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The Constitutional Court and Forest Tenure Conflicts in Indonesia

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Abstract

With regard to access to land and forest resources, forestry legislation maintains an imbalance between the state, corporations, and local communities. Since the colonial era, forestry regulation has facilitated restrictions on the ability of local communities to benefit from land and forest resources, while also concentrating power in the hands of the state. To uphold state ownership, forestry law criminalizes customary practices, putting local communities at risk. In this sense, conflicts between local communities, corporations, and government agencies arise because of structural issues in the legal framework of laws and regulations that undermine the land rights of local communities. The establishment of the Constitutional Court in Indonesia in 2003 has enabled local communities and NGOs to challenge the Forestry Law. They use the Constitutional Court to support the resolution of forestry tenure conflicts. This article examines the extent to which the Constitutional Court can contribute to the resolution of forest tenure conflicts through judicial review of forest laws. This article discusses twelve Constitutional Court decisions regarding judicial review of the Forestry Law and the Law on Forest Destruction Prevention and Eradication. We found that the Constitutional Court has made a positive contribution to addressing the deficiency of forest legislation regarding local and customary land rights. The implementation of Constitutional Court's ruling is not, however, a matter

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of self-implementation. The ruling of the Constitutional Court will only have significance if it is continuously promoted by various stakeholders in support of forest tenure reform to facilitate the resolution of forest tenure conflicts.

Keywords: Constitutional Court; Customary Land Rights; Forestry Law; Forest Tenure Conflicts; Indonesia

I. INTRODUCTION

1.1. Background

1.1.1. State Territorialization and Diminishment of Customary Land Tenure

In Indonesia, forest areas cover approximately 120 million hectares, or 67% of the land surface.[1] Forest areas not only contain substantial natural resources in the form of timber and mineral deposits but also deviate from a number of complex social issues. The vast potential of land and forest resources has made it a battleground for the competing interests of local residents, governments, and business companies. This conflict has existed since colonial times and is now known as the forest tenure conflict.[2] In the midst of the ongoing conflicts, the law played a significant role because the ruler used legal measures to strengthen state control and weaken people's access to land and forest resources.

Exclusive state control over forest areas has transformed forests into state property that must be free of local residents' individual and collective rights.[3] This restriction is not instantaneous but is gradually constructed through a territorialization process. The territorialization of forest areas by the state occurs in three stages.[4] In the beginning, colonial rulers declared and asserted that all lands for which ownership could not be proven by individuals and communities were state land property. During the Dutch colonial period, this unilateral claim was

1 SOIFO, *The State of Indonesia's Forest 2020* (Jakarta: The Ministry of Environment and Forestry, 2020).

2 Myrna Asfinawati Safitri, "Forest Tenure in Indonesia: The Socio-Legal Challenges of Securing Communities' Rights" (PhD diss., Van Vollenhoven Institute, Leiden University, 2010).

3 Nancy Lee Peluso, "The History of State Forest Management in Colonial Java," *Forest & Conservation History* 35, no. 2 (1991): 65-75; Nancy Lee Peluso, *Rich Forests, Poor People: Forest Access Control and Resistance in Java* (Berkeley/Los Angeles/Oxford: University of California Press, 1992).

4 Peter Vandergeest and Nancy Lee Peluso, "Territorialization and State Power in Thailand," *Theory and Society* 24, no. 3 (1995): 385-426.

made through the doctrine of declaration (*domein verklaring*).[5] The government intends to monopolize all forest land and resources with this claim.

The second step involves establishing boundaries. The colonial authorities established the boundaries of forest areas to differentiate between forest and non-forest areas and to divide forest functions into various purposes, including extraction, protection, and conservation. During colonial times, the forestry service categorized the forests into forestry registers. Some regions of Indonesia continue to use this colonial forestry register system. In addition, the Indonesian government implemented a similar strategy to expand its control over forested lands beyond the islands of Java and Madura. In the 1970s and 1980s, the government conducted this process through "the forest agreement system" (*Tata Guna Hutan Kesepakatan*/TGHK).[6] The government has meticulously mapped and organized the forests. Individuals and groups of citizens were prohibited from accessing land and forest resources without government permission. Former forest dwellers are considered illegal residents who are subject to expulsion from the forest.

In the third stage, colonial rulers and national governments establish policies and initiatives to maintain their control over forest areas. The government allocates land and forest resources for self-exploitation or for granting forest concessions to business corporations. This stage is not always tied to extractive operations, but also to environmental protection, including the establishment of conservation forests, the creation of national parks that sustain conservation forests, and even reforestation to reinforce long-term government control of forest areas.

In conducting the three stages of territorialisation, colonial rulers and national governments not only use legal instruments and physical violence to legitimise the deprivation of people's living space, but also use forestry knowledge. A study by Mia Siscawati explores how forestry knowledge was

[5] Cees Fasseur, "Purse or Principle: Dutch Colonial Policy in the 1860s and the Decline of the Cultivation System," *Modern Asian Studies* 25, no. 1 (1991): 33-52.

[6] Mia Siscawati, "Social Movements and Scientific Forestry: Examining the Community Forestry in Indonesia" (PhD diss., University of Washington, 2012); Myrna Asfinawati Safitri et al., *Menuju Kepastian dan Keadilan Tenurial [Towards Tenure Certainty and Justice]* (Jakarta: Kelompok Masyarakat Sipil untuk Reformasi Tenurial [Civil Society Group for Tenurial Reform], 2011).

constructed by colonial rulers to legitimize their control over forest areas.[7] The Dutch colonial foresters in the colonies learned from the forestry knowledge of German forestry, known as scientific forestry.[8] Through this scientific forestry approach, forests are categorized and managed using a mathematical approach.[9] Local knowledge about how communities manage and depend on forests is not considered. Scientific forestry builds the myth that the government is the greatest and most sustainable in managing land and forest resources. On that basis, local communities are considered a threat to forest sustainability and will reduce substantial benefits for the state in extracting forest resources. This authoritarian practice in the field of forestry continued and became the root of forestry tenure conflicts to present times.[10]

1.1.2. Forest Tenure Conflicts

Forest tenure conflict is defined as a conflict of claims to obtain access and benefits from land and forest resources. These conflicts can occur between fellow communities or what is called horizontal conflicts, but they can also occur between communities, corporations, and government agencies in the forestry sector. The last forest tenure conflict is referred to as a vertical or structural conflict because it involves an unbalanced power relationship among local communities, forestry companies, and government agencies. This article discusses forest tenure conflict in the latter sense.

The root of the tenure forestry conflict in Indonesia is state territorialization, as mentioned in the beginning of this article. The expansion of government control over forest areas is carried out without community consent, criminalizing forest management practices by communities and expelling communities living within forest areas because communities are considered a threat to forest sustainability.[11] In fact, many indigenous and local communities already live and depend on

7 Siscawati, *Social Movements and Scientific Forestry*.
8 Peter Vandergeest and Nancy Lee Peluso, "Empires of Forestry: Professional Forestry and State Power in Southeast Asia, Part 1," *Environment and History* 12, no. 1 (2006): 31–64.
9 Siscawati, *Social Movements and Scientific Forestry*.
10 Peluso, *Rich Forests, Poor People*; Yance Arizona, "Rethinking Adat Strategies: Politics of State Recognition of Customary Land Rights in Indonesia" (PhD diss., Leiden University, 2022).
11 Peluso, *Rich Forests, Poor People*.

their livelihoods from land and forest resources.[12] The Indonesian Central Bureau of Statistics *(Badan Pusat Statistik/BPS)* released a census, stating that 31,957 or 71.06% of villages in Indonesia are located within and at the edge of forest areas.[13] Similarly, in 2014, the MoEF conducted a forestry survey and found that 32,447,851 people depend on forest resources for their livelihoods. Most of them live in poverty. They have cultivate land and gather forest products, according to their local customs.

Forest tenure conflict between local and indigenous communities and government agencies and forestry companies seems inevitable. Forest tenure conflicts can be latent or manifest. Conflicts are latent because there are conflicts over legal claims and legitimacy to land ownership and control of land and land assets, while conflicts become manifest when government agencies and companies expand control and physically exclude indigenous and local communities from their territories. This situation has caused many forestry tenure conflicts in Indonesia. The NGO Agrarian Reform Consortium (*Consortium for Agrarian Reform/KPA*) recorded 2,047 cases of land conflict occurring between 2015 and 2019. In 2019 alone, 279 land conflicts appeared to be located within 734,239 hectares. Approximately 109,042 of the households resided in 420 villages across Indonesia.[14] In 2021, the Ministry of Environment and Forestry (MoEF) has already received 500 reports on land conflicts in the forestry sector, and only 54 of these have reached a solution between the parties in conflict.

For many years, the government allowed the conflict to occur, and there was no effective and efficient mechanism to resolve forest tenure conflicts. Since the 1990s, the government began to develop social forestry schemes to involve communities in forest management, but this has not fully resolved the conflict.[15] One of the obstacles to resolving the conflict lies in forestry legislation itself, which does not fully provide human rights guarantees for indigenous and local

[12] Safitri et al., *Menuju Kepastian dan Keadilan Tenurial [Towards Tenure Certainty and Justice]*.
[13] Ibid., 6-7.
[14] Totok Dwi Diantoro, "Dinamika Kebijakan Resolusi Konflik Tenurial Kawasan Hutan Era Joko Widodo [Dynamics of Forest Area Tenurial Conflict Resolution Policy in the Joko Widodo Era]," *Media of Law and Sharia* 1, no. 4 (2020): 245-46.
[15] Safitri, "Forest Tenure in Indonesia"; Siscawati, *Social Movements and Scientific Forestry*.

communities as rights-bearing-ubjects and land owners.[16] Understanding that the cause of forest tenure conflict is embedded in forestry legislation, indigenous communities and NGOs in the forestry sector challenged forestry law to the Constitutional Court as a strategy to resolve forest tenure conflicts.

1.1.3. Constitutional Court and Judicial Review

The constitutional reforms in Indonesia from 1999 to 2002 opened the opportunity to uphold democratic principles and the rule of law. In line with the spirit of underpinning constitutional democracy and promoting human rights, the result of constitutional reform established a Constitutional Court. In Indonesia, the Constitutional Court was created with the main task of conducting judicial review.

Through the authority of judicial review, the Constitutional Court can evaluate laws, collaboratively created by the government and the House of Representatives (*Dewan Perwakilan Rakyat*/DPR), to ensure that these laws do not violate the constitution. Ginsburg and Versteeg showed that 83% of constitutions now explicitly authorize constitutional review by courts.[17] Judicial review is a forum for the Constitutional Court to be involved in supervising the democratization process, ensuring the fulfilment of human rights, and enforcing the rule of law. However, there have not been many studies that discuss the relevance of judicial review related to the issue of resolving conflicts over natural resources. In fact, indirectly, the judicial review conducted by the Constitutional Court can contribute to the resolution of conflicts related to natural resources, especially since the roots of the conflict are embedded in the legislation.

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[16] Yance Arizona, Siti Rakhma Mary, and Grahat Nagara, *Anotasi Putusan MK No. 45/PUU-IX/2011 Mengenai Pengujian Konstitusionalitas Kawasan Hutan dalam Pasal 1 Angka 3 UU No. 41 Tahun 1999 tentang Kehutanan [Annotation of Constitutional Court Decision No. 45/PUU-IX/2011 Regarding Testing of the Constitutionality of Forest Areas in Article 1 Number 3 of Law no. 41 of 1999 concerning Forestry]* (Jakarta: Perkumpulan HuMa [HuMa Association], 2012); Noer Fauzi Rachman and Mia Siscawati, "Forestry Law, Masyarakat Adat [Indigenous Community] and Struggles for Inclusive Citizenship in Indonesia," in *Routledge Handbook in Asian Law*, ed. Christopher Antons (London and New York: Routledge, 2016); Yance Arizona, Siti Rakhma Mary Herwati, and Erasmus Cahyadi, *Kembalikan Hutan Adat kepada Masyarakat Hukum Adat: Anotasi Putusan MK No. 35/PUU-X/2012 Mengenai Pengujian UU No. 41 Tahun 1999 tentang Kehutanan [Return Customary Forests to Customary Law Communities: Annotation of Constitutional Court Decision No. 35/PUU-X/2012 Regarding Review of Law No. 41 of 1999 concerning Forestry]* (Jakarta: Perkumpulan HuMa, Epistema Institute, and Aliansi Masyarakat Adat Nusantara [HuMa Association, Epistema Institute, and Alliance of Indigenous Peoples of the Archipelago], 2014).

[17] Tom Ginsburg and Mila Versteeg, "Why Do Countries Adopt Constitutional Review?" *Journal of Law, Economics and Organization* 30, no. 3 (2014): 587.

In the context of forestry in Indonesia, this is interesting because the latest Forestry Law was created in 1999 before the constitutional amendments were completed (1999-2002) and the Constitutional Court was established in 2003. Thus, the Constitutional Court became an important institution for adjusting provisions in the Forestry Law, which are still weighted with the legacy of colonial forestry law in the context of the new democratic era. Indigenous communities and NGOs who assist the forest communities in facing forestry conflicts with companies and government agencies then take advantage of the Constitutional Court to challenge forestry legislation that facilitates forestry tenure conflicts. This article further examines how the Constitutional Court plays a role in resolving forestry tenure conflicts through judicial review of laws in the field of forestry.

1.2. Research Questions

This study discusses the role of the Constitutional Court in conducting judicial review of laws in the field of forestry in relation to the resolution of forestry tenure conflicts encountered by local communities against forest companies and government agencies. More specifically, the research questions are divided as follows:

1. What is the character of the Constitutional Court's ruling in reviewing laws relating to forestry tenure conflicts?
2. Does the Constitutional Court contribute to resolving forest tenure conflicts and improving good forest governance and protecting local and indigenous communities' rights over forest land and resources?
3. What are the limitations of Constitutional Court's ruling related to efforts to protect the rights of local communities in forest tenure conflicts?

1.3. Method

This research is not a completely new study conducted by the author. Previously, the first author published a book chapter on *the Constitutional Court and Forest Tenure Reform* (2014), as well as several annotations to the Constitutional Court's rulings.[18] This article partly uses data from previous research

[18] Arizona et al., *Anotasi Putusan MK [Annotation of Constitutional Court Decision].*

by updating data and analytical tools on constitutional court rulings related to law in the field of forestry. The update of this article was conducted by the second author. In addition, data updates were also carried out by conducting literature studies and observing how the implementation of the Constitutional Court's rulings facilitated forest tenure conflict resolutions.

Specifically for this article, the stages of research activities is described as follows. First, the author, with the help of a research assistant, conducted an inventory of the Constitutional Court's rulings related to the judicial review of the Forestry Law (Number 41/1999) and the Law on Prevention and Eradication of Forest Destruction (Number 18/2013). Second, the author performs a classification. Of the 16 cases handled by the Constitutional Court, the author set aside four cases because these cases were withdrawn by the petitioners before they were decided by the Constitutional Court. The author analyzed twelve Constitutional Court rulings in which 6 of them were rejected by the Constitutional Court, 2 judgments were declared inadmissible, and four decisions were granted either in full or partially. Third, the author conducted a content analysis of four granted rulings to understand the changes, the substance of the Constitutional Court's considerations, and the juridical implications of the Constitutional Court's decisions. The fourth stage concerns the implementation of the court rulings. The author collects data and analyzes the implementation of the decision. The data collected are secondary data obtained from government regulations and policies to respond to the Constitutional Court's decision, as well as data from the NGOs reportingthe implementation of the Constitutional Court's ruling to encourage forest tenure reform and conflict resolution in concrete cases. Finally, the author analyzes the contribution and limitations of the Constitutional Court rulings in facilitating the implementation of resolving forest tenure conflicts.

From the aforementioned stages of research, it can be understood that this research is basically court studies, in particular the study of the decisions of the Constitutional Court. However, this research does not stop at text analysis, which is generally carried out in normative legal studies, but also examines how the Constitutional Court's decision is located in the context of forest tenure

conflicts that have occurred for a long period in Indonesia. In that context, this study captures how the government responds and how the community and NGOs advocate so that the Constitutional Court's decision gives real meaning to forest tenure conflict resolution for concrete cases on the ground.

II. DISCUSSION

This section begins with a description and analysis of forestry laws through a historical approach. The author would like to point out that the current Forestry Law, characterized by its strong colonial influences, centralizes forest area ownership under government control while neglecting the rights of local and indigenous communities dependent on forest resources.. Such a law is the root of current forest tenure conflicts. Next, this section will discuss several judicial review cases of the Forestry Law and the Law on the Prevention and Eradication of Forest Destruction submitted to the Constitutional Court. The author will highlight some fundamental changes in Constitutional Court's ruling that corrected the Forestry Law. Furthermore, this section also discusses how the Constitutional Court's rulings are implemented by the government, local communities, and NGOs. The final section discusses the contribution and limitations of the Constitutional Court rulings in resolving forestry tenure conflicts in Indonesia.

2.1. Forestry Laws: From Colonial to Contemporary

The development of forestry regulations in Indonesia strengthens state control while weakening people's rights to land and forest resources. The development of forestry policy can be distinguished in five periods, starting from the Dutch colonial period (1865-1942), the Japanese period (1942-1945), the early independence period (1945-1967), the New Order period (1967-1999), and the reform era (1999-present).

The first colonial forestry regulation was created in 1865.[19] In 1865, the Dutch colonial government strengthened forestry control through a regulation

[19] Peluso, "The History of State Forest," 65-75.

specifically applied to Java and Madura. The 1865 Forest Regulation defined forests as state-owned forests by removing a provision on the recognition of native communities managing their village forests.[20] At that time, the general policies of European expansion and imperialism supported the creation of regulations to protect and control colonies against other colonial powers, whilst increasing profits from colonial exploitation. The 1865 forestry regulation was revised several times, including in 1874, 1875, 1897, 1913, 1927, 1932, 1937, and 1939. Such revision was conducted to expand government control over forest areas, including by implementing the 'domain declaration' principle, according to the *Agrarische Besluit* of 1870.[21] For example, in 1874, the colonial government enacted a regulation on forest management and exploitation in Java and Madura, which divided forest management into teak and non-teak forest areas.[22] This regulation strengthened the colonial government's control, and provided a legal basis for issuing concessions to private corporations to exploit teak forests. In the beginning, the colonial government was only interested in controlling teak forests in Java, because of their commercial value. The latter forest regulation was the *Boschordonantie voor Java en Madura* 1927, which was later revised in 1932. Article 2 of this forestry regulation states that forests are state-owned and free from indigenous rights. According to this regulation, state forests comprise uncultivated trees and bamboo plants, timber gardens planted by the Forestry Service or other government agencies, and gardens containing plants that do not produce trees but are planted by the Forestry Service. The colonial government only made regulations on forest control for Java and Madura.[23]

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[20] Soenarjo Hardjodarsono, *Sejarah Kehutanan Indonesia I: Periode Reasejarah - Tahun 1942* [History of Indonesian Forestry I: The Historical Period – 1942] (Jakarta: Departemen Kehutanan [Forestry Department], 1986), 76.

[21] Rachman, *Land Reform dari Masa ke Masa* [Land Reform from Time to Time] (Yogyakarta: STPN Press and SAINS, 2012).

[22] Hardjodarsono, *Sejarah Kehutanan Indonesia* [History of Indonesian Forestry], 80; Siti Rakhma Mary, Dhani Armanto, and Lukito, *Dominasi dan Resistensi Pengelolaan Hutan di Jawa Tengah: Studi Kasus di 4 Kabupaten [Dominance and Resistance in Forest Management in Central Java: Case Studies in 4 Districts]* (Jakarta: Perkumpulan HuMa [HuMa Association], 2007), 10.

[23] Marjanne Termorshuzen-Arts, "Rakyat Indonesia dan Tanahnya: Perkembangan Doktrin Domein di Masa Kolonial dan Pengaruhnya dalam Hukum Agraria Indonesia [The Indonesian People and Their Land: The Development of the Domain Doctrine in the Colonial Period and its Influence on Indonesian Agrarian Law]," in *Hukum Agraria dan Masyarakat di Indonesia* [Agrarian Law and Society in Indonesia], ed. Myrna Safitri and Tristam Moeliono (Jakarta: HuMa, Van Vollenhoven Institute-Leiden University, KITLV-Jakarta, 2010), 65.

During the early period of Indonesian independence, Indonesia's postcolonial government replaced Dutch colonial land laws with national laws that were compatible with Indonesian peoples' interests. During the preparation of the Basic Agrarian Law (BAL) 1960, forestry issues were not much debated. Although the BAL intended to reform forest regulation by replacing the concepts of state domain and domain declaration in the *Agrarische Wet 1870*, it did not impact the core forestry regulations. The BAL removed several agrarian regulations from the colonial period, but it did not revoke the *Boschordonantie 1932*. The first forestry law in the post-colonial period was created in 1967. President Suharto enacted Basic Forestry Law Number 5 of 1967 (BFL) to increase economic activity in forest areas that would create state income. In contrast to the BAL, which specifically revoked agrarian regulations during the colonial period,the BFL did not revoke the *Boschordonantie*. Forestry Service officials translated *Boschordonantie* into Bahasa Indonesia, and used it as the main source for the BFL.[24] By not removing the *Boschordonantie*, the government can preserve the implementation of regulations in the forestry sector, including maps of forest areas based on the *Boschordonantie*. The BFL continued the forestry management policy of the *Boschordonantie* by stating that the state is the forest landowner. The Minister of Forestry has the authority to determine which areas are designated as 'forest area' (Article 1, point 4 of the BFL), and to grant logging concessions to foreign and domestic companies (Article 14 of the BFL, and Government Regulation No. 21/1970). The BFL does not recognise customary territories at all, and thus no customary forests.[25] Through the Forestry Law, the Suharto Administration expanded state control over forest areas outside Java, especially on the islands of Kalimantan, Sulawesi, and Sumatra. The government created an Agreement Forest Use Program (TGHK) to make claims and determine the boundaries of forest areas unilaterally without the consent of the community. This makes forestry conflicts increasingly widespread in areas outside Java.

[24] Peluso, *Rich Forests, Poor,* 131.
[25] Rachman and Siscawati, "Forestry Law, Masyarakat Adat [Indigenous Community]."

After Suharto stepped down as President in 1998, in the spirit of reform, the government and the new House of Representatives passed a new Forestry Law (Number 41/1999). The new Forestry Law explicitly mentions repealing colonial forestry regulations. Nevertheless, the principle that the government is the sole owner of the forest area, which is at the core of the forestry ideology still persists. NGOs tried to influence the substance of the new Forestry Law to strengthen the communities' rights, but this was not fully successful. As a result, the Forestry Law is very limited in accommodating community rights. For instance, the Forestry Law regulates customary forests in an ambiguous way because customary forests are defined as forests located in state forest areas.

During the reform period, the government also implemented a decentralization policy that gave local governments the flexibility to grant business licenses in the forestry sector. As a result, the exploitation of timber in the forest is increasing. This not only happens legally, but also illegally. There is rampant illegal logging in various places in Indonesia. To overcome illegal logging and other forestry crimes, the government and the House of Representatives enacted Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction. This law takes over all the criminal provisions contained in the Forestry Law (Number 41/1999). The repressive approach taken by the government also targets people who have been living in forest areas and depend on forest resources for their livelihood. Thus, various parties often challenge both the Forestry Law and the Law on the Prevention and Eradication of Forest Destruction in the Constitutional Court. The petitioners argue that the provisions in both laws have caused human rights violations, thereby inflicting constitutional rights on the petitioners.

2.2. Constitutional Court's Rulings

The Forestry Law has not changed much, especially with regard to forestry practices. Although there are some provisions in the Forestry Law that provide access to communities to manage forests, the ideology of foresters in the forestry sector has not changed much. For them, the reduction of state forest areas is considered a failure to manage forests, while giving access to communities to

manage forests is considered a weakness of the state in maintaining and managing forest land and resources.

Nevertheless, this conservative view of foresters has gradually changed. Local communities, NGOs, and regional heads perceived the central government's monopoly of forest areasas a violation of constitutional provisions. This awareness relies on the assumption that the 1945 Constitution has the spirit of democracy, decentralization, and the protection of human rights.[26] Consequently, the Forestry Law should be interpreted as a means to implement the main principles of the constitution in natural resource management.

Table 1.
Judicial Review of Forestry Laws to The Constitutional Court (2005-2022)

No	Case number	Constitutional issues	Court decision
1	003/PUU-III/2005	Mining operations in forest areas	Rejected
2	013/PUU-III/2005	Illegal transport of wood from forest areas	Inadmissible
3	021/PUU-III/2005	Deprivation of forest harvesting equipment in the Forestry Law	Rejected
4	72/PUU-VIII/2010	Permits for using forest areas for mining operations, and mining permits in forest areas issued by district heads	Rejected
5	34/PUU-IX/2011	The forest establishment process	Partially granted
6	45/PUU-IX/2011	Definition of (state) forest areas	Granted
7	35/PUU-X/2012	Definition of customary forest and legal recognition of adat communities by district regulation	Partially granted
8	95/PUU-XII/2014	Criminalization of adat and local communities living in forest areas	Partially granted

[26] Yance Arizona, *Konstitusionalisme Agraria* [Agrarian Constitutionalism] (Yogyakarta: STPN Press, 2014).

No	Case number	Constitutional issues	Court decision
9	70/PUU-XII/2014	Authority of local governments in the establishment of forest areas and authority of local governments in granting mining concessions within forest areas	Inadmissible
10	98/PUU-XIII/2015	Forestry corporation crimes	Rejected
11	139/PUU-XIII/2015	Criminal act of creating a plantation in a forest area	Rejected
12	69/PUU-XIV/2016	Evidence of timber in forestry crimes	Rejected

Of the 12 judicial review cases of the Forestry Law and the Forest Prevention and Eradication Law, six were rejected by the Constitutional Court, 2 were inadmissible, and four were partially or completely engulfed. The applicants in the case of testing the law in the field of forestry also vary from indigenous and local communities, community organizations, NGOs, and local governments, to entrepreneurs. From some of these rulings, there are several that have relevance to forestry tenure reform and forestry conflicts. There are four rulings that will be discussed, including:

1. Case Decision No. 45/PUU-IX/2011 relates to the constitutionality of the definition of forest areas (MK45 Ruling),
2. Case Decision No. 34/PUU—IX/2011 concerning the limitation of forest tenure by the state on the rights to land used as forest areas (MK34 Decision),
3. Case Decision No. 35/PUU-X/2012 concerning the constitutionality of customary forests and the conditional recognition of the existence of indigenous peoples (MK35 Decision).
4. Case Decision No. 95/PUU-XII/2014 concerning the provisions of forestry crimes that ensnare people who live and depend on forest areas and resources.

Table 2.

Changing Provision in the Forestry Law through Constitutional Court Rulings

Case Number	Before the Court rulings	After the Court rulings
No. 45/PUU-IX/2011	Article 1 (3) of the Forestry Law "A forest area is a certain area that is appointed and/or determined by the government to maintain its existence as a permanent forest."	Article 1 (3) of the Forestry Law "A forest area is a certain area that is ~~appointed and/or~~ determined by the government to maintain its existence as a permanent forest."
No. 34/PUU-IX/2011	Article 4, paragraph (3) of the Forestry Law "The control of forests by the State continues to pay attention to the rights of indigenous communities, as long as the reality is still there and recognized for their existence, and does not conflict with national interests."	Article 4, paragraph (3) of the Forestry Law "The control of forests by the canyon still pays attention to the rights of indigenous communities, as long as the reality is still there and recognized for its existence, **community rights are given based on the provisions of laws and regulations**, and do not conflict with national interests".
No. 35/PUU-X/2012	Article 1 (6) of the Forestry Law "Customary forests are state forests located within the territory of indigenous peoples."	Article 1 number 6 of the Forestry Law "Customary forests are ~~**state**~~ forests located within the territory of indigenous peoples."

Case Number	Before the Court rulings	After the Court rulings
No. 95/PUU-XII/2014	Article 50 paragraph (3) letter e and letter i of the Forestry Law Article 50 paragraph (3) Everyone is prohibited: e. cutting down trees or harvesting or collecting forest products in the forest without having the rights or permission of an authorized official; i. herding livestock within forest areas not specifically designated for such purposes by authorized officials;	Article 50 paragraph (3) letter e and letter i of the Forestry Law Article 50 paragraph (3) Everyone is prohibited: e. cutting down trees or harvesting or collecting forest products in the forest without having the rights or permission of the authorized officials, **except for people who live in the forest for generations and are not intended for commercial purposes;** i. herding livestock within forest areas not specifically designated for such purposes by authorized officials**, except for people who live in the forest for generations and are not intended for commercial purposes;**

The above section shows the changes in the Forestry Law before and after the Constitutional Court rulings. Although the changes are textual,, the substance of these changes plays a crucial role in giving new meaning to the context of forestry governance and the resolution of forestry tenure conflicts encountered by indigenous and local communities. The following sections briefly review these four rulings.

2.2.1. The Definition of Forest Area Has Been Revisited (Case Number 45/PUU-IX/2011)

Five district heads from Central Kalimantan Province: (1) Muhammad Mawardi (Head of Kapuas District); (2) Duwel Rawing (Head of Katingan District); and

(3) H. Zain Alkim (Head of East Barito District); (4) H. Ahmad Dirman (Head of Sukamara District); (5) Hambit Bintih (Head of Gunung Mas District); and a businessman named Akhmad Taufik filed a judicial review case against Article 1 number 3 of the Forestry Law, which stated that: "*A forest area is a certain area appointed and/or determined by the Government to maintain its existence as a permanent forest*." The petitioners questioned the phrase "appointed and or" in Article 1 number 3 of the Forestry Law. They questioned whether the provision caused legal uncertainty regarding the status of forest areas and allowed the Ministry of Forestry to arbitrarily determine forest areas because unilateral action through appointment was considered to have full legal consequences as the basis for determining forest areas.

Seven months after the application filled case number 45/PUU-IX/2011, the Constitutional Court issued a judgment on February 21, 2012. The Constitutional Court granted the petitioner's application. Consequently, Article 1 number 3 is changed to: "*A forest area is a certain area designated by the Government to maintain its existence as a permanent forest*." The phrase "appointed and/or" no longer exists in Article 1 number 3 of the Forestry Law.

This ruling gives a new meaning to the forest area. For many years, there has been legal uncertainty about the process to determine an area as a forest area because there is a conflict between Article 1 number 3 of the Forestry Law which determines that the appointment decree by the Ministry of Forestry is the basis for determining forest areas and Article 15 of the Forestry Law which places the appointment of forest areas as the first step in establishing legal forest areas. The Constitutional Court made corrections by determining that the correct process in determining forest areas was to follow the stages in Article 15 consisting of (1) appointment, (2) delineation of (3) mapping, and (4) determination. Thus, all forest area designations that have been carried out by the Ministry of Forestry cannot be considered valid as forest areas until the determination of forest areas by the government is carried out.

This court ruling prevents the Ministry of Forestry from arbitrarily establishing forest areas. For years, the Ministry of Forestry used an appointment decree to establish forest areas by neglecting local communities who had lived in particular areas before forest areas were established. The Judgment of the Constitutional Court stated:

> "Whereas in a rule of law, a state administrative officer shall not do as he pleases, but shall act in accordance with the laws and regulations, as well as acts under freies Ermessen (discretionary powers). The mere appointment of an area to be used as a forest area without going through a process or stages involving various stakeholders in the forest area in accordance with laws and regulations, is the implementation of authoritarian government. The designation of forest areas is predictable, not incidental, and even has to be planned, and therefore does not require the action of freies Ermessen (discretionary powers). It should not be a forest area that will be maintained as a permanent forest, controlling the lives of many people, only done through an appointment".[27]

The citation of the Constitutional Court's legal consideration means that the presumption by the Ministry of Forestry that the appointment procedure is the basis for defining forest areas is no longer viable. Maintaining the appointment decree as the legal basis for determining forest areas as definitive forest areas is a form of forestry authoritarianism that should be ended. This decision corrects the arbitrariness that has existed since colonial times in determining forest areas in Indonesia.

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[27] This is a loose translation of the following citation: "*Bahwa dalam suatu negara hukum, pejabat administrasi negara tidak boleh berbuat sekehendak hatinya, akan tetapi harus bertindak sesuai dengan hukum dan peraturan perundang-undangan, serta tindakan berdasarkan freies Ermessen* (discretionary powers). *Penunjukan belaka atas suatu kawasan untuk dijadikan kawasan hutan tanpa melalui proses atau tahap-tahap yang melibatkan berbagai pemangku kepentingan di kawasan hutan sesuai dengan hukum dan peraturan perundang-undangan, merupakan pelaksanaan pemerintahan otoriter. Penunjukan kawasan hutan merupakan sesuatu yang dapat diprediksi, tidak tiba-tiba, bahkan harus direncanakan, dan karenanya tidak memerlukan tindakan freies Ermessen* (discretionary powers). *Tidak seharusnya suatu kawasan hutan yang akan dipertahankan keberadaannya sebagai hutan tetap, menguasai hajat hidup orang banyak, hanya dilakukan melalui penunjukan* [In a legal state, state administrative officials are not allowed to act arbitrarily; instead, they must act in accordance with the law and regulations, as well as actions based on freies Ermessen (discretionary powers). The mere designation of an area to be classified as a forest area without going through processes or stages involving various stakeholders in the forest area in accordance with the laws and regulations constitutes an implementation of authoritarian governance. The designation of a forest area is something that can be predicted, not sudden, and must even be planned, and therefore does not require discretionary powers. A forest area that is to be maintained as a permanent forest should not dominate the livelihoods of many people, and its designation should not be done solely through appointment]".

2.2.2. Local Communities' Land Rights Must Be Considered in the Establishment of Forest Areas (Case Number No. 34/PUU-IX/2011)

In the Constitutional Court ruling on Case Number 34/PUU-IX/2011, the Constitutional Court strengthened its view that the confirmation of forest areas must pay attention to the existence and rights of indigenous communities, including the rights of individuals and legal entities. The petitioner in case No. 34/PUU-IX/2011 is Maskur Anang bin Kemas Anang Muhamad, a businessman in Jambi, who submitted the judicial review case against Article 4 paragraph (3) of the Forestry Law, which stated: *"The control of forests by the State continues to pay attention to the rights of indigenous peoples, as long as the reality is still there and recognized for its existence, and does not conflict with the national interest."*

The applicant expected that what is considered in the establishment of forest areas by the Ministry of Forestry is not only indigenous communities rights, but also other land rights recognized by laws and regulations. In this case, the petitioner suffered a constitutional loss due to the establishment of a forest area that deprived him of land use rights for developing plantation activities. The Constitutional Court granted the application. Consequently, the Constitutional Court gave a new meaning to Article 4, paragraph (3) of the Forestry Law: "*The control of forests by the state still pays attention to the rights of indigenous ommunities, as long as the reality is still there and recognized for its existence,* ***the rights of communities are given based on the provisions of laws and regulations****, and do not conflict with the national interest".* Therefore, in establishing forest areas, the government must first include local communities' consent as a form of control with respect to the exercise of government authority in the forest establishment process. The government must ensure the fulfillment of the constitutional rights of citizens in the form of property rights, customary rights, and other land rights according to the provisions of laws and regulations such as Land Use Rights (*Hak Guna Usaha*), Building Use Rights (*Hak Guna Bangunan*), and Right to Use (*Hak Pakai*).

What does the Constitutional Court mean by the word "pay attention" in Article 4, paragraph (3) of the Forestry Law? The Constitutional Court in this ruling refers to the Constitutional Court Decision No. 32/PUUVIII/2010, on June 4, 2012, stating that the following:

> "... The wo"d *"pay attent"on"* in Article 4, paragraph (3) of the Forestry Law must also be interpreted imperatively in the form of an affirmation that the Government, when determining forest areas, is obliged to include community consent first as a form of control function over the Government to ensure the fulfilment of the constitutional rights of citizens to live a prosperous life mentally and physically, reside, and get a good and healthy living environment, and have private property rights and such property rights may not be arbitrarily taken over by anyone [vide Article 28H paragraphs (1) and (4) of the 1945 Constitution]. "[28]

Therefore, in the process of determining forest areas, when the government determines the existence and rights of indigenous communities or individual rights based on laws and regulations, it is obliged to make a fair land conflict settlement with the rights holders in advance. Consequently, the criminal approach of imprisoning people who live and depend on forests is not the best way to solve land tenure conflicts. This decision strengthens the rights of communities in the process of establishing forest areas that have been ignored for centuries and have led to pervasive forest tenure conflicts.

2.2.3. Separation of Customary Forest and State Forest (Case Number No. 35/PUU-X/2012)

The petitioners in Case No. 35/PUU-X/2012 comprise AMAN, the Kuntu community, and the Cisitu Kasepuhan community. The main point of application

[28] This is a loose translation to the following citation: "*... kata "memperhatikan" dalam Pasal 4 ayat (3) UU Kehutanan haruslah pula dimaknai secara imperatif berupa penegasan bahwa Pemerintah, saat menetapkan wilayah kawasan hutan, berkewajiban menyertakan pendapat masyarakat terlebih dahulu sebagai bentuk fungsi kontrol terhadap Pemerintah untuk memastikan dipenuhinya hak-hak konstitusional warga negara untuk hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat, mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapa pun (lihat Pasal 28H ayat (1) dan ayat (4) UUD 1945)* [...the word "considering" in Article 4 paragraph (3) of the Forestry Law must also be interpreted imperatively, signifying that the Government, when determining forest area boundaries, is obligated to involve the opinions of the community first as a form of control function against the Government to ensure the fulfillment of citizens' constitutional rights to live a prosperous life physically and spiritually, to reside, and to have a good and healthy environment. They have personal ownership rights, and these rights cannot be arbitrarily taken over by anyone (see Article 28H paragraph (1) and paragraph (4) of the 1945 Constitution)]."

in Case No. 35/PUU-X/2012 is the constitutionality of the existence of customary forests as part of state forests. Article 1 number 6 of the Forestry Law states: "*Customary forests are* ***state*** forests located *within the territory of indigenous peoples.*" Furthermore, Article 5 paragraph (2) of the Forestry Law states that: "*State forests as referred to in paragraph (1) letter a, can be in the form of customary forests.*" The provision stating that customary forests are part of the state's forests has created a denial of the existence of customary forests. Coupled with the government's lack of seriousness in creating operational policies that allow indigenous communities to enjoy their rights to customary forests.

The petitioners argued that the existence of customary forests should be made into a special category in contrast to state and right forests. However, the Constitutional Court has another opinion that differs from the construction of the Forestry Law and from that pleaded by the petitioner. The Constitutional Court, through its ruling, separated customary forests from state forests, but did not make customary forests a special category, but instead included the existence of customary forests as one of the types in rights forests. Therefore, the right forest consists of forests that are on the land of individuals/legal entities, and customary forest.[29]

2.2.4. Diminishing Criminalization Toward Local Communities (Case Number 95/PUU-XII/2014)

This case is related to the judicial review of the Forestry Law and the Law on the Prevention and Eradication of Forest Destruction. The applicants in this case were 10 parties consisting of indigenous communities, individuals, and NGOs. The applicants argue that the enactment of some provisions in the Forestry Law and the Law on Prevention and Eradication of Forest Destruction has had an impact on the criminalization of communities who live within and around forest areas. This also creates legal uncertainty regarding the status of forest areas that sustain forest tenure conflicts, and the deteriorating condition of forests.

[29] Arizona et al., *Kembalikan Hutan Adat* [Return Customary Forests].

The Constitutional Court, in its legal considerations, stated that the provisions of the forestry crime in Article 50 paragraph (3) letter e and letter i of the Forestry Law do not apply to people who live for generations in the forest areas, as long as they cut down trees, harvest, collect forest products, and raise livestock in forest areas are carried out not for commercial purposes. The Constitutional Court argues that people who have lived for generations in the forest need clothing, food, and shelter for their daily needs that must be protected by the state, not even threatened with criminal penalties. To provide further explanation on this matter, it is necessary to explain the following categories:

People who have lived in the forest areas for generations, known as heredity communities, are not subject to the criminal provision in the Forestry Law. Hereditary community is a general term that can be applied to indigenous communities and local communities that have lived in the forest for generations. The term hereditary can also be proved by investigating grandchildren within the community to show that the community has lived in the forest for more than two generations. Therefore, to measure whether a community has lived for generations, it is proven that the community has lived in the forest for more than two generations.

People who live in forest areas does not mean that they reside in forest areas. the Constitutional Court stated that the exemption criminal provisions are only aimed at people living in the forest, not for communities located "around the forest area". The Constitutional Court did not specify the difference between people who "live in the forest" and people who are "around the forest area." However, to provide a clear understanding, people living in the forest must be linked to their livelihood, especially with regard to basic needs such as clothing, food, and shelter from the forest, as considered by the Constitutional Court. Therefore, people who live in the forest do not have to be a community whose houses are built in the forest, but local community members who depend on their livelihood from forest land and resources. In short, only people who have a strong life relationship with the forest, beyond economic relations, are excluded from the criminal provisions.

Local communities use forest land and resources, not for commercial purposes. Another criterion for exemption is that local communities only use forest land and resources for non-commercial activities. This condition is important to avoid over-exploitation of forest resources by local community members, which can lead to forest degradation. However, many local community members had planted trees and other crops for commercial activities in forest areas by themselves. In many cases, this practice has occurred even before the government designated their land as forest areas. Another issue is related to raising livestock in forest areas. People often raise animals such as chickens, goats, and cows in the forest for commercial purposes to increase their income. Therefore, the Constitutional Court's restrictions on non-commercial purposes should be viewed as an effort to protect forests from excessive destruction.

2.3. Implementation of Constitutional Court Rulings

The four Constitutional Court rulings discussed above have contributed to facilitating forest tenure conflict resolution. The Constitutional Court has made corrections and encouraged forestry tenure reform in line with the principles of the rule of law and human rights. In the process of establishing forest areas, the Constitutional Court stated that the process of determining definitive forest areas must follow all stages, including paying attention to and seeking approval from communities that will be affected by the determination of forest areas. The Constitutional Court also emphasized the position of customary forests as part of customary territories and not as part of state forests. Thus, customary forest areas that have been used by the government as state forest areas must be returned to indigenous communities. Finally, the Constitutional Court developed exceptions for the application of criminal provisions for people who live, use forest products not for commercial purposes, and herd livestock in forest areas.

The Constitutional Court's ruling contributes indirectly to the resolution of forest tenure conflicts. To understand the effect of the Constitutional Court's rulings, it is necessary to investigate the implementation of the court rulings by the government, local communities, and NGOs to determine the impact of the Constitutional Court's rulings. This section discusses some of the government's

responses, both institutional and programmatic, and examines what changes have been made to implement the Constitutional Court's decision in relation to improving forestry governance and resolving forest tenure conflicts.

2.3.1. Joint Agreement of Twelve Ministries and State Agencies Under the Supervision of KPK

Good Constitutional Court rulings will not work without institutional change and government response to implement Constitutional Court's rulings. At an earlier stage, the Ministry of Forestry was not responsive to Constitutional Court's ruling. Another institution, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*/KPK), which promotes better forestry governance, encourages the establishment of a joint understanding involving twelve ministries and state agencies to advance the establishment of forest areas. This program aims to resolve forestry tenure conflicts through reformulation of procedures for establishing forest areas.

In 2013, the KPK built a commitment with 12 Ministries and Institutions to prevent corruption in the establishment of forest areas, known as *Nota Kesepahaman Bersama* (NKB) 12. Although the entrance to this issue is from the prevention of corruption, this joint agreement can enable the Ministry of Forestry and other ministries to work together to improve forestry governance as a prerequisite for the resolution of forest tenure conflicts. The data below show that the establishment of forest areas has increased dramatically since the NKB was agreed. Each agency is actively involved in the establishment of forest areas.

In addition to its success in encouraging the acceleration of the establishment of forest areas, NKB 12 has also succeeded in encouraging some ministries to create basic regulations for the recognition of customary forests. To implement NKB 12, the Ministry of Home Affairs issued a Regulation on Guidelines for the Recognition of Indigenous Communities, the Ministry of Agrarian Affairs issued a Ministerial Regulation on Communal Lands, and the Ministry of Forestry issued a Ministerial Regulation containing procedures for the establishment of customary forests. Details on this will be discussed further in the section below.

Although NKB 12 is quite effective in encouraging forest governance reform and the implementation of Constitutional Court's decision, the commitment of this cooperation does not last long. In 2014, a general election led to the establishment of a new regime. The commitment of the ministers of the previous government was different from that of the new government. In addition, the form of cooperation through NKB 12 is naturally *ad hoc*, not in the form of a permanent institution. Therefore, the improvement of forest tenure reform to resolve forestry tenure conflicts requires permanent institutions.

2.3.2. The Reorganization of the Ministry of Forestry and New Policies

The Constitutional Court's ruling provides an argument for indigenous community organizations and NGOs to push for structural changes. For this group, the recognition of customary forests is a strategic step toward the resolution of forestry tenure conflicts. This group is aware that the implementation of Constitutional Court's decision is not entirely an administrative process, but a political process. Therefore, they take advantage of the political opportunities available. During the 2014 presidential election, AMAN, as the applicant in the Court ruling in Case Number 35 and as the largest indigenous organization in Indonesia, supported presidential candidate Joko Widodo-Jusuf Kalla. The pair of presidential candidates incorporated the AMAN agenda into their political programs, to encourage the government to implement the Constitutional Court's decision on customary forest recognition.

After Joko Widodo-Jusuf Kalla won the 2014 elections, the group felt that it had a great opportunity to oversee the implementation of the Constitutional Court ruling. However, it requires an institutional change in the government. President Joko Widodo merged the Ministry of Forestry with the Ministry of Environment. This merger is expected to provide a stronger social and environmental dimension to forest management. Within the Ministry of Environment and Forestry, the Directorate General of Social Forestry and Environmental Partnerships (*Perhutanan Sosial dan Kemitraan Lingkungan*/PSKL) was established. This Directorate is at the forefront of the process of resolving forestry conflicts and recognizing communities' rights in the field of forestry.

2.3.3. Enhancing Social Forestry Programs and Legal Recognition of Customary Forests

The notable contribution of the Constitutional Court is to strengthen communities' rights in forestry management. Currently, the demands of communities to resolve conflicts are not only based on the real needs they face for the fulfillment of daily needs, but are also based on constitutional rights. The Constitutional Court's ruling has prompted many community groups to use constitutional rights as an argument to deal with government agencies and forestry companies on the ground. One example relates to the decision of Constitutional Court Case Number 35, which recognised the existence of customary forests. Indigenous groups in various places made signposts and erected them at conflict sites. The signpost stated: Based on the Decision of the Constitutional Court No. 35/PUU-X/2012, Customary Forests are No Longer State Forests. These events concretely show that Constitutional Court's ruling impacts on the ground as an argument for local communities encountering forest tenure conflicts.

The rise of awareness that the resolution of forest tenure conflicts and the constitutional rights of forest dwellers has led to many important changes. A notable example is the increase in access and rights of communities through various social forestry schemes and customary forests.[30] The government is rapidly expanding the scheme and simplifying procedures for communities to gain access to or recognition of customary forests.[31] Data until July 2022 show that the area of forest areas managed by the community has reached more than 5 million hectares. This number has increased greatly compared to the condition of approximately 10 years ago, before there was a single Constitutional Court ruling that strengthened community rights and encouraged improvements in forestry governance.

[30] Mia Siscawati, et al., "Overview of Forest Tenure Reforms in Indonesia" (Working Paper 223 (published) presented for Center for International Forestry Research at Bogor, Indonesia, 2017).

[31] Yance Arizona, Malik, and Lucy Ishimora, "*Pengakuan Hukum Terhadap Masyarakat Adat: Trend Produk Hukum Daerah dan Nasional Paska Putusan MK 35/PUU-X/2012* [The Legal Recognition of Adat Communities: The Trend of Local and National Regulation after Constitutional Court Decision Number 35/PUU-X/2012]," *Outlook Epistema* 2017.

2.4. Contribution and Limitations of Court Rulings

The Constitutional Court has played an important role in facilitating forest tenure reform by making corrections to several provisions of the Forestry Law. There are substantially at least two main contributions of the Constitutional Court. First, the Constitutional Court restricts arbitrary action by the government, which is the most important element in realizing the rule of law principles. The Constitutional Court tends to end authoritarian practices in determining definitive forest areas. In the ruling, the Constitutional Court restored the position of appointment as the initial stage in the process of establishing forest areas as desired by Article 15 of the Forestry Law. The Constitutional Court wants to ensure a participatory process in the establishment of forest areas to reduce forestry tenure conflicts.

Second, the Constitutional Court plays an important role as the protector of constitutional rights by prioritizing the existence and indigenous peoples' rights as well as individual rights in the process of establishing forest areas. The priority of citizens' rights is used as a principle by the Constitutional Court so that the government must consider the designation of forest areas. Similarly, in the establishment of forest areas, the government must pay attention to seeking the consent of the community. The Constitutional Court not only recognizes the existence of community rights in forest management but also affirms a special category of customary forests that must be separated from state forests to ensure that indigenous communities can enjoy their constitutional rights guaranteed by the constitution.

However, it is also undeniable that there are many of limitations to the use of the Constitutional Court in supporting forestry tenure reforms. The first is the Constitutional Court's decisions that apply to the future (*prospective*). Consequently, it is less effective to endure fundamental corrections from past decisions by the government that have been the main cause of the present forest tenure conflicts. Second, the Constitutional Court ruling is general and public. It only resolves problems at the level of legal norms, not at the level of legal practice in the field. Thus, the presence of a Constitutional Court ruling does

not necessarily solve the concrete problems faced by the people on the ground. At the very least, the Constitutional Court's ruling can open a new debate and policy that is more in favour of the interests of citizens whose living space has been deprived of due to the enactment of a law. Thus, the implementation of Constitutional Court's ruling requires institutional changes and the involvement of the political process to give meaning to Constitutional Court's decision.

III. CONCLUSION

The Constitutional Court has played an important role in supporting forestry tenure reform. The Constitutional Court's most important contribution is to limit the arbitrary power of the government in the process of establishing forest areas while providing a solid foundation for the priority of individuals' and indigenous communities' rights in forest governance in Indonesia. However, the Constitutional Court's decision has a significant impact only if its implementation is supported by community organizations and NGOs who consistently encourage institutional changes, policy reforms, and innovative programs to implement the Constitutional Court's rulings.

Thoroughly, the implementation of Constitutional Court's ruling followed the changing demands and pressure from local communities. The government made incremental changes to gradually accommodate the local and indigenous communities' rights to reach forestry tenure conflict resolution. However, there is something unimaginable in advance by proponents of indigenous communities' rights regarding the procedural consequences of realizing customary forest recognition. Regulatory reform requires improved access to legal procedures for realizing the recognition of rights and the resolution of conflicts. Government agencies strictly control the process and outcomes of conflict resolution and the legalization of indigenous communities' rights. The indirect consequences of such a mechanism reinforce the imbalance of power between the government and the people. In other words, complicated procedures for the recognition of rights and conflict resolution generate greater discretionary space for state agencies to slow down, divert, and reject claims submitted by communities.

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