



Law Enforcement Against Papuan Customary Ownership in Raja Ampat Gardening on Inherited Land with Non-Productive Convertible Production Forest Status

Suwardi; Liston Habonaran Simorangkir

Master of Law Study Program, Faculty of Law, Universitas Narotama Surabaya, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i10.3082>

Abstract

Based on this perspective, the type of legal research is carried out through juridical-empirical. In terms of the orientation of law enforcement towards land management by (PCO) as citizens for gardening, it's an arbitrary act and leads to legal discrimination, considering that the State has protected the rights of citizens through Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction Article 11 paragraph (3). In addition, the professionalism of law enforcement officials in the field of human resources must be further improved in order to further strengthen the mastery of knowledge of criminal offenses and the elements of crime from an act, so that the community as citizens is not harmed in terms of law enforcement orientation.

Keywords: *Forest Status; Law Enforcement; Papuan Customary*

Introduction

Convertible Production Forest (CPF) is an unproductive and productive Production Forest Area which spatially can be reserved for development outside of forestry activities (Gusti Ayu Ketut Rachmi Handayani et al. 2018) or can be used as land to replace Forest Areas. Meanwhile, unproductive CPF's are CPF's whose land cover is dominated by non-forested land, including shrubs, vacant land, and mixed gardens. (Kementerian Lingkungan Hidup dan Kehutanan RI 2018) At the level of the implicit definition of Forest set by the Central Government, it certainly cannot be ignored that in West Papua Province and specifically in Raja Ampat Regency, it's recognized that indigenous Papuan customary ownership (PCO) is still alive and developing until now, the truth of which cannot be denied by anybody.

This gave rise to the initiation and idea for the Regent of Raja Ampat to submit a Proposal for Change and Release of Forest Area Functions in Raja Ampat Regency on April 11, 2016 to the Governor of West Papua Province, then forwarded to the Minister of Environment and Forestry of the Republic of Indonesia (Regent Letter of Raja Ampat No.661/345/2016, Regarding the Proposed Change and Release of Forest Area Functions in Raja Ampat Regency).

Then it ended with the Minister of Environment and Forestry of the Republic of Indonesia stipulating Decree Number Sk.745/MENLHK/SETJEN/PLA.2/9/2019 concerning Changes in Functions

in the Main Functions of Forest Areas and Between Main Functions of Forest Areas from Part of the West Waigeo Nature Reserve to Wildlife Reserve Area of ±1,396 Ha and Becomes a Permanent Production Forest Area of ±575 Ha in Raja Ampat Regency, West Papua Province (Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number Sk.745/MENLHK/SETJEN/PLA.2/9/2019).

Several related agencies that have authority over forest crimes (Bayramoglu and Kadiogullari 2018), such as the West Papua Regional Police and the Center for Environmental and Forestry Security and Law Enforcement in the Maluku-Papua Region carry out legal procedures and take action regarding forest area land management issues without permission from the Central Government against residents who carry out management land in the forest area and the case is tried in the Court. (Kristiani 2020)

This has also happened concretely in the Alex Robert Womsiwor Criminal Case which was processed by the West Papua Police Agency until it was tried at the Class IB Sorong District Court with Criminal Case No: 153/Pid.Sus/2020/PN Son, because of flattening a small portion of the land area of the land area of 1 Ha which is the Land of Parental Inheritance (In-Law) for gardening and coincides with the location of the land which is the Location of Cases (LC) with the status of Non-Productive CPF.

On the other hand, Alex Robert Womsiwor who is undergoing the legal process (McLachlan and Webley 2021) is an Indigenous Papuan (PCO) community domiciled in Waisai, Raja Ampat Regency, and the location of the crime scene is on Jalan Bonkawir, Waisai Kota District, Raja Ampat Regency Bananas, and others. In addition, the thing that is the basis for gardening is the existence of a Statement Letter of Release of Land Tenure (file sale) between Drs. Marcus Wanma (In-law of Alex Robert Womsiwor) with Mochtar Kome as the First Land Owner, known and registered by the Head of Bonkawir Village and Head of South Waigeo District on behalf of the Raja Ampat Regency Government on January 4, 2012.

Research Methods

Based on this perspective, the type of legal research is carried out through juridical-empirical (Michael 2021).

Result and Discussion

Law Enforcement Incident to PCO ALEX ROBERT WOMSIWOR due to Gardening on Legacy Land with Non-Productive CPF Status

Alex Robert Womsiwor owns a plot of land with an area of approximately 1 Ha which was obtained from the inheritance of the in-laws and the late Marcus Wanma which was purchased on January 4, 2012 from the Customary Rights Authority, namely Mochtar Kome Umpain, then the customary land file was registered by the Regional Government of Raja Ampat Regency through a Land Release Statement The Right to Tenure of Inherited Land signed by the Head of Bonkawir Village and knowing the Head of the South Waigeo District with Number. 593.8/08/2012 dated January 09, 2012. Then on February 13, 2020 Alex Robert Womsiwor eviscerated a small piece of land that is high, steep and sloping using a family-owned excavator with the aim of making it easier to plant short-term and long-term agricultural crops without bringing out soil and rock materials from the garden site.

After planting agricultural seeds such as Sweet Potato, Papaya, Mahogany, Teak, Banana, and others. (Paul et al. 2014) On 03 March 2020 the West Papua Police Criminal Investigation Team visited

the following land location to carry out an Investigation and Investigation which stated that "Alex Robert Womsiwor without permission from the Minister of Environment and Forestry of the Republic of Indonesia used heavy equipment on land with the status of Convertible Production Forest (CPF)".

Efforts to clarify and provide documents on land ownership at the West Papua Regional Police have been carried out with the hope that the legal process of investigation (Anon 2016) and investigation can be stopped, but to no avail. A few days later Alex Robert Womsiwor was named a suspect and underwent a trial process as a defendant at the Sorong District Court as in Criminal Case No: 153/Pid.Sus/2020/PN Son who was accused of violating;

1. *PRIMAIR'S IMPACT* Article 89 paragraph (1) letter a in conjunction with Article 17 paragraph (1) letter b Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction;
2. *SUBSIDER* Article 89 paragraph (1) letter b in conjunction with Article 17 paragraph (1) letter a of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction;
3. *OR THE SECOND IMPACT* Article 158 of Law No. 04 Year 2009 concerning Mineral and Coal Mining. (Sorong District Attorney's Indictment Letter PDM Case Register Number: 166/R.2.11/Eku.2/06/2020)

After going through the agenda of the stages of the trial (Zuiderveen Borgesius 2020), Alex Robert Womsiwor, who was accompanied by his Legal Counsel on December 14, 2020, was sued by the Public Prosecutor of the Sorong District Attorney that Alex Robert Womsiwor was legally and convincingly proven guilty of committing the crime of "Forestry" as stipulated and threatened with criminal in the provisions of Article 89 paragraph (1) letter b of Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction Jo Article 17 paragraph (1) letter b of Law No. 18 of 2013 concerning Forest Eradication.

The defense against Alex Robert Womsiwor as an Indigenous Papuan (PCO) has been carried out, so the Sorong District Court on March 1, 2021 decided;

1. To declare that the Defendant isn't proven to have committed a criminal act;
2. Release the Defendant;
3. Restoring the Defendant's rights.

Legal Implications for Law Enforcement Against PCO Alex Robert Womsiwor

Efforts to clarify and provide documents for ownership of land as a form of Proof of Ownership of Customary Land at the West Papua Regional Police are the first steps taken by Alex Robert Womsiwor regarding the legality and history of land ownership as a form of completion or termination of the legal process carried out by the West Papua Police Investigation Team.(Chaerani Nur 2016)

These efforts didn't help to complete and stop the process of investigation and investigation carried out by the West Papua Police Investigative Team. So that Alex Robert Womsiwor underwent a legal procedure as a suspect in the trial of the Class IB Sorong District Court with the Alternative Indictment of the Public Prosecutor of the Sorong District Prosecutor, namely the *PRIMAIR INDICMENT* Article 89 paragraph (1) letter a in conjunction with Article 17 paragraph (1) letter b of Law Number 18 of 2013 Concerning the Prevention and Eradication of Forest Destruction ; *SUBSIDER* Article 89 paragraph (1) letter b in conjunction with Article 17 paragraph (1) letter a of Law Number 18

of 2013 concerning Prevention and Eradication of Forest Destruction; OR THE SECOND IMPACT Article 158 of Law No. 04 of 2009 concerning Mineral and Coal Mining.

Then criminally charged with committing the crime of "Forestry" as regulated in Article 89 paragraph (1) letter b of Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction Jo Article 17 paragraph (1) letter b of Law no. 18 of 2013 concerning Forest Eradication.

Conclusion

In terms of the orientation of law enforcement towards land management by (PCO) as citizens for gardening, it's an arbitrary act and leads to legal discrimination, considering that the State has protected the rights of citizens through Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction Article 11 paragraph (3). In addition, the professionalism of law enforcement officials in the field of human resources must be further improved in order to further strengthen the mastery of knowledge of criminal offenses and the elements of crime from an act, so that the community as citizens is not harmed in terms of law enforcement orientation.

References

- Anon. 2016. "FOREST CRIMES AS A THREAT TO SUSTAINABLE FOREST MANAGEMENT." *Сибирский Лесной Журнал* (4). doi: 10.15372/sjfs20160405.
- Bayramoglu, Mahmut Muhammet, and Ali Ihsan Kadiogullari. 2018. "Analysis of Land Use Change and Forestation in Response to Demographic Movement and Reduction of Forest Crime." *Eurasia Journal of Mathematics, Science and Technology Education* 14(1). doi: 10.12973/ejmste/79640.
- Chaerani Nur, Nurul. 2016. "UPAYA BADAN PENGELOLA LINGKUNGAN HIDUP DALAM MENANGGULANGI TINDAK PIDANA LINGKUNGAN HIDUP DI KOTA JAYAPURA." *JIHK* 1(1). doi: 10.46924/jihk.v1i1.17.
- Gusti Ayu Ketut Rachmi Handayani, I., Gunarto Gunarto, Anis Mashdurohatun, I. Gusti Putu Diva Awatara, and Fatma Ulfatun Najicha. 2018. "Politic of Legislation in Indonesia about Forestry and the Mining Activity Permit in the Forest Area of Environmental Justice." *Journal of Engineering and Applied Sciences* 13(6). doi: 10.3923/jeasci.2018.1430.1435.
- Kementerian Lingkungan Hidup dan Kehutanan RI. 2018. *Status Hutan Dan Kehutanan Indonesia 2018*.
- Kristiani, Verlia. 2020. "Hukum Yang Berkeadilan Bagi Hak Ulayat Masyarakat Hukum Adat (Kajian Dan Implementasi)." *ADIL: Jurnal Hukum* 11(1). doi: 10.33476/ajl.v11i1.1449.
- McLachlan, Scott, and Lisa C. Webley. 2021. "Visualisation of Law and Legal Process: An Opportunity Missed." *Information Visualization* 20(2–3).
- Michael, Tomy. 2021. "Face Mask And Jus Cogens." *Journal of Xi'an University of Architecture & Technology* Volume XII(8):219–22. doi: doi.org/10.37896/JXAT13.8/313673.
- Paul, B. K., P. Pypers, J. M. Sanginga, F. Bafunyembaka, and B. Vanlauwe. 2014. "ISFM Adaptation Trials: Farmer-to Farmer Facilitation, Farmer-Led Data Collection, Technology Learning and Uptake." in *Challenges and Opportunities for Agricultural Intensification of the Humid Highland Systems of Sub-Saharan Africa*.

Zuiderveen Borgesius, Frederik J. 2020. "Strengthening Legal Protection against Discrimination by Algorithms and Artificial Intelligence." *International Journal of Human Rights* 24(10). doi: 10.1080/13642987.2020.1743976.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).