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Legal Position of Forest Area in Giving Land Rights Related To the State Land of Indonesia

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ABSTRACT

This study is focused on the legal position of the forest area as state land including the supervision authority. This study is an analytical study of all laws and regulations governing natural resources in the form of land, including legal certainty of state land with the status of Forest Area identified as state land. The method used in this research is normative legal research using four approaches, namely the statute approach, the historical approach, the comparative approach, and the conceptual approach. This study concludes that state land with forest area status has a special legal position obtained based on the provisions of the law and regulations in the forestry sector, which is applied in the colonial period in the form of Reglement-reglement, Ordonnantie and Verordening, and also law and regulations applied in Independent Indonesia era in the form of Laws, Government Regulations, Presidential Regulations and Ministerial Regulations. State land with the status of a forest area cannot be used as an object of granting land rights before being released from its status as a forest area by the Minister in charge of government affairs in the forestry sector through a mechanism regulated in the law and regulations in the forestry sector.

Keywords: Legal Position, Forest Area, State Land, Land Rights.

A. INTRODUCTION

Forests as national development capital have real benefits for the life and livelihood of the Indonesian people, both ecological, social and cultural and economic benefits, in a balanced and dynamic ways. Therefore, forests must be handled and managed, protected and used sustainably for the welfare of the Indonesian people, both present and future generations. State forests in Java occupy a very strategic position and play an important role in efforts to protect natural resources, especially land and water to support the agricultural activities of the inhabitant.

Forest characteristics which are very valuable resources affect the access of utilization and control to Forest Resources (SDH); these always invite problems. The issue of disputes on the control / ownership of forest land between the government (which calls itself the state) and the community in general and the customary law community in particular, actually appeared decades ago, but tends to increase from time to time and the last escalation is becoming higher along with the roll of the reform era with its excesses.

Issues of conflict and forest land disputes with communities are not only faced by companies of holding of Forest Use Permits (formerly: Forest Utilization Licenses / HPH) and PT. Inhutani outside Java, but it is also faced by State-Owned Enterprises (BUMN) Perum Perhutani which is authorized to manage forests in Java and Madura. Perum Perhutani as a forestry state-owned enterprise is given the task and authority by the government to manage state forests in Central Java Province, East Java Province, West Java Province, and Banten Province except conservation forests. The increase in the population has the consequence of increasing the need for land, for living and farming and subsequently for other businesses, but on the other hand it is faced with the fact that the land area cannot be increased, therefore the most accessible target is existing forest land/ forest area. This thing opens up the opportunities for conflicts and disputes related to forest land.

In addition, the existence of various agencies that deal with land issues and the emergence of development activities that often use forest land, often creates problems of authority among the agencies concerned. The position of Java Island in Indonesia is very important, where Java is the center of government, economy, industry which has an impact in any regions in Indonesia. Regarding the strategic position of Java Island, sufficient infrastructure and facilities are needed, including guarantees from natural disasters-free that are often caused by forest destruction. Although in terms of area breadth, it only occupies the 5th position in Indonesia, but Java is the most populous island in Indonesia.

Forest area conflict is a very complex issue, faced by Perhutani Public Corporation in carrying out the task of managing the forest area in Java. Various forms of conflict can be found in forest management practices. Some examples of cases of tenure disputes related to forest areas include the Jayasena Block Problems that begin to emerge around 2002, Problems in the Central Java Regional Division of Perhutani Regional Office, located in

Cilumping Village, Dayeuhluhur District, breadth of disputed land is 188.30 ha in Banjarnegara District, the community considers the location of the dispute to be Customary Land and the signing of a forest area in Trenggalek Regency which began with the issuance of 111 certificates of ownership rights of society's land in the State Forest area managed by KPH Kediri, BKPH Dongko and BKPH Kampak of Perum Perhutani. The root of the problems of these cases starts from an understanding that disputed land is free state land, both of which have not been previously entrenched in any land rights or free state land originating from former of rights according to west law/legal or lands former of rights that fall to the state.

Discussing the definition of free state land cannot be separated from the historical aspects of land / agrarian law that began in the colonial period. In order to facilitate the large investors who will develop their business in the plantation sector in the Dutch East Indies hindia belanda, in 1870 the Government and the Royal Parliament of the Netherlands issued the Agrarian Law (Agrarische Wet Staatblad 1870 No. 55), which followed by the implemented regulations in the form of Agrarian Decisions (Agrarisch Besluit Staatblad 1870 No. 118), which includes the principle of "state ownership" (domein beginsel) or better known as "state property" (domein verklaring). Domein Verklaring then gave birth to the so-called Free State Land (vrij landsdomein) and Unfree State Land (onvrij landsdomein).

Free State Land is state land that is not bound by the rights of the indigenous people (the Indonesian people) such as the yasan rights, gogolan rights, and etc., or state lands that are not attached to rights according to western law such as *erfpacht* rights and *opstal* rights. On the other hand, unfree state land is a state land which are attached by the rights of the indigenous people and rights according to western law as stated above.

Regarding the Free State lands (*vrij landsdomein*), if traced from its legal history there is no law and regulations that specifically and firmly regulates its control. The regulation which contains the provisions concerning that matter during the government era of the Dutch East Indies colonial is a Government Regulation on "control of immovable objects, buildings and other buildings that belong to the State", contained in the Staatsblad 1911 No. 110, as was last amended by Staatsblad 1940 No. 430.

During the Indonesian colonialized by Japan, there were many historical facts of State lands that were used for purposes that deviated from the intended purpose, or were transferred from the hands of one department to another department, without passing through the reception and surrender official consignment. Furthermore, the existence of actions from various offices department which do not show the same wisdom lines between one and another are still continued after the end of the Japanese colonialization, so it generally causes confusion in the affairs of State land control, thus in order to discipline state land control of the Old Order Government issued Government Regulation (PP) Number 8 of 1953 concerning "Control of State Lands".

In the framework of unification and guaranteeing legal certainty in the field of agrarian law, in September 1960 Act No. 5/1960 concerning "Basic Rules of Agrarian Principles" was issued, or better known as the Basic Agrarian Law (UUPA). Based on the background above, the problems that will be discussed in this research are formulated, namely how the legal position of forest area as state land regarding the granting of land rights.

B. RESEARCH METHOD

The type of this research is normative legal research[1] , namely the process of legal research carried out to produce arguments, theories, new concepts as prescriptions to answer legal issues that are carried out by reviewing and analyzing legislation provisions, court decisions and other legal materials[2]. So that it can be said that the results obtained in legal research already contain values.[3] Abdul Kadir Muhammad said[4], normative legal research examines laws that are conceptualized as norms or rules applied in society. Types of approaches in legal research, namely the statute approach, the historical approach, the comparative approach, and the conceptual approach.[5]

Legal research does not recognize the existence of data. To solve legal issues and provide prescriptions about what should be at the same time, the research sources are needed. Legal materials needed in this research are primary legal material, secondary legal materials, and also tertiary legal materials and to complete the sources of legal materials it needs annotation, information, or opinions that are directly obtained from legal

[1] Johnnny Ibrahim, Teori & Metode Penelitian Hukum Normatif, (Malang : Bayumedia Publishing, cet pertama April 2005), hlm. 47.
[2] Ronald Dworkin, *Legal Research*, (Deadalus: Spring, 1973), halaman.250
[3] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Prenada Media, 2005), hlm. 29-36.
[4] Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung : PT. Citra Aditya, 2004), hlm. 51
[5] Bambang Sunggono, *Penelitian Hukum Normatif*, Bandung: CV. Mandar Maju, 2000, hlm.76.

experts. Primary legal materials are legal materials that are authoritative covering the 1945 Constitution of the Republic of Indonesia and the laws and regulations. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials, consisting of all publications about the law which are not official documents, such as text books, legal dictionaries, legal journals, opinions of scholars, legal cases, results of research reports, results of seminars, workshops, symposiums including sources of legal material in the form of publications using internet media related to dissertation research material. Tertiary legal material is a legal material that supports primary legal materials and secondary legal materials, namely the Indonesian Large Dictionary and the Legal Dictionary.[1]

The analysis technique in this research is a qualitative juridical analysis in which the legal material obtained is presented, categorized, and systematically arranged to be analyzed by abstracting the existing laws and regulations in order to answer questions or solve problems. In the qualitative juridical analysis method, legal material or object of research is not only described as it is, but also will be argued on how the authority of permission grant (first agreement) to the legal position (*rechtspositie*) of state land in Indonesia.

C. RESULT AND DISCUSSION

Position of State Land. Discussing the legal position of forest areas in granting land rights related to state land cannot be separated from the discussion of what is meant by state land and how it is regulated, both in effect before the enactment of the UUPA and after the enactment of the UUPA. The discussion of state land is also inseparable from the discussion of the politics of agrarian law applied in the colonial period. During the colonial period, Dutch agrarian politics in the Dutch East Indies (*Nederlandsch Indie*) was stated in article 62 of the *Regeringsreglement* (RR)[2] Staatblad (Stb.) 1855 No. 2.

On April 9, 1870, with *Staatblad* year 1870 Number 55 Laws were stipulated in the Netherlands, known as "*Agrarische Wet*" (AW)[3] consisting of 5 (five) articles. 5 (five) articles from *Agrarische Wet* are then added as additional new verses from Article 62 RR (which originally consisted of 3 (three) paragraphs), with the addition of these 5 new verses, article 62 RR consists of 8 verses. Article 62 RR then became article 51 of the *Indische Staatregeling* (IS) in 1925[4].

Agrarische Wet was born at the insistence of large private entrepreneurs who want to work in large plantations in the Dutch East Indies region. Before the formation of *Agrarische Wet* in 1870, the only possible way was to rent land from the government. This is not profitable in terms of business because the maximum rental period is only 20 years, while renting land from the indigenous people is prohibited by law. With the publication of *Agrarische Wet*, so it opens opportunities for those big entrepreneurs to get *Erfpacht* rights for 75 years period.

This 1870 Agrarian Law (AW) is only applied to areas that are directly controlled by the Dutch East Indies Government or commonly known as: area of Governor (*Direct/rechtstreek bestuurd gebied* or *Gouvernements-gebied*) and it is not applied to regions that are not directly controlled (*Indirect bestuur gebied* or *Zelfbesturende Landschappen* or Swapraja area).

Since the Dutch East Indies became a Dutch colony (in 1815), legal conditions, especially civil law, were dualistic. Beside the customary law which is a civil law for the indigenous peole/ Bumiputera, for the Dutch colonial inhabitant and similar groups (European) the Dutch civil law is applied (*Burgerlijk Wetboek*/BW/Civil Code / Civil Law).

The legal position of state land before the enactment of UUPA cannot be separated from the principle of civil law as regulated in Article 519 and article 520 of the Civil Code. State-owned land actually belongs to the state (*staatseigendom, staatsdomein*), placed under the law listed in the Civil Code (Book II). The principle contained in article 519 and article 520 of the Civil Code (*Burgerlijkee wetboek*), it basically states that every land area always has the owner. If it is not owned by individuals or legal entities, then the country is the owner.

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[1] *Ibid*, hlm. 47.

[2] *Regeringsreglement* 1854 yang mulai berlaku tanggal 1 Mei 1855, dilihat dari sudut materiil, mengenai isinya, bersifat "Konstitusi Hindia Belanda". Vide : Wolhoff, G.J., *Pengantar Ilmu Hukum Tata Negara Republik Indonesia*, (Jakarta : N.V. Timun Mas, 1955), hal. 47.

[3] *Wet* adalah salah satu bentuk peraturan perundang-undangan (setingkat Undang-Undang) yang dibuat oleh *Kroon* (Raja/Ratu Belanda dan Dewan Menteri) bersama-sama dengan Dewan Perwakilan Rakyat (*Staten Generaal*).

[4] *Indische Staatregeling* (IS) tahun 1925 ini menggantikan *Regeringsreglement* 1854 sebagai dasar sistem pemerintahan *Nederlands-Indie* (Hindia Belanda), berdasarkan Wet 23 Juni 1925 "*Wet op de staatsinrichting van Nederlands-Indie*.

In the construction of colonial land law, state-owned land is divided into 2 (two) types, namely free state land (*vrijlandsdomain*) and unfree state property (*onvrijlandsdomain*). Free state land (*vrijlandsdomain*) is all land on which there are no land rights attached in the form of eigendom rights, eigendom agrarian rights, private land and self-governing land. On the other hand, the unfree state-owned land (*onvrijlandsdomain*) is state-owned lands on which there are land rights attached based on western law that are not as strong as eigendom rights, including erfpacht rights, namely installation opstal and use rights (*gebruik recht*), and land rights according to customary law, both communal and individual.

Granting Land Rights. After going a long way, finally on September 24, 1960 the Law Number 5 of 1960 it stipulated the Basic Regulations on Agrarian Principles, better known as the Basic Agrarian Law (UUPA). With the enactment of the UUPA, the legal pluralism in the land sector in Indonesia has been ended and legal unification has been created with the establishment of the national land laws based on the concept of customary law, as stated in article 5 of the UUPA.

With the enactment of the Basic Agrarian Law Number 5 of 1960 based on Article 33 of the 1945 Constitution, the old laws and regulations in the agrarian field were deleted. On the other hand, *Agrarisch Wet* 1870 which was capitalist liberal and the exploitation was declared revoked. In addition, all laws and regulations concerning *Domein Verklaring* are also declared revoked.

National Land Law (as stipulated in the UUPA) distinguishes between tenure rights control of land and land rights. Tenure rights of land are rights which each contain the authority, duty / obligation and / or prohibition for the right holder to do something with the land field that they deserve. Some of tenure rights of land are in the form of civil law, such as ownership rights of land, and some are in the form of public legal relations, such as the Right to Control of the State (HMN).

Rights of land contain the authority and obligation for the right holders to use, in the sense of controlling, using and benefiting from a particular land area being owned. Its use may not be limited to the earth surface of the land only, but for any purposes, it is always necessary to use the part of the earth below it and/ or part of the space above it. So the right of land are not only giving the authority to use of land field owned, but the authority to use it also includes part of the earth beneath it and part of the space above it, just as necessary, for the direct interest with the owned land use, deep and high within reasonable limits, according to the purpose of use and the wicked ability of the land and the applicable legal provisions, even if the earth, water and the space are not the object of its rights.

According to the conception of the UUPA, first of all, it is the country that controls all land in Indonesia. Even the state controls all agrarian elements, namely earth, water, space and the natural wealth contained in it. Three elements of authority as a concept of public law, namely:

1. Influence: the use of authority is intended to control the behavior of legal subjects;
2. Legal basis: the legal basis of authority can always be shown;
3. Conformity: it means that the standard of authority, namely general standards (all types of authority) and specific standards (for certain types of authority).[1]

State power of the land that has been owned by a person with a right limited by the content of that right, meaning that how far the state gives power to those who have rights to use it until that is where the power of the state is. And those restrictions will be stated in article 4 and subsequent articles and articles in Chapter II of the UUPA.

In accordance with the provisions of the laws and regulations in the field of land, the Head of State Land Agency of the Republic of Indonesia is authorized to grant rights to state land to individuals or legal entities. In its implementation it can be delegated to the Head of Regional Office of the Provincial National Land Agency or the Head of the District / City Land Office. The regulation governing the authority in granting rights to state land is the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1999 concerning the Delegation of the Authority for Granting and Cancellation of Decisions on the Granting of State Land Rights, the regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency No. 3 of 1999 states that it is not applicable to the Minister of Home Affairs Regulation No. 6 of 1972 concerning the Delegation of the Authority for Granting Land Rights. The procedure for granting state land rights is regulated in the Regulation of the Minister of State for Agrarian Affairs / Head of National Land Agency No. 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights. Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9

[1] Dikutip oleh PM Hadjon, tentang Wewenang, dalam Majalah Yuridika, No. 5 dan 6 Tahun XII, 1997, h. 2; lihat juga Suwoto Mulyodusarmo, *Peralihan Kekuasaan Kajian Teoritis dan Yuridis dan Terhadap Pidato Nawaksara*, PT. Gramedia Pustama Utama, Jakarta, 1997, h. 30.

of 1999 states that the following is no longer valid:

1. Regulation of the Minister of the Home Affairs No. 5 of 1973 concerning Provisions on Procedures for Granting Land Rights.
2. Regulation of the Minister of Home Affairs No. 1 of 1977 concerning Procedures for Requesting and Completion of the Granting of Rights to Parts of Land for Management Rights.
3. Regulation of the Minister of the Home Affairs No. 3 of 1985 concerning Procedures for Land Certification for the Programs and Projects of Department of Agriculture.
4. Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 1 of 1993 concerning Procedures for Granting Extensions and Renewal of the Right of use of Building in Certain Areas in Riau Province.

According to Article 1 number 6 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1999, what is meant by the granting of rights is the stipulation of a government to grant a right of state land, including the extension of the term of rights and renewal of rights. Article 1 Paragraph (8) Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No. 9 of 1999 extends the notion of granting rights, namely the stipulation of a government granting a right of state land, an extension of the rights period, renewal of rights, change of rights, including the granting of rights of Management Rights. Provisions that must be considered in the application for granting rights according to Article 4 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 are:

1. Before submitting an application for rights, the applicant must master the requested land proven by juridical data and physical data in accordance with the provisions of the prevailing laws and regulations.

2. The land requested is land of Management Right, the applicant must first obtain an appointment in the form of land use agreement from the Management Right holder.

3. In the term that the requested land is forest land, it must first be released from its status as a forest area in accordance with the provisions of the applied laws and regulations.

4. Certain lands needed for conversion determined by the Head of the National Land Agency of the Republic of Indonesia can be requested for land rights.

Legal Position of Forest Area. **A certain area that was originally not a forest area and then became an area that has status as a forest area through an activity called forest area acquisition, which consists of several stages of activity.**

The stages of forest area acquisition activities can be distinguished based on the enactment of laws and regulations in the forestry sector, namely the phase before the enactment of Law No. 5 of 1967 concerning Basic Forestry Provisions (hereinafter referred to UUPK 1967) and after the enactment of the UUPK 1967.

Acquisition of Forest Area before Law No. 5 of 1967. **The acquisition of forest areas before the enactment of the UUPK 1967, especially in the period before Indonesia's independence, cannot be separated from the political history of forest management law in Java and Madura.**

During the reign of General Governor of Daendels, a legal regulation was established which limit the exploitation of Teak forest resources in Java, which was seen as the beginning of forest management activities using modern forestry techniques and institutions in Indonesia, especially after Daendels formed *Dienst van het Boschwezen* (Department of Forestry) who are given the authority to manage forests in

Java.[1]

The legal regulation on forest management in Java and Madura was first issued in 1865, called *Boschordonnantie voor Java en Madoera* 1865 (Forestry Law for Java and Madura 1865). According to R. Soepardi Poerwokoesoemo, the Forest Regulations of 1865 regulated the management and exploitation of all forests in Java, including teak forests solely as state property. In this 1865 Regime, the forests in Java are distinguished from[2]. Teak Forest which is managed by regular management, Teak Forest which is not managed regularly and Forests.

Following the publication of *Agrarisch Besluit* (Agrarian Decision) Staatblad 1870 number 118, which in article 2 raises the principle of state ownership known as *Domeinverklaring* 1870[3], which states that every land (including forest land) in which existence of eigendom rights cannot be proven on it so it becomes a state domain.

In 1873 the Forestry department established a forestry territorial organization, in order to carry out forest management using modern forestry knowledge and technology. For this purpose, according to *Staatsblad* No. 215 forest areas on Java are divided into 13 Forest Areas, each of which has an area of 70,000 to 80,000 hectares for forest areas in the teak forest area, and wider than 80,000 hectares for forest areas in non-teak forest areas.[4]

Based on *Staatsblad* No. 2 of 1855 affirmed that the General Governor must pay attention and focus his duties on the management of teak forests, and teak forest areas which have not been handed over to other parties are kept and maintained properly. In subsequent developments, the Forest Regulations of 1865 were seen as having many weaknesses in anticipating the development of forest management, so that it was considered necessary to be replaced immediately. On April 14, 1874 the ***Reglemen*** **Regulations** of Use and Forest Exploitation in Java and Madura 1874 were regulated.

In subsequent developments, using the Ordinances of May 6, 1882 and the November 21, 1894, and then with the Colonial Ordinance February 9, 1897, the **Regulations** of Use and *Forest* Exploitation in Java and Madura in 1874 were renewed with *Boschreglement 1897* (Regulations on State Forest Management in Java and Madura 1897), completed by *Dienstreglement 1897* (Regulation of department) through a Government Regulation on February 9, 1897 No. 21 which specifically contains the regulation of implementation of *Boschreglement 1897* and the organization management of the Forestry department.

After being applied for more than 16 years, and after repeated changes with several ordinances, according to Ordinance on 30 July 1913 the Regulations of State Forest Management in Java and Madura 1897 (*Boschreglement* 1897) were replaced by Regulations of the Arrest of State Forests in Java and Madura 1913, but it had just been implemented on January 1, 1914.

In 1927 *Boschreglement van Java en Madoera 1913* was replaced by *Reglement voor het Beheer der bossen van den Lande op Java en Madoera 1927* (State Forest Management Regulations in Java and Madura 1927), or abbreviated *Boschordonantie voor Java en Madoera 1927* (Forest Ordinance for Java and Madura 1927). Boschordonantie 1927 was legislated in *Staatsblad* Year 1927 No. 221, then amended by *Staatsblad* Year 1931 No. 168, and was last amended by the 1934 Staatsblad 63 *Staatsblad* Year 1934 No. 63. Meanwhile, the implementing regulations of *Boschordonantie* 1927 were set out in *Boschdienst reglement voor Java en Madoera 1927*, then replaced with *Boschverordening voor Java en Madoera 1932*, and were later updated with *Boschvererdening* in 1935 and 1937.

Five years after the Forestry Ordinance of 1927 served as the parent guideline for the management of teak forests in Java, the colonial government issued *Bosch Verordening Java en Madoera* 1932 known as the Forestry Regulation of 1932.[5] This regulation contained implementing regulations and an explanation of the

[1] Soepardi, R., *Hutan dan Kehutanan dalam Tiga Jaman*, Vol. 1 - Perum Perhutani, Jakarta, 1974, hal. 57.
[2] Rd. Soepardi Poerwokoesoemo, *Jati Jawa (Tectona grandis Linn)*, tanpa tahun, tanpa penerbit, hal. 203 – 205.
[3] Peluso, Nancy Lee, "A History of State Forest Management in Java", dalam Mark Poffenberger (Ed), *Keepers of The Forest, Land Management Alternatives in Southeast Asia*, Ateneo de Manila University Press, 1990.
[4] Departemen Kehutanan, *Sejarah Kehutanan Indonesia I (Periode Prasejarah – tahun 1942),* Departemen Kehutanan, Jakarta, 1986.
[5] Peraturan Kehutanan Jawa dan Madura tertulis dalam Staatblad van Nederlandsch-lndie Tahun 1932 No 466, kemudian direvisi yang termuat dalam *Staatblad van Nederlandsch-lndie* Tahun 1934 No.134 dan *Staatblaad van Nederlandsch-Indie* Tahun 1937 No. 340.

1927 Forestry Ordinance.[1]

So before the enactment of the 1967 UUPK the forest area acquisition activities were originally intended to provide a basis for forest management, whose activities consisted of only 3 (three) stages, namely the appointment of forest areas, the arrangement of forest area boundaries and Forest Delineation Process Document (BATB) and with the map attachments and Confirmation of Forest Delineation Process Document and Attachments of the Map by the Head of the Forestry Service / Minister of Forestry.

In the previous phase the enactment of the UUPK 1967 the appointment of forest areas was carried out through the Dutch Indies Government Decree (Aanwijzing Besluit), which was issued by the General Governor or by the Head of the Department whose scope of duty, was in charge of the Forestry Service. As is known that during the Dutch East Indies period, the area of government was divided into areas that were governed directly (*rechtstreek bestuurgebied*) and areas that were governed indirectly (*indirect bestuurgebied/ zelfbesturende-landschappen*).

Table. Areas Division that were governed directly

Europeesch Bestuur Ambtenaren (European official)	*Gewest*/Ressort (Daerah)	*Inlandsch Bestuur Ambtenaren* (indigenous official)
Gouverneur	Provincie	-
Resident	Residentie	-
Assistent Resident	Regentschap/	Regent
Controleur	District / Kawedanan / Kawedanaan	*District Hoofd* / Wedana
Adspirant Controleur	Onderdistrict/ Kaonderan	Wedana Assistant

According to writer's opinion, thus the inauguration of forest areas during the Dutch East Indies period were not carried out unilaterally by the Forestry Department, but also involved elements of the local affairs official (*Binnenlandsch Bestuur*), namely a European / Dutch official (*europeesch bestuur ambtenaren*), namely *Assistent Resident* or *Controleur* or *Adspirant Controleur* and pangreh praja officials of Indonesian / indigenous nationality or *Inlandse Bestuur Ambtenaren,* namely Wedana or Assistant Wedana.

Based on the Government Circular on September 28, 1933 no. 2743, by the Governor-General, it was announced that it was deemed necessary to make proposals to improve the state of the forest with regard to hydrological interests. The proposal came from the Ministry of Forestry by cooperating with the relevant Agencies as the Forestry Committee (*Bebossings commissie*).

Based on the Government's decree on May 13, 1931 2, a "Forestry Committee" was formed (*Bebossings commissie*) with the intention in order that this Committee would function as an agency that advises the Government.

In order to expand or improve the condition of forest cover for the purpose of hydrology, an activity is needed first in the investigation of free State land, which will investigate free state lands that are feasible to be forested or will be used to expand forest areas. This activity is known as VDO (*Vrij Landsdomein Onderzoek*) or the investigation activity of free state land.

Inauguration of Forest Area After the Implementation of Law No. 5 of 1967. The first Indonesian Forestry Law of *Poska* of Indonesian Independence was Law Number 5 of 1967 concerning Basic Forestry Provisions. This Act is a substitute for the colonial Forestry Law. (*Bosch Ordonnantie* 1927). In Law Number 5 Year 1967, hereinafter referred to as the **UUPK 1967**, it is explained that the meaning of Forest is a field that is large enough, grows wood, bamboo and / or palm together with its soil, and all its contents in the form of both vegetable nature and animal nature, as a whole is a living partnership that has the ability to provide benefits of production, protection and / or other benefits in a sustainable manner. From this definition, the elements of the forest area are:

a. certain areas;

b. determined by the Minister and

[1] Aulia Rahmat Suat Maji, Wong Blandong, Eksploitasi & Rehabilitasi Hutan Jati Di Jawa Pada Masa Kolonial, Forum, Yogyakarta, 2017, hal. 50-51.

c. maintained as a forest.

The stipulation of certain areas as forest areas by the Minister is adjusted to their designation, covering forested areas that need to be maintained as permanent forests and non-forested areas that need to be reforested and maintained as permanent forests. According to Bambang Pamulardi's opinion,[1] the definition of forest is not followed by a horizontal separation between a field (land) and things above it.

After the enactment of the 1967 UUPK, in general the inauguration of forest areas consists of 4 (four) stages, namely:

1. Appointment of forest area;

2. Structuring forest area boundaries;

3. Mapping of forest area boundaries; and

4. Determination of forest area.

The implementation and responsibility of the inaugural work of a Forest Zone is borne by the Head of the Forestry Service, assisted by the Boundary Committee, who gives suggestions and considerations regarding the making of boundaries, import / release of owned lands and third party lands into / out of the Forest Zone and others.

Then based on the letter of the Minister of Agriculture (cq Director General of Forestry) on July 21, 1972 No. 1423 / DD-II / 72, regarding the Boundary Committee, it has been outlined that while waiting the establishment of further arrangements regarding the Boundary Committee according to Government Regulation No. 33/1970.

It turns out that the regulations that have been issued by the Government with the implementing regulations have not been able to expedite the work of forest gazettement. One of the reasons is overlapping with other regulations and also regulating land issues, for example UUPA or Law No. 5 years. 1960 (L. 104. 1960) concerning "Basic Agrarian Regulations" along with their implementing regulations.

In 1999 with the coming of the reform era, Law Number 5 of 1967 was replaced by Law Number 41 of 1999 concerning Forestry, contained in the State Gazette of the Republic of Indonesia of 1999 Number 167.

By this request, then on February 21, 2012 the Constitutional Court Decision Number 045 / PUU-IX / 2011 was issued concerning Material Test of Article 1 point 3 of the Forestry Law. In the Decision, the Constitutional Court granted the Petitioners' petition in its entirety by removing the phrase “appointed and or” in Article 1 number 3 of the Forestry Law, so that it reads: "Forest areas are certain areas **determined** by the government to maintain their existence as permanent forests". The implication is that the determination of forest areas is not just about the appointment of forest areas, but also the process of boundary arrangement, mapping and determination of forest areas.

On the other hand, in the final part of the decision, the Constitutional Court also gave consideration regarding the transitional provisions of the Forestry Law, specifically Article 81 which stated, “Forest areas that have been designated and / or stipulated based on the prevailing laws and regulations, before the enactment of this law is declared to remain valid based on this law”, according to the Court, even though Article 1 number 3 and Article 81 of the Forestry Law use the phrase “appointed and or determined”, but the enactment for those “appointed and / or stipulated” in Article 81 of the Forestry Law remains **valid** and **binding**.

With the decision of the Constitutional Court, the Ministry of Forestry has issued Circular Letter No. SE.3 / MENHUT-II / 2002, on May 3, 2012, addressed to: (1) Governors throughout Indonesia, (2) Regent / Mayor throughout Indonesia, and (3) Head of Provincial, District / City Department in the field of forestry.

[1] **Bambang Pamulardi, *Hukum Kehutanan dan Pembangunan bidang Kehutanan*, cet. 1, (Jakarta : RajaGrafindo Persada, 1995), hal. 34-35.**

The legal basis for the inauguration of forest areas can be found in Article 14 of the Indonesian Republic of Indonesia Law Number 41 of 1999 concerning Forestry. Inauguration of forest areas is organized by the Minister of the forestry sector. The authority to determine the status of forests is in the hands of the Government. State forests can be in the form of customary forests, namely state forests in which management is handed over to customary law communities (*rechtsgemeenschap*). If in the development the customary law community does no longer exists, then the right of customary forest management returns to the Government.

On May 16, 2013, the Constitutional Court in case Number 35 / PUU-X / 2012 had decided on a request to review the law proposed by Customary Community Alliance of the Archipelago (AMAN) regarding the testing of a number of provisions in Law Number 41 of 1999 concerning Forestry. The conditions petitioned are Article 1 number 6, Article 4 paragraph (3), Article 5 paragraph (1), paragraph (2), paragraph (3), paragraph (4), Article 67 paragraph (1), paragraph (2) , paragraph (3). As for the ruling of the Constitutional Court's decision, some stated that a number of provisions in the Forestry Law petitioned by the applicant were contrary to the 1945 Constitution, therefore some provisions were declared to have no binding legal force.

Forest Control**. In the context of the control and management of forest resources, article 4 paragraph (1) of Law No. 4 of 1999 concerning Forestry. The point is that forests as Indonesia's natural resources at the highest level are controlled by the State as an organization of all people's power, and used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in the Indonesian law and society.**

Forest control by the State does not constitute ownership, but as affirmed in Article 4 paragraph (2) of the Forestry Law, that the State authorizes the Government to regulate and manage everything related to forests, forest areas and forest products, determine forest areas and / or change the status of forest areas, regulate and establish relationships between people and forests or forest areas and forest products, and regulate legal actions concerning forestry.

The government or executive represented by the President in carrying out his government duties is assisted by the Ministers. Especially for the affairs of the forestry sector, it is devolved to the Minister or Ministry of Forestry. Indeed, in the Forestry Law there is no or it does not find formula that explicitly states that the Minister or Ministry of Forestry controls the land of forest areas. However, it does not

mean that the land of the forest area has no control. If it refers to the construction of the Forestry Law, forest tenure (of course including the land) is the state domain, not the government.

Interpreting and concluding the National Land Law according to the applied law to all land in the territory of the State, including land in forest areas, based on Presidential Instruction Number 1 of 1976 concerning Synchronization of Implementation of Forestry Duties with Forestry, Mining, Transmigration and Public Works Duties, according the writer's opinion is inappropriate. It is not appropriate that the provisions governing land tenure of forest area by the Minister of Forestry that have been explicitly stated in the Forestry Law, are ruled out only by a Presidential Instruction**, a legal product (precisely "policy") whose hierarchy is far below the Law.**

The difference of viewpoints or more precisely this interpretation, in my opinion it is largely because each party is based on or refers to different provisions and legal basis. On one side, the legal basis used is the UUPA and its implementing regulations, while the Ministry of Forestry is based on the provisions of the Forestry Law and its implementing regulations.

According to writer's opinion, those differences of opinion are more caused by and are a logical consequence of the implementation of the State's Right to Control in the sectoral laws governing natural resources, such as Law Number 5 of 1960 concerning Basic Rules of Agrarian Principles, Law Law Number 11 of 1967 concerning the Principles of Mining, Law Number 23 of 1997 concerning the Environment and Law Number 41 of 1999 concerning Forestry.

According to Achmad Sodiki, the main problem is that the right to control the state applied to the sectoral law does not show the same interpretation of the content and its boundaries. So that there is an overlap of authority. It creates legal uncertainty.[1] Furthermore, Achmad Sodiki stated, from a normative juridical point of view, in addition to UUPA there have been various laws which have resulted in legal uncertainty, both in the form of legal certainty and certainty due to law.

D. CONCLUSION

State land before the enactment of the UUPA is owned by the State, consisting of 2 (two) types, namely Free State Owned Land and Unfree State Owned Land. After the enactment of the UUPA, the definition of State Land undergoes a change, in the sense of lands according to the UUPA, referred to as the original state lands covering all land controlled by the State, other than what is called rights lands.

[1] Achmad Sodiki, *40 tahun Perjalanan UUPA*, Pidato Pengukuhan Guru Besar Universitas Brawijaya, 1999, hal. 14.

Forest area is basically state land. The status of the forest area is obtained through an activity called forest area confirmation. In the inauguration process of an area which was not a forest area to become a forest area, the source can come from free state land or unfree state land or (before the enactment of the UUPA), and can come from land that has been directly controlled by the state or rights land that have been released by the rights holder.

The granting of land rights to forest areas can be carried out after the release of forest area status by the Minister in the forestry sector in accordance with procedures or mechanisms regulated in the Forestry Law and the implementing regulations.

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