

The Law Review of The Possibility of Civil Law Application in The Area Lease Agreement Against Land Occupation in Grand Forest Park of Bukit Soeharto at East Kalimantan Indonesia

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ABSTRACT

Grand Forest Park of Bukit Soeharto (GBS) has been damaged and degraded. It is quite incredible and alarming as forest fires, burning forest, illegal logging, illegal mining, illegal hunting, illegal trading, land occupation, illegal settlements by the community. One of the trigger of emerging issues as mentioned above is no clear GBS boundaries. The condition occurs because the GBS map assignment set unilaterally by the Ministry of Forestry without involving the communities and stakeholders around the GBS region. This research aims are to describe the legal problems of the illegal settlement in GBS and to illustrate the contract law or area lease agreement, and to review the effectiveness of the application of the law contract or area lease agreement when applied by the community who occupy land and settled illegally in GBS. The expected benefits of this research are: find a solution by law to overcome the problem of illegal settlements especially in the community who occupy the land. It is discovered concepts, policies and appropriate action to overcome the types of violations of law, especially to the community who occupy land and illegal settlers in GBS. This research was done using the method of sociological research/empirical (socio-legal research), the type of research is descriptive analysis and research tools, namely: document study or library materials, observation, interview and questionnaires, with the methods of the quantitative data analysis. The results of field research show that the options of three variables through the percentage rate contract or area lease reached 97.44%, the percentage of leaving the location occupied voluntarily is 1.71%, and the percentage of criminal choose only 0.85%. Thus, when the result of contract or area lease applied in GBS will be very positive and effective because the percentage rate of choosing a contract or area lease agreement is 97.44%. The application of the contract law or area lease agreement can be received positively by the communities who settled in GBS. It can also be done data collection that can be known in detail how much land is occupied, how much the numbers of communities who occupy the land, and can be predicted how big a potential state revenue through Non-Tax State Acceptance. Then, either directly or indirectly, it will be able to return the occupied land is a state asset to the GBS manager. Then if maybe someday gradually the contract or area lease is terminated in an attempt to restore its GBS original function as a forest conservation. The assignment of a new participatory map of the Ministry of Environment and Forestry with involving the communities and stakeholders around the GBS region is needed, so it can be accepted by all parties. Thus, all the problems that currently exist in GBS can be overcome gradually.

Keywords: area lease agreement, non-tax state acceptance, occupation.

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I. INTRODUCTION

a. Background

There are approximately 22 pieces at grand forest park in Indonesia. The grand forest park are scattered in various regions in Indonesia. Forest park is one of the nature conservation area besides the national park and the natural park. Its function is similar to the botanical gardens, although it has different, especially in terms of collection of plants (Anonymous, 2011).

The meaning of grand forest park as stated in Law No. 5 of 1990 about conservation of natural resources and its ecosystems is a nature conservation area for the purpose of collection of plants or animals that are natural or artificial, the original or non-native type of plants or animals are utilized for research, science, education, cultivation, culture, tourism and recreation.

Grand forest park is a combined form of nature conservation, between the conservation of ex-situ and in-situ, so a grand forest park can be defined, either natural forests or artificial forests. Obviously, the function of grand forest park is as a showcase of biodiversity, a study, a breeding various species of the wildlife and fauna, and tourist attractions.

Grand forest park function as a showcase of biodiversity and the rescue of a specific plant species which is scarce and threatened its existence and function is almost similar to the botanical gardens. But, unlike the botanical garden can collect plants from various regions, in majority of the collection of plants in grand forest park that is approximately 80% must be filled the local plant (bioregion) where grand forest park is existed, and the rest of plants from the other bioregion (Anonymous, 2011). One of the 22 pieces of grand forest park in Indonesia is Grand Forest Park of Bukit Soeharto (GBS). Based on the government provision, through the Decree of the Ministry of Forestry in SK.577/MENHUT-II/2009 dated 29 September 2009, GBS conservation area covers an area of 67,766 hectares of forest area. The boundaries of the conservation area GBS are north bordered with the sub district of Loa Kulu and Loa Janan, east bordered with the sub district of Muara Jawa, and south bordered with of the sub district of Samboja included in the district of Kutai Kartanegara (Kukar), and on the west by the sub district of Sepaku included in the district of Penajam Paser Utara (PPU) in East Kalimantan Province. But, it is unfortunate that this time GBS has been damaged and degraded is quite incredible and alarming, within the forest park there are dozens of mine area with the mining authority, and alleged there are some illegal, similarly found several plantations such as palm, pineapple, dragon fruit, pepper and other plantations cultivated by the community, as well as forest fires, burning forest, illegal logging, illegal mining, illegal hunting, illegal trade and the occupation or annexation of land by the community. Emerging issues as mentioned above, one of the triggers is unclear the GBS boundaries. The condition occurs because the GBS map assignment set unilaterally by the Ministry of Forestry without involving the communities and stakeholders around the GBS region.

There are three different maps that describe the position of GBS, and three maps are all published by the Ministry of Forestry. From the GBS total area of 67,766 hectares, there are 39,861 hectares which are currently managed by the Agency Technical Implementation Unit of the GBS Manager who do definitively duties on August 5, 2014. Previously, GBS was managed by the Forestry Service of East Kalimantan Province. Other GBS Managers, namely: a). The Forest Areas for Special Purposes of the Agricultural Research Center of Samboja in area of 3,504 hectares by the Decree of the Ministry of Forestry No. 290/Kpts-II/1991, which later developed into the Seed Technology Research Institute by Decree No. SK.201/MENHUT-II/ 2004; b). The Forest Area for Special Purposes of the Forestry Education and Training Center of Samarinda in area of 4,130 hectares by the Decree of the Ministry of Forestry No. 8815/Kpts-II/2002; and c). Forest Areas for Special Purposes of The Tropical Forest Research Centre of Mulawarman University in area of 20,271 hectares by the Decree of the Ministry of Forestry No. 160/Menhut-II/2004.

Over time, the guiding this while is SK.577/MENHUT-II/2009 dated September 29, 2009, covers an area of 67,766 hectares of forest area of controversy at the borders.

The factual condition of the existing problems in the GBS region, as well as problems and issues arising in connection with the management area (Anonymous, 2008b), an outline is as follows:

- (a). The level of accessibility of the region is relatively high, this is due to the availability of the former of logging road that crosses the region at various points along the boundary of the region and directly adjacent to the surrounding community. This means that there are vulnerable spots by various disturbances to the region, such as land and forest fires, illegal logging, the encroachment, annexation, or occupation of land, and land claims.
- (b). In addition there is the vulnerability of the region by the various forms of the disorder on top, overlapping with the use of land by mining activities (their permits of the mining authority).
- (c). Encroachment and occupation of forest land in all three areas of the Forest Area for Special Purposes (i.e. the Forestry Education and Training Center of Samarinda, the Seed Technology Research Institute of Samboja, and the Research Center's Tropical Forests of Mulawarman University) caused by several reasons, among others: ignorance of the community against GBS area boundaries, a map that is not accompanied stakes enough as a marker of the region boundary, community ignorance on the existence and function of area conservation, the economic motive in the utilization of the forest (forest wood, agriculture, plantation) and as a result of the limited farm land.
- (d). Lack of adequate surveillance and patrolling the area owned by the managers, resulting in the continuing process of destruction of protected areas GBS.
- (e). Most of the GBS conservation areas (over 60%) have been degraded severely as a result of the land and forest fires in 1982/1983 and 1997/1998 and illegal logging which has continued until now.
- (f). The area along the axis road at kilometers of 61 between Balikpapan-Samarinda which has ever designed for the purpose of tourist interest is now occupied permanently by building a small restaurants by traders and dismissal of the unofficial many large vehicles.

- (g). There is still dissatisfaction or dissent on borders of the Forest Area for Special Purposes in GBS conservation area.

Of all the problems mentioned above, from the side of law enforcement that is expected to contribute for solving various problems in GBS apparently are not running as the provisions of the applicable law, because it is more due to the weak commitment of the government and law enforcement officers. Even, there are some problems tended to occur precisely as maintained for the benefit and advantage of certain apparatus elements. It is ironic indeed, but that was the case until now in GBS.

Law enforcement has always involves a human element in it with a variety of properties and behavior as a vehicle. Laws cannot be upright by itself, means that the law is not able to manifest itself on its promises and will, his will specified in the regulations of law without any motive, namely law enforcement officers (Raharjo, 2009).

The object of research in GBS is directed at the legal review of the civil cases with applying the contract law or area lease agreement. The subject of research are the community who occupy the land and the settlers who inhabit GBS region. With the approach of humanistic, given the number of laws that served the legal basis allows for it, such as Law No. 41 of 1999 on Forestry, which is contained in Article 80 Paragraph (1) of Law No. 19 of 2004 concerning the determination of government regulation in lieu of law No. 1 of 2004 on the Amendment of Act No. 41 of 1999 on Forestry (Anonymous, 2008a). Then combined using the Law No. 20 of 1997 regarding Non-Tax State Acceptance, and derivatives that the Minister of Finance R.I. No. 33/PMK.06/2012 on Procedures for Lease of State Property.

According to the Law No. 41 of 1999 on Forestry, in Article 50 regarding a violation of criminal law and to Article 78 governing the criminal provisions of forestry, then by reference to both articles, the imposition of criminal sanctions to the offenders are quite heavy. However, if the handling problems in GBS, especially the community who occupy the land and settled illegally conducted through a criminal law approach and the book of the law of criminal law, it is feared will appear extraordinary resistance from the community which can be certain to lead to social conflicts, considering there are currently $\pm$ 52,000 inhabitants in the two districts, and five sub districts in 18 villages who inhabit GBS region that can be categorized as illegal (see Table 2).

b. Purpose

This purpose of researches are: To describe the legal problems of the illegal settlement of GBS and to illustrate the contract law or area lease agreement when applied to people who occupy land and squatted on GBS as well as to review the effectiveness of the application of the contract law or area lease agreement to the community who occupy the land and inhabit GBS region illegally.

c. Benefit

The expected benefits of this research are: found a solution by law, to overcome the problem of the illegal settlement of GBS, especially to the community who occupy the land and the illegal settlement in GBS and found concepts, policies and appropriate action to overcome the types of law violations, particularly in communities of land occupation and illegal settlement in GBS.

II. THEORETICAL FRAMEWORK

In term of legislation on forestry is regulated on civil liability, for example in Government Regulation No. 45 of 2004 on the Protection of Forests in Article 30 Paragraph (2) which reads:

"Responsibility referred to in Paragraph (1) includes:

- a. Criminal liability.
- b. Civil liability.
- c. Pay compensation
- d. Administrative sanction."

Then the civil liability provided in Article 80 of Law No. 41 of 1999 on Forestry, said:

"Any illegal acts violated in this law, without prejudice to criminal sanctions as provided in Article 78, requires that the responsible action was to pay compensation in accordance with the level of damage or consequences caused to the state, to the cost of rehabilitation, recovery forest conditions, or other necessary actions (Anonymous, 2008)."

The idea of inserting Article 80 (1) of Law No. 41 of 1999 is derived from Article 1365 of the Civil Code.

In Article 1365 of the Civil Code reads:

"Every act of unlawful bring harm to others, requires that the person causing the loss was because of his mistake to replace those losses."

According Niewenhuis (1985), there are four essential condition to be able to sue for damages based on Article 1365 of the Civil Code, namely:

1. The act that is unlawful harm.
2. Losses arising as a result of actions that have a causal relationship.
3. The offender guilty
4. The norms have been violated "Strekking" to avoid losses.

The application of civil law through a applied land lease to land occupation in GBS, as understood in the agreement or contract proposed by Salim (2003), which defines the law of the contract as: "The entirety of

legal norms that regulate the legal relationship between the parties or is based on an agreement to give rise to legal consequences."

Salim definition as pointed out above are based on the opinions and Burgh Dunne (1987), which not only examines the contract at this stage purely contractual, but also be aware of the previous acts. Previous acts including the stage of "pre-contractual" and "post-contractual". Pre-contractual a bidding stage (offer) and acceptance, while the implementation of the agreement is a contractual post. Law relationship is a relationship that creates legal effect. As a result of the law, namely the emergence of rights and obligations. Rights is a delight, while liabilities are a burden (Salim, 2003).

The elements listed in the contract law or agreement are as follows:

1. The existence of legal norms

Legal norms can be divided into two kinds, namely: legal norms written and unwritten legal norms.

2. The existence of legal subjects

Legal subject which advocates rights and obligations. Legal subjects in the agreement or contract is the debtor and the creditor, implementing agencies and business entities or permanent, service users and service providers, the owner/manager/her power and tenants and others.

3. The existence of legal object

The object of law is closely related to the principal achievement. Principal achievements of the contract depends on the type of contract made by the parties, (In the contract of area lease, demonstrated in GBS, who became principal achievement is the tenant shall meet lease payments in accordance with the agreement, while the land owners or their proxies principal achievements mandatory ensure security of land leased).

4. The existence of an agreement

An agreement referred to by consensus. This agreement is a statement of conformity will of the parties on the substance and the object of the contract.

5. The legal consequences

The legal consequences associated with the onset of the rights and obligations of the parties.

The implementation of area lease agreement in GBS associated with Non-Tax State Acceptance, due to the existence of the illegal settlement of an impact on the destruction of forests and very threatening GBS as forest conservation.

The foundation of Non-Tax State Acceptance is the Law No. 20 of 1997 on Non-Tax State Acceptance. The existence of this law is in achieving the national objectives as enshrined in the Constitution of 1945. The Government organized activities of the governing and national development. Therefore, the role of Non-Tax State Acceptance in the financing of such activities is the most important to improving the nation's independence in state financing and development.

With increasing national development in all fields, there are many forms of state revenue outside taxation. Think of the tax element is more dominant, thus the understanding of Non-Tax State Acceptance formulated in the regulation of Non-Tax State Acceptance covers all central government revenue outside the tax revenue.

By sticking to the principle of legal certainty, justice and prosperity, the direction and objectives of Non-Tax State Acceptance is more legal certainty and justice for the community to participate in development financing in accordance with the enjoyment of the benefits of the activities that generate Non-Tax State Acceptance.

The benefits are enjoyed by community of activities in generating Non-Tax State Acceptance (PNBP) is the use of government assets in the form of State Property (BMN) with through BMN lease facility.

The rule foundation of the lease implementation of the State Property is through the Regulation of the Minister of Finance No. 33/ PMK.06/2012 on Procedures for Lease of State Property. The Regulation of the Ministry of Finance is the implementation of the rules in Law No. 20 of 1997.

The application of the legislation of the Non-Tax State Acceptance is also in law enforcement efforts and securing the state assets from being dominated by the other unauthorized or illegal party.

III. METHOD

Before conducting the research, the first specified the type of research that will be carried out. In the assessment of the science of law are two types of research, namely: first, the type of normative research/literature and second, the type of sociological research/empirical. Each type of these researches has their respective areas of study.

Type of normative legal research is as follows: legal research done by researching library materials or secondary data (legal research literature), whereas the type of sociological research/empirical, are the main one examines the primary data (Sukanto and Mamudji, 2003).

In this research, used sociological research type/empirical (socio-legal research), where the law is conceptualized as a social institution in real terms associated with social variables other.

Research conducted in the GBS region on community who occupy and inhabit the land illegally, as well as in the Agency Technical Implementation Unit of the GBS Manager by documenting the data collection and networking data/information (documents study), through observation and interview.

The data collected is any data that can be used as reference in this study, more specifically the data from the incoming illegal settlers taking over land in GBS region.

These data are collected and sorted and analyzed the data according to the needs of research.

IV. DISCUSSION

4.1. Land Occupation by Community in GBS

The occurrence of occupation or annexation of land by residents in GBS. One reason is due to the unclear boundaries that surround the area GBS, stakes that exist as a boundary marker numbers are not adequate, the lack of dissemination/socialization into the community regarding the limits of GBS including the dissemination of the existence and function of GBS (social function). Debates and disagreements between managers GBS with the community, whichever region of the incoming GBS, and which areas are the rights or property of the community, because the map is referenced maps made unilaterally by the Ministry of Forestry. With the level of accessibility of GBS relatively high result of free people in and out of the territory GBS, coupled with the intensity and frequency of supervision and security are relatively low due to limited human resources of some GBS managers, as security personnel as special police of Forestry or Civil Servant Investigators.

Complex the problems that exist in GBS, there must be an effort to find solutions to the various problems that occurred, according to the author to parse these issues can be started from the curb squatters who occupy land and illegal settlement of GBS, although Law No. 41 Year 1999 on Forestry, as Article 50 Paragraph (3) which expressly Hank dropped sanctions Criminal heavy enough to anyone who occupy forested areas illegally and against the encroachment, but not necessarily the law can be applied, given its social impact is very wide, it can even bring social conflicts that great when applied in GBS, having to deal with a number of community members who are not the least, there $\pm$ 52,000 inhabitants inhabiting 18 villages in the GBS, not to mention when considering aspects of human rights, it can be unimaginably complex.

4.2. District, Sub District, Village and Total Population in GBS Area

4.2.1. District, Sub District and Village in GBS Area

GBS area administratively entered in the two districts, namely Kutai Kartanegara (Kukar) and Penajam Paser Utara (PPU) at East Kalimantan Province.

Most GBS area is in four sub districts in Kukar (Samboja, Muara Jawa, Loa Janan and Loa Kulu) covering an area of 58,685 hectares, or 86.60% of the GBS area. Then from the four districts there are 50 villages, Of 50 villages there are 14 villages are included in the GBS, covering an area of 14,617.13 hectares.

The GBS region of district PPU is in the sub district of Sepaku that covers an area of 9,081 hectares, or 13.40%. In sub district of Sepaku there are 14 villages, from 14 villages are included in GBS area there were four villages with an area of 4,449.77 hectares.

From GBS area at 67,766 hectares, there is 19,066.90 hectares or 28.14% of the area GBS are included in the 18 villages in five sub districts and two districts mentioned above.

The numbers 19,066.90 hectares or 28.14% of GBS area is predicted and indicated or can be said it was area occupied in the region of 18 villages as mentioned above. For details, as seen in the data in Table 1 which illustrates the situation.

Table 1. The Data of District, Sub Districts and Villages in GBS Area

No.	Districts	Sub Districts	An Area (km ²)	GBS Area	Villages in GBS area	
				(ha)	(ha)	(%)
I.	Kutai Kertanegara	a. Samboja (9 Villages)	1.045,90	29.478,21	3.971,24	20,83
		b. Muara Jawa (1 Village)	754,50	3.591,60	2.863,56	15,02
		c. Loa Janan (3 Villages)	644,20	6.708,83	2.446,04	12,83
		d. Loa Kulu (1 Village)	1.405,70	18.906,72	5.336,29	27,99
II.	Penajam Paser Utara	Sepaku (4 Villages)	1.172,36	9.080,64	4.449,77	23,34
Total			5.022,66	67.766,00	19.066,90	100,0
Mean					3.813,38	20,00

Source: Anonymous (2015)

Although the numbers 19,066.90 hectares is still a predictive value of the land that was occupied GBS but it can give you an idea of how the extent of land that has been appropriated, i.e. more than a quarter of the GBS or 28.14%. These conditions would negatively affect the state of the ecosystem, wildlife and fauna (biodiversity) and the environment in GBS that need protection. It certainly should be a serious concern by stakeholders, both by society and especially by the GBS Manager, as stated in Article 47 of the Law No. 41 of 1999 on Forestry, which reads that:

"The protection of forests and forest areas is an effort to: (a). Preventing and limiting damage to forests, forest areas and forest products by the actions of humans, animals, fire, forces of nature, pest, and disease, and (b). Maintain and safeguard the rights of states, communities, and individuals to forest, forest area, forest products, investment and devices associated with forest management."

Forest protection effort is an attempt to prevent the destruction of forests. Of the five categories of forest destruction that need protection, one of which is: The protection of forests from the ravages of workmanship/ occupation of forest land illegally, forest use deviating from its function, and forest exploitation are not responsible (Salim, 2006b). As happens now in GBS.

Furthermore, when associated with Rules No. 32 of 2009 on the Protection and Management of the Environment (Anonymous, 2009b), in Article 1 Paragraph (2) states:

"The protection and management of the environment is a systematic, integrated efforts are being made to preserve the environment and prevent pollution or damage to the environment that includes planning, utilization, control, maintenance, supervision, and enforcement."

Then on Article 57 states that:

Paragraph (1) "Maintenance of environment is done through the efforts of: a. Conservation of natural resources; b. Backup of natural resources; and/or, c. Preservation of atmosphere".

Paragraph (2) "Conservation of natural resources referred to in Paragraph (1) Letter a covering activities: a. Protection of natural resources; b. Preservation of natural resources; and c. A sustainable advantages of natural resources."

In another part of Article 65 Paragraph (1) states that:

"Everyone is entitled to a good environment and healthy as part of human rights".

Thus, by law, either according to the Law No. 41 of 1999 on Forestry or Act No. 32 of 2009 on the Protection and Management of the Environment, have been sufficient to govern the protection of forests. Law No. 41 of 1999 on Forestry in Article 50 Paragraph (3), states that "Every person shall be prohibited: a) Working and or using or occupying forest land illegally; b) Exploring the forest area. Repression against violations on land

squatters or illegal settlements that cause adverse impacts on forest protection and conservation of natural resources could be rewarded with legal sanctions severe enough, just how to implement these laws in a real work in the field, in this case by the enforcers law and the GBS managers.

4.2.2. Incoming Area Population GBS

In five districts, located in the GBS population there are about 195,200 inhabitants. Of the 5 districts are 64 villages. Then, of 64 villages, there are 18 villages are included in GBS area with a population of about 52,242 inhabitants or $\pm 52,000$ inhabitants. This is the massive number of people who have access to GBS region, and a portion of this amount also that had occupied the land in GBS. In detail can be seen in Table 2. Because the population so you can imagine the difficulties faced by the manager of GBS with the limitations of human resources and facilities owned for securing, controlling and monitoring the residents in order not to be penetrated and grabbed land in the GBS area.

Table 2. The Data of Total Population of the Sub Districts and Villages in GBS Area

No.	Sub Districts/ Villages	Total Population of Sub Districts	Total Population of Villages	Description
I	LOA JANAN	43,689		1. Of the 8 villages, there is 3 villages in GBS area. The total population of 18,311 inhabitants.
1	Batuah		9,682	
2	Purwa Jaya		5,589	
3	Tani Bakti		3,042	
II	LOA KULU	31,654		2. Of the 13 villages, there is 1 village in GBS area. The total population of 1,517 inhabitants.
4	Jongkang		1,517	
III	MUARA JAWA	48,372		3. Of the 8 villages, there is 1 village in GBS area. The total population of 1,122 inhabitants.
5	Dondang		1,122	
IV	SAMBOJA	40,639		4. Of the 21 villages, there is 9 villages in GBS area. The total population of 23,594 inhabitants.
6	Argo Sari		694	
7	Bukit Merdeka		4,141	
8	Bukit Raya		1,369	
9	Karya Jaya		1,287	
10	Karya Merdeka		4,783	
11	Sungai Merdeka		5,176	

12	Sungai Seluang		3,500	5. Of the 14 villages, there is 4 villages in GBS Area. The total population of 7,698 inhabitants.
13	Margo Mulyo		1,197	
14	Wono Tirto		1,447	
V	SEPAKU	30,792		
15	Argo Mulyo		2,463	
16	Semoi Dua		2,771	
17	Suko Mulyo		1,540	
18	Wono Sari		924	
T o t a l		195,200	52,242	

Source: Anonymous (2015)

Assuming that there are 4-5 families in one family head, then there are approximately 10,448 to 13,061 family heads depend on their life against the existence of GBS illegally.

4.3. Contradictions of the Law Status and Law Enforcement in Grand Forest Park of Bukit Soeharto

Of the various problems and the problems that occurred on GBS is such a complexity, especially with no compact elements of government in addressing the existence of society, especially the settlers who inhabit the area GBS, from the Department of Forestry declared the existence of these communities is illegal. While in the administrative side of government (residence), they are legal. So that development programs such as community facilities that should not be there in the area of forest conservation, like in GBS, in fact occurred, for example: roads, electricity, health centers, schools, urban village office, the sub-district head office, house renovation program and others. As contained in the Village of Bukit Merdeka, Merdeka River, Sungai Seluang and Wono Tirto at Sub District of Samboja.

Construction of these facilities can be interpreted by the people legitimize their existence is legal because the government has set up these facilities for the benefit of society, de facto they are recognized.

With the contradictions concerning the legal status of the inhabitants GBS then it will be very difficult to take action by law as law enforcement efforts against them, because of their presence with their owned land, either in the form of farm houses or plantation/agriculture land or others, many in of which already have a document ownership certificate issued by the urban village office, although legally it does not mean legality as evidence of ownership, but it has become evident as the right base for them, and from the letters easier for them to buy and sell soils or land within the GBS area. Transactions with buying and selling the land a long-time until now, so it is no longer as an indication but obviously occur, and it is also known by the Forestry Service of East Kalimantan Province as a manager (before the Agency Technical Implementation Unit as GBS manager), without being able to do many of the situations and conditions. This case is also due to lack of socialization

where GBS to the community by of the district government of Kukar, due to changes in the status area into the grand forest park is an initiative of the district government of Kukar in the Syaukani HR's period.

The problems above do make law enforcement difficult though clearly in Law No. 41 of 1999 on Forestry, mentioned in Article 50 Paragraph (3) Every person is prohibited from: a). Working and using or occupying forest land illegally; b). Penetrated the forest area. Furthermore, the violations were sentenced to criminal as stated in Article 78 Paragraph (12) in the category is a crime. Understanding these crimes associated commentary further sanctions by the Code of Penal (Penal Code) in the Second Book of Crime.

On the other hand if you want to enforce the law, the difficulties faced by law enforcement agencies to conduct legal proceedings, especially criminal charges, because most of the people own the land papers that any form. This condition makes it unlikely that wish to proceed with criminal charges as set out in forest laws, as mentioned above, even if it would be a case for the issue, then this will be included in the jurisdiction of the Civil Code (to prove the validity of the ownership of the land). It is very possible to do as a middle way is to try to apply the "Contract or Area Lease Agreement", although they still needed a long way to its implementation, but at least there is an option legally that can be chosen as a legal solution in addressing the illegal settlements.

4.4. The Basic of the Implementation of Law Contract or Area Lease Agreement on Land Occupation in GBS

Referring to the above analysis, then apply the Civil Code by the contract law or to area lease agreement to encroachers and illegal settlement of land is expected as an alternative to solving the Management GBS against those who occupy land in GBS. The concept of civil liability is put forward in view of the Law No. 41 of 1999 on Forestry, contained in Article 80 Paragraph (1) which reads:

"Any illegal acts stipulated in this law, without prejudice to the offenses referred to in Article 78, requires that a person in charge acts to pay compensation in accordance with the extent of damage or the consequences thereof to the state, to the cost of rehabilitation, recovery forest, or other necessary actions."

Explicitly, did not mention about the contract or lease agreement, but according to the author of this article can be used as a basis in applying the contract law or area lease agreement. With reference to and interpret the last sentence of Article 80 paragraph (1) in question, namely: "Another action is needed".

The idea of Article 80 paragraph (1) of Law No. 41, 1999 is derived from Article 1365 of the Civil Code, which reads:

"Every act of unlawful bring harm to others, requires that the person causing the loss was because of his mistake to replace such losses".

Besides the idea of implementing a contract or area lease agreement is a legal basis, namely in Law No. 20 of 1997 regarding Non-Tax State Acceptance and its derivatives, the Regulation of the Minister of Finance R.I. No. 33/ PMK.06/2012 on Procedures for Lease of State Property.

In the application of the concept of the law of contract or this area lease agreement, whether accepted or rejected by the illegal settlers, the choice is firmness of the GBS managers, if they are rejected, it can be done by applying effort to criminal charges under Law No. 41 of 1999 and the Penal Code, or act lightest to expel them from the locations which they occupy illegally. Options legally in the hands of GBS manager stay how to implement and follow up.

In applying the contracts law or this area lease agreement should be considered for a persuasive manner with the activities initiated through socialization or dissemination and approaches amicably through consultation to consensus. Because the author believes most of the settlers in GBS realize their existence in places it is illegal, but they also express a variety of reasons for each of its existence in GBS. This belief, author get indirectly through interviews with some of the people who inhabit the GBS area, by asking the question: "When beginning your living or occupying GBS, who invited you?" Answers to these questions as the data shown in Table 3.

Table 3. The Data of Origin Inhabitants in GBS

No.	Analysis	Traders/ Shop Owners		Farmers/ Planters		Breeders		Settlers		Description
		Fk	%	Fk	%	Fk	%	Fk	%	
1	Invited by a friend	12	21.43	10	18.87					- Traders/Shops owners as respondents were interviewed are 56 people. - Farmers/Planters are 53 people. - Breeders are 3 locations. - Settlers are 5 people.
2	Invited by family	18	32.14	15	28.30	1	33.33	3	60	
3	Invited by Elections									
4	Getting inherited from parents	19	33.93	17	32.08	2	66.67	2	40	
5	Buying land for bussiness	7	12.50							
6	Open their own land			11	20.75					
T o t a l		56	100	53	100	3	100	5	100	

Description: Fk=Frequency

From Table 3 above illustrated that the traders who occupy GBS, gain land from the legacy of their parents of 33.93%, occupied the land since invited by the families or relatives of 32.14%, invited by a friend of 21.43%, and only of 12.50% open their own land. However, of the four variables suggests that the soil before or

initially obtained the mastery illegally. Likewise the farmer /planter invited by a friend of 18.87%, invited by the family or relatives of 28.30% and through inheritance of 32.08%, the farmers/planters are so easily open their own land because he saw a vast tracts of land lie in plain sight, as illustrated by the figure 20.75%. Breeders, particularly chicken farmers who made the sampling there are three cage locations. Of the three cage locations, there are two land acquired through inheritance by a percentage of 66.67%, and the location of the land was opened for family invited by 33.33%. Settlers who live in the area GBS married there five locations, including the home office of the Principal.

The results showed also that the beginning they occupy land in GBS, i.e. after the publication in SK.577/MENHUT-II/2009, thus it can be concluded that the way they do occupy land illegally.

4.5. Documenting Land Occupational, and Claims/Lawsuits

4.5.1. Documenting Land Occupational

The absence of data legally from those GBS Managers (the Forestry Education and Training Center of Samarinda, the Seed Technology Research Institute of Samboja, the Research Center's Tropical Forests of Mulawarman University and the Agency Technical Implementation Unit of the GBS manager) on lands that have been occupied by the community has also become one of the difficult issues to carried out legal action or law enforcement in GBS. According to the Decree of the Minister of Forestry No. SK. 577/Menhut-II/2009, dated September 29, 2009, of the 67,766 hectares in GBS area was occupied and predicted an area of 19,065 hectares (Table 1). The data is still totality, accumulative data, not detailed by the number of the items of squatters (e.g., 19,065 hectares appropriated by illegal by 9,532 inhabitants, meaning each person taking over 2 hectares). The completed and detailed data are not owned by the GBS managers. Meanwhile, on the other hand if you want legal process either criminal or civil, rigid and complete data should be available.

Land grabbing in GBS is alarming and ironic story because the effect of severely damaging GBS conditions and threaten the existence of GBS, and always delivered on every forum and opportunity when talking about GBS. The fact is in sight, and the extent of time was increasing, but ironically how the total area occupied in the category of illegal and unlawful, and how much people are occupy data does not exist. It becomes a tough job and great homework for the GBS managers if you want to fix that GBS could have been better and provide maximum benefit.

Based on data from 2014, the data were taken using Landsat Analysis progress has been extensive farming dry land in the area of forest conservation GBS of 3,319.89 hectares in 2010 to an area of 8,135.63 hectares in 2014. This shows the dynamics land use in the area of GBS by the community who live in and around the area of GBS.

4.5.2. Demands and Lawsuit

To take legal action either criminal charges or civil lawsuits, it must be provided the data, and the data must be complete as fact, all data must be clearly and definitely if you want to prosecute or tort law. All such data exist and are listed with the names of a complete personal (per individual) with a clear, defined and detailed, along with data of land occupied illegally then it can only be done prosecution in criminal or tort civil and sued in court. But if on the contrary, in the absence of data, how is it possible legal action, it is clearly not possible to enforce the law against land squatters and illegal settlers in GBS when data are not owned by the GBS managers. It is therefore necessary participatory mapping as an initial stage, the area boundaries GBS, gardens and fields of society, as the basis or foundation of communication and discussion between the government in this case the business community to GBS and toward consensus and agreement of the parties.

4.6. Positive Values and Advantages Implementation Contract Law or Area Lease Agreement in GBS.

4.6.1. Data Collection

With the implementation of the law will contract or lease agreement for land, the data must be known how much the number of community who occupy land in GBS, for the sake of it then it must be carried out data collection. Of the 19,065 hectares of land area occupied, how many people occupy land illegally, in order to know that it must do a complete data collection in order to know the person's name and a land area occupied in GBS. With data collected of the person's name and land area occupied illegally, it can apply the contract law or land lease agreement in question. To find the data it must be preceded by participatory mapping the GBS area boundaries and community arable lands.

In addition of these data can also be used if he wanted to take legal action to enforce the law, both civil and criminal because the data are available completely if the data are done properly and correctly. So by doing data collection on land in GBS, the positive value that is: (1). Can be known for certain and measurable occupied land area, and will be recorded the names of people and a land area that occupied, making it easier to take further action, whether it be legal action or other action, (2). In doing lease lands to be limited, specifically to the settlers who exist today only, does not give a chance to new tenants, as a strategic move to gradually reduce the illegal settlements are an attempt to restore the GBS region as its function before, namely as a forest conservation.

4.6.2. The Potential of State Revenues from Non-Tax State Acceptance

With known of a land wide data that was occupied and people occupying land will be calculated and estimated how much of the Non-Tax State Acceptance if applied to the contract law or area lease agreement in GBS, with reference to the provision as Minister of Finance Regulation No. 33/ PMK.06/2012 on Procedures for Lease of State Property.

The GBS assumed only area that was occupied by the imposition of 19,065 hectares lease 100,000 /ha/year, the potential state revenue from Non-Tax State Acceptance amounted Rp 1,906,500,000,- (1.9 billion) per

year. Imposition of the rental fee that's assuming rental costs low, not to mention if calculated clusters, given that inhabit GBS not only farmer/planter, but there are also traders, farmers, the placement of the Telkom tower and others, then you can imagine how great potential state revenue from Non-Tax State Acceptance with the implementation of contracts area lease agreement when implemented in GBS.

4.6.3. The use of Non-Tax State Acceptance for Operational Costs of Managers

As stated in Law No. 20 of 1997 regarding Non-Tax State acceptance, in Article 8 Paragraph (1) states:

"By continuing to comply with the provisions of Article 4 and Article 5, some of the funds from a type of Non-Tax State Acceptance can be used for certain activities related to the type of the Non-Tax State Acceptance by the relevant agencies."

Then subsequently in Paragraph (2) reads:

"Certain activities referred to in Paragraph (1) includes: to the point f. preservation of natural resources."

In accordance with the sound chapter of the legislation mentioned above, then the business, such as for example 4 GBS managers as an agency collector of the Non-Tax State Acceptance can use part of the income of these Non-Tax State Acceptance for the management and development and advancement of GBS, for example, the provision of facilities and infrastructure activities, making programs such as rehabilitation, socialization, dissemination, construction and development of forest tourism, and the development potential of more than GBS in accordance with the duties and functions of GBS. Thus how great a benefit when applied to the contract law or area lease agreement in GBS, when previously the land squatters are prickly problem for GBS, then the condition can be reversed situation into a positive value, as a source of income for the country through non-tax state acceptance in GBS. Furthermore, with the availability of sufficient funds to be able to secure acreage GBS of illegal acts which disturb and threaten the existence of GBS.

4.7. Making land occupied Become Source of Tax State Revenue (non-tax)

To restore the lands that have been occupied by people in GBS in its original form is very difficult to do and would also be impossible, rather than pessimistic that will inevitably bring broad resistance from the community. So it would be better if the land is occupied it is changed and used as a potential source of Non-Tax State Acceptance through contracts or land lease agreements as long as this condition is only a problem for GBS and does not produce anything, and only bring damage to ecosystems, conservation and the environment at GBS. In addition, because it is supported by legislation that allows for such things as set forth in Law No. 20 of 1997 regarding Non-Tax State Acceptance, which states in Article 1, Paragraph (2) that:

"Natural resources are all natural resources contained in the above, on the surface and deep in the earth controlled by the state."

What is contained in the GBS both in top form clean air/fresh generated by forests and in surface expanse of forest with different species of trees, plants flora and fauna (biodiversity) and the ecosystem of the environment, then in the bowels of earth containing the content of the rock coal and other types of mineral, so what's in GBS already included in the criteria as meant in Article 1, paragraph (2) above.

In Article 2, paragraph (1) shall be declared group of Non-Tax State Acceptance include: at point b. Acceptance of the use of natural resources.

By utilizing the land that occupied it to be contracted with the lease agreement of land which then results into state acceptance derived from Non-Tax State Acceptance as the purpose of Article 2 above, acceptances from natural resource use, while it is also going to change the negative situation such as the occupied land to the positive conditions such as create the state revenue from the sector of Non-Tax State Acceptance.

Then in Article 3 Paragraph (1) states that:

"Tariffs on Non-Tax State Acceptance types set with regard to the impact on society and the imposition of its business activities, the cost of implementation of the Government's activities with respect to the type of Non-Tax State acceptance concerned, and the aspect of fairness in the imposition of the burden to the community."

Article 3 Paragraph (1) shows the government's concern for the community of users or tenants provided that the rental rates set forth above types of Non-Tax State Acceptance are very expensive business activities of the peoples concerned, and not determined by how arbitrarily, but by considering and prioritizing aspects of justice, in order to burden that must be borne society is fair and gives the possibility of obtaining a profit so it is not too burdensome to the community. It is also stated in Minister of Finance Regulation No. 33/PMK.06/2012 on Procedures for Lease of State Property (BMN). In Article 2 Paragraph (2) intended for the implementation of BMN lease orderly, effective, equitable and accountable in order to realize SOA management of efficient, effective and optimal.

In Article 4 paragraph (1) and (2) of the Regulation of the Minister of Finance No. 33/ PMK.06/2012 states that:

Article 4 Paragraph (1) points c. reads "Lease of State Property (BMN) conducted with the aim Preventing use of SOA by other parties illegally."

Article 4 Paragraph (2) states: "Lease of State Property do no harm throughout the country and does not interfere with the tasks and functions of state government administration."

In Article 4 Paragraph (1) the implication that leasing BMN conducted with the aim of preventing the use of SOA by other parties illegally. Where this is related to what is now happening in GBS clear violation of the provisions of the article because of the occupation of land by the community at GBS is the use of SOA by

other parties illegally without compensation, in the form of occupation of the land illegally, therefore the road best to resolve the issue is to sign-rented land was occupied, so there is inclusion of revenue for the state.

Then the sound in Article 4 Paragraph (2) of the lease BMN do no harm throughout the country. This means that if the GBS manager wanted to sign the land lease that was occupied must calculate rental rates were reasonable, the search for data rental transactions is similar in the surrounding land proposed for lease, not to make the rental rates are detrimental to the state, because when that happens there are consequences the consequences of business as an agency collector.

4.8. Effectiveness of the Application of the Contract Law or Area Lease Agreement in GBS

With the implementation of the contract or area lease agreement by GBS Managers to those who occupy the land, will be able to be one solution to tackle land grabbing going on GBS, this is the way the resolution is quite pragmatic because each party benefited from the implementation of the lease agreement renting this land, because the parties no loss, only its status has changed, if used to its status as squatters, now turned into tenants, and is concerned to avoid criminal prosecution for land grabbing, while the manager of GBS will be able to restore state property previously controlled by the land squatters. However, before applying the contract or land lease in question must first be disseminated or dissemination of the law of contract/lease of land to settlers, as well as gains or positive values to be derived by both sides, so it can be properly understood if later applied to the contract or area lease agreement at GBS.

Then from the lease of this land will be able to provide income to the country through non-tax revenue, the remainder of these non-tax revenue of 50-75 percent or more of the funds will be returned to the agency collector GBS in this business, and became budget of Non-Tax State Acceptance outside from Pure Rupiah in the Budget Implementation List (DIPA) in each agency of GBS manager.

The implementation of the contract or land lease is intended only limited to illegal settlements that exist now, not again open the opportunity for contracting or new tenants, even should be pursued in such a way to the maximum by the manager in order gradually to reduce the extension of the contract or land lease and so is expected in a time that the illegal settlers could run out leaving the current location they occupy, in order to restore the GBS original function such as forest conservation. From what author pointed out above, that some of the positive value of the effective implementation of the contract or lease agreement when the land was held in GBS. Apart from that the main thing is, since the implementation of the contract or land lease could be accepted by society or the illegal settlements as the wisest option for them. As an illustration can be seen in Table 4 below is based on the field survey conducted by the author to receive a positive response from the settlers.

The survey was conducted through interviews and questionnaires, by thrusting some legal options, i.e.: (1). The criminal law, (2) the contract or area lease, or (3). Leave the location voluntarily. With the following questions; "If the existence of your living or occupying GBS otherwise unlawful or illegal what legal steps

you choose?” The question was directed to the Traders/Shop Owners, Farmers/Planters, Farmers and Settlers in the GBS area. The answer is clearly illustrated as in Table 4 below.

Table 4. The Data of Law Option are selected by Inhabitants in GBS

No.	Analysis	Traders/ Shop Owners		Farmers/ Planters		Breeders		Settlers		Description
		Fk	%	Fk	%	Fk	%	Fk	%	
1	Through Criminal Law(in accordance with Law No. 41 on Forestry)							1	20	- Traders/Shops owners as respondents were interviewed are 56 people. - Farmers/Planters are 53 people. - Breeders are 3 locations. - Settlers are 5 people.
2	Through the contract or area lease agreement	56	100	53	100	2	66.67	3	60	
3	Leave the location voluntarily					1	33.33	1	20	
Total		56	100	53	100	3	100	5	100	

Description: Fk=Frequency

Of the 56 respondents on traders/shop owners who met 100% chose a legal option through a law contract or area lease agreement, although some of them asked for compensation because they had paid for it with documentary evidence of buying and selling. But after it was explained that the land into the GBS territory, they understood it. Furthermore, the choice of law of the farmers/planters who work the land in the GBS area, of 53 respondents on farmers/planters interviewed all or 100% chose the option of the contract or lease agreement land, as long as the rent is not expensive and burdensome for them, with the hope of more in order to petition for enclave can be realized. As for the choice of law selected by breeders who inhabited the GBS area. There were three locations of surveyed, i.e. chicken farms. Of the three owners of the livestock places chose the option of the contract or land lease were two owners with a percentage of 66.67%, and one chose to leave the site voluntarily with a percentage of 33.33%. Then the choice of law chosen by the settlers in the area of GBS, from five locations in the survey as respondents. There were three with a percentage of 60% who chose the contract or land lease, one with a percentage of 20% who chose to leave the site voluntarily, and one with a percentage of 20% pick through judicial proceedings in criminal given the house inhabited by the person concerned (principal of a school) is the official residence of the principal, which is concerned to know the level of the land validity of the official residence.

From the results of the field study showed that of the three options offered law as it turned out contracts or leases of land when applied to the illegal settlements in GBS become their top choice. So when three variables is assembled through the selection of contract or lease land percentage rate reached 97.44%, while choosing to leave the premises voluntarily percentage of existing 1.71%, and the percentage of criminal chose only 0.85%. Thus when the contract or land lease applied on the illegal settlers, the results will be very positive and very effective, because choosing a contract or area lease agreement percentage rate of 97.44%.

CONCLUSION

One of the causes of Lawlessness in the form of the land occupation by settlers on GBS is the determination of GBS map, defined and published unilaterally by the Ministry of Forestry, without first participatory mapping with the communities and stakeholders, as well as the lack of dissemination of the GBS area boundaries so gave rise to claims from the community on land owned by the community adjacent to the area of GBS.

The application of the contract law or area lease agreement in GBS can be received positively by the people who live on GBS, and bring other positive impacts, which can be carried out data collection that can be known in detail how much land is occupied, how much the number of people who occupy, and can predict how much a potential state revenue through non-tax state acceptance.

It would be very effective when applied to the contract law or area lease agreement to the people who occupy land in GBS, as it will be able to bring in revenue for the state through non-tax state acceptance. Then, either directly or indirectly, will be able to return the occupied land is an asset to the GBS manager, then very likely when gradually contract or land lease is terminated in an attempt to restore its original function as a GBS to forest conservation.

SUGGESTION

The need for the establishment of a new participatory map of the Ministry of Environment and Forestry with the communities and stakeholders around the GBS region, so as to produce a map of the GBS region that can be accepted by all parties. Thus all the problems that currently exist in GBS gradually can be overcome.

Importance reproduced socialization or dissemination, and installation of billboards area boundary GBS especially in locations immediately adjacent to the land rights so widely known by the community in order to gain recognition of the various parties in order to have the legality of strong de facto against the boundaries GBS.

The need for pilot implementation of the contract or land lease in GBS to test the effectiveness of the contract or land lease as a result of this research.

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