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Research Article

A Critical Review of the Actualization of the Right to Control by the State Doctrine in the Policy on Revocation of Forest Area Permits/Concessions

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ABSTRACT

The Right to Control by the State (Hak Menguasai Negara or HMN) is a doctrine derived from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which asserts that the land, water, and natural resources contained therein shall be controlled by the state for the greatest benefit of the people. In its decision, the Constitutional Court explained that the phrase "controlled by the state" reflects political democracy, whereby citizens entrust their sovereignty to the government in the management of natural resources.In exercising its authority, the government issued the Decree of the Minister of Environment and Forestry No. 01/2022 concerning the Revocation of Forest Area Concession Permits. This decree raised issues regarding the boundaries of authority between the forestry and land regimes. The purpose of this study is to examine how the doctrine of HMN is implemented in Decree No. 01/2022.This research employs a normative legal approach, analyzing the text of laws and regulations, court decisions, and legal doctrines. The findings reveal that, aside from the fact that Decree No. 01/2022 does not genuinely revoke problematic forest area permits, its administrative function (*bestuurdaad*) remains far from definitive and final. From the perspective of policy function (*beleid*), the decree even intervenes in the management of former forest areas, thereby exceeding its jurisdiction. However, even with this intervention, there is no evident concrete commitment to prioritize the interests of the people.The conclusion drawn from this study is that Decree No. 01/2022, as a manifestation of the HMN doctrine, still falls short of being oriented toward the greatest prosperity of the people.

Keyword: Right to Control by the State; Natural Resources; People's Welfare

A. INTRODUCTION

At the beginning of 2022, President Joko Widodo announced at the State Palace the revocation of thousands of permits and land use rights over state-owned land. These included 2,078 mineral and coal mining permits, 192 forestry permits covering 3,126,439 hectares, and abandoned plantation business use rights (*Hak Guna Usaha* or HGU) totaling 34,448 hectares. This policy was based on the issuance of the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.01/MENLHK/SETJEN/KUM.1/1/2022 concerning the Revocation of Forest Area Concession Permits.

Following the President's announcement, the Minister of Investment/Head of the Investment Coordinating Board (BKPM) stated that after the revocation of these permits and concessions, the rights to manage the land would be reassigned

not only to other companies deemed credible but also to various community groups and small business groups. The companies, business entities, community groups, and community enterprises that will be entrusted to manage the areas affected by the revoked permits will first be selected by the Ministry of Investment/Head of BKPM.

The issuance of policies concerning the granting of permits and concessions over state land to be managed by legal entities or community groups including the revocation of such permits can essentially be interpreted as a form of actualization of the *Right to Control by the State* (Hak Menguasai Negara, HMN) doctrine. Within legal discourse, the HMN doctrine is believed to originate from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that: *"the land, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest benefit of the people."*

The phrase *"controlled by the state"* has been further interpreted by the Constitutional Court (*Mahkamah Konstitusi*, MK) in various rulings, which emphasize that state control must be understood in a broad sense, derived from the concept of the sovereignty of the Indonesian people.

The following are several Constitutional Court decisions that discuss the HMN doctrine in relation to Article 33 paragraph (3) of the 1945 Constitution:

a. Constitutional Court Decision No. 001-021-022/PUU-I/2003 regarding the Judicial Review of Law No. 20 of 2002 on Electricity, dated 21 December 2004.
b. Constitutional Court Decision No. 3/PUU-VIII/2010 regarding the Judicial Review of Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands, dated 16 June 2011.
c. Constitutional Court Decision No. 36/PUU-X/2012 regarding the Judicial Review of Law No. 22 of 2001 on Oil and Gas, dated 5 November 2012.
d. Constitutional Court Decision No. 85/PUU-XI/2013 regarding the Judicial Review of Law No. 7 of 2004 on Water Resources, dated 17 September 2014.

According to the Constitutional Court, the *Right to Control by the State* (HMN) constitutes a mandate granted by the people to the state to formulate policies (*beleid*), carry out administration (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) over branches of production and natural resources (SDA) for the greatest benefit of the people.

Based on this mandate, the state thereby holds the legitimacy to exercise authority in regulating natural resources within the framework of achieving the people's maximum welfare. Therefore, the substance of its implementation must not deviate from the constitutional path that has been collectively agreed upon.

Borrowing the analytical framework of Elinor Ostrom and Edella Schlager, the series of authorities encompassed within the doctrine of the *Right to Control by the State* (HMN) is essentially equivalent to the concept of *collective-choice actions* in the property rights regime over natural resources (Ostrom & Schlager, 1992). In such a regime, *collective-choice actions* refer to the authority to determine or design rights over natural resources at the operational level (*operational-level rules*), particularly concerning who may use the resources and how they may be utilized and managed.

Within this context, the state through the government as the holder of HMN has full authority to actualize *collective-choice actions*. The distinction, however, lies in the fact that the HMN doctrine, as derived from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, emphasizes the purpose of achieving *"the greatest possible prosperity of the people."*

Hariadi Kartodihardjo further underscores the relevance of state control over natural resources through the HMN regime, noting that the characteristics of natural resources both in terms of their biophysical nature and their fundamental properties significantly influence human relations. Natural resources can be classified into two categories: those that constitute the landscape, and those that serve as commodities, functioning as economic sources or factors of production. In both categories, particularly natural resources as part of the landscape, their existence undeniably impacts human interaction. Likewise, natural resources as commodities bring about consequences for the surrounding environment when exploited (Kartodihardjo, 2017).

In this regard, natural resources are not only crucial branches of production but also significantly affect the livelihoods of the broader population. Therefore, it is highly relevant for the state to exercise control over them.

Soeryo Adiwibowo views the *Right to Control by the State* (HMN) as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as merely a normative constitutional commitment (Adiwibowo, 2005). From a political ecology perspective, Adiwibowo perceives Article 33 paragraph (3) as a symptom of statization of access to and control over natural resources, which tends to negate the welfare of the people. HMN, in its excessive application, becomes nothing more than a mantra of state authority to exploit natural resources, while showing minimal concern for Indigenous Peoples (*masyarakat hukum adat*).

Through the HMN doctrine over natural resources, the property rights of Indigenous Peoples particularly their *ulayat* (customary) rights are no longer full or autonomous (Jamin, Hermawan, & Mulyanto, 2023). Indigenous Peoples themselves can essentially be understood as communities organized through associative patterns and possessing distinct

characteristics and traits unique to their members, which are not found in other communities in different regions. Therefore, Indigenous Peoples in specific territories should hold inherent customary or traditional rights that are preserved, developed, and passed down from generation to generation (Istijab et al., 2022).

In general, Indigenous Peoples (*masyarakat hukum adat*) reside in areas rich in natural resources. This condition often makes them targets of government and private sector programs aimed at the exploitation and development of natural resources. In the name of modernization and development, the existence of Indigenous Peoples is increasingly threatened by mining activities, deforestation, large-scale plantations, and infrastructure projects. These projects are often carried out without notification, consultation, or consent, resulting in adverse impacts on local communities and, ultimately, the displacement of Indigenous Peoples from their ancestral lands. As a consequence, various customary systems of forest tenure and resource management that have been practiced for hundreds of years are abolished in the name of national interest (Aditya & Al-Fatih, 2023).

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, when interpreted through Ostrom's *bundle of rights* theory, is viewed by Soeryo Adiwibowo as a turning point that has gradually displaced the role and control of Indigenous Peoples over natural resources. Their original position as *owners* has been reduced first to *proprietors*, then to *claimants*, followed by *authorized users*, and finally, to mere *entrants* on their own customary land (Adiwibowo, 2005). In other words, the presence of the state through the Constitution has, in fact, further weakened the *ulayat* (customary) rights of Indigenous Peoples, stripping them of the ability to actualize their rights to manage and utilize natural resources within their ancestral territories (Nur, Al-Fatih & Intania, 2024).

The elaboration provided by Soeryo Adiwibowo, using Ostrom's approach, outlines a hierarchical structure of rights holders over natural resources from the strongest to the weakest. The first three levels *alienation*, *exclusion*, and *management* constitute rights associated with *collective-choice actions*. The fourth and fifth levels *withdrawal* and *access* fall under *operational-level rules*.

According to Ostrom, *access rights* refer to the right to physically enter a location where the resources are located, while *withdrawal rights* are the rights to directly extract and benefit from those resources. *Management rights* provide the authority for rights holders not only to access and withdraw resources but also to regulate their use. *Exclusion rights* authorize rights holders to determine who may or may not access or use the resources. Finally, *alienation rights* grant the authority to transfer or assign all or part of the *exclusion* and *management* rights to other parties (Ostrom & Schlager, 1992).

In terms of identifying the subjects holding rights over natural resources (SDA), the hierarchy according to Ostrom and Schlager is as follows: *owner*, *proprietor*, *claimant*, *authorized user*, and *entrant*. An *owner* possesses the full set of rights, including access, withdrawal, management, exclusion, and alienation. A *proprietor* holds all these rights except alienation. A *claimant* has the right to manage natural resources (*management*), but not exclusion or alienation. An *authorized user* holds only *withdrawal* and *access* rights. Finally, an *entrant* holds the weakest position, with *access rights* only (Ostrom & Schlager, 1992).

When explained using Elinor Ostrom's framework, at a certain level, the concept of *Right to Control by the State* (HMN), as an actualization of Article 33 paragraph (3) of the 1945 Constitution, may be seen as placing the state in the position of an *owner* of natural resources. However, from a legal discourse perspective, this interpretation is rejected. Tri Hayati, for instance, argues that the phrase "controlled by the state" means that the state, as the holder of authority rights, exercises control, but does not possess ownership of natural resources (Hayati, 2019).

Ownership of natural resources located in outer space, on the surface, and beneath the earth belongs collectively to the entire Indonesian people. Therefore, the management of these resources must provide benefits to all citizens in order to achieve prosperity and welfare. According to Tri Hayati, the phrase *"for the greatest possible prosperity of the people"* implies public ownership of natural resources by the collective people. Consequently, it is the people as the true owners who delegate authority to the state to exercise control. Thus, the state, as an organization, is merely mandated by the people to manage and administer the use of these resources (Hayati, 2019).

In their study, Emily E. Harwell and Owen J. Lynch preceding Soeryo Adiwibowo voiced a similar perspective to that of Adiwibowo (Harwell & Lynch, 2002). Through a historical approach tracing natural resource management policies from the colonial period through the New Order era to the post-Reformasi period, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is viewed as merely a transformation and, in essence, a continuation of the *domeinverklaring* principle. The state, through the government, holds exclusive authority to control natural resources, including granting access and utilization rights according to its own preferences. Thus, it is not surprising that state policy choices have tended to prioritize large-scale commercial extraction of natural resources over the protection of subsistence-based resource management practices by local communities which are, in many cases, still accompanied by intimidation or even criminalization.

Against this discursive backdrop, it becomes relevant to assess the extent to which the policy of revoking forest area permits and concessions, issued by the Ministry of Environment and Forestry through Decree No.

SK.01/MENLHK/SETJEN/KUM.1/1/2022 concerning the Revocation of Forest Area Concession Permits, has progressed over the past three years. This is especially significant in light of the institutional changes under the current Prabowo-Gibran administration, wherein the Ministry of Environment and Forestry has been separated into two distinct entities: the Ministry of Forestry and the Ministry of Environment. Nevertheless, this restructuring does not absolve the new institutions particularly the Ministry of Forestry of their responsibilities, duties, and functions.

This policy, politically narrated by the Ministry of Environment and Forestry as an entry point for reorganizing the tangled system of permits and concessions in natural resource governance in order to uphold the constitutional mandate, warrants closer scrutiny. This is particularly true considering that policy instruments in the form of decrees are, by nature, unilateral actions, which not only require fulfillment of formal legal prerequisites but also carry legal consequences. A key question is the extent to which such governmental actions whether in granting or revoking permits or concessions remain within the constitutional framework of Article 33 paragraph (3) of the 1945 Constitution, namely that they must aim *"for the greatest possible prosperity of the people."* This is especially important when considering the very nature and legal meaning of the terms "permit" (*izin*) and "concession."

A *permit* is an exception granted to an otherwise prohibited act under prevailing laws and regulations, provided certain restrictions are observed and specific requirements are fulfilled (Hayati, 2019). As such, a permit may be denied if the criteria and conditions set by the government are not met. A permit functions as a preventive legal instrument because it is inseparable from the obligations and requirements imposed on the permit holder (Amiq et al., 2024). Conversely, a previously granted permit may be revoked if the conditions and criteria on which it was originally based are subsequently violated or no longer satisfied.

A *concession*, on the other hand, refers to a set of activities related to public interests that are carried out by third parties in lieu of the government, which would otherwise be responsible for such actions. This occurs when the government lacks the capacity to execute such functions itself, and thus grants permission to a non-governmental party typically a business entity to undertake them under certain conditions. Accordingly, while specific rights are granted to the concession holder, these are also accompanied by corresponding obligations. Concessions are therefore grounded in a mutual agreement in which the rights and responsibilities of both parties the government and the concession holder are clearly defined, such as in the case of natural resource management concessions (Hayati, 2019).

The discourse surrounding the *Right to Control by the State* (HMN) doctrine is certainly not a new topic within academic discussions. Generally, further elaboration of the HMN doctrine focuses on the philosophical meaning embedded in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, particularly concerning the position of the state and the government, the distinction between control and ownership, and the actualization of state authority in managing natural resources.

Tri Hayati explains that in the context of the state and government's position, a distinction can be drawn from the meaning of the right of control (Hayati, 2019). According to her, Article 33 paragraph (3) implicitly provides the state with *authority rights* over natural resources. The government, as the administrator of the state, then exercises management based on *exploitation rights*. Thus, it is indirectly affirmed that "control" by the state does not equate to ownership, as *resource rights* over natural resources belong to the people of Indonesia as a whole.

Chronologically, these rights are then delegated: the people's ownership rights are entrusted to the state in the form of authority rights, followed by exploitation rights by the government, and subsequently implemented through the granting of *economic rights* to business actors either government entities or private sectors. Within this context, this study explores how exploitation rights are exercised in government decisions, particularly in the issuance of the Minister of Environment and Forestry's decree to revoke forest area permits and concessions.

Furthermore, the delegation of economic rights as a derivative of the government's exploitation rights especially when granted to government-affiliated entities such as State-Owned Enterprises (BUMN) has received specific attention from the Constitutional Court (MK). This relates to determining which governmental entities must retain both *exploitation* and *economic rights*.

Simon Butt and Fritz Edward Siregar, in their study of Constitutional Court Decision No. 36/PUU-X/2012 concerning the dissolution of the Executive Agency for Upstream Oil and Gas (BPMIGAS), criticize the Court's reasoning. In that ruling, the Court stated that the agency failed to provide adequate state control, thus violating Article 33 paragraph (3) of the 1945 Constitution (Butt & Siregar, 2015). The Court emphasized that the state must maintain full control over the oil and gas sector, including the direct management of upstream activities. It found that BPMIGAS lacked sufficient supervisory capacity as it merely acted as a regulator without direct authority to conduct operations.

Simon Butt and Fritz Edward Siregar interpreted this view as reflecting an overly narrow interpretation of the HMN doctrine, as it focuses exclusively on direct state operation. Such an interpretation, they argue, could hinder

private sector participation and foreign investment in natural resource management.

In this context, the present study focuses only on the government's *exploitation rights* as reflected in the Minister of Environment and Forestry's decree on the revocation of forest area permits and concessions, rather than on the authority to issue such permits.

On the other hand, there is a prevailing phenomenon in which business actors particularly private entities, including foreign companies often benefit disproportionately from natural resource management contracts, thereby disregarding the principle that natural resources should be utilized for the greatest possible prosperity of the people (Desafitri RB & Deliaantoro, 2024). Linda Desafitri RB and Deliaantoro emphasize that this represents a key challenge in the implementation of Article 33 paragraph (3) of the 1945 Constitution, where, in practice, natural resource contracts often face conflicts between state-based management and free market mechanisms, lack of commitment to environmental protection, and discrepancies between national regulations and global commitments to sustainable development.

To address these challenges, policy reform is necessary, particularly one that integrates the principles of Article 33 paragraph (3) of the 1945 Constitution into the regulatory framework for natural resource governance. Equally important is the need for policy reforms that incorporate environmental sustainability considerations in every regulation concerning natural resource management and that strengthen public participation in decision-making processes. In other words, the goal of the recommended policy reforms is to ensure that natural resource management aligns with the constitutional spirit delivering benefits for public welfare and safeguarding environmental sustainability.

In relation to this, the present study further examines how the Minister of Environment and Forestry's Decree on the Revocation of Forest Area Concession Permits reflects the constitutional spirit, particularly the goal of achieving public welfare or the greatest possible prosperity for the people.

In response to the frequent preferential treatment of foreign private entities, the discourse on strengthening State-Owned Enterprises (BUMN) has emerged as a relevant proposal. This is to ensure that control over key productive sectors that impact the livelihoods of the population remains in the hands of the state, in accordance with the constitutional mandate. Strengthening BUMN is seen as a critical step to ensure that the management of natural resources and other strategic sectors remains under state control (Barata, Octora, & Heliaantoro, 2024). Such strengthening may also serve as a precautionary alternative, emphasizing the importance of carefully drafting investment contracts so that they do not compromise national sovereignty and remain aligned with the principles of Article 33 paragraph (3) of the 1945 Constitution.

A relevant example in this context is the foreign investment contract in the case of PT Freeport Indonesia. The model of foreign-controlled mineral resource management through a contract of work (*kontrak karya*) essentially poses a threat to state sovereignty over natural resource wealth, which according to Article 33 paragraph (3) should be controlled by the state for the benefit of the people (Zada et al., 2021). Therefore, the renegotiation between the Government of Indonesia and PT Freeport, which resulted in the state acquiring a 51% share, can be seen as a significant step toward realizing state sovereignty over natural resource governance.

Furthermore, following the acquisition of a majority share by the Indonesian government, the management of Freeport transitioned from a *contract of work* scheme to a *Special Mining Business License* (*IUPK*), which conceptually places the government in a superior position over the license holder. In other words, this transition illustrates a shift from bilateral contractual arrangements to state-regulated licensing mechanisms.

Based on the aforementioned context, this study focuses on analyzing the actualization of the *Right to Control by the State* (HMN) doctrine as mandated by Article 33 paragraph (3) of the 1945 Constitution, particularly in its implementation by the government through the mechanism of permit revocation. This actualization is reflected in the issuance of Ministerial Decree No. SK.01/MENLHK/SETJEN/KUM.1/1/2022 concerning the Revocation of Forest Area Concession Permits by the Ministry of Environment and Forestry. The distinction of this study lies in its focus on the government's authority to revoke permits or concessions, assessed in terms of the Ministry's institutional capacity to represent the state's *authority rights*, especially regarding *exploitation rights*.

B. RESEARCH METHOD

This research, which investigates the actualization of the HMN doctrine in the policy of forest area permit and concession revocation through Ministerial Decree No. SK.01/MENLHK/SETJEN/KUM.1/1/2022, employs a normative legal research method. The research involves examining legal theories, principles, norms, and a set of policies and regulations related to the HMN doctrine in natural resource governance. Consequently, this study relies on secondary data in the form of legal materials comprising primary, secondary, and tertiary legal sources. Given that the primary data analyzed are secondary in nature, data collection is conducted through literature review. The data are then analyzed qualitatively using a critical legal approach, which closely examines the relationship between legal doctrine and its real-world application.

C. RESULTS AND DISCUSSION

1. The Philosophical Meaning of the Right to Control by the State (HMN)

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states: *"The land, the waters, and the natural resources contained therein shall be controlled by the state and utilized for the greatest possible prosperity of the people.* These two aspects "controlled by the state" and "for the greatest possible prosperity of the people" are inseparable, as they form a unified and systematic normative framework (Hayati, 2019).

The Right to Control by the State (HMN) serves as an instrument to achieve the collective national goal of realizing the greatest prosperity for the people through the management of existing natural resources (Laturette et al., 2021). The state's authority to control natural resources is ultimately directed toward ensuring the welfare of the people, as ownership of these resources resides with the people themselves. It is the people, collectively, who delegate the mandate of control to the state, and subsequently to the government, to manage Indonesia's natural resources.

Ahmad Redi describes these two components as the "spirit" of the exploitation of land, water, and natural wealth. He argues that every effort to utilize natural resources must be guided by a fundamental philosophical question as outlined in Article 33 paragraph (3) of the 1945 Constitution specifically, whether such exploitation reflects both state control and the pursuit of the greatest possible prosperity for the people (Redi, 2015).

Moreover, as a provision enshrined in the Constitution, the doctrine of the Right to Control by the State (HMN), according to FX Adji Samekto and Yasyifa Fatharani, essentially constitutes a *grundnorm* a fundamental norm which serves as the highest source of legal obligation, accepted by every citizen without question due to its a priori nature. The substance of a *grundnorm* is therefore not established by the state through a formal constitutional or political process, but rather exists as an inherent principle. HMN is also considered a legal principle, as it represents a set of values that must serve as a guiding norm in the execution of any legal action (Samekto & Fatharani, 2025).

In the explanatory section of Article 33 paragraph (3) of the 1945 Constitution now repealed following constitutional amendments it was affirmed that land, water, and the natural resources contained within the earth are the foundations of the people's prosperity, and thus must be controlled by the state and used for the greatest benefit of the people. Although this explanation remains abstract, a review of the constitutional drafting process reveals that in matters of social justice, the government must act as a supervisor and regulator, as noted by A.B. Kusuma and quoted by Maria S.W. Sumardjono (Sumardjono, 2014).

In accordance with this constitutional mandate, the utilization of both renewable and non-renewable natural resources must be carried out in an integrated, optimal, efficient, transparent, sustainable, and environmentally responsible manner, while also ensuring fairness in the process (Rahayu et al., 2023).

Meanwhile, according to Koeswahyono, who cites the inaugural speech of Professor Maria S.W. Sumardjono, the concept of the Right to Control by the State (HMN) implies a formal delegation of authority from one party to another. This delegation consists of rights and powers granted to public officials to demand compliance in accordance with the laws and regulations established within the scope of their public duties. The state obtains such authority because not all issues can be handled independently by society. Therefore, the state's function is complementary when society is able to resolve its own matters and interests, there is no need for state intervention (Koeswahyono, 2008).

Furthermore, Maria S.W. Sumardjono, drawing on the views of Frans Magnis Suseno, emphasizes the principle of delegated authority as the foundational principle underlying the HMN doctrine. This principle holds that society delegates its authority to the state, represented by the government, which then exercises that authority to protect the lives and property of its citizens (Sumardjono, 2014). The relationship between citizens and the state is a trust-based relationship, where the authority of the state is limited by its purpose namely, to serve the public (Koeswahyono, 2008). In this context, the goal is the greatest possible prosperity for the people. In other words, the HMN is derived from the people's mandate to the government based on a principle of trust, which demands accountability for the delegation of that authority.

The interpretation of HMN, which essentially refers to the authority held by the state, has been further elaborated by the Constitutional Court (Mahkamah Konstitusi/MK). As the institution responsible for interpreting the Constitution, the Court has, in a number of decisions reviewing the constitutionality of laws related to natural resource management, explored the phrase “controlled by the state” in Article 33(3) of the 1945 Constitution as a concept of public law grounded in the principle of popular sovereignty, as enshrined in the Constitution both in political (political democracy) and economic (economic democracy) domains.

According to the principle of popular sovereignty, the people who collectively form the nation and are recognized as the rightful owners must manage natural resources by and for themselves. The Constitutional Court has affirmed that the phrase “controlled by the state” must be understood as encompassing a broad scope of state authority derived from the concept of the sovereignty of the Indonesian people. Accordingly, the Court has derived the HMN as the delegation of a mandate to the state to formulate policy (*beleid*), administration

(*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and oversight (*toezichthoudensdaad*) of the natural resource production sectors for the purpose of achieving the greatest possible prosperity of the people.

Regarding the management function, it refers to the state's direct involvement in managing natural resources (NR) to generate greater benefits, which in turn are intended to achieve the greatest possible prosperity of the people. Meanwhile, the regulatory function refers to the legislative authority exercised jointly by the House of Representatives (DPR) and the government, or by the government alone. Next, in the policy-making function, it is evident that the government holds the authority to decide on public policies. As for the administrative function, it can be concluded that the government, in exercising its authority, may both issue and revoke licenses and concessions. The supervisory function represents the highest level among these functions, carried out by the government to ensure that all state control functions over natural resources are implemented in accordance with the goal of achieving the greatest prosperity for the people (Sumardjono, 2014).

Thus, it becomes clear that there is a correlation that connects these five functions as an integrated whole, guided by the constitutional spirit that mandates the state to control natural resources solely for the purpose of realizing the greatest prosperity of the people (Sumardjono, 2014). In other words, the state's authority over natural resources is not unlimited, as such authority is constrained by its objective namely, to serve the greatest benefit of the people.

2. Minister of Environment and Forestry Decree No. SK.01/2022: HMN in Principle, but Lacking Assertiveness in Its Administrative Function

Minister of Environment and Forestry Decree No. SK.01/MENLHK/SETJEM/KUM.1/1/2022 on the Revocation of Forest Area Concession Permits, signed on January 5, 2022, contains information on the revocation of 42 licenses and concessions that had been annulled during the period from September 2015 to June 2021 (as listed in Annex I), and the revocation of an additional 192 licenses and concessions officially revoked as of January 6, 2022 (as listed in Annex II).

Specifically, Clause TWO of the Decree stipulates that the decisions of the Minister of Forestry and the Minister of Environment and Forestry that were revoked during the period of September 2015 to June 2021 amount to 42 licenses and concessions, covering a total area of 812,796.93 hectares. Clause THREE states that the decisions of the Minister of Forestry and the Minister of Environment and Forestry, effective as of January 6, 2022, and revoked under this decree, include 192 corporate licenses covering an area of 3,126,439.36 hectares.

The use of the terms "Ministry of Forestry" and "Ministry of Environment and Forestry" refers

to the forestry permits/concessions issued both during the time when the Ministry of Forestry operated independently and after its merger with the Ministry of Environment under President Joko Widodo's administration. As is currently known, under the Prabowo administration, these ministries have been re-separated into individual institutions.

Through this decree, the Minister of Environment and Forestry also instructed several Directorates General under the Ministry to issue revocation decisions for each company among the 192 licenses and concessions mentioned in Clause THREE. This is specified in Clause FOUR, which states that the Minister instructs the Director General of Sustainable Forest Management, the Director General of Forestry Planning and Environmental Structuring, and the Director General of Natural Resources and Ecosystem Conservation to issue, in the name of the Minister, individual revocation decisions for each license/concession-holding company.

In addition, the Decree also instructs several Directorates General to conduct a licensing evaluation, at the very least for those licenses listed in Annex III, amounting to 106 licensing decision units. As stated in Clause FIVE of the Decree, the Concession Licensing Control, Structuring, and Revocation Team, together with the Director General of Sustainable Forest Management, the Director General of Forestry Planning and Environmental Structuring, and the Director General of Natural Resources and Ecosystem Conservation, are mandated to evaluate and review business permits, starting with at least 106 licenses/concessions covering an area of 1,369,567.55 hectares as listed in Annex III of this Decree, in accordance with the provisions of prevailing laws and regulations.

As a policy product in the form of a Ministerial Decree, this Minister of Environment and Forestry Decree raises questions regarding its nature as an administrative decision (beschikking), which according to legal principles should be concrete, individual, and final when it comes to revoking forest area licenses/concessions. Although the Decree inventories a number of licenses/concessions in its annexes, it does not, in essence, directly target specific decision objects. In fact, the substance of this Decree combines actions of revocation and evaluation of the licenses/concessions in question. Moreover, the decision lacks finality, as following the issuance of Decree No. 01/2022, there remained an opportunity for clarification or verification by the licensed companies involved. Each case would then be determined individually as to whether the company listed in Annex II would have its license/concession revoked or not. Minister of Environment and Forestry Siti Nurbaya even explicitly stated during a hearing with the Indonesian House of Representatives (DPR RI) on January 25, 2022, that Decree No. 01/2022 was declarative in nature.

Kamarullah emphasizes that, in principle, a decision holds the characteristics of a legal norm

that is individual and concrete, derived from a set of general and abstract legal norms. To translate general matters into concrete events, decisions are issued so that these general occurrences may be implemented. A decision is said to be individual when it is not general, but specific, based on what it targets (Kamarullah, 2018). As formulated in Article 1, point 3 of Law No. 5 of 1986 on the State Administrative Court, a decision of a state administrative official is defined as a written determination made by a state administrative official that is concrete, individual, and final, which results in legal consequences for a person or a legal entity.

If examined closely, the concrete, individual, and final elements required to give rise to legal consequences from Decree No. 01/2022 are, in fact, absent. Its effect is limited merely to serving as a basis for internal units within the Ministry of Environment and Forestry (MoEF) to follow up with further administrative decisions that are more concrete and definitive in nature. This is clearly stated in Clause FOUR of Decree No. 01/2022, which explicitly orders the Director General of Sustainable Forest Management, the Director General of Forestry Planning and Environmental Structuring, and the Director General of Natural Resources and Ecosystem Conservation to, on behalf of the Minister, issue a Decision on the Revocation of Licenses for each company holding a license as referred to in Clause THREE (Annex II).

In other words, the actual and definitive revocation of the 192 licenses/concessions will only occur once the Director General of Sustainable Forest Management, the Director General of Forestry Planning and Environmental Structuring, or the Director General of Natural Resources and Ecosystem Conservation issues an individual revocation decree for the respective licenses/concessions. Thus, such revocation does not automatically take effect by virtue of the Decree itself namely, Decree No. SK.01/MENLHK/SETJEM/KUM.1/1/2022 on the Revocation of Forest Area Concession Licenses.

This is further evidenced by the fact that out of the 192 licenses or companies whose concessions were supposedly revoked under Clause THREE of Decree No. 01/2022, after verification by the Task Force for Land Use and Investment Restructuring, only 15 units of licenses/concessions were definitively revoked. Among those, three involved forest release permits covering a total area of 84,521.72 hectares. The remaining 12 were companies holding Timber Forest Product Utilization Business Licenses or Forest Utilization Business Permits (IUPHHK/PBPH), covering a total area of 397,677 hectares. This was revealed by the Minister of Investment/Chair of the Investment Coordinating Board (BKPM), who also serves as the Chairperson of the Land Use and Investment Restructuring Task Force, on March 31, 2022 (Zazali, 2022). The Task Force was established through Presidential Decree No. 1 of 2022, issued

on January 20, 2022 after the issuance of the Minister of Environment and Forestry's Decree No. 1/2022 on January 5, 2022. One of the duties of the Task Force is to provide recommendations to the Minister of Investment/Head of BKPM regarding the revocation of forest area licenses/concessions.

Due to the unclear legal consequences that result from this decree, Decree No. 01/2022 as an actualization of the doctrine of State Control Rights (HMN), specifically in the context of the administrative function, lacks clear legal legitimacy. In fact, the state holds a constitutional right and obligation to ensure that natural resource management policies not only aim to achieve the greatest benefit for the people, but also adhere to the principle of legal certainty. In this regard, every government decision must be based on a clear and firm legal foundation, and furthermore, must provide clarity in its legal consequences.

As Jimly Asshiddiqie has stated, the principle of legal certainty is part of the broader concept of the rule of law, which demands that all actions by public authorities must be lawful and legally accountable (Asshiddiqie, 2006). Various other legal scholars have also asserted that the principle of the rule of law is generally aimed at protecting citizens from chaos and disorder, granting them the freedom to pursue their intentions based on rational considerations, and ensuring protection from arbitrary acts (Rofingi, Rozah & Asga, 2022).

According to Hariadi Kartodihardjo, the absence of legal certainty leads to legal loopholes, such as the lack of explicit criteria for license issuance, including defined timelines or standardized official fees. This opens a wide scope for discretion on the part of the licensing authority namely the government and also creates opportunities for license recipients to influence decisions related to the size and scope of the license/concession without sufficient accountability mechanisms (Kartodihardjo, Nagara, & Situmorang, 2015). The same logic also applies in the case of license revocation.

3. Ministerial Decree of Environment and Forestry No. 01/2022: State Control Rights (HMN) that Exceed the Sectoral Authority of Forestry

The scope of permits and concessions discussed in Decree No. 01/2022, although concerning forest areas, does not necessarily mean that all of them still fall under the domain of the Ministry of Environment and Forestry (MoEF). The authority of the MoEF over forest areas is limited to those areas that are still legally and formally designated as forest areas. In other words, forest areas that have been reclassified as non-forest areas are no longer subject to the forestry regulatory regime but instead fall under the land tenure regulatory regime.

Only after such reclassification is it possible for the land to be assigned a legal basis of ownership through the land registration mechanism as regulated under Law No. 5 of 1960

concerning the Basic Agrarian Law (UUPA). In land law, in order for land to obtain legal certainty, land registration must be carried out.

Through land registration, relevant parties can easily identify the legal status or standing of the land, its location, size, boundaries, ownership, and any legal encumbrances attached to it (Ardani, 2020). This is clearly stipulated in Article 19 paragraph (1) of the UUPA, which states that to guarantee legal certainty, the government shall conduct land registration throughout the territory of the Republic of Indonesia in accordance with the provisions established by Government Regulation. Similarly, the technical definition of land is also regulated in Government Regulation No. 24 of 1997 concerning Land Registration, where land is defined as a portion of the earth's surface that forms a unified land parcel with defined boundaries (Mahfud & Chin, 2024).

The UUPA also contains several foundational principles, one of which affirms the doctrine of State Control Rights (HMN), as stipulated in Article 2 of the UUPA. This provision emphasizes that the highest-level control over land, water, and outer space including the natural resources contained therein is held by the state (Wibowo & Mariyam, 2021).

Meanwhile, the regulation of the forestry sector, as governed by Law No. 41 of 1999 concerning Forestry (UUK), although it allows for the existence of private forests (*hutan hak*), is in practice predominantly focused on the regulation of state forest areas. The concept of state forest as defined in the UUK refers to forests located on land not encumbered by land rights. In practice, this is identical to forest areas in the legal-formal sense. The definition of state forest is provided in Article 1 point 4 of the UUK, and further affirmed in Article 5 paragraph (1), which categorizes forests based on their legal status as either state forest (*hutan negara*) or private forest (*hutan hak*). Conversely, the definition of private forest is found in Article 1 point 5 of the UUK, and is understood as the opposite of state forest.

In other words, this classification of forest by legal status serves as a demarcation of institutional authority between the Ministry of Environment and Forestry (MoEF) and the land affairs sector (Ministry of Agrarian Affairs and Spatial Planning/National Land Agency ATR/BPN). When the forest, based on its legal status, is categorized as private forest, then the ATR/BPN holds the authority to grant land rights therein. Therefore, for areas that have been formally released from their status as forest areas, the authority lies within the domain of the land affairs institution, not the forestry sector.

This holds true despite the increasingly concerning condition of Indonesia's forests. Over the span of two decades, from 2002 to 2020, according to Global Forest Watch, Indonesia has lost at least 9.75 million hectares of natural forest, placing the country among the top five globally in terms of forest loss (Mutawalli et al., 2023).

This issue is also reflected in Ministerial Decree No. 01/2022. While it is undeniable that the decree represents an effort by the government (through the MoEF) to address problems concerning forest area permits and concessions, it becomes ineffective when the object of the issue lies beyond the scope of its authority. In this context, the very essence of public policy which refers to the process or series of government decisions or actions designed to resolve public problems, whether real or anticipated loses its meaning (Wibowo, 2004).

As is known, out of the 192 permits/concessions listed in Appendix II of Ministerial Decree No. 01/2022, which were claimed to be subject to revocation, 137 of them were in fact definitive forest release permits issued for the purpose of oil palm plantation development (Wicaksono, 2022). This raises the question of whether the Ministry of Environment and Forestry (MoEF) still holds any relevant authority over such objects of decision, which are evidently no longer within the scope of its jurisdiction. It is also possible that among the 137 released forest area permits, some have already been granted land rights in the form of plantation Business Use Rights (HGU).

The issuance of SK 01/2022 as a form of policy that exceeds its legal authority has been confirmed, in part, by several lawsuits filed by companies holding forest release permits or concessions. These lawsuits were filed against follow-up decisions issued based on the FOURTH dictum of SK 01/2022, and some were won by the plaintiffs in the administrative court. One such case involved PT. Kartika Cipta Pratama, a company listed in Appendix II of SK 01/2022, holding a permit located in Boven Digoel Regency, Papua Province.

Following the issuance of SK 01/2022, the MoEF issued another decree SK No. 1157/MENLHK/SETJEN/PLA.2/11/2022 concerning the Regulation and Structuring of the Forest Release Holder on behalf of PT. Kartika Cipta Pratama. This decree instructed the company not to clear forested land within the released area for palm oil plantation activities. However, the company had previously obtained its forest release permit in 2012 for the purpose of converting the area for palm oil plantation development. That permit was issued by the Ministry of Forestry under SK No. 127/Menhut-II/2012, titled *Forest Release of Convertible Production Forest Area for Palm Oil Plantation on Behalf of PT. Kartika Cipta Pratama Located in Mandobo and Jair Districts, Boven Digoel Regency, Papua Province with an Area of 39,338 Hectares*.

In response to this regulation and structuring decree, PT. Kartika Cipta Pratama filed a lawsuit at the Jakarta Administrative Court (PTUN), which was decided on September 5, 2023. Although the Jakarta PTUN initially dismissed the lawsuit, the Jakarta High Administrative Court (PT TUN) ruled in favor of PT. Kartika Cipta Pratama on appeal. The

decision PT TUN Jakarta No. 353/B/2023/PT.TUN.JKT, dated February 19, 2024 explicitly stated that a forest area whose status has been officially released ceases to fall under forestry governance. In other words, land that has been released from its forest status is no longer part of the forestry domain and has changed its function to a non-forest area, intended for development outside of forestry activities.

Therefore, it can be concluded that once an area's status has changed from forest to non-forest, the Ministry of Environment and Forestry no longer holds the authority to regulate or manage that area. It is no longer appropriate for the Ministry to assert jurisdiction over such areas as if they remain part of the forest estate.

Moreover, although Ministerial Decree No. 01/2022, in its normative claim, was also intended to serve the welfare of the people (the greatest possible prosperity for the people), there appears to be no concrete evidence that the policy's follow-up actions would prioritize the allocation of the revoked forest area permits or concessions to the public. On the contrary, various government representatives have explicitly stated that the revoked permits or concessions would instead be reallocated to investors deemed genuinely serious about developing the land. This was emphasized by the Director General of Forestry Planning and Environmental Governance, even just one day after the issuance of Decree No. 01/2022 (Wicaksono, 2022). Thus, the revocation of forest area permits or concessions by the government appears to be merely a matter of administrative enforcement due to the failure of the permit/concession holders to utilize them in accordance with their intended purposes, and with no apparent intention to realize the constitutional mandate of achieving the greatest possible prosperity for the people.

In fact, if the revoked forest areas were reallocated to local communities or Indigenous peoples, they would not only serve as spaces for habitation and human activity but also provide essential sources of livelihood. This aligns with the concept of land in human life, which encompasses various dimensions particularly as a means of production that fosters prosperity and holds profound sacred and religious value. Land is not merely an immovable object but a vital part of a community's identity and existence (Widiyono & Khan, 2023). This is especially relevant for Indigenous communities, whose customary land rights (ulayat rights) may have previously been infringed upon through forest area permit or concession schemes granted by the government for business activities. It is well known that Indigenous communities regard forested land as a living home that must be preserved. For them, the forest is the most critical source of life, embodying a symbiotic relationship between Indigenous communities and the forest as part of their customary territory (Yulia & Herinawati, 2022).

Furthermore, Indigenous peoples have the right to manage and utilize natural resources

within their customary territories in accordance with their traditional norms, beliefs, and knowledge systems (Permadi, Dungga, & Arshad, 2025).

D. CONCLUSION

The doctrine of the state's right to control (HMN) as enshrined in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirms that the state's control over natural resources (SDA) is inherently limited. This control is constrained by the ultimate goal it is meant to serve, namely, the greatest possible prosperity for the people. To implement this right of control, the Constitutional Court (MK) has derived five functions to be carried out by the government. Among these, Ministerial Decree No. 01/2022 concerning the Revocation of Forest Area Concession Permits can be interpreted as an actualization of two functions: the administrative function (*bestuursdaad*) and the policy function (*beleid*).

However, upon closer examination, it becomes evident that the administrative function essentially the state's authority through the government to grant or revoke permits and concessions for the utilization of natural resources is not fully realized in SK 01/2022. Although the decree appears to project the authority of HMN through its title (Revocation of Forest Area Concession Permits), in reality, it amounts to little more than an empty threat. SK 01/2022 is more declarative in nature than final and definitive.

Similarly, in terms of the policy function which should reflect a series of decisions or governmental actions designed to address public issues SK 01/2022 lacks meaning and effectiveness. The authority invested in SK 01/2022 in fact exceeds the scope of its sectoral jurisdiction. Rather than serving as a legal instrument to resolve problematic forest area concessions, the decree creates new problems. Its half-hearted substance has become a burden for the government, now faced with legal challenges stemming from the uncertainty generated by the decision.

As for the goal of "the greatest possible prosperity for the people," SK 01/2022 does not even mention this as its main orientation. On the contrary, the official interpretation reveals that the decree merely aims to regulate and tidy up forest area permits or concessions, without ever reallocating the lands to the public as previously promised. Yet, "the greatest possible prosperity for the people" is supposed to represent the principal objective in the management and utilization of natural resources. In other words, it is the *das sollen* the normative imperative of how natural resource governance should be carried out in Indonesia.

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