

The Position and Role of Constitutional Justices In Indonesia

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THE POSITION AND ROLE OF CONSTITUTIONAL COURT JUSTICES
IN INDONESIA: A SOCIOLOGY OF LAW PERSPECTIVE

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ABSTRACT: This article tries to examine the position of Constitutional Court Justices in Sociology of Law perspective. Within the new amendment of the 1945 Constitution of Republic of Indonesia, the new institution is so called Constitutional Court is added. Why this Institution exist, and what the role of the Constitutional Court plays will be depend on the position and role of Constitutional Court Justices. Finally, this article explores the role of the Justices in Sociology of Law Perspective.

KEYWORDS: The position, role, Constitutional Court Justices, Sociology of Law perspective

Introduction

The establishment of the Constitution Court should be followed by the appointment of nine Justices. The article 24C, PARAGRAPH (6) of the 1945 Constitution says: "The appointment and Removal of constitutional justice, the judicial procedure, and other provisions concerning the Constitutional Court shall be regulated by law." In line with the said stipulation, the law on the Constitutional Court must be firstly enacted on 13 August 2003 by the State Gazette of Republic Of Indonesia Number 98 of 2003 and the Additional State Gazette Number 4316 of 2003.

After the amendment of the 1945 Constitution of Republic Indonesia, the judicial control based On the Constitution is now officially take in places. The function of Constitutional Court is Started since the 9 justices took an oath in August 16 2003. Formally, in transition period, the Constitutional cases conducted by the Supreme Court. The Constitutional Court establishment Signifies a new era in constitutionalism and supremacy of law, at least for the time being. The Checks and balances system among the legislative, the executive and the judicative power has Been starting since the Constitutional Court carry out its function.

The constitutional court

The Constitutional Court as part of the judiciaries as stipulated in the 1945 Constitution of the Republic Indonesia. The Constitutional Court Judges based on the principles and values Written or unwritten in the Constitution. Constitution is the basic norm (fundamental norm) at The top of the regulation hierarchy. It has important role in the efforts to uphold the Constitution. It also has important role as the supremacy of law in accordance with its Competence and jurisdiction. The main function of the Constitutional Court is to adjudicate Constitution cases in framework of guarding the constitution. It is also expected not only to Safeguard the Constitution but also to safeguard a stable government administration in Indonesia.

The 1945 Constitution of Republic of Indonesia stated that there are four constitutionally Entrusted powers and one constitutional obligation of The Constitutional Court. The one of the

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Four constitutionally entrusted powers is to review the laws whether suitable to or against the Constitution (Indonesia4 2003:78). The name and the authority or jurisdiction in the article 24 (2) and 24C of the 1945 Constitution , we can conclude that the Constitutional Court carries Out constitutional control through the adjudication of subject-matters that fall within its Power and organ equally. The establishment of constitutional court must also as the process of reciprocal control over the performances of the other branches of power.

The Constitutional Court independences is guaranteed under the Article 24 (1) of the Constitution. The Constitutional court should posses the power to organize the judicature in Order to enforce law and justice (Indonesia4. 2003:77). There should be no individuals or Institution intervene the Constitutional Court appropriately in implementing its duty. In other Words, the Constitutional Court must be free from outside directives.

The position of constitutional court justices

The position of Constitutional Court Justices is state officials (Indonesia4 2003:92).

Safeguards of the judiciary are provided in general term under the the Act, among others are:

- a. The Constitutional Court justices can only be investigated, arrested and detained under the order of the Attorney General after obtaining permit from the President, except if get caught red-handed in the act of the crime being sanctioned with death penalty, and /or a crime against the State's security (Indonesia4 2003:92);
- b. The protocol and financial rights of the Chief and Deputy Chief Justices, and member justices of the Constitutional court are equal to other state officials as regulated by the legislation (Indonesia4 2003:92).

In order to safeguard their position, Constitutional Court Justices has the responsibility to Manage its own organization, human resources , administration and finances in accordance with The principles of good and clean government (Indonesia4 2003:94).

The system of remuneration or income that gives security in exercising their duties, even is not Mention in the law, except by stating that the Constitutional Court Justices are State Officials. It is authorized to fill the lacunae in the law of procedure by granting the Constitutional Court a Rule making power. The tenure of 5 years and can be elected for another 5 years term if Eligible(Indonesia4 2003:97).

Furthermore, the Constitutional Court is comprises 9 (nine) justices. They shall be appointed By the President Decree of Republic Indonesia. The Supreme Court nominates 3 three Candidate of Constitutional Court Justices, the House Representative (DPR) Nominate 3 Candidate as well as President. The nomination system of the Constitutional Court is being Question by the society " How come the Constitutional Court Justices are independence if they Are nominated by those institutions?" It is very important to find out another system for Nomination of the candidate of Constitutional Court Justices in the future in order to make the Constitutional Court Justices independent and impartial. The eligibility for the nomination and Appointment of Constitutional Court Justices are limited to the candidates who fulfill the

Following requirement (Indonesia 2003:95)

- a. hold an Indonesia citizenship;
- b. hold a law degree;
- c. aged at least 40 (forty) years old at the time of appointment;
- d. have never been imprisoned based on a permanent court decision for committing a crime punishable by at least 5 (five) years of imprisonment;
- e. not declared bankrupt by court; and
- f. have the experience in the field of law for at least 10 (ten) years.

In addition that the Constitutional Court Justices must fulfill some requirement: possess a strong Integrity and good personality; just, and statesmen who have sufficient knowledge of the Constitution and state administration (Indonesia 2003:94). These qualification themselves, if Correctly possessed by the justices are ideal safeguards that can guarantee independence and Impartiality of the Constitutional Court Justices. There is a discussion about the requirement Of Constitutional Court Justices among the scholars until now. The standard of values for a Strong integrity , and good personality are not clear yet. Moreover, the Constitutional Court Justices are prohibited to hold other position such as other state officials; members of any Political parties; business people; legal advocates; or public servant (Indonesia 2003:95). I Suggest for the future justices candidate should have experience and knowledge of the Constitutional Court such as the expert assistants.

Regarding the term of office of the Constitutional Court Justices is renewable for another 1 (one) Term. It is clearly stated provision in the Constitutional Court Act (Indonesia 2003:97). The term of Constitutional Court Justices is five years and the retirement age of sixty-seven. The Constitutional Court Justices dismissal comprises into two categories ;honor and dishonor (Indonesia 2003:97). The Constitutional Court Justices will be respectfully removed when One :passes away; resigns upon a his/her own request to the chief justice of the Constitutional Court; has reached the age of 67 (sixty-seven) ; has his/her term of office ended ; or suffers from Prolonged mental or physical illness supported by a statement from a doctor. On the other Hand, the Constitutional Justice will be removed in dishonor when one: imprisoned based on a Permanent court decision for committing a crime punishable by at least 5 (five) years of Imprisonment; commits misdemeanor; fails to attend 5 (five) consecutive sessions- which is One's main duty and responsibility-without any acceptable reason; violates the oath or promise As a Constitutional Court Justice; deliberately obstructs the Constitutional Court to produce a Decision as stated in Article 7B sub article (4) of the 1945 Constitution of the Republic of Indonesia ;violates prohibition as stated in article 17 or no longer qualifies as a constitutional Court Justice (Indonesia 2003:97).

Finally, there is no a guarantee of justice except the integrity of justice itself. It seems that the Legislative realized the integrity of justice as well as it is reflected in the qualification and Eligibility of the Justice to be recruited. They are required to possess integrity and personality Without flaw , a man with statesmanship that master constitutional law and also does not assume Concurrent responsibility (Indonesia 2003:66).

Constitutional court justice roles in sociology of law perspective

Therefore, relating to the issue of the role of Constitutional Court Justices can be analyzed from M.FRIEDMAN'S three components of the legal system such as structure, substances and legal

¹ Culture (Friedman 1975:14-16). The structure of a system is its skeletal framework; it is the permanent shape, the institutional body of system, the tough, rigid bones that keeps the process flowing within bounds. We describe the structure of constitutional court when we talk about the number² of judges, the jurisdiction of courts, what people are attached to the court, and what their roles. The substance is composed of substantive rules about how institution should behave. The legal culture refers, then, to those parts of general culture: customs, opinions, way of doing and thinking that bend social forces toward away from the law.

¹ In discussion of Constitutional Court Justices' role relating to the structure component, we will discuss Justice role in accordance with regulation and in Constitutional Court Justices decisions. The substance component, we will address to regulation gives the authority of the Justice, and the Head of justices of Constitutional Court of Republic of Indonesia which will shape how to institution should behave. Moreover, the Justices role relating to the element of legal culture will also discuss legal education in Indonesia, because the resource of "legal Actor" are given birth by faculty of law. Therefore, the effort of Justice in legal culture also affected strongly by "way of thinking" as a result of the process of the system and the curriculum of the legal education in Indonesia. And of course, "the way of thinking" of the legal actors extremely affects their way of doing.

¹ In the discussion about the Constitutional Court Justice role in the structure component, in brief, we will discuss the essential structure of Justices and Chief of Justice. The number jurisdiction, privileges, and salaries of the Chief of Justices, the Deputy Chief Justices, and the Justices are usually the same. In fact, the total number of Justices of Constitutional Court of Republic of Indonesia is nine. If we compare of the number of Constitutional Court Justices in other countries such as Thailand, Taiwan and South Korea which have fifteen Justices, the total number of the Justice in Indonesia is small in number, especially if we compare to the total number of population. There is also a different between the Chief of Justices, the Deputy Chief Justices, and other justices in term of salaries, facilities and voting rights. Every Justices has one man one vote, except for the chief of Justices has two voting rights.

The role of the constitutional Court Justice is very important in order to achieve justice and social welfare for the nation. Based on the purposes of the establishment of the Constitutional Court above, the Constitutional Court Justices must possess a strong integrity and good personality, just, and statesman who have sufficient knowledge of the Constitution and state administration.

In the mean time most of Indonesian sees that condition of law and the enforcement of law is very confusing. There is no rule of law in Indonesia. The condition rule of law, enforcement of law and personal of law in Indonesia is desperate but not hopeless (Budiarjo et al 1999:ii). It takes time and process to create democracy with liberty, equality before the law, to safeguard the Constitution, a stable government administration and human rights. It is a hope that the revision of the 1945 constitution of the Republic of Indonesia has determined the institution for creating democracy. There is another aspect that should be paid attention is the human resources. The purpose of the rule of law and democracy could be achieved by working hard, cooperation hand by hand among the stockholders such as apparatus, law enforcers, businessman, and Indonesian people other ways the rule of law and democracy is only a dream.

¹ The present opinion of Indonesia public is very much disappointed with court services. It

considers the courts of judges as having failed to fulfill their hope as the last resource or the last bastion against injustices. In fact, court cases are conducted inefficiently, and adjudication procedures are not transparent. This result in this respect towards the judicial system and the accusation that many judges are politicized and corrupt.

A very important breakthrough was made recently in the selection of the constitutional Court Justices. The nomination of Constitutional Court Justices shall be conducted in transparent Participatory manner. The candidate should be aged at least (40) forty years old, have Never been in prison on permanent court decision for committing a crime punishable by at least 5 (five) years of imprisonment, no debt bankrupt by the court and have the experience in the Field of law for at least 10 (ten) years. Therefore, it is permitted for one with no experience as A career-judge to be appointed Justices, ¹ in this case, for a justice candidate who is not a Career-judge. Six of the nine Justices are not career justices, but coming from the circle of "professor of law" and one of the retired army general and house of representative's member.

In general, Indonesian people put higher expectation toward the role of the Constitutional Court Justices to produce a just, fair and impartial trial. Since the justices are veteran and qualified people in the field of law mainstreams. This can be seen from the application submitted to the Constitutional Court. In 2003 there are 24 cases for judicial review. Moreover, on December 2004 there are 69 cases for judicial review, and followed by 297 cases of dispute on the result of general election (Table 1).

Table 1. Total Cases Accepted by Constitutional Court

Year	Judicial Review	Granted	Denied	Rejected	General Election	Granted	Denied	Rejected	Total
2003	24(14)	2	20	2					24
					229	25	110	94	297
2004	68								321

Sources: Constitutional Court Republic of Indonesia

¹ In according with regulation, as mentioned above, indeed, sufficient role have taken place, as seen from new revision of the 1945 Constitution of the Republic of Indonesia, the Act of Number 24 of 2003 on the Constitutional Court of Republic of Indonesia, Presidential Decree Number 147/M/2003, and Constitutional Court Regulation (Indonesia 1. 2003:1).

One of the regulation leading progresses is on the Constitutional Court Justices role such n the formulation has been made to cover the Constitutional Court Justices are competent to adjudicate in the first and final instance cases that are brought before it, and they are:

- a. review of the constitutionality of a law
- b. dispute over the authority of the States' organ conferred upon by the constitution;
- c. dispute over the dissolution of political party
- d. dispute over the opinion of the House of representatives that the President and/or Vice President is being presumed to have committed violation of the law. i . e. treason, corruption, bribery, other serious crime or disgraceful deeds, and/or being no more eligible to be President and/ or Vice President as stipulated under the 1945 Constitution.

All subject mater mentioned above are legal disputes that have to be heard, adjudicated and decided by the Constitutional Court Justices, and its decision is final once it has been pronounced in open trial. The decision is final, since there is no more appeal or possible review in the system and the decision become

Res Judicata there are also arguments among scholars and Justices, that for the last mentioned subject matter under the Jurisdiction of the Constitutional Court, the decision is not a final. It requires the Peoples Assembly in a believe that the decision of Constitutional Court is final in terms of the inexistence of appeal It is worth mentioning here, that majority of 2/3 votes out of 3/4 present members. Many people believe that the decision of Constitutional Court final in terms of the inexistence of appeal and review. But the process in the Peoples Assembly is another matter which is political in nature.

The establishment of the Constitutional Court since the appointment of Constitutional Court Justices on August 2003, which is regarded as historical moment for the Republic of Indonesia, was determined by the President Decree Number 147/M/2003.

in the substance component, the focus on how the institution should behave. Constitutional Court has difference from the point of Justices of General Court, Appeal Court and the Supreme Court in Indonesia. Constitutional Court examines and hold trials at the first and final stage and will produce final decisions (Indonesia5 2003:93). The Constitutional Court became a Judex Factie as well as Judex Juris. The examination in the trial of Constitutional Court will give a chance for the parties to response toward the application. The parties in the Constitutional Court consist of the applicant and others who has related matter toward the application is being examined. institution such as The application should be in 12 copies which will be distributed to the other Supreme Court, DPR (House of Representative), and President if it is judicial review of laws against the 1945 Constitutional of Republic of Indonesia.

Constitutional Court will set the date of the first session at the latest 14 working days after the application is recorded in the registration Book of Constitutional Cases (Indonesia5 2003:101) and the determination of the first session will be notified to the parties and announced to the public. The public announcement is done by posting the copy of notification on a announcement board dedicated to such a purpose at the Constitutional Court. Before carrying out an examination of the case, Constitutional Court verifies the adequacy of materials and clarifies of the applicants. In the first session, only the applicant attendance is needed. The Constitutional Court Justice is obliged to advice the applicant to complete and/or fix the application at the latest 14 (fourteen) days (Indonesia5 2003:101). It is obligation of the Constitutional Court Justice to advice or informs the applicant about the formal and material requirement of application. The Constitutional Court Justices will reject the application if it is not completed. The 14 days for completion can be enforce toward judicial review of law toward constitution as well as dispute among state institutions which is not strictly set the time frame for the decision. which is the time frame for the decision is set. One of the characteristics of the Constitutional Court decision is to state that the decision based on law should be according to two evidences and Justices discretion. Based on the two evidences and the Justices discretion will consider in favor of the application. consideration toward the application and the decision will take place after the Justices establish plenary session. In case where deliberation of Constitutional Court Justices during the plenary session fails to reach a consensus, the session will be adjourned until the next Constitutional Court Justices' plenary session. But if consensus cannot be reached through agreement in the plenary session of Constitutional Court Justices, then the decision will be made means of voting. Moreover, in case where the consensus cannot be attained by means of Moreover, for other cases such as disputes on the results of general election, The Justices submit their consideration or written opinion or a mutual by voting in the plenary session of the Constitutional Court Justices, the final decision will be determined by the Chairman of the Constitutional Court of Justices' plenary session. The dissenting views of member justices must be mentioned in the decision (Indonesia5 2003:104).

Legal culture is one of three components which influent of the Constitutional Court Justices role, having equal important as the other two components. Legal culture is very important aspect among the three components, because it has strong influence toward the Justices role and the court behavior. Indonesia. The curriculum of law faculty adopted in Indonesia, the content of which does not already fully support

the process of renovating the legal paradigm into a reformist paradigm. The curricula of law faculties of today One of the sectors of legal culture is the law faculties (law schools) throughout are not tailor to accommodate the basic reform of the legal system after independence. This does not mean that no effort has been made to make such a reform; rather, the reforms are not comprehensive and systematic enough to match the great change in legal system (Rahardjo 1994:150). All of this form the mind set of the Justices.

Conclusion

The Indonesian Constitutional Court was established in August 2003 as the result of reformation of the people's especially students successful for the struggle for Democracy in 1998. The Constitutional Court is to create the checks and balances among legislative, executive and judicative. In the previous followed by the era where the legislative was strong as the consequence that the executive/president era (New order era/ Suharto) the government was so strong and easily impeach by the DPR (House of Representative). It is expected that the role of justices to create democracy with liberty, and equality can be achieved and will play safeguard a stable government administration, human rights through fair and impartial over unjust attempt and pressure from outside especially from the political sector, and the executive. There are three aspects influence the role of Constitutional Court Justices such as substance, structure and legal culture.

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FOREST CERTIFICATION IN INDONESIA: WILL IT INSPIRE REDUCING THE DEFORESTATION? Eli Nur Nirmala Sari

ABSTRACT: Certification has been underway in Indonesia for about 11 years. It should be a challenge for Indonesia, as Indonesia based on a colonial model of forestry which denied customary rights, arrogated all forest lands to the State and allowed them to be leased it in concessions to commercial operators. Large amount of forest concessions holder and plantation forest companies in Indonesia,

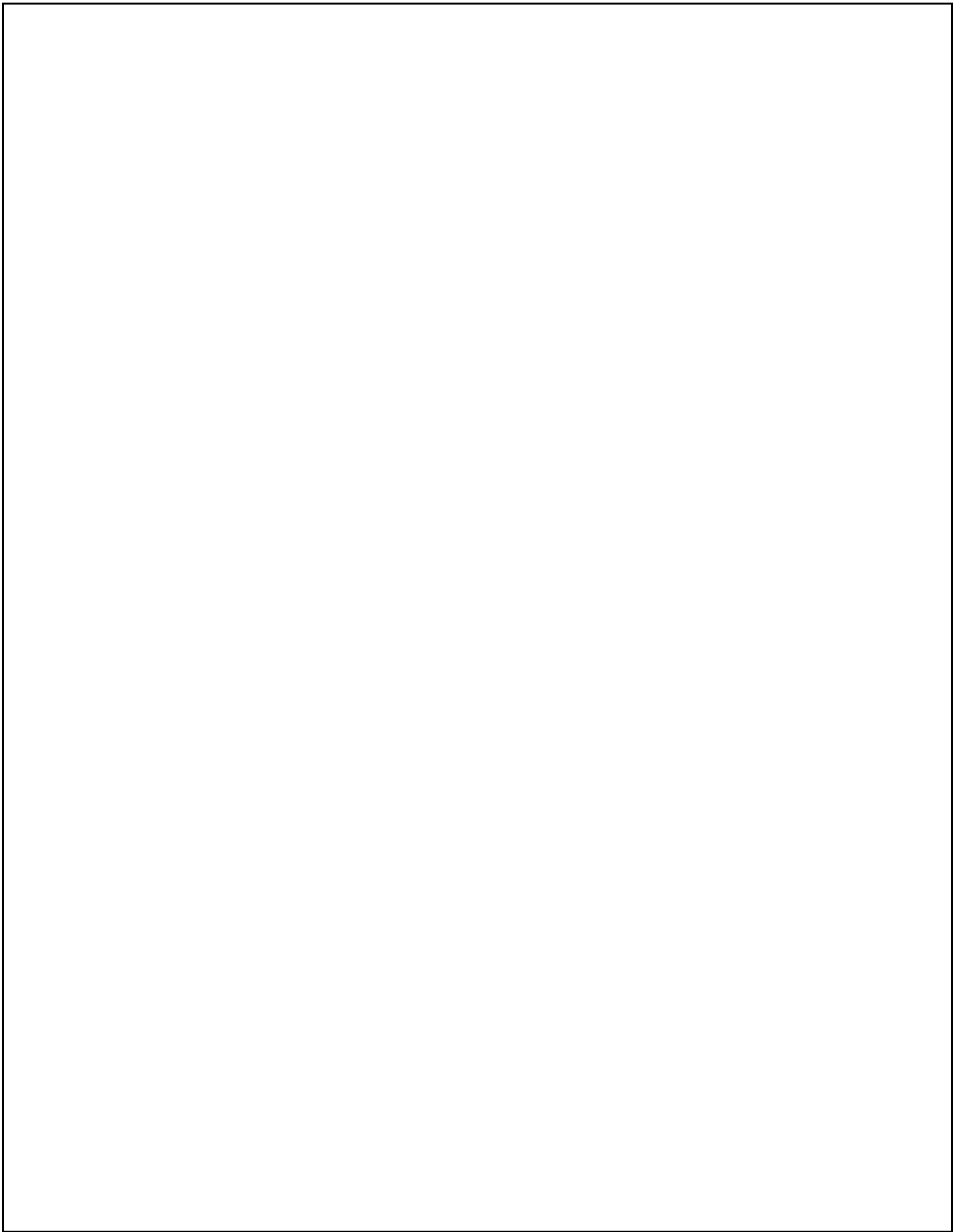
but plenty amount of the company who is getting the forest certification. Although the concept of certification is well known in Indonesia, it is often misunderstood. This problem is compounded by current chaos in the countries forestry sector, reflecting confusion around decentralization, forestry resource rights and political uncertainty. There lots of challenge for obtaining the forest certification in Indonesia such as difficult external environment that includes inconsistent government policy, deforestation that caused by lots of factors, poor law enforcement and corruption. The existence of forest certification is one of the tool for reducing the deforestation, but in fact, after the certification is underway about 11 years in Indonesia, the amount of certified forest is small, such as for the sustainable natural production forest is 0.24 % of total forest area managed by forest concession holders. The deforestation especially caused by illegal logging still could be found in a huge number in Indonesia, and it takes time for proving that forest certification is an effective tool for reducing the deforestation.

KEYWORDS: Indonesia, forest certification, deforestation

Introduction

Based on Indonesian Forest Department in 2005, forest area in Indonesia is about 133,128,000 hectares, and from that area, only 83,892,000 hectares or 63 % area is covered by forest, meanwhile in 1966, seventy five percent of total Indonesia area or 144 millions hectares of Indonesia territory were still covered by forest. From the remainder forest area, there are 376 Natural Forest Concessions Holder with the total area is 38,294,364 hectares, and 227 Industrial Forest Plantation with the total area is 9,586,808 hectares (Forest Department, 2005). The existence of forest concession holders is purposed for maintaining the sustainable forest in Indonesia, but in fact, lots of forest concession holder in Indonesia is against the law of Indonesian Selective Cutting and Planting System at that time (FWI &GFW, 2003). This pushed the deforestation. Deforestation in Indonesia is started in the seventies. The deforestation is caused by illegal logging, illegal land clearing, and pushed by large-scale forest fire in 1997-1998, economic crisis and the collapse of politics competence and weakness of law enforcement. Lots of causes of deforestation could be discovered physically and are found as a focus for the research for ecologically destructions minimize purposed. But, not all of the causes of degradation and forest directly and clearly mentioned, as social process and economic policy destructions are are playing important role also.

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