

## LEGAL PROTECTION OF OWNERSHIP OF PROPERTY RIGHTS CERTIFICATES IN FORESTRY CULTIVATION AREAS

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### Abstract

The background of this study examines the overlapping authority in determining forest areas and its implications for the legal protection of ownership of Land Ownership Certificates (SHM). This study found that overlapping authority occurred due to the absence of confirmation of forest area boundaries and systematic spatial planning, thus triggering conflict between communities that own SHM and forestry policies. The state has an obligation to protect community rights, including land rights as evidenced by SHM. The purpose of the study is to answer two things, first, to find out clarity about the factors that cause overlapping in determining forest areas in the Forestry Law, by analyzing the problems that arise from existing provisions. Second, the study looks at the form of legal protection provided by the state to the community in dealing with the problem of overlapping determination of forest areas in Kutai Kartanegara Regency. The type of this research is sociological legal research or Sociological studies. The research was conducted in the East Kalimantan Province, (East Kalimantan Province Environmental and Forestry Service, and the East Kalimantan Province Agrarian Spatial Planning Office/National Land Agency). The focus of this research was conducted in Sepati Village, Anggana District, Kutai Kartanegara Regency. This research will use selected respondents (purposive sampling) within the Kutai Kartanegara Regency in the area around the forestry cultivation area, namely Village Heads and Community Leaders. Specifically for respondents, researchers will conduct an interview process (deep-interview) including the use of snow-ball techniques with respondents who have a structured information network. The results of this study conclude that resolving overlapping authorities requires a comprehensive approach involving all related parties. The steps taken are comprehensive spatial planning, land dispute resolution, confirmation of forest area boundaries, strict law enforcement, strengthening institutions and non-litigation resolution.

**Keywords:** Forestry Cultivation Area, Land Ownership Certificate, Legal Protection, Overlapping Authority

## INTRODUCTION

The state has an obligation to provide legal certainty for holders of Property Rights Certificates (SHM) to be managed properly. This is in accordance with Article 6 of Law No. 5 of 1960 concerning Agrarian Principles which states that land has a social function. Various land functions that are utilized by the community include agricultural land, managed as ponds for shrimp cultivation and other natural products.

Forest areas in Indonesia have an important role in supporting ecosystem life and providing economic, social and environmental benefits for the community. Based on Law No. 41 of 1999 concerning Forestry, the state has the authority to determine forest areas as protected areas or limited utilization. One issue that often arises is overlapping land ownership in forest areas, especially in forestry cultivation areas.

Population growth in the forestry cultivation area is increasing and of course the need for land to be managed is increasing, the rapid economic growth is also one of the consequences of the exploitation of natural resources on land controlled by the community. One of the areas affected by the exploitation of natural resources is in Sepatin Village, Anggana Subdistrict, KutaiKartanegara Regency. The land owned by residents there is known to be included in the forestry cultivation area under the auspices of the Mahakam Delta so that the land managed by the community cannot be managed or even traded because every land transaction must hold a permit from the Ministry of Forestry. From this, the regulation results in social conflict between the community, the community and the company, and the community and the government. Then this will affect the effectiveness of the community's economy. If there is land ownership in the forestry cultivation area, the government should enclave or remove it from the forestry cultivation area so that it can be utilized by the surrounding community.

In terms of land tenure in forest areas, it is indeed something that is not right, however, in land tenure in forest areas there are exceptions. The exception is for the development of residential areas, changes in forest areas can be made by determining the transfer of forest functions, but not all types of forests can be converted, the types of forests that can be converted are production forest areas (Mahakam Delta Area) through the decision of the minister of forestry No. 70/Kpts-II/2001 concerning Determination of Forest Areas, Changes in the status and Function of Forest Areas, the status of the Mahakam Delta forest area is a production forest area, which means that the mahakam delta forest area can be converted into (HPK). Production forest converted into HPK is a production forest area that can be used for development outside of forestry activities. HPK can be in the form of unproductive or productive forest areas. HPK can be used for various purposes, such as transmigration development, settlement, agriculture, plantation. On the basis of this change in status, it benefits the community, especially the people of Sepatin Village who are transmigration residents from Sulawesi. The issuance of Property Rights Certificates in Sepatin Village began in 1950 until 1980 where the community there utilized the Mahakam Delta Forest area into residential areas, fisheries and agriculture as a source of community income until now.

However, in 2001 the Ministry of Forestry issued a Decree on the Determination of Forestry Cultivation Areas based on Decree of the Minister of Forestry No. 70/Kpts-II/2001 concerning Determination of Forest Areas, Changes in the Status and Function of Forest Areas, this is the basis of the Ministry of Forestry being too hasty without looking at government administrative maps and maps of residential areas. In terms of determining forest areas, the Forest Area Management Agency (BPKH) in determining forest areas should pay attention to the time of SHM determination, the legal basis for SHM issuance and proof of ownership. This needs to be done to prevent social conflicts in the community. The Forest Estate Management Agency (BPKH) as an institution responsible for the management of forest areas, is currently causing various polemics, one of which is the issuance of land certificates in the Forestry cultivation area which is claimed by the Forest Estate Management Agency (BPKH) that there are no land certificates in the area, various communities that long before the establishment of KBK, the community already had a land certificate issued in 1985 with the status of land as agricultural land, but this recognition is considered impossible and will never happen, because the Forest Estate Management Agency (BPKH) considers that for the land certificate process BPKH does not have the authority but has the authority to BPN as the institution responsible for issuing land certificates.

## RESEARCH METHOD

This type of research is sociological legal research or Sociolegal studies. Wheeler and Thomas cited by Banakar conceptualize socio legal studies as: an alternative approach that tests doctrinal studies of law. The word socio in socio legal studies represents the relationship between the context

in which the law exists (an interface with a context within which the law exists. That is why, when a socio legal researcher uses legal certainty theory for analytical purposes, they are not drawing attention to sociology or other social sciences, but to law and legal studies.

The research location was carried out in the East Kalimantan Province, (East Kalimantan Provincial Environment and Forestry Service, and the Regional Office of Agrarian Spatial Planning / National Land Agency of East Kalimantan Province). The focus of this research was conducted in Sepati Village, Anggana Sub-district, KutaiKartanegara Regency. This research will use selected respondents (purposive sampling) within KutaiKartanegara Regency in the area around the forestry cultivation area, namely the Village Head and Community Leaders. Specifically for respondents, researchers will conduct a deep-interview process including the use of snow-ball techniques against respondents who have structured information networks.

**Data Retrieval Techniques** This normative legal research, data is taken from library materials which are usually called secondary data, with the scope of primary, secondary and tertiary legal materials then studied and explored from these legal materials then also quoted theories or concepts from various literature, namely books, journals, papers, newspapers and other written works that have a relationship with the issues raised and researched.

The research will be carried out for 8 (eight) months starting from the preparation of research design, research design seminar, literature study, data collection, report preparation, and publication.

## RESULTS AND DISCUSSION

### Overlapping Authority in Forest Area Designation

Overlapping forest area designation is a condition where there are differences or discrepancies between the boundaries of forest areas officially designated by the government and claims or land use by communities, either individually or in groups. This condition is often a source of complex and prolonged agrarian conflict. There are several things that cause overlapping authority, including:

1. **Spatial weaknesses**  
Spatial planning that is not participatory and does not involve the community often results in the designation of forest areas that are not in line with the social and economic conditions of the community.
2. **Weak Law Enforcement**  
Weak law enforcement against spatial planning and forestry violations allows communities to claim or utilize forest areas.
3. **Conflict of Interest**  
Differences in interests between the government, companies and local communities often trigger conflicts.
4. **Climate Change**  
Climate change can trigger migration and changes in land use patterns, which can exacerbate conflicts.

### Legal Basis of Forest Area Monitoring Center

The confirmation of forest areas into residential areas can be done through the process of releasing forest areas. Forest area release can be carried out by the central government, local governments, and the Ministry of Environment and Forestry (KLHK). Forest area gazettelement is a series of activities aimed at providing legal certainty over the status, location, boundaries and extent of forest areas. These activities include designating forest areas, demarcating forest areas, mapping forest areas and determining forest areas. Based on data from the Ministry of Forestry, forest area data in Indonesia covers an area of 125,795,306 hectares with a boundary length of 373,828.44 KM consisting of 284,032.3 KM of outer boundaries and 89,796.1 KM of forest area function boundaries. As of December 2022, 332,184.0 KM (88.88%) of forest area boundary demarcation has been carried out, consisting of 242,387.8 KM (65%) of outer forest area boundary demarcation and 89,796.1 KM (24%) of forest area function boundary demarcation.

The realization of forest area determination until December 2022 is 99,659,996 Ha consisting of 2,328 units of Forest Area Determination Decree. Specifically for 2022, as a form of seriousness in completing the acceleration of forest area gazettelement, forest area gazettelement of 10,006,045 Ha consisting of 179 decrees has been achieved. There has been a significant increase in the area of forest area gazettelement in the last 10 years to a total of 79.2% of the total area of Indonesia's forest area. The remaining 26,137,830 Ha will be designated by 2023. The forest area in East and North Kalimantan managed by the Mahakam Delta is 110,153 hectares. However, based on the initial determination of the East Kalimantan Forest Area based on the Decree of the Minister of Agriculture

Number: 24/Kpts/Um/1/1983 dated January 13, 1983 concerning the Designation of Forest Areas in the East Kalimantan Province Area  $\pm$  21. 144,000 (Two Million One Hundred Forty Four Thousand) Hectares as a forest area, then in 2001 there was an additional forest area based on the Decree of the Minister of Forestry Number 79/Kpts-II/2001 dated March 15, 2001 concerning the Designation of Forest Areas in the East Kalimantan Province Area of  $\pm$  14,651,553 (Fourteen Million Six Hundred Fifty One Thousand Five Hundred Fifty Three) Hectares. The Mahakam Delta is located on the East Coast of Kalimantan Island with an area of 1,500 Km<sup>2</sup>.

The forest area is under the supervision of the Forest Area Stabilization Center (BPKH), which has the main task of structuring forest area boundaries and proposing changes in area functions based on laws and regulations. The legal basis for BPKH includes:

1. Law No. 41/1999 on Forestry  
This law regulates the designation, function, and management of forest areas, including production forest areas that can be utilized as cultivation areas. Adjustment of forestry cultivation areas for settlements must be done without damaging their ecological functions.
2. Government Regulation No. 23/2021 on Forest Management  
Provides guidance for BPKH in preparing forestry plans, including zoning aspects for settlement purposes in forestry cultivation areas.
3. Regulation of the Minister of Environment and Forestry (LHK) Number P.83/MENLHK/SETJEN/KUM.1/10/2016  
This regulation emphasizes the authority of BPKH in the process of mapping, verification, and proposals for changes in forest area designation.

### **Designation of Settlement Areas**

In determining the Forestry Cultivation Area for the concept of settlement, BPKH (Forest Estate Management Agency) has several foundations, namely the Laws and Regulations in the Forestry Sector: BPKH is authorized to manage forest areas in Indonesia, including production forest, protected forest, and conservation forest areas. Based on Forestry Laws and Regulations, BPKH is authorized to manage forest areas in Indonesia, including production forest areas, protected forests, and conservation forests. This authority includes forest management in KutaiKartanegara Regency. The Legal Basis:

1. Law Number 41 Year 1999 on Forestry: This law is the main legal basis for forest management in Indonesia, including the role of BPKH in managing production forests.
2. Government Regulation No. 23 of 2021 on the Implementation of Forestry: This Government Regulation further regulates forest management, including the role of BPKH in managing production forests, protected forests, and conservation forests.

Specifically for KutaiKartanegara Regency, the management of forest areas, both protected forests and production forests, is based on the Regional Regulation of East Kalimantan Province Number 1 of 2023 concerning the Regional Spatial Plan of East Kalimantan Province Year 2023-2042. This regulation regulates the spatial planning of areas in East Kalimantan, including KutaiKartanegara Regency. In this regulation, there is a division of forest areas that include production forests, protected forests, and conservation areas. BPKH has the authority to manage production forests in KutaiKartanegara Regency in accordance with this regulation. However, in its determination, the Forest Area Management Agency must pay attention to the principles of forest sustainability and environmental sustainability.

### **Legal Certainty of Ownership of Property Rights Certificates**

Indonesia is an archipelago rich in natural resources. Our laws stipulate that all natural resources in Indonesia, from land, water, to the wealth under the ground or in the air, belong to the state. So, the state has the responsibility to manage this natural wealth for the benefit of all Indonesian people. In general, land ownership by the community is an implementation of Law No. 5 of 1960 concerning Agrarian Principles in Article 6 which states that "All land rights have a social function". Based on its understanding, land ownership is a right to land that can be owned by individuals or legal entities.

Certificate of Ownership (SHM) has been the main reference in proving ownership of land. However, just as the law is dynamic, experts' views on the legal power of SHM continue to evolve. Strong Legal Certainty: The majority of legal experts are of the opinion that SHM provides very strong legal certainty for the owner. This is based on:

- a. Land Registration System

Indonesia adheres to a modern land registration system. Every parcel of land that has been registered will have a certificate issued. This system is designed to provide legal certainty for landowners.

b. Principle of Publicity

Article 3 of Government Regulation 24 of 1997 states that land registration is also to provide land information to the parties, both the government and the general public. Therefore, everyone has the right to request information from the Land Office and also has the right to request a land registration certificate (SKPT) containing the type of right, whether for the purpose of confiscation or litigation and so on. This means that information on registered land rights will be made public through the land book. This makes it possible for anyone to know who is the rightful owner of a parcel of land.

c. Negative Principle

Land certificates have negative legal force. This means that as long as there is no strong evidence to cancel the certificate, then the certificate is considered valid and legally binding. Land registration with a negative principle, meaning that not necessarily someone whose name is written on the land certificate is the absolute owner. If we look at Article 23 paragraph 2 or Article 32 paragraph 2 and Article 38 paragraph 2 that registration is a strong means of proof, and not written as the only means of proof.

Based on the results of research conducted in Sepatin Village, Anggana Subdistrict, KutaiKartanegara Regency, East Kalimantan Province in the form of According to the head of Sepatin Village, Anggana Subdistrict, KutaiKartanegara Regency, Mr. AriantoJuanda said that the people of Sepatin Village are transmigration residents who come from South Sulawesi, Java and Kalimantan. Sepatin Village has an area of 624.87 square kilometers with a population of 3,200 people. In addition to the Bugis tribe that dominates in this village, there are also Javanese and Banjar tribes. The majority of the population work as pond farmers, while some work as company employees and civil servants. The forest area in Sepatin Village is located in the Mahakam Delta area. The area of the Mahakam Delta is 150,000 hectares of 150,000 hectares. There are 16 hectares that are outside the area and which are currently residential areas in Sepatin Village. The Mahakam Delta area is a production forest area managed by the Delta Mahakam Production Forest Management Unit (KPHP). Here is a picture of the Mahakam Delta.

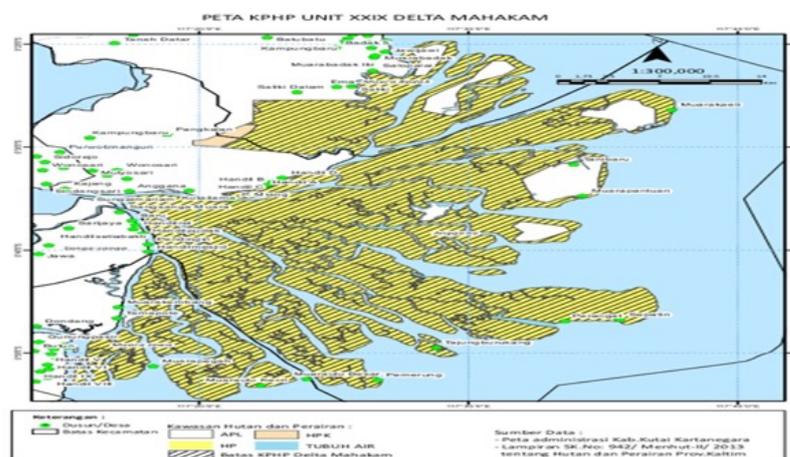


Figure 1. Mahakam Delta Area (Source: Map of the Mahakam Delta KPHP area)

If you look at the map of the Mahakam Delta area, Sepatin Village is included in the Mahakam Delta area. In relation to the ownership of a Certificate of Ownership (SHM) in Sepatin Village, Anggana Subdistrict, Mr. Juanda confirmed that the community has managed and controlled land in Sepatin Village, Anggana Subdistrict, since 1980 until now, and their land is mostly used as fish ponds and used as agricultural land.

Furthermore, based on the results of interviews with Mr. Hamsyah, related to ownership of land certificates located in the mahakam delta forest area, there are several certificates of land rights that have the status of property rights controlled by the community which claim that the certificate is canceled and not considered valid. Some of the certificates controlled by Hamsyah are based on Certificate of Title No. 049 in the name of Baba issued on November 09, 1995, Certificate of Title No. 103 in the name of Nisah issued on 27 Month 11 Year 1995 and Certificate of Title No. 050 in the

name of Rahmatiah. 050 in the name of Rahmatiah which was issued on November 09, 1995, the three lands each have the status of agricultural land and have been controlled before the issuance of the Decree of the Minister of Forestry Number: 70/Kpts-li/2001 concerning Determination of Forest Areas, Changes in Status and Functions of Forest Areas and strengthened by the Decree of the Minister of Forestry Number 32/Kpts-li/2001 concerning Criteria and Standards for Confirming Forest Areas.

The ownership of the Certificate of Ownership (SHM) controlled by Mr. Hamsyah is physical evidence that the land certificate was issued by the government/authorized official. These certificates were issued in the name of another person in 1995, but then the land changed hands to Hamsyah on the basis of a sale and purchase. Then from the foregoing that the land certificate controlled by Mr. Hamsyah has fulfilled the provisions of Government Regulation (PP) No. 18 of 2021 concerning Management Rights, Rights of Management, and Land Rights. 18 of 2021 concerning Management Rights, Land Rights, Flat Housing Units, and Land Registration Article 9 which reads "Land Registration is a series of activities carried out by the Government continuously, continuously and regularly including collecting, processing, bookkeeping, and presenting and maintaining physical and juridical data, in the form of maps and lists, regarding parcels of Land, Aboveground Space, Underground Space and units of flats, including the provision of evidence of rights for parcels of Land, Aboveground Space, Underground Space that already have rights and ownership rights to Flats and certain rights that encumber them ". The provisions in question have gone through land registration mechanisms such as Measurement and mapping, Land Registration and Transfer of Rights.

### **Forms of Legal Protection Provided by the State to the Community in Facing the Problem of Overlapping Forest Area Designation**

Based on the Regional Regulation of East Kalimantan Province Number 1 of 2023 concerning the Regional Spatial Plan of East Kalimantan Province Year 2023-2042 and the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number 4 of 2023 concerning the Management of Social Forestry in Forest Areas with Special Management, the state is responsible for residential areas designated as forestry cultivation areas in KutaiKartanegara Regency. The designation of residential areas within Forestry Cultivation Areas in KutaiKartanegara Regency is usually regulated through spatial documents such as the Regional Spatial Plan (RTRW). Based on the latest RTRW, KutaiKartanegara Regency has allocated a cultivation area of 1,606,763 hectares, which includes permanent production forests and other sectors to support sustainable development. Within this area, settlements can be established if they meet ecological, social, and governance requirements in accordance with regulations.

In managing forestry cultivation areas, local governments must ensure that environmental, economic and social functions are maintained. Therefore, any change in land function or establishment of residential areas requires in-depth studies and permits in accordance with laws and regulations. If there is a dispute over the issuance of a community-owned land certificate, it is as follows:

1. Clear and Transparent Spatial Planning:
  - a. The state has the responsibility to establish a clear and transparent spatial plan, so that the public can know with certainty the status and designation of land in KutaiKartanegara Regency.
  - b. Information on spatial planning should be easily accessible to the community, especially for those living in residential areas bordering forestry cultivation areas.
  - c. The state needs to ensure that land licensing and certification processes are conducted in a transparent and accountable manner, to prevent overlapping ownership and land disputes.
2. Dispute Prevention and Resolution:
  - a. The state must have an effective mechanism to prevent and resolve disputes over the issuance of land certificates in residential areas bordering forestry cultivation areas.
  - b. This mechanism must involve all relevant parties, including communities, local governments and relevant agencies.
  - c. In the event of a dispute, the state must ensure that the rights of communities, especially those who have long lived in the area, are protected and respected.

Disputes related to the issuance of land certificates often involve communities that have controlled the land for generations. When disputes occur, especially in areas whose status has changed, such as from forest areas to settlements, the issue of compensation becomes very crucial. The basic principle of compensation is to restore the injured party to its original condition before the loss occurred. In the context of land disputes, compensation must be fair, reasonable, and in accordance with the true value of the lost land. In determining compensation, it must pay attention to

its elements, which must look at the subjective and objective aspects, which are adjusted to the value of the land object, the value of use, the costs caused and immaterial losses.

Regarding the form of compensation, it is regulated in Article 76 Paragraph (1) of Government Regulation No. 39 of 2023 concerning Amendments to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, which reads "Compensation can be given in the form of money, replacement land, resettlement, share ownership and other forms agreed by both parties. The compensation is determined by an appraisal team or authorized institution. In relation to the appropriate compensation in the event of a dispute over the issuance of community ownership land certificates, especially in KutaiKartanegara Regency, it is determined based on the East Kalimantan Provincial Regional Regulation Number 1 of 2023 concerning the East Kalimantan Provincial Spatial Plan for 2023-2042.

This Ministerial Regulation regulates Social Forestry Management Approval in KHDPK, which is a Forest Utilization activity carried out by Social Forestry Groups through HD, Hkm, or HTR Management Approval, in Protected Forest or Production Forest areas in accordance with their functions. Based on these regulations, if there is a dispute over the issuance of land ownership certificates in KutaiKartanegara Regency, the community can file a compensation claim to the government and/or license holder. The compensation settlement procedure is regulated in accordance with the provisions of the applicable laws and regulations. Regarding the compensation settlement procedure in the event of a dispute over the issuance of a community-owned land certificate in KutaiKartanegara Regency based on applicable laws and regulations:

## CONCLUSION

Overlapping authority in the determination of forest areas occurs due to weak coordination between government agencies, lack of public understanding of the boundaries and functions of forest areas, the practice of using forest areas by communities for generations without official documents, and overlapping authority between the National Land Agency (BPN) and the Ministry of Forestry. In terms of establishing settlement areas within forestry cultivation areas, the government needs to strengthen regulations related to the process of releasing forest areas for settlement, especially in East Kalimantan Province, by clarifying procedures and standards for forest boundaries that can be used for settlement. Regional Regulation No. 1 of 2023 concerning the Regional Spatial Plan of East Kalimantan Province Year 2023-2042 as the legal basis for the government of East Kalimantan Province. In addition, forest area designation is often a complex issue involving various parties, ranging from the central government to local governments. This is caused by different interests, overlapping regulations, and lack of coordination between institutions. The comprehensive approach in this context means an effort to resolve the problem of overlapping authority in the determination of forest areas as a whole and involves various aspects. The steps taken are comprehensive spatial planning, settlement of land disputes, affirmation of forest area boundaries, strict law enforcement, strengthening institutions and non-litigation settlements. With a comprehensive approach and involving all parties, the problem of overlapping authority in determining forest areas can be resolved effectively.

Legal protection for the community is a very important state obligation. The state must continuously strive to improve the quality of legal protection so that people can live safely, peacefully and prosperously. Land use change from forest to settlement is a complex issue that requires careful handling and involves various parties. The state as the highest authority has a central role in ensuring that these changes are carried out wisely, fairly and sustainably. Settlement areas are the mandate of Article 28 H Paragraph (1) of the 1945 Constitution which states that every citizen has the right to be able to live in prosperity, physically and mentally, have a place to live, and get a good and healthy living environment. Legal protection for the community in facing the problem of overlapping zoning includes guarantees of legal certainty, fair dispute resolution, compensation, and protection of the rights of indigenous peoples. Government actions that have been implemented in the form of the Livable House program which is a housing program for low-income people to get a livable house, the Financing Facility Program provides easy access to housing finance through various credit schemes, and the Cities without Slums program to improve the quality of the settlement environment. Forms of state responsibility for residential areas provide representative land and ensure their needs are met. in general, the state's responsibility in providing residential areas is environmental protection and ensuring legal certainty. In addition, the State has a great responsibility in managing the conversion of forest areas into settlements. These responsibilities include environmental protection, social justice, sustainable development, and law enforcement.

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