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EYES ON CUSTOMARY FORESTS TRANSITION OF TRADITIONAL FORESTS INTO PRODUCTION FORESTS

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Abstrak:
Forests as a medium for balancing nature are something whose importance cannot be ignored in human life and civilization. Forests must be managed, protected, and utilized sustainably for the community's welfare, both current and future generations. The problem of customary forests in Indonesia tends to be paradoxical; constitutionally, it has been regulated so that matters are aimed at providing justice, certainty and benefits for indigenous peoples and customary forests. However, Indonesia is known as "*The Scramble For Land Rights*," where there is a gap between companies and customary law communities in terms of getting opportunities for land tenure rights. This research uses a normative method with a statutory approach, which is expected to answer the problem of how customary forests become production forests in Indonesia and how customary forests become production forests in Indonesia are transitioned from the perspective of justice, certainty and benefit. The current problem is related to permits given unilaterally by indigenous people to companies. Apart from that, the issue of legal action for permit violations is currently not being carried out properly, so many customary forests are still being "grabbed" by companies and not heeding legal regulations by statutory regulations. Constitutionally, the status of customary law is guaranteed. However, law enforcement in the field and supervision from related parties are minimal, causing many problems in transitioning customary forests to production forests.

INTRODUCTION

Forests have a very important function, so the Indonesian government has established regulations in Republic of Indonesia Law no. 41/1999 concerning Forestry: Forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural environment, one of which cannot be separated from the other.

As an ecosystem unit, the forest protects all biological natural resources in it. Protected forests are forest areas that protect life support systems to regulate water management, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility (Indriyanto, 2017).

In terms of terminology in Indonesian, there are various terms for "forest," for example, thicket forest, virgin forest, natural forest and others. The word forest in English is called forest, while jungle is called jungle. However, the general perception of forests is that they are full of trees that grow irregularly.

Forests are a medium for balancing nature whose importance cannot be ignored in human life and civilization. Forests must be managed, protected and utilized sustainably for the welfare of the community, both current and future generations.

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According to the Indonesian Constitution, the use of natural ecosystems, especially forests, is contained in Article 33 paragraph (3) of the 1945 Constitution as a constitutional basis, which requires that the earth, water and natural resources contained therein be controlled by the State and used for the greatest prosperity of the people. So, forestry management always contains the soul and spirit of the people and is fair and sustainable.

Control of forests by the State is not actually an ownership right, but the State has the authority and delegates it to the government to regulate and manage everything related to forests, forest areas and forest products, determine forest areas and/or change the status of forest areas, regulate and establish legal relations between people and forests or forest areas and forest products, and regulate legal acts regarding forestry.

Furthermore, the government has the authority to grant permits and rights to other parties to carry out activities in the forestry sector. However, for certain matters that are very important, large-scale, have a broad impact and are of strategic value, the government must pay attention to the people's aspirations through the approval of the People's Representative Council (Sarkawi, 2014).

Property rights to land can be considered a network of interests involving various parties who have the right to use, regulate, or manage resources. These rights are based on various customary institutions or local norms as well as state law (Tjoa et al., 2018).

Customary law communities and their rights are guaranteed by the 1945 Constitution, which is the Constitution of the Republic of Indonesia. This way, customary law communities have constitutional rights in Indonesia as recognized community groups with inherent rights. This is confirmed in Article 18B paragraph (2) of the 1945 Constitution: "*The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in the Law.*"

Although community customary rights as part of customary law are recognized by the Indonesian Constitution, which is embodied in the 1945 Constitution, Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles and Law No. 41 of 1999 concerning Forestry, however, control of forests and natural resources still denies customary land rights. This is because forests managed by customary communities are interpreted as state forests.

The consequences of the right to control by the State as an organization of power for all the people at the highest level should not negate the rights of customary law communities to carry out forest management activities (Yusuf, 2011).

Based on considerations considering Law No. 41 of 1999 concerning Forestry (from now on referred to as the Forestry Law), letters a, b, and c state;

Firstly, as a gift and mandate from God Almighty bestowed upon the Indonesian nation, forests are a wealth controlled by the State, providing versatile benefits for humanity. Therefore, they must be grateful for, managed, and utilized optimally, and their preservation must be maintained to the greatest extent possible. Prosperity of the people, for present and future generations.

Second, forests, as one of the determinants of the life support system and a source of people's prosperity, tend to decline in condition. Therefore, their existence must be maintained optimally, their carrying capacity maintained sustainably, and managed with noble, fair, wise, wise, open, professional morals. , and take responsibility.

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Third, sustainable forest management with a global perspective must accommodate the dynamics of community aspirations and participation, customs and culture, and community values based on national legal norms (Wildam, 2015).

The condition of forests in Indonesia is now increasingly critical, and this is due to errors in forest management. For more than thirty years, forest exploration activities, both carried out by the government and private parties who are given permits to manage forests (through Forest Management Rights), have caused serious forest damage.

Apart from that, the rise of various crimes against forests has worsened forest conditions. Forest destruction in the country is quite worrying. According to records from the Ministry of Forestry of the Republic of Indonesia, at least 1.1 million hectares or 2%, of Indonesia's forests shrink every year.

Data from the Ministry of Forestry states that of the approximately 130 million hectares of forest remaining in Indonesia, 42 million hectares of them have been cleared ((Baharta, 2024).

The problem of customary forests in Indonesia tends to be paradoxical. Constitutionally, it has been regulated in such a way that matters are aimed at providing justice, certainty and benefits for indigenous peoples and customary forests.

However, research conducted by the World Resources Institute (WRI) in 15 countries explains that Indonesia has received the nickname "*The Scramble For Land Rights*," where there is a gap between companies and customary law communities in obtaining opportunities for land tenure rights.

Because there are often problems regarding the transition of customary forests into production forests that are not by legal regulations, serious efforts are needed to look at the problem of transitioning customary forests into production forests. Based on the background of this problem attracted the author's interest in writing research with the title *All Eyes On Customary Forests* Transition of Customary Forest to Production Forest.

METHODS

The author uses a normative legal method with a statutory approach in this research. The type of data used is secondary data, namely the Forestry Law, UUPA, Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency (BPN) No. 5 of 1999 concerning Guidelines for Resolving Customary Law Community Land Rights Issues, Minister of Environment and Forestry (LHK) Regulation No: P.32/Menlhk-Setjen/2015 concerning Forest Rights, Constitutional Court Decision No. 35/PUU-X/2012 concerning Review of Forestry Laws and from the results of research, journals, books and related laws and regulations. The analytical method used uses a qualitative approach.

RESULT AND DISCUSSION

Portrait of the problem of customary forests becoming production forests in Indonesia. Conflicts related to customary forests have become a familiar issue in Indonesia. The balance between the interests of the government, corporations and indigenous communities is often a point of friction that results in long-term tensions and conflicts.

In the end, traditional communities are often the most affected and vulnerable. Resolving this kind of conflict is often difficult without a strong and clear legal umbrella. The latest conflict regarding customary forests is regarding the diversion of customary forests in Papua, specifically in Boven Digul Papua. The forest covers an area of 36 thousand hectares and will be completely cleared, and an oil palm plantation will be built.

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In this regard, the Awyu Papuan Indigenous community held a demonstration in front of the Supreme Court to voice the rights of the Papuan Indigenous people, especially those who live in customary forests.

Customary forest management provides economic, ecological and social benefits to the Kasepuhan community, where the establishment of cultivation rights provides certainty of rights to manage land within the customary law community's territory. The establishment of customary forests helps clarify that in every community, there is a living law (Komaratulloh, 2019). According to the Forestry Law, based on their status, forests consist of State and private forests. State forests can be customary forests whose management is handed over to Customary Law Communities. Traditional forests were originally called community forests, master's forests, clan forests or other names.

The entry of existing forests into the state forest section results from the right to control the State as the highest level of people's power organization and the principles of the Republic of Indonesia. The inclusion of customary forests into this part of the state forest still maintains the customary rights of customary law communities as long as, in fact, they still exist and are recognized for their existence to manage the forest (Apricia, 2022). The problem with the existence of national land law based on customary law is where the location or position of customary law relative to national land law is, which is, as much as possible, set out in the form of statutory regulations.

The recognition of Customary Law Communities (MHA) as subjects of customary forest law is the basis for establishing Customary Forests as one of the schemes in the Ministry of Environment and Forestry's Social Forestry program. Customary Forest is a Social Forestry scheme with the subject of forest management by Customary Law Communities (MHA) (Wihelmus Jemarut et al., 2023).

Even though it is regulated by statutory regulations and the State has access to take over customary land in an effort to manage customary land in the public interest, the State is prohibited from arbitrarily threatening the rights of customary law communities. It is clearer that public or national interests, which still have limitations, are prone to misuse and used to be owned for one's interests and not for the interests of the wider community, especially customary law communities.

Recognition of the traditional rights of customary law communities can be seen in Article 18b paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that if there are still rights of customary law communities that by the development of the times and the principles of the Republic of Indonesia, then the State recognizes and respects their rights which include land and resources. natural resources (Irawan, 2021).

This map of customary forests and Indicative Customary Forest Areas covers an area of approximately 1,090,755 Ha, showing the government's commitment to recognizing and protecting the rights and existence of customary forests as an integral part of the lives of customary law communities (Setiawan et al., 2021).

In an agrarian country, land ownership is necessary to fulfill one's right to a decent life. This shows that there are similarities in the concept of control and ownership by individuals, society and the State, which are integrated with the same goal, namely a prosperous society. However, at the level of implementation, there are irregularities, so the rights of Indigenous peoples are often sidelined (Wildam, 2015).

In the context of customary forests, customary law communities have certain rights which are regulated based on customary values and the laws that apply therein. Some of the rights owned by Indigenous forest communities include:

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a) Area use Customary forest communities can utilize customary forest areas communally according to their needs.
b) Utilization of environmental services: Customary forest communities can utilize environmental services produced by customary forests, such as water sources and biodiversity.
c) Utilization or collection of timber forest products: Indigenous forest communities can utilize or collect timber products according to their needs while still paying attention to sustainability principles.
d) Utilization or collection of non-timber forest products: In addition to timber forest products, Indigenous forest communities can also utilize or collect non-timber forest products such as fruit, medicinal plants, and so on.
e) Forest management activities: Customary forest communities can carry out forest management activities based on applicable customary law as long as they do not conflict with the provisions of applicable laws and regulations.
f) Empowerment to improve welfare: Indigenous forest communities have the right to receive empowerment from the government or related institutions to improve their welfare through sustainable management of customary forests

Forest Area Swapping is carried out to obtain a decision to release the forest area and a decision to designate replacement land as a forest area so that the land can then be applied for HGU. For plantation business activities whose permits are issued by regional governments whose areas are Limited Production Forest areas, they are processed through Forest Area Exchange. Then, HGU applications originating from the release of forest areas are obliged to build community gardens that amount to 20% of the total forest area released and can be cultivated by plantation companies. They are obliged to facilitate the development of these community gardens. If the land for which Cultivation Rights are requested is land in a State Forest Area (Limited et al.), its status must first be released from the State Forest Area.

Minister of Agriculture Regulation Number 05/2019 concerning Procedures for Business Licensing in the Agricultural Sector requires palm oil entrepreneurs to obtain an HGU before applying for an IUP. The obligation to obtain HGU is contained in Article 9, which states the commitment, as referred to in Article 8, letter b, for plantation plant cultivation businesses that can convey several requirements, including the Cultivation Rights. According to this article, the condition for obtaining an IUP is HGU. The company must also make a statement stating that after obtaining the HGU within 6 (6) years, it will seek the entire area of land rights that are technically arable to carry out planting activities immediately.

PERMENDAGRI Guidelines No. 52 of 2014 have also provided clear direction regarding the management of customary territories, the rights of indigenous communities, and decision-making mechanisms related to the use of natural resources. (Ella Rumapea et al., 2024) Cultivation Rights (HGU), which are being discussed in the context of the transfer of rights, are the provisions specifically regulated in Articles 28-34 of the UUPA. In this case, the UUPA allows the State to regulate HGU through government regulations. To obtain an IUP, a plantation company applies to writing and with sufficient stamp duty to the governor or regent/mayor according to their authority, accompanied by the following requirements:

1) The Company Profile includes the Deed of Establishment and the latest amendments which have been registered with the Ministry of Law and Human Rights, the composition of share ownership, the composition of the management and the company's business fields;
2) Tax ID number;
3) Business Place Permit;

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4) Recommendations for conformity with district/city Plantation Development Planning from the regent/mayor for IUPs issued by the governor;
5) Recommendations for conformity with the Governor's Provincial Plantation Development Planning for IUPs issued by the regent/mayor;
6) Location permit from the regent/mayor equipped with a digital map of the prospective location with a scale of 1:100,000 or 1:50,000 (printed map and electronic file) by statutory regulations and no permit has been given to other parties;
7) Technical consideration of land availability from the department in charge of forestry if the requested area comes from a forest area. Guarantee of raw material supply using the format in Attachment IV and Attachment XII to Minister of Agriculture Regulation 98/2013;
8) Work plan for the development of plantations and plantation product processing units, including plans for facilitating the development of gardens for the surrounding community;
9) Environmental Permit from the governor or regent/mayor according to authority;
10) Statement of capability:
    a. Have human resources, facilities, infrastructure and systems to control plant pest organisms (OPT);
    b. have human resources, facilities, infrastructure and systems to carry out land clearing without burning and control fires;
    c. facilitate the construction of gardens for local communities equipped with work plans and financing plans, And
    d. implementing partnerships with Planters, employees and Communities around the plantation using the Statement format in Appendix X of Minister of Agriculture Regulation 98/2013.
11) Statement Letter from the Applicant that the status of the Plantation Company as an independent business or part of a Group of Plantation Companies does not control land that exceeds the largest limit (100,000 hectares for oil palm plantations, using the Statement format in Attachment XI of Minister of Agriculture 98/2013.

The current problem is related to permits given unilaterally by indigenous people to companies, which can later be used to obtain land transfer permits. Apart from that, the issue of legal action for violations of permits is currently not being carried out properly, so many customary forests are still being "grabbed" by companies that are naughty and do not heed the rules of law in accordance with statutory regulations. Likewise, the government tends to side with companies by imposing fines on companies that encroach on customary forests. Instead of taking firm action, the government takes a step contrary to the principles of justice, certainty and usefulness of the law itself.

The transition of Indigenous forests to production forests in Indonesia from the perspective of the principles of legal justice, legal certainty and utility purposiveness. Although both are one unit owned by Indigenous peoples, customary forests are different.

We can see the difference between Ulayat Forest and Customary Forest in the definition regulated in Article 1 point 4 of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Forests and Private Forests, as well as Article 1 point 6 of Papua Province Regional Regulation Number 23 of 2008 concerning Ulayat Rights of Customary Law Communities and Individual Rights of Members of Customary Law Communities to Land.

In Article 1 Point 4 of the Minister of Environment Regulation and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Forests and

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Private Forests. A customary Forest is a forest within the territory of a customary law community. If described, the elements that must be fulfilled are:

a) Forest In article 1 point (1) of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Forests and Private Forests in this provision it is explained that Forest is an ecosystem unit in the form of an expanse Land containing biological natural resources dominated by trees in a natural environment, one of which cannot be separated from the other.
b) Customary Law Community Areas In article 1 point (10) of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Forests and Private Forests, Customary Law Communities are community groups that have been hereditary for generations. Living in a certain geographical area because of ties to ancestral origins, a strong connection with the environment, and a value system that determines economic, political, social and legal institutions. Regarding customary areas, stipulated in Article 5 paragraph (1) of the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.21/MENLHK/SETJEN/KUM.1/4/2019 concerning Customary Forests and Private Forests, which mandates that the Determination of Customary Forests be carried out through application to the Minister by Traditional Stakeholders.

As the State's representative, the government is given the right to manage (management rights) natural resource wealth so that the people enjoy it fairly and equitably. Furthermore, people's prosperity is the spirit and ultimate ideal of a welfare state that the Indonesian State and government must realize. Natural resource management is one of the instruments that can achieve this (Sutedi, 2012).

In Article 1 Point 1 of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, it is explained that a forest is an ecosystem unit in the form of an expanse of land containing biological natural resources dominated by trees in a natural community environment that cannot be separated from one another. (Nurmaningsih, 2011). The promulgation of the Forestry Law has created problems regarding the legal status of customary forests. The status of customary forests in the Forestry Law is classified as state forests. As a consequence of the "right to control the state," the rights of Indigenous peoples and their traditional rights to forests in their customary territories feel marginalized and even ignored by the State (Wiyono, 2018). The legal status of state forests and customary forests are, of course, two different things. State forests based on the "right to control the state" have a general status (lex general), and the government's position is based on Article 2 paragraph (2) of the Basic Agrarian Law.

Meanwhile, customary forests and their customary rights or traditional rights have a special status (lex specialis), and what applies is customary law by Article 5 of the Basic Agrarian Law. This means that the "right to control the state" does not apply to the law on the rights of customary law communities along with their ulayat or traditional rights.

Even though the functional relationship between the two is still possible, it is possible to regulate them independently. So, government policies based on "state control rights" over state forests and customary forests must be different. From the definition of state forest in Article 1 paragraph (4) of the Forestry Law, a state forest is a forest located on land not burdened with land rights. So, logically, customary forests cannot be categorized as state forests. Because, over customary forest areas, land rights are attached to those owned by customary law communities, which have been hereditary since time immemorial.

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This means customary forests were not born and originated from the State; customary forests existed long before this country was founded. So far, forest areas have often been claimed as state forests. In fact, state forests will only exist if the government has established private forests and customary forests. Constitutional Court Decision No. 35/PUU-X/2012 contains several main things, including:

a) The Constitutional Court's statement that the Forestry Law, which has included customary forests as part of state forests, is a form of neglect of the rights of indigenous peoples and a violation of the Constitution.
b) Customary forests were removed from their position from being part of state forests and then included as part of the private forest category.
c) The holder of the right to the land is the holder of the right to the forest.
d) State authority over state forests and customary forests is different.
e) Affirmation that Indigenous peoples are rightsholders

Several provisions must be considered, including:

a) The State is no longer allowed to take over the rights of customary law communities that they manage except if it is necessary for the development of public interests, as regulated in Law No. 2 of 2012 and Presidential Regulation No. 71 of 2012, which regulates land acquisition for public purposes.
b) After the Constitutional Court Decision No. 35/ PUU-
c) Customary forests are forests within customary rights areas, so the government should respect the legal areas of customary law communities as a follow-up to Constitutional Court Decision No. 35/ PUU- customary law community. One of them is the regional government, which is responsible for carrying out these tasks (Abdullah et al., 2018).

The aim of regulating private forests is for private forest holders to receive recognition, protection and incentives from the government to manage their forests sustainably over time and space. The scope of private forest regulation includes determining private forests, rights and obligations, and compensation and incentives.

The regulation has conditions for the application for the designation of Customary Forests. The conditions of the application for the designation of the customary forest include:

a) The regional government has recognized customary law communities or customary rights through regional legal products.
b) There are traditional areas that are partially or completely forested.
c) Statement letter from the customary law community to designate their customary territory as customary forest.

The most important thing in determining customary forest status is the regional government's recognition of customary communities or customary rights through Regional Regulations. In terms of regional government recognition of the existence of traditional communities or customary rights, Regulation of the Minister of State for Agrarian Affairs/Head of BPN No. 5 of 1999 concerning Guidelines for Resolving Problems with Customary Law Communities' Land Rights.

The regulation contains policies that clarify the principle of recognition of customary rights and similar rights in customary law communities (Article 2 paragraph (3) Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.32/Menlhk-Setjen/2015 concerning Private Forests). Legal protection for customary forests is constitutionally strong enough, so there should be few land disputes between Indigenous peoples and customary communities, investors and customary communities, or investors and fellow investors (Kartsapoetra, 1985).

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Constitutional Court Decision Number 35/PUU-X/2012 granted some requests for material review regarding customary forests' status. The status of customary forests is regulated by Article 1 point 6 of Law Number 41 of 1999 concerning Forestry with the definition of "state forests located in the territory of customary law communities," declared contrary to the 1945 Constitution. So, they do not have binding legal force (or are not enforced). Again). The definition was changed to "forest within the territory of customary law communities."

Running the Indonesian rule of law means carrying out state activities that must be supported by concern for realizing the country's ideals. Every actor/official must find out his concern for the country. This concern is the essence that animates work: enthusiasm, empathy, dedication, commitment, honesty and courage.

Gustav Radbruch's thoughts on the three basic values of law, when connected to the concept of the Indonesian rule of law as regulated in the 1945 Constitution resulting from the amendments, are also reflected in article 18B paragraph (2), article 24 paragraph (1) and article 28D paragraph (1) and article 28H (2) 1945 Constitution. Article 18B paragraph (2) regulates the recognition and respect for the existence of customary law communities, which have so far been ignored and tend not to receive recognition from the State. This reality can be considered directly proportional to Radbruch's thoughts about reality (customary law communities as part of the Indonesian population), which includes customs, morality and law. In this case, the life practices of Indigenous peoples can be identified with habits because, during the last few decades, the activities and existence of customary law communities have often "escaped the grasp" of positive law (their interests were not accommodated).

So far, Indonesia has tended to "judge" positive law and "ignore" customary law. The formulation of this problem in Article 18B (2) of the 1945 Constitution as a result of the amendment shows a more serious desire for the State to accommodate customary law.

There is the same spirit as recognizing sociological aspects in Radbruch's thinking. The sociological aspect put forward by Radbruch is a form of accommodation from the legal approach by "empirical legalists" who focus their studies on viewing law as a set of reality, action, and behavior. By recognizing customary law, the State should also be able to provide more recognition and guarantees to the components of customary communities, one of which is customary forests. Granting land transfer concession permits should pay more attention to the three basic values of the rule of law: fairness, certainty and justice. If these basic values are embodied in the system of transitioning customary forests into production forests, there will no longer be any parties who will suffer losses from the transition. As the manager and owner of the rights to grant management rights to the government, the State must also be present in monitoring the transition of forest functions holistically.

CONCLUSION

Today, the problem is that permits are often given unilaterally by indigenous people to companies, which can later be used to obtain land transfer permits. Besides, legal action for permit violations is currently not being carried out properly, so many customary forests are still being "grabbed" by companies that are naughty and do not heed the rules of law in accordance with statutory regulations.

Carrying out the Indonesian rule of law means carrying out state activities, which must be supported by concern for realizing the country's ideals. The recognition of customary law by the State gives rise to the consequence that the State should also be able to provide more recognition and guarantees to the components of customary communities, one of which is customary forests.

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Suppose the basic values put forward by Gustav Randburg are embodied in the system of transitioning customary forests into production forests. In that case, any parties will no longer be disadvantaged by the transition. In this case, the State, through existing instruments, must be present to monitor the transition of customary forest functions holistically.

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