

## ANALYSIS OF NEW PALM OIL LAND CLEARING PERMITS IN SUBULUSSALAM CITY FROM THE PERSPECTIVE OF *MILK AL- DAULAH*: A Study on the Encroachment of Leuser Forest Area, Indonesia

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### Abstract

On the island of Sumatra, several provinces have made palm oil a superior commodity, including Aceh Province. Therefore, many people in the Subulussalam region and various parties want to invest in the palm oil agribusiness sector, as a result, various unproductive lands have turned into palm oil lands. The function of the forest, which is the lungs of the earth, is disrupted due to the use of forest areas that are converted into economic land, which of course has a long-term effect on the destruction of the forest itself, which makes the condition of the forest soil will also deteriorate due to the use of fertiliser substances. This study aims to examine and analyse the problem with theoretical and practical approaches regarding the use of the Leuser Forest Area (KEL) as land for oil palm plantations. The research method used is a qualitative research method with a descriptive-analytical approach, data collection techniques are carried out by interview and documentation as well as literature review and regulations related to this research. The results showed that the process of forest encroachment that occurred in the Leuser forest area in Subulussalam City was an illegal activity, because the community cleared oil palm land without going through licensing procedures. Currently, there are approximately 20,000 hectares of illegal oil palm land cleared by residents that have been disciplined. The review of the concept of milk al-daulah on the issue of new palm oil land clearing by the community in the Leuser Forest Area (KEL) is contrary to the concept of milk al-daulah.

**Keywords:** Leuser Ecosystem Area (KEL), Oil Palm Plantations, and Milk Al-Daulah

### **Abstrak**

Di Pulau Sumatera, beberapa provinsi telah menjadikan kelapa sawit sebagai komoditas unggulan, termasuk Provinsi Aceh. Oleh karena itu, banyak masyarakat di wilayah Subulussalam dan berbagai pihak yang ingin berinvestasi di sektor agribisnis kelapa sawit, akibatnya berbagai lahan yang tidak produktif berubah menjadi lahan kelapa sawit. Fungsi hutan yang merupakan paru-paru bumi menjadi terganggu akibat pemanfaatan kawasan hutan yang dialihfungsikan menjadi lahan ekonomi, yang tentu saja berdampak jangka panjang terhadap kerusakan hutan itu sendiri, yang membuat kondisi tanah hutan juga akan semakin rusak akibat penggunaan zat-zat pupuk. Penelitian ini bertujuan untuk mengkaji dan menganalisis permasalahan dengan pendekatan teoritis dan praktis mengenai pemanfaatan Kawasan Hutan Leuser (KEL) sebagai lahan perkebunan kelapa sawit. Metode penelitian yang digunakan adalah metode penelitian kualitatif dengan pendekatan deskriptif analitis, teknik pengumpulan data dilakukan dengan wawancara dan dokumentasi serta studi kepustakaan dan peraturan-peraturan yang berkaitan dengan penelitian ini. Hasil penelitian menunjukkan bahwa proses perambahan hutan yang terjadi di kawasan hutan Leuser di Kota Subulussalam merupakan kegiatan ilegal, karena masyarakat melakukan pembukaan lahan kelapa sawit tanpa melalui prosedur perizinan. Saat ini, ada sekitar 20.000 hektar lahan sawit ilegal yang dibuka oleh warga yang telah ditertibkan. Tinjauan konsep *milk al-daulah* terhadap permasalahan pembukaan lahan sawit baru oleh masyarakat di Kawasan Hutan Leuser (KEL) bertentangan dengan konsep *milk al-daulah*.

**Katakunci:** Kawasan Ekosistem Leuser (KEL), Perkebunan Kelapa Sawit, dan Milk Al-Daulah

### **INTRODUCTION**

On the island of Sumatra, several provinces have palm oil as a leading commodity, including Aceh Province. In this study, the research sample area is the city of Subulussalam, which has a large area of oil palm plantations in Sultan Daulat, Simpang Kiri, Penanggalan, Runding, and Longkib sub-districts. With this oil palm plantation, it is able to increase the income and *income of the community*, especially entrepreneurs engaged in oil palm agribusiness. Therefore, many people in the Subulussalam region and various parties want to invest in the palm oil agribusiness sector, as a result various unproductive land has turned into palm oil land. , so that the palm oil plantation sector is growing in the city of Subulussalam.

This poses a clear threat to the protected forest population within Subulussalam City, which is adjacent to the protected forest area of Mount

Leuser. The more people interested in oil palm plantations, the more land is needed to open new oil palm plantations. Therefore, the community chooses the leuser forest area to be cleared as a plantation area. The use of forest areas for commercial purposes disrupts the forest's function as the earth's lungs. This of course has a long-term impact on the destruction of the forest itself, causing forest soil conditions to deteriorate due to the use of fertiliser substances.

In fact, *land* use in the leuser protected forest area by *clearing* new land that was previously overgrown with trees, weeds and biodiversity in it, will threaten the existence of the protected leuser area. Land clearing by unauthorised communities will exacerbate forest degradation and directly threaten the sustainability of the leuser ecosystem, destroying the habitat of rare animals and other living creatures. It is clear from the government's regulation that the Leuser area is a protected area for forest conservation and is also the lungs of the world. The government has permanently determined that the Leuser area is a state-owned area that is protected by legal provisions in the form of laws and other implementing regulations.

State property, also known as *milk al-daulah*, is the right of all people or public property whose use and management are for the benefit of public welfare and public interest. All wealth and ownership spread over the territory of the country that is under the jurisdiction and jurisdiction of a state is referred to as state property.<sup>1</sup> State property (*milk al-daulah*) is public property controlled by the state, which also has full management and control authority over it.<sup>2</sup>

According to fiqh muamalah, state property (*milk al-daulah*) is collective property that is utilised for the common good and benefit. In accordance with local regulations, the state and the community can work together to utilise state milk. The use of such resources must not cause harm, be arbitrary, infringe on the rights of others, or make it private property by preventing others from using it<sup>3</sup>

Assets are conceptually separated into two categories: state-owned assets, also known as *milk al-daulah*, and privately owned assets. State property, according to Al-Kailani, is defined as property belonging to the

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<sup>1</sup> Abdullah Abdul Husein at-Tariqi, *Islamic Economics Principles, Foundations, and Objectives*, (Yogyakarta: Magisra Insania Press, 2004), p.58.

<sup>2</sup> Sholahuddin, *Principles of Islamic Economics*, (Jakarta: PT. Grafindo Persada, 2007), p.114.

<sup>3</sup> Nasrun Haroen, *Fiqh Muamalah*, p. 79.

people that is used for social welfare and public interest. This ownership includes all wealth within the borders of the state and its jurisdiction, both above and below the surface of the earth.

The right to manage state land entails a number of powers, duties and restrictions that limit the ability of the right holder to do anything with the land. Basic Agrarian Law Number 5 of 1960 regulates the authority to manage state-owned land. Islamic law basically permits the use of state-owned land for the benefit and welfare of the people, as well as providing them with the opportunity to access sources of income that fulfil primary and secondary needs.<sup>4</sup> Shari'ah law should not be violated in any way that causes harm to others. The Provincial Government has direct authority over management, in accordance with the protection system under Law (UU) No. 23/2014 on Regional Government in the Management of Forest Areas (Protected Forest and Production Forest). Meanwhile, the Indonesian Ministry of Environment and Forestry is in charge of protecting forest areas such as the Singkil Wildlife Reserve.

In general, there are areas of state-owned land in each region. The area of Subulussalam City contains some state-owned or state-controlled areas. As state land is used for public purposes, it is officially illegal for individuals to manage it. According to the author's statistics, the Leuser forest area spans two provinces, Aceh Province and North Sumatra Province, and has a total area of 2.6 million hectares. The area included in Aceh Province is 2.2 million hectares.

Especially in the Singkil Wildlife Reserve, a peat forest included in the Leuser Ecosystem Area (KEL) which spans 102,500 hectares in three districts/cities: Subulussalam City, South Aceh, and Aceh Singkil District. Around 3,177 hectares are part of the Singkil Wildlife Conservation Area, which is part of Subulussalam City.<sup>5</sup>

Especially in Subulussalam City, there are areas that are included in the leuser forest. This of course cannot be separated from the encroachment of the leuser forest by the surrounding community. This is done for several reasons, one of which is because there is no public awareness of the importance of forest conservation. One example of encroachment in Subulussalam City is located in Pasir Belo village, Sultan Daulat sub-district, where at least 14.6 hectares of

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<sup>4</sup> Abdullah Abdul Husein At-Tariqi, *Islamic Economics, Basic Principles, and Objectives*, (Terj. M. Irfan Sofwani), (Yogyakarta: Magistra Insania Press, 2004), p. 58.

<sup>5</sup> <https://leuserconservation.org/keanekaragaman-hayati-subulussalam-menunggu-punah>(Accessed on 3 July 2022)

illegal palm oil have been destroyed.<sup>6</sup> This data was obtained directly from the Leuser Sustainability Forum (FKL) which is also based in Pasir Belo village, precisely on the banks of the Soraya river.

With regional offices in Langsa, Tapak Tuan and Kuta Cane, Forum Konservasi Leuser (FKL) is a non-governmental organisation (NGO) based in Banda Aceh. Its 26 teams are tasked with conducting 15 patrols each month in the Leuser ecological area of Aceh Province. Ketambe research station in Southeast Aceh, Suak Belimbing research station in South Aceh, and Soraya research station in Subulussalam are the three research stations currently active in the Leuser ecosystem.<sup>7</sup>

The existence of the Leuser Conservation Forum is highly appreciated by the communities around the Leuser forest area. In addition to preventing land encroachment, this organisation also focuses on the survival of the flora and fauna in the Leuser forest. The community also hopes that related agencies such as the forestry service and the forest rangers will help guard and monitor the leuser forest as much as possible. So far there are not many cases of encroachment around the leuser forest due to frequent routine patrols by the authorities.<sup>8</sup>

## RESEARCH METHODS

The author used qualitative research in this study. Qualitative methods concentrate on the significance, value, and interpretation of the data collected to obtain a thorough understanding of events.<sup>9</sup> In the context of this research, a qualitative approach is applied to study the analysis of new palm oil land clearing permits in Subulussalam City in the perspective of *milk al-daulah*.

This research uses a descriptive-analytical research design. The purpose of descriptive research is to present an accurate and comprehensive picture of the research subject. The licensing of additional oil palm land establishment in Subulussalam City from the perspective of *milk al-daulah* is the subject of this research.

Descriptive-analytical research not only describes facts, but also analyses and interprets these facts based on relevant theoretical frameworks.

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<sup>6</sup> <https://mediaindonesia.com/nusantara/214239/lahan-sawit-di-kawasan-hutan-lindungdestroyed> (accessed 31 January 2019).

<sup>7</sup> (<https://hutanitu.id/para-penjaga-hutan-leuser/> Accessed on 25 October 2020)

<sup>8</sup> Interview with Puspa Oktavia as a community member of Pasir Belo Village, Sultan Daulat Sub-district, Subulussalam City via whatsapp on 1 August 2023.

<sup>9</sup> Lexy Jennis Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2018), p. 157. 157.

In this context, the researcher describes the feasibility analysis carried out by the Subulussalam City Plantation Service authority on the request for oil palm land clearing, the supervision carried out by the Subulussalam City Plantation Service authority on oil palm land clearing, and the perspective of Milk Al-Daulah on these issues.

Primary and secondary data are the data used in this study. Primary data is information collected directly from the source, such as through observation, interviews, or written reports which are then analysed by researchers. Informants are members of the Plantation Service of Subulussalam City, which is the main source of data for this research. Secondary data is information collected personally by researchers to enhance primary data. It can also be described as a data source that can offer more information or data that can strengthen primary data.<sup>10</sup>

The data collection techniques used were interviews and documentation. Interview and documentation techniques are appropriate methods for empirical research, because they allow researchers to explore various information from the source, both respondents and informants. In this study, researchers also studied classical fiqh books, in order to understand the concept of *milk al-daulah*. In addition, this research also examines contemporary literature, such as fiqh muamalah books and journals that discuss palm oil land clearing permits in the perspective of *milk al-daulah*. The data obtained is then analysed descriptively and linked to the theory of fiqh muamalah.

## **RESULTS AND DISCUSSION**

### **A. Oil Palm Plantation Business Licence According to Laws and Regulations**

Land can be used for business development by oil palm plantation companies that have been approved for investment. These businesses require a location permit. Therefore, they are not allowed to purchase land before receiving a location permit, with the exception of land required for agricultural business operations, which cannot exceed 25 Ha.

A decree issued by the mayor or regent authorises the location permit if the site is within the city or regency. The governor signs the decree if the location is outside the province. The Minister of Agrarian Affairs and Spatial Planning or the Head of the National Land Agency signs the decree if the

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<sup>10</sup> Sumardi Suryabrata, *Research Methodology*, (Jakarta: PT. Raja Grafindo Persada, 1997), p.84



location is outside the province. The governor or regent will issue a decree letter.

If the location permit contains additional rights and interests, it is granted as part of the land purchase procedure. In accordance with the terms of the agreement, the location permit holder is authorised to purchase land. In accordance with relevant laws, land acquisition may be carried out through sale and purchase, compensation, land consolidation or other methods. The holder of the location permit is responsible for enforcing all rights that existed before obtaining the permit, and none of the rights are weakened or reduced.

Authorised officials must grant Plantation Business Licences to plantation companies that have obtained land rights. Oil palm plantations of 1,000 hectares or more must be paired with a plantation product management industry company in addition to the Plantation Business Licence.

Oil palm cultivation businesses are granted a plantation business licence by the regent or mayor if the land is within the same regency or city if the land is outside the regency, the plantation business licence is granted by the governor.

Referring to the Plantation Law No. 39 of 2014, the oil palm plantation licensing process must pass through at least 9 (nine) stages, which consist of the following processes:<sup>11</sup>

- a) The regent/mayor or governor must grant a location permit to prospective investors, businesses, or cooperatives (if the location is within two regency/city administrative areas).
- b) The Directorate General of Plantations or plantation agencies must provide technical investment recommendations to investors using investment facilities.
- c) The governor or regent/mayor is obliged to grant a major investment licence to the investor. After obtaining the location permit, the second and third chains may be eliminated if the potential investor does not utilise the investment facility.
- d) Prospective investors must apply for a forest area release permit from the Ministry of Environment and Forestry if the location is within an area designated as Production Forest (HP) or Convertible Production Forest

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<sup>11</sup> Syahrul, "Improving the Governance of Oil Palm Plantation Business Licensing in Aceh", *Kanun Journal: Journal of Legal Science*, Vol 20 No 2, 2018, p.344.

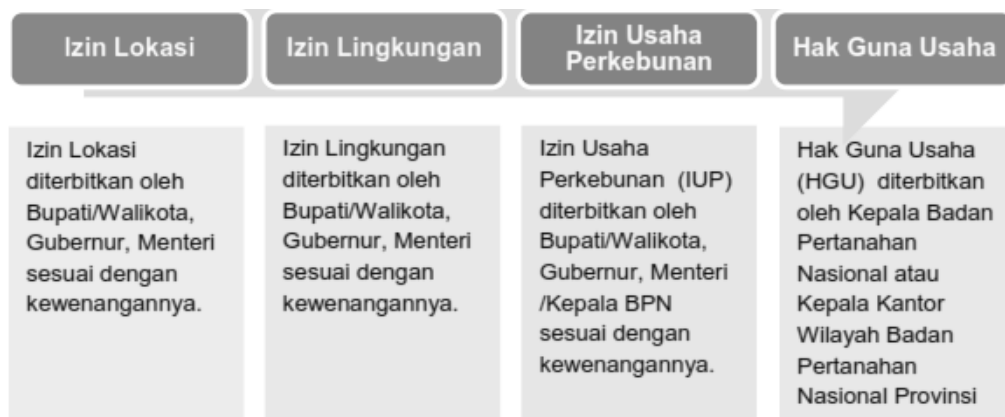
(HPK). This procedure can be omitted if the location is in an Area for Other Uses (APL).

- e) Environmental permit processing using UKL/UPL or AMDAL research documents.
- f) Supervise plantation business licences (IUP), crop cultivation (IUP-B), and processing (IUP-P).
- g) Cadastral measures to be recorded as validity of the Cultivation Rights Title certificate.

For oil palm plantation companies based in Indonesia and established in accordance with Indonesian law, HGU is granted by the Central Land Agency (BPN) for land larger than 200 hectares or by the Head of the Provincial BPN for land smaller than 200 hectares. If the land to be used for the HGU already has rights or belongs to other parties, those rights must first be acquired or relinquished. If there are buildings or plants on the land, the new right holder is required to pay the owner of the land.

Furthermore, Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 2 of 1999 limits the amount of land that can be granted location permits for HGU in the plantation sector. The maximum area for each province is 20,000 hectares, with the exception of 60,000 hectares for sugarcane. With the exception of sugarcane, all commodities in Indonesia have a large-scale land holding size of 100,000 hectares, while for sugarcane, it is 150,000 hectares. Based on the above, the following chart illustrates how oil palm plantation licences are processed:

**Flowchart of Palm Oil Plantation Business Licensing Process**





Based on the flowchart of the oil palm land clearing licensing process above, it is known that there are 4 (four) general stages that must be fulfilled, namely location permit, environmental permit, plantation business permit, and issuance of business use rights by the National Land Agency (BPN).

The total area of the Leuser Forest is 2.6 million hectares, spanning two provinces, Aceh and North Sumatra. The area included in Aceh Province is 2.2 million hectares. Specifically in Subulussalam City, there are areas that are included in the Leuser Forest. This, of course, cannot be separated from the encroachment of the leuser forest by the surrounding community. This is done for several reasons, one of which is that there is no public awareness of the importance of forest conservation.

Based on the results of the research, it was found that the encroachment of the Leuser forest into oil palm plantations by the community is an illegal act that does not go through the licensing process. Currently, the Plantation Office of Subulussalam City is conducting field observations and curbing the plantation land illegally cleared by the community.

Furthermore, encroachment carried out by the community on average with an area of land above 5 hectares, if referring to the regulations on the utilisation of forest areas above 5 hectares, must have a Cultivation Rights Title. The eligibility procedures carried out by the Subulussalam City Plantation Office for requests to open new oil palm land are as follows:

a) Location permit processing

A location permit is a document that allows a business to acquire property necessary for its operations. It can also be used to transfer rights and utilise land for its operations. Location permits for land clearing in the Leuser forest area of Subulussalam City are issued by the Mayor of Subulussalam City because the Leuser forest area is territorially located within the administrative area of Subulussalam City, so the authority to issue location permits is the Mayor of Subulussalam City.

b) Environmental Permit

Every person who conducts business or activities that require an EIA or UKL-UPL in the context of environmental management and maintenance is granted an environmental permit, which is a condition for obtaining a business or activity permit. In the case of new oil palm plantation land clearing in the Leuser forest area of Subulussalam City, the location permit is issued by the Mayor of Subulussalam.

c) Plantation Business Permit (IUP)

Companies engaged in plantation cultivation and those engaged in processing plantation products must have a plantation business permit which is an official permit from the authorised agency. IUP permits for new oil palm plantation land clearing in the administrative area of Subulussalam City are issued by the Mayor of Subulussalam.

d) Issuance of Cultivation Rights

The issuance of Cultivation Rights Title (HGU) is the granting of permission to certain parties to utilise state land or customary rights. Since the Leuser forest area is a forest area controlled by the state, it requires the issuance of a Cultivation Rights Title (HGU), which is issued by the Head of the Regional Office of the National Defense Agency of Aceh Province (Kanwil BPN Aceh).

There are 4 (four) stages in the process of permitting the utilisation of new oil palm land clearing in the Leuser Protection Forest area, all of which are in accordance with the provisions of the legislation, starting from the application for location permit to the issuance of HGU by the Aceh Provincial BPN Office. After the relevant parties fulfil a series of licensing procedures, there is one final stage, namely the *land clearing* stage, which is a written permit from the Mayor of Subulussalam for the land clearing of oil palm plantations in the Leuser Protection Forest area. Recommendations regarding *land clearing* include considering competitive factors and environmental carrying capacity, limiting land allocation, and eliminating land in commercially valuable forest areas that require IPK.

Based on the data, it was found that the process of forest encroachment that occurred in the Leuser forest area in Subulussalam City was an illegal activity, because the community cleared the oil palm land without going through the licensing procedures as specified in the laws and regulations, and the community that encroached on the Leuser forest area did not have a HGU certificate. Currently, the relevant authorities of Subulussalam City in collaboration with several non-governmental organisations and environmental activists are working to control the Leuser protected forest area that has been converted into oil palm plantations. This is done to restore the function of the Leuser ecosystem. Prior to the crackdown, socialisation was conducted to residents that the existence of oil palm plantations in the Leuser forest area is a violation of the law. This is because it can eliminate the function of protected forests that are very useful for the sustainability of life on earth.

## **B. Legal Analysis of Palm Oil Plantation Land Clearing in Protected Forest Area in Subulussalam**

Law No. 41/1999 on Forestry (Forestry Law) allows the use of protected forest and production forest areas for development purposes other than forestry activities without changing the forest area designation. Under the Forest Area Borrowing and Use Permit (IPPKH), mining companies are allowed to use forest areas for purposes other than forestry, provided that open-pit mining is not permitted there.<sup>12</sup>

Therefore, activities outside forestry are prohibited by the Forestry Law, except mining. After the release of forest land, additional forest areas can be used for crops and other purposes. Regulations governing the release of forest areas include Minister of Environment and Forestry Regulation No. P.51/Menlhk/Setjen/KUM.1/6/2016 on Procedures for the Release of Convertible Production Forest Areas and Government Regulation No. 104/2015 on Procedures for Changing the Designation and Function of Forest Areas.<sup>13</sup>

According to Article 2 of the Minister of Environment and Forestry Regulation No. P.51/Menlhk/Setjen/KUM.1/6/2016, only convertible Production Forest (HPK) can be released for development purposes outside forestry activities. Under the following conditions:

- a) Forest Protection Forest (HPK) operates in accordance with laws and regulations;
- b) No fees are charged for forest area use permits, forest utilisation permits, or other permits from the minister;
- c) unproductive, except in provinces where unproductive HPK areas have been closed; and
- d) Located in provinces with more than 30% forest area.

Ministers or ministerial-level officials, governors, regents, mayors, heads of business entities or legal entities, individuals, groups of people, or

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<sup>12</sup> Muhammad Dila Putra and Muazzin, "State Responsibility for the Transfer of Function of the Leuser Ecosystem Area", *Student Scientific Journal of State Law*, Vol 4 No 2, 2020, p.98.

<sup>13</sup> Eko N Setiawan, et al, "Conflict between Forestry Spatial Planning and Regional Spatial Planning (Case Study of Unprocedural Forest Area Use for Palm Oil Plantation in Central Kalimantan Province)", *BHUMI: Journal of Agrarian and Land Affairs*, Vol 3 No 1, 2017, p.66.

communities may apply to the minister through the Head of the Investment Coordinating Board (BKPM) for the release of HPK areas for commercial use.<sup>14</sup>

With the minister's approval, the Head of Investment Coordination issues a Decree on the Release of HPK Area for oil palm plantation business activities. Article 14 of the Minister of Environment and Forestry Regulation No. P.51/Menlhk/Setjen/KUM.1/6/2016 states that the person in possession of this decree shall:

- a) complete the boundary demarcation of the released HPK area, supervised by the Forest Area Consolidation Centre; and
- b) ensure the security of the released HPK areas.

Except for initial activities such as nurseries, measurement of infrastructure facilities, and construction of the board of directors' office, the holder of the HPK Area Release Decree is not allowed to transfer the released HPK area to other parties or conduct activities within the released HPK area. After the HPK Area Release Decree is issued, the HPK area boundary demarcation must be completed within a maximum of 1 (one) year and cannot be extended. The boundary demarcation of the released HPK area has been completed, as indicated by a boundary map and boundary demarcation minutes. A Decree on the Boundary Arrangement of the Released HPK Area is then issued by the Director General on behalf of the Minister.<sup>15</sup>

The Decree on the Release of HPK area is considered cancelled and the area remains a forest area if the holder cannot fulfil the required HPK area boundaries (Article 16 paragraph (4)). Based on the above requirements, oil palm plantation businesses in forest areas are only allowed in HPK areas that have been released with ministerial approval and stipulated by a Decree of the Head of the Investment Coordinating Board. The holder of the HPK Area Release Decree must first complete the boundary demarcation of the HPK area based on the Director's Decree before it can start activities such as planting on the released HPK area.<sup>16</sup>

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<sup>14</sup> Susanti, A., "Jangka Benah: An Alternative Solution to the Issue of Monoculture Oil Palm Plantations in Forest Areas", *Journal of Forestry Science*, Vol 15 No 1, 2021, pp. 8.

<sup>15</sup> Arif Irawan, et al, "Analysis of Community Perception and Behaviour towards the Existence of KPHP Model Poigar Area", *Journal of Forestry Social and Economic Research*, Vol 14 No 1, 2017, pp. 75

<sup>16</sup> Dwimas Suryanata Nugraha and Suteki, "The Legal Politics of Handling Plantation Conflicts by Socially Just Governments", *Kanun Journal of Legal Sciences*, Vol 20 No 1, 2018, p.65

Permits are only granted for non-forestry activities carried out in forest areas, with the exception of mining, which is allowed with a Borrow-to-Use Forest Area Permit (IPPKH), after a review of the laws and regulations relating to the utilisation and use of forest areas. Therefore, without proper permits, oil palm plantations in forest areas constitute forest utilisation. Article 50 paragraph (3) letter a of the Forestry Law states that every person is prohibited from cultivating, utilising, or occupying forests. In fact, the Forestry Law provides a maximum fine of Rp 5,000,000,000.00 and a minimum prison sentence of 10 years for violators.<sup>17</sup>

In fact, it is not uncommon for oil palm plantation permits to be accompanied by forest area use and utilisation permits, or when oil palm plantation land is located within forest areas. According to the Corruption Eradication Commission (KPK), 349 ha of Indonesia's oil palm plantations overlap with IUPHHK-hectares, and 534,000 ha overlap with IUPHHK-HTI. The findings of a review of the rules and policies governing the plantation licensing supervision system indicate a number of problems in ensuring compliance by plantation businesses.

The Plantation Law stipulates that plantation planning should be the basis for allocating plantation agriculture business areas. According to the Plantation Law, local governments that grant licences are not equipped with a plantation planning framework. Furthermore, sanction mechanisms for licences that contradict spatial planning are not mentioned in the Minister of Agriculture Regulation No. 98/Permentan/OT.140/9/2013 on Plantation Business Licensing Guidelines. This has led to the issuance of many plantation business licences that are not in accordance with the existing spatial classification. In addition, because several state organisations have different levels of authority, the licensing flow in the plantation sector is highly fragmented. Cooperation mechanisms between local governments and ministries or agencies are not regulated in Minister of Agriculture Regulation No. 98/Permentan/OT.140/9/2013 regarding the issuance and management of plantation business licences. Because they still operate in forest areas, plantation business licences do not have HGUs, raising legal questions and making licensing enforcement ineffective in the event of overlapping land.

One of the most important conservation zones in the world is the Leuser Ecosystem (KEL). With a total area of 2.6 million hectares and high

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<sup>17</sup> Anggraeni Arif, "Juridical Analysis of Deforestation and Forest Degradation on the Environment, *Journal of Jurisprudentie*, Vol 3 No 1, 2016, p.45

biodiversity, it is located in the two northernmost provinces of Sumatra, Aceh and North Sumatra. With the complex legal framework of the Leuser Ecosystem (KEL) as a protected forest, Article 150 of Law No. 11/2006 on the Governing of Aceh essentially explains that the Indonesian government is willing to authorise the Aceh government to manage the Leuser Ecosystem in the Aceh region, as well as to protect, maintain, conserve, restore and utilise the area to the maximum extent possible.

The Leuser Ecosystem Area (KEL) is a National Strategic Area, an area of national importance, particularly for economic and environmental reasons, in accordance with Government Regulation No. 26/2008 on the National Spatial Plan. The Leuser Ecological Area in particular "must be preserved and conserved, its functions maximised to restore ecological balance, conserve biodiversity, maintain its distinctiveness, and maintain the national strategic area designation".

Based on this legal basis, it can be understood that until now the status of the Leuser Forest Area (KEL) is a protected forest that must be maintained and preserved in accordance with its function to maintain the balance of the ecosystem. However, Law No. 41/1999 on Forestry allows the use of protected debt areas for development purposes without changing the function of the forest.

Governors, regents, mayors, ministers, or ministerial-level officials, heads of business entities or other legal entities, individuals, groups of people, or communities are legal subjects authorised to request the release of protected forest areas. Through them, the Head of the Investment Coordinating Board requests the minister to release the HPK area. The Head of the Investment Coordinating Board issues a Decree on the Release of HPK areas for oil palm plantation companies after obtaining ministerial approval.

However, based on information gathered, the Leuser Ecosystem Area (KEL) remains a protected forest as required by law; neither the community nor the Subulussalam City Government has applied for the release of the forest area or changed its status. Therefore, the encroachment and clearing of oil palm land in the Leuser Area by the community is illegal and subject to administrative and criminal charges. The Law on Prevention and Eradication of Forest Destruction No. 18/2003 regulates criminal sanctions for anyone who illegally clears land.

According to the data, it was found that currently there are approximately 20,000 hectares of illegal oil palm land cleared by residents



have been disciplined, currently the efforts made are by conducting patrols for 1 (week) or 4 times a month in the leuser ecosystem area, this is done to minimise the existence of environmental destruction activities due to the opening of plantation land by the surrounding community.

### **C. New Palm Oil Land Clearing in Protected Forest Areas in Subulussalam City According to the Concept of *Milk Al-Daulah***

*Milk al-Daulah* is land belonging to the state, sometimes called the property of all people, which is managed and utilised for public benefit. Roads, water, pastures, forests, markets, irrigation, and rivers are all considered state property in the concept of fiqh muamalah. These resources are used for the common good so that the state and the people can use them according to the requirements of the law.<sup>18</sup>

Based on the explanation of the concept of *milk al-daulah* above, if seen in the case of oil palm land clearing by the community in a protected forest area in Subulussalam City, it is an illegal act. The utilisation of the Leuser Ecosystem Area (KEL) as an oil palm plantation has changed its function, and caused massive environmental impacts such as the use of heavy equipment to clear land and logging, resulting in the loss of the original habitat of flora and fauna found in the Leuser Forest Area. The act of controlling protected forests for private purposes is not legally justified because it contradicts the concept of *milk al-daulah* itself. Because state property is tied to public interest and order, the *milk al-daulah* function itself essentially cannot be transferred, controlled, or utilised arbitrarily for personal or group purposes. Instead, it must be used or exploited appropriately in accordance with applicable laws and regulations. Private control of assets classified as public ownership is not possible. The above statement is supported by the following two arguments:

Firstly, the clearing of oil palm plantations by communities in the Leuser Forest Area without written or verbal government permission (illegal). Because it can deprive others of their rights, the state prohibits any form of individual use in terms of ownership. Therefore, according to sharia, ownership is prohibited because such land use is classified as unlawful

Secondly, according to Article 50 paragraph (3) letter a of the Forestry Law and Article 17 paragraph (2) letter b of Law No. 18/2003 on the Prevention and Eradication of Forest Destruction, it is illegal for a community

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<sup>18</sup> Abdul Madjid, *Principles of Muamalah Jurisprudence and Property Law in Islam*, (Bandung: IAIN Sunan Gunung Djati, 1986), p. 36. 36.

to own and operate an oil palm plantation in the Leuser Forest Area without a valid government permit or is considered unlawful. Both regulations clearly state that everyone is prohibited from cultivating, using, or occupying forest land. In contrast, the idea of *milk al-daulah* stipulates that all wealth belonging to the state must be used and distributed for the public good and not for private interests.

Based on the review of the concept of *milk al-daulah* on the issue of new palm oil land clearing by the community in the Leuser Forest Area (KEL) is not in accordance with the *milk al-daulah* theory. The land used by the community for oil palm plantations is not based on permission from the government, so that oil palm plantations in the Leuser Forest Area (KEL) can be said to violate the rule of law. Because basically state-owned land belongs to the umm and is used for the common good.

## CONCLUSIONS

The process of forest encroachment that occurs in the Leuser forest area in Subulussalam City is an illegal activity, because the land clearing of oil palm by the community did not go through the licensing procedures as specified in the laws and regulations, and the people who encroached on the Leuser forest area did not have HGU certificates. Currently, the relevant authorities of Subulussalam City in collaboration with several non-governmental organisations and environmental activists are working to control the Leuser protected forest area that has been converted into oil palm plantations.

Currently there are approximately 20,000 hectares of illegal oil palm land cleared by residents have been disciplined , currently the efforts made are by patrolling for 1 (week) or 4 times a month in the leuser ecosystem area, this is done to minimise the activities of environmental destruction due to the opening of plantation land by the surrounding community.

The review of the concept of *milk al-daulah* on the issue of new oil palm land clearing by the community in the Leuser Forest Area (KEL) is not in accordance with the theory of *milk al-daulah* . The land used by the community for oil palm plantations is not based on permission from the government, so that oil palm plantations in the Leuser Forest Area (KEL) can be said to violate the rule of law. Because basically state-owned land belongs to the umm and is used for the common good.

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