

The Concept of State Control over Forests and Forest Areas in Indonesia

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ABSTRACT

The constitutional principle of a state's authority over forests and forest areas is public and implemented through administrative permits; nonetheless, it is often misconstrued as an absolute right, which can potentially lead to mismanagement and ecological harm. This research aims to clarify the concept of state attributive control over forests and forested regions through standardized licensing mechanisms. This research is normative, utilizing a statutory approach to examine the fundamental notion of the state's authority to control, as delineated in Article 33 of the 1945 Constitution of the Republic of Indonesia and other relevant Indonesian regulations. This research demonstrates that the confusion between the ideas of rights and permissions in forest management stems from the erroneous belief that governmental authority is absolute, rather than being derived from the public interest. Secondly, it is crucial to recognise that permits serve as a mechanism for governmental regulation of forests, facilitated through licenses for the utilisation of forest products, area usage permits, and environmental services, as delineated in the Forestry Law, the Omnibus Law, and other pertinent regulations. In this framework, forest utilisation permits function not only as administrative tools, but as social and ecological contracts that encompass breaches of environmental regulations.

KEYWORDS: *Concept; Control; Forests; Permits; State*

1. INTRODUCTION

The Constitutional Court Decision No. 85/PUU-XI/2013 highlights that the term 'controlled by the state' in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia means the state has authority,¹ not complete ownership, and this authority

¹ Rian Saputra, Willy Naresta, and Vincent Ariesto, 'Post-Mining Land Use Regulations and Practices in the United States of America : Lesson for Indonesia', *Journal of Law, Environmental and Justice*, 3.1 (2025), pp. 104–33, doi:10.62264/jlej.v3i1.118.

must be exercised through 'permits' to ensure ecological justice, protect communities, and promote sustainability.² However, in practice, the misconception often arises that permits are considered permanent government rights, even though their existence is administrative and conditional. Land rights, including the right to cultivate, the right to build, and the right to ownership, are civil and relatively permanent in nature. A crucial problem in forest governance in Indonesia is the fundamental error often reproduced by government officials, corporations, and communities who equate administrative permits with civil rights.³

Misunderstanding the distinction between rights and permits can open up space for abuse of authority, mainly when permits are used exploitatively without regard to the principle of ecological justice. These circumstances necessitated the presence of legal and governance affirmations that distinguish between rights, which refer to ownership subject to social functions, and permits, which are temporary authorizations subject to evaluation and review.⁴ Granting permits for forest use and management is the attributive authority of the state, for example, the Timber Forests Product Utilization Business Permit, Forest Area Borrow-to-Use Permit, or Environmental Services Utilization Business Permit. Permits should be a state instrument for exercising its right to control the people for the greatest possible prosperity. However, in practice, these permits are often misinterpreted by the government or businesses as exclusive rights, leading to uncontrolled use and ecological damage, such as deforestation, biodiversity loss, and even land tenure conflicts with indigenous communities.⁵

Misunderstandings in distinguishing between rights and permits can have profound

² Abidah Setyowati and Constance L McDermott, 'Commodifying Legality? Who and What Counts as Legal in the Indonesian Wood Trade', *Society and Natural Resources*, 30.6 (2017), pp. 750 – 764, doi:10.1080/08941920.2016.1239295.

³ Tatag Muttaqin and others, 'Asymmetric Power Relations in Multistakeholder Initiatives: Insights from the Government-Instituted Indonesian National Forestry Council', *Trees, Forests and People*, 12 (2023), p. 100406, doi:https://doi.org/10.1016/j.tfp.2023.100406.

⁴ Sidra Fatima and others, 'Sustainable Forestry and Environmental Impacts: Assessing the Economic, Environmental, and Social Benefits of Adopting Sustainable Agricultural Practices', *Ecological Frontiers*, published online 2024, doi:https://doi.org/10.1016/j.ecofro.2024.05.009.

⁵ Kazuhiro Harada and others, 'The Role of NGOs in Recognition and Sustainable Maintenance of Customary Forests within Indigenous Communities: The Case of Kerinci, Indonesia', *Land Use Policy*, 113 (2022), p. 105865, doi:10.1016/J.LANDUSEPOL.2021.105865.

implications for forest area governance. When administrative and conditional permits are misunderstood as permanent and exclusive rights, the state loses control over the implementation of its regulatory rights, which should be directed toward the prosperity of the people and ecological sustainability. This is evident in the 1.60 million hectares of forest area decreased between 2021 and 2023, indicating a weakening of state control over forest use and the potential for permit abuse by parties solely seeking economic gain. Table 1 below presents data on the decline in forest area (ha):

Table 1 Forest Area in Indonesia 2019-2023

Years	Protected Forest (ha)	Production Forest (ha)	Total Land Forest Area (ha)
2019	29.578.158,29	68.828.970,27	120.495.702,96
2020	29.578.158,29	68.828.970,27	120.495.702,96
2021	28.975.933,29	70.279.252,50	121.938.748,68
2022	29.560.152,29	68.825.364,00	120.471.864,69
2023	29.520.962,98	68.686.362,08	120.343.229,85

Source: Ministry of Forestry of the Republic of Indonesia, 2023

Table 1 shows the forest area in Indonesia from 2019 to 2023, consisting of protected forests and production forests, as well as the total land area of the forest. In the protected forest category, the area remained relatively stable in 2019–2020, at approximately 29.58 million hectares. In 2021, there was a decrease of approximately 602 thousand hectares (to 28.98 million hectares), followed by a recovery in 2022 to 29.56 million hectares, then a slight decline again in 2023 to 29.52 million hectares. Meanwhile, production forests remained constant in 2019–2020 at approximately 68.83 million hectares, increased by approximately 1.45 million hectares in 2021 (to 70.28 million hectares), decreased significantly in 2022 to 68.83 million hectares, and further declined to 68.69 million hectares in 2023. In general, 2021 marked a shift in the area, with protected forests decreasing while production forests increased. The following two years saw a decline in both regions. These changes affected the total terrestrial forest area, which remained at approximately 120.50 million hectares in 2019–2020, increasing to approximately 1.44 million hectares in 2021 (121.94 million hectares). This was the highest level in the past five years, but it fell again from approximately 1.47 million hectares to 120.47 million hectares in 2022 and decreased

slightly to 120.34 million hectares in 2023.⁶

Based on data, Indonesia's terrestrial forest area decreased by approximately 1.60 million hectares, reflecting a decline in the effectiveness of state control over forest resources. The dynamics of production forests significantly contributed to this fluctuation, with variations in protected forests having an additional impact. The state has the right to control; it has the attributive authority to regulate, manage, and supervise the use of forests for the greatest prosperity of the people.⁷ The loss of millions of hectares of forest areas highlights the weakness of the supervisory function and the potential for permit misuse, as well as the influence of captive regulations that prioritize corporate interests over ecological protection and community rights. This reduction in forest area is not only a degradation of ecological space but also a threat to the state's constitutional mandate to guarantee ecological justice and sustainable prosperity for all the Indonesian people.⁸

This research shows two urgent issues regarding the interpretation of the concept of state control over forests and forest areas.⁹ First, the main problem in understanding rights and permits in the context of state control of forests and forest areas lies in error in distinguishing the conceptual and legal basis of both; regulation of attribution authority as the primary source of state authority over the control and management of natural resources in Indonesia; the need for the instrumentalization of the authority of rights controlled by the state interpretation of the meaning of 'controlled by the state, namely the state is not the owner, but the manager for the public; and analysis of the truth of the Constitutional Court Decision No. 001-021-022/PUU-I/2003 confirms that the phrase

⁶ Rini Astuti and Yuti A Fatimah, 'Science in the Court: Expert Knowledge and Forest Fires on Indonesia's Plantations', *Environmental Science & Policy*, 151 (2024), p. 103631, doi:<https://doi.org/10.1016/j.envsci.2023.103631>.

⁷ Atikah Mardhiya Rohmy, Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, 'Judicial Mafia and Ecological In-Justice: Obstacles to Policy Enforcement in Indonesian Forest Management and Protection', *Trees, Forests and People*, 17 (2024), p. 100613, doi:<https://doi.org/10.1016/j.tfp.2024.100613>.

⁸ T D Ngo and Mahdi, 'Chapter 14 - Targeting Deforestation Through Local Forest Governance in Indonesia and Vietnam', in *Redefining Diversity & Dynamics of Natural Resources Management in Asia, Volume 1*, ed. by Ganesh P Shivakoti, Ujjwal Pradhan, and Helmi (Elsevier, 2017), pp. 273–88, doi:<https://doi.org/10.1016/B978-0-12-805454-3.00014-1>.

⁹ Luca Tacconi, Rafael J Rodrigues, and Ahmad Maryudi, 'Law Enforcement and Deforestation: Lessons for Indonesia from Brazil', *Forest Policy and Economics*, 108 (2019), p. 101943, doi:<https://doi.org/10.1016/j.forpol.2019.05.029>.

'controlled by the state' is not identical to eigendom in civil law. Second, a conceptual understanding of state control of forests and forest areas through permitting instruments is needed.¹⁰

It is essential to comprehend how the state regulates forests and forest areas through permits, as this demonstrates the state's authority to control, as stipulated in Article 33, paragraph (3), of the 1945 Constitution and further explained in Constitutional Court Decision No. 001-021-022/PUU-I/2003. This control is not a form of absolute ownership but rather a constitutional mandate that must be implemented to achieve the people's prosperity through five primary elements: policy, administration, regulation, management, and supervision.¹¹ Each element is outlined in a permitting mechanism that is structured according to established standards and is guided by the principles of legality, social justice, and environmental sustainability. The primary function of a permit is not merely to provide access to resources but also to ensure the fair distribution of benefits, promote community involvement, and protect the rights of local communities, including indigenous peoples. Therefore, the permitting system should not be used to control power or restrict competition; instead, it should be applied as a public legal tool that is responsible, transparent, and adheres to constitutional rules and environmental sustainability principles.¹²

Previous research by Delfirman et al. (2025) shows that managing natural resources like forestry and mining is affected by local politics, especially after decentralization reforms that gave more power to regions to issue permits and handle money. Instead of improving governance, decentralization has allowed powerful individuals to take advantage of the system, where government officials at both national and local levels profit from controlling permit rules and regulations. Rather than strengthening governance, decentralization has created space for elite capture and rentier practices, where state actors

¹⁰ Moira Moeliono and others, 'REDD+ in Indonesia: A New Mode of Governance or Just Another Project?', *Forest Policy and Economics*, 121 (2020), p. 102316, doi:<https://doi.org/10.1016/j.forpol.2020.102316>.

¹¹ Yvonne Kunz and others, "'The Fridge in the Forest': Historical Trajectories of Land Tenure Regulations Fostering Landscape Transformation in Jambi Province, Sumatra, Indonesia', *Forest Policy and Economics*, 81 (2017), pp. 1–9, doi:<https://doi.org/10.1016/j.forpol.2017.04.005>.

¹² Silvio Hermawan, Moch Faisal Karim, and Lena Rethel, 'Institutional Layering in Climate Policy: Insights from REDD+ Governance in Indonesia', *Forest Policy and Economics*, 154 (2023), p. 103037, doi:<https://doi.org/10.1016/j.forpol.2023.103037>.

at both the central and regional levels derive economic benefits through control over permitting policies and regulations. The relevance of these findings lies in the gap between the constitutional concept of the state's right to control of the permitting system. This research presents real examples from places like Bangka Belitung to emphasize the need for changes in the public legal system, ensuring that the permitting system functions not only as a means for government control but also promotes ecological justice and fulfills the constitutional goal of benefiting the people.¹³

Previous research by Yovi et al. (2018) on how Sustainable Forest Management is carried out through the state certification scheme reveals a contradiction in forestry governance; while the state aims to promote sustainable forest management through rules and certification, these methods often focus only on paperwork and do not ensure the safety and well-being of forest workers, who play a key role in making Sustainable Forest Management happen.¹⁴ This finding is relevant to the study of state forest control, as it demonstrates that state authorization over forests should not only stop at granting permits but must also comprehensively fulfill its constitutional mandate through the protection of field actors and the achievement of ecological and social goals.¹⁵

Previous research by Chevalier et al. (2025) found that Forest Management Units, which are meant to improve forestry management in Indonesia, have not fully succeeded in lowering deforestation rates despite the government's attempts to manage forests by giving more power to local authorities. This finding is important for understanding how well decentralization can help the state fulfill its responsibility to promote environmental sustainability, protect communities, and involve local people. The failure of these findings in several cases reflects the gap between the state's constitutional attribution and institutional capacity on the ground, thus reinforcing the urgency of redesigning forest

¹³ Delfirman and Hilmy M. Dzaki, 'Shifts in the Control of Natural Resources: An Analysis of the Resource Curse in Tin-Rich Bangka Belitung, Indonesia', in *Extractive Industries and Society*, preprint, Elsevier Ltd, 1 September 2025, ^{XXIII}, doi:10.1016/j.exis.2025.101682.

¹⁴ Efi Yulianti Yovi and Dodik Ridho Nurrochmat, 'An Occupational Ergonomics in the Indonesian State Mandatory Sustainable Forest Management Instrument: A Review', *Forest Policy and Economics*, 91 (2018), pp. 27–35, doi:10.1016/j.forpol.2017.11.007.

¹⁵ Muhammad Alif K. Sahide and others, 'The Boom of Social Forestry Policy and the Bust of Social Forests in Indonesia: Developing and Applying an Access-Exclusion Framework to Assess Policy Outcomes', *Forest Policy and Economics*, 120 (2020), doi:10.1016/j.forpol.2020.102290.

tenure so that it does not stop at the formation of institutional units, but also ensures the effectiveness of permitting, area protection, and substantive community involvement.¹⁶

This research aims to examine the urgency of reinterpreting the concept of state control over forests and forest areas through permitting instruments as a form of implementing the state's attributive right to control. Misunderstanding the distinction between rights and permits has led to abuse of authority and ecological damage.¹⁷ Therefore, permits must be understood not as property rights but as public legal instruments subject to the principles of legality, social justice, community participation, and environmental sustainability.

2. RESEARCH METHODS

This research is normative legal research based on the analysis of primary and secondary legal materials.¹⁸ It can generate new arguments, theories, or concepts that serve as prescriptions for addressing issues related to the state's regulation and management of forests and forest areas. The approach used in this study is the statutory approach, which examines laws and regulations related to distinguishing between the concepts of rights and permits in the context of state control over natural resources, including forests and their surrounding areas.¹⁹ This research employs the Theory of Division of Authority by Utrecht, a theory that responds to the need for a state of law, ensuring the state is not absolute, government actions have a legitimate legal basis, and there is a division of power in the form of responsibilities and practical government functions. The aim is to reflect the principles of social and ecological justice.²⁰ The purposes

¹⁶ Colas Chervier and others, 'Impact of Indonesia's Forest Management Units on the Reduction of Forest Loss and Forest Fires in Sulawesi', *Ecological Economics*, 227 (2025), doi:10.1016/j.ecolecon.2024.108418.

¹⁷ Ponco Hartanto, Subagio Gigih, and Riami Chancy, 'Discourse of Ecological Damage as a State Financial Loss: Evidence from Indonesia', *Journal of Law, Environmental and Justice*, 2.3 (2024), pp. 307–31, doi:10.62264/jlej.v2i3.110.

¹⁸ Rian Saputra and others, 'Ecological Justice in Indonesia and China Post- Mining Land Use?', *Journal of Law, Environmental and Justice*, 2.3 (2024), pp. 254–84, doi:10.62264/jlej.v2i3.108.

¹⁹ Willy Naresta Hanum and Muhamad Nafi Uz Zaman, 'Existence of Human Rights Protection in Land and Mining Conflicts: Evidence from Indonesia', *Journal of Law, Environmental and Justice*, 2.3 (2024), pp. 285–306, doi:10.62264/jlej.v2i3.107.

²⁰ Arsyad Aldyan and others, 'Local Wisdom-Based Environmental Management Policy in Indonesia: Challenges and Implementation', *Journal of Law, Environmental and Justice*, 2.3 (2024), pp. 332–54, doi:10.62264/jlej.v2i3.100.

include a fair distribution of environmental benefits and burdens to all levels of society, recognition of the rights of vulnerable communities, and inclusive participation in decision-making related to natural resource management. The data collection technique used in this study is a literature review. Legal materials are obtained by collecting relevant laws and regulations, books, academic works, and international and national journals. The analysis technique used is deductive logic, a method of reasoning that begins with the understanding that something also applies to all events of that type.²¹

3. RESULTS AND DISCUSSION

State Authority in Controlling Forests and Forest Areas in Indonesia

Pancasila, as a grundnorm, places the State's control and management of agrarian resources within an ethical conceptual framework that demands social justice, respect for humanity, and popular sovereignty.²² Constitutionally, state control over natural resources, including forests and their areas, is regulated to realize the State's objectives as stated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, namely that state control over natural resources must be managed for the prosperity of the people, not solely for the interests of certain parties. Without state control, it would be impossible to achieve the goals outlined in the State's Constitution. However, this 'control' cannot be interpreted as absolute, unrestricted power. This means that the meaning of control in Article 33, paragraph (3) is broader than control from a civil perspective and is also accompanied by certain conditions, ensuring it cannot be used arbitrarily.²³

In the context of forest and forest area control, Article 33 of the 1945 Constitution of the Republic of Indonesia explains that forests are part of the natural resources that must be managed for the prosperity of the people, including the protection of their ecological and

²¹ Didik Sukriono and others, *Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?*, no. 1 (2025), pp. 261–85 <<http://www.ejournal.umm.ac.id/index.php/legality>>.

²² Jefri Hari Akbar and Soeganda Priyatna, 'Kudus, Local Wisdom, and Tobacco Industry: Historical Trajectory of the Employment Relationship Between Scissoring Workers and the Company', *LJIH*, 33.1 (2025), pp. 168–91 <<http://www.ejournal.umm.ac.id/index.php/legality>>.

²³ Fernando Morganda Manullang, 'The Purpose of Law, Pancasila and Legality According To Ernst Utrecht: A Critical Reflection', *Indonesia Law Review*, 5.2 (2015), doi:10.15742/ilrev.v5n2.141.

social functions. Article 3 of the Forestry Law emphasizes the importance of forests for well-being and sustainability.²⁴ Forests serve a conservation function, which involves efforts to protect biodiversity and ecosystems for ecological resilience, including climate stability, genetic diversity, and natural balance. The protection function refers to the role of forests in protecting water systems, preventing erosion and flooding, and maintaining soil fertility, all of which are closely related to environmental resilience. The production function enables forests to be utilized for production purposes, producing goods or services such as forest products or ecotourism. Article 2, letter d, of the Environmental Protection and Management Law also explains the State's role in ensuring ecological resilience and sustainability.²⁵

Furthermore, Constitutional Court Decision No. 35/PUU-X/2013 states the social role of forests for indigenous communities and the importance of recognizing their existence and customary rights. This means that several laws and regulations in Indonesia have provided a conceptual framework for forest management that is not only economically oriented but must also consider their ecological and social functions. This discussion presents several legal arguments regarding state authority over forests and their areas, including the following:

First, the main problem in understanding rights and permits in the context of state control of forests and forest areas lies in the misunderstanding of the conceptual and legal basis for both. Normatively, the State's right to control is rooted in the *grundnorm*, which emphasizes the principle of social justice as the ethical foundation for managing natural resources. This fundamental value is embodied in the Constitution, which mandates the State as a public entity. However, in practice, there is often a misunderstanding where permits are treated as permanent rights when, in fact, they are administrative, conditional, and subject to revocation at any time. Conversely, land rights have a stronger civil dimension and tend to be permanent. This conceptual ambiguity has the potential to violate the principle of legality and open up opportunities for tenure conflicts and abuse

²⁴ Indah Dwi Qurbani, Ilham Dwi Rafiqi, and Ilham Dwi Rafiqi, 'Prospective Green Constitution in New and Renewable Energy Regulation', *Legality: Jurnal Ilmiah Hukum*, 30.1 (2022), pp. 68–87, doi:10.22219/ljih.v30i1.18289.

²⁵ Hanum and Zaman, 'Existence of Human Rights Protection in Land and Mining Conflicts : Evidence from Indonesia'.

of authority.²⁶

Second, in studying the State in a dynamic context, the practice of administering state governance in the context of forest area control must be based on the public legal authority exercised by the State through government agencies, for example, considering the Ministry of Environment and Forestry as a case study. State authority can be explained using Utrecht's Theory of Division of Authority. Utrecht developed this theory in response to the need for a state based on the rule of law, ensuring that the State is not absolute, government actions have a legitimate legal basis, and there is a division of power in the form of effective government responsibilities and functions.²⁷ Utrecht explains that the division of power can be achieved through attribution, delegation, and delegation of authority. Attribution is the direct granting of authority by statutory regulations to a state institution or official. Attribution fulfills the characteristics of original authority, not delegation, and serves as the basis for the distribution of authority under it, such as delegation or mandate. This means that if a state institution or official receives a delegation or mandate, its authority must first be regulated in statutory regulations.

Based on these three forms of division of power, this study concludes that attribution is the primary source of state authority over the control and management of natural resources in Indonesia, including forests. The conclusion is based on Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which serves as the legal basis and is directly derived from the Indonesian Constitution. The State has the original authority to regulate, manage, and supervise forest utilization from the outset. Therefore, without this theory of authority, the State lacks a legal basis for issuing various policies governing natural resources. State control over forests and their areas is not derivative jurisdiction, as it comes directly from the Constitution, not from another institution.²⁸

²⁶ Pratiwi and others, 'Managing and Reforesting Degraded Post-Mining Landscape in Indonesia: A Review', *Land*, 10.6 (2021), doi:10.3390/land10060658.

²⁷ Sri Maryati, 'Land Capability Evaluation of Reclamation Area in Indonesia Coal Mining Using LCLP Software', *Procedia Earth and Planetary Science*, 6 (2013), pp. 465–73, doi:https://doi.org/10.1016/j.proeps.2013.01.061.

²⁸ Muhammad Bagus Adi Wicaksono and Devi Triasari, 'Coal Post-Mining Reclamation Policies in Several Countries: Lessons for Indonesia', *Journal of Law, Environmental and Justice*, 2.3 (2024), pp. 229–53, doi:10.62264/jlej.v2i3.106.

This attributive nature demands strict control mechanisms to prevent the abuse of power, as public authority is too broad if exercised without adherence to the principles of legality, accountability, and judicial control. Abuse of power can occur due to policy exclusivity, such as the issuance of forest concession permits without involving the community. Captive regulation, namely, regulations and policies that prioritize corporations over society. In this situation, the Omnibus Law should be criticized because it exhibits signs of poor regulation, as evidenced by the weakening of control and approval over how forest areas are used, which is highlighted by changes to the Forestry Law. For example, revisions to simplify business permits include eliminating the requirement to release forest areas for specific business permits and imposing light administrative sanctions deemed investment-oriented. Furthermore, the Omnibus Law also provides a legal framework to reduce objection mechanisms and public consultation in the business permit granting process. In this case, the principle of popular sovereignty, which underpins the right to control the State, has the potential to render the people mere objects of development rather than subjects of it.²⁹

Third, the Agrarian Law's Article 2, paragraph (2), formalizes the State's authority over controlled rights. Article 2, paragraph (2), explains that the State's right to control includes regulating and organizing the allocation, use, supply, and maintenance of land, water, and space. This means that the State has the authority to regulate regional spatial planning and forest resources, for example, by controlling the production of forest areas that must be used according to permits to ensure the availability of agrarian resources, thereby providing the sustainability and preservation of the ecosystem. Determine and regulate the legal relationship between people and the land, water, and space. This means that the State has the authority to determine which legal subjects have rights to land, water, and space, as established by legal bases such as ownership rights, business use rights, building use rights, management rights, and customary rights.³⁰

Lastly, determining and regulating legal relationships between people and legal actions

²⁹ Abdul Kodir and others, 'Integrated Post Mining Landscape for Sustainable Land Use: A Case Study in South Sumatera, Indonesia', *Sustainable Environment Research*, 27.4 (2017), pp. 203–13, doi:<https://doi.org/10.1016/j.serj.2017.03.003>.

³⁰ William R I Sopaheluwakan and others, 'Two-Decade Decentralization and Recognition of Customary Forest Rights: Cases from Special Autonomy Policy in West Papua, Indonesia', *Forest Policy and Economics*, 151 (2023), p. 102951, doi:<https://doi.org/10.1016/j.forpol.2023.102951>.

regarding the earth, water, and space. This means that the State has the authority to regulate how legal actions are carried out regarding forest resources, including the legality, limitations, and requirements for sales, waqf, and inheritance. Furthermore, the State has the authority to determine the legal relationship between legal subjects and agrarian objects such as land, water, and airspace.³¹ This includes granting legal frameworks to indigenous communities, such as ownership rights, business use rights, building use rights, management rights, and customary rights. Furthermore, the State also has the authority to regulate the forms and limitations of legal actions related to natural resources, including the legality and formal requirements for sales, waqf, inheritances, and other transactions involving natural resources.³²

Fourth, the interpretation of the meaning of 'controlled by the state,' namely that the State is not the owner but the manager of the public. Constitutional Court Decision No. 001-021-022/PUU-I/2003 emphasized that the phrase 'controlled by the state' is not identical to eigendom in civil law. This interpretation serves to reconstruct the phrase "controlled by the state" as a constitutional mandate rooted in the public trust doctrine: the State is positioned as a trustee that carries the people's legitimacy to manage natural resources, not as a titleholder that can exploit them privatistically. Controlled by the State is interpreted as the State exercising control over forests on behalf of the people to regulate, manage, supervise, and guarantee fair distribution and sustainability. For example, the State grants forest management business permits, but business actors must still uphold the principles of ecological and social justice.³³

This ruling shifts the paradigm of forest control from an absolute ownership scheme to a multidimensional public authority scheme encompassing regulatory, management, oversight, and redistribution functions. The State is not merely a 'permit issuer'; instead,

³¹ Linda Mensah, 'Legal Pluralism in Practice: Critical Reflections on the Formalisation of Artisanal and Small-Scale Mining (ASM) and Customary Land Tenure in Ghana', *The Extractive Industries and Society*, 8.4 (2021), p. 100973, doi:<https://doi.org/10.1016/j.exis.2021.100973>.

³² I Made Ronyastra, Lip Huat Saw, and Foon Siang Low, 'Monte Carlo Simulation-Based Financial Risk Identification for Industrial Estate as Post-Mining Land Usage in Indonesia', *Resources Policy*, 89 (2024), p. 104639, doi:<https://doi.org/10.1016/j.resourpol.2024.104639>.

³³ Julius Sembiring, 'Hak Menguasai Negara Atas Sumber Daya Agraria', *BHUMI: Jurnal Agraria Dan Pertanahan*, 2.2 (2016), pp. 119–32; Marulak Pardede, 'Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya', *Jurnal Penelitian Hukum De Jure*, 19.4 (2019), p. 405, doi:[10.30641/dejure.2019.v19.405-420](https://doi.org/10.30641/dejure.2019.v19.405-420).

it is obligated to uphold the principle of ecological due process, guarantee intergenerational equity, and establish a prior informed consent mechanism for Indigenous communities before establishing or relinquishing concessions. These obligations are based on Article 33, paragraph (3), of the 1945 Constitution; Article 28H of the 1945 Constitution; Constitutional Court decisions regarding customary forests; and the principle of sustainable development adopted in the Environmental Law.³⁴ With this framework, forest utilization permits are not merely administrative instruments but social and ecological contracts.³⁵ Violations of environmental or social obligations in permits are constitutional violations and can be challenged through judicial review, citizen lawsuits, or public interest litigation.

Meanwhile, eigendom, as mentioned in Articles 570-584 of the Civil Code, includes three rights: the right to use (*ius utendi*), the right to enjoy (*ius fruendi*), and the right to dispose of (*ius abutendi*), giving the owner complete control over the object, but this control is restricted by social rules and the rights of others. This comparison highlights the ontological disparity between private rights and public obligations: on the one hand, landowners can legally pledge, sell, or cultivate their assets for personal gain; on the other hand, the State cannot exchange or mortgage forest resources solely for fiscal revenue without considering ecological sustainability and citizens' constitutional rights. Suppose the State acts in an abusive manner, for example, by facilitating land swaps for large corporations through the transitional articles of the Omnibus Law. In that case, such action has the potential to reduce its status from trustee to constitutional trespasser, sparking tenure conflicts, the criminalization of citizens, and ecosystem degradation. Thus, the distinction between state-controlled and private property ownership is not merely a matter of terminology but a reflection of two distinct legal rules. The rule of ecological popular sovereignty, which is limited by social justice and sustainability, is juxtaposed

³⁴ Myrna A. Safitri, 'Hak Menguasai Negara Di Kawasan Hutan: Beberapa Indikator Menilai Pelaksanaannya', *Jurnal Hukum Lingkungan Indonesia*, 1.2 (2014), pp. 1-21; Ananda Prima Yurista, 'Implikasi Penafsiran Kembali Hak Menguasai Negara Terhadap Pengelolaan Wilayah Pesisir Dan Pulau-Pulau Kecil', *Rechtsvinding*, 5.3 (2016), pp. 257-75.

³⁵ Nizammudin Nizammudin, 'Hak Menguasai Negara Dalam Sistem Tata Kelola Minyak Dan Gas Bumi: Analisis Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012', *Jurnal Hukum Dan Peradilan*, 5.3 (2016), p. 407; King Faisal Sulaiman, 'Polemik Fungsi Sosial Tanah Dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 Dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), pp. 091-111, doi:10.31078/jk1815.

with the rule of absolute private rights, which prioritizes the freedom to utilize objects. When the two are combined without checks and balances, the risk of captive regulation and abuse of power arises, which violates the constitutional mandate.

Conceptualization of State Control of Forests and Forest Areas through Permit Instruments

The interpretation of the state's right to control forest natural resources is explained in Constitutional Court Decision No. 85/PUU-XI/2013, which confirms that the phrase 'controlled by the state' in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia is not interpreted narrowly as ownership (*eigendom*), but as a form of public authority exercised by the state as a public representative. Permitting is a legal instrument to implement state authority constitutionally, such as through policies, administration, regulation, permits, management, and supervision.³⁶ Permitting is not only an administrative action but also a tool for controlling and distributing the benefits of natural resources, which must guarantee ecological justice, protect community rights, and ensure intergenerational sustainability. To understand the concept of state control of forests and forest areas, the author designed a scheme on Figure 1 based on permitting provisions as the following administrative instrument.³⁷

Figure 1 is a schematic of the state's control of forests and forest areas through permits. The basis of the state's right to control is contained in the grundnorm, namely the 5th principle of Pancasila, which states that all forms of policy, including forest resource management, must guarantee fair distribution, prosperity, and protection for the community.³⁸ This fundamental value is stated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. From this constitutional clause flows the concept of the state's right to control, a doctrinal construct elaborated by the constitutional

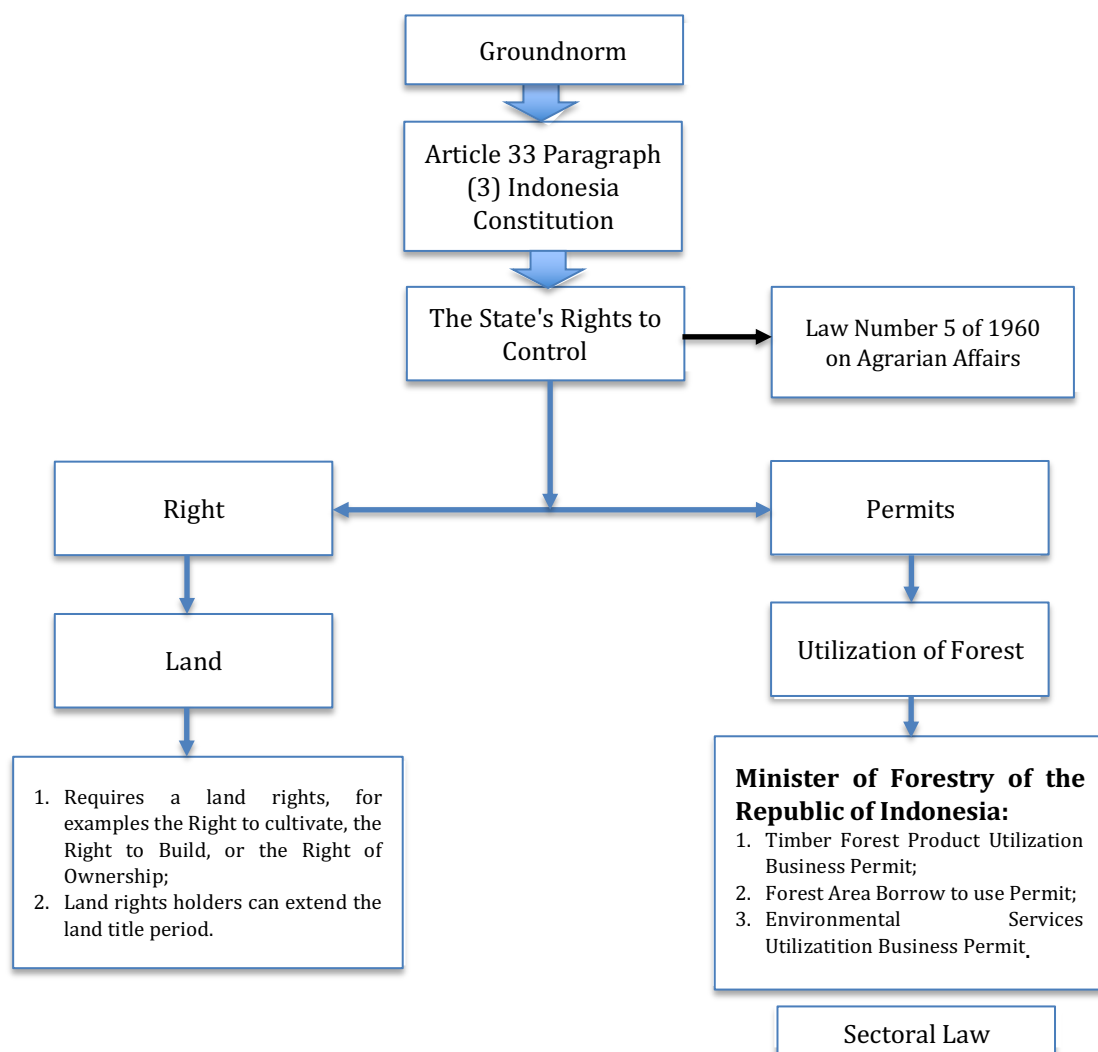
³⁶ Agung Basuki and others, 'Establishing Ecological Justice in the Governance of Land Inventory, Ownership, and Utilisation in Indonesia', *Journal of Law, Environmental and Justice*, 18.2 (2023), pp. 137–54, doi:10.62264/jlej.v1i2.12.

³⁷ Rahmi Agnes Tania and Iwan Satriawan, 'Discriminatory Policy of Land Ownership of the Chinese in the Special Region of Yogyakarta in Constitutional and Local Regulation Perspective', *E3S Web of Conferences*, 316 (2021), doi:10.1051/e3sconf/202131604019.

³⁸ Yance Arizona, 'The Return of Pancasila: Political and Legal Rhetoric Against Transnational Islamist Imposition', *Constitutional Review*, 5.1 (2019), pp. 164–93, doi:10.31078/consrev516.

court as a public-trust mandate rather than a title of private ownership. Article 2, paragraph (2), of Agrarian Law demonstrates how constitutional attribution gains concrete legal force and empowers the state to regulate, determine, and administer all agrarian affairs. Thus, all administrative actions, from spatial planning and granting rights to permitting, must be traceable back to these two peak norms to fulfill the principles of hierarchy of norms and legality.³⁹

Figure 1 Concept of State Control of Forests and Forest Areas through Permitting



Source: Designed by the author

³⁹ Fais Yonas Bo'a, 'Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional Pancasila as the Source of Law in the National Legal System', *Jurnal Konstitusi*, 15.1 (2018), pp. 27–49, doi:10.31078/jk1512.

The state's right to control is divided into two categories: the fundamental rights to land and the permits for managing natural resources, including forests and their areas. Land rights are derived directly from laws and the constitution, which are required to regulate civil relations based on land rights, such as the right to cultivate, the right to build, or the right to ownership.⁴⁰ State attribution here determines the subject and object; namely, the state validates certificates, administers registration, and limits the extent of ownership. Although categorized as private, every land right remains rooted in the state's right to control. Individual authority is only valid to the extent that it does not violate the principles of social function, environmental sustainability, and the public interest. This argument emphasizes the need for special rights to cultivate or build, as well as the right of holders to extend the legal basis through national land institutions that operate on behalf of the state.⁴¹

The above diagram illustrates that the state's right to control forests and forest areas differs from its right to control land, requiring the state to issue permits as a public instrument within the realm of administrative law. Permits for control, including forest and forest area management, are granted by the central government through the Ministry of Forestry of the Republic of Indonesia, based on the Forestry Law in conjunction with the Omnibus Law, as well as the Government Regulation on Forestry Implementation, Presidential Decrees, and Ministerial Regulations.⁴² Article 4, paragraph (2) of the Forestry Law explains that the state grants the government the authority to regulate and manage all matters related to forests, forest areas, and forest products. Article 29 explains that efforts to utilize forests and forest areas can only be carried out with 'permits' from the government. Permits that must be fulfilled for forest control and utilization include a Timber Forest Product Utilization Business Permit for wood utilization, a Forest Area Borrow-to-Use Permit for the use of forest areas for non-forestry activities without

⁴⁰ Iqra Anugrah, 'Land Control, Coal Resource Exploitation and Democratic Decline in Indonesia', *TRaNS: Trans-Regional and -National Studies of Southeast Asia*, 20.5 (2023), doi:10.1017/trn.2023.4.

⁴¹ Hilary Oliva Faxon and others, 'Territorializing Spatial Data: Controlling Land through One Map Projects in Indonesia and Myanmar', *Political Geography*, 98 (2022), p. 102651, doi:https://doi.org/10.1016/j.polgeo.2022.102651.

⁴² Xiuqin Zhang and Meiqi You, 'Environmental Justice, Corporate Green Total Factor Productivity, and Pollution Control: A Quasi-Natural Experiment Based on the Establishment of Environmental Courts', *International Review of Economics & Finance*, 100 (2025), p. 104126, doi:https://doi.org/10.1016/j.iref.2025.104126.

changing their status, and an Environmental Services Utilization Business Permit for environmental services such as ecotourism, carbon sequestration, or biodiversity protection. These three permits were then placed under sectoral laws, indicating that each permit must align with sectoral laws, such as the Forestry Law, the Mineral and Coal Mining Law, the Omnibus Law, and the Risk-Based Permitting scheme. By requiring permits, the state maintains regulatory authority, imposing sanctions and revoking permits if principles of ecological or social justice are violated.⁴³

Then, the above scheme demonstrates a dual-track implementation of the state's right to control, specifically the rights branch, which facilitates private tenure of land through a robust legal framework. The 'permits' branch facilitates controlled access to forest areas through permit instruments that can be reviewed, revoked, or tightened according to public policy. Both paths come from the same legal source, Article 33 of the 1945 Constitution, and are only valid if backed by the authority given in Article 2, paragraph (2), of the Agrarian Law. This figure shows that the way the state manages agricultural and forestry resources is not just a random practice, but a connected legal system that runs from the constitution to laws and administrative processes.⁴⁴

The idea that the state manages forests and forest areas through permits shows how the state has the right to control things like policy, administration, regulation, management, and supervision, as explained by the Constitutional Court in Decision No. 001-021-022/PUU-I/2003.⁴⁵ The elements of the state's right to control explain the dimensions of state authority that are public and constitutional, not private ownership of natural resources. These elements provide the legal foundation for the state's lawful and fair exercise of its control function. To understand the relationship between the state's right to control, indicators of people's prosperity, state objectives, and permitting standards for

⁴³ Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, and Willy Naresta Hanum, 'Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty', *Sriwijaya Law Review*, 6.2 (2022), pp. 286–303, doi:10.28946/slrev.Vol6.Iss2. 1745.pp286-303.

⁴⁴ Ben White, Colum Graham, and Laksmi Savitri, 'Agrarian Movements and Rural Populism in Indonesia', *Journal of Agrarian Change*, 23.1 (2023), pp. 68 – 84, doi:10.1111/joac.12506.

⁴⁵ Sri Martini, Maiza Hazrina Ash-Shafikh, and Nur Choirul Afif, 'Implementasi Reforma Agraria Terhadap Pemenuhan Harapan Masyarakat Yang Bersengketa Lahan', *BHUMI: Jurnal Agraria Dan Pertanahan*, 5.2 (2019), pp. 150–62, doi:10.31292/jb.v5i2.367.

forest control, this can be understood in the table below:

Table 2 Elements of State Control Rights in the Concept of Forest Control and Legal Areas

Elements	About	Permits Standardization	Welfare State Indicators
Policy	Determination of direction and strategy for natural resource management within the framework of national development.	National Forestry Master Plan and National/Provincial/District Forestry Plans.	<ul style="list-style-type: none"> • Benefits for the people. • Equal distribution of benefits for the people. • Public participation. • Respect for the rights of the people, including indigenous peoples.
Arrangement	Administrative and technical arrangements for the use of natural resources by the state.	Information System for Forest Product Administration and Environmental Permits in Integrated Business Permitting.	
Regulation	Preparation of regulations for permitting, utilization, and protection of natural resources.	Risk-Based Permitting (PP No. 5 of 2021) and Business Identification Number) and Approval of Suitability of Spatial Utilization Activities.	
Management	Operationalization of the use of natural resources directly by the state or through permits to business actors based on the principle of sustainability.	Forest Utilization Business Permit, Forest Area Borrow-Use Permit, and Environmental Services Utilization Business Permit.	
Supervision	Monitoring, evaluation, and enforcement of laws against violations of natural resources by the state.	Administrative, Civil, and Criminal Sanctions; Forest Monitoring System; and Rapid Response Forestry Police.	

Source: Compiled by the author

Table 1 shows a comprehensive description of the forms of state authority over natural resources, especially forests, and their areas, which are interpreted as a public authority, as emphasized in the Constitutional Court Decision and Article 33 paragraph (3) of the 1945 Constitution. The table above outlines the five main elements of the right to control land, namely policy, administration, regulation, management, and supervision.⁴⁶ The policy elements in the state's right to control indicate the state's strategic role in determining the direction and strategy for managing natural resources, especially forests, and forest areas, as part of sustainable national development. This policy is implemented through planning documents, such as the National Forestry Master Plan, Provincial

⁴⁶ Nurhasan Ismail and others, 'Penjabaran Asas-Asas Pembaharuan Agraria Berdasarkan Tap Mpr No Ix / Mpr / 2001 Dalam Perundang-Undangan Di Bidang Pertanahan', *Mimbar Hukum*, 22.2 (2010), pp. 360–72.

Forestry Plans, and those at the Regency/City, which serve as the legal and substantive basis for all forestry activities, including the issuance of permits. These documents establish permitting standards that align with the objectives of equitable, sustainable, and people forest management.⁴⁷ Thus, every forest utilization permit is not merely an administrative procedure but also part of the implementation of state policy designed to realize the people's prosperity, as mandated by Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The management element in the state's right to control refers to the state's administrative and technical functions in managing the use of natural resources, especially forests and forest areas.⁴⁸ This element emphasizes that the state not only makes policies but is also responsible for building and managing an efficient, transparent forestry bureaucracy system that ensures public involvement and the protection of Indigenous peoples' rights. This section includes data management, administration, and technical procedures that govern the entire forestry permitting cycle, from application and evaluation to oversight. In practice, this element is realized through various administrative tools, such as the Forest Product Administration Information System, which regulates the reporting and distribution of forest products. Additionally, environmental permits are integrated into the business permitting system through a single online submission, simplifying and harmonizing the cross-sectoral permitting process.⁴⁹

The regulatory elements within the state's right to control reflect the state's role in establishing regulations governing the permitting, utilization, and protection of natural

⁴⁷ Pertiwi Liliyani, Tanjung Nugroho, and Dwi Wulan Titik Andari, 'Inventarisasi Penguasaan, Pemilikan, Penggunaan Dan Pemanfaatan Tanah (IP4T) Partisipatif Di Kabupaten Madiun', *Tunas Agraria*, 3.2 (2020), pp. 157–76, doi:10.31292/jta.v3i2.114; Farista Dewi Anindyati, Abdul Haris Farid, and Dwi Wulan Titik Andari, 'Urgensi Autentikasi Dan Legalisasi Arsip Pertanahan Hasil Digitalisasi', *Tunas Agraria*, 3.3 (2020), doi:10.31292/jta.v3i3.121.

⁴⁸ Ana Silviana, 'Urgensi Sertipikat Tanah Elektronik Dalam Sistem Hukum Pendaftaran Tanah Di Indonesia', *Administrative Law and Governance Journal*, 4.1 (2021), pp. 51–68, doi:10.14710/alj.v4i1.51-68; Mira Novana Ardani, 'Penyelenggaraan Tertib Administrasi Bidang Pertanahan Untuk Menunjang Pelaksanaan Kewenangan, Tugas Dan Fungsi i Badan Pertanahan Nasional', *Administrative Law and Governance Journal*, 2.3 (2019), pp. 476–92, doi:10.14710/alj.v2i3.476-492.

⁴⁹ Muhamad Azhar, 'Hak Menguasai Negara Atas Sumur Minyak Melalui Pendirian Mini Refinery Plant Di Kabupaten Bojonegoro', *Administrative Law and Governance Journal*, 1.1 (2018), pp. 90–102 <<https://ejournal2.undip.ac.id/index.php/alj/article/view/2758>>.

resources, including forests, to ensure their legal, sustainable, and fair management. This element is the core of the state's legislative function, which rests on the principles of legality and supports vulnerable groups, particularly indigenous communities, as a primary indicator of public prosperity. In practice, this element is achieved through standard permitting rules, like Risk-Based Permitting (Government Regulation No. 5 of 2021), Business Identification Numbers for legal business identification, and Spatial Utilization Activity Conformity Approvals, which make sure that business activities fit with spatial plans. Thus, these regulatory elements emphasize the state's role as a lawmaker, ensuring that all forms of forest utilization comply with regulations that guarantee ecological justice and protect community rights.⁵⁰

The final two elements of the state's right to control, management, and supervision are operational aspects that ensure the responsible and sustainable utilization of natural resources, particularly forests and forest areas. The management element refers to the direct implementation or granting of permits for natural resource utilization by the state to business actors while upholding the principles of efficiency, effectiveness, and sustainability. Indicators of successful management include optimizing economic benefits without neglecting the ecological and social functions of forests. Permitting closely related to this function includes Forest Utilization Business Permits, Forest Area Borrow-Use Permits, and Environmental Services Utilization Business Permits, all of which are regulated to ensure that utilization does not exceed the environment's carrying capacity. Meanwhile, the oversight element emphasizes the importance of monitoring, evaluating, and enforcing the law against potential deviations and violations of granted permits. This oversight is achieved through a control system that incorporates administrative, civil, and criminal sanctions.⁵¹ Additionally, the use of instruments such as the Forest Monitoring System and the presence of specialized personnel, including the Rapid Response Forestry Police, are also employed. These two elements serve as a balance to prevent the abuse of state authority and ensure that all forms of forest use remain under control, in line with

⁵⁰ Le Thi Thao and Phan Vinh Tuan Anh, 'Control Air Pollution to The Sustainable Development Goals Vietnam Perspective', *Administrative and Environmental Law Review*, 4.1 (2023), pp. 49–64, doi:10.25041/aclr.v4i1.2860.

⁵¹ Raja Rajendra Timilsina and Koji Kotani, 'Evaluating the Potential of Marketable Permits in a Framed Field Experiment: Forest Conservation in Nepal', *Journal of Forest Economics*, 29 (2017), pp. 25–37, doi:10.1016/J.JFE.2016.11.003.

the constitutional goal of maximizing the people's prosperity.⁵²

The idea that the government manages forests and forest areas by issuing permits shows how it exercises its right to control, as mentioned in Article 33, paragraph (3), of the 1945 Constitution and explained by the Constitutional Court in Decision No. 001-021-022/PUU-I/2003. This control is not absolute but rather a constitutional mandate that is carried out for the greatest prosperity of the people through five main elements: policy, administration, regulation, management, and supervision. Each of these elements is implemented through a standardized permitting system based on the principles of legality, social justice, and ecological sustainability. The purpose of this permitting system is not only to regulate access to resources but also to ensure the equitable distribution of benefits, promote public participation, and protect the rights of local communities and indigenous peoples. Therefore, permitting in forest management must not be a tool of power domination or corporate interests (captive regulation) but rather must be a public legal instrument that is accountable, transparent, and supports the constitutional interests of the people and environmental sustainability.

4. CONCLUSION

Constitutionally, the state's right to control is not absolute ownership but rather a public state that is carried out through administrative permits that are temporary and conditional but are often misinterpreted as permanent rights, giving rise to governance errors, including authority, and ecological damage that requires a clear boundary between civil rights and administrative permits in forest management. This research shows, *first*, that the main problem in state control of forests and forest areas is the error in distinguishing between rights and permits on a conceptual and legal basis. Additionally, it emphasizes that state authority is attributive rather than ownership, it focuses on management for the public interest, as indicated in the interpretation of 'controlled by the state' and highlighted in Constitutional Court Decision No. 001-021-022/PUU-I/2003. *Second*, a conceptual understanding of permitting as a tool of state control over forests and forest areas is necessary. Public permitting for the power and utilization of forests is granted by the

⁵² Uta Wehn and Abeer Almomani, 'Incentives and Barriers for Participation in Community-Based Environmental Monitoring and Information Systems: A Critical Analysis and Integration of the Literature', *Environmental Science & Policy*, 101 (2019), pp. 341–57, doi:<https://doi.org/10.1016/j.envsci.2019.09.002>.

central government through permits for the use of forest products, forest area leases, and environmental services based on the Forestry Law, the Omnibus Law, and sectoral regulations. The intent is to maintain the state's regulatory authority in upholding ecological and social justice, including the imposition of sanctions and the revocation of permits.

5. CONFLICTING INTEREST STATEMENT

The authors state that there is no conflict of interest in the publication of this article.

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