

## **Forestry Partnership as an Alternative for Settlement of Forestry Disputes in Indonesia**



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**ABSTRACT:** This study examines the forestry partnership, which is one of the government's social forestry programs. This forestry partnership program focuses on community empowerment and provides an alternative to the frequent occurrence of forestry disputes in forest utilization and/or management areas. Forestry Partnership includes the state and its people in an agreement with stipulations that each side must meet and implement. However, there is an unequal bargaining stance (bargaining power) between the state and its citizens, and this is one of the causes of disputes. This study is a descriptive normative legal study. Secondary data are utilized in this study, i.e., data that is not gathered directly from the field or the community, but rather through literature review by evaluating and analyzing books, journals, and internet data. The forest partnership agreement between LMDH Banyurip Lestari and KPH Surakarta is a manifestation of the employment of civil law instruments, according to the findings of this legal study. As a result, the government's position as a representative of a legal entity is identical to that of a person or civil legal entity in general, which is subject to civil legislation and can take actions in the civil sector, which in this case are carried out by KPH Surakarta as a legal entity. Thus, the fairness aspect of this forestry partnership agreement has been met, as the actions taken by the government in the forestry partnership agreement are an exercise of authority as a government organ that is also bound by juridical provisions, incorporates general principles of good governance, and effectively functions as an alternative dispute resolution mechanism in the field of forest utilization and/or management.

**KEYWORDS:** Agreements; Forestry Partnerships; Dispute Resolution; Principles of Justice; Social Forestry.

### **A. INTRODUCTION**

Human civilisation and forests cannot be separated. Both have a close link, with the forest serving as a pillar for the advancement of human civilisation to the present day. Forests with all the natural resources they contain, all of which can be utilized by humans for their own existence. Oxygen is the primary source of life produced by photosynthesizing trees in forests, which are oxygen producers.

Without oxygen, it is difficult for humans to survive, and it is also impossible to create a global civilisation. Especially in the present day, the forest's function as a life-supporting environment remains unchanged. In fact, the role of this forest is significantly greater than it was before the invention of technology due to the vast quantity of pollution and trash produced, which reduces the amount of pure oxygen produced. For this reason, it is important to conserve the forest, as it is a factor that sustains life. In addition to serving as the lungs of the earth, forests also provide mankind with a variety of natural resources of economic value. As a water reservoir, namely during the rainy season, the forest's shady trees will absorb water to prevent flooding and serve as a reserve throughout the dry season. The forest also serves as a natural habitat for a vast range of plants and animals, a food supply, a producer of medicinal plants, a source of fuel, etc. Therefore, forests must be protected, as the future survival of people and other forms of life will depend on the current presence and sustainability of forests.

According to the regulation, forests are state-regulated natural resources whose use and/or management. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia specifies the state's authority over land rights: "that the ground and water and the natural resources contained within are controlled by the state and utilised for the greatest prosperity of the people." The terms "control" and "control" can be used in a legal context, referring to both the civil and public aspects of control (Budi Harsono, 2016).

The civil side of control comprises the regulation of the rights and obligations of natural resources, while the public aspect, which includes state control, is designed for the greatest benefit of the community as a whole. The right to control from the state is a delegation of authority tasks for the inseparable nation of Indonesia. As public law, the right to control the state does not grant the authority to physically control land and use it as do land rights. The state controls land that is not privately held because, under our land law, the state is not a subject of land rights. The state is authorized or permitted to manage the land to the maximum extent

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possible for the prosperity of the people. Thus, the state in this instance solely controls natural resources such that there are no gaps in their distribution that could lead to community disputes.

In accordance with the aforementioned objectives, the government formulates forest sector policy via forestry partnerships. The forestry partnership program is one of the social forestry programs that focuses on empowering forest-dependent people surrounding forest lands. This program is also designed to serve as an alternate method for settling conflicts between the state and the people about the usage and/or management of forests. However, the cooperation between the state and the people is deemed to be unbalanced. Everyone is aware that the state and the people have uneven bargaining power (bargaining power). The state has a greater and more forceful position in the forestry partnership agreement, while the people are more likely to accept any state policy. Such conditions appear unbalanced, unfair, and possibly detrimental to the people. Consequently, if this is allowed to run on, it is not inconceivable that it will result in a dispute.

Therefore, the research question will be "Is the Forestry Partnership between LMDH Banyurip Lestari and KPH Surakarta fair and equal?" It is necessary to understand the community's sense of fairness about the use and/or management of forest areas.

### B. METHODS

This is normative legal research, also known as doctrinal research, which involves reviewing library materials or secondary data to perform legal research (Soerjono Soekanto & Sri Mamudji, 2003). The legal materials are systematically compiled, analyzed, and finally a conclusion is drawn regarding the problem under study. This research was conducted by examining cases related to the issues at hand, particularly about the applicable laws and regulations, namely the 1945 Constitution of the Republic of Indonesia, Law no. 5 of 1960 pertaining to Basic Regulations on Agrarian Principles, Law no. 41 of 1999 pertaining to Forestry, and Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.83/MENLHK/SETJEN/KUM.1/10/2016 pertaining to Social Forestry. Secondary data is derived from information gathered indirectly through literature studies, documentary materials, scientific publications, written sources, reports, archives, literature, judicial decisions, rules and regulations, and others related to the object of the study.

### C. DISCUSSION

A forestry partnership is an agreement for cooperation between a local community and the holder of a forest use permit or license. Article 1 point 9 of Law Number 41 of 1999 concerning Forestry defines a forestry partnership as cooperation between local communities and forest managers, holders of business permits for forest utilization/forest services, permits for borrowing and using forest areas, or holders of business permits for primary industrial products. forest. The development of this forestry partnership is intended to serve as a form of empowerment for the community surrounding the forest by allowing legal access to the management and/or exploitation of forest areas in order to promote their well-being while preserving the sustainability of the forest. It is anticipated that the availability of this legal access will give legal certainty in preventing and resolving conflicts between local communities and permit or rights holders, which frequently arise in forest areas.

This cooperation shows that the parties have reached certain agreements. In accordance with the definition of engagement as a binding thing between two parties, where the binding thing is a legal event that can take the shape of actions, events, and circumstances that create a legal relationship, engagement is a legal event (Abdulkadir Muhammad, 2000). This legal connection gives each party reciprocal rights and obligations, in which one party has the right to make a demand and the other party is obligated to comply.

The engagement (*verbinten*) is governed by general and special sections of Book III of the Civil Code. The general section contains restrictions that apply to all engagements, whereas the special section contains regulations governing often used named agreements. The engagement adopts an open system, which allows anyone to enter into any type of engagement, both those whose names have been determined and those whose names have not been determined other than those stipulated in the Civil Code, as long as they do not violate the provisions of law, morality, or public order. In accordance with the usage of an open system, Article 1233 of the Civil Code states that an obligation might emerge either by agreement or by operation of law.

Article 1233 of the Civil Code emphasizes that every engagement is born either by agreement (agreement) or by law, and that the genesis of every engagement is either by agreement (agreement) or by law. Article 1313 of the Civil Code defines an agreement as an act that binds one or more parties. Article 1320 of the Civil Code stipulates that for a valid agreement (agreement), four conditions must be met: first, the parties must agree to commit themselves; second, they must be capable of entering into a contract; third, a particular thing must exist; and fourth, there must be a legitimate purpose.

According to the preceding explanation, both LMDH Banyurip Lestari and KPH Surakarta voluntarily agreed to operate together under an agreement that stipulates each party's rights and obligations. As a result, the agreement made legally will be binding on those who make it (Article 1338 of the Civil Code).

The relationship between LMDH Banyurip Lestari and KPH Surakarta in the field of forestry was founded on a public authority agreement. According to Indroharto, an agreement regarding public authority is a contract between a state administrative agency or official and citizens regarding how the state administrative agency or official will use his government's authority (Ridwan,

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2020). The government, through its organs, which in this case are represented by KPH Surakarta, takes unilateral action by binding itself with members of the community, specifically LMDH Banyurip Lestari. This includes unilaterally preparing an agreement, leaving the other party with little choice except to accept or reject it. Such unilateral action on the part of the government when utilizing the legislative action provided jurisdiction.

SK. 9757/ MENLHK-PSKL/ PKPS/ PSL.0/11/2019 concerning Recognition and Protection of the Forestry Partnership (Kulin KK) between LMDH Banyurip Lestari and KPH Surakarta, covering an area of  $\pm 904.1$  (nine hundred four and one tenth) hectares in Forest Area Permanent Production (HP) in Banyurip Village, Jenar District, Sragen Regency, Indonesia:

1. Conducting activities in areas that have been granted the Recognition and Protection of the Forestry Partnership;
2. Receiving protection from environmental destruction and pollution or unilateral takeover by other parties;
3. Utilizing the Forestry Partnership area in accordance with its function;
4. Receiving assistance in utilization, counseling, technology, access to financing, and marketing activities; and
5. Conducting activities in areas that have been granted the Recognition and Protection of the Forestry Partnership;

The aforementioned forestry partnership agreement demonstrates that the government plays an active role in the partnership's execution. Because this forestry partnership program is a community empowerment program, its socialization to the community, particularly forest-dwelling communities, still requires significant support. This is evident from the government's provision of the needed facilities and technology for the implementation of forestry partnerships.

Concerning the aspect of justice in the forestry partnership between LMDH Banyurip Lestari and KPH Surakarta, it is necessary to understand the cooperation agreement itself, including whether the granting of government authority in the cooperation agreement contains freedom, whether the agreement is binding, etc. This is to determine whether the government's unilateral acts still fall within the legal limits for exercising its jurisdiction via an agreement or cooperation mechanism. Because, if the government's authority is limited in terms of material, time, and how it can be used, the execution of government authority with the agreement is not permitted (Ridwan, 2020).

As is common knowledge, justice is described as being straightforward, impartial, and devoid of arbitrary nature. Legal thinkers, such as Jeremy Bentham with his Utility Theory, have broadly defined what justice entails, stating that the objective of law must be useful for persons in order to produce the greatest happiness for the greatest number (Frederikus, 2012). In addition, according to the liberal theory of John Rawls, justice is a form of integrity that derives from the values of freedom, equality, equal opportunity, and the principle of diversity (two principles of justice) (Pan Mohamad, 2009).

Both theories of justice are based on the role of the government as the holder of power to use all of its authority for the welfare of the people by running an honest, equal, and citizen-friendly government. This is also consistent with the Pancasila justice embraced by the Indonesian people, which is a justice whose application depends on the economic, political, social, cultural, and ideological processes of society. In accordance with Pancasila, justice encompasses not only efforts to implement justice, but also concerns of decency and the satisfaction of reasonable communal needs.

Justice is an abstract concept that cannot be seen or touched, but may be experienced. Due to the fact that justice emerges from the deepest conscience, it is difficult to quantify it. Therefore, a deeper level of reflection is required to determine if something is fair or not. This approach of thinking is referred to as interpretation, which is a method for discovering law by interpreting and providing clear explanations about the text of the law so that the applicability of the laws in relation to specific occurrences may be determined (Sudikno, 2008).

As far as the author is concerned, the forestry partnership between LMDH Banyurip Lestari and KPH Surakarta was formalized by Decree No. SK.9757/MENLHK-PSKL/PKPS/PSL.0/11/ 2019 issued by the Ministry of Environment and Forestry of the Republic of Indonesia concerning the Recognition and Protection of the Forestry Partnership (KULIN KK) between the Forest Village Community Institution (LMDH) Banyurip Lestari and the Surakarta (KPH). The decision letter also includes the agreed-upon provisions covering each party's rights and obligations, which automatically become binding on both parties. The parties to the forestry partnership agreement, LMDH Banyurip Lestari and KPH Surakarta, must comply with and implement the requirements as stipulated. It is hardly impossible that, with such cooperation, forestry partnerships may evolve into a social forestry program that strives to decrease or perhaps serve as a means of resolving disputes in forest areas.

The forest partnership agreement between LMDH Banyurip Lestari and KPH Surakarta is an example of the application of civil law instruments, as explained previously. As a result, the government's position as a representative of a legal entity is identical to that of a person or civil legal entity, which is subject to civil regulations and can take acts in the civil sector. The government's civil law action is not conducted by government organs, but rather by the legal body, which in this case is KPH Surakarta. Because the government can only participate in the private sector as a representative of a legal entity.

However, it should be recognized that when the government employs civil law tools, it does not actively engage in civil law-based legal relations. For instance, as in the cooperation agreement between LMDH Banyurip Lestari and KPH Surakarta, which is an impure agreement (*gemengd overeenkomst*), the government only uses civil law instruments as an alternative or method for carrying out government duties, without placing itself in a legal relationship of equality with other parties. This is due to the fact

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that the government, as the owner of land rights, has a responsibility to promote general welfare, equity, and justice in the political, legal, economic, and socio-cultural sectors.

Thus, the question of whether the forestry partnership agreement is fair can be answered in the affirmative, as not all definitions of fair must be same. A thing is fair if it is proportional to its share and does not harm or violate the rights of others. Through a decree about the forestry partnership cooperation agreement between LMDH Banyurip Lestari and KPH Surakarta, the government, in this case KPH Surakarta, has specified the rights and responsibilities of both parties. Therefore, both KPH Surakarta and LMDH Banyurip Lestari are equally burdened by provisions that must be observed and implemented. As for the government's participation in the forestry partnership agreement, it is an exercise of its authority as a government organ. In implementing the cooperation agreement, the government, through its government organs, is bound by legal provisions including the principle of trust and the principle of honesty, which are all codified in the law. broad principles of good governance.

### CONCLUSION

Whereas the partnership agreement between LMDH Banyurip Lestari and KPH Surakarta is evidence of the application of civil law instruments. As a result, the government's position as a representative of a legal entity is identical to that of a person or civil legal entity in general, which is subject to civil legislation and can take actions in the civil sector, which in this case are carried out by KPH Surakarta as a legal entity. In addition, the issue of justice in this forestry partnership agreement has been satisfied, as not all definitions of justice must be same. Fair is proportional to the amount and does not violate the rights of others. Thus, the government's action in the forestry partnership agreement is an exercise of its authority as a government organ. In implementing the cooperation agreement, the government, through its government organs, is bound by legal provisions that include the principle of trust and the principle of honesty, which are all contained in the general principles of good governance.

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