

**RINGKASAN**  
**PRINSIP HUKUM PENGELOLAAN HUTAN PADA TANAH ULAYAT**  
**MARTHIN**

Bumi dan air dan kekayaan alam yang terkandung didalamnya dikuasai oleh Negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat. Konsep “penguasaan oleh negara” dan “pemanfaatan untuk sebesar-besarnya kemakmuran rakyat,” menjadi norma dasar yang harus dijabarkan dan dilaksanakan oleh Pemerintah dalam penyelenggaraan negara seperti Undang-undang Nomor 41 Tahun 1999 tentang Kehutanan.

Pengelolaan hutan dalam pemanfaatannya memerlukan berbagai peraturan perundang-undangan agar memenuhi kebutuhan dan kepentingan yang selalu bertambah pada hutan. Pada tahun-tahun belakangan banyak negara yang telah mengakui klaim masyarakat atas kepemilikan tanah pada Kawasan Hutan.

Perlindungan Masyarakat Hukum Adat dan hak tradisionalnya selain dalam konstitusi juga dalam sebagian putusan hakim, dari berbagai tindak administrasi negara khususnya dalam peraturan perundang-undangan dan implementasinya sebagaimana diuraikan di atas masih terjadi pro dan kontra sehingga ada peraturan perundang-undangan yang mengakui, namun juga ada yang mengingkari.

Isu hukum pertama berkaitan dengan Landasan filosofis pengaturan pengelolaan hutan. Kajian filosofis tentang penguasaan negara atas sumber daya hutan, pengaturan dalam hubungan pengelolaan guna pemanfaatan bagi sebesar-besarnya kemakmuran rakyat.

Isu hukum kedua berkaitan dengan Prinsip hukum pengelolaan hutan untuk kesejahteraan rakyat dilakukan dengan mengkaji prinsip hukum dalam

peraturan yang mengatur pengelolaan hutan dan peran dari pemerintah, swasta dan masyarakat (koperasi) serta masyarakat hukum adat dalam pemanfaatan sumber daya hutan.

Isu hukum ketiga berkaitan dengan Implementasi Pengaturan pengelolaan hutan pada tanah ulayat, mengkaji peraturan yang mengakui dan melindungi serta implementasinya dalam pengelolaan hutan oleh masyarakat hukum adat.

Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan undang-undang (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan kasus (*Case approach*). Sesuai dengan sifat penelitian hukum normatif, maka sumber bahan hukum yang digunakan yaitu bahan hukum primer dan sekunder. Dilakukan dengan analisa dan interpretasi bahan hukum yang difokuskan untuk menjawab permasalahan di atas.

Dari hasil kajian dan hasil interpretasi tentang prinsip hukum pengelolaan hutan pada tanah ulayat dapat disimpulkan:

1. Penguasaan sumber daya alam oleh negara sebagai hubungan abadi bangsa Indonesia dengan bumi air dan kekayaan alam, mewujudkan penguasaan oleh negara memberi kewenangan mengurus, mengatur dan menetapkan hubungan-hubungan hukum antara orang dengan hutan, serta mengatur perbuatan-perbuatan hukum mengenai kehutanan. Filosofi pemanfaatan sumber daya alam untuk sebesar-besarnya kemakmuran rakyat berdasarkan prinsip pengelolaan hutan lestari. Berdasarkan pendekatan undang-undang dan pendekatan konseptual menunjukkan pemanfaatan secara lestari atau

berkelanjutan merupakan komitmen negara dalam konstitusi, masyarakat dunia internasional juga merupakan kearifan lokal masyarakat hukum adat Indonesia.

2. Prinsip atau azas dan tujuan Pengelolaan hutan berasaskan manfaat dan lestari, kerakyatan, keadilan, kebersamaan, keterbukaan, dan keterpaduan. Berdasarkan pendekatan undang-undang dan pendekatan konseptual Pengaturan tentang Pengelolaan hutan masih lebih mengutamakan pemanfaatan ekonomi. Pemerintah dalam pengaturan dan penyelenggaraan kehutanan mendesentralisasikan sebagian kewenangan kepada pemerintah daerah dan BUMN/BUMD/BUMDes. Swasta maupun masyarakat (melalui Koperasi) termasuk masyarakat hukum adat diberi peran dalam pengelolaan hutan. Masih belum berimbang dalam memperoleh manfaat dari pengelolaan hutan. Perlu pengaturan lebih lanjut dalam peraturan pelaksana guna legalitas masyarakat hukum adat berperan dalam pemanfaatan ekonomi untuk meningkatkan kesejahteraannya.
3. Implementasi Pengaturan pengelolaan hutan pada tanah ulayat dengan pendekatan undang-undang, pendekatan konseptual, dan pendekatan kasus, 'kearifan lokal' diakui sebagai prinsip hukum bagi masyarakat hukum adat dalam pengelolaan hutan seperti prinsip lestari dalam hukum kehutanan. Hak ulayat dimana terletak hutan adat perlu kepastian bukan saja pada tataran peraturan tetapi sinkronisasi pengakuan oleh semua pihak terkait di lapangan guna melindungi dan meningkatkan kesejahteraan masyarakat hukum adat.

## SUMMARY

### LEGAL PRINCIPLES OF CUSTOMARY LAND FOREST MANAGEMENT

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Land, waters, and their all natural resources are owned by The State and optimally managed to achieve social welfare. The concepts of “being owned by The State” and “optimally managed to achieve social welfare” become normative bases which should be well defined by the government in organizing The State and implemented on statutes, including Act Number 41 Year 1999 on Forestry.

Forest management and utilization requires regulations to accommodate growing needs and interests on forest. Recently, many countries have acknowledged social (i.e. indigenous people) claims on forest areas. Indeed, indigenous people and their traditional rights protection should be implemented on constitution, verdicts made by judges, and all administrative actions conducted by The State, particularly in regulations and statutes. However, there is controversy on this concept, results some regulations made by the government acknowledge indigenous people and their interest while some regulations ignore them.

The first legal issue which is discussed in this study is the philosophical base of forest management and utilization. Philosophical study on State ownership of the forest and all its resources and regulations made by The State in forest management and its optimal utilization to achieve social welfare is conducted.

The second legal issue deals with legal principles of forest management and utilization to achieve social welfare. The discussion on this issue is conducted

by analyzing the legal principles of regulation made by the government on customary land forest management and analyzing the roles of government, private companies, society, and indigenous peoples in managing and utilizing forest resources.

The third legal issue concerns with the implementation of regulations on customary land forest management, is conducted by analyzing customary land forest management regulations acknowledging, accommodating, and protecting customary rights and its implementations.

This study which is categorized as normative law study applies statute approach, conceptual approach, and case approach. As a normative law study, this study utilizes both primary and secondary legal sources. This study is focused on analyzing and interpreting the legal sources to discuss the issues above.

Based on the findings of this study, it can be concluded that:

1. "Owned by The State" referred to eternal relationship between Indonesian government and land, waters, and all resources contained in it. "Owned by The State" assured an authority possessed by the government to manage, regulate, and to establish laws governing the relationship between forest and citizens and governing legal acts on forestry. The philosophical bases of natural resources optimal utilization to achieve social welfare was built on sustainable forest management principle. Based on statute and conceptual approaches, sustainable management/utilization which was integrated in local wisdom and traditional customs described national commitment on international constitution.

2. Forest management and utilization was conducted based on the principles of utility, sustainability, populist, proportionality, solidarity, transparency, and integrity based on conceptual and statute approaches, regulations on customary land forest utilization and management prioritized on economic utilization by government rather than decentralizing (distributing) some authorities in forest management by involving local government, local and national corporations, private companies, society, and indigenous people. The benefits of forest utilization were shared un-proportionally. Therefore, advanced regulations were needed to legalize and ensure the participation of indigenous people in order to achieve social welfare.
3. Based on statute principle, conceptual principle, and case principle, the implementation of customary land forest management regulations signified the integration of "local wisdoms" (such as sustainability principle) as legal principle for indigenous people in managing customary law forest. Customary rights on customary land forest should be assured not only by regulations but also synchronized by all authorized parties to ensure and improve indigenous people welfare.

## ABSTRACT

### LEGAL PRINCIPLES OF CUSTOMARY LAND FOREST MANAGEMENT

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Forest has become a global concern for the great deforestation and poverty experienced by indigenous peoples living around it. This dissertation attempts to discuss and analyze three legal issues related to customary land forest management. They are: philosophical base of customary land forest management, legal principles of forest management to achieve the society welfare, and the implementation of customary land forest management regulation.

This normative law study applied statute approach, conceptual approach, and case approach. As a study on normative law, this study utilized primary legal sources and secondary legal sources. Analysis and interpretation were focused on the legal sources to discuss the issues above.

The analysis on the first issue (i.e. the philosophical base of forest management) resulted: based on the constitution, forest as one of natural resources should be fully utilized for the sake of social welfare. The utilization of forest should consider the sustainability of the forest. As the development of the society, sustainable development principles were adopted. The principles were coherent with the philosophical view and local wisdom believed by indigenous people namely in terms of natural preservation. Regarding the second issue (i.e. the principles of customary land forest management), customary land forest management was conducted based on several principles: benefit and sustainability, populist, justice, solidarity, transparency, and integration. In forest utilization and management, the government was not only regulating, but also decentralizing the authority to manage the forest. Customary land forest management should also involve local government, local corporations, private companies, and society (including indigenous people). However, the benefits of customary land forest management had not proportionally distributed. Advanced regulations on the implementation customary land forest management were needed to legalize the involvement of indigenous people in managing customary land forest and achieving its benefits. The finding of the third issues analysis (i.e. the implementation of customary land management regulation) proved that “local wisdom” principles (such as sustainability principle in forestry laws) were integrated as legal principles by indigenous people in managing customary land forest.

**Keywords:** Legal Principles, Local Wisdom, Customary Land Forest