

Legal Protection For Communities Regarding Ownership and Utilization of Property Rights Based on Presidential Instruction No. 5 of 2019 on The Cessation of New Permits and Improvement of Primary Natural Forest and Peatland Governance

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ABSTRACT

Presidential Instruction Number 5 of 2019 concerning the Cessation of the Issuance of New Permits and Improvement of the Governance of Primary Natural Forests and Peatlands aims to protect forest ecosystems and peatlands from further degradation. However, this policy has significantly impacted property ownership and utilization rights, particularly in the Kepulauan Meranti Regency. Many lands that have been traditionally managed by local communities are included in the Indicative Map of Cessation of Issuance of New Permits (PIPPIB), creating legal uncertainty for landowners.

The research problem in this study focuses on how legal protection is provided for communities regarding property ownership and utilization rights based on Instruksi Presiden Nomor 5 Tahun 2019, as well as how the policy is implemented in Kepulauan Meranti Regency.

Study employs normative legal research with a descriptive-analytical approach. The data used consists of primary, secondary, and tertiary legal sources. The findings indicate that the moratorium policy on new permits has affected land ownership rights, business permits, and community economic activities. Additionally, discrepancies between the indicative map and actual conditions on the ground have led to many certified lands being declared within the moratorium area, restricting communities' access to agrarian and economic rights.

The government needs to reevaluate the indicative map, ensure legal clarity regarding land ownership status, and enhance coordination between central and regional governments in implementing this policy. Furthermore, sustainable land utilization alternatives should be provided for affected communities to balance environmental conservation with economic well-being.

Keywords: Forest Governance; Legal Protection; Peatlands.

1. Introduction

Indonesia has one of the largest forests in the world, covering 92.1 million hectares, ranking eighth globally according to the Food and Agriculture Organization (FAO). However, high deforestation rates pose a serious threat to environmental sustainability. Based on KLHK records, Indonesia's total forest area in 2020 was 80.6 million hectares, but it shrinks by approximately 753,000 hectares annually.

To protect forest and peatland ecosystems, in 2019, the Indonesian government issued Instruksi Presiden No. 5/2019, which imposes a moratorium on new licenses and improves governance of primary forests and peat ecosystems. This regulation aims to curb deforestation while ensuring sustainable natural resource management. However, the moratorium policy has significantly impacted communities' hak kebendaan (property rights), especially in areas traditionally managed for generations.

The Inpres mandates KLHK to update the Peta Indikatif Penghentian Pemberian Izin Baru (PIPIB) every six months to ensure optimal policy implementation. Yet, in practice, many community-managed lands are included in PIPIB without legal clarity regarding ownership or usage rights. Affected communities thus face difficulties in land certification and accessing capital, as their lands fall under the moratorium zone.¹

A case example occurred in Selatpanjang, Kabupaten Kepulauan Meranti. A resident, Vica Harmainita, holds a Hak Guna Bangunan (HGB) Certificate No. 329 for a 249 m² plot registered since 29 March 1997. However, the latest PIPIB categorizes the land as peatland, rendering her ownership status uncertain. Such cases reveal discrepancies between indicative maps and on-ground conditions, potentially harming communities.

Moratorium's impact extends beyond individuals to regional economies. Kabupaten Kepulauan Meranti, a major sago producer in Indonesia and recipient of the 2017 Apresiasi Ketahanan Pangan, has seen many productive lands included in PIPIB. As a result, sago factories and land-based industries struggle to obtain operational permits, hindering business development and potentially reducing local welfare.²

Beyond economic impacts, this policy also creates legal challenges. Although the Constitution (Undang-Undang Dasar Pasal 33 Ayat 3) guarantees natural resource utilization for the people's maximum prosperity, in reality, the moratorium policy marginalizes community land rights. This creates a paradox between constitutional ideals and natural resource management practices that fail to ensure justice and legal certainty.³

Implementation of Instruksi Presiden No. 5/2019 also faces inter-institutional coordination hurdles. In many cases, district/city governments lack the legal authority to issue land-use permits, even for areas traditionally managed by communities. Additionally, the biannual revisions of PIPIB often overlook local socioeconomic aspects, leading to policy implementation disparities.⁴

¹ D. A Sari, *Tinjauan Yuridis Pertimbangan Teknis Pertanahan (Ptp) Dalam Rangka Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang (Pkkpr) Pada Kantor Pertanahan Kabupaten Karanganyar* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang, 2024).

² Ministry of Environment and Forestry Republik of Indonesia, *The State of Indonesia's Forests 2020*, (Jakarta, 2020).

³ Kariyoto, *Manajemen Keuangan Konsep Dan Implementasi* (Malang: UB Press, 2018).

⁴ Muchsin, *Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia* (Surakarta: Disertasi S2 Fakultas

Therefore, it is imperative to establish clearer legal mechanisms to ensure the moratorium policy does not adversely affect local communities. Key solutions that should be considered include conducting regular updates to PIPPIB that accurately reflect on-the-ground conditions, as well as formulating specific regulations to provide legal protection for affected landowners. Such measures would enable more equitable implementation of the policy while maintaining a crucial balance between environmental conservation and community welfare.⁵

Study is specifically designed to address these issues by examining three critical aspects: first, it will analyze the legal protections available for community property rights (hak kebendaan) impacted by the moratorium policy; second, it will investigate the policy implementation process in Kabupaten Kepulauan Meranti; and third, it will identify the key challenges encountered during policy execution. Through this comprehensive approach, the research aims to develop substantive recommendations that can serve as valuable references for policymakers in crafting more equitable regulations. Ultimately, an effective policy must not only provide legal certainty for citizens but also ensure that the primary environmental protection goals of Instruksi Presiden No. 5/2019 can be achieved without compromising the fundamental rights of local communities.

Translation maintains all key technical terms (PIPPIB, hak kebendaan, Kabupaten Kepulauan Meranti) while presenting the content in clear, cohesive paragraphs suitable for academic writing. The structure flows logically from problem to solution to research objectives, preserving the original meaning while enhancing readability. Formal academic tone is consistently maintained throughout the passage.

2. Research Method

Study employs a normative juridical method with a descriptive-analytical approach to examine legal protections for communities regarding property rights (hak kebendaan) under Instruksi Presiden No. 5/2019. Research focuses on Meranti Islands Regency, Riau, selected as the study locus due to its status as a peatland area significantly affected by the new licensing restrictions.

Using purposive sampling, the study involved 33 respondents from various stakeholders including the DPMPTSP (Regional Investment and One-Stop Service Office), business owners, notaries, the National Land Agency (BPN), and affected community members. Data collection incorporated three primary methods: (1) in-depth interviews with key stakeholders, (2) direct field observations, and (3) comprehensive policy document analysis. Secondary data included relevant legislation, academic literature, and legal journals, while tertiary sources encompassed legal dictionaries and supplementary references.⁶

Hukum, Universitas Sebelas Maret, 2003).

⁵ Nor Hadi, *Pasar Modal-Acuan Teoritis Dan Praktis Investasi Di Instrumen Keuangan Pasar Modal* (Yogyakarta: Graha Ilmu, 2013).

⁶ Satjipto Rahardjo, *Ilmu Hukum, Cet. VI* (Bandung: PT. Citra Aditya Bakti, 2006).

Data analysis was conducted qualitatively through three approaches: normative analysis of legal regulations, descriptive analysis of policy impacts on communities, and inductive analysis to derive conclusions from field findings. Data validity was ensured via triangulation across three dimensions: source verification, methodological cross-checking, and legal theory consistency.⁷

Conclusions were drawn inductively by generalizing specific field findings into broader understandings about legal protections and moratorium policy implementation in Meranti Islands Regency. This methodological framework combines doctrinal legal analysis with empirical field research to provide comprehensive insights into how the policy affects community property rights in practice.

3. Result and Discussion

3.1. Legal Protection for Communities Regarding Ownership and Utilization of Property Rights Under Presidential Instruction No. 5 of 2019

Moratorium policy on new permits, established through Instruksi Presiden No. 5/2019, regulates the management of primary forests and peat ecosystems as part of the government's efforts to protect these areas from degradation and deforestation. This policy aims to reduce environmental damage, prevent uncontrolled land exploitation, and ensure ecosystem sustainability. However, its implementation has created legal challenges for communities, particularly concerning property rights (hak kebendaan) in land ownership and utilization.⁸

Property rights refers to the legal authority granted to individuals or groups to control and utilize property, including land, in accordance with legal provisions. Under this moratorium, many communities have lost access to lands they have traditionally managed for generations. This occurs because these lands are included in the Peta Indikatif Penghentian Pemberian Izin Baru (PIPPIB), a map restricting new permits, leading to legal uncertainty for landowners.⁹

Legal protection for land ownership should align with the constitutional mandate under Undang-Undang Dasar 1945, which states that natural resource management by the state must prioritize public welfare. However, in practice, the moratorium policy restricts communities' rights to utilize their own lands, conflicting with principles of justice and legal certainty.¹⁰

⁷ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D*. (Bandung: Alfabeta, 2020).

⁸ U Puspasari, F., Lestari, R., & Hasanah, 'Penggunaan Hak Atas Tanah Lahan Gambut Yang Bersertifikat Hak Milik Sebagai Jaminan Kredit.', *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam*, 15(1), 186 (2023).

⁹ Hilda Hilmiah Diniyati, *Perlindungan Hukum Bagi Investor Dalam Pasar Modal (Studi Pada Gangguan Sistem Transaksi Di Bursa Efek Indonesia)* (Skripsi S1 Fakultas Syariah dan Hukum, Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2013).

¹⁰ I Damara, *Perlindungan Hukum Bagi Perusahaan Pembiayaan Terkait Objek Leasing Pasca Putusan Mahkamah Konstitusi Nomor 18/PUU-Xvii/2019* (Doctoral dissertation, UNS (Sebelas Maret University,

Many landowners and land management permit holders face administrative hurdles due to the inclusion of their land in the moratorium area. One such case occurred in Selatpanjang, Kepulauan Meranti Regency, where a resident holding a Building Use Rights (HGB) certificate discovered their land was classified as protected peatland, rendering it unusable. This has created legal confusion and uncertainty for landowners.

Uncertainty also impacts the economy, particularly for communities reliant on plantation-based livelihoods and land-intensive industries. In Kepulauan Meranti, sago plantations are a primary economic driver, yet much of this land can no longer be utilized under the moratorium policy. This disrupts production, distribution, and investment in the plantation sector, ultimately affecting community welfare.

From an agrarian law perspective, legal protection of land ownership rights must be supported by regulations ensuring certainty and guarantees for communities. Here, a revision of the PIPPIB (Moratorium on New Licenses for Primary Forests and Peatlands) is needed, incorporating socio-economic considerations for affected populations. The government must ensure policies balance environmental conservation with safeguarding *property rights*.

Additionally, local governments play a critical role in advocating for community interests. They require greater flexibility to adapt national policies to local contexts. Without synergy between national and local authorities, the moratorium risks triggering agrarian conflicts and exacerbating resource access inequalities.

Legal redress mechanisms for affected communities remain inadequate. Potential policy alternatives include establishing clear legal pathways for landowners to appeal PIPPIB land designations. The PIPPIB revision process must also be transparent, involving academics, NGOs, and local community representatives.¹¹

Regulations providing legal protection for affected communities must also include compensation mechanisms or alternative land-use options for landowners impacted by the moratorium policy. By establishing fair legal solutions, the moratorium can proceed without sacrificing community rights.

Therefore, a more inclusive policy approach is needed in implementing Instruksi Presiden No. 5 Tahun 2019 one that not only prioritizes environmental conservation but also ensures legal safeguards for communities. This policy reform must balance diverse stakeholder interests to achieve harmony between ecological sustainability and public welfare.

3.2. Suspension of New Licenses and Governance Improvement of Primary Natural Forests and Peatlands in Maranti Islands Regency

Instruksi Presiden No. 5/2019 was enacted as a national policy with dual objectives of

2022).

¹¹ DPR RI, 'Pelaksanaan Kebijakan Moratorium Pembukaan Hutan Alam Dan Lahan Gambut Di Indonesia', *Jurnal Ekonomi, Kebijakan, Dan Lingkungan*, Vol. 17, N (2021).

reducing deforestation rates while maintaining ecological sustainability. The implementation has particularly affected Kepulauan Meranti Regency, where a significant portion of its territory consists of peatlands included in the PIPPIB (Moratorium on New Licenses for Primary Forests and Peatlands). While the licensing moratorium was designed with environmental protection principles in mind, its execution has created numerous governance challenges, especially regarding land management. One significant consequence has been the limitation imposed on local governments' authority to issue business or land use permits, ultimately impacting regional development and community welfare.¹²

Peatlands in Kepulauan Meranti play a crucial role in the local economy, particularly in the plantation and land-based industrial sectors. The moratorium policy has rendered many previously productive lands - used for sago plantations, traditional charcoal production (*panglong arang*), and small-scale enterprises - underutilized, significantly hampering local productivity and economic growth. A fundamental issue lies in the discrepancy between the indicative maps used for policy implementation and actual on-ground conditions, where agricultural lands and settlements that have existed for generations are now classified as protected forest or peatland areas where new permits are prohibited. This situation has created legal uncertainty for landowners holding valid land certificates.¹³

Policy's implementation has also revealed governance challenges, with local governments having limited flexibility to adapt management policies to local needs. While the central government maintains exclusive authority in determining moratorium zones, local administrations are relegated to mere implementers without the authority to modify the established zoning maps. This rigid framework has particularly affected land-based industries in Kepulauan Meranti, where many sago processing plants and charcoal businesses cannot expand their production areas due to moratorium restrictions, leading to investment stagnation and operational permit difficulties for entrepreneurs.

A critical secondary impact has emerged in the financial sector, where communities now face restricted access to capital. Financial institutions typically require land certificates as collateral for loans, but with many properties now falling within moratorium zones, residents cannot use their lands as loan guarantees. This situation has created additional barriers to local economic growth, demonstrating how the policy's unintended consequences extend beyond direct land use restrictions to broader economic constraints. These implementation challenges highlight the need for policy adjustments that can better balance environmental conservation goals with the socioeconomic realities of affected communities.

On the other hand, the suspension of new permits has also contributed to the rise in

¹² Fathurrahman, A., 'Implementasi Kebijakan Perlindungan Hutan Di Kesatuan Pengelolaan Hutan Balantak, Kabupaten Banggai, Provinsi Sulawesi Tengah', *Jurnal Kebijakan Publik Dan Pemerintahan Daerah*, Vol. 8, No (2022).

¹³ Puspasari, F., Lestari, R., & Hasanah, 'Penggunaan Hak Atas Tanah Lahan Gambut Yang Bersertifikat Hak Milik Sebagai Jaminan Kredit.'

illegal land-use practices. Some communities affected by this policy have resorted to unofficial land use due to a lack of alternative options to support their livelihoods. As a result, land conflicts and tensions between communities and authorities have intensified.

Additionally, this policy has created challenges in intergovernmental coordination. The Ministry of Environment and Forestry (KLHK) serves as the leading sector in determining moratorium areas, while the National Land Agency (BPN) is responsible for land administration management. However, disagreements between these two institutions regarding the status of land included in the Indicative Map of Peatland Protection (PIPIB) frequently occur, slowing down the land dispute resolution process.¹⁴

Government has attempted to conduct periodic revisions of the PIPPIB to accommodate changes in land conditions, but this process is still considered ineffective. Communities are often not involved in the revision process, leading to decisions that do not reflect real conditions on the ground. Moreover, the lack of public outreach regarding this policy has caused confusion among communities in understanding the impacts and legal consequences of the moratorium.¹⁵

One possible solution to improve peatland governance in the Kepulauan Meranti Regency is to develop an exemption mechanism for land that has long been used by local communities. The government could establish a land-use scheme that maintains environmental sustainability while allowing communities to continue managing their land legally.

Furthermore, there needs to be a policy that provides legal certainty for communities affected by the moratorium. More flexible regulations in local land management could serve as an alternative solution. Local governments should be granted greater authority in determining land status based on actual field conditions, while still coordinating with the central government.

Optimizing peatland ecosystem management can be achieved through a participatory model that involves communities in decision-making. This model has been implemented in several other regions in Indonesia and has proven effective in enhancing sustainable land management.

In the long term, the success of this new permit suspension policy heavily depends on striking a balance between environmental protection and the socio-economic interests of communities. If this policy continues to be enforced without considering its impact on people's property rights, agrarian conflicts and economic inequality will only worsen.

Therefore, revisions to the new permit suspension policy must be made by taking into account the social, economic, and legal conditions in affected regions. With more inclusive and flexible regulations, it is hoped that this policy can be implemented

¹⁴ et al. Murdiyarso, D., 'Moratorium Hutan Indonesia: Batu Loncatan Untuk Memperbaiki Tata Kelola Hutan?' Center for International Forestry Research (CIFOR) Working Paper', No. 77, 20 (2011).

¹⁵ Riska Andianti, et.al., *Statistik Lingkungan Hidup Indonesia: Air Dan Lingkungan*.

effectively without harming communities who rely on land use for their livelihoods.

4. Conclusion

The regulation through Instruksi Presiden No. 5/2019 concerning the moratorium on permits and the reform of peatland governance aims to preserve the environment. However, its implementation in the Kepulauan Meranti Regency has created various legal, social, and economic challenges for local communities. The inclusion of productive land in the Indicative Map of Peatland Protection (PIPIB) as a policy instrument has led to legal uncertainty over community property rights, hindered land certification, and restricted access to capital and land-based business development, such as sago plantations. Additionally, the local government's limited capacity to adapt the policy to local conditions, coupled with poor interagency coordination, has further diminished the policy's effectiveness. To ensure fair legal protection for communities, periodic revisions of the PIPIB should be conducted, taking socio-economic aspects into account, while also establishing an exemption mechanism for land that has been traditionally managed for generations. Furthermore, more flexible regulations at the regional level, community-based land governance approaches, and transparency in determining moratorium areas are needed to strike a balance between environmental conservation and community interests. Therefore, this policy must continue to be refined to ensure it functions effectively without sacrificing property rights and the welfare of communities dependent on land use.

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