EUREDD Facility EFI

Funded by the European Union

WORKING PAPER

Potential impacts of law number 11/2020 on job creation and its implementing regulations on the forest and land-use sector

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March 2023

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List of Acronyms

AMDAL	: *Analisis mengenai dampak lingkungan* / Environmental impact assessment
CSO	: *Organisasi masyarakat sipil* / Civil society organisations
DAS	: *Daerah aliran sungai* / Watershed area
DPR	: *Dewan perwakilan rakyat* / House of Representatives
FAO	: Food and Agriculture Organization of the United Nations
FOLU	: Forest and land use
HKm	: *Hutan kemasyarakatan* / Community forestry
HP	: *Hutan produksi tetap* / Permanent production forest
HPK	: *Hutan produksi yang dapat dikonversi* / Convertible production forest
HPT	: *Hutan produksi terbatas* / Limited production forest
IPPKH	: *Izin pinjam pakai kawasan hutan* / Borrow-to-use licence for forest areas
ISPO	: Indonesia sustainable palm oil
KHDPK	: *Kawasan hutan dengan pengelolaan khusus* / Forest area with special management
KHDTK	: *Kawasan hutan dengan tujuan khusus* / Forest area with special purposes
KHDTT	: *Kawasan hutan dengan tujuan tertentu* / Forest area with specific purposes
KHKP	: *Kawasan hutan untuk ketahanan pangan* / Forest areas for food security
KPH	: *Kesatuan pengelolaan hutan* / Forest management units
MIFEE	: Merauke integrated food and energy estate
MoEF	: Ministry of Environment and Forestry
NIB	: *Nomor induk berusaha* / Business identification number
OSS	: Online single submission
SPPL	: *Surat pernyataan kesanggupan pengelolaan dan pemantauan lingkungan hidup* (Statement letter of environmental protection and management)
RSPO	: Roundtable of sustainable palm oil
TORA	: *Tanah objek reforma agraria* / Agrarian reform
UKL-UPL	: *Upaya pengelolaan lingkungan hidup dan upaya pemantauan lingkungan hidup* (Environmental management efforts and environmental monitoring efforts)
UUCK/JCL	: *Undang-undang cipta kerja* / Job creation law
UUK	: *Undang-undang kehutanan* / Forestry Law
Perppu	: *Peraturan pemerintah pengganti undang-undang* / Regulation in lieu of law

Executive Summary

On 5 October 2020, the House of Representatives of Indonesia passed Law 11/2020 on Job Creation or the Job Creation Law (JCL). It was ratified by President Joko Widodo on 2 November 2020. The JCL aims at streamlining licensing requirements, increasing bureaucratic efficiency and accelerating the country's economic progress. It was developed using the omnibus law method by simplifying 77 and repelling two laws. The JCL amended many provisions related to the forest and land-use sector. These changes cover various topics: minimum threshold of forest areas, forest area gazettement, role of forest management units, forestry sector licences, forest areas with specific purposes, utilisation of forest areas for non-forest sector development, environmental protection, protection of indigenous/local community rights, and tenurial conflict resolution. This study identifies and discusses such changes, and analyses their potential impacts.

In relation to the minimum threshold of forest areas, the JCL eliminated the obligation for each region to have at minimum 30% of their total land area designated as forest area. The abolition of the provision potentially results in a new burden for the Ministry of Environment and Forestry, which now has to stipulate and maintain the adequacy of forest area and forest cover based on physical and geographical conditions in watersheds, islands and provinces. Since the procedures for stipulating this adequacy are complex, it will not be easy for the MoEF to accomplish this task within a short timeframe. In addition, the absence of a minimum forest area threshold could facilitate forest conversion, as it could ease the release of forest areas for other uses, leading to deforestation and land degradation. This may particularly be the case in provinces that have less than 30% of forest area, most of which are in Java Island. Nonetheless, specifically on Java Island, the elimination of the provision has the potential to provide more opportunities for resolution of tenurial conflicts. This is because even if the area no longer had forest cover, it could not be released, even for the purposes of resolving tenurial conflicts.

In terms of forest area gazettement, the JCL prioritises forest area gazettement in strategic areas by eliminating several procedures, including settlement of third-party land rights along the forest area boundaries. This potentially creates future new conflicts. The interested third-parties should be involved in the forest area gazettement process to avoid potential conflicts.

Furthermore, the JCL amended the role of forest management units. From forest managers at the site level, they are now facilitators and coordinators in the implementation of government policies. This can threaten forest sustainability at the site level. In addition, prior to the issuance of the JCL, forest management units could be financially independent by establishing cooperation with external parties. The change of role eliminates their financial independence, so they will again entirely depend on the central government budget allocation.

The JCL introduces several changes to business licences in the forestry sector with different implications. *First*, the emergence of the single 'business licences for forest utilisation' scheme potentially eases the business licensing process in the forestry sector. However, it could also impede communities' access to non-timber products in concession areas. *Second*, the change

in the terminology from ‘timber utilisation licence’ to ‘approval for timber utilisation for non-forestry activities’ is not considered to have any significant impact. *Third*, the addition of ‘individuals’ as subjects in the social forestry scheme potentially reduces the participation of local communities since eligible individuals might originate from outside the social forestry area.

The JCL introduced the terminology ‘forest areas with specific purposes,’ which consists of three schemes: 1) forest areas with special purposes; 2) forest areas with special management; and 3) forest areas for food security. The first scheme existed well before the JCL, and we found no substantial change. The second scheme appeared with the JCL and is carried out on forest areas managed by Perum Perhutani, the state-owned enterprise in the forestry sector. This scheme potentially reduces the area managed by Perum Perhutani and may trigger conflicts, since Perum Perhutani has been involved in joint partnership schemes with local communities in Java. The last scheme was also introduced by the JCL and is to be implemented through the food estate development, potentially causing future deforestation and forest degradation.

The JCL also introduced changes in the use of forest areas by the non-forestry sector. *First*, the JCL abolishes the forest area exchange scheme. This should not have a significant impact in the future. *Second*, the JCL allows the release of production forest areas other than convertible production forests. This may reduce the total of forest areas and forest cover, thereby triggering deforestation and forest degradation. *Third*, the elimination of the House of Representative’s approval for changes in the designation and function of forest areas that have strategic value and cover a large area is considered not to have a significant impact. This is because provisions related to changes in the allocation and function of forest areas are strengthened. *Fourth*, the JCL prioritises administrative sanctions compared to criminal sanctions. This has the potential to weaken legal compliance. *Fifth*, tolerance for oil palm plantations that have been established in forest areas is increasingly strengthened by the JCL. This can lead to a reduction in the total forest area and weaken compliance.

With regard to environmental protection in the context of business licence for forest utilisation, the JCL has changed the terminology of environmental licence to environmental approval. The JCL has also introduced a new approach, namely, ‘risk-based licensing’. In general, these changes are not likely to cause adverse impacts.

In the context of protection of indigenous peoples/local community rights, the JCL provides several affirmative policies. *First*, social forestry is strengthened by the JCL, as it was previously only regulated by ministerial and government regulations. It is now regulated at the law level. In addition, the JCL only envisages administrative, and not criminal sanctions for communities who have lived around forest areas for at least five years and violate the law in the forestry sector. This supports those communities whose livelihood depends on forest resources. Furthermore, the introduction of the term ‘customary forest indicative areas’ can potentially simplify the administrative process of recognising customary forests.

After the JCL, tenurial conflict resolution continues to use the forest area designation stage as the basis for developing land tenure settlement mechanisms in forest areas, even though the forest area gazettement is the ideal stage. This could create new conflicts.

1. INTRODUCTION

1.1. Background

The Job Creation Law (JCL) or Law 11/2020 on Job Creation was passed by the Indonesian House of Representatives on 5 October 2020, and ratified by President Joko Widodo on 2 November 2020. The JCL has simplified 77 laws and repealed 2 laws. The JCL was passed with the aim to increase domestic and foreign investment by eliminating bureaucratic inefficiencies and excessive licensing requirements. The JCL ratification was included in five priority development goals of President Joko Widodo's second term, which are: infrastructure development, human resources development, deregulation through the proposed omnibus law, bureaucratic reform, and economic transformation (Saubani, 2019). The JCL "academic document" (*Naskah Akademik*)[1] states that the JCL issuance is important to support the country's (Gold Indonesia) 2045 vision, which necessitates increasing economic growth in 2020–2024 to ensure Indonesia moves out of the middle-income trap.[2] More specifically, the JCL is intended to improve the ease of doing business in Indonesia and support the government in achieving its target of 6%-7% economic growth (Ulya, 2020).

The JCL was formulated using the omnibus law method. Etymologically, "omnibus" means "many/various." Therefore, omnibus law is a method of formulating laws that merge various regulations into an integrated law (Anggraeni and Rachman, 2020). The adoption of the omnibus method in the development of the JCL was the first in the Indonesian legal system. The JCL touches on various sectors, including the forestry and land-use (FOLU) sector. Changes in the FOLU sector introduced by the JCL are associated with provisions related to the minimum threshold on forest areas, forest area gazettement, role of forest management units, forestry sector licensing, forest areas with special purposes, utilisation of forest areas for non-forestry sector development, environmental protection, protection of the rights of indigenous peoples/local communities, and resolution of tenurial conflicts. This study focuses on these aspects and attempts to identify potential impacts arising because of these indicated changes.

1.2. Objectives of the study

This study aims to identify and understand changes in the FOLU sector after the issuance of the JCL. This study also analyses the potential impacts of such changes. The results of this study should be viewed as preliminary.

[1] Academic document is defined as a scientifically justifiable document that contains the background, the purpose, the goals, and the scope of the draft law

[2] JCL Academic Manuscript uu-ciptakerja.go.id/naskah-akademis-ruu-about-cipta-kerja

1.3. The JCL drafting process

The concept and method of omnibus law are not regulated in Law 12/2011 on the Formation of Law. The government and the lawmakers, however, claim that the method can avoid overlapping, conflicting and disharmonious regulations, which have hindered the acceleration of national development. The JCL aims to simplify regulations and licensing by changing and removing original laws into various clusters in a single law. The JCL is divided into 11 clusters. Our analysis suggests that the changes introduced by the JCL in the FOLU sector are associated with five clusters in the JCL (marked in dark green in **Figure 1**). The JCL changed, deleted or added 20 articles of Law 41/1999 on Forestry (*Undang-undang Kehutanan*-UUK), 20 articles of Law 18/2013 on Prevention of Eradication of Forest Logging (*Undang-undang Pencegahan dan Pemberantasan Perusakan Hutan*-UUP3H), and 14 articles of Law 32/2009 on Environmental Protection and Management (*Undang-undang Perlindungan dan Pengelolaan Lingkungan Hidup*-UUPPLH).

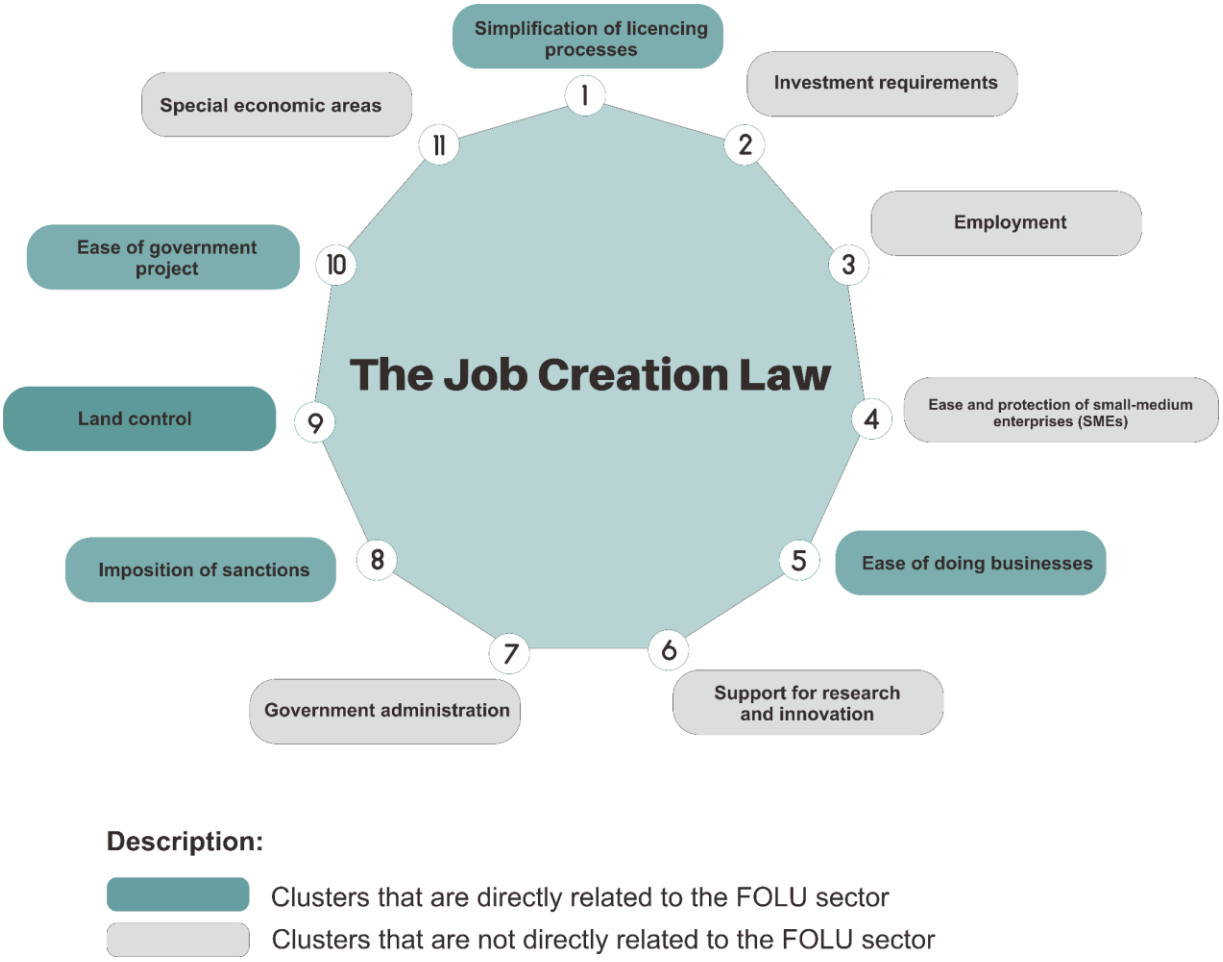

Figure 1. 11 clusters contained in the JCL

The formulation of the JCL can be divided into four main phases: initiation, first level discussion sessions, second level discussion sessions, and finalisation.[3] The JCL was initiated by the government. As a start, on 7 February 2020, the President sent a letter R-06/Pres/02/2020 to the House of Representatives with the JCL bill and its academic document as the letter's attachment. The letter contained the President's request for the JCL bill to be immediately discussed and prioritised in meetings of the House of Representatives. In response, the House held a meeting on 7 April 2020, addressing schedules to discuss the bill further. On 5 May 2020, the House of Representatives held a public hearing and invited several experts to present their perspectives on the JCL bill. Following the public hearing, the first level discussion sessions were carried out, from 14 April 2020, to 3 October 2020, to deliberate on various aspects of the JCL Bill. In this phase, 55 meetings discussing the JCL bill were conducted. This was then followed up by a single session (i.e. the second level discussion session) on 5 October 2020, during which the bill was voted and passed into law. Seven out of nine parties accepted the bill, while two rejected it. The House of Representatives then sent the approved bill to the government on 14 October 2020. On 2 November 2020, President Joko Widodo signed the bill, ratifying the bill into Law 11/2020 on Job Creation/the Job Creation Law (JCL).

1.4. Ambivalence of the Constitutional Court's decision on the JCL

The issuance of the JCL triggered mixed responses in the country. Various elements of society, such as representatives of workers, academics, students, indigenous groups and other civil society organisations (CSOs) requested that the government and the House of Representatives review the JCL.[4] On 15 November 2020, several civil society groups, including *Komite Pembela Hak Konstitusional* (Kepal), petitioned the Constitutional Court, requesting a judicial review of the JCL (Putri, 2020) on the grounds that the omnibus method used in developing the JCL was not constitutionally described or recognised in Law 12/2011. As such, it was unclear whether the JCL was a new, amended or replacement law. The petitioners also claimed that the JCL formulation process did not follow due processes regarding public participation. The process was perceived as too rushed and non-transparent. Although over 50 meetings had been held by the government and/or the House of Representatives, these meetings were internal or closed. Petitioners claimed that they were not participatory meetings that sufficiently accommodated public interests (Riyanto et al., 2020). This was alleged to Article 96 of Law 12/2011, which explicitly states that members of the public, both individuals and groups, who have an interest in the substance of a bill, have rights to provide inputs on the formation of a law either orally or in writing.

On 25 November 2021, the Constitutional Court read out the decision 91/PUU-XVIII/2020 regarding the lawsuit. The decision affirmed the arguments brought by the petitioners. The Constitutional Court stated that the procedural requirements for developing a law were not met

[3] https://www.dpr.go.id/uu/detail/id/442

[4] See the decision of the Constitutional Court Number 91/PUU-XVIII/2020 on Formal Examination of Law 11/2020 on Job Creation

during the development of the JCL. In other words, the JCL was formally flawed. The Constitutional Court decided that:

1) *The formation of the JCL violates the 1945 Constitution of the Republic of Indonesia, and (the JCL) does not have conditionally binding legal force as long as it is "not revised within 2 years since this decision was pronounced."*
2) *The JCL is still valid until it is revised within the period given in this decision.*[5]
3) *The legislators shall make changes within two years of this stipulation, and if no changes are made within that time, the JCL is declared permanently unconstitutional.*
4) *If the legislators cannot complete the revision of the JCL within a period of two years, then the laws, articles or contents of the laws that have been revoked or amended by the JCL are deemed to be in force again.*
5) *All strategic and broad-impact actions/policies shall be suspended for the time being, and new implementing regulations related to the JCL shall not be issued.*

The Constitutional Court decision is ambiguous. Although the Court ruled that the JCL is "conditionally unconstitutional", the law is still declared valid for at least two years after the decision was issued. This is different from the meaning of "conditionally unconstitutional" understood by the public and practised by the Constitutional Court. A "conditionally unconstitutional" decision normally would state the law in question was unconstitutional as of when the decision is issued and until a new law is passed.

Although the Constitutional Court decision is ambivalent, most legal experts and other stakeholders agreed that the JCL and all its implementing regulations are still in force. The issuance of new implementing regulations and policies that are strategic in nature and have a broad impact are suspended. However, the Government still adopted several JCL implementing regulations after the issuance of the Constitutional Court decision, for example:

1) Presidential Regulation 113/2021 on Land Bank of 17 December 2021. This Presidential Regulation is an implementing regulation of Government regulation 64/2021 on the Land Bank Agency and one of the implementing regulations of the JCL.
2) Minister of Environment and Forestry (MoEF) Decree 287/2022 of 4 April 2022, on Designation of Forest Areas with Special Management (*Kawasan Hutan Dengan Pengelolaan Khusus*-KHDPK) in some production and protection forest areas in Central Java, East Java, West Java and Banten Provinces. This Decree is an implementing regulation of Government Regulation 23/2021 on Forestry Management, a regulation directly implementing the JCL. As of October 2022, the government was formulating and designing a MoEF regulation to provide guidelines for the operationalisation of the Designation of Forest Areas with Special Management, and another regulation to regulate social forestry schemes in Forest Areas with Special Management.[6]

[5] The Constitutional Court gave a deadline for revising JCL until 21 November 2023

[6] Presented by the Director General of Social Forestry and Environmental Partnership at the Pesona Webinar "Sharing Knowledge on Social Forestry (Learning from Java)" on 22 July 2022.O

1.5. Regulation in Lieu of Law 2/2022 on Job Creation (Perppu CK)

As explained, the Constitutional Court's decision 91/PUU-XVIII/2020 stated that JCL was conditionally unconstitutional. The Constitutional Court gave the Government two years to make improvements. In response, the Government amended Law 12 of 2011 on Formation of Legislation. On 16 June 2022, the Law was revised to become Law 13/2022 on the Second Amendment to Law 12/2011 on Formation of Legislation. This revision recognises omnibus laws as a method of forming law within the Indonesian legal system.[7] This implies that the GoI's understanding of 'conditional unconstitutionality' of the JCL is confined to procedural aspects, and does not cover its substance.[8] This differs from the broader public assumption and many legal experts' views that the JCL's substance should also be improved.

The Government's interpretation of the Constitutional Court's decision could create legal uncertainty regarding the business and investment sector in Indonesia. On 30 December 2022, the Government passed the Regulation in Lieu of Law (Perppu) 2/2022 on Job Creation. In terms of legal hierarchy, a Perppu is equal to a Law. However, a Perppu can only be issued if there is an emergency situation. The Government claims that the issuance of the regulation was needed to respond to the threat of a global recession, rising inflation, stagflation and threats related to food, energy, finmoancial crises and climate change.[9] The Government argues that the issuance of the regulation can immediately provide legal certainty and encourage investments in Indonesia up to Rp. 1,200 trillion in 2023.[10]

The issuance of the Regulation in Lieu of Law 2/2022 on Job Creation received mixed reactions. Around 206 community organisations, including the Labour Movement, the National Committee for Agrarian Reform, the Committee for Defending Constitutional Rights and the People's Ultimatum Network, urged the President to revoke the regulation. They consider that the regulation is no different from the JCL. The public views the conditional unconstitutionality of the JCL as including both substantive and procedural aspects (Bahfein, 2023).

Responding to the dissenting views, the House of Representatives asked the protesters to submit their concerns formally through legal channels. The Chairperson of Commission V of the House argued that the regulation cannot be revoked immediately, as it is necessary to clarify which articles will be judicially reviewed according to mechanisms regulated under the Indonesian law framework (Rizky, 2023). Several parties have filed formal lawsuits against the regulation with the Constitutional Court. The first lawsuit (number 5/PUU-XIX/2023) was filed by

[7] Delivered by the Coordinating Minister for Politics, Law and Security of the Republic of Indonesia in a press release at the Presidential Palace Complex Tuesday, January 3, 2023. See the article Penjelasan Lengkap Mahfud MD soal Perppu Cipta Kerja yang Tuai Pro-Kontra (kompas.com)

[8] Ibid

[9] Delivered by the Coordinating Minister for Economic Affairs of the Republic of Indonesia together with the Coordinating Minister for Politics, Law and Security and the Minister of Law and Human Rights at a press conference Friday, December 30, 2022. See article Sekretariat Kabinet Republik Indonesia | Pemerintah Terbitkan Perpu Cipta Kerja (setkab.go.id)

[10] Ibid

academics, Migrant Care administrators, legal consultants, entrepreneurs and students. The second was submitted by the Confederation of Indonesian Trade Unions (number 6/PUU-XIX/2023) (Pujianti, 2023). Even though the regulation is subject to judicial review by the Constitutional Court, it remains valid and binding. However, if the House of Representatives approves the regulation, it will become law. On the contrary, if the House of Representatives rejects the regulation, the President will have to revoke it (DPR, 2023).

2. METHODOLOGY

This study reviewed FOLU-related laws and regulations in force before and after the JCL ratification (see **Table 1**), in particular those that are impacted by the JCL and its implementing regulations. This method consists in normative legal research, which examines laws/regulations as the object of study (Atmadja and Budi Artha, 2018). It aims to clarify, analyse, interpret, systematise and criticise the laws and regulations (Cristiani, 2016). This study also used various non-legal documents, such as scientific articles, grey literature and popular articles related to the JCL to validate findings of the normative legal analysis.

Table 1. List of laws and regulations analysed

Laws and regulations related to the FOLU sector	The JCL and its implementing regulations
Laws: 1. Law 41/1999 on Forestry 2. Law 26/2007 on Spatial Planning 3. Law 32/2009 on Environmental Protection and Management 4. Law 18/2013 on Prevention and Eradication of Forest Destruction	**Laws:** 1. Law 11/2020 on Job Creation (Article 22, 35, 36, and 37)
Government regulations: 1. Government regulation 6/2007 on Forest Management and Preparation of Forest Management Plans and Forest Utilisation and Government regulation 3/2008 on Amendments to Government regulation 6/2007 2. Government regulation 104/2015 on Procedures for Changes in the Designation and Function of Forest Areas 3. Government regulation 105/2015 on Second Amendment to Government regulation 24/2010 on Use of Forest Areas	**Government regulations:** 1. Government regulation 5/2021 on Application of Risk-Based Business Licence 2. Government regulation 23/2021 on Forestry Management 3. Government regulation 24/2021 on Procedures for Imposing Administrative Sanctions and Obtaining Non-Tax State Revenue from Administrative Fines in the Forestry Sector
Presidential regulations and presidential instructions: 1. Presidential regulation 88/2017 on Completion of Land Tenure in Forest Areas 2. Presidential regulation 109/2020 on the Third Amendment to Presidential Regulation 3/2016 on Acceleration of Implementation of National Strategic Projects	**Presidential regulations:** 1. Presidential regulation 109/2020 on the Third Amendment to Presidential Regulation 3/2016 on Acceleration of National Strategic Projects
Ministerial regulations: 1. MoEF Regulation P.62/2015 on Timber Utilisation Permit 2. MoEF Regulation P.83/2016 on Social Forestry 3. MoEF Regulation P.39/2017 on Social Forestry in the Working Area of Perum Perhutani	**Ministerial regulations:** 1. MoEF Regulation P.4/2021 on List of Businesses and/or Activities Required for Environmental Impact Analysis (*Analisis Mengenai Dampak Lingkungan*- AMDAL), Environmental Management Efforts-

4. MoEF Regulation P.17/2020 on Private Forests and Customary Forests	Environmental Monitoring Efforts (*Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup* -UKL-UPL) or Statement Letter of Environmental Protection and Management (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup*-SPPL) 2. MoEF Regulation P.7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas 3. MoEF Regulation P.8/2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forests and Production Forests 4. MoEF Regulation P.9/2021 on Social Forestry Management

3. COMPARISON BETWEEN THE JCL AND ITS IMPLEMENTING REGULATION WITH PREVIOUS LAWS AND REGULATIONS

This section compares the JCL and its implementing regulations with previous laws and regulations in the FOLU sector. The aspects compared include: provisions related to the minimum threshold of forest areas; forest area gazettement; the role of forest management units; forestry sector licensing; forest areas with specific purposes; utilisation of forest areas for non-forestry sectors; environmental protection; protection of the rights of indigenous peoples/local communities; and resolution of tenurial conflicts.

3.1. Minimum threshold of forest areas

The national government stipulates a minimum threshold of forest areas in regions to balance environmental, social and economic aspects. Accordingly, each province and district/city is mandated to stipulate the minimum threshold of forest areas in their administrative areas. Referring to the Law 41/1999 on Forestry, the minimum threshold of forest areas is 30% of the total of administrative areas. This means that 30% of the total of administrative areas should be allocated to forest areas for environmental protection purposes.

The provision to keep 30% of forest areas has existed since 1967. This is mandated by Article 7 of the Basic Forestry Law, Law 5/1967: "*To ensure that the maximum benefit is obtained from the forest in a sustainable manner, such as: regulation of water management, disaster prevention flood; production of forest products for the community and especially for development, industry and export; diverse sources of livelihood for communities in/around the forest; protection of nature for the benefit of science, culture, defence, and tourism; as well as transmigration, agriculture, plantations and animal husbandry, furthermore,* ***the government needs to stipulate the existence of a forest areas of sufficient size with proper description and location.***"

Furthermore, the law also explains that: "*Based on the socioeconomic needs of the Indonesian people and considerations regarding the physical condition, climate and water management arrangements,* ***the minimum area of land that must be kept as forest areas is estimated to be more or less 30% of the land area****. In connection with this need, the government shall prepare a general plan for forest gazettement that includes the objectives, details and urgency of recognising areas designated as forest areas. The general planning for forest gazettement is regulated by the Minister of Forestry by taking into account the land-use plan and the interests of residents who may have to leave their homes as a result of the stipulation of the area. One of the considerations in stipulating forest areas is the local natural balance between rainfall, field conditions and flowing water. Therefore, the forest gazettement plan should be regulated according to the watershed condition and as far as possible taking into account the boundaries of administrative areas*."

The provision of 30% of forest areas is still applicable in the Law on Forestry. Article 18 of the law states that: *(1) The government shall stipulate and keep the adequacy of forest area and*

forest cover for each watershed and/or island, to optimise environmental, social and economic benefits of local communities. (2) The extent of forest areas that must be kept as referred to in paragraph (1) is at least 30% (thirty percent) of the area of river watersheds and/or islands with a proportional distribution.

In addition, Law 26/2007 on Spatial Planning also explicitly states the minimum requirement of 30% forest areas in the regional spatial planning plan. Article 17, paragraph 5 of the law states that *"in the context of environmental protection as referred to in paragraph 4, in the regional spatial planning plan, forest areas of at least 30% of the watershed area shall be stipulated*."

With the issuance of the JCL, the 30% minimum threshold of forest areas is eliminated. Article 36 point 2 of the JCL amends article 18 paragraph 2 of the Law on Forestry. The JCL no longer mentions the 30% of forest areas, but states that the national government regulates forest areas that must be kept in accordance with the physical and geographical conditions of watersheds and islands.[11] The MoEF shall stipulate and keep the adequacy of forest areas and forest cover based on physical and geographical conditions in watersheds, islands, and/or provinces according to a proportional distribution.[12] The adequacy of forest areas and forest cover means the minimum threshold that must be kept in each provincial and district/city administrative areas. The forest cover includes forests in forest areas and non-forest areas/lands for other uses.[13] The assumption is that the adequacy of forest areas and forest cover is used as the basis for the implementation of spatial planning at the national, provincial, and district/city levels.[14]

Furthermore, the JCL has also amended Law 26/2007 on Spatial Planning. Article 17 paragraph 5 of the law was changed with article 17 point 9 of the JCL: "*In the context of environmental preservation […], the regional spatial plan stipulates the area of forest areas and forest cover for each island, watershed, province, district/city, based on biogeophysical conditions, climate, population, and socioeconomic conditions of local communities*."

JCL removed the minimum 30% threshold for forest areas and replaced it with "adequate" forest area and forest cover

3.2. Forest area gazettement

In the context of forest area gazettement, there have been several changes introduced by the JCL. Before the JCL, the gazettement of forest areas was carried out to provide legal certainty over forest areas.[15] Article 15 of the Law on Forestry described the stages of forest area gazettement as follows:

[11] See Article 41 paragraph (1) Government Regulation 23/2021 on Forestry Implementation

[12] See Article 1 point 35 MoEF Regulation P.7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas

[13] See Article 41 paragraph (3) Government Regulation 23/2021 on Forestry Implementation

[14] See Article 228 paragraph (1) MoEF Regulation P.7/2021 on Forestry Planning, Changes in Allotment of Forest Areas and Changes in Forest Area Functions, and Use of Forest Areas

[15] See article 14 UUK

"*(1) The gazettement of forest areas as referred to in Article 14 is carried out through the following process:*

a. *designation of forest areas;*
b. *demarcation of forest area boundaries;*
c. *forest area mapping; and*
d. *forest area stipulation.*

(2) The gazettement of the forest areas as referred to in paragraph (1) shall be carried out with due observance of the regional spatial plan."

The above article was amended in the JCL by Article 36 Point 1:

"(1) The gazettement of forest areas as referred to in Article 14 is carried out through:

a. *designation of forest areas;*
b. *demarcation of forest area boundaries;*
c. *forest area mapping; and*
d. *forest area stipulation*

(2) The gazettement of the forest area as referred to in paragraph (1) shall be carried out with due observance of the regional spatial plan

(3) The gazettement of forest areas is carried out by utilising information technology and geographic or satellite coordinates

(4) The National Government prioritises the acceleration of the gazettement of forest areas as referred to in paragraph (1) in ***strategic areas****"*.

"Strategic areas" are described in Article 16 paragraph 4 of Government Regulation 23/2021:

a. National strategic project (*Proyek Strategis Nasional*-PSN);
b. National economic recovery activities;
c. Procurement of lands for food estates;
d. Procurement of lands for agrarian reform (*Tanah Objek Reforma Agraria*-TORA);
e. Customary forests;
f. Rehabilitation of forest areas in watersheds for environmental protection functions; and
g. Areas adjacent to densely populated settlements and which have a high potential for encroachment.

As a result of the changes, the gazettement of forest areas is being prioritised and accelerated by the national government in strategic areas. The priority for acceleration is primarily at the stage of delineating/demarcating forest area boundaries. The demarcating process in strategic areas is different from the process in general areas. In particular, of the seven types of strategic areas listed above, points a to d are given higher priority than points e to g.[16] **Table 2** below explains the differences in demarcating forest area boundaries in general areas versus in strategic areas, where the former is simpler than the latter.

[16] See Article 19 paragraph (4) of Government Regulation 23/2021 on the Implementation of Forestry and Article 50 paragraph (2) of the Minister of Environment and Forestry Regulation P.7/2021 on Forestry Planning, Changes in Allotment of Forest Areas and Changes in Forest Area Functions, and Use of Forest Areas

Table 2. Differences in the demarcation of forest area boundaries

Demarcation of forest area boundaries in general areas[17]	**Demarcation of forest area boundaries in strategic areas**[18]
a. preparation of boundary route plan containing the coordinates of the boundary points where temporary boundary stakes will be erected and/or the coordinates stipulated virtually as a result of the discussion of the boundary planning committee; b. temporary boundary stake erection; c. announcement of temporary boundary stake erection results; d. inventory and settlement of the rights of third parties along the forest area boundary route; e. preparation of minutes of temporary boundary erection accompanied by a map of temporary boundary stake erection; f. installation of boundary pals; g. mapping of boundary demarcation results; h. making and signing minutes of boundary demarcation and boundary demarcation maps; and i. reporting to the minister with a copy to the governor.	a. preparation of boundary route plan containing the coordinates of the boundary points where temporary boundary stakes will be erected and/or the coordinates stipulated virtually as a result of the discussion of the boundary planning committee; b. announcement of boundary route; c. installation of boundary pals; d. mapping of boundary demarcation results of forest areas; e. making and signing minutes of boundary; demarcation and boundary demarcation maps; and f. reporting to the minister with a copy to the governor.

- The JCL has given priority to acceleration of forest area gazettement in strategic areas
- The process of demarcating forest area boundaries in strategic areas is simpler than demarcating forest area boundaries in non-strategic areas

3.3. The role of forest management units

Forest management units (FMUs) are mandated by Article 17 of the Law on Forestry. The formation of FMUs was triggered by various problems, such as conflicts occurring in forest areas, overlapping licences, etc. (Hernowo and Ekawati, 2014). Article 17 states that "*management unit is the smallest forest management unit according to its main function and designation, which can be managed efficiently and sustainably, including protection forest management unit (KPH-Lindung), production forest management unit (KPH-Produksi), conservation forest management unit (KPH-Konservasi), community forest management unit (KPH-Kemasyarakatan), customary forest management unit (KPH-Hutan Adat), and watershed*

[17] See Article 19 paragraph (2) Government Regulation 23/2021

[18] See Article 19 paragraph (5) Government Regulation 23/2021 and Article 50 paragraph (3) MoEF Regulation P.7/2021

management unit (KPH-DAS)." According to Law 23/2014 on Regional Government, the organisation of FMUs is divided into *KPH Lindung, KPH Produksi,* and *KPH Konservasi.*

Furthermore, formal tasks of FMUs are detailed in Government Regulation 6/2007 jo. Government Regulation No 3/2008 on Forest Management and Preparation of Forest Management Plans and Forest Utilisation. Basically, the role of FMUs is to manage forests according to their formal tasks efficiently and sustainably.[19] The role of managing forest includes forest utilisation, supervision on the implementation of forest management, etc. In addition, as a site-level management unit, FMUs also play a role in forging partnerships with communities to achieve better forest governance.

However, there have been changes on the role of FMUs after the JCL issuance. In accordance with Government Regulation 23/2021, FMUs no longer have a role as site-level management unit that can independently utilise forest resources within their management areas. The role of the FMU is reduced to merely facilitation and coordination, as emphasised in Article 123:

"The organisation of FMUs has the following formal tasks:

a. *Prepare a forest management plan as outlined in the long-term forest management plan and short-term forest management plan.*
b. *Carry out coordination of forest management planning with holders of business licence and approvals of forest use and release and social forestry management.*
c. *Carry out facilitation of policy implementation in the environmental and forestry sector, including: forest inventory, forest area gazettement, forest area administration and forestry planning; forest rehabilitation and reclamation; forest utilisation and forest area use; and protection and security of forests, control of forest and land fires, mitigation of disaster resilience and climate change.*
d. *Carry out facilitation, technical guidance, mentoring and development of forest farmer groups in supporting social forestry activities.*
e. *Carry out facilitation of forest area demarcation in the context of forest area gazettement and forest area utilisation.*
f. *Carry out the facilitation of investment growth, industrial and market development to support hectares the recovery of the national economy.*
g. *Carry out the facilitation of activities in the context of food security (food estate and energy).*
h. *Carry out facilitation of human resource capacity building.*
i. *Carry out monitoring and evaluation of the implementation of forest management activities.*
j. *Carry out supervision and control over forest management activities.*
k. *Carry out other duties in accordance with the provisions of the laws and regulations in their working area."*

[19] See Article 1 point 1 Government Regulation 6/2007 on Forest Management and Preparation of Forest Management Plans and Forest Utilisation

The JCL has changed the role of FMUs. They no longer act as site-level forest managers, but are positioned as facilitators and coordinators of government policies in the environmental and forestry sector.

3.4. Business licences in the forestry sector

3.4.1. Forest utilisation

The licensing for forest utilisation in the forestry sector is currently done through 'business licences for forest utilisation' scheme. Activities of forest utilisation under the scheme are only allowed in protection and production forest areas. Protection forest has the main function of protecting life support systems to regulate water systems, prevent flooding, control erosion, prevent seawater intrusion and maintain soil fertility.[20] Meanwhile, production forest has the main function of producing forest products (both timber and non-timber products).[21] The total area of protection forest is approximately 29.6 million hectares. Meanwhile, the extent of production forest is around 68.8 million hectares, consisting of 29.2 million hectares of permanent production forest, 26.8 million hectares of limited production forest, and 12.8 million hectares of convertible production forest (See **Figure 2**) (KLHK, 2020).

Figure 2. Total of forest areas in Indonesia[22]

Before the JCL issuance, several types of business licences for forest utilisation were issued separately. Based on Article 28 of the Law on Forestry, forest utilisation in production forest was

[20] See Article 1 point 8 UUK 41/1999 on Forestry

[21] See Article 1 point 7 UUK 41/1999 on Forestry

[22] Source: MoEF Regulation No. 1 of 2020 on Amendments to the Regulation of the MoEF P.16/MENLHK/SETJEN/SET.1/8/2020 on the Strategic Plan of the Ministry of Environment and Forestry

granted through several schemes: area utilisation business licence, environmental services utilisation business licence, timber forest product utilisation business licence, non-timber forest product utilisation business licence, timber forest product collection licence, and non-timber forest product collection licence. Meanwhile, forest utilisation in protection forest is limited to non-timber utilisation i.e. area utilisation business licence, environmental services utilisation business licence, and non-timber forest product collection licence.

After the JCL issuance, all these were simplified into a single, integrated 'business licences for forest utilisation' as previously mentioned. Articles 26 and 28 of the Law on Forestry were amended and reformulated in Article 36 points 4 and 6 of the JCL (see **Table 3**).

Table 3. Changes in the terminology of forestry sector licensing in the JCL

Law on Forestry 41/1999	**The JCL/Law 11/2020**
Article 26 (1) Utilisation of protection forest can be in the form of area utilisation, utilisation of environmental services, and collection of non-timber forest products (2) Utilisation of protection forest is carried out through the issuance of area utilisation business licence, environmental services utilisation business licence, and non-timber forest product collection licence	Article 36 4. Provisions stated in Article 26 are amended as follows: (1) Utilisation of protection forest can be in the form of area utilisation, utilisation of environmental services, and collection of non-timber forest products (2) Utilisation of protection forest as referred to in Paragraph (1) is carried out by the granting a Business Licence from the National Government
Article 28 (1) Utilisation of production forest can be in the form of area utilisation, environmental services utilisation, timber and non-timber forest product utilisation, and timber and non-timber forest product collection (2) Utilisation of production forest is carried out through the issuance of utilisation business licence, timber and non-timber forest product utilisation business licences, and timber and non-timber forest product collection licence	Article 28 (1) Utilisation of production forest can be in the form of area utilisation, environmental services utilisation, timber and non-timber forest product utilisation, and timber and non-timber forest product collection (2) Utilisation of production forest as referred to in Paragraph (1) is carried out by the granting of a Business Licence from the National Government

Based on the JCL, a single business licences for forest utilisation now covers various business activities under the concept of forestry multi-business. This is in line with one of the main objectives of the JCL, i.e. to simplify licensing. In the implementing regulations of the JCL i.e. the Government Regulation 23/2021 and the MoEF Regulation 8/2021, forestry multi-business is defined as: "*the implementation of several forestry business activities in the form of area utilisation business, timber and non-timber forest product utilisation business, and/or environmental service utilisation business to optimise forest area in protection forest and production forest*." Multi-business activities that are allowed in production forest areas include: area utilisation, environmental service utilisation, timber forest product utilisation, non-timber

forest product utilisation, timber forest product collection, and non-timber forest product collection.[23] Meanwhile, multi-business activities in the protection forest areas include: area utilisation, utilisation of environmental services, and collection of non-timber forest products.[24]

3.4.2. Timber utilisation

Initially, timber utilisation was granted through a scheme called 'timber utilisation licence'. However after the issuance of the JCL, the term was changed to 'approval for timber utilisation for non-forestry activities'. Before the JCL, timber utilisation licences were regulated by the MoEF Regulation 62/2015 on Timber Utilisation Licences. With the enactment of the JCL, the MoEF regulation was revoked and replaced by the MoEF Regulation 8/2021 on Forest Management and Formulation of Forest Management Plans, as well as Utilisation of Protection Forests and Production Forests.

Before the JCL, based on article 2 of the MoEF Regulation 62/2015, areas that can be proposed for timber utilisation licences include: non-forest areas that have been granted a licence, forest areas that have been granted a 'licence to borrow and use forest areas', and convertible forest areas that have been converted or exchanged to non-forest areas (*Tukar Menukar kawasan Hutan*/TMKH). Following the JCL, the forest area exchange scheme was abolished, and replaced by another scheme, namely 'forest area release'. This is stated in Article 175 paragraph 3 of the MoEF Regulation 8/2021: *"(3) areas that can be applied for approval under timber utilisation for non-forestry activities include: a) other use areas that have been granted non-forestry licences; b) areas for forest area use that have been granted a forest area use approval; or c) production forest that has been converted through the forest area release."*

There is also another change related to the authorities in charge of timber utilisation licence/approval for timber utilisation for non-forestry activities. Prior to the JCL, timber utilisation licences in non-forest areas that have been granted with a licence and in convertible forest areas that have been converted and exchanged to non-forest areas were issued by the governor. In practice, the governor delegated this task to the Head of the forestry service.[25] After the JCL ratification, approval for timber utilisation for non-forestry activities in those areas is directly granted by the Head of the forestry service, no longer on behalf of the governor. This is stated in Article 175 paragraph 5 the MoEF Regulation 8/2021: "*(5) approval for timber utilisation for non-forestry activities in lands for other uses that have been granted with non-forestry licences and production forests that have been converted through the forest area release as referred to in paragraph 3 Letters a and c are issued by the Head of forestry service*". Approval for forest area use is issued by the MoEF. Licences of cultivation rights in non-forest

[23] See Article 149 of Government Regulation 23/2021 and Article 49 paragraph (6) of the MoEF Regulation P.8/2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forest and Production Forest

[24] See Article 132 of Government Regulation 23/2021 and Article 49 paragraph (5) of the MoEF Regulation P.8/2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forest and Production Forest

[25] See article 4 of MoEF P.62/2015 on Timber Utilisation Permits

areas are granted by the Minister of Agrarian and Spatial Planning and Spatial Planning/National Land Agency and their respective agencies at the sub-national levels.

In addition, approval for timber utilisation for non-forestry activities holders must pay an advance for forest resource provision and reforestation funds of at least 25% of the recapitulation of the cruising report before starting activities. Another obligation is to prepare a logging plan, which is prepared by the forest management technical personnel. This logging plan is developed based on timber cruising with a sampling method, the results of which are included in the cruising results report and recapitulation of the cruising report. After the logging plan has been developed, timber utilisation for non-forestry activities approval holders can carry out logging in their concession areas. The logging plan is submitted to the head of the forestry service and the head of the production forest utilisation monitoring centre at a province.

3.4.3. Social forestry

Social forestry is included as one of the approved licences in the forestry sector. Currently, social forestry is granted through 'social forestry management approval'. Social forestry is not included in the category of business licences because the subject is not the private sector but communities who live in or around forest areas. In addition, the main purpose of social forestry is to resolve tenure issues to provide justice for local/customary communities living in or around forest areas. The status of social forestry in the JCL era has been heightened. Initially it was only regulated by government and ministry regulations but has now been regulated by law.[26]

Before the JCL, the discourse on social forestry was only shown in the explanation of Law on Forestry. Social forestry is mentioned in the explanation of article 5 paragraph 1 regarding types of social forestry, in which the communities serve as the main actors. The explanation of the law states that "*state forest managed by the village and used for the welfare of the village is called village forest. State forests whose use is intended to empower the community are called community forests. Private forest located on land that is encumbered with property rights is commonly called the people's forest*." Social forestry was further regulated in more detail in the law on forestry implementing regulations, i.e. Government Regulation 6/2007 jo. Government Regulation 3/2008, the MoEF Regulation 83/2016, and the MoEF Regulation 39/2017.

Based on the MoEF Regulation 83/2016 on Social Forestry (in the context of outside Java Island),[27] social forestry is defined as a sustainable forest management system implemented in state forest areas or private forests/customary forests carried out by local communities or customary law communities as the main actors to improve their welfare, environmental balance and socio-cultural dynamics in the form of village forest, community forest, forests community plantation, customary forest and forestry partnership. Village forest is a state forest managed by the village and used for village welfare. Community forest is a state forest whose main use is intended to empower the community. Community plantation forest is plantation forests in production forests built by community groups to increase the potential and quality of production forests by applying silviculture to ensure the sustainability of forest resources. Customary

[26] See Article 36 point 8 JCL, especially in the formulation of Article 29A paragraph (2)

[27] See Articles 2 and 4 of MoEF Regulation 83/2016 on Social Forestry

forests are those within the territory of customary law communities. Forestry partnership is a collaboration between local communities and forest managers such as FMUs and various business licence holders. Village forest schemes are granted through village forest management rights, community forest is through a community forest utilisation business licence, and community plantation forest is through a timber forest product utilisation business licence.

The MoEF Regulation 39/2017 was specifically passed to regulate the implementation of social forestry in Java Island.[28] Basically, the management of forest areas in Java Island has long been handed over to a forest state company namely Perum Perhutani. The MoEF regulation provides legal access to communities living around forest areas managed by Perum Perhutani. Social forestry in this context is granted through the issuance of social forestry forest utilisation licences in protection and production forests. However, there is another scheme for social forestry in Java Island, i.e. recognition and protection of forestry partnerships. This is specifically used to recognise partnerships between Perum Perhutani and communities that have been running before the social forestry forest utilisation licences scheme was launched by the national government.

After the JCL issuance, social forestry in Java and outside Java became integrated. Social forestry is currently granted through 'social forestry management approval' and regulated under the MoEF Regulation 9/2021. In the MoEF regulation, social forestry management approval is defined as granting access to forest use by social forestry groups for village forest, community forest, community plantation forest, recognition and protection of forestry partnerships, and customary forests management activities. Village forest management activities are granted through village forest management approval, community forest through community forest management approval, community plantation forest through community plantation forest management approval, and recognition and protection of forestry partnerships through recognition and protection of forestry partnerships approval.[29] With this integrated scheme, social forestry forest utilisation licences and recognition and protection of forestry partnerships schemes previously existed for Java Island are automatically abolished by the JCL (see **Table 4**).

In addition, the JCL has also changed the provisions related to community forest and community plantation forest schemes. Currently, the approval for community forest management is not only given to community groups, but also to individuals. The approval for community Plantation Forest management is also not only given to community groups, but also to individuals or even forestry professionals. 'Individual' here is an individual who joins or forms a community group, while forestry professional is an individual who has received forestry education, or other fields with experience in the forestry sector or has served as assistants or extension workers in the forestry sector[30] (see **Table 4**).

[28] See Articles 2 and 3 MoEF Regulation 39/2017 on Social Forestry in the Working Area of Perum Perhutani

[29] See MoEF Regulation 9/2021 on Social Forestry

[30] See Article 21 Paragraphs 2 and 7 MoEF Regulation P.9/2021 on Social Forestry

Table 4. Changes associated with social forestry after the JCL issuance

Social forestry before the JCL (The MoEF Regulation 83/2016 and 39/2017)	**Social forestry after the JCL (The MoEF Regulation 9/2021)**
Social forestry forest utilisation licences is a business in the form of area utilisation, utilisation of timber forest products in plantation forests, utilisation of non-timber forest products in plantation forests, utilisation of water, utilisation of water energy, utilisation of natural tourism services, utilisation of natural tourism facilities, utilisation of carbon sequestration	Approval for social forestry management is the granting of access to forest use by social forestry groups for village forest, community forest, community plantation forest, forestry partnership, and customary forest management activities
Village forest management rights are management rights granted to village institutions	Approval for village forest management is legal access granted by the Minister (of the MoEF) to village institutions
Community forest utilisation business licence is a business licence granted to a group or a combination of local community groups	Approval for community forest management) is legal access granted by the Minister (of the MoEF) to individuals, farmer groups, joint forest farmer groups or local community cooperatives
Timber forest product utilisation business licence on community plantation forest is a business licence to utilise forest products in the form of wood and its associated forest products in production forests which is granted to community groups or individuals	Approval for community plantation forest is legal access granted by the Minister (of the MoEF) to forest farmer groups, joint forest farmer groups, forest farmer cooperatives, forestry professionals or individuals to utilise forest products in the form of timber and forest products associated with it
Forestry partnerships are collaborations among local communities, forest managers and business licence holders for forest use/forest services, borrow-to-use forest area, or forest product primary industry	Approval for forestry partnership (*persetujuan kemitraan kehutanan*) is a partnership agreement that is given to forest utilisation business licence holders or approval for forest area use holders with partners/communities

- The JCL simplifies various forest utilisation business licences that were initially separated into one integrated licensing scheme called 'forest utilisation business licence by adopting the concept of forestry multi-business.
- The JCL has changed the timber utilisation licence to approval for timber utilisation for non-forestry activities.
- The official who issues timber utilisation for non-forestry activities approval also changed; originally it was the governor, but is now the Head of forestry service in the province.

- The JCL strengthens the position of social forestry, which previously was only regulated by government and ministerial regulations, but is now regulated by the JCL.
- The JCL has also added ‘individuals’ as legal subjects who can be given approval for community forest management, as well as ‘individuals’ and ‘forestry professionals’ in approval for community plantation forest management.

3.5. Forest areas with specific purposes

The term forest area with specific purposes appeared after the JCL enactment. It is mentioned in Government Regulation 23/2021 on Forestry Management, one of the JCL implementing regulations. Forest areas with specific purposes are divided into three schemes: forest areas with special purposes, forest areas with special management, and forest areas for food security.

3.5.1 Forest areas with special purposes

Prior to the JCL issuance, forest areas with special purposes were regulated by article 8 paragraph 2 of Law 41/1999 on Forestry, as follows:

1) *The government can designate certain forest areas for special purposes*
2) *Determination of forest areas with special purposes, as referred to in paragraph (1) is needed for public purposes, such as: a. research and development; b. education and training; and c. religion and culture*
3) *Forest area with special purpose as referred to in paragraph (1), does not change the main function, forest area as referred to in article 6.*

Substantially, the JCL did not substantially change the above article.

3.5.2. Forest areas with special management

The scheme of forest areas with special management emerged after the JCL issuance. It is regulated by article 112 paragraph 1 of Government Regulation 23/2021 on Forestry Implementation. The regulation states that the scheme is intended for:

a. Social forestry
b. Arrangement of forest areas in the framework of forest area confirmation
c. Use of forest areas
d. Forest rehabilitation
e. Forest protection
f. Utilisation of environmental services

Areas allocated for forest areas with special management are described in the Decree of the Minister of Environment and Forestry SK.287/2022. Forest areas with special management will only be implemented in Java Island, over approximately 1.103.941 hectares, distributed in production and protection forest areas. The area includes part of the forest area that was

previously managed by the state-owned forest enterprise Perum Perhutani. See article 112 paragraph 2 Government Regulation 23/2021, which provides that:

> *"Determination of forest areas with special management as referred to in paragraph (1) is carried out in areas where management has not been delegated to state-owned forestry companies in parts of state forests located in production forest areas and protection forests in Central Java Province, East Java Province, Province West Java, and Banten Province".*

3.5.3. Forest areas for food security

The scheme of forest areas for food security appears in article 114 Government Regulation 23/2021. It is intended to provide forest areas for food estate development. Food estate is a wide-scale food business by utilising natural resources to produce food products to meet human needs including food crops, horticulture, plantations, livestock and fisheries in a forest area.

In the era of President Suharto, food estate was developed through a peatland development programme by utilising 1 million hectares of peatlands in Central Kalimantan Province. A similar programme was also implemented by President Susilo Bambang Yudhoyono, namely Merauke Integrated Food and Energy Estate (MIFEE) in Papua. In the era of President Joko Widodo's first period, through Presidential Decree 3 of 2016 on the Acceleration of Implementation of National Strategic Projects, food estate development continued through the food estate programme (not yet using the term forest areas for food security).

Following the JCL issuance, the government strengthens its commitment to continue the food estate development. This can be seen from its action in establishing a working group for the preparation of a master plan for food estate for food production centres through the Decree of the Minister of National Development Planning/Head of the National Development Planning Agency Number KEP.13/M.PPN/HK/ 02/2021. In addition, the implementation of the scheme of forest areas for food security in forest areas is regulated under MoEF Regulation 7/2021 on Forestry Planning, Changes in Allocation of Forest Areas and Changes in Functions of Forest Areas, as well as Use of Forest Areas. This regulation states that the scheme can be carried out in production and protection forest areas (especially protection forest areas which do not fully function as a protection). The scheme can also be implemented in forest areas that have been granted licences and reserved for agrarian reform or social forestry, as described in article 115 Government Regulation 23/2021:

1) *Provision of forest areas for the development of food security (food estate) with the mechanism of determination of forest areas for food security is carried out on:*
    a. *protection forest areas; and/or*
    b. *production forest area.*
2) *Protection forest areas as referred to in paragraph (1) letter a which are no longer fully functional for protection shall be carried out through restoration activities in accordance with the provisions of laws and regulations.*
3) *Provision of forest areas for the development of food security (food estates) can be carried out in forest areas:*

a. *which have been burdened with management by state-owned companies in the forestry sector;*
b. *which have been burdened with forest utilisation business permits, after being removed from their work area; and*
c. *which have been reserved or have been encumbered with social forestry agreements or have been reserved for land as objects of agrarian reform by adjusting people-oriented programmes and agrarian reform.*

Based on the explanation above, it can be seen that the scheme of forest areas for food security is one of the government's current priority programmes. It is included in one of the national strategic programme lists, so it is prioritised in terms of land acquisition originating from forest areas, as mentioned in point 3.2.

- JCL introduces forest areas with specific purposes.
- Forest areas with specific purposes consist of three schemes: forest areas with special purposes, forest areas with special management, and forest areas for food security.
- Forest areas with special purposes existed before the JCL, and the terms have not changed.
- Forest areas with special management appeared following the JCL issuance, and will be carried out on forest areas formerly managed by Perum Perhutani.
- Forest areas for food security emerged after the JCL ratification, and are specifically intended for the implementation of the food estate programme.

3.6. Utilisation of forest areas for non-forestry sector development

3.6.1. Changes in the designation and function of forest areas

Before the JCL issuance, changes in the designation and function of forest areas for the development of the non-forestry sector were regulated by Government regulation 104/2015 on Changes in the Designation and Functions of Forest Areas. It regulated: 1) changes in the designation of forest areas; and 2) changes in the function of forest areas. The first refers to a change of land status from forest areas to non-forest areas. Meanwhile, the latter is the change of forest area status, for example from protection forest to production forest, which also changes its main function from protection of life support systems to utilisation of forest products. The decline of forest status from protection to production forest implies that an increasing number of activities from other sectors are allowed. For example, open mining activities previously prohibited in protection forest are allowed with the decline of status to production forest.

Furthermore, changes in forest area designation could be carried out using the forest area exchange scheme and forest area release. The forest area exchange scheme is the change of permanent production forest and/or limited production forest by replacing them with lands from non-forest areas or with productive convertible production forest.[31] Meanwhile, forest area

[31] Article 1 Point 15 of Government Regulation 104/2015 on Changes in the Designation and Functions of Forest Areas

release is a change in the allocation of convertible forest area to non-forest areas, from the status of forest area to non-forest area.

After JCL, activities for the use of forest areas for the purposes of non-forestry sector development are regulated by Government Regulation 23/2021 on Forestry Implementation and MoEF Regulation 7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas. Based on JCL and these two regulations, the forest area exchange scheme has been abolished, but the forest area release scheme is maintained. The difference is that before JCL, forest area release could only be done in convertible forest areas.[32] However, after JCL, the release may be possible in production forests in general if based on the spatial planning, the location is included in an area with a cultivation function. Both Government Regulation 23/2021 and MoEF Regulation P.7/2021 state that approval for the release of forest areas can be given to convertible forest areas and/or permanent production forests for the following activities:[33]

a. national strategic project
b. national economic recovery
c. land acquisition for food estate and energy
d. land acquisition for natural disasters
e. procurement of land objects for agrarian reform; and
f. business activities that have been established and have licences in the forest area before the JCL enactment

However, the release of forest areas principally still prioritises convertible forest areas to be released, especially those that are unproductive.[34] According to MoEF Regulation 7/2021, unproductive convertible forest areas consist of more than 70% of non-forest land cover, such as shrubs and mixed gardens.[35] If there are no convertible forest areas in a province, permanent production forest and limited production forest areas are allowed to be released. The limit of forest area release is based on the adequacy of forest areas and forest cover for each watershed.

Besides eliminating the forest area exchange scheme, the JCL also eliminates the role of the House of Representatives in approving changes to the allocation and function of forest areas that have strategic values and cover large areas. Previously, the House of Representatives had to approve changes to the allocation of forest areas as regulated in article 19 paragraph 2 and article 38 paragraphs 3 and 5 of the Law on Forestry. Article 19 paragraph 2 stated that "*changes in the allocation of forest areas as referred to in paragraph (1) which have an important impact and wide scope and strategic value, shall be determined by the government with the approval of the House of Representatives"*. Article 38 paragraphs 3 and 5 pointed out

[32] See Article 1 Point 16 of Government Regulation 104/2015 on Changes in the Designation and Functions of Forest Areas

[33] See Article 58 paragraph (4)Government Regulation 23/2021 and Article 273 paragraph (3) MoEF Regulation P.7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas.

[34] See Article 58 of Government Regulation 23/2021 on Forestry Implementation

[35] See Article 273 paragraph (2) letter d MoEF Regulation P.7/2021 on Forestry Planning, Changes in Allotment of Forest Areas and Changes in Forest Area Functions, and Use of Forest Areas.

that "(3) *the use of forest areas for mining purposes is carried out through the granting of a borrow-to-use permit by the Minister taking into account the limits of a certain area and period of time as well as environmental sustainability … (5) The granting of a borrow-to-use permit as referred to in article 38 paragraphs 3 and 5 of the Law on Forestry in paragraph (3) which has an important impact and wide scope and strategic value is carried out by the Minister with the approval of the House of Representatives*".

With the JCL, approval for changes to the allocation of forest areas is only in the hands of the central government without approval from the House of Representatives. This is stated in article 36 point 3 of the JCL: "*changes in the designation and changes in the function of forest areas are determined by the Central Government by considering the results of integrated research*."

3.6.2. Forest area release for activities that have been established

Specifically related to point f in the above section (i.e. business activities that have been established and have licences in the forest area before the JCL enactment/'*keterlanjuran*'), forest area release policy in the JCL era was launched to resolve the issue of oil palm plantations that have been established in forest areas. The JCL facilitates such activities, making them liable to administrative sanctions only. Article 37 point 20 of the JCL adds article 110 A to the Law 18/2013 on Prevention of Eradication of Forest Logging, which confirms that business activities (including plantations) existing in forest areas are given a period of up to three years to complete the requirements to avoid administrative sanctions. Meanwhile, business activities (article 110B) that do not have a licence at all/completely illegal will be subject to administrative sanctions in the form of temporary suspension, payment of administrative fines, and government coercion. This means that the JCL prioritises administrative sanctions compared to criminal sanctions for activities that have been established and are illegal.

According to Government Regulation 24/2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in the Forestry Sector, for oil palm business actors who have business licences but do not have forestry sector licences and have paid fines administratively, the MoEF can issue an approval for forest area release if the activities are located in production forest areas. If they are in protection forest or conservation forest areas, the MoEF can give approval to continue the oil palm business activities through a long-term improvement strategy or "*strategi jangka benah*."[36,37] Meanwhile, for oil palm business actors who do not have a business licence, after paying administrative fines, they are:[38]

a. granted approval for forest area use if the activities are located in a production forest;

[36] See Article 30 paragraph (5) of Government Regulation 24/2021 and Article 301 paragraph (4) MoEF Regulation P.7/2021. on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas

[37] The Term "jangka benah"is a socio-technical-policy effort to improve the structure and function of forest ecosystems that have already been damaged in monoculture oil palm areas in forest areas, this improvement is carried out gradually and comprehensively through institutional strengthening, scheduled silvicultural/agroforestry actions, and policy support.

[38] See Article 36 paragraph (1) of Government Regulation 24/2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Deriving from Administrative Fines in the Forestry Sector

b. facilitated with cooperation if the location overlaps with other licences in the forestry sector in production forest areas; or
c. required to return activity areas/concessions if the location is in protection forest and/or conservation forest areas.

The JCL leads to a higher tolerance of oil palm plantations in forest areas. These activities were previously regulated at government regulation-level i.e. Government Regulation 104/2015,[39] and are now regulated by law, namely the JCL. Previously, the Supreme Court ruled that Article 51 Paragraph (2) of Government Regulation 104/2015 conflicts with higher norms, including Law 5/1990 On Conservation of Living Resources and their Ecosystems, Law 41/1999 on Forestry, and Law 26/2007 on Spatial Planning. In response, transitional provisions below were added to article 51 paragraph (2) as a solution:

> "*In the case of plantation business activities whose licences are issued by the regional government based on the provincial or regency/city spatial planning stipulated by regional regulations before the enactment of Law Number 26 of 2007 on Spatial Planning and whereas based on the applicable spatial planning, it is still in accordance with the spatial planning previously, but if based on Law Number 41 of 1999 on Forestry as amended by Law Number 19 of 2004 on Stipulation of Government Regulations instead of Law Number 1 of 2004 on Amendment of Law Number 41 of 1999 on Forestry, the area according to the latest Forest Area map is a Forest Area with conservation and/or protection functions, then (the business actors are)* ***given the opportunity to continue its business for one cycle of principal crops*****.**"

However, the opportunity to continue oil palm business for one cycle of principal crops needs to be interpreted that business actors must make efforts to restore environmental carrying capacity by taking into account the ecological, economic and social aspects. On the contrary, this should not be interpreted simply as continuing their business for one cycle without any effort at all.[40] Through a judicial review decision 77P/HUM/2019, the Supreme Court explained the interpretation of the opportunity to continue the business (palm plantation) for one cycle as follows:

a. providing the opportunity to continue business for one cycle is the government's effort to restore the carrying capacity of the lands by requiring plantation owners to plant forestry plants on their lands
b. providing business opportunities for one cycle will further support restoration and rehabilitation efforts towards ecosystem restoration of conservation forests or protection forests. Oil palm plants can serve as natural cover for young forest plants. without oil palm cover, the success of restoration will be much lower and result in vulnerability to forest and land fires, as well as encroachment by communities
c. planting forest plants is the responsibility of business actors

[39] See Article 51 of Government Regulation 104/2015 on Changes in the Designation and Functions of Forest Area

[40] Decision Number 77P/HUM/2019 which was read out on December 13, 2019, is a judicial review decision on Government Regulation Number 104/2015 proposed by Walhi and the Kalimantan Legal Aid Association (PBH).

In more detail, the JCL and its implementing regulations regulate patterns/mechanisms of settlement of oil palm plantations that have been established in forest areas. The settlement can be carried out with forest area release scheme or long-term improvement strategy. The forest area release scheme can be carried out if the oil palm plantation business owner has paid the reforestation fund and forest resource provision, and fulfilled the forestry licence.[41] Meanwhile, the long-term improvement strategy can be carried out through social forestry programme for 25 years for smallholder oil palm plantations,[42] and through partnerships with business-licence holders for 25 years in the event of overlapping areas of business licences.[43] Meanwhile, the settlement for the continuation of the oil palm plantation business in protection and conservation forest areas can only be carried out with long-term improvement strategy for 15 years and must fulfil forestry licences as well as pay the reforestation fund and forest resource provision.[44] Meanwhile, in smallholder oil palm plantations, the long-term improvement strategy in protection and conservation forests is carried out through social forestry programme for 15 years.[45] (See **Figure. 3**).

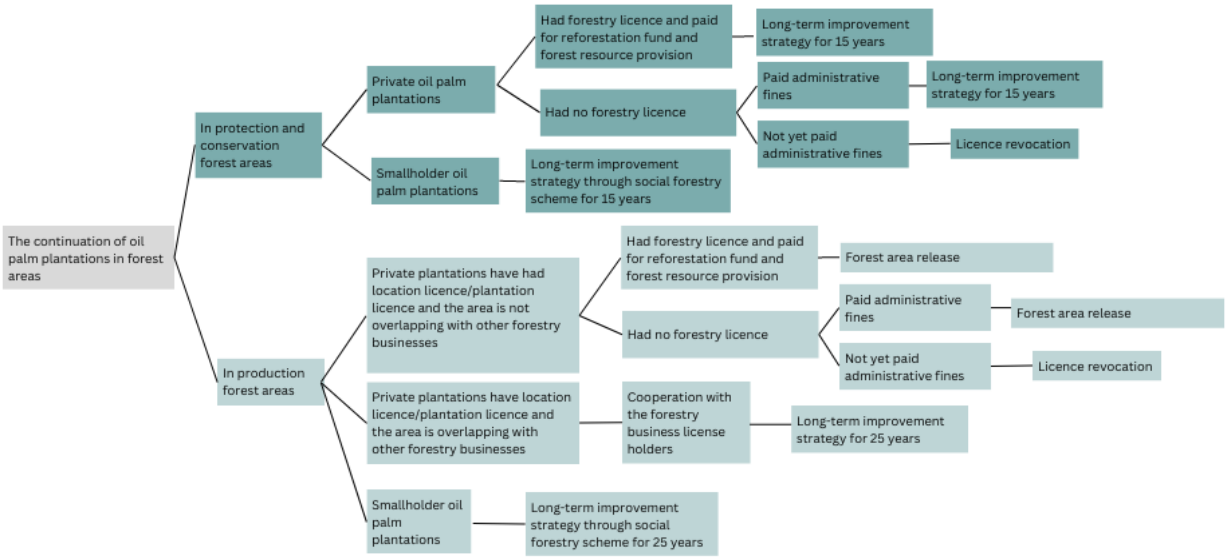

Figure 3. Mechanisms of settlement of oil palm plantations that have been established in forest areas

3.6.3. Forest area use

Besides forest area release, there is another scheme to accommodate non-forestry sector development i.e. forest area use. Before the JCL, forest area use scheme for sector

[41] See Article 18 of Government Regulation 24/2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-State Revenue Tax originating from Administrative Fines in the Forestry Sector

[42] See Article 177 and 178 paragraph 1 MoEF Regulation P.9/2021 on Social Forestry

[43] See Article 171 MoEF Regulations P.8/2021 on Forest Management and Preparation of Forest Management Plans, and Utilisation of Forests in Protection Forests and Production Forests

[44] See Article 18 of Government Regulation 24/2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-State Revenue Tax originating from Administrative Fines in the Forestry Sector

[45] See Article 178 Paragraph 2 MoEF Regulation P.9/2021 on Social Forestry

development outside forestry was only granted through a borrow-to-use forest area licence scheme (*izin pinjam pakai kawasan hutan*/IPPKH), which was regulated by article 38 of the Law on Forestry:

1) *The use of forest areas for development purposes outside forestry activities can only be carried out within production and protection forest areas.*
2) *The use of the forest areas as referred to in paragraph (1) may be carried out without changing the main function of the forest areas.*
3) *The use of forest areas for mining purposes is carried out through the granting of a borrow-to-use licence by the Minister taking into account the limitations of the areas and a certain period of time as well as environmental sustainability.*
4) *In protection forest areas, mining with an open mining pattern is prohibited.*
5) *The granting of a borrow-to-use licence as referred to in paragraph (3) which has an important impact and a broad scope and strategic value is carried out by the Minister with the approval of the House of Representatives.*

Forest area use was further regulated by Government Regulation 105/2015 on the Second Amendment to Government Regulation 24/2010 on the Forest Area Use. Article 1 paragraph 2 of Government Regulation 105/2015 detailed the types of activities that fall under the category of development outside the forestry sector, namely:

a. *religion;*
b. *mining;*
c. *power generation, transmission, and distribution installations, as well as new and renewable energy technologies;*
d. *construction of telecommunications networks, radio transmitting stations, television relay stations, and space observation earth stations;*
e. *public road, toll roads, and railroads;*
f. *transportation facilities that are not categorised as public transportation facilities for the transport of production products;*
g. *reservoirs, dams, weirs, irrigation, drinking water canals, sewers and sanitation, and other irrigation structures;*
h. *public facilities;*
i. *industries other than forest product primary industries*
j. *defence and security*
k. *public safety supporting infrastructure*
l. *temporary shelter for victims of natural disasters and their business land; or*
m. *certain agriculture in the context of food security and energy security.*

After the JCL issuance, forest area use is now regulated by Government Regulation 23/2021 and more technically regulated by the MoEF Regulation 7/2021. Forest area use scheme appears to primarily facilitate government priority projects. Article 94 paragraph 3 of Government Regulation 23/2021 states that forest area use for development purposes other than forestry activities for the public interest, especially priority projects of the central government, is carried out with the following provisions:

1) In case land acquisition is carried out by a government agency, through the mechanism for Forest Area Release; or
2) In case land acquisition is carried out by a non-government agency, with the following provisions:
    a) if permanent in nature, with the mechanism of Forest Area Release; or
    b) if not permanent or to avoid fragmentation of Forest Areas and (the activities) can become part of forest management, with the mechanism of Approval for Forest Area Use

Based on the above, the JCL adds forest area release as one of the schemes of forest area use (point a and point b.1). Before the JCL, the use of forest areas was only carried out using the borrow-to-use forest area licence scheme, which is currently referred to as approval for forest area use (point b.2). The approval for forest area use includes approval for wood utilisation, as well as approval for the import and use of equipment.

The approval of forest area use for the government's strategic project activities is further facilitated by article 94 paragraph 8 of Government Regulation 23/2021 point f: "*Approval for Forest Area Use for the following activities: a. state defence, means of safety for sea or air traffic, and means of meteorology, climatology, and geophysics; b. survey and exploration activities; c. temporary shelter for victims of natural disasters and their business land; d. infrastructure by non-commercial government agencies; e. religion includes places of worship, burial places, and spiritual tourism; and f.* ***national strategic programme activities, national economic recovery, and non-commercial food and energy security*** *excluded from the obligations as referred to in paragraph (5), paragraph (6), and paragraph (7)*." Paragraph (5) refers to the obligation to pay non-tax state revenue for the use of forest areas. Paragraph (6) is the obligation to pay compensation. Paragraph (7) is the obligation to carry out planting in the context of watershed rehabilitation.

- The JCL abolishes the forest area exchange scheme
- The JCL allows releasing forest areas in permanent and limited production forests with certain terms and conditions, while previously forest area release was only allowed in convertible forest areas
- The JCL eliminates the role of the House of Representatives in approving changes to the allocation and function of forest areas that have strategic value and cover large areas
- The JCL prioritises administrative sanctions rather than criminal sanctions for activities that have been established and are illegal in forest areas
- The JCL strengthens the policy for tolerating oil palm plantation in forest areas, previously only at the government regulation level and currently at the law level
- The JCL changed the terminology of borrow-to-use forest area licence to approval for forest area use
- The JCL incorporates the forest area release scheme into the forest area use policy
- The policy on forest area use legally accommodates strategic national policies

3.7. Environmental protection in the context of business licences for forest utilisation

The JCL issuance has led to a change in terminology in the context of environmental protection, from 'environmental licence' to 'environmental approval'. The term 'licence' is a product of administrative law, while 'approval' is more of a discretionary authority (Riyanto et al, 2020). In Law 32/2009 on Environmental Protection and Management, an environmental licence is "*a licence granted to every person who conducts a business and/or activity for which an environmental impact assessment or environmental management and monitoring efforts in the context of environmental protection and management serve as a prerequisite for obtaining business and/or activity licence*."[46] Meanwhile, environmental approval in the JCL is an "*environmental feasibility decision or a statement of environmental management ability that has obtained approval from the central government or local government.*"[47]

Before the passing of JCL, environmental licence was separate from business licence, but it became the basis for obtaining business/activity licence. For example, if the environmental impact assessment or environmental management and monitoring efforts as an environmental requirement is not fulfilled, then an environmental licence cannot be issued. Likewise, without an environmental licence, a business/activity permit cannot be issued, or if the environmental licence is cancelled then the business/activity licence will also be cancelled. Because the environmental licence is a form of decision by state administrative officials, members of the public may file a lawsuit about it in state administrative courts. After JCL issuance, environmental approval no longer stands alone as a licence, but is now part of a business licence. Thus, it is no longer possible to take legal action directly on the environmental approval if it has been illegally obtained.

The JCL issuance also introduces a new approach: risk-based business licensing. Risk-based business licensing is regulated in Government Regulation 5/2021 on the Implementation of Risk-Based Business Licensing. Based on this regulation, environmental approval is a general requirement in risk-based business licensing. Activities of business licences are now classified into four categories based on the level of risk for danger and the business scale:

a. low-risk level;
b. medium-low-risk level;
c. medium-high-risk level; and
d. high-risk level

Each risk level requires different documents to prove the legality of licensing:

a. for the low-risk level, it is sufficient to prove a business licence through a business identification number (*Nomor Induk Berusaha*/NIB) as the identity of the business actor and the legality to carry out business activities.

[46] See Article 1 number 35 of Law 32/2009 on Environmental Protection and Management
[47] See Article 22 poin 1 of Law 11/2021 on Job Creation

b. for the medium-low-risk level, the required business licensing documents are the business identification number and standard certificate in the form of a statement by business actors showing willingness to meet business standards in carrying out business activities through the online single submission (OSS) system.[48]
c. for the medium-high-risk level, business licensing documents include the business identification number and standard certificates in the form of business activity implementation certificates issued by the central government or regional governments according to their respective authorities, based on the results of verification of business actors' compliance with business activity implementation standards.[49]
d. for the high-risk level, required documents include the business identification number, licences and standard certificates. the licences referred here are the approvals of the central government or regional government for the implementation of business activities that must be fulfilled by business actors before carrying out their business activities. In terms of standard certificate, the central government or local governments in accordance with their respective authorities shall issue a business standard certificate and a product standard certificate based on the results of verification of standard compliance by actors of high-risk business activities.[50]

Hence, we can see that the higher the risk of business activities, the more complex the required documents.

In the forestry sector, the risk-based business licensing specifically pertains to business licences for forest utilisation, which is regulated through the MoEF regulation 8/2021. Before obtaining a business licence for forest utilisation, business actors must fulfil commitments and technical requirements. The preparation of environmental documents is one of the commitment requirements. Based on the MoEF Regulation, business licences for forest utilisation in protection forest areas are included in the category of medium high-risk level, whereas business licences for forest utilisation in production forest areas are categorised as high-risk level. This is because business licences for forest utilisation in production forest areas allow the use of timber forest products, which have a significant potential impact on the environment. On the other hand, business licences for forest utilisation in protection forest areas only allow the use of non-timber forest products, which in principle should have a less harmful impact on the environment. Thus, the environmental documents required differ for the two forest types. For business licences for forest utilisation in production forest areas, the environmental document that must be completed is the environmental impact assessment. On the other hand, business licences for forest utilisation in protection forest areas only require environmental management and monitoring efforts documents.[51]

[48] See Article 13 paragraph (2) of Government regulation 5/2021 on Implementation of Risk-Based Business Licensing

[49] See Article 14 paragraph (2) of Government regulation 5/2021 on Implementation of Risk-Based Business Licensing

[50] See Article 15 Government regulation PP 5/2021 on Implementation of Risk-Based Business Licensing

[51] See MoEF Regulation P.4/2021 on List of Businesses and/or Activities Requiring Environmental Impact Assessment, Environmental Management and Monitoring Efforts and Statement Letter of Environmental Protection and Management in Appendix I

- The JCL changes the terminology of environmental licence to environmental approval
- The JCL changes the approach from 'business licensing' to be 'risk-based business licensing'

3.8. Protection of indigenous people's/local community's rights

One of the highlighted aspects in the JCL is certain focus on the rights of indigenous peoples/local communities. The JCL includes affirmative policies related to the activities of indigenous peoples/local communities in utilising forest resources. These are: 1) strengthening social forestry policies (as described in chapter 3.3.3); 2) less restrictive activities of indigenous peoples/local communities in forest areas; and 3) the emergence of the terminology of customary forest indicative areas to facilitate the recognition process of customary forests. This section will explain the affirmative policies related to points 2 and 3.

Before the JCL issuance, the activities of indigenous peoples/local communities in forest areas were very limited. Article 50 Paragraph (3) of the Law on Forestry stipulates various prohibitions: "(*3) everyone is prohibited from: a) working and/or using and/or occupying forest areas illegally; b) encroaching on forest areas; c) planting trees….; d) burn down the forest …; e) herding cattle and so on.*" The JCL adds Article 50A, which provides opportunities for local communities who have been living in or around forest areas continuously but carrying out activities without licences in forest areas to be subject only to administrative sanctions, as follows:

"(1) in terms of the violation as referred to in Article 50 paragraph (2) letter c, letter d and/or letter e that is done by an individual or community group residing in and/or around the forest area for at least 5 (five) years continuously, (they are) subject to administrative sanctions.

(2) the imposition of administrative sanctions as referred to in paragraph (1) is exempted from:

a. individual or community group residing in and/or around the forest area for at least 5 (five) years continuously and is registered in the (government's) forest area management policy; or
b. individuals who have received social sanctions or customary sanctions."

Furthermore, before the JCL enactment, one of the recognition requirements of customary forest by the government was subject to the recognition of the indigenous peoples themselves. The recognition of indigenous peoples must be proved with regional legal products in the form of regional regulations or regional heads' decrees depending on where the prospective customary forest is located. If the area is located in forest areas, the required legal product is regional regulations. Meanwhile, if the area is non-forest areas, the legal product can be in the form of regional regulations or a regional head decree.[52]

[52] See Article 6 paragraph 1 MoEF Regulation P.17/2020 on Customary Forests and Private Forests.

After the JCL ratification, the term 'indicative customary forest area' emerged to ease administration for the recognition of customary forest in the future. Article 1 point 25 of the MoEF Regulation 9/2021 states that: "*indicative customary forest areas are customary forest areas located in state forest areas that have not obtained legal products in the form of regional regulations but that have been stipulated by the district head/mayor as indigenous communities' areas*." This article is further clarified through article 71 of the MoEF Regulation 9/2021, as follows:

(1) whereas a field verification is carried out on an application that has not been accompanied by a regional regulation confirming the existence of indigenous peoples and/or a decision by the governor/district head/mayor regarding the recognition of indigenous peoples, but the customary area has been determined by the regent/mayor, the Director General on behalf of the Minister within a period of 14 (fourteen) working days shall determine the (area) as indicative area of customary forest
(2) the stipulation as referred to in paragraph (1) is carried out partially and becomes the principal approval for the recognition of the status of Customary Forest.

Based on the article above, an indicative customary forest area can function to "secure" the area that has been proposed for the recognition of customary forest, so that other types of licences cannot be issued in that area.

- The JCL provides affirmative policies for indigenous peoples/local communities through: 1) strengthening social forestry, 2) facilitating allowed activities of indigenous peoples/local communities in forest areas, and 3) the emergence of "indicative customary forest areas" to facilitate the recognition process of customary forests and protect the rights of indigenous communities until they obtain legal recognition
- Regarding the facilitation of the activities that indigenous/local communities can conduct, the JCL only provides administrative sanctions to individuals or community groups who violate the law in the forestry sector and live in forest areas for at least five consecutive years

3.9. Tenurial conflict resolution

Tenurial conflicts in the Indonesian context are primarily caused by overlapping legal claims over land, particularly overlaps between forest areas and indigenous peoples/local communities lands. Before the JCL era, policies related to tenurial conflict resolution had been reformulated several times. The latest policy was Presidential Regulation 88/2017 on the Settlement of Land Tenure in Forest Areas. The basis for the issuance of this presidential regulation was to implement the Constitutional Court's decisions 45/PUU-IX/2011, 34/PUU-IX/2011, 35/PUU-X/2012 and 95/PUU-XII/2014 related to the need to complete and provide legal protection to community rights in forest areas. According to the Constitutional Court decision 45/PUU-IX/2011, the designation of forest areas by the state does not have legal force before going through the following process: 1) designation, 2) planning, 3) mapping and 4) gazettement of forest areas. However, under Presidential Regulation 88/2017 the designation of forest areas is

the only stage that provides a basis for consideration for settlement of land tenure in forest areas resolution.

Presidential Regulation 88/2017 also explains the mechanisms for settlement of land tenure in forest areas both before and after the lands are designated as forest areas. If lands have been occupied and utilised and/or upon which rights have been granted before they were designated as forest areas, the settlement is carried out by removing the lands from the forest areas by changing the forest area boundaries. Meanwhile, if lands are occupied and utilised after they were designated as forest areas, the settlement includes: a. removing lands in forest areas through changes to forest area boundaries, b. forest area exchange scheme, c. providing access to forest management through social forestry programmes, or d. resettlement.[53] However, these mechanisms are to consider the total area of forest areas that must be maintained, i.e. at least 30% of the area of the watershed, island, and/or province, as well as the main functions of the forest area.[54] **Table 5** below describes in more detail the mechanisms of settlement of land tenure in forest areas after the designation of forest areas in the era before the JCL was issued.

Table 5. Settlement of land tenure in forest areas mechanisms after the designation of forest areas before the issuance of JCL

Forest Area	**Forest Area <30%**				**Forest Area>30%**			
Province	Java, Lampung, and Bali				Others			
Utilisation	Settlement	Public facilities/ social facilities	Cultivation lands	Customary forests	Settlement	Public facilities/ social facilities	Cultivation lands	Customary forests
Completion Pattern	Release/change of forest area boundaries, forest area exchange, social forestry, and resettlement							
Forest Function								
Conservation Forest	Resettlement (for all conditions)							
Protection Forest	Resettlement	Resettlement	Social forestry	-	Resettlement	Resettlement	>20 years: land reform <20 years: social forestry	-
Protection forest but does not meet the criteria as protection forest	Forest area exchange	Forest area exchange	Social forestry	-	Release/ change of forest area boundaries	Release/ change of forest area boundaries	>20 years: land reform	-

[53] See Articles 7 and 8 of Presidential Regulation 88/2017 on Settlement of Land Tenure in Forest Areas

[54] See Articles 9 of Presidential Regulation 88/2017 on Settlement of Land Tenure in Forest Areas

							<20 years: social forestry	
Production forest	Forest area exchange/resettlement	Forest area exchange/resettlement	Social forestry	-	Release/ change of forest area boundaries	Release/ change of forest area boundaries	>20 years: land reform <20 years: social forestry	-

After the JCL issuance, the mechanisms for the settlement are regulated by Government Regulation 23/2021. Article 23 of this regulation mentions that land reform, social forestry, forest area use and changes to the allocation and function of forest areas are schemes under the settlement to resolve tenurial conflicts. Government Regulation 23/2021 also stipulates several criteria for the completion of the settlement, including:[55]

a. Settlement of land tenure in forest areas is carried out before the enactment of the JCL;
b. Occupied for at least five consecutive years;
c. Occupied by an individual with a maximum area of 5 ha;
d. Lands have been physically occupied in good faith openly;[56] and
e. Undisputed lands

The mechanisms for the settlement before and after the JCL issuance principally remains the same.[57] After the JCL, the completion pattern also uses demarcation;[58] i.e. before and after the designation of forest areas, as the main benchmark. For lands that have been occupied and utilised and/or upon which rights have been granted before being designated as forest areas, the mechanism is through removing the lands from forest areas by changing the boundaries of the forest areas.[59] Meanwhile, for lands whose occupation or utilisation occurs after the lands are designated as forest areas, the settlement mechanism will depend on the location of the lands (whether in a production, protection, or conservation forest areas), the type of land occupation, the party who occupies the land, and the adequacy of minimum area of forest areas and forest cover (introduced in exchange for the removal of the provision for at least 30% forest area in the JCL). **Table 6** below details the completion of the settlement after the JCL.

Table 6. Settlement of land tenure in forest areas mechanisms after the designation of forest areas in the JCL era[60]

[55] See Article 24 PP 23/2021 on Forestry Implementation

[56] Control that is based on the norms of propriety and justice, does not take away the rights of others, does not cause harm to other parties, pays off the required burdens when controlling land and/or buildings, always acts prudently according to reason and common sense, and fulfils standard of behaviour desired by society. source: the plot of land has been physically controlled in good faith

[57] Article 37 of MoEF Regulation P.7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area
Functions, and Use of Forest Areas

[58] Demarcation can be interpreted as a form of separator or categorisation.

[59] See Article 25 of Government Regulation 23/2021 on Forestry Implementation

[60] See Articles 26, 27 and 28 of Government Regulation 23/2021 on Forestry Implementation

Forest Function	Adequacy of forest areas		Type of occupation			The party who occupies the lands	
	Enough	t nough	Public facilities	Resettlement	Cultivation lands	Government	Individual or group
Production Forest	✓		Change of forest area boundaries	Change of forest area boundaries	Change of forest area boundaries, managed>20 years social forestry, managed <20 years		Change of forest area boundaries
		✓	Forest area release approval/ forest area use approval	Forest area release approval/ forest area use approval	Social forestry	Forest area release approval	Forest area release approval/ forest area use approval
Protection Forest	✓		Forest area use approval	Forest area use approval	Change of forest area boundaries, both managed>20 years and <20 years	Forest area use approval	Forest area use approval
		✓	Forest area use approval	Forest area use approval	Social forestry	Forest area use approval	Forest area use approval/social forestry
Protection forest but does not meet the criteria as protection forest	✓		Change of forest area boundaries	Change of forest area boundaries	Change of forest area boundaries, managed>20 years social forestry, managed <20 years	Forest area release approval/ forest area use approval	Change of forest area boundaries /social forestry
		✓	Forest area use approval/ changes in the function and allocation of forest areas	Forest area use approval/ changes in the function and allocation of forest areas	Social forestry	Forest area release approval/ forest area use approval	Forest area use approval/ changes in the function and allocation of forest areas/social forestry
Conservation forest	✓		Partnerships	Partnerships	Partnerships	Conservation partnerships/ changes in the function and allocation of forest areas	Partnerships
		✓	Partnerships	Partnerships	Partnerships	Conservation partnership/	Partnerships

						changes in the function and allocation of forest areas	

- Before and after the JCL issuance, the basis used for selection of settlement of land tenure in forest areas mechanism is unchanged i.e. using the ‘designation of forest area’ not ‘gazettement of forest area’
- Before the JCL issuance, the forest areas exchange scheme was still one of the options under the settlement of land tenure in forest areas. However, the JCL abolished this mechanism.
- The mechanism for settlement of land tenure in forest areas in conservation forests before the JCL issuance was resettlement. The JCL replaced it with partnerships.
- The settlement of land tenure in forest areas options in protection forests before the JCL issuance were only resettlement and social forestry. Meanwhile, the JCL introduces a new scheme i.e. approval for special forest area use for public facilities and settlements.

4. POTENTIAL IMPACTS OF THE JCL AND ITS IMPLEMENTING REGULATIONS ON THE FOLU SECTOR

This section outlines potential impacts, both positives and negatives, of changes introduced by the JCL as discussed in chapter 3.

4.1 Minimum threshold of forest areas

As described in section 3.1, the provision for a minimum forest area of 30% of the total administrative area has been removed by the JCL. Instead, the MoEF stipulates and maintains the adequacy of forest area and forest cover based on physical and geographical conditions in watersheds, islands and/or provinces according to a proportional distribution.[61] This is a burden for the central government in the future, considering the procedures for stipulating the adequacy of forest area and forest cover are quite complex, including:[62]

a. data inventory and compilation;
b. identification and preparation of criteria and indicators;
c. discussion of criteria, indicators, data, and methods
d. analysis;
e. spatial data analysis; and
f. stipulation of the adequacy of forest area and forest cover

The party responsible for implementing stages a to e is the Director General of Forestry Planning and Environmental Partnerships, while stage f is carried out by the Minister of Environment and Forestry.

However, when can the stipulation of the adequacy of forest area and forest cover be completed? With this centralised policy approach, the MoEF must calculate the adequacy of forest area and forest cover in all watersheds and islands within a short timeframe (Susetyo, 2021). The adequacy of forest area and forest cover are then used as basic guidelines for non-forestry sector activities to be carried out both inside and outside forest areas. This means that the stipulation of the adequacy of forest area and forest cover at the subnational levels must be expedited, otherwise the development of other economic sectors is potentially hampered.

Up until mid-2022, there has been no stipulation of the adequacy of forest area and forest cover in any province based on the post-JCL regulatory regime. This might be due to 'the contingency provisions'[63] stated in Government Regulation 23/2021, Article 294 Letter g: "*In case a province or region has not stipulated the adequacy of its forest area, the forest area used is the previous forest area.*" This means that the adequacy threshold of forest area in each province using the 30% threshold is still considered valid.

[61] See Article 41 paragraph (1) Government Regulation 23/2021 regarding Forestry Implementation

[62] See Article 234 of MoEF P.7/2021 on Forestry Planning, Changes in Forest Area Designation and Changes in Forest Area Functions, and Use of Forest Areas

[63] A contingency is a situation or situation that is expected to occur soon, but may not happen

The loss of the minimum threshold for forest area of 30% was likely caused by pragmatic development interests, such as the notion that increasing investment might require lands from forest areas. Generally, if there is no minimum threshold of 30% forest area per province, the utilisation of forest area for non-forestry activities, either through the schemes of forest area release or forest area use, will potentially become easier. In other words, the loss of this provision could potentially facilitate forest conversion, thus potentially increasing the rate of deforestation and land degradation. Thus far, eight provinces have less than 30% of forest area. Six of them are in Java (Banten, DKI Jakarta, West Java, Central Java, Yogyakarta, and East Java), and the other two are in Bali and Lampung.

However, specifically in the context of Java Island, the loss of this provision can be an opportunity for resolving tenurial conflicts in forest areas. This provision has become an obstacle to the tenurial conflict resolution due to overlaps between settlements, arable land and public/social facilities with forest areas. This provision prohibited the release of forest areas, even for the purposes of resolving tenurial conflicts, and even if the area no longer had forest cover.

- The mechanisms for stipulating the adequacy of forest area and forest cover after JCL potentially puts a heavy burden on the MoEF to complete the target within a short timeframe.
- The loss of the minimum threshold for forest area of 30% potentially encourages deforestation and land degradation, especially outside Java.
- The loss of the minimum threshold for forest area of 30% can be an opportunity for resolving tenure conflicts in Java.

4.2. Forest area gazettement

Section 3.2 explained that the JCL gives priority to forest area gazettement in strategic areas. More specifically, the process of demarcating boundaries in strategic areas (i.e. areas intended for national strategic policy priorities) tend to be simpler than in non-strategic areas. Steps that were omitted include activities of erecting temporary boundary markers, announcement of the erection of temporary boundary stakes, and inventory and settlement of third-party land rights located along the route of forest area boundaries. These omitted activities, especially the last one, are key to avoiding future issues, in particular land conflicts.

Several questions therefore arise: Isn't one of the purposes of forest area gazettement to obtain legal certainty and the legitimacy of forest areas? Why does the 'strategic areas' clause have to rule out the certainty of third-party land rights? This might be due to the JCL's orientation, which is to spur increased investment to accelerate national economic growth. Such a focus unfortunately loses sight of the fact that one of the latent problems of forest area gazettement in recent times is the overlap between local communities' lands with forest areas. The demarcation step ideally should be a safeguard to resolve problems related to land rights, so that the land is not unilaterally claimed by the government as part of forest areas. If this step is not conducted

properly, tenurial conflicts could potentially occur repeatedly. In the end, local communities will lose out and might get criminalised by the government.

The omission of several steps in the boundary demarcation process could potentially give rise to new tenurial conflicts

4.3. The role of forest management units

FMUs have often been seen as the 'spearhead' of forest management at the site level. Site-level management is deemed effective in preventing deforestation and forest and land degradation.[64] The existence of FMUs has also been touted for contributing to improve forestry governance (Kim et al., 2016; Meehan et al., 2019). FMUs officials are the closest to the communities around forest areas, so they can directly understand the communities' conditions and encourage their participation in managing forest resources to avoid conflicts (Mugiono 2013). FMUs therefore play a significant role in managing forest sustainably.

The change in the role of FMUs from acting as forest managers to facilitating and coordinating government policies means that FMUs no longer have the authority to directly manage forest at the site level. In other words, the role of FMUs was weakened by the JCL. Kartodihardjo et al. (2011) describe in detail the importance of FMUs in sustainable forest management (See **Table 7**), including the potential impacts arising if there are no FMUs as forest managers at the site level.

Table 7. The important roles of FMUs in sustainable forest management

Aspect	No FMUs	With FMUs
Forest planning and forest management	• Weak acknowledgment from other parties, possibly resulting in conflicts • Weak control on licence holders	• Lessened uncertainty of forest areas • Control of policy implementation can be increased
Forest management planning	• Central, provincial and district planning is not consolidated at the site level • It is difficult to evaluate business work plans and annual work plans of the licence holders	• Forestry plans and investments can be integrated at the site level • Forest resources information accuracy can be improved
Forest utilisation	• Weak control over forest use and products	• Precondition for licence preparation can be done by FMUs • If the FMUs is strengthened with the authority to evaluate the performance

[64] Delivered by Wahyudi Wardojo (Senior Advisor of KLHK) in the national seminar "Development of FMUs Post PP 23/2021" organised by Tropical Forest Conservation Action (TFCA) Sumatra, Indonesian Higher Forestry Institution Leadership Forum, and Faculty of Forestry, Bogor Agricultural University on 21 September 2021

	• Investments that require area certainty (i.e. conflict-free) are charged to the licence applicants • Evaluation of the implementation of IUPHHK (now business licences for forest utilisation) is carried out partially, so transaction costs are high	of IUPHHK (now business licences for forest utilisation), the integration of evaluation of various activities can also be carried out by the FMUs • Transaction costs can be minimised
Forest and land rehabilitation	• The outputs of forest and land rehabilitation are not well managed after some time • Lack of coordination in determining the location	• Clarity on the management of forest and land rehabilitation results and other forestry investments • Increased coordination capacity for the location determination
Forest protection	• Illegal activities and disturbances (fires, pests, etc.) are not immediately detected	• Early detection and prevention/eradication efforts can be improved

Furthermore, FMUs in recent decades have been evolving to become financially independent. FMUs as forest managers are given the authority to independently utilise forest resources within their management areas to generate income. This independence can be seen from the cooperation that has been built between FMUs (mainly FMUs in protection and production forests) with individuals, community groups, state business entities, and private business entities. This cooperation has taken several forms: businesses in the utilisation of the area; environmental services; and timber and non-timber forest products. These become alternative financial sources for FMUs, so that they can carry out their operational activities without being fully dependent on the financial budget allocations of the central government and provincial governments.

Due to the freedom in carrying out forest management activities and in generating income from other sources, several provinces were interested in further developing FMUs. Up to 2020, there have been several regional regulations that position FMUs as the main actors in forest management, for example, the regional regulations of the Special Region of Yogyakarta and West Nusa Tenggara Provinces. However, with the change in the role of FMUs from forest management to facilitating and coordinating the implementation of government policies, the financial independence of FMUs will end because they are prohibited from collaborating with other parties to generate their income. This means that the FMU will again fully depend financially on the government, and therefore become a burden on government finances. In addition, many FMUs officials may also feel unmotivated, and this could cause a decline in the quality of their work.

Changes in the role of FMUs, which now only serve to facilitate and coordinate government policies, potentially lead to unsustainable forest management. The elimination of their financial independence will likely increase the government's burden.

4.4. Business licences in the forestry sector

As explained in 3.4.1, after the JCL issuance, forest utilisation business licences were simplified into a single licence called the business licences for forest utilisation scheme, adopting the multi-business concept. The business licence for forest utilisation is issued in production and protection forest areas. The business licences for forest utilisation holders in production forest areas are allowed to utilise timber and non-timber forest products.[65] Meanwhile, business licences for forest utilisation holders in protection forest areas are only given access to non-timber use.[66]

However, the business licences for forest utilisation implementation gives rise to several concerns. One of the principal concerns is related to the equitable distribution of access for communities living around the business licences for forest utilisation concession areas. Although the business licences for forest utilisation can also be granted to individuals and cooperatives, it is likely that preference will still be given to companies, because companies have greater resources. This can be seen from the changes in the provisions of the Law on Forestry. Initially certain forest utilisation licences were only allocated to small-scale business unit actors. But with the JCL, large-scale business units can also apply for those licences. For example, article 27 paragraphs (1) and (3) of the Law on Forestry allocate business licences for the use of protection forest areas and licences for collecting non-timber forest products in protection forests to individuals or cooperatives. The JCL amended this article with article 36 point 5: "*business licences can be granted to individuals, cooperatives, state business entities, or private business entities*."

The JCL also amends the duration of business licences. The minimum period of business activity for business licences for forest utilisation in protection forest areas is 35 years.[67] For business licences for forest utilisation in production forest areas, the period of business activities is 90 years maximum, and it can be extended.[68] With such a long timeframe design, the opportunity for local communities to utilise forest resources is limited. This can be done possibly only through partnership or collaboration schemes with business licences for forest utilisation holders. This policy could therefore lead to inequality in the utilisation of forest resources.

In the context of the approval for timber utilisation for non-forestry activities, there is no significant potential impact for the forestry and land use sector. In principle, the provisions in the approval for timber utilisation for non-forestry activities are still the same as in the previous timber utilisation licence. This means that the JCL introduced only changes in terminology.

[65] See Article 149 of Government Regulation 23/2021 on Forestry Implementation and Article 49 paragraph (6) P.8/2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forests and Production Forests

[66] See Article 132 of Government Regulation 23/2021 on Forestry Implementation and article 49 paragraph (5) P.8/2021 on Forest Management and Preparation of Forest Management Plans, as well as Forest Utilisation in Protection Forests and Production Forests

[67] See Article 33 paragraph (1) Government Regulation 23/2021 regarding Forestry Management

[68] See Article 150 paragraph (1) of Government Regulation 23/2021 on Forestry Management

The JCL has strengthened the position of social forestry policy at the law level. In this context, the JCL may contribute positively to the security of the social forestry programme in order to remain to exist in the future. In addition, strengthening social forestry policy at the law level may contribute to the acceleration of achieving the target which is 12.7 million hectares (See **Figure 4**). Up to July 2022, referring to data from the Directorate General of Social Forestry and Environmental Partnership of the MoEF in the goKUPS system,[69] the total area granted with social forestry management approval has reached approximately 5.019.111,10 ha, covering 7,644 approvals issued to 1.106.221 heads of households.[70] This achievement is still far from the target of 12.7 million hectares as promised in the 2015–2019 national long-term development plan.

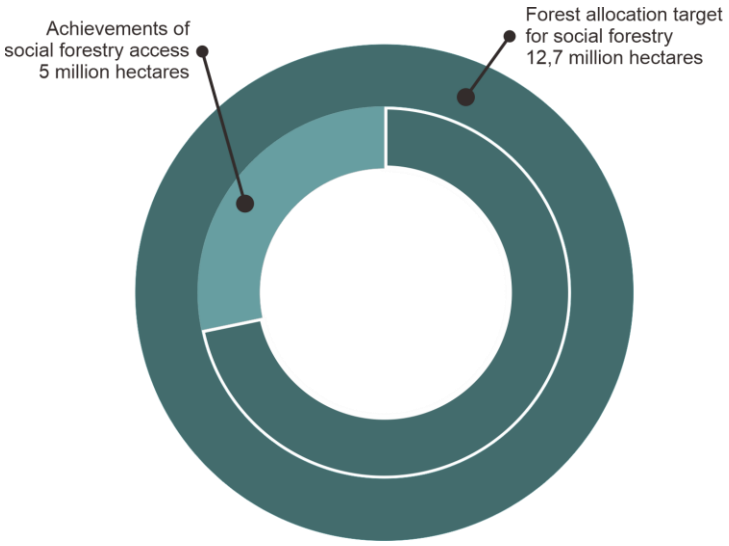

Figure 4. Achievements to access permission for social forestry

However, on the other hand, there might be some negative impacts related to local communities' exclusion from being the main actors in implementing social forestry. This specifically refers to the community forest scheme, which now includes 'individuals' as one of the subjects of the social forestry management approval scheme. Although the individuals must form a group/collective, the existing regulations do not explicitly require that group members must include local communities.[71] In addition, forestry professionals or experienced individuals as assistants/extension workers in the forestry sector are also allowed to apply for approval for social forestry management. Forestry professionals/individuals are also allowed to come from outside the local village.[72] This means that the community forest scheme in principle preserves inequality. 'Individuals' and 'professionals' may have more knowledge and are more well educated rather than local communities, so they may become competitors for them. This is

[69] goKUPS is an Integrated Information System for Social Forestry to visualise data on social forestry business groups, this system has been integrated with support systems within the Directorate General of PSKL.

[70] The data source from the goKUPS platform was developed by the Directorate of Social Forestry and Customary Forest Business Development (BUPSHA) and fully supported by the Secretariat of the Directorate General of Social Forestry and Environmental Partnerships (SetditJen PSKL) at the Ministry of Environment and Forestry.

[71] See Article 21 paragraph (7) MoEF Regulation P.9/2021 on Social Forestry

[72] See Article 21 paragraph (7) MoEF Regulation P.9/2021 on Social Forestry

contrary to the main pillar in the definition of social forestry itself: "*sustainable forest management system implemented in state forest areas or private forest/customary forests carried out by local communities or customary law communities as the main actors to improve their welfare, environmental balance and social culture dynamics in the form of village forests, community forests, community plantation forests, customary forests and forestry partnerships*."

- After the JCL issuance, the business licences for forest utilisation scheme potentially hinders communities' access to directly and independently utilise forest resources around the business licences for forest utilisation concession areas.
- The emergence of 'individuals' and 'professionals' as the subjects of the community forest scheme potentially leads to reduced access for local communities to implement social forestry.

4.5. Forest area with specific purposes

The emergence of the forest area with specific purposes potentially has significant impacts on the forestry and land-use sector in Indonesia, especially forest area with special management and forest area for food security schemes. First, the forest area with special management scheme will be implemented by the MoEF. From the government point of view, the scheme may contribute to overcome problems related to forests and local communities living around forests in Java, in addition to serving as an opportunity to improve forest management in Java in general (Hardiyanto, 2022). In addition, the scheme is also expected to encourage Perum Perhutani to focus more on timber management.[73]

However, the implementation of the scheme may also adversely impact Perum Perhutani and related stakeholders. Before the JCL was issued, the total forest area managed by Perum Perhutani in Java was approximately 2,433,024 hectares (1,790,949 hectares in production forest areas and 642,075 hectares in protection forest areas) (see **Figure 5**). However, after the JCL issuance, the area was reduced to approximately 1,329,081 hectares (reduced by 638,649 hectares in production forest areas and 465,294 hectares in protection forest areas) (see **Figure 6**). This reduction might trigger conflict, since Perum Perhutani has carried out a partnership scheme with local communities through a programme called community joint forest management in large areas across Java.

[73] Delivered at the National Social Forestry Webinar (Pesona) session held on Thursday, 21 July 2022

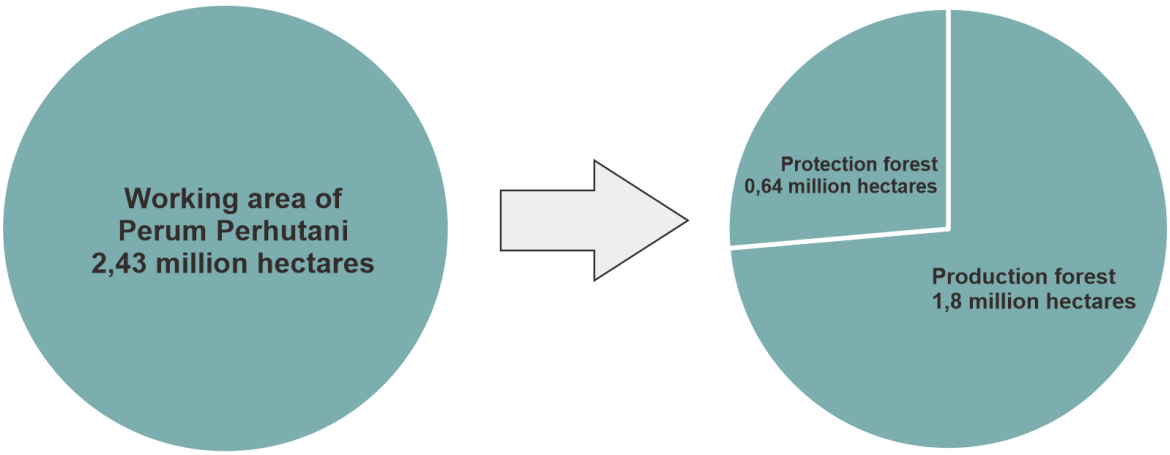

Figure 5. Total area of production and protection forest areas in Java managed by Perum Perhutani before the JCL issuance[74]

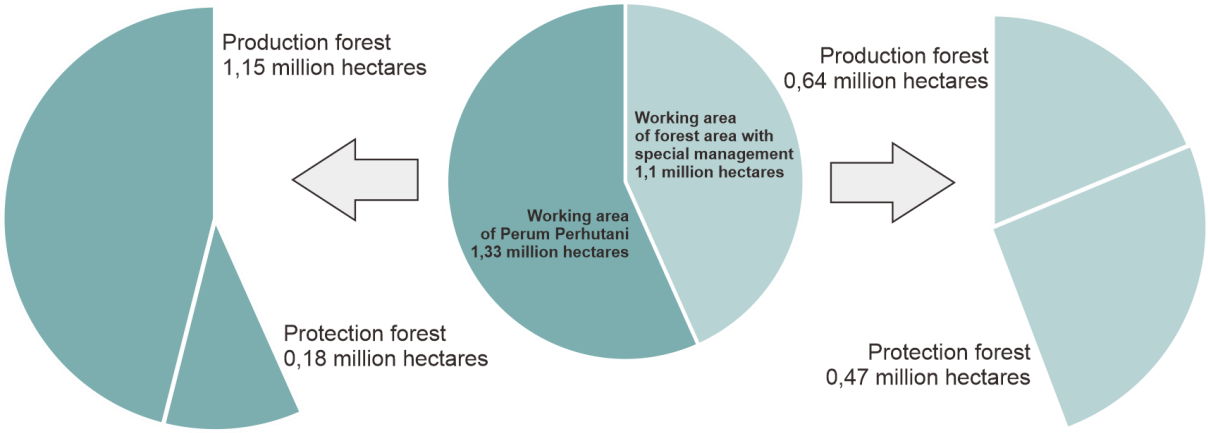

Figure 6. Division of total forest areas in Java for Perum Perhutani management and forest area with special management scheme after the JCL[75]

Several parties have also urged the government to be more careful in regulating the scheme. For example, a member of Commission IV of the House of Representatives has appealed to the government not to be hasty in establishing the scheme, to avoid unlawful actions and the potential privatisation of forest management in Java in the future.[76] The implementation of the scheme may also be costly, particularly for establishing implementing units on the ground. The reduction of the management area of Perum Perhutani may also reduce national tax revenue from the company; the estimated loss is around IDR 47 billion from land and building taxes per year (Suradiredja, 2021).

[74] Quoted from the Perhutani page, Perhutani Hutan in Java and Perhutani Transformation - Perhutani

[75] See Minister of Environment and Forestry Decree No SK.287/2022 on Designation of Forest Areas with Special Management in
Part of State Forests Located in Production Forest Areas and Protection Forests in Central Java Province, East Java Province, West Java Province, and Banten Province

[76] Delivered in a press release on April 14, 2021

Second, the forest area for food security policy is implemented through the food estate programme. The government claimed that the programme is needed as the Food and Agriculture Organization (FAO) released a statement regarding the potential for a food crisis caused by the Covid-19 pandemic. A number of food-producing countries have implemented lockdown policies, which have the potential to disrupt economic activity, agriculture and food industry (FAO, 2020). As a result, the world's food supply is disrupted (Schmidhuber, 2020).

In response, the Government of Indonesia has included the food estate programme in the list of national strategic projects regulated under Presidential Regulation 109/2020. The provinces of Central Kalimantan, Papua and North Sumatra are projected to become areas for food estate development, with a total area of around 2.5 million hectares. Based on data from the Directorate of Forest Area Stipulation and Administration, Directorate General of Forestry Planning and Environmental Management (2020), the area used for the food estate programme is 1.84 million hectares within forest areas and 0.77 million hectares outside forest areas. Within forest areas, the land used includes 0.47 million ha of protection forest land and 1.45 million hectares of production forest (See **Figure 7**). In 2022–2023, the Government of Indonesia is targeting the development of food estate areas on peatlands within forest areas in Central Kalimantan Province with a total area of 43,000 hectares.[77] The peatlands were previously used for the peatland development programme during President Soeharto's era, which ended in a failure.

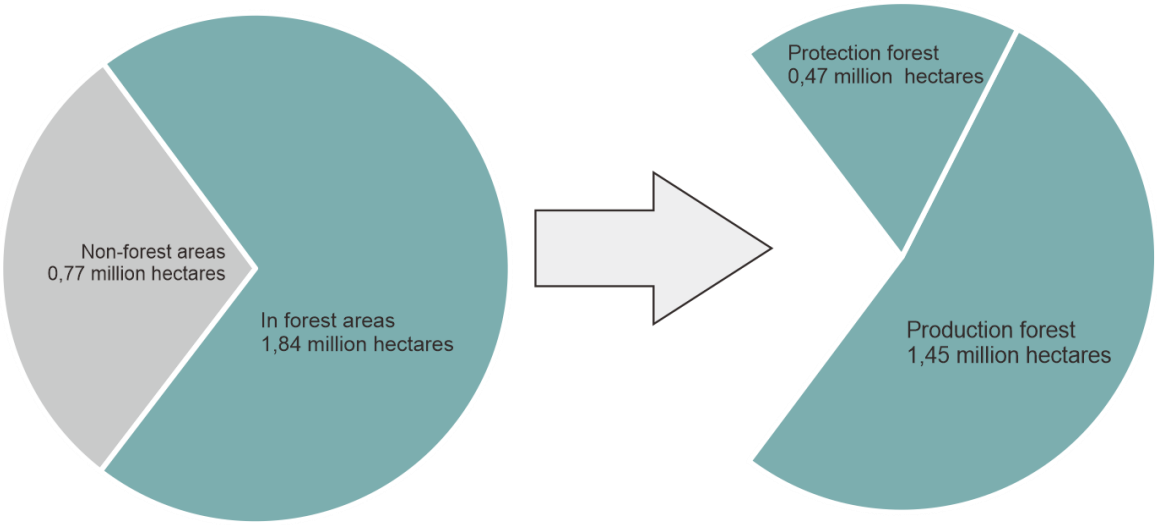

Figure 7. Forest area utilisation plan of the food estate programme

Changes in the function of forest areas for the food estate development have the potential to cause deforestation and forest degradation in the future. Referring to Figure 6 above, at least 1.84 million hectares of forest areas will be used for food estate development, which will include

[77] Monitoring and Discussion on the Development of the Central Kalimantan Food Estate Sentra Area (2022). Retrieved on 3 October 2022 from the article: Monitoring and Discussion on the Development of the Central Kalimantan Food Estate Sentra Area - Coordinating Ministry for Economic Affairs of the Republic of Indonesia

protection forest areas. Even though the targeted protection forest areas are forests that do not fully perform their protection function, it raises the question: why are those protection forest areas not rehabilitated to return their functions?. In addition, given that food estate development is included as non-forestry sectors development, it allows to utilise timber although its location is in protection forest areas. This obviously contradicts the provisions for the use of protection forests in the forestry law that prohibit harvesting timber in protection forest areas (Maskun et al., 2021).

- The forest area scheme with special management in Java has the potential to impact Perum Perhutani. This could also trigger conflicts at the site level, considering that Perum Perhutani has carried out a partnership scheme with local communities.
- The forest area scheme for food security implemented through the food estate programme has the potential to cause deforestation and forest degradation in the future.

4.6. Utilisation of forest areas for non-forestry sector development

The development of the non-forestry sector requires a lot of land from forest areas. To accommodate this need, the government prepares the schemes of forest area release and forest area use approval. First, related to forest area release, as explained in section 3.6.1 and further elaborated in section 3.6.2, it is used specifically for oil palm plantations that have been established in forest areas. Previously, forest area release was only allowed in convertible forest areas, particularly the unproductive convertible forest areas. However, the JCL allows forest area release in permanent and limited production forest areas. This shows that the JCL accommodates oil palm plantations in forest areas through a more relaxed forest area release mechanism. This might also be interpreted as 'whitewash' or legalisation of the illegality of oil palm plantations in forest areas. Therefore, the potential impact is that forest areas in the future will decrease because of the release. The total area of Indonesian oil palm plantations as of 2020 is 15.08 million hectares according to the Directorate General of Plantations, the Ministry of Agriculture.[78] The latest data from the MoEF shows that there are at least 3,357 million hectares of oil palm plantations inside forest areas. The existence of 3,357 million hectares is spread over all types of forest areas (production, protection, and conservation forests). The total area of oil palm plantations in production forest areas is 3,111 million hectares (1.49 million hectares in HPT, 1.12 million hectares in convertible forest areas, and 501 thousand hectares in HP). The figures for protection and conservation forest areas are 155 thousand hectares and 91 thousand hectares respectively (see **Figure 8**).[79]

[78] National Key Plantation Commodities Statistics 2019-2021 Directorate General of Plantation Ministry of Agriculture BUKU STATISTIK PERKEBUNAN 2019-2021 OK.pdf

[79] This was conveyed by the Secretary General of the Ministry of Environment and Forestry, Bambang Hendroyono, during a working committee meeting of Commission IV House of Representatives RI at the Parliament Complex, Jakarta. On Monday, 22 August 2022.

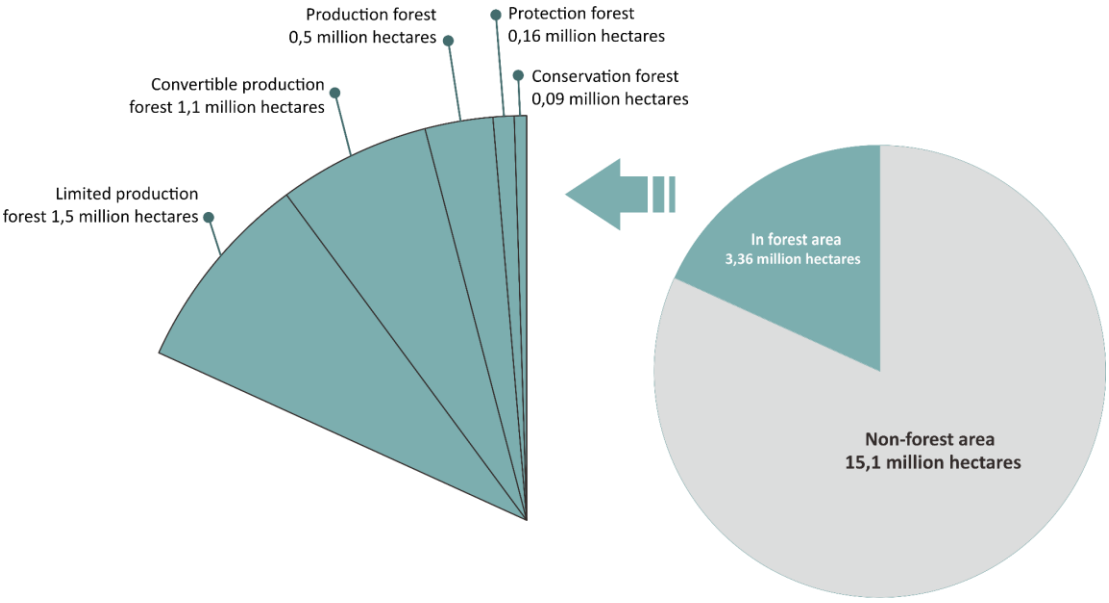

Figure 8. Oil palm plantation area inside and outside the forest area

Most oil palm plantations in forest areas are in the provinces of Riau and Central Kalimantan. According to Yayasan Auriga data, of the 3.4 million hectares of oil palm plantations in forest areas, 2.2 million hectares are owned by companies (Nugraha, 2019), while the rest are owned by smallholders. Greenpeace revealed that there are 252 thousand hectares of oil palm plantations in forest areas owned by companies that have obtained indonesia sustainable palm oil (ISPO)[80] certificates. In addition, there are around 100 companies that already have roundtable of sustainable palm oil (RSPO)[81] certificates that might manage oil palm plantations in forest areas (Maulana, 2021). Yayasan Madani also noted that out of 3.4 million hectares oil palm plantations inside forest areas, more than one million hectares are located in moratorium areas (primary forest and peatland licences), and are controlled by 724 companies that spread across 24 provinces (Nugraha, 2019) (**S**ee **Figures 9 and 10**).

[80] Legally speaking, ISPO (Indonesian Sustainable Palm Oil) is a business system in the field of oil palm plantations that is economically viable, socially feasible, and environmentally friendly based on the prevailing laws and regulations in Indonesia.

[81] RSPO (Roundtable of Sustainable Palm Oil) is based on memberships, where membership is voluntary but the application of standards is mandatory for members.

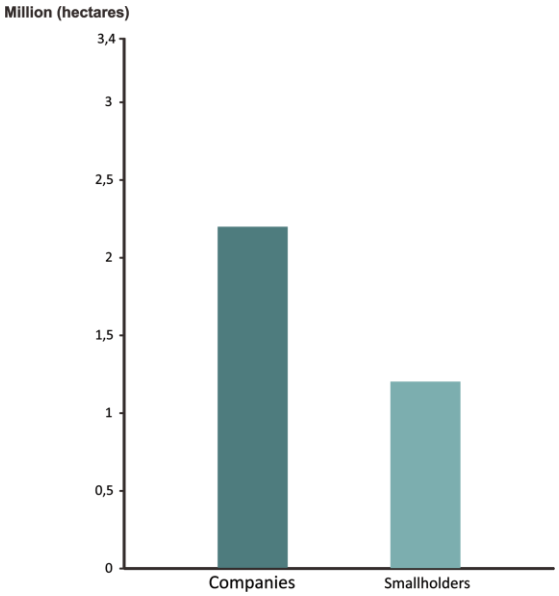

Figure 9. Oil palm plantation ownership inside forest areas (Nugraha, 2019)

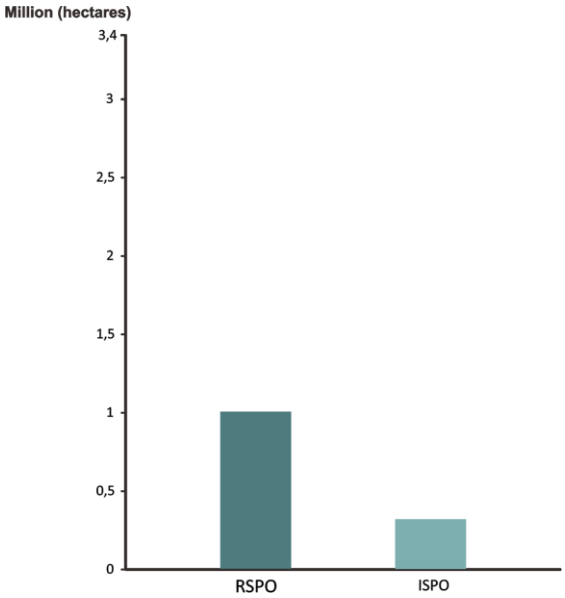

Figure 10. Oil palm plantations with RSPO and ISPO certificates inside forest areas (Maulana, 2021)

After the JCL issuance, only administrative fines are incurred for oil palm plantations in forest areas (i.e. no longer criminal sanctions). The abolition of criminal sanctions may potentially weaken law compliance in the forestry and land-use sector in the future. Administrative sanctions tend to have a lesser deterrent effect on perpetrators of illegality. In addition, this abolition might contribute to the damage to the environment in the future. Although the perpetrators of illegality must pay administrative fines, the revenue from administrative fines will

not necessarily be fully allocated to restore deforested and degraded forests because of the illegality.

Regarding forest area use, after the JCL issuance, forest area release approval is also included as one of the schemes of forest area use. Previously, forest area use was only granted through the borrow-to-use forest area licence scheme, which is now referred to as forest area use approval. As explained in section 3.5.3, forest area release approval can be used for development outside the forestry sector such as public interests, especially priority projects of the central government, and such land acquisition is carried out by government agencies.[82] However, if the initiator of land acquisition is not a government agency, but the land is used permanently, the scheme of forest area release approval (i.e. no longer included as forest areas) can still be used.[83] Meanwhile, if the use of the land does not result in permanent changes, the mechanism used is forest area use approval (i.e. forest area status is still maintained).[84]

With the above provisions, questions arise regarding the borrow-to-use forest area licence scheme that existed before the JCL issuance. On the conditions that cause permanent physical changes to forest areas, for example reservoir and public road infrastructures which have an "unlimited" period, will the land used for such purposes be released? If the relevant provisions in the JCL are enforced, the area of forest areas will be reduced significantly due to these “permanent” borrow-to-use forest area licence scheme. The reduction of forest areas may then affect provisions related to the adequacy of forest area and forest cover in an area.

- The relative easing of the release of forest areas mechanism to solve the issue of oil palm plantations in (currently) forest areas will potentially lead to a decrease in the extent of forest areas.
- The imposition of administrative sanctions only in case of oil palm plantations in forest areas potentially weakens law compliance in the forestry and land-use sector.
- The extent of forest areas may decrease because of the enforcement of new provisions of forest area use.

4.7. Environmental protection in the context of business licences for forest utilisation

The terminological change from environmental licences to environmental approvals does not have significant consequences. More specifically, in the context of business licences for forest utilisation, the mechanism for granting business licences for forest utilisation, both in protection and production forest areas, seems to still require the completeness of environmental documents strictly. The change in terminology does not reduce the importance of the environmental impact assessment and environmental management and monitoring efforts,

[82] See Article 94 paragraph (3) letter a Government Regulation 23/2021 on Forestry Management

[83] See Article 94 paragraph (3) letter b point 1 Government Regulation 23/2021 on Forestry Management

[84] See Article 94 paragraph (3) letter b point 2 of Government Regulation 23/2021 on Forestry Management

which will be assessed as the basis for environmental feasibility tests. The business licences for forest utilisation application process still requires environmental documents as the required commitments that must be fulfilled.

4.8. Protection of indigenous people's/local community's rights

Section 3.8. outlined affirmative policies to indigenous peoples/local communities brought forward by the JCL, through strengthening social forestry policies, easing permitted activities for indigenous peoples/local communities in forest areas, and the emergence of the terminology "customary forest indicative areas" to facilitate the process of recognising customary forests. Section 4.4 discusses the potential impacts of the strengthening of social forestry policies. Meanwhile, the easing of permitted activities that can be conducted by indigenous peoples/local communities in forest areas will have a positive impact because it potentially reduces criminalisation, thus contributing to reducing conflicts. This affirmative action is in line with the Constitutional Court's decision 95/PUU-XII/2014, which prohibits criminalising local communities who carry out subsistence activities in forest areas without a legal status.[85]

In the context of customary communities, the affirmative policy provided by the JCL in the form of 'indicative customary forest area' eases administrative procedures in the customary forest recognition process. However, such affirmation might not be substantive enough. One of the prerequisites for the recognition of customary forest status is the existence of forest product collection activities by indigenous peoples in forest areas to fulfil their daily needs.[86] However, what if the indigenous communities have been evicted from the forest areas? Often, indigenous peoples were expelled from their traditional territory because of overlapping claims with concession areas. In such a case, they automatically cannot meet the criteria required.

Such a problem has not been solved by the decision of the Constitutional Court 35/PUU-X/2012, which upholds article 67 of the Law on Forestry. Article 67 Paragraph (1) of the Law on Forestry outlines the criteria that indigenous peoples have to meet to prove their existence, and which are very difficult. "*customary law communities are recognised for their existence, if in reality they fulfil the following elements:*

a. *the community is still in the form of an association (rechtsgemeenschap);*
b. *there are institutions in the form of traditional rulers;*
c. *there is a clear customary law area;*
d. *there are legal institutions and instruments, particularly customary courts, which are still being adhered to; and*
e. *still collecting forest products in the surrounding forest areas to meet their daily needs.*"

Up until July 2022, according to the data from the Directorate General of Social Forestry and Environmental Partnerships of the Ministry of Environment and Forestry,[87] the total area of

[85] The judicial process starts from the stage of investigation, prosecution, examination before the court, to the implementation of court decisions

[86] See Article 65 paragraph (1) letter d MoEF P.9/2021 on Social Forestry

[87] Data from goKUPS, namely the Social Forestry Integrated Information System to visualise data on social forestry business

recognised customary forests has only reached 76,155 hectares, and the indicative area of customary forests was at approximately 1.90.755.33 hectares. This is still far from the MoEF's 6.53 million hectares target (Widodo, 2021) (See **Figure 11).**

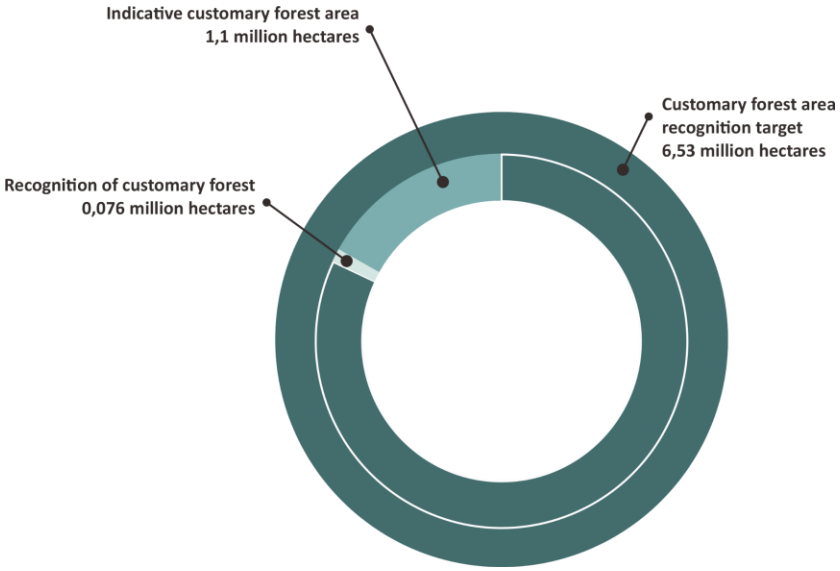

Figure 11. Total area of recognised customary forests

The existence of terminology 'indicative customary forest areas' only eases up administrative procedures.

4.9. Tenurial conflict resolution

The tenurial conflict referred to in this context is specific to the overlap between claims of forest areas by the government and claims of the territory of local communities/indigenous peoples. As explained in section 3.9, referring to the decision of the Constitutional Court 45/PUU-IX/2011, a forest area becomes legitimate only after several steps are followed: 1) designation, 2) demarcation, 3) mapping and 4) gazettement. However, Presidential Regulation 88/2017 is not in line with this Constitutional Court's decision. According to Presidential Regulation 88/2017, the basis for resolving tenurial conflicts and applying settlement of land tenure in forest areas mechanisms is that the area is designated as forest area (i.e. the first of the aforementioned steps). In other words, the presidential regulation does not use definitive/legitimate forest area as the basis for resolving tenurial conflicts. Therefore, although there have been changes after the JCL related to the mechanisms of settlement of land tenure in forest areas (see Tables 4 and 5 section 3.8), the basis used for the settlement mechanisms remains the same, i.e. the step of forest area designation. The government's decision to use an area that has been designated as a forest area as the basis for conflict resolution may cause other conflicts in the future.

groups; this system has been integrated with other supporting information systems within the Directorate General of PSKL.

The mechanism for tenure conflict resolution focuses only on one step which is forest area designation, which may lead to conflicts as the tenure problems may have occurred at other stages.

5. KEY FINDINGS AND RECOMMENDATIONS

5.1. Key findings

After comparing the JCL and its implementing regulations with previous regulations, as well as analysing potential impacts of changes occurring after the JCL issuance, it can be concluded that:

1. The JCL has removed the provision for forest area minimum threshold of 30% in each region. This potentially places a heavy burden on the MoEF to set the targets in all regions within a short timeframe and may lead to deforestation and land degradation, especially outside Java Island.
2. The JCL encourages the acceleration of forest areas gazettement, especially in strategic areas. The process of forest areas gazettement, especially the step of demarcating forest area boundaries in strategic areas is simpler than in non-strategic areas. It omits the crucial step of settlement of third-party land rights located along the forest area boundaries. This may lead to new tenurial conflicts in the future.
3. The role of FMUs after the JCL issuance has been changed from site-level forest managers to facilitator and coordinator of the implementation of the government policies. This could potentially threaten the sustainability of forestry operations and management and increase the FMUs' financial dependence on the government.
4. In the context of licensing in the forestry sector, there have been several changes after the JCL issuance. First, various forestry sector licences are now integrated into one licensing scheme with the concept of multi-business forestry. On the one hand, this provides ease of licensing, but on the other hand, it potentially maintains and even increases inequality for communities living near concessions in utilising forest resources. Second, the terminology of timber utilisation licence was changed to timber utilisation for non-forestry activities approval, and the authority to grant the approval has also shifted from the governor to the head of the regional service. This is considered not having a significant impact in the future. Third, the JCL has added 'individuals' and 'professionals' as one of the subjects in the community forest scheme in social forestry. Both 'individuals' and 'professionals' can be the competitors for the local community groups, so this might lead to reduced access to local communities in the social forestry programme.
5. JCL has introduced the scheme of forest area with specific purposes which consists of three schemes namely: forest area with special purposes, forest area with special management, and forest area for food security. Forest area with special purposes existed prior to the JCL, and its substance has not changed by JCL. Forest areas with special management and forest areas for food security emerged only after the JCL enactment. Forest area with special management will be carried out on forest areas that have been managed by Perum Perhutani, so this may lead to conflicts with the Perum Perhutani and also communities who have been cooperating with Perum Perhutani. Besides, this scheme may also reduce national tax revenue resulting from Perum

Perhutani. Forest area for food security is specifically aimed for the implementation of the food estate programme. This may cause deforestation and forest degradation in the future considering that it will also be implemented in protection forest areas.

6. In terms of forest area use for the development of the non-forestry sector, there have been several changes after the JCL launch. First, the abolition of the forest area exchange scheme. This is considered not to have a significant impact, because this scheme was difficult to implement even before the JCL. Second, there is an opportunity to release forest areas in production forests other than convertible forest areas. This will have the potential to reduce forest area and forest cover. Third, the loss of the role of the House of Representatives in giving approval for changes to the allocation and function of forest areas that have strategic value and cover a large area. This change is considered not to have a significant impact because provisions of changing allocation and function of forest areas are strengthened. Fourth, prioritising administrative sanctions over criminal sanctions. A future consequence that may arise from this change is the weakening of law compliance in the forestry and land use sector. Fifth, the strengthening of the policy of tolerating oil palm plantations in forest areas. On the one hand, this change has the potential to solve the difficult issues of oil palm plantations in forest areas, but on the other hand, it provides a tacit agreement with illegality, while at the same time physically reducing the extent of forest areas. Sixth, forest area release approval is now included as one of the schemes of forest area use. This can also potentially reduce the extent of forest.
7. Regarding the change in the terminology from environmental permits to environmental approvals and the change in the licensing approach to risk-based licensing are likely not to have significant impact because the mechanism for granting business licences for forest utilisation in both protection and production forest areas still strictly requires the production of environmental documents.
8. The JCL creates several affirmative policies for indigenous/local communities. First, the strengthening of social forestry policies. Second, the provision of sanctions relief for those violating the laws in the forestry sector, but having lived in forest areas for at least five years will have a positive impact on communities whose subsistence depends on forests, as it avoids their criminalisation. Third, the emergence of the term ‘customary forest indicative area’ will likely contribute positively in the administrative context in recognising customary forests, but not in terms of substance.
9. In the context of tenurial conflict resolution, both before and after the JCL issuance, the basis used for selection of the settlement of land tenure in forest areas is the same, namely ‘designation of forest areas’. This will not help the settlement of tenurial conflicts. However, there are differences in the settlement of land tenure in forest areas mechanisms, namely: a) the abolition of the forest area exchange scheme; b) before JCL, the mechanism of settlement of land tenure in forest areas in conservation forests was carried out through resettlement, while the JCL provides for partnerships; and c) before the JCL, the settlement of land tenure in forest areas options in protection forest were only resettlement and social forestry, whereas the JCL introduces a new scheme, i.e. approval for special forest area use for public facilities and settlements.

5.2. Recommendations

The followings are recommendations that have been developed according to the potential impacts arising in each aspect:

1) Minimum threshold of forest areas
    - The mechanism for stipulating the adequacy of forest area and forest cover after the JCL issuance should be a step-by-step and bottom-up process. A step-by-step procedure includes clear stages, timeframe, areas and parties who will be involved in the process. This can be done, for example, by developing a roadmap that can involve various parties such as universities, NGOs and other parties with relevant capacities. A bottom-up process means that the stipulation of the adequacy of forest areas and forest cover can start from the lower to the higher administrative levels, such as from the village to the province levels. This can provide a strong basis for forest area allocation and utilisation in the future so that the forest areas and forest cover in varying administration levels are synchronised.
    - To avoid deforestation and land degradation caused by the elimination of the minimum threshold of forest areas, the central government can provide incentives to subnational governments to keep their forests. Indonesia's 'Environmental Fund Management Agency (*Badan Pengelola Dana Lingkungan Hidup*/BPDLH)' is an environmental funding mechanism for channelling and distributing environmental and climate funds. This agency could provide the incentives.
2) Forest area gazettement
    - Although forest area gazettement needs to be carried out in a short timeframe, the rights of third parties, such as local communities who own land or live in surrounding forest areas, should be considered in the gazettement process. If those communities own land or live in a forest area that is within the government's planned area for strategic projects, the government should provide a transition period for them to move, as well as replacement lands that are closer, and have similar characteristics to their original lands. In addition, they can also be involved in the project development process, to ensure that they benefit from it.
3) The roles of forest management units
    - With the change in the role of forest management units from site-level forest managers to facilitators and coordinators of the implementation of government policies, forestry services at the provincial level will replace the tasks previously assigned to forest management units. Furthermore, in the past, the forestry services have been taking on more administrative than direct forest management roles on the ground. Therefore, the forest management units and forestry services must establish a strong coordination mechanism, such as a joint forest management procedure.

- For those forest management units that have been successfully collaborating with third parties in generating income for the units, the central government should give them time to complete their cooperation and establish other exit strategies.

4) Forestry sector licensing
    - Under the newly introduced scheme of business licence for forest utilisation, one licence holder has the right to utilise timber and non-timber forest products at the same time using a single licence. However, in certain cases, indigenous peoples and local communities utilise non-timber forest products around the concession area to meet their daily needs. In these cases, the licence holder can establish partnerships with the communities. This will provide formal mechanisms to legalise their activities and avoid their criminalisation. The partnerships can be implemented between the licence holder and the communities or through social forestry with a forestry partnership scheme.
    - With the stronger position of social forestry, which is now regulated at law level, the MoEF can strengthen coordination and collaboration with other government institutions at varying levels and other stakeholders to accelerate the implementation of social forestry. However, the MoEF should pay more attention to selecting potential subjects of social forestry. The emergence of 'individuals' and 'forestry professionals' as potential subjects in social forestry schemes should be balanced with a strong selection system. The MoEF, which selects social forestry proposals, should develop detailed criteria and indicators for 'individuals' and 'forestry professionals' that can be granted social forestry licences. For example, the individuals or the forestry professionals who originate from the proposed area and have closer interaction with local communities in the area can be prioritised.
5) Forest areas with specific purposes
    - The implementation of the forest areas with special management scheme will require the establishment of new technical implementing units at the ground level. This may require significant financial and human resources, the development of procedural and operational standards, etc. In this transition period, the new technical implementing units can be initiated through collaboration between the existing technical implementing units from the MoEF (which manages production and protection forests) and the existing technical implementing units from Perum Perhutani. The collaboration between the two should be directed at developing innovations in forest management, moving away from the Perum Perhutani's business-as-usual approach. In addition, to avoid potential reduction of national tax revenue previously generated by Perum Perhutani and potential conflicts on the ground, granting approvals for social forestry management can be accelerated by recognising existing social forestry practices that have not yet been formalised under social forestry schemes.
    - In the context of forest areas for food security, there is a need to develop detailed criteria and indicators for the stipulation of forest area for food security purposes, especially in not fully functioning protection forests. The MoEF and the MoA

could conduct joint assessments to determine which lands that can be allocated to forest area for food security purposes by assessing the vulnerability and productivity of the lands. This may be done similarly to the development of an indicative map of social forestry areas in the social forestry programme.

6) Utilisation of forest areas for non-forestry sectors
    - In the current context of changes in the designation and function of forest areas, forest area release scheme could be done in other types of production forest areas if convertible production forest areas are not available in a region. This potentially reduces the extent of forest areas. To anticipate the significant reduction of the extent of forest areas, the MoEF needs to redefine the productive and unproductive production forests based on current contexts and conditions. A set of indicators of productive and unproductive production forests may need to be developed. The development of indicators can be done through collaborative discussions with a broad range of stakeholders.
    - The prioritisation of administrative sanctions compared to criminal sanctions for the continuation of the oil palm plantations potentially weakens law compliance in the forestry and land-use sector. To avoid this, a stronger mechanism for monitoring at the site level can be established by involving a broad range of stakeholders. In addition, details on the location and total area of oil palm plantations in forest areas are needed. The MoEF and the MoA should synchronise data on the location and total area of oil palm plantations in forest areas. Following this synchronisation, both can jointly develop a roadmap to settle the continuation, by using a long-term improvement strategy, social forestry, forest area release or by revoking the licence.
    - In terms of forest area use, the extent of forest areas may also decrease because of allowance to release the forest areas that are permanently used. Therefore, the MoEF should first carry out an inventory of the total forest areas that have been used for permanent use, such as roads and public facilities. If the areas cannot be restored, they then can be categorised as unproductive forests and authorised for release.
7) Environmental protection
    - Although the change of environmental licences into environmental approvals is not expected to have a significant impact, the monitoring and evaluation mechanism for the implementation of environmental commitments must be strengthened to avoid negligence by business actors. The monitoring and evaluation mechanism can involve a broad range of stakeholders, such as communities or NGOs around the companies' concessions.
8) Protection of indigenous peoples/local communities rights
    - The JCL creates positive impacts by strengthening social forestry (regulated at the law level). The MoEF, therefore, can strengthen coordination and collaboration with other government institutions at varying levels and other stakeholders to accelerate the implementation of social forestry. However, the MoEF should pay more attention to selecting potential subjects of social forestry.

- The MoEF has developed the concept of ‘customary forest indicative area’ to accelerate the recognition of customary forests originating from forest areas. Subnational governments can be more proactive to accelerate the recognition of the subjects of customary forests (indigenous peoples). They can also establish affirmative policies, for example by simplifying the recognition process for those indigenous peoples who have secured their areas. This will create policy synchronisation among the MoEF and subnational governments.

9) Resolution of tenurial conflicts
    - The settlement of land tenure in forest areas should occur at gazettement, not designation. Forest areas that have been gazetted can legitimately be called forest areas. However, the gazettement of forest areas may be lengthy. To accelerate this process, the MoEF can create strong collaboration with subnational governments, NGOs and other relevant parties.

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Funded by
the European Union