 184 letter b of the Law No. 6 of 2023 confirms that all legislation constituting the implementation regulation of the Law No. 11 of 2020 about Job Creation is still effective as long as it is not in contradiction with this Government Regulation in lieu of Law.

This article will compare the law of social forestry before and after the

enactment of *UU Cipta Kerja*. Some questions are discussed in this articles: (1) how is the regulation about Social Forestry before the enactment of *UU Cipta Kerja*? (2) how is the regulation about Social Forestry after the enactment of *UU Cipta Kerja*? And (3) what are similarities and differences of regulation about Social Forestry between before and after the enactment of *UU Cipta Kerja*? Considering the comparison, the author formulates legal records about social forestry.

METHOD

This research used a normative research method with statute and comparative approaches. A normative research is the one studying legal norms (Marzuki, 2005). As a normative research, the data used was library data (Soerjono Soekanto, 2007). Researchers conducted a literature review the legal norms relevant to social forestry as the primary legal source (Law No. 41 of 1999 about Forestry, Law No. 6 of 2023, Minister of Living Environment and Forestry's Regulation Number 83 of 2016, and Government Regulation Number 23 of 2021) and books and journals as secondary data source. Those materials were collected, reduced, and analyzed to compare the laws on social forestry. The results of data analysis are described descriptively.

ANALYSIS AND DISCUSSION

Social Forestry Before Job Creation Law

The law underlying the legal regulation about social forestry before the issuance of *UU Cipta Kerja* is the Law No. 41 of 1999 about Forestry (*Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 tentang Kehutanan*, no date). Article 2 of the Law Number 41 of 1999 about Forestry confirms that the organization of

forestry should be based on the principles of benefit and conservation, populist, equality, togetherness, transparency, and cohesiveness. The principles of benefit and conservation are intended to encourage the organization of forestry to take forest, social-cultural, and economic balance and conservation into account. Populist and equality principles are involved to encourage the organization of forestry to give all citizens equal chance to support their prosperity. The principle of togetherness is involved to encourage the organization of forestry to take the synergy between community members and between community members and enterprise into account. The principle of transparency is intended to enable the organization of forestry to involve people and to pay attention to the people's aspiration. And the principle of cohesiveness is intended to encourage the organization of forestry to be conducted cohesively by taking the national interest of other sectors and local people into account (*Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 tentang Kehutanan*, no date).

The organization of forestry is aimed at the people's prosperity based on the principles of equality and sustainability (Article 3). In relation to this, the organization of forestry is required to improve and to develop community capacity and empowerment in participative manner, equality, and environment (Article 3 letter d). Thus, the organization of forestry considers the ecological, social-cultural, and economic benefits equally and dynamically for the present and the future generations (*Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 tentang Kehutanan*, no date).

Social forestry is not mentioned specifically in the Law No.41 of 1999.

However, there are some articles in the Law No. 41 of 1999 about Forestry explicitly governing the ecological, social, and economic benefits of forest: Article 2 about the principle of forest organization, Article 3 about the objective of forest organization, Article 23 about forest utilization, and Article 67 clause (1) about the customary community's right in forest management and utilization.

Social forestry before the issuance of Job Creation Law has been governed specifically in the Minister of Living Environment and Forestry's Regulation Number 83 of 2016 about Social Forestry. This regulation is the derivation of Government Regulation No. P No. 6 of 2007 about Forest Management and Preparation of Forest Management Plan. Considering this Government Regulation, the technical regulation is issued to regulate Social Forest (Indonesian: *Hutan Kemasyarakatan* or HKm), Village Forest (Indonesian: *Hutan Desa* or HD), People's Plant Forest (Indonesian: *Hutan Tanaman Rakyat* or HTR), Partnership Forest, and Customary Forest.

The legal access to social forestry is provided in the form of the Right to Village Forest Management (Indonesian: *Hak Pengelolaan Hutan Desa* or HPHD), Permit for Social Forest Utilization Business (Indonesian: *Izin Usaha Pemanfaatan Hutan Kemasyarakatan* or IUPHKm), permit for Wood Forest Utilization Business in the People's Plant Forest (Indonesian: *Izin Usaha Pemanfaatan Hasil Hutan Kayu dalam Hutan Tanaman Rakyat* or IUPHHK-HTR), Forestry Partnership, and Customary Forest. The legal access aforementioned is filed to the Minister of Living Environment and Forestry by farmer group, farmer group association, or village institution. The period of

legal access is at most 35 years, is evaluated once in five years, and cannot be inherited (Article 53 clause (1)). The regulation about the granting and the application for the right to or the permit of legal access to social forestry has been governed in Articles 6-52.

Social Forestry after the Issuance of Job Creation Law

Job Creation Law (*UU Cipta Kerja*) is the Law No. 11 of 2020 in turn revoked and replaced with the Law No. 6 of 2023, one of which amends the Law No. 41 of 1999 about Forestry. The Law No.6 of 2023 revise some big matters in the Law No. 41 of 1999 about Forestry, the priority of forest area confirmation acceleration (Article 15), forest area width to be maintained (Article 18), procedure of change, and allocation of Forest Area (Article 19), social forestry (Articles 29 B and B), forest produce building and management (Article 33), non-tax state revenue levy (Indonesian: *pungutan PNBP*) for utilization (article 35), forest protection (articles 48 and 49), and forest utilization (articles 26, 27, 28, 30, 31, and 32) (*Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang*, no date).

Social forestry is a form of forest utilization as mandated in the Law No.6 of 2023. Article 29A of Law No. 6 of 2023 confirms "*The Utilization of Protected Forest and Production Forest as intended in Articles 26 and 28 can be carried out through social forestry activity*". Law No.6 of 2023 does not regulates specifically social forestry, but the Government Regulation Number 23 of 2021 about the Organization of Forestry does it (*Peraturan Pemerintah Nomor 23 Tahun 2021 Tentang Penyelenggaraan Kehutanan*, no date).

Article 108 clause (1) of

Government Regulation Number 23 of 2021 about the Organization of Forestry states that by certain purpose, forest area can be divided into forest with specific purpose, forest with special management, or forest for food resilience purpose. Forest with special management as intended in article 108 clause (1) letter b is established for, among others, Social Forestry program (Article 112 clause (1)).

Article 1 clause (64) states Social Forestry is the Sustainable Forest Management System implemented by local people or indigenous people in the State Forest Region or Private Forest/Customary Forest as the main actor in improving their wellbeing, environmental balance, and social-cultural dynamics in the form of Village Forest, Social Forest, People's Plant Forest, Customary Forest, and Forestry Partnership.

In Social Forestry Program, people (community) are the subject of forest produce management and utilization (Puspitasari, Saragih and Navalino, 2019). The utilization intended includes the utilization of region; that of environmental service; and that of/the collection of forest product (Articles 206 clause (3)).

There are four (4) schemes of Social Forestry program: Village Forest (Indonesian: *Hutan Desa* or HD), Social Forest (Indonesian: *Hutan Kemasyarakatan* or HKm), People's Plant Forest (Indonesian: *Hutan Tanaman Rakyat* or HTR/IPHPS), Partnership, and Customary Forest (Indonesian: *Hutan Adat* or HA).

Generally, the regulation about Social Forestry in Government Regulation No. 23 of 2021 governed in Chapter VI about the Social Forestry Management, from Articles 203 to 2047. General matters are governed in Article 203-213. Articles 214-219

govern Village Forest. Articles 220-225 govern Social Forest. Articles 226-232 govern People's Plant Forest. Articles 233-243 govern Customary Forest. Article 244 governs Forestry Partnership. Article 245 governs the Acceleration of Social Forestry Management. Articles 246-247 mention Social Forestry Management Funding.

Article 27 confirms that further provision about Social Forestry is governed in the Minister's Regulation. The Ministry of Living Environment and Forestry stipulated the Ministry of Living Environment and Forestry's Regulation No. 9 of 2021 about Social Forestry as the Regulation deriving from Government Regulation No. 23 of 2021. Before the issuance of the Ministry of Living Environment and Forestry's Regulation No. 9 of 2021 about Social Forestry, the social forestry has been regulated in the Ministry of Living Environment and Forestry's Regulation No. 83 of 2016 (*Peraturan Menteri Lingkungan Hidup dan Kehutanan Republik Indonesia Nomor 83 Tahun 2016 tentang Perhutanan Sosial*, no date).

There are 4 (four) schemes of Social Forestry Program: Village Forest (Indonesian: *Hutan Desa* or HD), Social Forest (Indonesian: *Hutan Kemasyarakatan* or HKm), People's Plant Forest (Indonesian: *Hutan Tanaman Rakyat* or HTR/IPHPS), Customary Forest (Indonesian: *Hutan Adat* or HA) and Partnership Forestry. Village Forest (*Hutan Desa*) is a scheme of Social Forestry in which forest management is implemented by Village Institution. Social Forest (HKm) is a Social Forestry scheme in which community groups utilize the forest to empower the community. People's Plant Forest (HTR) is a scheme of plant forest management in the forest

constructed by community to improve its potency and quality by implementing *silvicultural* system. Partnership forest is a scheme of Social Forestry, in which the forest management is implemented by the holder of permits to attempt to utilize forest region or the holder of approval of using forest regional along with the partner. Meanwhile, Customary Forest is a Social Forestry scheme in which the forest is managed by indigenous people.

The Social Forestry Program is implemented in the conserved forest, protected forest, and production forest areas. Conserved forest can be managed with Partnership Forest. The scheme that can be implemented is conservation partnership. Protected forest can be managed using Village Forest (HD), Social Forest (Hkm), and Partnership Forest schemes. Meanwhile, the production forest can be managed using Village Forest (HD), Social Forest (Hkm), People's Plant Forest (HTR), and Partnership Forest. The Customary Forest scheme is implemented in the areas of conserved, protected, and production forests.

The permit of Social Forestry program is provided by Ministry of Living Environment and Forestry in the form of approval and stipulation. The Minister's approval is given to Village Scheme (HD), Social forest (Hkm), People's Plant Forest (HTR), and partnership Forest. Meanwhile, Customary law is the permission in the form of stipulation. The stipulation of customary forest consists of state and non-state forest areas (article 62 clause (1))

Comparison of Legal Regulation about Social Forestry, before and after Job Creation Law

Before the issuance of Job Creation Law, the concept of social

forestry is not mentioned firmly in the statutory regulations. Social forestry is mentioned firmly in government regulation and minister regulation. In principle, an idea of social forestry has actually been initiated since 1995 through the Minister of Forestry's Decree Number 622/Kpts-II/1995 about the Guidelines of Social Forest. Similarly, it also has been initiated through Government Regulation No. 6 of 2007 about Forest Management and Forest Management Plan and Forest Utilization later amended with Government Regulation Number 3 of 2008 about the Amendment to Government Regulation No.6 of 2007 actually also governing Social Forestry (Kementerian Lingkungan Hidup dan Kehutanan, 2020). The Social Forestry has just been mentioned firmly in the Minister of Living Environment and Forestry's Regulation Number 83 of 2016 about Social Forestry.

Job Creation Law (*UU Cipta Kerja*) or The Law No. 11 of 2020 about Job Creation as revoked and replaced with the Law No. 6 of 2023 about the Stipulation of Government Regulation in lieu of the Law No. 2 of 2022 about Job Creation to be the Law mentions Social Forestry issue firmly. It has been regulated in Articles 29A and B. Article 29A confirms that forest utilization can be undertaken through Social Forestry activity. Meanwhile, Article 29B mentions that the further provision regarding social forestry has been governed in Government Regulation.

Social Forestry, following the Job Creation Law, has been governed specifically in Government Regulation Number 23 of 2021 about the Organization of Forestry and the Minister of Living Environment and Forestry's Regulation Number 9 of 2021 about Social Forestry

Management. Although the legal foundation of the last two regulations is the Law No. 11 of 2020 about Job Creation, the Article 184 letter b of the Law No. 6 of 2023 confirms that all legislations constituting the implementation regulation of the Law No. 11 of 2020 about Job Creation will remain to be effective as long as it is not in contradiction with this Government Regulation in lieu of the Law.

Generally, the legal comparison of social forestry before and after Job Creation Law can be seen in the table below.

Table 1: Legal Comparison of Social Forestry Before and After Job CreaLaw

Issues	Before Job Creation Law	After Job Creation Law
Legislation Document	Law No. 41 of 1999 about Forestry Government Regulation No. 6 of 2007 about Forest Management and Preparation of Forest Management Plan The Ministry of Living Environment and Forestry's Regulation No. 83 of 2016 about Social Forestry	Law No. 6 of 2023 about the Stipulation of Government Regulation in lieu of the Law No. 2 of 2022 about Job Creation to be the Law Government Regulation No. 23 of 2021 about the Organization of Forestry The Ministry of Living Environment and Forestry's Regulation No. 9 of 2023 about Social Forestry Management
Legal Access to Social Forestry	Legal Access is given in the form of Right or Licensing Legal Access of Right is given for HPHD and Village Forest schemes	Legal access is given in the form of Approval or Stipulation Legal access of Approval is given to HD, HDM, HFM, and Forestry Partnership schemes
Period of Access	Legal access of licensing is given to HPHD, HPMH, HFM and Forestry Partnership schemes 35 years, is evaluated once in 5 years and cannot be inherited.	Legal Access of Stipulation is given to Customary Forest 35 years and can be extended
Village Forest	Application for HPHD is filed by one or several village institutions, village cooperative or local Village-Owned Enterprise (BUMDES)	Application for HD can be made one for each Village Institution or one for all Village Institutions
Social Forest	Given to production forest and protected forest area with or permit land, protected forest managed by State Forest Public Company (<i>Perum Perhutani</i>), and certain region included in KPH Application is filed by (1) the Head of Community Group, (2) Head of Forest Farmer Group Association, and (3) Head of Cooperatives.	given to protected forest and production forest areas with neither social forestry permit nor approval, the areas inside PLAS and/or those having been managed by the applicant Application is filed by (1) individual, (2) forest farmer group, (3) cooperatives.

Source: Author

From the result of comparison aforementioned, it can be confirmed that:

- a. Job Creation Law governs firmly the social forestry, while before the issuance of Job Creation Law, the social forestry was governed in the Minister's Regulation. It indicates the government's seriousness and is expected to have an impact on the state's work plan and budget (Nugroho, 2021).
- b. The stipulation of customary forest status is still governed in

the regulation equivalent to Government Regulation and Minister Regulation both before and after the Job Creation Law. Meanwhile, the recognition of customary forestry as one of forest types is the decision of Constitution Court's reviewing the Law (Rachman, Nawawi and Umanailo, 2021). The stipulation of customary forest status is governed in the law, in this case Job Creation Law. It is supported by empirical condition that the forest management involving indigenous people will be more effective because indigenous people has strong legal instruments in taking care of forest (Samekto, 2016).

- c. Customary forest is stipulated by the Minister both before and after Job Creation Law. The stipulating process requires the presence of Regional Regulation about the Stipulation of Customary Law Community (Indonesian: *Masyarakat Hukum Adat* and MHA) and should meet the criteria stipulated by the Minister of Living Environment and Forestry related to the requirement of Customary Forest stipulation for one MHA (Gunawan, 2023).
- d. Following the Job Creation Law, the Permit of Social Forestry Management can be filed by an individual while previously only farmer group, farmer group association or village institution were allowed to file it. The ideal of social wellbeing expected from social forestry begins to be reduced (Fakultas Kehutanan UGM, no date).
- e. The social forestry licensing was governed in the Directorate General's regulation before the Job

Creation Law, but it is governed in the Minister's Regulation after the Job Creation Law. Nevertheless, there seems to be no simplification of licensing, as suggested by the basic philosophy of drafting in the Job Creation Law.

CONCLUSION

Before the Job Creation Law, Social forestry was governed specifically in the Minister of Living Environment and Forestry's Regulation No. 83 of 2016 about Social Forestry. This regulation is the one deriving from Government Regulation No. 6 of 2007 about Forest Management and Preparation of Forest Management Plan and the Law No. 41 of 1999 about Forestry. Meanwhile, after the Job Creation Law, the social forestry is governed in the Minister of Living Environment and Forestry's Regulation No. 9 of 2021 about Social Forestry Management. This regulation derives from the Government Regulation No. 23 of 2021 about the Organization of Forestry and the Job Creation Law, the Law No. 11 of 2020 about Job Creation as revoked and replaced with the Law No. 6 of 2023 about the Stipulation of Government Regulation in lieu of the Law No. 2 of 2022 about Job Creation to be the Law.

The results of a comparison of legal regulations about social forestry before and after the Job Creation Law are as follows. *Firstly*, Social Forestry after the Job Creation Law has been governed firmly in the Law, Government Regulation and Minister's Regulation. It indicates that the government pays serious attention to maintaining the balance between forest conservation and economic wellbeing of people around the forest. *Secondly*, the stipulation of customary forest is governed in Government Regulation

and Minister Regulation with the right to stipulation is given to the Minister, both before and after the Job Creation Law. *Thirdly*, after the Job Creation Law, legal access to the management of social forestry can be conducted by an Individual. *Fourthly*, the licensing of social forestry before the Job Creation Law has been governed in the Directorate General's Regulation, while after the Job Creation Law it is governed in the Minister Regulation. Nevertheless, there seems to be no simplification of licensing, as suggested by the basic philosophy of drafting in the Job Creation Law.

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