

## **The Legal Mechanism for the Reversion of Limited Production Forest Areas Converted into Oil Palm Plantations by PT Arara Abadi under Law Number 6 of 2023 on Job Creation**

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### **ABSTRACT**

*The guidelines for determining forest areas in the Riau province are still based on the Decree of the Minister of Forestry Number 173/kpts-II of 1986 dated June 6, 1986, concerning the designation of forest areas in the Riau Province at the first level. The main issues in this study are the mechanism for the return of limited production forest areas by PT Arara Abadi that have been converted into oil palm plantations based on Law No. 6 of 2023 and the factors hindering the mechanism for the return of limited production forest areas by PT Arara Abadi that have been converted into oil palm plantations based on Law No. 6 of 2023. The research method used in this study is descriptive analytical observation. The approach method is qualitative analysis. The data sources in this study are primary and secondary data. The method of drawing conclusions in this study is deductive.*

*The results of this study show that the mechanism for returning limited production forest areas by PT Arara Abadi, which have been converted into oil palm plantations based on Law Number 6 of 2023 concerning Job Creation, has not been implemented in terms of licensing mechanisms, the return of forest areas, and their utilization by the community, even though legal action has been taken in the district court, resulting in Decision Number 17/Pdt-G/LH/2023/PN Bkn. PT Arara Abadi must restore 180 hectares of forest planted with oil palms to its original status as Limited Production Forest. The factors hindering the return of the limited production forest area in Bencah Kelubi Village are the multiple legal interpretations by PT Arara Abadi, the difficulty of the return process due to the vast area of land, which requires a lot of money and security personnel, and the lack of implementation of duties and supervision by the Ministry of Forestry and the Forestry Service.*

**Keywords:** *Refund Mechanism, Job Creation Law, Limited Production Forest Areas.*

## **1. Introduction**

Plantation business is one type of business in natural resource management in Indonesia. Plantation business actors can be given land rights for plantation business in accordance with the provisions of laws and regulations. The types of plantation business as mentioned in Article 41 of the Plantation Law consist of plantation crop cultivation business, plantation processing business, and plantation service business. Plantation business activities can only be carried out by plantation companies if they have obtained land rights and/or a Plantation Business Permit, including an Environmental Permit, and the plantation area is in accordance with the regional spatial plan (RT/RW) and the plantation plan. Plantations consist of several commodities, one of which is oil palm. Oil palm is the most efficient vegetable oil-

producing plant among several other vegetable oil source plants and has high economic value.

Indonesia is one of the world's largest producers of palm oil. Palm oil is one of Indonesia's leading commodities and is often exported to various countries around the world.<sup>1</sup> The growth of the palm oil plantation business is inseparable from local and central government policies that make it easier for private companies to invest their capital by issuing Plantation Business Permits. Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 5 of 2015, Article 1, point 1, states that a Location Permit is a permit granted to a company to acquire the land necessary for investment, which also serves as a transfer of rights permit, and to use the land for investment purposes. Article 2 paragraph (1) states that every company that has obtained investment approval must have a Location Permit, and is prohibited from acquiring land before the Location Permit is issued. A Location Permit is a requirement that must be met in the event that a company will acquire land for the purpose of investment. The purpose of this requirement is to guide and control companies in acquiring land, considering that land ownership must take into account the interests of the wider community and land use must be in accordance with the applicable spatial plan and the physical capabilities of the land itself.

In its development, this provision has been expanded so that for purposes unrelated to investment or with the intention of obtaining a Location Permit as mentioned above, a Location Permit is also required. In this regard, it is considered necessary to clarify the function of the Location Permit by, among other things, stipulating that the Location Permit is only required for investment purposes and simultaneously stipulating the circumstances under which the Location Permit is not required or is deemed to have already been obtained by the company concerned because the purpose of the Location Permit has already been fulfilled.

Article 3 paragraph (1) of Minister of Agriculture Regulation Number 98/Permentan/OT.140/9/2013 states that there are three types of plantation businesses, namely Plantation Crop Cultivation Businesses, Plantation Product Processing Industry Businesses, and Integrated Plantation Businesses combining cultivation with the plantation product processing industry. Then Article 3 paragraph (2) states that plantation businesses can be carried out throughout Indonesia by Plantation Business Operators, in accordance with national, provincial, and regency/city plantation development plans. Article 7 states that Plantation Business Licenses consist of a. Plantation Business License for Cultivation (IUP-B), b. Plantation Business License for Processing (IUP-P) and c. Plantation Business License (IUP). IUP-B is required for plantation crop cultivation businesses covering an area of 25 (twenty-five) hectares or more. IUP-P is required for industrial businesses processing palm oil, tea, and sugar cane products with a capacity equal to or exceeding the minimum

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<sup>1</sup> Pricillia Monica Runtulalo, Fransiscus X. Tangkudung, and Marthin L. Lambonan, 'TINJAUAN YURIDIS PERIZINAN HAK GUNA USAHA LAHAN PERKEBUNAN KELAPA SAWIT DI INDONESIA', *Lex Privatum*, 11.2 (2023).

capacity.

In response to the disharmony between central and regional government policies and in order to open up investment opportunities in Indonesia, especially in the regions, the government has passed and enacted Law Number 11 of 2020 (Job Creation Law), which includes revisions to Law Number 39 of 2014 concerning Plantations. However, following the Constitutional Court (MK) ruling that "The formation of the Job Creation Law is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as 'no improvements are made within 2 (two) years from the date of this ruling'. It also stated that the Job Creation Law remains in effect until revisions are made in accordance with the time frame specified in this ruling." This means that the provisions of the Job Creation Law above remain in effect as long as all of its implementing regulations do not conflict with Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perpu Cipta Kerja).

New regulations in the forestry and plantation sectors following the enactment of the Job Creation Law and its derivative regulations support the growth of the palm oil industry as a key commodity in the Indonesian economy.<sup>2</sup> However, the enactment of the Job Creation Law has created legal uncertainty. The uncertainty resulting from the controversy has been exacerbated by the emergence of new problems since the issuance of Government Regulation No. 24 of 2021 concerning the Legalization/Amnesty of Palm Oil Plantations in Forest Areas, which is derived from Articles 110A and 110B of the Job Creation Law. In general, the article explains that any industry that owns palm oil land and does not yet have a permit and violates forestry regulations will be subject to criminal and/or administrative sanctions in accordance with the type of violation committed. Unfortunately, the presence of this palm oil land amnesty regulation will further threaten the sustainability of forest areas and the entire natural ecosystem within them, increasing the scope for violations.<sup>3</sup>

With the new government policy, the question arises as to whether the enactment of the Job Creation Law can satisfy the public's sense of justice and reduce existing conflicts. As described by Kirsfianti Ginoga et al., facts on the ground show that the damage to protected forests is higher than that to production forests. This can be interpreted as meaning that there is still no harmonization of policies that can underpin the management of protected forests in the regions. The main issues identified relate to overlapping spatial planning, local government and community management rights, illegal logging, encroachment, and land ownership issues. This means that there is a contradiction in forest management policy, whereby local governments want to expand protected areas with a focus on increasing revenue, but the central government has designated several forest areas as national parks with a

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<sup>2</sup> Raymond Jonathan and others, 'Implikasi Undang-Undang Cipta Kerja Dalam Industri Kelapa Sawit Dalam Kerangka Pembangunan Berkelanjutan', *Jurnal Hukum Lingkungan Indonesia*, 7.2 (2021), pp. 323-46, doi:10.38011/jhli.v7i2.326.

<sup>3</sup> Hafilah Adys Mardela and others, 'Analisis Dilema Pengambilan Keputusan Pada Regulasi Pemutihan Lahan Sawit Dalam Undang-Undang Cipta Kerja', *Journal of Social and Economics Research*, 5.2 (2023), pp. 759-67, doi:10.54783/jsr.v5i2.147.

focus on conservation. Another issue is the confusing overlapping policies for field implementers, such as the process of borrowing forest areas for non-forestry development purposes, which requires permission from the local government. Meanwhile, the regulations on plantation business permits in the Job Creation Law prioritize ease of investment, with permits being the authority of the central government.

In Riau, the guidelines for determining forest areas in the Riau province are still based on the Decree of the Minister of Forestry Number 173/ktps - II of 1986 dated June 6, 1986, concerning the designation of forest areas in the Province of Riau Level I as TGHK 1986 forestry. This is based on the Letter of the Minister of Forestry dated July 19, 2003, Number 404/Menhut-II/2003, concerning: Circular Letter addressed to all Governors and Regents throughout Indonesia, which essentially states that "for every province that does not yet have a ministerial decree on the re-designation of forest areas based on the results of the integration of the Provincial Spatial Plan (RTRWP) with the Forest Use Agreement (TGHK), then the forest areas in that province shall refer to and be guided by the Minister of Forestry's decision on the Agreed Forest Use Plan (TGHK). This is intended to prevent a legal vacuum.

That based on the provisions of Article 4 paragraphs (1) and (2) of Law Number 41 of 1999 concerning Forestry, every activity related to the management, utilization, and use of forests must obtain a permit from the Minister of Forestry, so that any utilization or use of forest areas that has not been approved by the Minister of Forestry is an unlawful act. The ownership of the Limited Production Forest (HBT) area is recognized as belonging to the State based on the Decree of the Minister of Forestry Number 173/Kpts-II/ 1986 dated June 6, 1986, concerning the Designation of Forest Areas in the Province of Riau as Forest Areas, also known as TGHK 1986. The boundaries of these forest areas were demarcated in the field by the Directorate General of Forest Inventory and Utilization in 1990, and these boundaries were ratified on February 26, 1992.

A 180-hectare oil palm plantation located in Bencah Kelubi Village, Tapung District, Kampar, Riau Province is the subject of this case. The oil palm plantation is a forest area that has been designated by the government based on a ministerial decree. From the above phenomenon, there is an unlawful act whereby PT Arara Abadi has taken land that is not its right and is exploiting the land for its own interests. The government has issued and published that the land is forest area land, and it has also been decided that the land is forestry land. However, in reality, the land is still controlled by PT Arara Abadi, and the actions of PT Arara Abadi constitute illegal acts that have been carried out since 2004, approximately 21 years ago, until today.

From the background description above, the author is interested in raising the issue of the non-implementation of the Bangkinang District Court's decision on the restoration of status and function in a scientific paper in the form of a scientific journal with the title "The Legal Mechanism for the Reversion of Limited Production Forest Areas Converted into Oil Palm Plantations by PT Arara Abadi under Law Number 6

of 2023 on Job Creation.”

## 2. Research Method

The type of research used in this study is empirical legal research. In this study, the researcher will directly conduct research in the area that is the object of study, beginning with direct observation of the research location. The aim is to obtain data and answers from respondents related to the Mechanism for Returning Limited Production Forest Areas by PT Arara Abadi to be Used as Palm Oil Plantations Based on Law Number 6 of 2023 concerning Job Creation for Palm Oil Plantations in Bencah Kelabi Village, which involves PT Arara Abadi and the community of Bencah Kelabi Village, Tapung District. The nature of this research is descriptive analysis, meaning that the author will provide a complete and accurate presentation of data related to the object of study so that the issues raised in this research can be clearly understood.

## 3. Result and Discussion

### 3.1. Mechanism for the Return of Limited Production Forest Areas by PT Arara Abadi That Have Been Converted into Palm Oil Plantations Based on Law Number 6 of 2023 Concerning Job Creation

Land conflicts are one of the most common conflicts in Indonesia. These conflicts arise not only because of the community's lack of knowledge about land ownership and greed in controlling land, but also because of overlapping land interests.<sup>4</sup> Based on Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (P3H Law), which has been amended by Law Number 6 of 2023 concerning Job Creation (Job Creation Law), the following is a description of the procedures that must be followed by PTs that convert forest areas into oil palm plantations.

#### 1. Completing Licensing Requirements

The completion of these licensing requirements covers several aspects, including that the company must fulfill all licensing requirements necessary for oil palm plantation activities in forest areas. This includes permits related to the release of forest areas, plantation business licenses, and other relevant permits. This process will involve an assessment of environmental impacts, compliance with spatial planning, and other technical requirements.

In this study, PT Arara Abadi has obtained a permit for the control of Industrial Forest Plantations covering a forest area of 299,975 hectares in the Province of Riau, as well as an Annual Work Plan for the Utilization of Industrial Forest Timber Products for 2023 in the Province of Riau, SK.

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<sup>4</sup> Riyadi Mustofa and Riati Bakce, 'Potensi Konflik Lahan Perkebunan Kelapa Sawit', *Unri Conference Series: Agriculture and Food Security*, 1 (2019), pp. 58–66, doi:10.31258/unricsagr.1a8.



IUPHHK-HTI, Number: SK 1131/MENLHK/SETJEN/HPL-2/2022 dated November 1, 2022, with a working area of 296,164.00 hectares, covering the districts of Kampar, Bengkalis, Indragiri Hilir, Pelalawan, Rokan Hilir, Siak, the city of Pekanbaru, and Dumai.

In this case, the author interviewed Mr. H. Nuriman, SH., MH, a lawyer for PT Arara Abadi, regarding the permits held by PT Arara Abadi for control of the forest area located in Bencah Kelubi Village, Tapung District, Kampar Regency. In the interview, Mr. H. Nuriman, SH., MH said *"PT Arara Abadi has obtained several permits to manage forest timber products in several areas in Riau Province, one of which is located in Bencah Kelubi. This is based on the 2018 Work Plan Map for the Utilization of Timber Forest Products in Industrial Forest Plantations (RKTUPHHK-HTI) for PT Arara Abadi, Kampar Regency, Riau Province."*

Furthermore, regarding the transfer of land that was originally granted a permit for timber utilization but is now a palm oil plantation, the source stated, *"Legal action has been taken regarding the issue of forest areas being converted into palm oil plantations, and we will resubmit several legal measures so that this issue can be resolved as soon as possible. And now there is Law Number 6 of 2023 concerning Job Creation, whereby this issue can be resolved through amnesty and utilization of the area."*<sup>5</sup>

## 2. Land Return Obligation

Land restoration may be requested from the company if it does not have complete permits or if its plantation activities are considered to cause significant environmental damage. In this case, PT Arara Abadi is obliged to restore the land because its permit is for the utilization of forest products in the form of timber, not for the conversion of forest areas into oil palm plantations. PT Arara Abadi has received a ruling from the Bangkinang District Court Number 17/Pdt.G/LH/2023/PN/Bkn. Regarding this matter, the author inquired about the restitution that must be made by PT Arara Abadi and conducted an interview with the Head of the Riau Madani Foundation, Mr. Surya Darma, who provided the following statement during the interview *"PT Arara Abadi must return the 180-hectare forest area in Bencah Kelubi Village, which today has become a palm oil plantation controlled by PT Arara Abadi since 2004, around 21 years ago. This has certainly damaged the forest ecosystem and only brought profits to PT Arara Abadi. Now, Law Number 6 of 2023 concerning Job Creation has been passed, which in articles 110a and 110b regulates that amnesty is allowed with the payment of fines and other penalties. However, in my opinion, this does not apply to PT Arara Abadi because its control over the forest land has exceeded 15 years, and it must be returned to the state in its original form as a forest area."*<sup>6</sup> In this case, PT Arara Abadi has not yet carried out the restoration as required and regulated in the mechanism for restoring forest

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<sup>5</sup> 'Wawancara Dengan Bapak H. Nuriman, SH., MH Selaku Pengacara PT. Arara Abadi'.

<sup>6</sup> 'Wawancara Dengan Bapak Surya Darma Kepala Yayasan Riau Madani'.

areas that have been converted into oil palm plantations.

### 3. Administrative Witness in Criminal Cases

In addition to land restitution, administrative and criminal sanctions may also be imposed on individuals who violate the provisions of the Law on Prevention and Eradication of Forest Destruction. Regarding the imposition of sanctions in this case, PT. Arara Abadi also interviewed Mr. Surya Darma, head of the Forestry Foundation. In the interview, Mr. Surya Darma stated:<sup>7</sup> *"PT Arara Abadi was sanctioned based on the Bangkinang District Court Decision Number 17/Pdt.G/LH/2023/PN/Bkn, which stipulated that PT Arara Abadi must cut down all oil palm trees and dismantle all buildings in Bencah Kelubi Village covering an area of 180 hectares and carry out reforestation (reforestation) by planting forestry crops in accordance with their designation as industrial forest, such as Acacia species, on an area of 170 hectares with the status of industrial forest, and to carry out reforestation with forestry crops such as Meranti, Kempas, Bintagur, Bird's Eye Durian, Gerunggang, Kedondong, Terantang Ayam, and so on."*

This sanction has been imposed on PT Arara Abadi, but PT Arara Abadi has yet to make any restitution as determined and required to date.

### 4. Resolution For the Community

In resolving land use conversion issues, regulations and the government must pay attention to the rights of the people by providing concrete solutions. Regarding this issue, the author also interviewed the Head of Bencah Kelubi Village regarding the issue of forest areas being converted into oil palm plantations by PT Arara Abadi. Mr. Baidarus, Head of Bencah Kelubi Village, said that *"This issue has been going on for a long time, and it has not been resolved until now. On behalf of the residents, I feel that it is unfair. We, as local residents, have formed a farmer group called Tuah Melayu. We hope that the forest area can be used and utilized by the surrounding community. Now, the forest area has indeed been turned into a palm oil plantation. We hope that we can enjoy the results together and that it will be approved by the government."*<sup>8</sup>

The author also interviewed the Kampar District Forestry Service regarding the issue of forest areas that have been planted with oil palms, Mr. Yuricho Efril, S. STP, stated that his office always carries out its duties and responsibilities to supervise and protect forest areas in the Kampar Regency, including the forest area in Bencah Kelubi Village controlled by PT Arara Abadi, where the forest area in that area has been destroyed by cutting down all the natural trees and turning it into an oil palm plantation. This certainly serves as a lesson for us in the future so that such incidents do not occur again.

Mr. Yuricho, S.STP also added *that this issue had been resolved by the Bangkinang District Court, which ordered PT Arara Abadi to restore the forest to its original*

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<sup>7</sup> 'Wawancara Dengan Bapak Surya Darma Kepala Yayasan Riau Madani'.

<sup>8</sup> 'Wawancara Dengan Bapak Baidarus Kepala Desa Bencah Kelubi'.

*state as stipulated in the ruling. The local community is allowed to use the forest as long as they obtain a clear permit and use it in accordance with the permit, without damaging the forest.*<sup>9</sup>

The Job Creation Law provides opportunities for companies that were already operating in forest areas before the law was passed to complete the licensing requirements. However, for new plantation activities carried out after the Job Creation Law was passed without a valid permit, criminal sanctions will be imposed immediately. Resolving this issue involves coordination between various parties, including the Ministry of Environment and Forestry, local governments, and the community, with reference to the latest laws and regulations. Articles 110a and 110b of Law No. 6 of 2023 on Job Creation (UUCK) provide an opportunity to legalize oil palm plantations that are clearly not forest plantations, as stated in Article 110A.

- a. Every person who has a business permit in a forest area prior to the enactment of the Job Creation Law must complete the requirements no later than 3 years after the Job Creation Law comes into effect.
- b. If the requirements are not fulfilled within 3 years, the business operator will be subject to administrative sanctions in the form of fines or revocation of business licenses.
- c. Further provisions regarding the procedures for imposing administrative sanctions are stipulated in Government Regulations.

If we refer to the Decree of the Minister of Forestry of the Republic of Indonesia Number: 173/Kpts-II/1986 dated June 6, 1986 concerning the Designation of Forest Areas in the Province of Riau as palm oil plantations controlled by PT Arara Abadi, it is indeed a forest area. Therefore, since June 6, 1986, the status of the Object of Dispute in the case in question has been that of a Limited Production Forest Area (HPT). In 1994, the Riau Provincial Government issued Local Regulation No. 10 of 1994 concerning the Spatial Plan for the Province of Riau, in which the Object of Dispute was designated as a Production Forest Area, as shown in the Map Appendix to Local Regulation No. 10 of 1994 concerning the Spatial Plan for Riau.

The boundaries of the Limited Production Forest Area (HPT) mentioned above have been demarcated in the field by the Directorate General of Forest Inventory and Utilization, with a total length of 40,825 meters. The Limited Production Forest Area (HPT) has been named the "Minas Limited Production Forest Area," abbreviated as HPT MINAS.

The Minutes of the Minas Limited Production Forest Area Boundary Agreement, as stated in the third point, explicitly states that within the Minas Limited Production Forest Area, there are no longer any lands belonging to residents or third parties who have ownership or other rights. Furthermore, on November 25, 1997, the Minister of Forestry issued Decree Number: 743/Kpts-II/1996 dated November 25, 1996,

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<sup>9</sup> 'Wawancara Dengan Bapak Yuricho S. STP Kepala Dinas Lingkungan Dan Kehutana Kabupaten Kampar'.



concerning the Granting of Industrial Forest Concession Rights for a forest area of approximately 299,975.975 hectares in the Province of Riau to PT. Arara Abadi, as amended by Decree of the Minister of Forestry of the Republic of Indonesia Number: 100/Kpts-II/1997 dated November 25, 1997, concerning the Granting of Industrial Forest Concession Rights for a forest area of approximately 299,975.975 hectares in the Province (two hundred ninety-nine point nine hundred seventy-five) hectares in the Province of Riau to PT. Arara Abadi, as amended by Decree of the Minister of Forestry of the Republic of Indonesia Number: SK. 703/Menhut-II/2013 dated October 21, 2013, whereby  $\pm 170$  (one hundred seventy) hectares of the Disputed Object is included in PT. Arara Abadi's Industrial Forest Concession Rights and the remaining  $\pm 10$  (ten) hectares is designated as a Permanent Production Forest Area (HP).

On August 8, 2014, the Minister of Forestry issued Decree of the Minister of Forestry of the Republic of Indonesia Number: SK. 673/Menhut-II/2014 concerning the Change of Forest Area Designation to non-forest area covering an area of  $\pm 1,638,249$  (one million six hundred thirty-eight thousand two hundred forty-nine) hectares, Changing the Function of Forest Areas covering an area of  $\pm 717,543$  (seven hundred seventeen thousand five hundred forty-three) hectares and Designating non-forest areas as forest areas covering an area of  $\pm 11,552$  (eleven thousand five hundred fifty-two) hectares in Riau Province, which, based on the Map Attachment to the Minister of Forestry's Decree, sheet 0816, shows that the status of the Object of Dispute in the a quo case remains as Permanent Production Forest Area (HP).

Furthermore, on September 29, 2014, the Minister of Forestry issued Decree of the Minister of Forestry of the Republic of Indonesia Number: SK. 878/Menhut-II/2014 concerning Forest Areas in Riau Province, which, based on the Map attached to the Decree of the Minister of Forestry, sheet 0816, shows that the status of the Object of Dispute in the case a quo remains as Permanent Production Forest Area (HP). On April 20, 2016, the Minister of Environment and Forestry of the Republic of Indonesia issued Decree Number: SK. 314/MENLHK/SETJEN/PLA.2/4/2016 dated April 20, 2016 concerning the Change of Designation of Forest Areas to Non-Forest Areas covering an area of  $\pm 65,125$  (sixty-five thousand one hundred twenty-five) hectares in Riau Province, which, based on the Map Appendix to the Decree of the Minister of Environment and Forestry on sheet 0816, shows that the status of the Object of Dispute in the a quo case remains as Permanent Production Forest Area (HP).

Then on December 7, 2017, the Minister of Environment and Forestry of the Republic of Indonesia issued Decree Number: SK. 903/MENLHK/SETJEN/PLA.2/2016 concerning the Riau Province Forest Area, which, based on the Map Appendix to the Decree of the Minister of Environment and Forestry on sheet 0816, it can be seen that the status of the Object of Dispute in the a quo case remains as a Permanent Production Forest Area (HP). On May 8, 2018, the Provincial Government of Riau issued Riau Provincial Regulation Number 10 of 2018 concerning the 2018-2038 Spatial Plan for the Province of Riau (RTRWP), in which the Object of Dispute is designated as a Production Forest Area. From the above explanation, it can be concluded that the 180-hectare oil palm plantation area in Bencah Kelubi Village, Tapung District, which is controlled by PT Arara Abadi, is a Forest

Area.<sup>10</sup>

From the above explanation, it can be concluded that the 180 hectares of land located in Bencah Kelubi Village, Tapung District, is a limited production forest area that cannot be converted into a palm oil plantation, as has been done by PT Arara Abadi since 2004, The issuance of Law Number 6 of 2023 concerning job creation, articles 110A and 110B. PT Arara Abadi cannot follow the procedure for amnesty and obtaining permits. This is because the provisions of these articles stipulate that the land can only be used for 15 years, after which it must be returned to the state. In this case, PT Arara Abadi has controlled the land for 21 years.

The author also interviewed the Head of the Bangkinang District Court, Mr. Ersin, SH. MH, who said that *"The process of establishing the above forest area has gone through the stages of designation, boundary demarcation, and mapping, and has not yet reached the stage of final determination."*<sup>11</sup>, as stipulated in Article 15 of Law Number 41 of 1999 concerning Forestry, but there are no provisions in Law Number 41 of 1999 concerning Forestry, either in Article 15 of Law No. 41 of 1999 itself or in other articles, which states that if the confirmation process as referred to in Article 15 of Law No. 41 of 1999 has not been carried out, then a forest area that is in fact a forest becomes a non-forest area, as stated in the legal considerations of the Supreme Court in Supreme Court Decision No. 2642K/Pid/2006, dated February 12, 2007, (Criminal Decision in the name of Darianus Lungguk Sitorus). Furthermore, the Legal Considerations of the Constitutional Court of the Republic of Indonesia in Decision MK No. 45/PUU-IX/2011 dated February 21, 2012, states that "Forest areas that have been designated and/or established based on applicable laws and regulations prior to the enactment of this law shall remain valid under this law. The Court, although Article 1(3) and Article 81 of the aforementioned Law use the phrase "designated and/or established," the designation and/or establishment under Article 81 of the aforementioned Law remains valid and binding, and declares that the 180-hectare oil palm plantation located in Bencah Kelubi Village is a Forest Area, Therefore, every activity related to the management, utilization, administration, and use of forest areas must obtain a permit from the State, namely the Government, namely the Minister of Forestry (now the Minister of Environment and Forestry). However, in fact, PT Arara Abadi has cultivated, worked on, controlled, and changed the designation of the Object of Dispute into a palm oil plantation without a permit from the Minister of Forestry (now the Minister of Environment and Forestry), thus making PT Arara Abadi's actions an unlawful act in the field of forestry, namely violating Article 50 paragraph (3) letters a and b of Law Number 41 of 1999 concerning Forestry, which reads "Everyone is prohibited from working and/or using and/or occupying forest areas illegally Jo. Violating the provisions of Article 17 paragraph (2) letter b of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, which reads "Everyone is prohibited from carrying out plantation activities without a permit from

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<sup>10</sup> 'Wawancara Dengan Bapak Yuricho S. STP Kepala Dinas Lingkungan Dan Kehutana Kabupaten Kampar'.

<sup>11</sup> 'Wawancara Dengan Kepala Pengadilan Negeri Bangkinang, Bapak Ersin S.H.,M.H.'

the Minister in Forest Areas.”<sup>12</sup>

The author also interviewed the Director of PT Arara Abadi, represented by his lawyer, Mr. H. Nuriman, SH., MH. During the interview, the company admitted to having cultivated/worked on and/or changed the designation of the forest area into a palm oil plantation without going through the procedure of releasing the forest area from the Minister of Forestry of the Republic of Indonesia (now the Minister of Environment and Forestry of the Republic of Indonesia), as stipulated in the Joint Decree of the Minister of Forestry, Minister of Agriculture and Head of the National Land Agency Number: 364/Kpts-II/90, 519/Kpts/HK.50/7/90, and 23-VIII-1990 concerning Provisions on the Release of Forest Areas and the Granting of Land Use Rights for Agricultural Business Development.<sup>13</sup>

### **3.2. Factors Hindering the Mechanism for Returning Limited Production Forest Areas by PT Arara Abadi to be Used as Palm Oil Plantations Based on the Labor Law**

The occurrence of various agrarian inequalities that continue to this day is related to the conversion of forest land for oil palm cultivation. Factors Hindering the Implementation of the Mechanism for Returning Limited Production Forest Areas by PT Arara Abadi, Which Have Been Converted into Palm Oil Plantations Based on Law Number 6 of 2023 concerning Job Creation, are influenced by several factors, including regulations governing the mechanism for returning forest areas that have been converted into palm oil plantations, and secondly, the implementation mechanism in the field regarding the stages that must be carried out by the party that changed the function of the forest, in this case PT Arara Abadi, along with the following factors:

1. The Existence of Multiple Interpretations of the Law Regarding the Refund Mechanism

The Ministry of Environment and Forestry (KLHK) has emphasized that there will be no amnesty or pardon for palm oil ownership in forest areas. This was confirmed by KLHK Secretary General Bambang Hendroyono during a socialization event on the implementation of Job Creation Law No. 11 of 2020 and Government Regulation No. 24 of 2021 at the Riau Regional Police Headquarters. Attending the event were the Riau Police Chief, all district police chiefs, private sector representatives, DPD RI member Instiawati Ayus, and other relevant parties. “Under the UUCK, there is no amnesty or pardon. We agree to resolve the establishment of businesses or activities within forest areas prior to the UUCK, marked by the completion of the administrative legal process.” As stated in Article 110 B of the UUCK, the area we are resolving will remain a forest area,” explained Bambang, head of the UUCK Implementation Monitoring and Control Unit (Satlakwasdal). He said that the legal approach used is indeed *ultimum remedium*, or

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<sup>12</sup> ‘Wawancara Dengan Kepala Pengadilan Negeri Bangkinang, Bapak Ersin S.H.,M.H.’

<sup>13</sup> ‘Wawancara Dengan Pengacara PT Arara Abadi Bapak H.Nuriman S.H.,M.H.’

prioritizing administrative sanctions. However, this does not mean that legal sanctions will simply disappear. The imposition of administrative sanctions is used to provide space for community groups within the area, for example, due to changes in spatial planning, location permit policies issued by local governments, and also small community groups that have been settled for five consecutive years. "Their cases will later be identified for resolution through Articles 110 A and 110 B. This policy only applies to those who were already active in the area before the UUCK. If new activities are carried out in the forest area after the UUCK was passed on November 2, 2020, then law enforcement will be immediately imposed with criminal sanctions taking precedence, and administrative sanctions will no longer apply," Bambang emphasized.

In the UUCK, if administrative sanctions in the form of fines are not fulfilled, then the next step is to impose further legal sanctions, starting with the revocation of permits and government coercion in the form of confiscation and forced removal. "Articles 110 A and B only deal with activities that have already been established in forest areas. So if anyone is playing around in forest areas after the UUCK without a license or approval from the Minister, they should stop immediately because they will definitely be subject to criminal sanctions," said Bambang.

For small communities or farmer groups whose members only control less than 5 hectares of land and have lived for five consecutive years in or around forest areas, they will not be subject to administrative sanctions and will be given 'solutions in the form of legal access through forest area management, which can take the form of social forestry and TORA. "For existing oil palm plantations, they must be converted to forest plantations and given one cycle of opportunity. The UUCK provides an opportunity for communities to obtain legal access, so communities must quickly obtain social forestry permits to maintain productivity, as well as their forest areas," said Bambang.

Social forestry is also used for palm oil cultivation in HTI areas. After undergoing technical verification, legal access to social forestry will be obtained through a forestry partnership scheme with HTI permit holders. "This is our effort to ensure that activities that were carried out in forest areas in the past will not happen again in the future. Communities within forest areas can manage them as long as they have forestry permits through social forestry. There are many schemes, so that communities can prosper and the function of the forest can be maintained," explained Bambang.

Bambang invited the Riau Regional Police, together with other parties, particularly the private sector, including NGOs as representatives of the public, to view the UUCK with a common understanding. Legal certainty is an important part of the mandate of the law. Therefore, the process going forward through the UUCK is to prepare measures to provide legal certainty. This includes certainty regarding the area, legal certainty, business certainty,

business continuity certainty, and environmental sustainability certainty. "All of this certainty is contained in the mandate of the UUCK, so that in the future, everything will comply with the existing provisions," said Bambang. The government realizes that as a result of past policies, many community businesses and even settlers who were previously outside the area have moved into the area. As a result, they have lost their legal rights to ownership of settlements or plantations. It's not just the community; there are also private entities involved. This is what the UUCK is trying to resolve as a form of state presence. "Regulating this and implementing it is clearly not easy. We are working under the supervision of the KPK, BPK, DPR, and the public. We are not working carelessly, but adhering to regulations," said Bambang. The implementation of the UUCK is not only the work of the Ministry of Environment and Forestry, but also a multi-stakeholder collaboration to ensure that past mistakes are not repeated in terms of land legality. The goal is to preserve forest areas and ensure the welfare of the people. "The Ministry of Environment and Forestry has 10 working groups led by echelon II officials to accelerate social forestry measures at the grassroots level. The UUCK is a basic policy for resolving issues in the region, so it is non-negotiable. For those who feel they have strong evidence, strengthen your data for the application and go through the procedures," Bambang emphasized.

Meanwhile, Riau Police Chief M. Iqbal welcomed the dissemination of the new UUCK implementation, which was held for the first time for police forces throughout Indonesia. He expressed his hope that all Riau Police personnel, together with the community, would actively participate in overseeing the implementation of the UUCK. "All Riau Police personnel, my directive is to immediately consolidate and strengthen the follow-up actions from this socialization. Together with the Regional Leadership Forum (Forkompimda), stakeholders, and the community, regarding efforts in investigation and case resolution at the grassroots level," said Iqbal.

S.M Amin, a legal expert, also expressed his opinion as follows: "Law is a collection of rules consisting of norms and sanctions called laws, and the purpose of law is to establish order in human relations so that security and order are maintained."<sup>14</sup> Krabbe states that legal awareness is the awareness or values inherent in human beings, regarding existing laws or laws that are expected to exist.<sup>15</sup> Then, according to Soerjono Soekanto, legal awareness is a matter of values inherent in humans regarding existing laws or desired laws. What is actually emphasized are values regarding the function of law, rather than a legal assessment of concrete events in the society concerned.<sup>16</sup> Paul Scholten said that legal consciousness refers to the awareness that every

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<sup>14</sup> C.S.T Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Balai Pustaka Indonesia, 1992).

<sup>15</sup> Achmad Ali & Wiwie Heryani, *Menjelajahi Kajian Empiris Terhadap Hukum* (Kencana, 2012).

<sup>16</sup> Soerjono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum* (Raja Grafindo Persada, 2002).



human being has about what the law is or what the law should be, a certain category of our mental life from which we distinguish between what is lawful (recht) and unlawful (onrecht), between what should be done and what should not be done.<sup>17</sup>

Researchers interviewed Mr. H. Nuriman, SH., MH, lawyer for PT Arara Abad, who said *"That the 180-hectare oil palm plantation located in Bencah Kelubi Village is managed collectively by establishing the Tuah Melayu farmer group covering an area of 300 hectares based on Certificate Number: 29/SK/BcK/IX/2007 dated September 15, 2007, where the land is still owned by the community, whose rights were obtained from distribution as group members. The uncertainty and multiple interpretations of the explanation of Law Number 6 of 2023 articles 110a and 110b are the basis for our belief that the land can still be used as a palm oil plantation area after we complete the licensing process and pay the penalties that have been imposed."*

## 2. Sawit The Difficulty of Restoring Forest Areas That Have Been Converted to Palm Oil Plantations

Article 5 paragraph (3) of the Forestry Law stipulates that the determination of forest status is carried out by the government (the central government as referred to in Article 1 point 14 of the Forestry Law). Article 15 of Government Regulation No. 44/2004 on Forestry Planning states that the confirmation of forest areas is carried out by the Minister of Forestry. The Ministry of Forestry manages land in forest areas and limits its authority to manage forests located on land outside forest areas. The management of forests on other areas of use is carried out by local governments.

The author also interviewed representatives from the Riau Madani Foundation regarding the execution costs that have not been paid to date. According to Mr. Surya Darma, the Riau Madani Foundation is indeed experiencing difficulties with the execution costs. The execution costs in this case are very high, and we are still collecting funds and have requested assistance from Pusbakom to help with these execution costs. Because, fundamentally, our foundation is a profit-making foundation that has been granted rights by the government to preserve forests.

## 4. Conclusion

From the results of research and discussion on the Mechanism for Returning Limited Production Forest Areas by PT Arara Abadi to be Used as Palm Oil Plantations Based on Law Number 6 of 2023 concerning Job Creation, the following conclusions can be drawn:

1. The mechanism for returning limited production forest areas by PT Arara Abadi that have been converted into oil palm plantations based on Law Number 6 of 2023 concerning Job Creation in Bencah Kelubi Village has not

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<sup>17</sup> Marwan Mas, *Penghantar Ilmu Hukum* (Ghalia Indonesia, 2014).

been implemented, as can be seen from the fact that the licensing process carried out by PT Arara Abadi has not been completed. the process of returning the forest area in accordance with legal efforts in the district court, which resulted in decision No. 17/Pdt.G/LH/2023/PN.Bkn, and finally, the failure to utilize the forest area for the community in accordance with the mechanism regulated by existing laws and regulations.

2. The obstacles that have hindered the restoration of limited production forest areas that have been converted into oil palm plantations in Bencah Kelubi Village are the multiple interpretations of the law that exist within the community, due to the new regulations, namely Law Number 6 of 2023, Articles 110A and 110B, which have not been widely disseminated to the public. Furthermore, the process of returning these areas in accordance with Law No. 6 of 2023 is difficult because the forest areas that must be returned to their original function are very large and require a lot of funds and security personnel. In addition, the government has not played a significant role in addressing this issue, which remains unresolved to this day.

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