

# The Effectiveness of Article 33 Act Number 5 of 1990 Concerning Conservation in the Area of Lore Lindu National Park Central Sulawesi

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Abstract: The research aim is knowing and explaining the level of effectiveness conservation law (Act No. 5, 1990) into conserve the forest of the national park, and to know and understanding the influenced factor of the conservation weakness in the Lore Lindu National Park. Those conduct through juridical sociologies approach by finding the social and legal fact in the society than in last analyse it will found alternative solve of the problem. Generally, the influence factors of the weakness and ineffectiveness of the conservation law depend on various factor such as culture, society, substance, apparatus, and equipment. That is well known people live surround the forest as be a part of culture, people also have been a long time making and fulfill their need from the forest, even economic need tend to increase, unlike the other three factors culture and society looks dominant. Likewise, substance of the law, apparatus and equipment are not appropriate yet.

## 1 INTRODUCTION

The Lore Lindu National Park as an area of protected forest that according to the regulation enacted forbid any activities in the forest area. Even the condition of forests as the area of protected forest have also started experiencing relegation due to human action as respond to the government policy (Abdul Rokhim, 2016; Biagioni et al., 2016), Such as Decision Minister of Forestry Republic Indonesia No. 593/Kpts-II/1993, determine an area of national park approximately 229,000 hectares. The decision as the basis to manage its definitive boundaries then in June 23, 1999 confirmed by the new Minister of Forestry and Plantations, through Decision No. 464/Kpts-II/1999 with an area of 217.991.18 hectares. Meanwhile Forest Act Number 41 of 1999 and Environment Act Number 32 of 2009 both of them confirmed to conservation law toward sustainable development program (Acciaoli, 2008; *UU RI No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, 2009, *UU RI No. 41 Tahun 1999 Tentang Kehutanan*, 1999).

The situation and condition of the protected forest area of the Lore Lindu National Park along with the problem rises, it is necessary to view the policy conducted by the government in carrying out development. Because development policy during

the time seems to be deny indigenous rights over natural resources (Siscawati, 2014), enacting national park at least had the colouring and affect the communities existence (Harwell and Lynch, 2002a).

From a view of government concerning the previous forest law seen is not in accordance with the demands of the development of this currently who desires the preservation of re forest protection effectively even more resistant enhanced by communities surround the national park (Golar, et al., 2017; Mappatoba et al., 2017a), the new one enact Law No. 5 of 1990 Concerning Conservation over Natural Resources and Its Ecosystem was also debatable. The issue is whether the legislation or the new can maintain the preservation of the national park is effectively, if not what are the factors that influence (*UU RI No.5 Tahun 1990 Tentang Konservasi Sumber Daya Alam dan Ekosistem*, 1990).

## 2 METHOD

Research locations is village of Toro, sub district of Kulawi. This location is enclave of the Lore Lindu National Park. The reason that this choice of location because the area of the Lore Lindu National

Park is an area that has been designated as a national park in which there is a protected forest area is quite extensive and has the potential of sustainably (Hidayat et al., 2007; Jazuli, 2015).

The research is going to examine the issue of the effectiveness of the conservation of protected forest, then that becomes the area/region population is Lore Lindu National Park and its residents who lived around the area of the national park. The population was henceforth will be set in purposive sample of the total population with the consideration that the required data is limited and specialized nature, means the samples considered representative.

In addition to using secondary data in the form of research results, searches against rules with regard to material research, journal articles and experts, then this study also uses the primary materials participatory rural appraisal. Therefore to achieve the first goal (1), then the data collection was done with searches libraries especially legislation related to forestry. While the second goal (2), then the data collection is done by direct observation and interview with deep against the protected forest area include existing community conditions in the protected forest areas. In addition, the participatory rural appraisal conducted through small focus group discussion for certain group of the communities existing (Hertogh, 2018). Qualitative analysis using to know and describe whether the conservation of Lore Lindu National Park running effective or not in accordance with the applicable law (Zumbansen, 2009).

### **3 FINDING AND DISCUSSION**

#### **3.1 The Effectiveness of Article 33 Act No. 5 of 1999 Concerning Conservation in Lore Lindu National Park**

Article 33 of Conservation Act Number 5, 1990 stated: (1) any person prohibited from engaging activities that may result in changes to the integrity of the core zone of the National Park; (2) The changes of the integrity core zone referred to in par. (1) include reduce, eliminate functions as well as add other types of plants and animals that are not original; (3) any person prohibited from doing activities that are incompatible with the function and utilization of zones and other zones of national parks, forest parks, and theme parks.

The article mentioned above that the prohibitions are intended to alert any people to take any account

for conserving the national park, therefor any violation over article will be punished according to article 40 Act No.5 of 1990. The sanction is quite heavy whether imprisonment no longer than 10 (ten) years or a maximum fine amount Rp. 200,000,000.00 (two hundred million rupiah).

Even thought, since 28 years ago the court have never judge any case related the article 40 of the conservation law. There are many reason whether from a view of government or from the communities. Lack of legal resources as well as technology and information are moving forward with the legal communities needs.

Base on field trip, it is a contradiction between norm settled in the article 33 par. (1) and (3) of Act No.5 of 1990 and the fact that indigenouse people had had for a centuries using the area resources with their traditional knowledge. The norm of state law create with out considering the living law as one of the legal sources.

Theoretically, enforcement of the laws on anyway is an activity harmonize relationship describe values in the norms and behaviors as a steady value of the final stage of discussion to create, nurture and sustain peace association live (Allott, 1981a). Refere to this statement, the efforts of enforcement of the conservation law in Lore Lindu National Park means an effort to synchronize between the norms or rules stated in legislation and human behavior. In the sense that it should function in accordance with the provisions set forth in Act No. 5 of 1990.

The efforts of law enforcement, in particular Act No. 5 of 1990 in Lore Lindu National Park, encountered several obstacles as part mentioned above, such as less appropriate device supporting legislation such as ranger and equipment with a means any of its support.

The other problem is a synchronization among related regulation due of article 42 of the Act No. 5 of 1990 stated, "all the laws and regulations in the areas of conservation of natural resources, the ecosystem and biodiversity that has been there, not in conflict with this act, remain valid until the promulgation of the new implementation regulations based on law". The article potentially raise an uncertainty because law enforcement ought to be guaranty about the certain regulation that have to be complied by all citizen or equality before the law. As mentioned article 33 supported by article 40 mean every violation related conservation has to be covered by the both article, so article 42 reduce these previous article.

Synchronizing with the level of horizontal and vertical in procedures of enforcement used mechanism of network system, such Penal Code (KUHP), Act No. 41 of 1999, Act No. 32 of 2009 and Government Regulation No. 28 of 1998, theoretically these regulation are mutual supporting but some time contradiction each other in the certain case of conservation.

The synchronizing that affect the effectiveness is also determined by the officer who exercised the regulation. Conservation that did not understood enough will be note as a usual problem of environmental that caused the related provision as supporting of conservation law are considered.

A series of provisions in the afore mentioned and observations researchers in the field have not yet implemented, this indicates that Act Number 5, 1990 and Act Number 41, 1999 have not been effective in law enforcement in Lore Lindu National Park. Accordingly, forest law article 81 Act Number 41 of 1999 as well as its explanation stated conservation law and other environment regulation in force prior to the enactment of these act are declared to remain valid. Means direction to conserve or protect the forest are still kept by the government. These conditions will make it difficult when it has come to the stage of formulation legal action. Article 33 Act No. 5 of 1990 paragraph (1) and (2), where the existence of the core zone is not clearly lying. Mean the article could not to be realized cause of its instrument in order to implement are not supported well.

However, there are several constrains in enforcing of the law in area of national park such as the completion of structuring and settlement area boundaries and the completion of structuring the limit area represents. This led to the still overlapping areas for the onset of development activities with other sectors, such as irrigation, roads, bridges, houses of worship and others (Ervin, 2003; Soehartono and Mardiasuti, 2014; Uyeda et al., 2016).

So far, the role of forestry officer (rangers) are very important in law enforcement, especially in the field of forestry, it is defined in article 77 par. (1) Act No. 41. 1999 mentioned that in addition to the investigating officials of the State police of the Republic of Indonesia, officials of the civil servants The specific scope of civil duties and responsibilities include the management of forests, as a special investigator was authorized as mentioned in the book of the law of criminal procedure. However, in practice these roles often failed to be implemented (Ronald B. Mitchell, 2007).

The ranger as one of an forestry officer hold responsibility toward the effectives conservation law

event, they have a multi task with less incentive. It is realised that high expected unbalance with the ranger needs will potentially their work quality. In fact, there are some ranger indicate involved in case encroachment of national park.

Although on July 18, 2000, residents of Toro witnessed the signing of the official of Toro recognition of indigenous territories village/Ngata Toro by head of the Lore Lindu National Park. The recognizes the existence of territories adapt Ngata Toro acres more or less 18,360 hectares are in a national park to be managed according the knowledge requirement of the indigenous regions of Toro, because it equal with zoning system in the area, even the zoning itself has not been established officially.

Unlike national park, the local zoning is composed of; (i) *wana Ngkiki* is equivalent to the core zone covering an area of approximately 2,300 acres., (ii) *wana rimba* zone equivalent 11,290 acres., (iii) *pangale* equivalent of traditional utilization zone covering an area of approximately 2,950 hectares, (iv) *oma* equivalent of intensive utilization zone with regard to land tenure system wisdom of Toro 1,820 hectares, including approximately 18,000 acres in the implementation-defined by the Central Government as a national park in 1993 (Biagioni et al., 2016a).

The setup area and division of zoning is still in the stage of settlement or proposal for the promulgation of legal power in the form of a decision letter of the government. The complicated settlement of the area are often caused the communities especially indigenous people marked as the suspect of encroachment of the national park. Because they are supposed as a person who will destroy the park. While the people felt what they did as their custom for a long time to support their daily needs.

The potential failure of enforcement of environmental law, as good as any ruling regulation would be blunt when not counterbalanced and moral integrity of law enforcement officers. This could be due to the low level of welfare officers still as visible on the ground or because of lack of supervision from superiors.

Base on the above mention that the effectiveness of article 33 Act No. 5 of 1990 are related to the substance itself, including synchronizing with the other regulation related. Human resources as determinant factor that exercised the regulation. Any negligent and/or mistaken conducted by them will affect a whole system of the conservation law. That is proven article 33 having many constraint to enforce effectively.

### 3.2 The Factors Influenced Conservation of Lore Lindu National Park as Protected Forest

Theoretically, reviewed from the angle of its function then the law can serve as a means of social control, a means to make updates and also as a means to facilitate the process of social interaction (law as a facilitation of human interaction). The function of law in the expedited process are expected to be social interaction can create a harmonious reciprocal expectations (shared reciprocal expectations) between residents of the community and also with the norms that govern them (Friedman, 1986; Griggs, 2017; Ronald B Mitchell, 2007; Murray Li, 2000; Zumbansen, 2009).

With regard to the protection and preservation of the environment around the Lore Lindu National Park. According to the village head/Nagata Toro, residents on site research understand that protected forest and Lore Lindu National Park is important and it is a duty to maintain and keep the preserved (interview, head village of Ngata Toro).

So far, communities of the village there is only a small portion of forest cleared around joint limits pal of national park which is a security zone for the village which lies at the bottom of the garden area (the *Lore Lindu* National Park). Encroachment of the national park happened because the acreage of forests for other uses that are located around the protected forest is forbidden to be utilized by the villagers/*Ngata Toro* (interview with the head of the village/*Ngata Toro*).

Nevertheless the communities of Ngata Toro have known the importance of the existence of a protected forest or forest National Park. It is quite helpful in suppressing the action of forest encroachment. As the Government's attempt to disseminate the importance of the protection of the environment of the forest, the head of the Ngata Toro has attended several meetings both within the country and abroad (Birner and Mappatoba, 2002; Deschamps and Hartman, 2005; Glenk et al., 2007; Harwell and Lynch, 2002b).

As it has been expressed that the villagers/*Ngata Toro* generally edged livelihood as a farmer. According to the village head/*Ngata Toro*, the villagers in planting season was very busy due of taking care of his farm and after that they still maintain and keep the plants, so they didn't get to do other activities (interview with the head of the village/*Ngata Toro*).

However, other activities mentioned by the head of the village can be done that are not included in livelihood which remains however support can even

bring in profit personally like logging (forest), searching for rattan, and catches of protected animals (wildlife). The activity of searching for rattan and resin is only done at the time the villagers to cultivate his field is inactive or failed harvest due to the attack of pests or weeds, then only performed at certain seasons in case any order from buyer (trader gatherer) (Allott, 1981b; Glenk et al., 2007; Golar, et al., 2017; Mappatoba et al., 2017a).

Tree-felling activities (forest), spanking, and catching animals/endangered animals will cause damage to forests caused by changes that occur in natural forest ecosystems which resulted in the withdrawal of the value and function of forests as well as its environment. The occurrence of a change in the form of weak implementation of forest conservation by society in the village/*Ngata Toro* can be seen through some of the factors that affected it. Their behaviour can be described wether regard or disregard to the implementation of conservation in everyday life (Acciaioli, 2008; Allott, 1981b; Gantika and Wibowo, 2013; Ronald B Mitchell, 2007).

Based on observations made in the field of acquired data and information regarding the population growing rather than land increasingly narrower to meet the needs of their life. While acreage community garden is located in the area of the Lore Lindu National Park. The existence of the settlement communities that directly borders on the national park area is one of the threats to the preservation efforts of the middle of attempted. Economic conditions coupled with the relatively low they create opportunities to exploit the natural resources that exist in the national park. It is also supported by the culture of the society that are still profitable for his needs in natural resources available (Deschamps and Hartman, 2005; Glenk et al., 2007; Golar, et al., 2017; Haller and Galvin, n.d.; Harwell and Lynch, 2002b; Hidayat et al., 2007; Murray Li, 2000).

During the research in the field trip, researchers found people who carry a machine (chainsaw). He was just from a part of the village/*Ngata Toro*. As it known that *Toro* is also the enclave of national park so that the residents who brought the common tools used to cut or cut trees in the forest area without the permission of an authorized officer may be referred to as a criminal offence.

Both of the two important thing conservation and development including human being for example indigenous people who live surround the national park are equally into the main objective of national development of Indonesia. Violation toward the conservation law parallel with the government conservation policy, mean they need a balance to support each other.

The occurrence of illegal logging activities as well as taking wood or rattan good for purpose of living, for the manufacture of home and crafting needs (Mehring and Stoll-Kleemann, 2011) as well as for the needs of trades done by residents from outside the village/Ngata Toro, they entered the area of Toro in a way across the village (interview, head of sub village).

There are various indicators contribute the factor influenced of the conservation such economic, immigration, education, information and technology, culture, and personal behavior of national park ranger. The most factor is economic indicator that communities needs are related to fulfill their living with family needs. Increasing a member of family automatically has to be supported by income which limited in the scope of village. Natural resouces that available in national park that have for a long time used with tradional knowledge has become exploite to more economic reason.

Despite of the owners of capital are crucial in directing the activity of residents due to a dependency to capital owned by the entrepreneur (Herriman, 2017). This is one threat to conservation in Lore Lindu National Park, although this is an interact indirect personally. Activities the taking of rattan, wood and other forest products is done by the community around national parks besides because economic clash is also due to the request of the owners of capital (Mappatoba et al., 2017b). With his power, he will persuade the community to perform the retrieval of wood and rattan within the national park (interview, employment of rattan in river).

The level of community education village/Ngata Toro 58% or nearly two-thirds of the 567 families only educated primary school (elementary school), 30% are educated high school, junior high school, and College as well as 12% never school and/or did not finish elementary school. In general it can be inferred that the level of awareness of the law, especially with regard to Act No. 5 of 1990 and Act No. 41 of 1999 is still low. It is therefore in the several interview about understanding the meaning conservation law and forest law as well as environmental law, several of them have not comprehend enough. That is why exceptionally their behaviour tends to disobey the regulation than their customary laws (Fremerey, 2002; Mitchell, 2000; Painemilla, 2010; Plummer, 2005).

The above data show that the level of education of the community of the village/the relative low Ngata Toro, where most of the low educated, this reality may be suspected that an attempt to provide an understanding about the sense of the importance of the protection of natural resources, the ecosystem may experience barriers if the approach used only a

top down or follow orders legislation only (Blandy, 2016; Booth and Halseth, 2011; Ninan, 2012).

Indeed, commonly villagers/Ngata Toro saw that the woods around national park as well as land can be utilized for the benefit of their economies. Then the villagers through the village head to apply permit over forests to meet the needs life. Their application was received by the head of the national park in consideration that villager will support the conservation protected forest. In this case mutual relation between national park and the communities surround have had the conservation goal but in many cases it is quite difficult to realize as an ideal thing.

Then the factors above mentioned are also very influenced by the man behind the gun. The authority as the leading sector of the conservation in the national is national park authority (Balai Taman Nasional Lore Lindu). The institution equipped with division task as forest police or ranger. Unfortunately, the moral integrity and dedication of the rangers also remains questionable in several cases. Collusion between employers of illegal substances and the attendant rangers is still underway, as informed by one of the members of the community around the forest. Then based on the results of an interview with one of the investigating officers forestry Sigi, expressed that the involvement of persons who was the officer in a case of theft of forest products is very considerable constraints in the implementation of conservation in the national park (Fathoni, 2013; Ferry, 2012).

## 4 CONCLUSIONS

The main factors that affect the legal behavior of the communities against conservation law are more than fives factor such as the law it self, society, apparatus, equipment, and culture, even economic. There are interrelated each other to be a more influence action of law, a bundle of conservation regulation could not settle the communities problem in conserve the national park.

The effectiveness of the regulation not only determinate by law enforcement instrument because its have not been adequate as a means of supporting implementation, regulation, but the rule making have to be consider the living law as a part of communities culture. It is proven in this research the weak of substance of the law, disintegrated moral of the apparatus, and the equipment to support law enforcement un equal with the needs.

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