

The Implications of Government Disobedience in Carrying Out Constitutional Court Decision No. 45/PUU-IX/2011 on Forest Areas

Muhamad Zainal Arifin¹, Radian Salman²

^{1,2}Fakultas Hukum Universitas Airlangga
muhamad.zainal.arifin-2023@fh.unair.ac.id,
radian.salman@fh.unair.ac.id

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Abstract

The implications of Constitutional Court Decision No. 45/PUU-IX/2011 resulted in the determination of forest areas as the legal basis for forest areas. Forest areas in the designation stage can no longer serve as a foundation for legal authority. Since the Forestry Law became law, the Decree on the Designation of Forest Areas across Indonesia has been changed. This means the legal reason for designating forest areas under the Transitional Provisions of Article 81 of the Forestry Law is no longer valid. The Government continues to use the Decree on the Designation of Forest Areas as a foundation for convicting individuals, imposing administrative penalties, restricting civil rights, and issuing permits. The Government's noncompliance with the Constitutional Court Decision infringes upon individuals' constitutional rights and results in environmental degradation due to the lack of oversight in forested regions. This research is normative juridical research (doctrinal research).

1. Introduction

Since the Constitutional Court (MK) was established on August 16, 2003, several community organizations have submitted applications for judicial review of legislation that violates the 1945 Constitution of the Republic of Indonesia. Legal entities and individuals may submit applications either individually or jointly. The creation of the Constitutional Court demonstrates Indonesia's adherence to the principles of a free and independent judiciary and a democratic and autonomous rule of law.¹ Legal issues arise when other institutions disregard or decline to execute the Constitutional Court's ruling, notwithstanding the ruling's directive for further action. The Constitutional Court's decisions are mandatory and require execution; however, the realization of certain implementation decisions may need to be clarified and impractical.² I Dewa Gede Palguna asserted that "a right acknowledged and safeguarded by this Constitution can only be deemed to genuinely exist if it is authentically manifested in the practice of governing everyday state affairs."³

A notable instance of a Constitutional Court Decision that has not been effectively implemented to date is Decision No. 45/PUU-IX/2011, which pertains to the judicial review of Article 1 number 3 of Law No. 41 of 1999 regarding Forestry (Law No. 41/1999). More than 13 years have passed since the reading of Constitutional Court Decision No. 45/PUU-IX/2011 by the Constitutional Court Judges on February 25, 2012; however, the implementation of the Decision still needs to be fulfilled. The judges of the Constitutional Court have resolved to remove the phrase "designated and or" from Article 1 number 3 of Law No. 41/1999, clarifying that "forest area" refers to an area determined by the Government to preserve its status as a permanent forest. The approval of the application for judicial review of Article 1 number 3, has led the applicants and other affected parties to assert that the Decision regarding the area's designation should not serve as a standard or foundation for determining the forest area. Nonetheless, it remains true that the Government continues to use the Forest Area Designation Decree as a legal foundation to prosecute individuals, impose administrative penalties, limit civil rights in the community, and issue permits.

According to Constitutional Court Decision No. 45/PUU-IX/2011, the practical implementation of boundary planning and issuing decrees that define these areas also play a crucial role in identifying legally recognized forest areas. The primary document

¹ Asmaeny Aziz dan Izlindawati, *Constitutional Complaint & Constitutional Question dalam Negara Hukum*, (Jakarta: Kencana, 2018), p. 2. Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, 2012), p. 23

² Mohammad Agus Maulidi, Problematika Hukum Implementasi Putusan Final dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum, *Jurnal Hukum Ius Quia Iustum* Volume 24, No. 4, Oktober 2017, Fakultas Hukum Universitas Islam Indonesia

³ I Dewa Palguna Palguna, *Pengaduan Konstitusional (Constitutional Complaint) Upaya Hukum terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara*, (Jakarta: Sinar Grafika, 2013), p. 151

establishing the legal framework for forest areas is the Determination of Forest Areas. After the Decision's review, the Court upheld Article 81 of the Forestry Law, declaring that "Forest areas designated and or determined based on the laws and regulations in force before the enactment of this law remain valid under this law." The Constitutional Court Judge argues that using the term "designated and or determined" in Article 1 number 3 and Article 81 of Law No. 41 of 1999 does not invalidate Article 81, which remains valid and legally binding according to the Court's ruling. In light of the Constitutional Court's Decision, the Government has overlooked the key provisions of Decision No. 45/PUU-IX/2011. The Government asserts that the Constitutional Court has yet to annul Article 81 of Law No. 41/1999, thereby maintaining the Regional Designation Decree as a valid basis for forest areas. We can regard the Government's Decision to designate forest areas without stakeholder involvement as unlawful.⁴

This paper examines the implications of Constitutional Court Decision No. 45/PUU-IX/2011 regarding the legality of forest areas, thereby eliminating the necessity for prolonged discussions on the future designation of such places. This study will conduct a detailed analysis of the regulations and Decree on Forest Areas issued by the Government about the Constitutional Court Decision No. 45/PUU-IX/2011. The Government's compliance with the Constitutional Court's Decision regarding using the forest area reference is under examination. Several legal issues may emerge if the Government fails to implement the Constitutional Court Decision. We must identify and pursue the appropriate legal remedies to address noncompliance with Constitutional Court Decision No. 45/PUU-IX/2011.

This study formulates the problem as follows: (1) The implications of Constitutional Court Decision Number 45/PUU-IX/2011 for the legality of forest areas in Indonesia; (2) Issues arising from the Government's failure to comply with Constitutional Court Decision No. 45/PUU-IX/2011. This paper primarily focuses on analyzing the Constitutional Court Decision Number 45/PUU-IX/2011 and its implementation, particularly concerning the legality of forest areas.

2. Research Method

This legal research is normative juridical research (doctrinal research) that relies on literature studies, including two types of secondary and primary legal materials. It uses the historical approach, conceptual approach, case approach, and statute approach.⁵ The statute approach examines statutory regulations governing forest areas. The conceptual approach refers to legal principles in scholarly views or legal doctrine. The case approach uses the judge's Decision as a source of legal material. Meanwhile, the

⁴ M. Hadin Muhjad, *Hukum Lingkungan Sebuah Pengantar untuk Konteks Indonesia*, Yogyakarta: Genta Publishing, 2015, p. 188-189

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2005, p. 119.

historical approach studies the history of legislation from time to time.

3. Results and Discussion

Implications of the Constitutional Court Decision No. 45/PUU-IX/2011 on the Determination of the Legality of Forest Areas

a. The History of Forest Area Laws and Regulations

The Dutch colonial period instituted many rules to oversee forestry and forest regions, including the Forest Regulation of 1856, the Forest Regulation of 1874, and the Java and Madura Forest Management Rules of 1913. The Dutch Colonial Government instituted rules regarding woods and forested regions through the Boschordonantie Java En Madoera. The Dutch Colonial Government issued the regulations as Staatsblad 1927 No. 221. Staatsblad 1931 No. 168 and Staatsblad 1934 No. 63 explicitly modified this legislation on many occasions. This guideline specifies state forest regions: 1. Forested land featuring bamboo and indigenous woody flora on state property acquired via third-party customary rights; 2. The Forestry Office did not cultivate forested land with woody vegetation but was sourced from the Government under the management jurisdiction of the Forestry Office; and 3. Sections within specific forest parcels devoid of arboreal growth, unless designated by authorities or utilized exclusively for Forestry Service-related activities.⁶

Law No. 5 of 1967, on the Principal Provisions of Forestry, came into effect on May 24, 1967, following Indonesia's independence. Following the dismantling of the previous regime and the formation of the new administration, the Government perceived forests as a resource to leverage for attracting investment.⁷ Law No. 5/1967 does not annul the stipulations of the Java Boschordonantie, as published in Madoera Staatblad 1927 No. 221. Article 1, Section 4 states, "Forest areas are specific regions determined by the Minister for protection as permanent forests." Article 7 of Law No. 5/1967 specifies, "Certain regions are determined as forest areas, with sufficient area and location, to ensure the sustainable utilization of forest resources, and it is the minister's responsibility to identify these forest areas by the government's land use plan."

Implementing regulation of Law No. 5/1967 is Government Regulation No. 33 of 1970 concerning Forestry Planning (PP No. 33/1970).⁸ The General Explanation of Government Regulation No. 33/1970 explains that the Forest Gazetting Plan

⁶ Asep Yunas Firdaus et. Al, *Mengelola Hutan dengan Memenjarakan Manusia*, (Jakarta: Perkumpulan Huma, 2007), p. 16

⁷ Riyanto, Budi, *Hukum Kehutanan dan Sumber Daya Alam*, (Bogor: Lembaga Pengkajian Hukum Kehutanan dan Lingkungan, 2008), p. 20

⁸ Iskandar, *Hukum Kehutanan*, (Bandung: CV Mandar Maju, 2015), p. 123

establishes the status and boundaries of forest areas through boundary planning and boundary arrangement activities. According to this PP, the Forest Gazetting Plan establishes the status and boundaries of forest areas through activities such as boundary planning and arrangement. By the PP, the Minister of Agriculture issued Decree 680/Kpts/UM/8/1981, the Minister of Forestry issued Decree 399/Kpts-II/1990, and the Director General of Forestry issued Decree 85/Kpts/DJ/I/74. These official decisions pertain to the regulations on the gazetting of forest areas, providing more detailed implementation guidelines. The Government officially issued forest area designation products in 1982 and 1986. Upon reviewing the provisions of Law No. 5/1967, Government Regulation No. 33/1970, and the corresponding technical rules, it becomes clear that the determined forest area serves as a reference and possesses legal validity.

Law No. 41/1999, which repealed Boschordonantie Java En Madoera Staatblad 1927 No. 221 and Law No. 5/1967, came into effect on September 30, 1999. According to Law No. 41/1999, the definition of forest area can be found in Article 1 number 3, which reads, "Forest area is a certain area designated and or determined by the government to maintain its existence as a permanent forest." Of course, Law No. 5/1967 regulates a different definition than this one. The provisions of Article 81 state that "Forest areas that have been designated and/or determined based on the applicable laws and regulations before the enactment of this law are declared to remain valid based on this law." Articles 1, 3, and 81 acknowledge that the designation of forest areas is legally recognized as a forest area. However, Article 14, paragraph (2) of Law No. 41 of 1999 stipulates that forest area gazetting activities establish legal certainty over these areas, as mentioned in paragraph (1).

Furthermore, Article 15 paragraph (1) of Law No. 41/1999 stipulates that the gazetting of forest areas, as mentioned in Article 14, involves the following process: a. the designation of forest areas; b. the arrangement of forest area boundaries; c. the mapping of forest areas; and d. the determination of forest areas. Article 1 number 3, Article 14 paragraph (2), and Article 15 paragraph (1) of the Forestry Law contradict each other. On the one hand, Article 1 number 3, acknowledges that the designation alone can be interpreted as a forest area; on the other hand, Articles 14 and 15 admit that the final product with legal certainty is determination.

Historically, the inclusion of the phrase "designated and or" in the definition of forest areas under Law No. 41/1999 was due to the limited phases of forest area determination before 1999. The New Order Government needs to prioritize forest area border planning activities. By early 2005, six years after the enactment of Law No. 41 of 1999, delineating new borders encompassed an area of 12 million hectares of forest, almost 10% of the designated 120 million hectares.⁹ The data about the designated forest area, derived from the Forest Use Map and RTRWP up to 1999, indicates that the

⁹ Asep Yunas Firdaus et. Al, op.cit, p. 28-29

Forest Department document under the Ministry of Forestry encompasses an area of merely 120,353,104 ha.¹⁰

The implementing rule of Law No. 41 of 1999 is Government Regulation No. 44 of 2004, about Forestry Planning, which supersedes Government Regulation No. 33 of 1970. Article 1 number 8 of Government Regulation No. 44 of 2004 defines "the gazetting of forest areas as a sequence of activities involving the designation, boundary arrangement, mapping, and determination of forest areas, aimed at providing legal certainty regarding the status, location, boundaries, and area of these forest areas." Article 1, number 9, defines "the designation of a forest area as the preliminary identification of a specific region as a forest area." Additionally, Article 1, number 11 defines "the determination of a forest area as an affirmation of legal certainty concerning the status, boundaries, and extent of a forest area, thereby establishing it as a permanent forest area."

The enforcement of Article 1 number 3 of Law No. 41/1999 significantly impacts Central Kalimantan Province, Riau Province, and Riau Islands. The Decree of the Minister of Agriculture No. 759/KptsUm/10/1982, dated October 12, 1982, classified the entire Central Kalimantan Province as a forest area. The Decree of the Minister of Forestry Number 173/Kpts-II/1986, dated June 6, 1986, similarly declared Riau Province and the Riau Islands as a forest area. The regions within the three provinces provide challenges, mainly due to the intersection of property rights, customary rights, and forested areas. Without requiring an overlay analysis of the specified area map, we can confirm that all community land lies within the forest area.

In addition to being regulated in Law No. 41/1999, the forestry sector is also regulated in Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (Law No. 18/2013). This legislation governs several offenses in the forestry sector. According to Article 1, 2 of Law No. 18/2013, forest areas are defined as per Constitutional Court Decision No. 45/PUU-IX/2011, which states, "Forest areas are specific regions designated by the Government to preserve their status as permanent forests." Nonetheless, Article 1 number 3 and Article 6 paragraph (1) letter d of Law No. 18/2013 provide provisions that contradict Article 1 number 2. Both articles assert that the specified forest area has legal status as a forest area. Article 1 number 3 of Law No. 18/2013 says that "*forest destruction is the process, method, or act of destroying forests through illegal logging, using forest areas without permission, or using permits in ways that go against what the permits were meant to do in government-designated forest areas.*" Moreover, Article 6 paragraph (1) letter d of Law No. 18/2013 stipulates, "To avert forest destruction, the government formulates a policy in the form of a map designating forest areas and/or geographical coordinates as the legal foundation for forest area boundaries." Consequently, Law No. 18/2013 exhibits a conflict between

¹⁰ *Ibid*

Article 1 number 2, Article 1 number 3, and Article 6 paragraph (1) letter d.

In 2020, Law No. 11 of 2020 about Job Creation (Law No. 11/2020) was enacted, amending the forestry cluster laws, namely Law No. 41/1999 and Law No. 18/2013. The Constitutional Court Panel of Judges deemed Law No. 11/2020 unlawful by Constitutional Court Decision No. 91/PUU-XVIII/2020. In response to the Constitutional Court's Decision, the Government promulgated Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. Law No. 6 of 2023 enacted the Government Regulations in Lieu of Law No. 2 of 2022 on Job Creation as Law (Law No. 6/2023). Article 36 of Law No. 6/2023 has resulted in amendments to specific articles of Law No. 41/1999. The concept of forest areas under Law No. 41/1999 remains unchanged. Article 36 section 1, modifies the stipulations of Article 15 of Law No. 41/1999 by including paragraphs (3), (4), and (5). "Gazetting of Forest Areas is carried out by utilizing information technology and geographic coordinates or satellites," states paragraph (3) of Article 15. Paragraph (4) indicates that "The central government prioritizes the expedited gazetting of forest areas mentioned in paragraph (1) in strategic locations."

Government Regulation No. 23 of 2021 delineates the technical regulations of the Forestry Cluster Job Creation Law regarding forest implementation (PP No. 23/2021), while Government Regulation No. 24 of 2021 outlines the procedures for imposition of administrative sanctions and non-tax state revenue from administrative fines in the forest sector (PP No. 24/2021). Article 1 number 3 of Government Regulation No. 23/2021 defines "Forest Areas as certain areas determined by the Government to maintain their existence as Permanent Forests." There is also a definition of a state forest area as stated in Article 1 number 4 of Government Regulation No. 23/2021, "A State Forest Area is a certain area determined by the Government to maintain its existence as a Permanent Forest located on land that is not encumbered with land rights."

b. Constitutional Court Decision No. 45/PUU-IX/2011

The provisions of Article 1 Number 3 of Law No. 41/1999 affect Central Kalimantan Province, as they designate all its areas as forests. This means that all community activities in Central Kalimantan are considered illegal. This provision results in all activities in Central Kalimantan Province being charged with forestry crimes as regulated by Law No. 41/1999, Article 50, paragraph (3), letter a, which states, "Everyone is prohibited from working and/or using and/or occupying forest areas illegally." Regarding the provisions of Article 1 number 3 of Law No. 41/1999, a group of six individuals from Central Kalimantan, including Hambit Bintih, H. Zain Alkim, H. Ahmad Dirman, Duwel Rawing, Muhammad Mawardi, and Akhmad Taufik, submitted a judicial review to the Constitutional Court, citing the Article's unconstitutionality. In their capacity as both a regent and an individual, they

submitted.

The applicants argued, among other things, that the existence of Article 1 number 3 of Law No. 41 of 1999 had harmed their constitutional rights. The main concern is the regent's ability to exercise his authority, as the lack of legal certainty in granting pre-existing permits for mining, housing, cities, infrastructure, and other facilities hinders this ability. Furthermore, the Central Kalimantan province's identification of each district as a forest area prevents the applicants as regents from exercising the widest autonomy. Of course, this could expose the applicants to forestry crimes, as the state perceives them as occupying or conducting activities in forest areas without proper permits. The community's rights to their property and buildings are violated by its location in a forest area, and the state may confiscate it due to the lack of a permit to leave the forest area.

The Judges of the Constitutional Court read Decision No. 45/PUU-IX/2011 on February 25, 2012, and found that the phrase "designated and or" in Article 1 number 3 of Law No. 41/1999 contradicts Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. The Constitutional Court's Decision No. 45/PUU-IX/2011 delineates a range of factors to ensure the determination of forest areas aligns with the Constitution. The Constitutional Court Judge views the mere designation as an arbitrary or authoritarian act by the Government, especially when determining a forest area does not precede it through a procedure involving multiple parties. Therefore, maintaining forest areas as permanent forests, which regulate many people's lives, is just as important as strengthening them through the designation stage alone.

The Panel of Judges of the Constitutional Court asserted that the definition in Article 1 number 3 and the provisions in Article 15 of Law No. 41/1999 differ. Article 1 Number 3 states, "Forest areas are certain areas designated and or determined by the government to maintain their existence as permanent forests." However, Article 15, paragraph (1) of Law No. 41/1999 clearly outlines the steps of gazetting forest areas, which continue beyond the designation stage. Article 15 paragraph (1) of Law No. 41/1999 stipulates that "The gazetting of forest areas as referred to in Article 14 shall be carried out through the following process: a. the designation of forest areas; b. arrangement of forest area boundaries; c. mapping of forest areas; and d. determination of forest areas." According to Article 15 paragraph (1) of Law No. 41 of 1999, the initial stage of gazetting forest areas involves the designation of forest areas, while Article 1 number 3 equates "designation" with area determination. Thus, Article 1 number 3, and Article 15 paragraph (1) of Law No. 41/1999 become contradictory.

In the third consideration, the Panel of Judges of the Constitutional Court ruled that the gazetting of forest areas must adhere to the fundamental principles of the state of law, as outlined in Article 15, paragraph (1) of Law No. 41/1999. This includes

requiring state administrative officials and the Government to comply with relevant laws and regulations. Before the gazetting and identification process, the authorities must consider the potential for private property rights or customary rights (ulayat) within the forest area. Suppose there are individual or customary rights in the gazetting procedure. In that case, the authorities must mark and issue the boundaries of the forest area to protect the community's interests in the designated area.

In the fourth consideration, the Panel of Judges of the Constitutional Court declared that the phrase "determined and or" in Article 1 number 3, of Law No. 41/1999 clashes with Article 1 paragraph 3 of the 1945 Constitution due to the multiple activities involved in the process of gazetting forest areas. In addition, the phrase "designated and or" in Article 1 number 3 clashes with Article 15 of Law No. 41/1999. Therefore, Article 28D, paragraph (1) of the 1945 Constitution, which asserts that "Everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law," identifies a conflict and injustice in the law. In the fifth point, the Constitutional Court said that Article 81 of Law No. 41/1999 is still valid and has legal force. The law declares, "Forest areas designated and or determined based on the applicable laws and regulations before the enactment of this law remain valid based on this law."

c. The Transitional Provisions of Article 81 of Law No. 41/1999 cannot be used as a legal basis for the enforcement of the designation of forest areas

The Constitutional Court, in Decision No. 45/PUU-IX/2011, removed the phrase "designated and or in" from Article 1 number 3 of Law No. 41/1999, thereby invalidating the use of forest area designations as a basis. If this has not been done through gazetting, it does not yet have legal status as a forest area with legal certainty.¹¹ However, the Ministry of Forestry, acting on behalf of the Government, maintains its interpretation that the designation of a forest area can serve as a basis for a legitimate forest area, as the transitional provisions of Article 81 of Law No. 41/1999 remain in effect.

After the Constitutional Court Decision No. 45/PUU-IX/2011, the Minister of Forestry on May 3, 2012, sent Circular Letter Number SE.3/MENHUT-II/2012 to the governors, regents, and heads of provincial and regency/city offices in charge of forestry. "Article 1 number 3 of the Forestry Law states that a forest area is a specific area that the government has designated as a permanent forest," reads the first number of the circular. The Circular Letter says in number 2 that the Minister of Forestry's Decision to set up provincial and partial forest areas, as well as all the laws that came about after Law No. 41 of 1999 was passed and then changed by Law No.

¹¹ Sadino and B Wiyono, "Law study about confirmation of forest area towards legal certainty of forest area in Indonesia" 2024 IOP Conf. Ser.: Earth Environ. Sci. **1407** 012018DOI 10.1088/1755-1315/1407/1/012018

19 of 2004, are still valid and have full force. Also, number 3 of the Circular Letter says, "The Ministerial Decree on the designation of forest areas, both provincial and partial, issued by the Minister of Forestry after the Constitutional Court's decision remains valid and is interpreted as the first step in the process of opening forest areas according to Article 15 paragraph (1) of Law No. 41 of 1999 concerning Forestry as amended by Law No. 19 of 2004."

The subsequent inquiry pertains to the applicability of Article 81 of Law No. 41/1999 as a legal foundation for forest area designation. The answer is no. Only as long as the Decree remains unchanged or unreplaced does the enforcement of transitional provisions take effect. If, say, the Decree on designating forest areas has been changed or replaced. Its enactment must now refer to Articles 14 and 15 of Law No. 41 of 1999 instead of the transitional Article in Article 81. After the promulgation of Law No. 41 of 1999, all Forest Area Designation Decrees from Aceh Province to Papua Province have changed.

Table 1 Decree on the Designation of Forest Areas and Their Changes on the Island of Sumatra

No.	Province	Decree of Designation Before Law No. 41 of 1999	Decree of Designation after Law No. 41 of 1999
1.	Aceh	- Decree of the Minister of Agriculture No. 924/Kpts/Um/12/1982 dated December 27, 1982	- Decree of the Minister of Forestry and Plantations No. 170/Kpts-II/2000 dated June 29, 2000
2.	North Sumatra	- Decree of the Minister of Agriculture No. 923/Kpts/Um/12/1982 dated December 27, 1982	- Decree of the Minister of Forestry No. 44/Menhut-II/2005 dated February 16, 2005; - Decree of the Minister of Forestry No. 201/Menhut-II/2006 dated June 5, 2006; - Decree of the Minister of Forestry of the Republic of Indonesia Number SK.579/Menhut-II/2014, dated June 24, 2014, concerning Forest Areas of North Sumatra Province.
3.	West Sumatra	- Decree of the Minister of Agriculture No. 623/Kpts/Um/8/1982 dated August 25, 1982. - Decree of the Minister of Forestry and Plantations No. 422/Kpts-II/1999 dated June 15, 1999	- Decree of the Minister of Forestry Number SK. 35/Menhut-II/2013

4.	Riau	- Decree of the Minister of Forestry No. 173/Kpts-II/1986 dated June 6, 1986	- Decree of the Minister of Forestry No. SK.878/Menhut-II/2014 - Decree of the Minister of Environment and Forestry Number SK. 903/MENLHK/SETJEN/PLA.2/12/2016
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The Government asserts that the Constitutional Court has not annulled the transitional provisions in Article 81 of Law No. 41/1999, leading them to conclude that the designation of forest areas can underpin these regions. Regarding the transitional provisions of Article 81, the Forest Area Designation Decree may still serve as a reference for a forest area if it was issued before September 30, 1999, or before the enactment of Law No. 41/1999 and remains unrevoked, unaltered, or unchanged. As previously stated, Indonesian provinces have amended or revoked all Forest Area Designation Decrees. The province of Central Kalimantan is one example. On September 25, 2012, the Minister of Forestry promulgated Decree No. SK.529/Menhut-II/2012, amending the Minister of Agriculture's Decree No. 759/Kpts/Um/10/1982 regarding the designation of forest areas in the Province of Dati I, Central Kalimantan, as forest areas. This amendment encompassed an area of 15,300,000 hectares in Central Kalimantan.

The change that was made to the Decree on the Designation of Forest Areas in Central Kalimantan Province on September 25, 2012, has legal effects that mean the designation of forest areas in Central Kalimantan Province must follow the rules in Articles 14 and 15 of Law No. 41/1999, as well as Article 1 number 3 after the Constitutional Court Decision No. 45/PUU-IX/2011. The legal argument, which relies on the transitional provisions of Article 81 of Law No. 41/1999 to reinstate the enforceability of the area designation despite the amendments to the Forest Area Designation Decree, needs more strength from a legal perspective. Appendix II, number 127, "Transitional Provisions," in Law No. 12 of 2011 About the Establishment of Laws and Regulations, alters the structure of legal acts or existing legal relationships from the old Laws and Regulations to the new Laws and Regulations. The purpose of this is to: a. prevent legal gaps; b. ensure legal certainty; c. safeguard individuals legally impacted by the changes in laws and regulations; and d. manage transitional or short-term matters. According to Law No. 12/2011, the transitional provisions are a temporary repository for unchanged legal products. Law No. 41/1999 promulgated amendments to all Regional Designation Decrees. Each amendment must reference the fundamental legal principles of Law No. 41/1999, which stipulates that a forest area is considered legal only after it has undergone the necessary stages of designation as a forest area.¹²

¹² Sadino, *Mengelola Hutan dengan Pendekatan Hukum Pidana Suatu Kajian Yuridis Normatif Studi Kasus Propinsi Kalimantan Tengah*, (Jakarta: BKH2K, 2017), p. 123

Numerous parties need to grasp the fundamental importance of determining forest area. The Decree of the Minister of Environment and Forestry Number SK. 903/MENLHK/SETJEN/PLA.2/12/2016, which pertains to the Forest Areas of Riau Province, is commonly referred to as a Decree on the Determination of Forest Areas, even though its primary purpose is to designate Forest Areas. The Minister's approval of the Boundary Planning Minutes document is the primary underpinning for the Forest Area Determination Decree. This implies that the boundary plan corresponds to the month of forest area determination without requiring minutes. Furthermore, the Decree on the Determination of Forest Areas is limited in scope to smaller regions that do not fall under provincial or regency classifications.

Problems Due to Disobedience to the Constitutional Court Decision No. 45/PUU-IX/2011

a. Disobedience in Implementing the Constitutional Court Decision No. 45/PUU-IX/2011

Although Constitutional Court Decision No. 45/PUU-IX/2011 has been in effect since February 25, 2012, many laws and regulations deviate from this ruling. One of the relevant statutes is Law No. 18/2013. Article 1 number 3, and Article 6, paragraph (1), letter d, maintain that the designation of forest areas functions as a legal reference for forest area maps. For example, Article 1 number 3 of Law No. 18/2013 states, "Forest destruction refers to the process, method, or act of destroying forests through illegal logging activities, the use of forest areas without permits, or the use of permits that contradict the government's determination, designation, or ongoing determination of forest areas." Additionally, the Government Regulations, particularly Regulation No. 23 of 2021 regarding Forestry Administration, include provisions that conflict with Constitutional Court Decision No. 45/PUU-IX/2011. The provisions outlined in Article 24 paragraph (4), Article 25 paragraph (1), and Article 294 letters a and e of PP No. 23 of 2021 provide clear evidence. Article 294 letter of Government Regulation No. 23 of 2021 explicitly states, "When this Government Regulation comes into effect: a. Forest areas that have been designated or determined or changed in function based on the ministerial decree before the enactment of this Government Regulation are declared to remain valid." Article 294, letter e, addresses a similar matter: "When this Government Regulation comes into effect: e. Forest Areas designated or determined by the Minister before enacting this Government Regulation are recognized as part of the sufficiency of the Forest Area."

Moreover, Government Regulation No. 43 of 2021 contains provisions that conflict with the Constitutional Court's Decision, including Article 11, paragraphs (1) and (2), as well as the Explanation of Article 8, paragraph (1) letter a. Article 11, paragraph 2,

says, "Settlement of Non-Conformity in the Determination of Land Rights and or Management Rights that have been controlled and utilized in the Forest Area before the designation or designation of the area as an Area Forest, carried out by removing land parcels from Forest Areas through changes in Forest Area boundaries." The Article refers to the "forest area before its designation or determination." The Explanation of Article 8, paragraph (1), letter a, specifies that "the last designated Forest Area encompasses the determination of designation, boundary arrangement, mapping, and identification of Forest Areas." The technical regulations, specifically the Regulation of the Minister of Environment and Forestry No. 7 of 2021, contain provisions that contradict the Constitutional Court's Decision, including Article 99 paragraph (1), Article 131 paragraph (1), Article 518 paragraphs (1), (2), (3), and (4), and Article 524. Article 131, paragraph (1), specifies that "state forest areas," as mentioned in Article 129, paragraph (1), are "forest areas undergoing the designation and or determination process." This clause unequivocally violates Constitutional Court Decision No. 45/PUU-IX/2011.

Table 2 List of Laws and Regulations Contrary to the Constitutional Court Decision No. 45/PUU-IX/2011

No.	Regulation	Article
1.	Law No. 18/2013	Article 1 number 3 and Article 6 paragraph (1) letter d
2.	Government Regulation No. 23/2021	Article 24 paragraph (4), Article 25, Article 26 paragraph (1), Article 294 letters a and e
3.	Government Regulation No. 43/2021	Explanation of Article 8 paragraph (1) letter a, Article 11 paragraph (1) and paragraph (2)
4.	Minister of Environment and Forestry Regulation No. 7/2021	Article 99 paragraph (1), Article 131 paragraph (1), Article 518 paragraph (1), (2), (3), (4), Article 524

Furthermore, multiple judicial rulings reference the designation of forest areas as a foundational element. The Constitutional Court subsequently annulled the convictions of numerous parties under those provisions. Notable cases in the legal framework include the Central Jakarta District Court Decision No. 62/Pid.Sus-Tpk/2022/PN.Jkt.Pst, the Jakarta High Court Decision No. 18/Pid.Sus-Tpk/2023/PT. DKI, and the Supreme Court Decision No. 4950K/Pid.Sus/2023. The indictment in the case references the Decree of the Minister of Forestry Number 173/Kpts-II/1986, dated June 6, 1986, which pertains to the designation of forest areas in the Dati I Riau Province as a designated forest area. Additional criminal cases that reference the designation of forest areas as a foundation for penalties include the Batu Licin District Court No. 17/Pid Decision.Sus/2017/PN.Bln in conjunction with the Banjarmasin High Court No. 33/Pid Decision.Sus.LH/2017/PT. BJM, as well as the Supreme Court Decision No. 2252 K/Pid.Sus.LH/2017. The Public Prosecutor referenced the Decree

of the Minister of Forestry No. SK. 435/Menhut-II/2009, dated July 23, 2009, regarding the Designation of Forest Areas in South Kalimantan Province as the foundation for forest areas.

The Government uses the designation of forest areas when imposing administrative sanctions on the forestry sector. The Government has identified oil palm plantations within the 3.3-million-hectare forest area as part of the implementation of Government Regulation No. 24/2021. The designation of forest areas serves as the foundation for the data. The Government has issued a decree to enhance the designation of forest areas, focusing on their development and gazetting. Law No. 41/1999 and its implementing regulations do not reference the Decree on the Development of Forest Area Gazetting. Indeed, courts have the authority to evaluate the application of the Decree concerning the Designation of Forest Areas and the Development of Forest Area Gazetting. Suppose the Government needs to provide concrete evidence regarding the delineation of forest areas and the Decree on the Determination of Forest Areas. In that case, it may face legal challenges in Court.

b. Implications of Government Disobedience in Implementing the Constitutional Court Decision No. 45/PUU-IX/2011

Disobedience to the Constitutional Court Decision No. 45/PUU-IX/2011 has several legal implications. The first implication is that it causes environmental damage to forest areas. The Government's belief in the legal certainty of forest area designation has led to a need for more maintenance in these areas. The Ministry of Environment and Forestry has designated some land as forest areas for oil palm plantations and other purposes.¹³ Out of the 120,261,700-hectare designated forest area, at least 31,848,400 ha, or at least 26.48%, are classified as non-forested. Suppose the Government continues to disregard the Constitutional Court's Decision. In that case, the number of non-forested areas within the designated forest areas will increase due to the Government's failure to establish boundaries and provide security for these areas.

**Table 3 Details of Designated Forest Areas Based on Forest Conditions
(in thousands)**

No.	Land Closure	Functional Area	Forested Land		Non-Forested Land	
			Broad	%	Broad	%
1	Conservation Forest Areas	21.872,20	17.485,80	79,95	4.386,40	20,05
2	Protected Forest Area	29.560,20	24.162,50	81,74	5.397,70	18,26
3	Production Forest Area, consisting of:	68.829,30	46.765,00	67,94	22.064,30	32,06
	a. HPT	26.802,80	21.753,20	81,16	5.049,60	18,84
	b. HP	29.232,30	18.590,50	63,60	10.641,80	36,40

¹³ Suparto, S. (2019). Problematika Pembentukan Peraturan Daerah (Perda) Tentang Rencana Tata Ruang Wilayah Provinsi Riau. *Bina Hukum Lingkungan*, 4(1), 79-96

	c. HPK	12.794,20	6.421,30	50,19	6.372,90	49,81
	Forest Area (1+2+3)	120.261,70	88.413,30	73,52	31.848,40	26,48
4	Other Use Areas	67.490,20	7.148,70	10,59	60.341,50	89,41
	Sum (1 + 2 + 3 + 4)	187.751,90	95.562,00	50,90	92.189,90	49,10

Source: Recalculation of Indonesia's Land Cover in 2020 published by the Directorate General of Forestry and Environment Planning of the Ministry of Environment and Forestry, 2020

The second implication is that it infringes upon constitutional rights, particularly those of third parties. The Government's actions, which solely assert unilateral claims to forest areas without addressing the rights of the people residing there, are the root cause of these violations. Errors in the forest area designation map complicate the process of strengthening forest areas, particularly when inventorying community rights during boundary arrangements.¹⁴ The Government unilaterally claims forest areas, but settlements, plantations, and village and sub-district governments retain community and customary rights. Forest areas currently include 21,385 villages, with 9.2 million households, or 37.2 million people, residing nearby in 2018.¹⁵ With the Constitutional Court's Decision No. 45/PUU-IX/2011, the Government should implement a fair settlement for rights holders and not criminalize landowners or provide administrative sanctions.

4. Conclusion

The Constitutional Court Decision No. 45/PUU-IX/2011 implies that the Decree on the Designation of Forest Areas cannot serve as a valid legal foundation for establishing the legality of forest areas. Based on the Constitutional Court's Decision, determining forest areas is the legal basis for determining the legality of forest areas. The Government uses the transitional provisions of Article 81 of Law No. 41 of 1999 to say that designating forest areas is the same as deciding they are forests, which is not a valid legal argument. Law No. 41 of 1999's enactment modified or annulled all decrees about the designation of forest areas. The change of the Decree renders the terms of Article 81 of Law No. 41 of 1999 inapplicable, not equating the post of designation with the determination of forest areas.

The Government's disobedience to Constitutional Court Decision No. 45/PUU-IX/2011 carries significant legal consequences for the environment and the community's constitutional rights. Government non-compliance manifests as a failure to adequately protect forests, focusing solely on the extent of the land area while disregarding the physical condition of these ecosystems, ultimately leading

¹⁴ Iskandar, I. (2020). Fungsi Rencana Tata Ruang Wilayah Provinsi Sebagai Instrumen Hukum Pengendalian Pemanfaatan Ruang Kawasan Hutan. *Bina Hukum Lingkungan*, 5(1), 1-20.

¹⁵ Nurhamani, A. (2024). Reforma Agraria Dan Tembok Ego Sektoral: Merumuskan Alternatif Penyelesaian. *Bina Hukum Lingkungan*, 8(2), 189-213.

to their degradation. Furthermore, unilateral assertions regarding forest areas without addressing community rights result in infringements of constitutional rights, leaving many individuals residing in these regions deprived of their entitlements. A collective commitment is essential to ensure the implementation of the Constitutional Court's Decision, safeguarding the constitutional rights of citizens and preventing further environmental degradation. If the Government decides not to follow the Constitutional Court Decision No. 45/PUU-IX/2011, it is necessary to have a court review all laws and rules that conflict with that Decision. This includes statutes, government rules, and ministerial rules. Individuals adversely affected by the Forest Area Designation Decree, which serves as the basis for administrative sanctions, can either initiate a state administrative lawsuit or pursue legal action against the authorities for failing to implement the Constitutional Court Decision No. 45/PUU-IX/2011.

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