

PROBLEMS AND LAND OWNERSHIP STATUS IN FOREST AREAS AFTER THE ELIMINATION OF LAW NUMBER 6 OF 2023 CONCERNING JOB CREATION

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ABSTRACT

This study analyzes how Law Number 6 of 2023 concerning Job Creation (the Job Creation Law) reconstructs the previously closed status of land ownership in forest areas and the new problems that have emerged since the enactment of the Job Creation Law. The research focuses on the regulation of land ownership in forest areas and the issues that have arisen since the enactment of the Job Creation Law, as well as land disputes within forest areas. Using a juridical-normative approach and analyzed through the lens of Progressive Legal Theory and Legal Certainty Theory, this study finds that the Job Creation Law represents a paradigm shift from a security-oriented approach (oriented toward security/restrictions) to an access-oriented approach (oriented toward access and utilization). The novelty of this research lies in identifying the "Legal Hybridity" created by the Job Creation Law, where it attempts to reconcile the logic of conservation (forestry law) with the logic of investment and agrarian justice (agrarian law) within a single regulatory framework, which in turn creates new tensions in legal interpretation at the implementation level.

Keywords: Job Creation Law, Forest Areas, Land Ownership, Progressive Legal Theory, Legal Certainty.

1. INTRODUCTION

Indonesia, home to the world's third-largest tropical forest, faces a complex dual paradigm between conservation imperatives and the demands of economic development. On the one hand, forests serve as a vital support for global ecological systems, from carbon sinks and biodiversity protectors to hydrological regulators. On the other hand, pressure to utilize forest resources for national development, through sectors

such as plantations, mining, and industry, continues to intensify. This dynamic underpins decades-long tenurial conflicts, where state claims to forest areas, based on Law No. 41 of 1999 concerning Forestry and Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, are often overshadowed by the historical and cultural claims of indigenous and local communities who have lived and

managed the land for generations. These regulations position the state as the sole authority, resulting in communities living within forest areas being stigmatized as “illegal encroachers” and living under prolonged legal protection (Colchester 2020). Government programs such as Social Forestry and Recognition of Customary Forests (PPHMBA) are indeed a breakthrough, but in their implementation they often encounter complicated bureaucracy and limited reach, and have not been able to resolve the root cause of uncertainty about ownership rights (Sahide 2020).

Forests are the pillars of the Earth's life support system, playing a vital role in global climate regulation through the carbon and hydrological cycles, biodiversity preservation, and the provision of vital ecosystem services for billions of people (IPBES, 2018; FAO, 2022 2022). Despite recognizing this crucial role, global forest areas, particularly in tropical regions of developing countries, continue to experience alarming levels of pressure and forest loss. Deforestation is driven primarily by the expansion of commercial agriculture, oil palm and soy plantations, livestock farming, mining, and infrastructure development (Philip G. Curtis 2018). According to a report (FAO .2022) the world lost 10 million hectares of forest per year in the period 2015-2020, with Africa and South America as the regions with the highest deforestation rates.

Amid these external pressures, a fundamental issue that is often overlooked

is land ownership and control (land tenure). Therefore, the issue of land ownership in forest areas is no longer viewed solely as an agrarian or human rights issue, but has become a strategic issue within the global sustainable development and climate change agenda. Tenure uncertainty not only results in socio-economic marginalization for forest-dependent communities but also erodes the resilience of forest ecosystems themselves to external threats. Therefore, understanding and resolving the complexities of land ownership status is an urgent prerequisite for achieving global goals such as those outlined in the Sustainable Development Goals and the Paris Agreement.

The old paradigm of the State as the Absolute Owner of Forest Areas, regardless of the presence of local communities, was considered to be territory under the full control of the state. The presence and activities of local communities were often stigmatized as illegal and destructive “forest encroachment” (Sunderlin 2021). Based on Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, before 2021, the solution offered was through the Social Forestry scheme, specifically Community Forests (HKm). Communities are granted permission to manage the forest area for agroforestry cultivation activities, such as coffee and rubber. Communities receive a Community Forest Utilization Business Permit (IUP-HKm), which is a business permit, not a land right. This permit is valid for a certain period (e.g., 30 years)

and can be extended. Land with an HKm permit cannot be used as collateral (security) to banks because the land status is still a "Forest Area." Communities feel "legalized as cultivators, but not recognized as owners." Those who have invested decades of effort and capital in managing the land still do not have ownership certificates. This scheme is highly dependent on government agrarian and forestry policies. There is a fear that these permits could be revoked at any time.

Policies focus on two things: protecting forests from communities (conservation) and exploiting them for industrial purposes (HPH, HTI) without involving communities as legitimate owners. The impact of this paradigm is prolonged tenure conflicts, legal uncertainty, structural poverty, and forest degradation due to the lack of a sense of ownership from the community. A new paradigm is emerging from the awareness of local communities who have long lived and managed forests for generations. Management by indigenous/local communities is often more sustainable. Tenure conflicts are at the root of many forestry problems. Recognition of rights is a prerequisite for social justice and environmental sustainability (Myers, 2023). The impact and manifestation of prolonged conflict, criminalization and violence against communities defending their land, often criminalized with accusations of "forest destruction", social and ecological damage, conflict breaks down the social cohesion of communities and is often accompanied by

environmental damage due to unilateral land clearing by companies. Structural poverty, loss of access to agrarian resources (land, forests) plunges communities into structural poverty (Tyson, 2023).

Many community groups obtain permits but are unable to manage them due to a lack of capital, knowledge, or because the area is simply unproductive. Permits become mere dead documents (Rianti, 2023). The allocated areas are often degraded forests in need of restoration. However, without adequate incentives and technical support, communities tend to struggle and may resort to fast-yielding, yet ecologically risky, monoculture farming practices. Legality without economic support is like "a car without fuel". Communities have legal rights to the land, but there is no significant improvement in well-being because there is no accompanying economic transformation (Liu, 2024). By offering replacement land, often unequal, the government claims the conflict is "resolved". However, the root causes of the conflict in the original land (which may be more fertile and strategic) are never truly addressed. This is a form of conflict displacement, not resolution.

This stagnant legal landscape underwent a drastic change with the enactment of Law Number 6 of 2023 concerning Job Creation. Formed with the primary goal of spurring investment and simplifying licensing, this omnibus law revised, revoked, and introduced new provisions in various sectors, including forestry and agrarian affairs. In the

context of land ownership in forest areas, the Job Creation Law introduced an approach that has the potential to reconstruct tenure relations. One of the most significant changes lies in the recognition of the concept of “land encumbered with rights”. This concept opens up space for the recognition of land rights, such as Ownership Rights or Cultivation Rights, that legally existed before an area was designated as a forest area (Article 110A of the Job Creation Law). Theoretically, this represents a legal breakthrough that could resolve many stalled land disputes. However, in practice, the implementation of this provision has raised critical questions and profound concerns.

This law is considered to provide legal certainty for people who have strong proof of ownership (Suharto, 2023). However, on the other hand, sharp criticism has emerged that the Job Creation Law actually reinforces the neoliberal approach by commodifying forest areas for the benefit of large-scale investment, which has the potential to marginalize small communities and indigenous communities who do not have formal ownership documents (McCarthy, 2021). Another risk is the weakening of protection for natural forests. Simplifying business licensing in the forestry sector has the potential to open protected and conservation forest areas to exploitative activities, under the guise of “national strategic interests,” which could ultimately accelerate deforestation and biodiversity loss (Austin, 2019)

In the global environmental map, Indonesia plays a crucial role as the green lung of the world, having 8.4 million hectares of primary tropical forest remaining, the third largest in the world after Brazil and Congo (World Resources Institute, 2023). However, this strategic position is accompanied by massive global pressure. Indonesia's commitment in the Paris Agreement to reduce GHG emissions by 31.89% on its own and 43.20% with international assistance by 2030, as well as the 2030 FOLU Net Sink target, places the forestry sector as the main backbone of achieving these targets (Indonesia's NDC, 2021). Data from the Ministry of Environment and Forestry (KLHK) (2023) shows a fluctuating but still worrying deforestation trend: 2019-2020: 115.4 thousand hectares, 2020-2021: 113.5 thousand hectares, 2021-2022: 104.0 thousand hectares. Although showing a decline, this deforestation rate is still far from the expected target. More worryingly, 74% of total deforestation occurred in forest areas that should be protected, with the main causes being conversion for oil palm plantations (38%), industrial timber plantations (25%), and mining (17%) (the role of land tenure security in promoting forest restoration in Indonesia's , 2019) .

On the other hand, local and indigenous communities have land ownership and control systems based on history, culture, and customary law. The basis for their claims is sociological and historical. They are the “de facto owners” who have managed, maintained, and depended on the area for their livelihoods

for decades, even hundreds of years. This customary tenure system is usually not administratively recorded but is mutually understood, has strict rules regarding boundaries, allocation, and utilization, and is passed down from generation to generation. Article 18B paragraph (2) of the 1945 Constitution explicitly states: "The state recognizes and respects customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." The monumental Constitutional Court Decision No. 35/PUU-X/2012 also confirms that customary forests are no longer part of state forests.

The Job Creation Law generally aims to improve the investment climate by facilitating access to forest areas for economic activities. However, this has the potential to create conflicts with citizens' land rights and environmental sustainability if social and environmental impact assessments are not properly conducted (Aulia Oktarizka Vivi Puspita Sari A.P 2024). The integration of the job creation and forestry objectives lies in efforts to accelerate the licensing process and resolve land rights in forest areas through administrative reforms and a more efficient licensing framework. This includes mechanisms for recognizing rights through boundary changes, area releases, and social forestry schemes, which are expected to increase legal access for local communities without compromising forest conservation goals.

However, their effectiveness depends heavily on technical implementation, accountability, and strong public participation (UU Nomor 6 Tahun 2023 n.d.)

Previous research related to this study includes:

1. Putri Azizah, 2025, "Land Ownership Status in Forest Areas Based on Law Number 6 of 2023 Concerning Job Creation in Pelalawan Regency, Bandar Petalangan District," Thesis, Riau Islamic University.
2. Nur Atika, Abraham Ferry Rosando, 2023, "The Position of Land Ownership Certificates in Forest Area Control," 17 August 1945 University, Surabaya.
3. Chamdani Chanif Muchammad, 2021, "Resolution of Land Control in Forest Areas Post-Job Creation Law Regulations," Faculty of Law, Gadjah Mada University.

Previous research focused on land ownership in forest areas in general, while this study specifically examines emerging issues through an examination of the Job Creation Law and the Forestry Law. Furthermore, a gap in this research lies in the lack of comprehensive analyses specifically focusing on land ownership status and the problems post-Job Creation Law. Most of the earlier literature focused more on macro-investment impacts or general environmental impact analyses (Maryudi & Sahide, 2021). This

research aims to fill this gap by exploring the tenorial dimension at the heart of many agrarian conflicts in Indonesia. Its significance lies not only in its practical contribution, providing consideration for the government in drafting implementing regulations, law enforcement officials in resolving disputes, and civil society in advocacy, but also in its theoretical contribution. Therefore, this research is urgently needed to provide a comprehensive and in-depth understanding of the future of forest management and the rights of communities within it under this controversial new regulation.

2. RESEARCH PROBLEMS

- a. What are the legal consequences for the land status and rights of indigenous or local communities in forest areas under the Job Creation Law?
- b. How does Law Number 6 of 2023 concerning Job Creation reconstruct land ownership status in forest areas?

3. RESEARCH METHODOLOGY

This research uses a normative legal research method. The approach used includes a Statutory Approach analyzing articles in Law No. 6 of 2023, which amends Law No. 41 of 1999 concerning Forestry, Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, and their implementing regulations. A Conceptual Approach analyzes legal concepts such as control rights, legal certainty, and the social function of land

rights. A Policy Comparison Approach and the level of legal synchronization (the researcher will examine the harmony of positive law) (Nur Silikin: 2021) are used. A comparison of forest management regimes before and after the enactment of the Job Creation Law is used. Primary data sources are the Job Creation Law and the Forestry Law. Secondary data are obtained from international journals, books, and related research reports. Data analysis is conducted qualitatively by interpreting legal texts and policy contexts.

4. RESEARCH RESULTS AND DISCUSSION

a. What are the legal consequences that arise for the land status and rights of indigenous or local communities in forest areas based on the Job Creation Law.

Legal norms are, of course, an interpretative scheme. (Hans Kelsen: 2024). Therefore, this study finds that the Job Creation Law has two contradictory legal consequences: on the one hand, it creates opportunities (positive legal consequences), but on the other hand, it actually increases threats and uncertainty (negative legal consequences). The Job Creation Law simplifies and centralizes the business licensing process and changes in forest area designation through the "Forest Area Reservation for Investment" scheme and accelerates environmental impact analysis (AMDAL). The legal consequences for land status and the rights of indigenous or local communities weaken the recognition of customary law communities (MHA) rights before the Job Creation Law. Recognition of MHA and their

customary forests requires a Regional Regulation on Recognition, a process that has long been considered slow and complicated. The Job Creation Law actually adds to the complexity by requiring a "Central Government Determination" after the Regional Regulation is enacted. The central government's authority becomes very dominant. An indigenous community that has been recognized through a Regional Regulation may not be recognized by the central government, thereby invalidating their rights to customary forests. This creates legal uncertainty and has the potential to ignore the existence of MHA which is legitimate according to local customary law (Arizona 2021).

Factors Weakening the Recognition of the Rights of Customary Law Communities (MHA) Weak Constitutional Recognition in the Implementation of Article 18B paragraph (2) of the 1945 Constitution does recognize the existence of MHA, but this recognition is conditional (as long as they are still alive and in accordance with community developments. Customary rights often conflict with state interests through the Forestry Law and the Mineral and Coal Mining Law, so that customary land is considered as "state land" (Ikhsan Lubis, 2025). However, in practice, this recognition is very weak and faces many challenges. Two main interrelated factors are dualism or fragmentation within the national legal system and the failure to integrate legal pluralism, which results in customary law always being subordinated. Legal dualism here refers to the existence of two legal systems: state law and customary law, which operate side by side, but are not equal. Fragmentation means that

national law itself is fragmented and incoherent in regulating indigenous peoples' customary laws, thus creating uncertainty and loopholes for the neglect of the rights of indigenous people.

Overlapping and Conflicting Authority between the Forestry Law and the Village Law/MHA, Law No. 41 of 1999 concerning Forestry (as amended by Law No. 19 of 2004 and most recently Law No. 11 of 2020 concerning Job Creation) has historically claimed nearly two-thirds of Indonesia's territory as "forest areas." This unilateral claim often overlaps with customary (ulayat) territories. Meanwhile, Law No. 6 of 2014 concerning Villages grants recognition and authority to "Customary Villages" to regulate and manage their territories. The enactment of Law No. 11 of 2020 concerning Job Creation further reinforces the logic of investment and natural resource exploitation that often ignores the existence of Indigenous Communities. This results in policy fragmentation: on the one hand, the Village Law recognizes the authority of customary villages, but on the other, the Forestry Law and the Job Creation Law grant concessions to corporations over the same territory. The state appears in different and contradictory forms (Moniaga, 2020). Land within forest areas should have a social function. This social function of land rights aligns with the Indonesian grundnorm, which aspires to general welfare and social justice. In other words, it can be interpreted that the social function of primary rights means that ownership rights must not be allowed to harm the interests of the community (Suriansyah Murhaini, 2024).

The Draft Law on Indigenous Peoples (RUU MHA) has been discussed for decades but has yet to be

ratified. This lack of a comprehensive legal framework makes recognition of MHA dependent on sectoral regulations (such as forestry, plantations, and mining), whose interests often conflict with MHA. This has resulted in various inconsistent regional regulations. An MHA may be recognized in one district but not in neighboring ones, or the recognition may be merely symbolic with no real implications for territorial protection (Y. & Arizona 2022).

The weak integration of legal pluralism is a reality in Indonesia, where customary law, religious law, and state law coexist. The weakening of MHA recognition occurs because the state fails to integrate customary law into the national legal system equally. Customary law is often viewed as "second-class law" that must submit to state law, which is considered more modern and rational. The Indonesian legal system is still heavily influenced by the legal positivism inherited from the Dutch colonial era, which places state law as the sole legitimate law. Customary law is only recognized as long as it "does not conflict with national interests and applicable laws." This clause is highly subjective and is often used to delegitimize customary law. The state seeks to create legal uniformity, which contradicts the local, specific, and flexible characteristics of customary law.

The subordination of customary law in land and natural resource disputes. National courts are often reluctant to use and recognize customary law as a basis for legal considerations. Evidence and testimony based on customary law are often considered invalid under positive civil procedure law. Indigenous communities that challenge their rights in court often lose

because the judicial system is not designed to accommodate a plurality of legal sources (Dhiaulhaq, 2023). Creating an Overlapping and Complex Legal Framework: The Job Creation Law does not explicitly revoke previous implementing regulations, creating an overlapping legal framework. MHA now have to contend with two legal regimes: legacy regulations (such as the Ministerial Regulation on Customary Forests) and new regulations under the Job Creation Law.

Table : Summary of Unsynchronized Land Distribution

Regulation / Program	The main purpose	Impact on Indigenous Communities
UUPA 1960	Land ownership rights	Recognizing customary rights
Forestry Law	State control over forests	Denying ownership rights
Agrarian Reform	Land redistribution	Giving land outside the forest
Social Forestry	Forest management access	Does not grant ownership rights
Land Digitalization	Land data integration	Still overlapping with forestry data

The legal consequences arising from the Job Creation Law on land status and the rights of indigenous or local communities in forest areas include the weakening of the recognition of the rights of indigenous legal communities (MHA) and legal uncertainty. The Job Creation Law removes explicit provisions regarding the recognition of indigenous legal communities in the Forestry Law and the Land Law. Recognition of MHA as rights subjects is now entirely left to

Regional Regulations (Perda), a process known to be slow and complicated (Sugiarta, 2021). Changes in Forest Area Status and Threats to Customary Forests: The Job Creation Law simplifies the process of releasing forest areas and changing forest area designations for national strategic projects (SNP) and investment. This threatens the existence of Customary Forests, which are legally located within forest areas. Customary Forests can easily change their status if they overlap with areas designated for NSP (Y. & Arizona 2021).

In addition, the Job Creation Law provides amnesty for farmers/planters who have already managed forest areas, as evidenced by the issuance of derivative regulations in the form of Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue Originating from Administrative Fines in the Forestry Sector, which essentially brings a breath of fresh air for farmers/planters in forest areas to be able to manage their agricultural land and gardens in forest areas without fear because the government has sought a concrete solution or often referred to as “continued” with the specified conditions. However, the Job Creation Law and its derivative regulations PP/24 still have weaknesses, where the Job Creation Law and PP/24 are not in sync with Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, thus creating new problems for the state, corporations and the community.

One example, for example: In the Job Creation Law and PP/24 there is the term “overstepping” so that in quotation marks farmers/planters in forest areas are not absolutely subject to criminal sanctions but changed to administrative sanctions and farmers/planters can still manage land and utilize gardens in forest areas for a certain period. However, in practice, Farmers/Planters are still pursued by Environmental Observers either through legal standing lawsuits related to the environment or criminalized on the basis of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction and other regulations. Settling cases through the courts in Indonesia is tiring, high costs and relatively long completion times, not to mention being trapped by land mafia and the judiciary, so justice does not side with the right (Bambang Eko, 2013). So the adage that if you lose a goat, don't get involved with the law because you might end up losing a buffalo has become common knowledge.

The Dominance of Corporate Rights over Communal Rights: The Job Creation Law consolidates various business permits (such as the Forest Utilization Business Permit/IUPK) and provides greater certainty and convenience for corporations. Conversely, communal rights, such as Village Forests or Customary Forests, do not receive equal attention and protection. There is an imbalance in legal certainty between individual/corporate rights and communal rights (Gellert, 2022). Increasing Tenure Conflicts and the Criminalization of Indigenous Communities: With the strengthening of

corporate positions and the weakening of recognition of Indigenous Peoples (MHA), the potential for conflicts over land and forest resources is expected to increase. Communities defending their customary lands from projects backed by the Job Creation Law are vulnerable to criminalization on charges of forest encroachment or disrupting business activities (Yentirizka, 2021). The Job Creation Law's weakening of participation and the principle of free, prior, and informed consent (FPIC) centralizes licensing in the central government and simplifies the Environmental Impact Assessment (AMDAL) process. This severely limits community participation, including indigenous peoples (MHA), in decision-making for projects impacting their territories. The principle of FPIC, an international standard for respecting MHA rights, is practically ignored (M. A. Sahide 2020).

b. Law Number 6 of 2023 concerning Job Creation reconstructs the status of land ownership in forest areas

Prior to the Job Creation Law, tenure conflicts in forest areas were a classic problem in Indonesia. The government's designated "forest area" status often overlapped with community claims of ownership, control, or use of land (both customary and individual) that had existed for generations before the area was designated as forest. These communities then assumed the status of "occupants" or "asset holders" of the land, which, according to forestry administrative law, is illegal. The Job Creation Law was introduced to reconstruct this complex situation, although, according to the author, the Job Creation Law is not yet fully effective and does not provide a concrete solution to the inconsistency

between the Job Creation Law and the Forestry Law. Many farmers/planters are still being criminalized in the field, despite the Job Creation Law granting amnesty, a term often heard as "overspent".

As a result of separate land rights regulations in various forms of legislation, there is inconsistency or even a tendency towards a lack of synchronization between one and another (Darwin Ginting, 2010).

However, the Government, through the Job Creation Law, has attempted to reconstruct the situation to find effective solutions for communities that have already managed land in forest areas by issuing Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue from Administrative Fines in the Forestry Sector

Definition of Land in Forest Areas

The Job Creation Law, which amends Law No. 41 of 1999 concerning Forestry, introduces a new definition of "Land in Forest Areas," which is land located within a forest area that is encumbered with land rights, or land whose control was obtained through other means in accordance with statutory provisions, before the forest area was designated. The status of "forest area" and "land rights" are no longer seen as mutually exclusive. A plot of land may be spatially located within a forest area map, but legally possess a valid land rights status (such as a Certificate of Ownership/Cultivate Rights, etc.) because it was obtained before the forest area was designated. This law recognizes this historical legal fact and attempts to reconcile it with the administrative status of forestry.

The Job Creation Law introduces a groundbreaking legal distinction by recognizing “land within forest areas”. This provision recognizes that private property rights, legally acquired before the official designation of state forest areas, can coexist within their boundaries. This represents a fundamental shift from previous absolutist views of state control over forest areas, and aims to address the legacy of overlapping land tenure that has been a source of social conflict for decades (A. C. al. 2023).

The new legal concept of “land within forest areas” is a double-edged sword. On the one hand, it provides a way to formalize historical de facto land ownership, offering long-awaited tenure security to millions of people. On the other hand, it risks legitimizing large-scale land acquisitions that occurred immediately before forest area designation. The success of this reconciliation depends heavily on the transparency and accuracy of the verification process for these historical claims (Viña, 2023). The definition of “Land in Forest Areas” in the Job Creation Law represents a reconciliation between the National Land Law and the Forestry Law regimes. Recognizing land rights that existed before the designation of forest areas restructures the state's approach to resolving tenure conflicts, shifting from a repressive to a restorative approach. The land is no longer considered “illegal land” but rather a “legal asset” whose status must be resolved (Wisna 2023).

With this new definition, the Job Creation Law has revoked the doctrine of *domein verklaring*, which has long plagued land ownership in forest areas. The state now recognizes that designating forest areas does not

automatically revoke legally acquired land rights. This is a significant step forward in resolving structural agrarian conflicts, provided it is accompanied by fair and transparent verification and registration mechanisms (Siahaan, 2023). The concept of “Land in Forest Areas” is essentially an instrument for clarifying land ownership and control. This concept separates the object (land) from the status of the area (forest). A land ownership certificate issued before an area was designated as a forest area remains valid and recognized, even if it is spatially located within the forest area map (Sari, 2023).

Spatial Data Synchronization for Grassroots Level Solutions

This is the most concrete mechanism in reconstruction. The Job Creation Law mandates the Central and Regional Governments to synchronize spatial data between the Forest Area Map (from the Ministry of Environment and Forestry/KLHK), the Land Rights Distribution Map (from the National Land Agency/BPN, now the Ministry of Agrarian Affairs and Spatial Planning/BPN), and the Peta Indikatif Penghentian Pemberian Izin Baru (PIPIB) for plantations and mining. By comparing these maps, any overlapping locations can be identified. Land parcels proven to have valid land rights before the forest area was designated must be recognized and removed from the forest area. This process reconstructs forest area boundaries more accurately, removing legitimate community assets from within.

The Indonesian government's initiative to synchronize the 'Forest Estate' map with the 'Agrarian Reform Object' (TORA) and land certification maps represents a pivotal technical and governance challenge. This spatial

synchronization is the prerequisite for resolving the widespread tenure insecurity within state-claimed forests. However, the success of this initiative hinges on the accuracy of the base maps and the political will to excise lands with pre-existing rights from the forest zone, a process that may face resistance from forestry authorities accustomed to territorial control (Sloan, 2022). The Omnibus Law on Job Creation has introduced a new instrument for tenure resolution: the harmonization of spatial plans. By mandating the overlay of forest area maps with land ownership data, the policy aims to legally recognize community assets within the forest boundary. This process is intended to provide a clear foundation for Social Forestry schemes, distinguishing between areas that should be released from the forest estate and those that can be managed under social forestry permits. Yet, its implementation on the ground requires significant capacity building for local governments to handle complex spatial and tenure data (A. e. Maryudi 2023).

While the PIPPIB (Peta Indikatif Penghentian Pemberian Izin Baru) has been a primary tool for controlling licensing, its integration with other fundamental spatial data, such as the forest area boundary and land ownership maps, as mandated by the Job Creation Law, is critical. This integrated spatial approach is designed to prevent the issuance of new licenses on lands with existing community rights and in sensitive forest areas, thereby addressing a root cause of land conflict (K. e. Austin 2021). The spatial data synchronization mechanism between forest area maps (KLHK), rights distribution maps (ATR/BPN), and PIPPIB (Planning for Land and Land

Use Planning) is a progressive step in deconstructing centralized forestry law. Based on an analysis of Ministerial Regulation No. 8 of 2021 and Ministerial Regulation No. 17 of 2021, this process involves participatory verification and validation (verval) stages in the field. The success of this verval is crucial for ensuring justice for communities holding assets within forest areas, although in practice it is often hampered by inconsistencies in map scale and datum between the KLHK and ATR/BPN (A. & Prasetyo 2023).

A case study in East Kalimantan Province shows that the spatial data harmonization process has successfully identified over 45,000 hectares of overlapping forest areas and community claims. This identification serves as the initial legal basis for the forest release process. However, field findings indicate that of the identified data, only around 15% has adequate proof of ownership according to ATR/BPN standards. This indicates that data synchronization must be accompanied by legal and administrative assistance programs for communities to prepare evidence for their claims (Dharmawan 2022). The PIPPIB is no longer positioned solely as a moratorium instrument, but rather as a "living map" integrated into a single spatial data ecosystem with forest area maps and land rights maps. This integration creates a tiered overlay system capable of providing early warning signals of potential conflicts. Before new permits are issued, these three maps are mandatory for verification. Thus, the PIPPIB, within the framework of the Job Creation Law, functions primarily as a preventative, rather than a curative, measure (I. P. Sari 2024).

Legalization through Social Forestry and Forest Area Management

For communities who live and manage land within forest areas but do not have land title certificates, the Job Creation Law strengthens the Social Forestry mechanism (A. M. Maryudi 2023). Rather than being considered illegal, the Reconstruction Concept grants communities legal access to manage forest areas through Village Forest, Community Forest, People's Plantation Forest, Forestry Partnership, and Customary Forest schemes. This scheme does not change the land status to Ownership Rights, but rather reconstructs the community's status from "squatters" to "legal managers" with rights and obligations in forest management. The Job Creation Law (Law No. 11 of 2020) indeed strengthens Social Forestry as a middle ground for resolving tenure conflicts in forest areas. Rather than redistributing land by granting Ownership Rights (which contradicts the status of the forest area), the state carries out reconciliation and recognition by granting legal access to manage (Y. Y. Lestari, 2024).

The Job Creation Law, through its forestry cluster, has integrated the Social Forestry program into the business licensing system. This provides legal certainty for communities by issuing Forest Utilization Business Permits for Village Forests, Community Forests, and other schemes. This legitimacy reconstructs the community's position from being previously considered forest encroachers to becoming legal forestry business actors with rights and obligations (Oka, 2022). The Social Forestry scheme is an innovative solution for resolving tenure conflicts without having to change the

status of forest areas. By granting legal access through the Community Forest (HKm) and Village Forest (HD) schemes, a paradigm shift in forest management has occurred, from state-based to community-based management. Communities, previously in conflict with the state, are now given a role as management subjects (Alviyah, 2022). For indigenous communities, the Customary Forest scheme under Social Forestry after the Job Creation Law represents a form of limited recognition. While not the same as full recognition of customary rights, this scheme reconstructs their status from a marginalized (disadvantaged/neglected) community to an official partner of the government in managing the customary forests they have inhabited for generations (Prasetyo, 2022).

Recognition of Customary Forests

Forests within customary areas are by default designated as state forests, based on unilateral designations by the central government. This results in indigenous communities losing control over their ancestral territories. The Job Creation Law recognizes that customary forests are no longer part of state forests, a paradigm shift. By designating these areas by the local government (Pemda), they are legally recognized as customary forests, granting indigenous communities full authority to manage them in accordance with local customary laws. This process cuts through the lengthy and cumbersome bureaucracy that previously posed the greatest obstacle to recognizing customary forests. The Job Creation Law represents a pivotal shift by delegating the authority to recognize customary forests to local governments. This deregulation policy accelerates the recognition process by eliminating the

need for central government approval. This effectively reconstructs the legal status of the area from 'state forest' to 'customary forest,' granting indigenous communities full management authority based on their local wisdom and customary laws, without altering the forest's fundamentally protected status (M. S. Alvi, 2024).

The recent legal reforms in Indonesia, particularly the Job Creation Law, have created a pathway for the 'unbundling' of forest rights. By enabling regional governments to designate Customary Forests, the law facilitates a form of tenure recognition that separates management and use rights from state ownership. This formalization does not grant full private title but reconstructs the territory, acknowledging the authority of customary institutions to govern the forest according to *adat* law, thereby challenging the decades-old state forestry paradigm (J. F. McCarthy 2023). While the streamlined recognition of *hutan adat* under the Job Creation Law is celebrated for its efficiency, it introduces a new paradox. The recognition is contingent upon the willingness and capacity of local governments, potentially creating spatial inequalities. Furthermore, the reconstruction of 'state forest' into 'customary forest' places the burden of sustainable management entirely on indigenous communities, often without adequate state support, framing them as solely responsible actors in climate mitigation efforts (R. A. Sahide 2024).

After the Job Creation Law, recognition of Customary Forests no longer requires a determination from the Minister of Environment and Forestry, but is sufficient through Peraturan Daerah (Perda). This policy has legally

restructured the status of forest areas from state forests managed by the state to customary forests managed by indigenous communities. This change in status represents the restoration of indigenous peoples' rights to their long-encroached traditional territories (Hapsari 2023). The delegation of authority to designate Customary Forests to Regional Governments under the Job Creation Law represents a progressive decentralization measure. This policy facilitates access for indigenous communities to legal recognition, as regional governments are considered to have a better understanding of the local socio-cultural context. Thus, there is a shift in legitimacy from the central government to customary authorities recognized by the state through regional instruments (Wulandari 2023). Article 26A of the Job Creation Law, which states that "Customary Forests are designated by the Regional Government," has ended the dualism in the definition of Customary Forests. Customary Forests are now explicitly no longer part of state forests. This legal reconstruction has profound implications, with customary communities holding full management rights, while the state acts as a facilitator and supervisor (Dewi 2023).

Based on an analysis of the text of the Job Creation Law (and its derivative regulations) and its comparison with Law No. 41 of 1999 concerning Forestry and Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, several forms of reconstruction of land ownership status in forest areas, deregulation and simplification of business licensing were found. The Job Creation Law, through a risk-based business licensing scheme, simplifies

the licensing process for activities in forest areas. Activities that previously required complex forest area borrow-to-use permits (IPPKH) are now integrated into a single electronic licensing system. This opens up broader access for corporations and communities to utilize forest areas, although the land status remains controlled by the state. The expansion and acceleration of the existing Social Forestry Program are strengthened and accelerated through the Job Creation Law. Schemes such as Village Forests, *Hutan Kemasyarakatan* (HKm), and *Hutan Tanaman Rakyat* (HTR) are given stronger legal certainty. Most significantly, the recognition of the *Hak Pengelolaan Hutan Desa* (HPHD) and *Hak Pengelolaan Hutan Kemasyarakatan* (HPHKm) as legal evidence of access and use, although not as ownership rights. This represents a reconstruction of the status of pure "state land" to "land with management rights" by the community.

The mechanism for releasing forest areas for non-forestry purposes (such as plantations, mining, and infrastructure) has become faster and more centralized. This law grants the central government greater authority to determine changes in the designation and function of forest areas. Once released, the land's status can be converted to Hak Guna Usaha (HGU) or other rights, effectively changing its status from "forest area" to "land that can be owned and controlled" by private parties. The Job Creation Law recognizes customary forests as part of forest areas with a specific status. This recognition, while conditional (required through a regional regulation), represents a form of reconstruction of land previously considered "state land" into "customary land" managed by the

MHA. However, the recognition mechanism remains a challenge.

Progressive Legal Theory emphasizes that law must exist to achieve justice and human welfare (law for man), not the other way around. From this perspective, the reconstruction undertaken by the Job Creation Law can be seen as a progressive effort to address agrarian stagnation and injustice in forest areas. The Job Creation Law seeks to shift forestry law from a paradigm that is overly restrictive and often ignores local communities, to one that provides legal access and recognition. Social Forestry is a concrete manifestation of this spirit, where law is used as a tool to improve the welfare of communities living in and around forests (Rahardjo, 2009). Progressive law sees that substantive justice must be prioritized, including in the context of restoring community rights to forest resources (Arizona & Shohibuddin, 2020).

Analysis of the Job Creation Law through the Lens of Progressive Legal Theory From one perspective, the Job Creation Law can be seen as a progressive effort to dismantle the agrarian stagnation and injustice that have long plagued forest areas. For decades, a closed forestry regime (Law No. 41/1999) has created a situation where millions of hectares of forest areas are controlled by the state, while the communities living within them are deemed "illegal" and vulnerable to eviction. The Job Creation Law, through strengthening Social Forestry, seeks to provide access and legal recognition to these communities. By simplifying permits and strengthening management rights for communities, the Job Creation Law seeks to engineer a more equitable agrarian structure. The goal is to directly

improve community welfare through the legal use of forests (Nurrochmat 2022).

The Job Creation Law strengthens the legal basis for the Social Forestry scheme by integrating various previous schemes (Village Forests, Community Forests/HKm, HTR, Forestry Partnerships, and Customary Forests) into a single, more integrated system. Most significantly, this law recognizes the Hak Pengelolaan Perhutanan Sosial (HPHPS) as legal evidence of community access to and use of forests. Through a risk-based business licensing system, the previously complex and cumbersome process of obtaining Social Forestry permits has been simplified. Verification and recommendation authority has been decentralized to the provincial level, shortening the bureaucratic chain and reducing transaction costs for communities. Integration with Economic Empowerment Schemes: The Job Creation Law integrates Social Forestry with various financing and mentoring schemes, such as *Kredit Usaha Rakyat* (KUR) and other community empowerment programs, thereby not only providing access but also strengthening community economic capacity.

The legalization and expansion of social forestry rights formalize community access and management through various schemes (HKm, Village Forest, Customary Forest, Partnership), linking legality with welfare objectives and targeting poor households, those with limited or no land, and those living in or around forest areas. Local studies show that this legalization pathway is relevant for reducing access inequality, while also requiring continuous facilitation to ensure that the benefits are genuinely felt by the intended

households (Ananda Mahardika 2021). The implementation of customary forest management through social forestry following the recognition of customary areas at the regional level faces normative and administrative challenges (determination, overlapping claims, synchronization of Ministerial Regulation No. 9/2021). This emphasizes that legal progress must be accompanied by institutional design that is sensitive to the local context. Institutional and regulatory support encourages the government's efforts to strengthen institutions, funding, and regulations, resulting in positive impacts (increased legal access, growth of community-based forestry business initiatives). However, there remains work to be done at the field level (capacity, market access, conflict resolution) (Pambudi 2023).

The concept of Social Forestry is viewed as a sustainable compromise that positions communities as both forestry business actors and controllers of environmental degradation. However, the challenges in its implementation including planning integration, the quality of facilitation, and economic incentives significantly determine the quality of its impact. Administrative and tenure-related challenges, such as overlapping claims, slow recognition of Indigenous territories, and unclear management boundaries, create uncertainty and latent conflicts (Jasardi Gunawan 2023). Weak institutional capacity within community groups, limited business literacy, and inadequate access to community-friendly financing hinder the transformation of legal access into real, tangible welfare.

5. CONCLUSION

- a. The Job Creation Law and its derivative regulation, Government Regulation (PP) No. 24, still contain weaknesses. The Job Creation Law and PP 24 are not in sync with Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction, creating new problems for the state, corporations, and the public. One example is the concept of “sustainability” (“past use that is already established”) in the Job Creation Law and PP 24. Under this concept, farmers or smallholders operating within forest areas are not strictly subject to criminal sanctions; instead, the sanctions become administrative, and they may continue to manage and use the land for a certain period. However, in practice, farmers/smallholders are still pursued by environmental advocates either through environmental legal-standing lawsuits or through criminal charges based on Law No. 18 of 2013 on the Prevention and Eradication of Forest Destruction and other regulations. The main legal consequence is an increase in tenure vulnerability for Indigenous and local communities. Their land status and rights become uncertain and easily displaced by business permits that the state considers a higher priority. Protection of Indigenous peoples’ rights heavily depends on the implementation of derivative regulations and the political commitment of both local and central governments which in practice often does not align with the spirit of protecting Indigenous rights.
- b. In the author’s view, the Job Creation Law is neither effective nor solution-oriented in reconstructing land

ownership for communities living within forest areas to achieve progressive justice. Progressive Legal Theory emphasizes law for humans and substantive justice. This reconstruction tends to be anthropocentric and economy-driven, in which forest areas are viewed primarily as resources for economic growth rather than as complete ecosystems that must be protected along with Indigenous peoples as integral parts of them. The essence of “humanity” is directed more toward investment interests than the well-being of Indigenous communities. Progressive Legal Theory supports the deformalization of law to achieve justice for oppressed groups. Based on this theory, the reconstruction of land ownership status within forest areas under the Job Creation Law cannot be considered progressive. Instead of humanizing and freeing Indigenous peoples from legal uncertainty, this reconstruction reinforces state–corporate hegemony over agrarian resources, reduces the meaning of land from a socio-cultural and spiritual entity to a mere economic asset and regulatory object, and fails to bring about substantive justice while tending to ignore local values and traditional wisdom. Therefore, from the perspective of Progressive Legal Theory, the Job Creation Law represents a regression in protecting Indigenous peoples’ rights over land and forest areas. The law does not serve to humanize them but instead disciplines them to comply with the logic of national economic development, which often contradicts environmental preservation and the sustainability of their livelihoods.

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