

**LAW IMPLEMENTATION AND FOREST PROTECTION
(COMPARATIVE ANALYSIS OF INDONESIA AND AUSTRALIA)**

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ABSTRAK

Hutan termasuk ekosistem yang beragam di dunia, hutan menjadi jantung kehidupan baik lingkungan, sosial dan ekonomi. Tetapi sekarang ini menjadi ekosistem yang terancam dengan adanya penebangan pohon liar. Banyak negara yang sudah mengimplementasikan management hukum hutan dengan baik. Tetapi penebangan masih terjadi sehingga banyak faktor yang harus dikaji. Penelitian ini menguji persamaan dan perbedaan antara solusi Indonesia dan Australia dalam menangani permasalahan hutan. Dan bagaimana implementasi kedua negara tersebut terkait hukum tentang hutan. Penelitian ini menyimpulkan bahwa tidak bisa memungkiri bahwa Australia lebih maju daripada Indonesia sehingga memiliki hukum dan management yang comprehensive dibanding Indonesia. Australia dan Indonesia menghadapi permasalahan hutan yang sama seperti penebangan hutan liar dan kebakaran hutan, sehingga dengan penelitian ini Indonesia dapat mengadopsi peraturan dan kebijakan Australia seperti pembuatan laporan dan evaluasi tentang keadaan hutan secara konrtinyu sehingga linear dengan penanganannya.

Kata Kunci: Hukum Hutan, Indonesia, Australia.

ABSTRACT

Forest are among the most diverse and widespread ecosystems on earth, they provide mankind with a wide range of economic, social and enviromental benefits but nowadays the forest are increasingly being threatened by unsustainable logging practices. Many countries have been implemented forest law management improperly. This research examines the similarities and differences between the solutions that Indonesia and Australia used to solve their forest's problems and how the implementation of foresty law in both countries, what the similarities and differences and what should to be. This research concludes that can not be deny that Australia is more develop than Indonesia, has a comprehensive regulation than Indonesia about foresty law, but so far, they face same problem such as deforestation and Illegal logging. Indonesia can adopt Australia's regulation such as Australia's report and evaluation about forest therefore state and regional can be in line to against offending person or company.

Keywords: foresty law, Indonesia, Australia

Introduction

Forest are among the most diverse and widespread ecosystems on earth, they provide mankind with a wide range of economic, social and environmental benefits. However, the forest are increasingly being threatened by unsustainable logging practices. Many countries have been implemented forest law management improperly.

Beside the lack of forestry legal framework, the compliance with the existing of forestry laws management are more problematic. Another issues is lack of human resources , such as less of an environmental expert to deal with the problem and some issues caused by political will. This study examines Indonesia as Asian country and Australia as Pasific country, which has a different law background but fortunately both of them are having forest as their nation's wealth and they have kind of same problem about forest. This study examines the similarities and differences between the solutions that Indonesia and Australia used to solve their forest's problems and how the implementation of forestry law in both countries, what the similarities and differences and what should to be. The Focus is given a properly model of foresting law enforcement, concentrating on factors that can be adopted by Indonesia and other developing countries.

Research questions

1. What the similarities and differences between common law and civil law in histories and development context?
2. What the similarities and differences between indonesia and Australia's Forestry law, and how does the implementation?

Common and Civil Law Histories and Development

Because of this research will focus on comparative forestry law between Indonesia and Australia, which is known that both of them have a different of legal systems. Nevertheless, in each of this legal systems, civil law and common

law, there are certain characteristics and general attributes that can serve as bases for a general comparison.

Civil Law

The term "civil law" is derived from the Latin words "jus civile," by which the Romans designated the laws that only the Roman citizens or "cives" were originally privileged to enjoy. It is sometimes said that the countries of the civil law are those which received their legal system from the Roman law.¹ Generally, in civil law jurisdictions the main source or basis of the law is legislation, and large areas are codified in a systematic manner. These codes constitute a very distinctive feature of a Romanist legal system, or the so-called civil law. Although in the form of statutes duly enacted by the proper legislative procedure, these codes are quite different from ordinary statutes.

A civil code is a book which contains the laws that regulate the relationships between individuals. Generally it contains the following topics: persons and the family, things and ownership, successions and donations, matrimonial property regimes, obligations and contracts, civil responsibility, sale, lease, and special contracts, as well as liberative prescription (statute of limitations) and acquisitive prescription (adverse possession). A code is not a list of special rules for particular situations; it is, rather, a body of general principles carefully arranged and closely integrated. A code achieves the highest level of generalization based upon a scientific structure of classification. A code purports to be comprehensive and to encompass the entire subject matter, not in the details but in the principles, and to provide answers for questions which may arise.

civil law jurisdictions the function of the court is merely to apply the written law In the civil law system, courts are not bound to follow previous

¹ Joseph Dainow, *Civil law and Common law*, JSTOR, (Vol.15) 434

judicial decisions. Each new decision must be grounded on the authority of the legislative text which provides the basis of continuity and stability

Common Law

The common law, as a legal system, is associated with its origin and development in England, where the social and economic and political history as well as the foundation of its law stem from the feudal system and its incidents. From the economic point of view, the common law is more efficient than civil law, due to the merge and acquisition of practice. Due to the important role played by the law in the finance sector, economist and policy makers argued that the legal system can have a major influence on a country's economic prosperity.

When a court decided a particular case, its decision was not only the law for those parties, but had to be followed in future cases of the same sort, thereby becoming a part of the general or common law. Thus, the common law, as a body of law, consisted of all the rules that could be generalized out of judicial decisions. New problems brought new cases, and these enriched the rules of the common law.

The legislation of common law is the statutes are usually not formulated in terms of general principles but consist rather of particular rules intended to control certain fact situations specified with considerable detail

Comparative studies

In comparative analysis of civil and common law, it concludes that there are similarities and difference both of them, , while the common law starts with a case-law basis it also includes legislative encroachments, and while the civil law starts with a legislative basis, it incorporates developments of case law. , the importance of the difference between the civil law and common law is confirmed by an examination in the two systems of their doctrinal materials, legal education and modes of research, as well as in the organization and functioning of their judicial systems.

Even though it should be admitted that the civil law and the common law started from opposite extremes, it is sometimes said that as a result of the movements each has made in the direction of the other, there is no longer much difference between them. The same social needs, and similar economic and technical conditions, have led to the adoption of similar solutions for their legal problems. If it is true that the results are so close to each other, the methods used to reach them are nevertheless extremely divergent, and the matter is not that simple.

Conversely, neither would it be correct to say that there has been no rapprochement between these two great systems. The place and function of legislation and judicial decisions in the civil law, on the one side, and in the common law, on the other, are not so strict as to be mutually exclusive. Each system possesses strong characteristics of a distinct and comprehensive nature that establish its own individuality.

The matter of "mixed jurisdictions," where major areas of both civil law and common law have come together into a living continuity, as in Quebec and Scotland, is another topic and one of great interest. It is apparent that the purpose of these comments has not been to reach a relative evaluation of these two great legal systems. In its own ethnic and historical framework, each system has served well the society in which it functions; each has demonstrated its ability to satisfy the social and economic needs of a society in constant change. Each has also maintained a balance between the elements of flexibility and adaptation, on the one hand, while assuring the essential attributes of stability and security, on the other.²

In every country, a legal system is a part of the life and the culture of the people for whose needs it has developed. Its evolution, including its susceptibility to outside influences, cannot be dissociated from its own characteristics. This

² Joseph Dainow, *Civil law and Common law*, JSTOR, (Vol.15) 434

should never be lost from sight; this is what makes for the usefulness of comparative study in a world where international relations and activities are taking an increasingly important place.

All legal systems have the same purpose of regulating and harmonizing the human activity within their respective societies, and in each society the legal system forms part of the culture and civilization as well as of the history and the life of its people.

Forestry Law Comparison

Indonesia's Forestry law

Indonesia's Forestry law came into effect in 2000, and regulates the management of Indonesia's forest. Forestry law No. 41/1999 replaced the basic forestry law (Law No. 5 of 1967) which had focused mainly on timber management not conservation. Inversely, the previous Law, concern on conservation. Indonesia's forest divided into three categories: Conservation forest, production forest and protection forest.³

The 1999 forestry law reaffirms the ministry of forestry as the lead authority for almost all things related to forest. The responsibilities of forestry minister are: to govern and manage all affairs related to forest areas and products, Determine or change the category of certain lands as forest areas and determine legal relation between people and forest. The ministry of forest was officially merged with the ministry of environment in 2015 through presidential decree No.16/2015.

The other law is government regulation 32/2000, this regulation was passed shortly after Law 41/1999 effectively revoking regulation 6/1999 which was being exploited by jurisdictions trying to seize more forested area than they had traditionally held. Therefore, the regulation reinforces the ministry of forestry to

³ Mahdi, D schmidt- Vogt, *Redefining Diversity & Dynamics of Natural Resources management in Asia*, vol, 4, 2008.

administrate the handling of licensing, permitting, and extraction of commercial timber operation in Indonesia.

The Indonesian law is also have presidential instruction on illegal logging. The purpose of this regulation is to eradicate illegal logging within from Indonesia's forest and to stop within distribution throughout the Indonesia's territory. It orders the goverments to take actions against anyone harvesting, collecting, or distribution timber without an authorized license, to stop anyone who receive, buy or sell illegal for timber

The Indonesian law is also have Law No.18 of 2013 on prevention and eradication of Forest degradation. This law streghten law enforcement by providing additional legal certainty, and defining the penalties for those engaged in forest production. It clearly defines which activities are banned, on the part of individual or organization who log illegally in forest.

The Indonesia's foresty law regulates as well on ministry of forest decree SK/323/Menhut-II-2011 this regulation suspends on the issue of new harvesting license in pimary forest and peatland area. This also becaming part of the goverment implementation plan of Indonesia's policy to reduce emission from forest deforestation and degradation (REDD). The moratorium is an important step for Indonesia to but there are several unresolved issues concerning need to review , existing concession licences, improve law enforcement and adress land tenures issues. ⁴

Australian Foresty law

Forest policy in Australia has developed and implemented at national, state and territory. Australia has been well established in the institutional framework to support the conservation and sustainable forest. The management of Australia's forests is guided by the 1992 National Forest Policy Statement (NFPS). The NFPS was signed by the Australian Government and all mainland state and

⁴ Reducing Emission forest Deforestation and forest Degradation

territory governments in December 1992 and by the Tasmanian Government in April 1995.

As signatories to the NFPS, the Australian, state and territory governments are committed to the sustainable management of all Australian forests, whether the forest is on public or private land, or reserved or available for production. In developing the NPFS, governments were mindful of the important conservation values of Australia's forest and of the contribution that forest activities make to the national economy and regional communities.

Australia's formal name is the Commonwealth of Australia. Australia is a kind of federal state. Under a federal system, powers are divided between a central government and individual states. In Australia, power was divided between Commonwealth federal government and the six state governments.

This research will focus on Queensland and New South Wales as the representative of Australian forestry law.

1. New South Wales Forestry law and management

New South Wales is the most populous state in Australia, with some seven million people as of 2009⁵. Its protected areas regime is one of the most developed in the country and thus serves as an important example of the Australian protected areas system at state level⁶. Australia is a signatory to a number of international treaties and agreements which are considered in managing New South Wales' forests, including the 1971 Convention on Wetlands of International Importance (Ramsar Convention) and the 1972 World Heritage Convention and the 1992 Convention on Biological Diversity.⁷

⁵ Australian Bureau of Statistics, 2009.

⁶ (Boer and Gruber, 2010)

⁷ Overview of the New South Wales forest management, November 2018.

NEW South Wales contributes to Australia's state of the forest report 2003, (SOFR) which produced every five years, prepared by Australian Bureau of agricultural and resource economics and science.

New South Wales is a signatory to Australia's National Forest Policy Statement 1992 (NFPS), which sets out a nationally shared vision for the ecologically sustainable management of Australia's forests. As signatories to the NFPS, the Australian, state and territory governments are committed to the sustainable management of all Australian forests whether public or private, reserved or available for production, and have agreed that: "... the public and private native forest estate will be managed for the broad range of commercial and non-commercial benefits and values it can provide for present and future generations. Efficiently and sustainably managed public and private forests will provide the basis for nature conservation and maintaining forest biological diversity, and for regional economic development and employment opportunities in a wide range of sectors, including wood production from native and plantation forests, tourism and recreation, water supply, grazing and the pharmaceutical industry" (NFPS 1992, page 6)⁸.

The NSW is also signed Regional forest agreement (RFAs). RFAs are means of balancing environmental, economic and social uses and values of key native forest regions across Australia. They are derived from the NFPS and are formalised in the Regional Forest Agreements Act 2002 (Cth) (RFA Act). They provide a streamlined approach to satisfying Commonwealth legislative requirements for environmental planning and

⁸ Overview of the New South Wales forest management, November 2018

assessment and for conducting forestry operations to meet ecologically sustainable forest management objectives.

The RFA's key principles are: -provide for ecologically sustainable forest management and use of forests certainty for conservation of the environment and heritage values through the establishment and maintenance of a Comprehensive, Adequate and Representative (CAR) reserve system certainty of resource access for the forestry industry.

NSW Forest Framework is made up of legislation, policy, regulatory instruments and programs that regulate and support sustainable forest management in New South Wales. The Framework is administered by a number of State Government agencies and authorities and applies to both public and private land tenures. They are:

1. **Forestry Act 2012 (NSW)** which provides for regulation of forestry operations on State forests and other Crown-timber lands and the delivery of ecologically sustainable forest management. The Act also prescribes the Forestry Corporation of NSW (FCNSW) as the land manager of Crown-timber land, and allows for the dedication of flora reserves in State forest.
2. **Biodiversity Conservation Act 2016 (NSW) (BC Act)** which provides for the maintenance of a healthy, productive and resilient environment, consistent with the principles of ecologically sustainable development, and includes the listing of threatened species (flora and fauna), threatened ecological communities, and threatening processes, and voluntary conservation measures for private land. It also provides the EPA's enforcement powers and compliance tools to regulate public and private native forestry.

3. **National Parks and Wildlife Act 1974 (NSW) (NPW Act)** which prescribes management requirements for the majority of the NSW public reserve system and the protection and management of Aboriginal heritage.
4. **Plantations and Reafforestation Act 1999 (NSW) (PR Act) and Plantations and Reafforestation (Code) Regulation 2001 (PR Code)**, which provide for the authorisation and regulation of plantations and plantation operations on public or private land.
5. **Local Land Services Act 2013 (NSW) (LLS Act)** which provides for the regulation of native vegetation management on private land and the authorisation and regulation of private native forestry operations.

Forestry Act 2012 becoming The primary legislation for the management of State forest. Legislation covering native forestry in NSW was reformed in June 2018 and came into effect in November 2018. The legislative changes mainly relate to the regulatory framework for native forestry.

Queensland Forestry law and management

Queensland forestry law, the primary legislation for the management of state forest is forestry act 1959. The forestry act (1959) regulates the use of forest products such as timber on all state land, including state forest, leasehold land and allocated state land. A central definition of the act is “Forest product”. Which means, all vegetable growth and material of vegetables origin includes, honey animals and quarry materials.

The act was amended in 1999 pursuant to the south east Queensland forest agreement to allow for 25 year agreement in relation to forest practices.⁹

⁹ Brown AJ, *Beyond public native forest logging : national forest policy and regional forest agreements after south east Queensland* (2001) 18 (1) EPLJ 71: (2001) 18 (2) EPLJ 189

Discussion

Comparative studies shows that between Indonesia and Australia have a similarities of forestry law, such as both of them have a primary regulation about forest, In Indonesia regulates on Law No. 41 of 1999 as amended by Law No. 5 1967. In Australia, such as New south wales forest regulates by Forestry Act 2012 and Forestry act 1959 as primary regulation of Queensland. The difference, Indonesia's law after amended is only focused on timber management, moreover, in Australia , not only focused on timber management but concern to conservation forest, protection of biodiversity inside, proved by regulation of New South Wales, biodiversity act 2016. Australia also has report and evaluation that known as Australia's state of the forest report, because of Australia kind of federal states, therefore, this regulation connected with others common wealth states inside Australia, such as New south wales that always produces every 5 years to report about the forest condition.

Indonesia as well have a decentralization systems actually, every region has their otonomy and authority for control their own regulation, includes forestry law. But Indonesia doesnt have such as Australia's report and evaluation about forest yet.

Indonesia's forest law No. 18/2013 on prevention and erdication of forest destruction, pretendly to protect forest while instead being used to criminalize indigenous peoples and local communities.¹⁰

Indonesia and Australia as well have illegal logging regulation, Indonesia regulates on Law no 18 Of 2013 and Australia by Illegal logging prohibition act 2012¹¹

COMPARATION	Law of Indonesia's Illegal logging	Illegal logging prohibition act 2012 Australia
Definition of illegal	Timber is illegal if	Timber is illegal if

¹⁰ Anne sophie, *How Indonesian forest law is being used against poor people*, Jakarta Post: 2015

¹¹ Law No.18 of 2013 of Prevention and eradication of forest destruction.

timber	logging in prohibited area by indonesia's law	relevant laws in the country of harvest have been breached
Practical consideration	In defining what constitutes illegal timber, in Indonesia and Australian laws all refer to breaches of laws which are in force in the country of harvest. Those laws could for example be national legislation, international conventions ratified by the country of harvest and customary laws.	
Key Requirements	Illegal to import or process illegal timber. Obligation to exercise 'due diligence through Investigation, prosecution, and examination at the Court of Session.	Illegal to import or process illegal timber. Obligation to exercise 'due diligence'
Regulated parties	natural person and/or corporation that commits the conduct of forest destruction in the Indonesian jurisdiction and/or the law in the territory of Indonesia.	Key requirements apply to businesses who import timber/products into Australia and to businesses based in Australia that process domestically grown raw logs
Product covered	Apply for Trees are plants that are woody in stone and can reach a	The prohibition to import or process illegally logged timber applies to all

	diameter of 10 (ten) centimeters or more measured at an altitude of 1.50 (one comma fifty) meters above the surface of the ground that growth in prohibited area and The prohibition to import or process illegally logged timber applies to all timber or timber products	timber or timber products. The requirement to carry out due diligence only applies to a fixed list of timber/products
Punishment	Individuals who deliberately utilize timber logging and/or illegal use of forest areas derived from conservation forests as referred to in article 21 are sentenced to the shortest imprisonment of 1 (one) Year and at most 3 (three) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and at most Rp. 1,500,000,000.00 (one billion five hundred	The ILPA is enforced by the Australian Government Department of Agriculture and Water Resources. Maximum penalties include five years imprisonment and/or fines of up to AUD\$425,000 for a corporation. In case of violations of the due diligence requirement, civil penalties apply. However, the Australian Government has extended a 'soft start' compliance period until 1st January 2018, which means that

	million rupiahs).	until then the government will issue educational advice and not pursue civil penalties if importers/processors are found to be non-compliant. The soft-start compliance period does not apply to serious or deliberate breaches of the ILPA
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Conclusion

Indonesia and Australia has their own potential forest as their national heritage and economic and living source. Although they have different legal systems, whether Australia uses common law and Indonesia as republic country uses civil law, but they have some point of foresty law similarities. In fact, it can not be deny that Australia is more develop than Indonesia, has a comprehensive regulation than Indonesia about foresty law, but so far, they face same problem such as deforestation and Illegal logging. Indonesia can adopt Australia's regulation such as Australia's report and evaluation about forest therefore state and regional can be in line to against offending person or company.

References

Anne sophie, *How Indonesian forest law is being used against poor people*, Jakarta Post: 2015

Brown AJ, *Beyond public native forest logging : national forest policy and regional forest agreements after south east Queensland* (2001) 18 (1) EPLJ 71:
(2001) 18 (2) EPLJ 189

Law No.18 of 2013 of *Prevention and eradication of forest destruction*

Mahdi, D schmidt- Vogt, *Redefining Diversity & Dynamics of Natural Resources management in Asia*, vol, 4, 2008.

Prohibition of Illegal logging Act of 2012 Australia

Overview of the New South Wales forest management, November 2018