

IMPLEMENTATION OF LAND USE FOR PALM OIL PLANTATIONS BY THE INDRAGIRI HILIR COMMUNITY IN THE AREA FORESTS THROUGH SUSTAINABILITY MECHANISMS PLANTING ACCORDING TO THE LAW JOB CREATION

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Abstract

The resolution of community plantation issues within forest areas needs to prioritize legal certainty and protection for farmers, among others through area arrangement schemes, recognition of community rights, and non-litigation settlement policies in accordance with applicable laws and regulations. This research aims to analyze the implementation of the use of oil palm plantation land in forest areas through the planting encroachment mechanism based on the Job Creation Law, as well as to analyze the obstacles and efforts to address the implementation of such use of land through the same mechanism. The method employed is sociological legal research. Based on the research findings, the implementation of the use of oil palm plantation land in forest areas through the planting encroachment mechanism under the Job Creation Law constitutes a corrective policy aimed at organizing factual land control conditions that occurred prior to the enactment of the law. This policy marks a shift in the law enforcement approach from a repressive administrative model toward structuring that emphasizes legal certainty, community protection, and the sustainability of forest area management. In practice, the planting encroachment mechanism provides a settlement space for business actors and cultivating communities who were previously in a condition of legal uncertainty. The obstacles in implementing the use of oil palm plantation land in forest areas through the planting encroachment mechanism under the Job Creation Law include uncertainty regarding the status and boundaries of forest areas, regulatory disharmony and technical policy inconsistencies, limited institutional capacity, low levels of public dissemination, and the suboptimal involvement of indigenous law communities. These conditions result in the planting encroachment mechanism not yet fully providing legal certainty and substantive justice as envisaged by the Job Creation Law.

Keywords: Implementation, Plantation, Forest Area

INTRODUCTION

Riau Province is one of eight provinces in Sumatra, located in the eastern part of the country, largely comprised of lowlands with high natural resource potential, particularly in the plantation and forestry sectors, similar to those found in Kalimantan and Papua. The extensive exploitation of forest resources in recent decades in Riau Province has transformed land use from intact forest areas to plantations and transmigration areas. This exploitation has also caused friction within the community.

Forests are one of the sources of life that maintain this earth for the continuation of human life on this earth, forests are also the lungs of the world with various types of plants in them that maintain the availability of oxygen on this earth and absorb carbon dioxide. Forests also maintain the availability of water for humans on this earth and as flood control and maintain the balance of this earth from global warming (Wulan et al., 2004).

The developments that occur in human life are always faced with conflicts that color life, starting from problems that accompany every activity in human life. The variety of problems that give rise to conflict certainly cannot always be resolved in the shortest time with the results of the problem solving that is acceptable to the disputing parties and often even leads to the emergence of disputes. However, as God's perfect creatures, humans certainly always strive and strive in various ways to achieve the desired solution, so that balance and harmony are created in human life. Therefore, it is hoped that not only there will be a winner or loser but more efforts can be made to produce an agreement between the disputing parties with a consensus that is felt to fulfill the desires of the parties (a win-win solution).

Equally important to note is that conflict doesn't just occur in social life; it occurs everywhere. Another aspect of conflict and disagreement is that it can essentially serve as a means to achieve a balance of power within society. The resulting conflict is a sign that previously achieved accommodations are being disregarded. Therefore, changes are made in the relationship between these forces to restore balance. Furthermore, conflict can also result in a form of cooperation; with the conflict occurring, each party will introspect and then make improvements (Soekanto, 2007).

Conflicts over land use within community oil palm plantations in forest areas arise from overlapping areas, forest conversion, a lack of policy transparency, and the neglect of customary and social rights by companies and the government. This has resulted in deforestation, environmental damage, and agrarian injustice, despite efforts to regulate and amend land rights that have only created new tensions. Solutions require effective mediation, fair law enforcement, and policies that accommodate the interests of communities and forest ecosystems.

The main causes of conflictcommunity use of oil palm plantation land in forest areas, namely:

1. Overlapping licensing forThe one map policy is not yet effective, meaning that permits are still issued for land that is in forest areas.
2. Forest conversiontropical rainforests are converted into oil palm plantations, causing deforestation and habitat loss.
3. Unbiased policies such as the LawThe Job Creation Law opens up loopholes for the less transparent amnesty of illegal plantations, and the government tends to focus on state losses without reforestation.
4. Neglect of community rights in this case pCompanies and officials often collude to take over customary land without consent and proper compensation, ignoring the social and religious value of the land.
5. Lack of resolution mechanismsAgrarian conflicts often remain unresolved due to the lack of effective independent mediation.

Efforts and challenges in conflict resolutionThe use of community oil palm plantation land is as follows (Zazali, 2011):

1. The Forest Area Regulation Task Force (PKH) regulates illegal land, but risks impacting small farmers.
2. The amnesty scheme under the Job Creation Law lacks transparency and has the potential to exacerbate injustice.
3. A neutral mediation body at the local level is needed for peaceful resolution, but this mechanism is not yet optimal.
4. Law enforcement against large companies still faces lobbying challenges, while confiscations create new conflicts on the ground.

Conflict is inevitable for any society. This is especially true for Indonesia's multiethnic communities, and it's especially likely for the communities in Rokan Hulu, with its rich natural resource potential. Cultural diversity and uniqueness make this nation rich socially and culturally. However, this richness can create extraordinary potential for conflict due to differing perspectives on how to use things, potentially leading to conflict. This is especially true if those differences are framed by a stigma of superiority. Even in a highly homogeneous society, the potential for conflict always exists.

Land for our society has a multidimensional meaning, namely (Nugroho, 2001):

1. From an economic perspective, land is a means of production that can bring prosperity.
2. Politically, land can determine a person's position in societal decision-making.
3. As a culture, it can determine the high or low social status of its owner.
4. Land has sacred meaning because it deals with inheritance and transcendental issues.

Because of these meanings, there is a tendency for landowners to try to defend their land by any means necessary if their rights are violated. There is a Javanese proverb that emphasizes that no matter what the risk, a person will defend it to the last drop of blood, reflecting how persistently people defend their land (Nugroho, 2001).

Article 1 10B of the Republic of Indonesia Law Number 06 of 2023 concerning Job Creation, that:

- (1) Any person who commits a violation as referred to in Article 77 paragraph (1) letter b, letter c, and f or letter e, and f or Article 17 paragraph (2) letter b, letter c, and f or letter e, or other activities in forest areas without having a Business Permit carried out before this Law comes into effect shall be subject to administrative sanctions, in the form of:
 - a. temporary suspension of business activities;
 - b. payment of administrative fines; and/or
 - c. government coercion.
- (2) In the case of violations as referred to in paragraph (1) committed by individuals who reside in and/or around forest areas for at least 5 (five) years continuously with a maximum area of 5 (five) hectares, they are exempt from administrative sanctions and are resolved through forest area management.
- (3) Further provisions regarding the procedures for imposing administrative sanctions and procedures for non-tax state revenue originating from administrative fines as referred to in paragraph (1) are regulated in Government Regulations.

Article 2 of the Presidential Regulation of the Republic of Indonesia Number 5 of 2025 concerning the Regulation of Forest Areas Forms of Regulation of Forest Areas

- (1) In order to handle and improve the governance of mining, plantation and/or other activities in Forest Areas and to optimize State Revenue, the Central Government is taking government action in the form of regulating Forest Areas,
- (2) The regulation of Forest Areas as referred to in paragraph (1) shall be carried out against any person who controls Forest Areas not in accordance with the provisions of statutory regulations.

Normatively, Article 110B of the Republic of Indonesia Law Number 06 of 2023 concerning Job Creation emphasizes that violations of control or utilization of forest areas committed before the enactment of the Job Creation Law are resolved through administrative sanctions, not repressive measures in the form of land confiscation or seizure. In fact, paragraph (2) provides a clear exception for individual communities who have lived and managed land in or around forest areas for at least 5 years continuously with a maximum area of 5 hectares, which must be resolved through forest area management, not sanctions.

However, Presidential Regulation Number 5 of 2025 concerning Forest Area Regulation, specifically Article 2, opens up scope for government action in the form of "regulation" against anyone who controls forest areas not in accordance with statutory provisions. The formulation of this norm is general, broad, and repressive, without explicitly accommodating exceptions and legal protections as stipulated in Article 110B paragraph (2) of the Job Creation Law. As a result, this Presidential Regulation has the potential to ignore community rights that should be protected by law.

Within the hierarchy of laws and regulations, Presidential Regulations must not conflict with the Constitution. When Presidential Regulation No. 5 of 2025 is used by the PHK Task Force as a basis for confiscating or taking over community land, and even entering into joint operations (KSO) with third parties, such actions exceed their authority, violate the principle of *lex superior derogat legi inferiori*, and violate the principles of legal certainty and the protection of citizens' rights.

If the government believes the land is truly a forest area, its management cannot be immediately handed over or entered into a partnership with a third party (agribusiness/agrinas) without first resolving its legal status through the forest area management mechanism mandated by the Job Creation Law. As emphasized, this is because there is no legal legitimacy for state control of the land. Therefore, the PHK Task Force's practice of confiscating community land and entering it into a joint operation with a third party is inconsistent with the Job Creation Law, is potentially legally flawed, and can be classified as a form of abuse of administrative authority (*detournement de pouvoir*).

In practice, this situation is viewed more as a spatial planning and forestry administration issue, rather than as a deliberate violation of the law by the community. Therefore, the local government's approach, through the Department of Plantation and Forestry, is persuasive and preventative, encouraging data synchronization, field verification, and cross-sectoral coordination with forestry and land agencies. Resolving issues surrounding community gardens within forest areas requires prioritizing legal certainty and protecting farmers, including through area planning schemes, recognition of community rights, and non-litigation settlement policies in accordance with applicable laws and regulations. Therefore, the existence of community gardens is not automatically positioned as a legal case, but rather as an object of government regulation and development.

RESEARCH METHODS

This study employs empirical legal research, examining the application of law in social realities. The focus of the study is directed at the implementation of community oil palm plantation land use in forest areas through the pre-planting mechanism based on the Job Creation Law in Indragiri Hilir Regency, Riau Province. This study aims to assess the effectiveness of regulatory implementation and the dynamics of its implementation in the field.

The approaches used include:

1. Statute approach, namely examining various relevant laws and regulations, including:
 - a. The 1945 Constitution of the Republic of Indonesia;
 - b. Law Number 41 of 1999 concerning Forestry;

- c. Law Number 6 of 2023 concerning the Stipulation of the Job Creation Perppu;
 - d. Government Regulation Number 23 of 2021 concerning Forestry Implementation;
 - e. Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions in the Forestry Sector;
 - f. Law Number 39 of 2014 concerning Plantations;
 - g. Law Number 32 of 2009 concerning Environmental Protection and Management.
2. Conceptual approach, namely using legal doctrines and concepts such as the concept of state control over natural resources (Article 33 of the 1945 Constitution), legal certainty, and non-litigation dispute resolution as the basis for analysis.

The sampling technique used the census method for related officials and random sampling for oil palm farmers, with the sample determined by purposive sampling according to research needs.

Data sources consist of primary data (interviews and field observations) and secondary data (literature reviews and legal documents). Data collection techniques include observation, structured and unstructured interviews, and literature studies.

Data analysis was conducted qualitatively, including data reduction, categorization, interpretation, and conclusion drawing. Conclusions were drawn inductively, moving from specific facts in the field to generalizations regarding the effectiveness of implementing regulations on continued planting in Indragiri Hilir Regency.

RESULT AND DISCUSSION

A. Implementation of Palm Oil Plantation Land Use in Forest Areas through Planting Sustainability Mechanisms Based on the Job Creation Law

The development of the palm oil plantation sector in Indonesia is inextricably linked to the dynamics of natural resource management policies, particularly the control and use of forest areas. In practice, the expansion of palm oil plantations often overlaps with forest areas, due to asynchronous spatial planning, weak licensing oversight, and changes in forestry policies over time. This situation has given rise to a phenomenon known as "pre-planting," a situation where plantation activities begin in forest areas before there is clarity or agreement on the legal status of land ownership. This phenomenon not only raises environmental issues but also complex legal, social, and economic challenges.

The issue of land use for oil palm plantations within forest areas is a long-standing structural issue in natural resource governance in Indonesia. Since the 1990s, oil palm plantations have expanded rapidly in line with the increasing global demand for palm oil as a strategic commodity. This growth has not always been accompanied by adequate spatial planning and legal certainty, resulting in various forms of land ownership and use that overlap with state forest areas. In practice, many oil palm plantations have been planted and actively managed, but legally remain forest areas or have not been released from forestry functions (Harsono, 2013).

Forest areas are generally defined as areas designated by the government to be maintained as permanent forests, whether for conservation, protection, or production purposes. The designation of these forest areas carries the legal consequence that any non-forestry use within them must undergo strict licensing and designation change mechanisms. However, in practice, the designation of forest areas is often not accompanied by clear boundary demarcation, adequate outreach, and synchronization with regional spatial plans. This situation creates the possibility of what is known as "overplanting," a situation where plantation activities have already been carried out in forest areas without a valid forestry permit (Sumardjono, 2008).

The phenomenon of continued planting cannot be separated from the complex relationship between the state, business actors, and the community. On the one hand, the state

has the constitutional authority to control and regulate the use of natural resources for the greatest prosperity of the people. On the other hand, plantation businesses often face administrative issues, policy changes, and disharmony between central and regional regulations. It is not uncommon for location permits or plantation business permits to be issued by local governments based on spatial plans, only to be discovered within forest areas that have not been formally released by the central government (Wijoyo, 2014).

In addition to large-scale businesses, continued planting also involves local communities and smallholder farmers who have traditionally managed the land to meet their needs. For these communities, forest area status is often abstract and incompletely understood, especially when land ownership has existed long before the state's forest area designation. In this context, a purely repressive legal approach has the potential to lead to social injustice, agrarian conflict, and violations of the principle of legal protection for small communities (Rahardjo, 2009).

Law of the Republic of Indonesia Number 6 of 2023 concerning Job Creation serves as a regulatory reform instrument, one of the goals of which is to address the issue of continued land use, including the development of oil palm plantations in forest areas. Through an administrative approach and forest area management mechanisms, the Job Creation Law seeks to shift the paradigm of law enforcement from a repressive approach to a corrective and restorative one. In this context, the continued planting mechanism serves as a crucial instrument for bridging the state's interest in protecting forest areas with the socio-economic realities of communities and businesses that have long managed the land.

Article 1 10B of the Republic of Indonesia Law Number 06 of 2023 concerning Job Creation, that:

- (1) Any person who commits a violation as referred to in Article 77 paragraph (1) letter b, letter c, and f or letter e, and f or Article 17 paragraph (2) letter b, letter c, and f or letter e, or other activities in forest areas without having a Business Permit carried out before this Law comes into effect shall be subject to administrative sanctions, in the form of:
 - a. temporary suspension of business activities;
 - b. payment of administrative fines; and/or
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- (2) In the case of violations as referred to in paragraph (1) committed by individuals who reside in and/or around forest areas for at least 5 (five) years continuously with a maximum area of 5 (five) hectares, they are exempt from administrative sanctions and are resolved through forest area management.
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- (2) The regulation of Forest Areas as referred to in paragraph (1) shall be carried out against any person who controls Forest Areas not in accordance with the provisions of statutory regulations.

The provisions of Article 110B of the Republic of Indonesia Law Number 06 of 2023 concerning Job Creation expressly regulate the administrative and corrective approach to violations of forest area control and utilization committed before the enactment of the Job Creation Law. This norm reflects a non-penal policy with the aim of providing legal certainty,

avoiding criminalization, and opening up space for forest area management. In fact, in paragraph (2), the law explicitly provides an exception to administrative sanctions for individual communities who have lived and managed forest areas continuously for at least 5 years with a maximum area of 5 hectares, the resolution of which is carried out through forest area management, not repressive regulation.

In contrast, Presidential Regulation Number 5 of 2025, in Article 2, introduces the concept of "forest area regulation" as a government action against anyone who controls forest areas not in accordance with statutory provisions. This formulation is general, repressive, and does not differentiate between old violations (pre-Job Creation Law) and new violations, and does not provide explicit exceptions for communities who have long lived in or around forest areas as stipulated in Article 110B paragraph (2) of the Job Creation Law.

This misalignment raises the issue of normative hierarchy and the principle of *lex superior derogat legi inferiori*, as the Presidential Regulation, as an implementing regulation, cannot expand, reduce, or even negate norms clearly stipulated in the law. By subjecting all forms of forest area control to regulation, the Presidential Regulation has the potential to ignore the mandate of the Job Creation Law, which emphasizes administrative resolution and area management, particularly for small communities.

Furthermore, the Presidential Regulation also has the potential to violate the principles of legal certainty and legal protection, as it opens up scope for government action inconsistent with legislative policies in the Job Creation Law. In this context, Presidential Regulation No. 5 of 2025 can be deemed normatively inharmonious and potentially lead to conflicts in the application of the law in practice, particularly for individuals who should receive protection and exemptions under the Job Creation Law.

To address the complexity of these issues, the government introduced a mechanism to address ongoing planting as part of its legal policy reforms in the forestry and plantation sectors. This mechanism is essentially intended as a transitional solution to reorganize the use of oil palm plantations already located in forest areas, while maintaining the importance of forest protection and legal certainty. This approach marks a paradigm shift from criminal law enforcement to administrative and corrective regulation, while prioritizing the principles of justice, legal certainty, and benefit (Prasetyo, 2017).

Within the national legal framework, the mechanism for continued planting has gained normative legitimacy through legislative policies that accommodate the resolution of forest area violations that occurred before the new legal regime came into effect. This policy reflects the state's recognition of socio-economic realities on the ground and an effort to integrate environmental interests with economic development. However, the implementation of the mechanism for continued planting in the oil palm plantation sector is not without challenges, both normative, institutional, and technical (Hadjon, 2011).

One of the main problems in implementing the mechanism for continued planting is the unclear boundary between regulatory and regulatory actions. In practice, policies intended as administrative resolutions are often interpreted differently by implementing officials, potentially leading to repressive actions such as activity suspensions, land repossessions, or even disproportionate sanctions. This lack of uniformity in understanding is exacerbated by weak inter-agency coordination and overlapping authority between the central and regional governments (Ali, 2012).

The mechanism for continuing planting also faces challenges from a legal certainty perspective. Businesses and communities participating in the settlement scheme often face lengthy procedures, significant costs, and uncertain outcomes. In some cases, the forest area zoning process is not immediately followed by a clear change in the land's legal status, raising doubts about the sustainability of plantation businesses and long-term investments. This situation contradicts the initial goal of the continuing planting policy, which was to provide

legal certainty for all parties (Soeharsono, 2016).

From an environmental protection perspective, implementing the mechanism for continuing planting for oil palm plantations has also sparked debate. On the one hand, this policy is considered pragmatic, as it avoids the social and economic damage caused by mass clearing. However, on the other hand, there are concerns that legitimizing continued planting could actually weaken the protective function of forest areas and set a bad precedent for environmental law enforcement. Therefore, a careful balance is needed between the interests of restoring forest governance and respecting the rights of communities and businesses (Radbruch, 2014).

The implementation of the land use of oil palm plantations in forest areas through the mechanism of continued planting is an issue that is not only technical and administrative in nature, but also fraught with legal, social, economic, and ecological dimensions. The background to this problem indicates an urgent need to thoroughly examine how the continued planting policy is implemented, the extent to which it is able to provide legal certainty and protection, and its implications for the sustainability of forest area management in Indonesia. This study is crucial as a basis for formulating policy recommendations that are fairer, more effective, and aligned with sustainable development goals.

Legally and theoretically, the implementation of oil palm plantation land use in forest areas through the planting continuation mechanism under the Job Creation Law. The discussion focuses on legal implementation, land use, forest area characteristics, and the normative construction of the planting continuation mechanism as a form of state legal policy.

Legal implementation is fundamentally a crucial stage in the legal policy cycle, as it is at this stage that legal norms are tested for their effectiveness and relevance in social reality. From the perspective of legal implementation theory, as proposed by Lawrence M. Friedman, the success of a law is determined by its legal structure, legal substance, and legal culture. The Job Creation Law, as a legal substance, will be meaningless without the support of a consistent institutional structure and a legal culture within the apparatus and society that supports legal compliance.

Land use in the context of agrarian and forestry law is a manifestation of the legal relationship between humans and land and natural resources. The Basic Agrarian Law (UUPA) emphasizes that land is controlled by the state and used to the greatest extent possible for the prosperity of the people. However, within the forestry regime, forest areas have special characteristics as areas designated by the state to be maintained as permanent forests. This tension between the agrarian and forestry regimes often gives rise to land use conflicts, including in the oil palm plantation sector.

From the perspective of the welfare state theory, the state plays a role not only as a guardian of order but also as a facilitator of welfare. Therefore, resolving ongoing planting cannot be achieved solely through criminal law enforcement or evictions, but rather through administrative policies that guarantee legal certainty, justice, and environmental sustainability. The mechanism for ongoing planting in the Job Creation Law reflects this orientation, by prioritizing administrative sanctions and land use planning as primary instruments.

Legally, a forest area is a specific area designated by the government to be maintained as permanent forest. The designation of forest areas has significant legal implications for land use, as in principle, all activities within forest areas must obtain permits from forestry authorities. However, in practice, the process of designating and establishing forest areas in Indonesia is not always thorough and participatory, creating legal uncertainty for communities and businesses.

Oil palm plantations are expanding rapidly in line with increasing global demand for palm oil. This expansion often occurs in areas with unclear administrative status, or in areas

later designated as forest areas. As a result, many oil palm plantations have been operating for a long time but are legally considered to be within forest areas. This situation is the basis for the concept of continued planting.

From an environmental law perspective, the presence of oil palm plantations in forest areas poses a risk of ecosystem degradation and loss of the forest's ecological function. Therefore, policies to resolve ongoing planting must balance environmental protection with legal certainty for businesses and the community. The Job Creation Law attempts to balance these interests through administrative mechanisms that include remediation obligations and contributions to state revenue.

The Job Creation Law introduces a mechanism for continued planting as a legal solution to land use in forest areas that occurred before the law came into effect. This mechanism essentially acknowledges the social reality of plantation activities without necessarily legitimizing legal violations. This recognition is accompanied by administrative obligations in the form of permits, fines, and area planning.

Normatively, this approach reflects the principle of non-retroactivity in law, as well as the principle of corrective justice. The state does not criminally punish acts committed under conditions of legal uncertainty, but continues to assert state sovereignty over forest areas through administrative instruments. In administrative law theory, this mechanism can be understood as a form of bounded discretion, in which the government is empowered to adapt law enforcement to specific circumstances, as long as it remains within the law.

The mechanism for continued planting also has an economic dimension, as through the imposition of administrative fines and non-tax state revenue obligations, the state receives compensation for the use of forest areas. However, this mechanism should not be understood merely as legalizing illegal practices, but rather as a transitional instrument toward orderly and sustainable land use governance.

The implementation of the planting continuation mechanism for oil palm plantations in forest areas depends heavily on policy consistency and government institutional capacity. At the normative level, the Job Creation Law provides a relatively clear legal framework. However, various obstacles remain in implementation, ranging from overlapping authority, differing regulatory interpretations, to resistance from communities and businesses.

In practice, forest area management through the continued planting mechanism requires accurate mapping, historical verification of land use, and cross-sectoral coordination between ministries responsible for forestry, agrarian affairs, and plantations. Without effective coordination, policy implementation has the potential to create new legal uncertainties. Furthermore, the administrative approach must be implemented with the principles of transparency and accountability to avoid creating room for abuse of authority.

From the perspective of legal certainty theory, the implementation of the planting cessation mechanism should provide clarity on the legal status of oil palm plantation land use. This legal certainty is important not only for business actors but also for communities surrounding forest areas who depend on the land for their livelihoods. Therefore, the planting cessation mechanism must be implemented proportionally, while taking into account the principles of social justice and environmental sustainability.

While conceptually, the planting continuation mechanism offers a pragmatic solution, its implementation is not without criticism. One major criticism is the potential erosion of forest protection principles if this mechanism is implemented permissively. From an environmental law perspective, policies that overemphasize economic aspects have the potential to neglect environmental carrying capacity.

Furthermore, there are normative challenges related to synchronizing implementing regulations with the Job Creation Law. Regulatory inconsistencies can create legal uncertainty and open up opportunities for normative conflicts. Therefore, regulatory harmonization is a

crucial prerequisite for the effective implementation of the planting continuation mechanism.

In the context of administrative law, the imposition of administrative sanctions must comply with the principles of legality, proportionality, and due process of law. Implementation that deviates from these principles has the potential to violate the rights of legal subjects and undermine the legitimacy of policies. Therefore, administrative oversight and complaint mechanisms need to be strengthened as part of policy implementation.

The implementation of the continued planting mechanism for oil palm plantations in forest areas under the Job Creation Law represents a state effort to pragmatically and equitably address structural land use issues. This mechanism reflects a paradigm shift in law enforcement from a repressive approach to a corrective and restorative administrative approach.

However, the successful implementation of the planting delay mechanism depends heavily on policy consistency, institutional capacity, and commitment to the principles of the rule of law and environmental protection. Without careful and measured implementation, this mechanism has the potential to create new problems in forest area governance. Therefore, strengthened coordination, regulatory harmonization, and effective oversight are needed to ensure that the planting delay mechanism truly serves as a fair, sustainable, and compliant solution, in line with the objectives of the Job Creation Law.

B. Completion of Implementation of Land Use for Palm Oil Plantations in Forest Areas Through Planting Sustainability Mechanisms Based on the Job Creation Law

The development of the plantation sector, particularly oil palm plantations, has become a crucial pillar of the Indonesian national economy. Oil palm plantations not only contribute significantly to the country's foreign exchange earnings through exports but also provide a livelihood for millions of workers and local communities across various regions. Since the 1990s, oil palm plantations have expanded significantly, driven by the growing global demand for vegetable oils and national policies encouraging investment in the agribusiness sector. However, this expansion often raises legal and governance issues, particularly when plantation activities are conducted within forest areas legally regulated by forestry law.

According to Indonesian law, forest areas are defined as specific areas designated by the government to be maintained as permanent forests. The designation of forest areas carries the legal consequence that their use is subject to the principles of sustainable forest management and requires special permits from the state. In practice, the boundaries between forest areas and other use areas are not always clear in practice. The process of designating, establishing, and confirming forest areas often faces administrative, technical, and social obstacles, resulting in overlapping land ownership. This situation opens up space for land use in forest areas for non-forestry activities, including oil palm plantations, by both business entities and individuals (Hadjon, 2011).

The use of forest areas for oil palm plantations often occurs before the area's status is definitively determined or before the business owner obtains the permits required by law. In many cases, the business owner has already planted and even operated the plantation for a long time. When it is later discovered that the land is forested, legal issues arise in the form of violations of forestry regulations. It is at this stage that the state faces a dilemma between rigid law enforcement and the socio-economic realities that have emerged on the ground (Wijoyo, 2014).

Prior to the enactment of Law of the Republic of Indonesia Number 6 of 2023 concerning Job Creation, unauthorized use of forest areas was generally viewed as a serious violation subject to criminal, administrative, and civil sanctions. This approach stemmed from the paradigm of protecting forest areas as strategic state assets that must be protected from

illegal conversion. However, a purely repressive approach often has significant social impacts, particularly for communities who have long lived and depended on the land for their livelihoods. On the other hand, for large-scale businesses, inconsistent law enforcement creates legal uncertainty and an unfavorable investment climate (Ali, 2012).

Regulatory reform through the Job Creation Law has brought a paradigm shift in handling violations of forest area utilization. One normative innovation introduced is the mechanism for continued planting, explicitly stipulated in Article 110B. This provision reflects a more pragmatic legal policy by emphasizing administrative resolution of violations that occurred before the law's enactment. The state no longer automatically resorts to criminal prosecution, but instead provides space for forest area management and governance restoration through administrative sanctions and financial obligations to the state (Prasetyo, 2017).

The mechanism for continued planting stems from the realization that in many cases, the use of forest areas for plantations is not solely the result of deliberate violations of the law, but rather is triggered by weak inter-agency coordination, unclear area status, and overlapping licensing practices. Therefore, a corrective-administrative approach is seen as more proportionate than a repressive approach, especially when the violations have been ongoing for a long time and involve the socio-economic interests of the wider community (Rahardjo, 2010).

However, the implementation of the mechanism for continued planting is not without its challenges. Normatively, this provision is intended as a transitional solution to reorganize the use of forest areas that have already been exploited. However, in practice, this mechanism has the potential to create the perception that the state is legalizing past violations. This concern arises primarily from the perspective of environmental protection and forest sustainability, given that oil palm plantations are often associated with deforestation and ecosystem degradation (Wijoyo, 2018).

Furthermore, the mechanism for continued planting also raises questions about legal fairness. For business actors who have complied with all licensing procedures and have not entered forest areas, this policy can be viewed as a form of injustice, as violations are "resolved" through administrative mechanisms. On the other hand, for small communities who have long lived within forest areas, this mechanism opens up opportunities for legal protection through area management, as reflected in the exemption from administrative sanctions for individuals with certain areas. This difference in treatment requires clear implementation to avoid horizontal or vertical conflicts (Rawls, 1999).

In the context of oil palm plantations, the implementation of the mechanism for continued planting is also closely linked to the goal of optimizing state revenue. Payment of administrative fines and other obligations is positioned as an instrument to compensate for unauthorized use of forest areas. However, this focus on state revenue must not override the principles of environmental sustainability and the ecological function of forests. If this mechanism is not accompanied by strict supervision and comprehensive management, it has the potential to encourage moral hazard practices, whereby business actors deliberately take risks by entering forest areas in the hope that they can be "resolved" later through administrative mechanisms (Radbruch, 1950).

The implementation of the planting delay mechanism cannot be separated from the central government's forest area regulation policy. Regulation is intended to improve governance and reaffirm state control over forest areas. However, if this regulation policy is not aligned with the spirit and substance of the planting delay mechanism, policy disharmony will arise. Repressive regulation has the potential to negate the corrective-administrative approach designed by lawmakers in the Job Creation Law (Kelsen, 1945).

This disharmony ultimately creates legal uncertainty in the implementation of oil palm

plantation land use in forest areas. Businesses and communities find themselves in an uncertain position: on the one hand, they are given administrative recourse through the mechanism of continued planting, but on the other, they face the threat of forest area regulation without clear parameters. This uncertainty contradicts the principle of legal certainty, a pillar of the rule of law, as affirmed in the constitution and modern legal theory (Fuller, 1969).

From the perspective of administrative law theory, the mechanism of continued planting can be viewed as a form of state policy discretion (*beleidsvrijheid*) in addressing structural issues that cannot be resolved solely through conventional law enforcement. This discretion is legitimate as long as it is implemented within the law, is proportional, and does not violate the fundamental rights of citizens. Therefore, the implementation of this mechanism requires clear, transparent, and accountable guidelines to prevent misuse as a tool to legitimize violations (Hadjon, 2015).

The use of oil palm plantation land in forest areas through a planting continuity mechanism is not only related to normative issues, but also touches sociological, ecological and economic aspects. This complexity demands a comprehensive legal analysis to assess the extent to which the mechanism is able to realize the objectives of forest area management, environmental protection, legal certainty and justice for all stakeholders. Without consistent and harmonious implementation, the planting continuity mechanism has the potential to become a source of new legal conflicts in plantation and forestry governance in Indonesia.

The issue of forest use for oil palm plantations in Indonesia has been one of the most complex agrarian and forestry legal issues of the past two decades. This complexity stems from overlapping control and licensing, differences in regulatory regimes between forestry and land law, and socio-economic realities that drive the massive expansion of palm oil. In practice, many oil palm plantations have been planted and are even producing on forest areas that have not yet been legally released or have not yet received forest use approval. This phenomenon is known as "pre-planted land" and was subsequently regulated specifically through changes to forestry policy under the Job Creation Law.

Normatively, the Indonesian forestry regime is rooted in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people. The doctrine of state control over natural resources has been interpreted by the Constitutional Court as a constitutional mandate to carry out regulation (*regeling*), administration (*bestuursdaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*). In the context of forest areas, the state's authority is outlined in Law Number 41 of 1999 concerning Forestry, which states that forest areas are designated and managed based on conservation, protection, and production functions.

However, the dynamics of economic development, particularly through the palm oil commodity, have created tremendous pressure on forest areas. Prior to harmonization through Law of the Republic of Indonesia Number 6 of 2023 concerning Job Creation, which was later refined by Law Number 6 of 2023 concerning the Establishment of the Perppu on Job Creation, many business actors obtained plantation business permits from local governments without adequate synchronization with forest area status according to the national forestry map. This lack of synchronization was exacerbated by weak forest area boundary delineation and the incomplete forest area gazettelement process as mandated by forestry law.

From a legal theory perspective, the phenomenon of continued planting can be analyzed through the theory of legal certainty as proposed by Gustav Radbruch (1950), which places legal certainty as one of the fundamental values of law alongside justice and utility. The continued planting reflects the state's failure to provide legal certainty because business actors and communities are in a situation of unclear land status: administratively holding

plantation permits, but forestry-wise located within forest areas. This uncertainty gives rise to the potential for criminalization, civil disputes, and even social conflict between companies, indigenous communities, and the state.

The Job Creation Law attempts to address this problem with a corrective and transitional approach. Through changes to forestry norms, the government introduced a mechanism to resolve ongoing business activities in forest areas, including oil palm plantations. This policy is not intended to legitimize violations, but rather to restructure them through administrative and state financial instruments. In this case, the approach used is administrative sanctions plus compliance mechanisms, not solely criminal repression.

Normatively, further regulations regarding the resolution of unsustainable planting are outlined in 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. This regulation provides scope for business actors who have conducted activities in forest areas without permits to resolve their status through payment of administrative fines, compliance with business licensing requirements, and the obligation to restore forest functions, if necessary. On the other hand, for activities that cannot be reconciled with the function of the forest area, the mechanism for returning the area to the state remains an option.

From the perspective of the theory of state administrative authority, this policy can be understood as a form of bound discretion (*gebonden bevoegdheid*) implemented within the framework of the principle of legality. Hans Kelsen (1967) stated that the validity of a legal norm is determined by its conformity with higher norms in a hierarchical structure. Therefore, the legitimacy of the planting continuation mechanism must be traced to the constitutional basis and laws that serve as the source of its authority. As long as the mechanism is explicitly regulated in the law and its implementing regulations, it formally possesses legal legitimacy.

However, debate has arisen around the ecological justice dimension. Many have criticized the administrative fine mechanism for potentially creating a moral hazard, as if violations of forest areas could be "redeemed" with money. Within the framework of modern environmental law theory, as argued by Philippe Sands (2012), environmental protection cannot be reduced solely to economic instruments but must consider the precautionary principle and the principle of state responsibility. Therefore, the effectiveness of the mechanism for continued planting depends heavily on the design of sanctions and strict oversight.

Conceptually, the mechanism for continued planting encompasses three dimensions of resolution. First, there's limited legalization, which provides the opportunity to manage risk-based business permits through the Online Single Submission (OSS) system. Second, there's the fiscal dimension, which involves imposing administrative fines as non-tax state revenue. Third, there's the corrective dimension, which involves requiring environmental restoration or reclaiming the area. These three dimensions reflect an integrated regulatory framework approach that seeks to balance economic interests with environmental sustainability.

In practice, resolving ongoing planting requires factual verification of the extent, location, and timing of land clearing. The government establishes a special task force to conduct an inventory and assessment. This process is administrative in nature, but has broad legal implications as it determines whether an oil palm plantation can be continued, released from forest areas, or terminated. In this context, the principle of due diligence (*zorgvuldigheidsbeginsel*) in administrative law is crucial to prevent errors in determination that could harm certain parties.

From a liability theory perspective, the imposition of administrative fines on business actors reflects the concept of liability without fault in environmental law. This means that business actors remain responsible for administrative violations without having to prove

criminal wrongdoing. This concept aligns with the doctrine of strict liability that has developed in international and national environmental law (Rahmadi, 2015). Therefore, the mechanism for continued planting does not eliminate liability, but rather shifts the form of accountability from criminal to administrative.

Furthermore, this solution must also be analyzed within the framework of agrarian reform and spatial planning. Many smallholder oil palm plantations are located in forest areas due to ignorance or changing spatial planning policies. In this case, a repressive approach alone will not address the root of the problem. The Job Creation Law opens up the possibility of a solution through the release of forest areas for specific purposes while still considering environmental carrying capacity and carrying capacity. This reflects a policy approach that balances legal certainty and sustainability.

However, the implementation of this policy faces serious challenges. First, data and mapping issues are not yet fully synchronized between relevant ministries. Second, resistance from some civil society groups who believe this policy weakens forest protection. Third, there is the potential for unequal treatment between large companies and smallholder farmers. From the perspective of John Rawls's theory of distributive justice (1971), public policy should provide the greatest benefits to the least advantaged. Therefore, the design of the policy to continue planting must ensure that smallholder farmers are not disproportionately disadvantaged.

Theoretically, the mechanism of continued planting can be viewed as a form of transitional legal policy, namely a transitional legal policy to correct past deviations without creating new instability. Law functions not only as a repressive instrument but also as a means of social engineering (law as a tool of social engineering), as argued by Roscoe Pound (1954). In this context, the state seeks to transform a situation of uncertainty into a more orderly legal order through measurable administrative instruments.

However, the success of this mechanism is largely determined by consistent law enforcement. If, after being given the opportunity to resolve the issue, new violations still occur, criminal action must be firmly enforced. Without such consistency, the continued planting mechanism could be misinterpreted as a form of impunity. Therefore, a balance between corrective and repressive approaches is key.

Ultimately, resolving the implementation of oil palm plantation land use in forest areas through the continued planting mechanism under the Job Creation Law represents the state's attempt to resolve the normative conflict between forestry law and economic development practices. This policy has a constitutional and legal basis, but it remains to be tested in practice to determine whether it can simultaneously provide legal certainty, ecological justice, and social benefits. Without strict oversight and a commitment to environmental protection, this mechanism has the potential to be a short-term solution that leaves structural problems in the future.

CONCLUSIONS

Implementation of Oil Palm Plantation Land Use in Forest Areas through the Planting Continuation Mechanism Based on the Job Creation Law, Law Number 06 of 2023 concerning Job Creation and Government Regulation Number 24 of 2021 have been designed as administrative settlement instruments aimed at creating legal certainty and proportional justice. However, empirically, the implementation of this policy has not been fully consistent with existing regulations, especially after the issuance of Presidential Regulation Number 5 of 2025 which confirms land acquisition by the state and the Joint Operation (KSO) scheme. This condition indicates a regulatory disharmony that has implications for legal uncertainty, so that policy synchronization is needed so that the objectives of forest area management,

environmental protection, and business certainty can be achieved in a balanced manner in accordance with the principles of the rule of law.

The settlement of the implementation of oil palm plantation land use in forest areas through the planting continuation mechanism under the Job Creation Law is through the planting continuation mechanism under Law Number 6 of 2023 concerning the Stipulation of the Job Creation Government Regulation in Lieu of Law (Perppu Cipta Kerja), a form of transitional legal policy aimed at reorganizing the irregularities in licensing and land ownership that occurred before regulatory harmonization. This policy is not intended to legitimize violations, but rather as an administrative corrective instrument that balances legal certainty, economic benefits, and environmental protection. Through derivative regulations such as Government Regulation Number 24 of 2021 concerning Procedures for Imposing Administrative Sanctions in the Forestry Sector, the state is shifting its approach from a dominant criminal repressive approach to a measured administrative mechanism, with mandatory fine payments, licensing requirements, and restoration of the area's function. Theoretically, this mechanism reflects the application of the principles of legal certainty, administrative responsibility, and the function of law as a means of social engineering. However, its effectiveness depends heavily on strict supervision, accurate forest area data, and consistent law enforcement against new violations.

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