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Foreword

In this globalization era, advancement in science and technology has led to remarkable gains in life. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progress. Even worse, these countries are facing many problems such as poverty, terrorism, drug abuse, and other social issues. These problems are complex and multidimensional. We should give a real contribution to solving these problems. Because the problems are multidimensional, we need people from cross-disciplinary interests to work hand in hand with strong commitment, not only to face, but also to change these problems into opportunities.

Therefore, the Postgraduate Program in collaboration with Institute of Research and Community Service of University of Lampung provides a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development (SHIELD) to meet and interact with members inside and outside their own particular disciplines. All participants are challenged to give their real contribution to helping solve the real-world problems.

The authors of Proceeding of 2nd SHIELD International Conference come from academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development.

This conference aims to share information and discuss recent developments and innovations arising from research in a wide range of disciplines. Through this conference, it is expected that the research articles can be documented and communicated throughout the countries.

Head of Committee

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Chaos of Forest Resource Access Regulation: Study on Moro-Moro Farmers at Register 45 Lampung

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Abstract

One of the problems of farmers in Indonesia is the limited availability of agricultural land. Through various regulations, the government gives farmers hope for the availability of agricultural land, through the land levy, land use permits or partnerships with forest management right holders. For decades the Moro-Moro farmers have struggled to gain access to forest resources (farmland) legally, in Register 45 Sungai Buaya Mesuji Lampung. This study will examine forest resource access regulations and their implementation in Register 45 Sungai Buaya Mesuji Lampung.

The approach that used in this research is socio-legal. Socio-legal is a study that combines the study of doctrinal law with social studies. Legislation can be categorized properly and well if the substance is able to accommodate as much as possible the aspirations, interests and needs of the community. So the analysis is not only based on normative rules but also the social context.

The result of the research shows that the regulation of forest resource access model in register 45 Lampung to farmer of Moro-Moro is partnership. Partnerships offered by forest management right holders are considered have not been able to provide welfare to farmers, considering that the types of plants have been determined and in the process of the partnership, the dialogical space is still very poorly done by forest managers. In addition, the area of farmland is getting narrower, because it must be planted with hard plants. However, it is necessary to trials the forest resource access model by means of the partnership, even though it is possible to use another access model.

Keywords: *Regulation, Implementation, Access of Forest Resources, Moro-Moro;*

1. Preface and Problems

The obligation to protect the forests is the responsibility of the government and all the people of Indonesia, considering the function of the forest concerning the livelihood of the people. On the one side people need agricultural land in the forest area, on the other side the forest should be protected, but on the other hand, forest exploitation is given to entrepreneurs with an area that exceeds their capacity. Meanwhile on the policy side, the government is less involved the community in the planning, designation and determination of state forests. As a result there is often conflict occur of forest utilization with the community, both within the forest area and around the forest area¹.

Unilateral appointment of forest areas by the government in the past has been one of the factors which is triggers the conflict² in forest areas³, besides to licensing of forest exploitation to the private

¹ Salim, 2013, *Dasar Dasar Hukum Kehutanaan*, Jakarta: Sinar Grafika, p.123

² The 2011 KPA report mentions 163 agrarian conflicts throughout 2011, details of 97 cases in plantation sector, 36 forestry cases, 21 cases of infrastructure sector, eight cases in mining sector and one case in coastal and

sector. Period of economic crisis⁴ in the late 1990s became an important period in the history of forestry in Indonesia especially at Register 45 Sungai Buaya Mesuji Lampung (hereafter referred to as Register 45 Lampung). Conflict develops when on 17 February 1997 the Minister of Forestry issues SK No.93 / Kpts-II / 1997 on the granting of HTI concession rights over forest area which originally 33,500 ha up to \pm 43,100 ha to PT Silva Inhutani Lampung (PT SIL) for 45 years. PT SIL is considered to take a forced community land area of \pm 10,000 ha. In fact, PT SIL is actually only able to cultivate the land about 12,000 ha. People struggle to get land claimed by PT SIL, to be able to continue their livelihood. Land cultivation by the community still continues, considering that on one side of the land is abandoned by PT SIL and on the other side there are quite a lot of poor people who need land to be able to extend their life.

The number of poor people in Lampung based on the results of the National Socioeconomic Survey (Susenas) September 2016 reached 1.14 million people (13.86 percent). This number is reduced compared to March 2016 reached 1.17 million people (14.29 percent).⁵ In general, the poor are landless farming families, who seek to earn their livelihoods from farming. For example, Moro-Moro citizens based on the results of the 2010 census, consisting of 1,300 heads of households (3359 inhabitants),⁶ spread over five districts. In 2006, they formed a peasant mass organization under the name of the Persekutuan Petani Miskin Moro-Moro Way Serdang (PPMWS). Currently, each sub-village level consists of 12 groups (so there are 60 groups). Each group consists of 16-20 people. Moro-Moro region with an area of \pm 2,444 ha,⁷ is part of the forest Register 45 Lampung, as well as entry in HTI PT HTI Concession Rights. Based on the above description, the parties related to the Moro-Moro community's land are composed of three elements: first, the Ministry of Forestry and the Environment; second, PT SIL; and third, Moro-Moro citizens. The Ministry of Forestry is a party that has the authority to control Register 45 Lampung, PT SIL as the holder of HPH-HTI, and the Moro-Moro community as a party who needs access to forest resources to carry on their life. During this time, the cultivation of land by Moro-Moro residents is considered illegal, both by the Government (Minister of Forestry and Environment) and by PT SIL. Citizens need legal certainty related to the cultivation of the land. For the purpose of guaranteeing legal certainty on access to forest resources, the government has issued various policies to facilitate such access to the community. One of the offers is through partnerships between community members and HPH-HTI holders, but people are rejected for various reasons. Based on the above explanation, this research would like to examine how the arrangement of forest resource access and its implementation in Register 45 Lampung?

coastal areas. Throughout the year 2015 land conflicts tends to increase, the data collected by Indonesian Peasant Union (SPI) during 2015, the number of agrarian landfalls that occurred in Indonesia reached 231 cases. This figure is 60% compared to agrarian conflict that occurred in 2014 amounted to 143 cases with conflict land area in Indonesia with total area of agrarian conflict covering 770.341 ha.

³ The Court through Decision Number 45 / PUU-IX / 2011 gave a judicial review on five Regents of Central Kalimantan against the Forestry Law. The Constitutional Court abolished the phrase "appointment and or". In its legal considerations, the Constitutional Court is convinced of the article, the government may be misinterpreted and arbitrarily in granting territory status in the applicant's territory. The reason, in the determination of the area as a forest area enough with the phrase "appointed and or".

⁴ In mid 1997 the ASEAN countries were hit hard by the regional economic crisis caused by the depreciation of their currency against the US dollar. Indonesia is the worst of all countries in Asia. Various researches say the rupiah exchange rate is depreciating considerably against US \$, which is in real terms around 71.6 percent in 1998. The rate of inflation in the year reached 77.8 percent. This led to an increase in interest rates to reach the highest level of 61.8 percent in September 1998. The economic crisis is bad enough to affect the financial health of entrepreneurs, increasing the number of unemployed, and including economic pressure for farmers / farmers.

⁵ Lampung Poverty Rate, September 2016, quoted from Statistics Agency of Lampung Province, January 3, 2017, <https://lampung.bps.go.id/Brs/view/id/487>, accessed 23 Agustus 2017 At 14.00 wib.

⁶ Ridwan Hardiansyah, 2013, *Kami Bukan Superman*, Bandar Lampung: Indepth Publishing, p. 28.

⁷ *Ibid.*

2. Research Method

This study uses socio-legal approach. Socio-legal is a study that combines the study of doctrinal law with social studies. The study materials are legislation and community behavior. Legislation can be categorized properly and well if the substance is able to accommodate many aspirations as possible, interests and needs of the community. So the analysis is not only based on normative rules but also pay attention to social context.

3. Discussion

Article 28A of the 1945 Constitution of the Republic of Indonesia has provided assurance that every person shall have the right to live and have the right to maintain his life and life. For farmers to sustain life and life can not be separated from farmland. This means that the government should have made the land available for agricultural business for the people. considering the very limited agricultural land, while that appears in front of the forest is a forest area that has been burdened HPH-HTI but abandoned, it will certainly be utilized by farmers in meeting the needs for the sustainability of life. Of course such a condition equally should not happen, employers should not neglect their land, while citizens / farmers are prohibited from utilizing the land of others without permission, even though the land abandoned though.

In order to meet the need for access to natural resources (forests / land) for citizens in order to maintain life and life, the government has issued various policies. Apart from the advantages and disadvantages of the form of policy issued by the government, it all depends on the good intentions of the implementers in the field. Also considering, the need for land / land is day by day is increasing, while the amount of land / land area is relatively fixed. So throughout human history, the seizure of land resources never ends. Thus, it takes the wisdom of all parties to overcome the problem of limited agricultural land by utilizing forest resources without reducing the function of the forest itself. One of forest resource access policy is forestry partnership.

Forestry Partnership is a collaboration between local communities and forest utilization holders or forest managers, holders of forest primary industry business permits, and / or forest management units in capacity building and access granting, on the principle of equality and mutual benefit. This policy was changed into social forestry with the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry. This Regulation affirms Social forestry is a system of sustainable forest management conducted within state forest areas or forest rights / customary forests implemented by local communities or customary law community as the main actors to improve their welfare, environmental balance, and socio-cultural dynamics in the form of village forests, community forests, community plantations, community forests, customary forests, and forestry partnerships.

Through social forestry policies, the Government wants to: (a) create and accelerate equitable access and distribution of forest resource assets; (b) resolve tenurial conflicts in forest areas; and (c) reducing poverty and improving the welfare of people living in and around forest areas. Based on the available data, the entire territory of Indonesia can be divided into two based on the management authority. The first party, the Ministry of Forestry and Environment claimed 2/3 of Indonesia's land territory (67.74%) was forest, which became its authority. Its legal policy adheres to the forestry law regime. Meanwhile, the second party is the Ministry of Agrarian Affairs and Spatial which get the rest (1/3 or 32.26%) to manage its management, and subject to the land law regime (agrarian law in the narrow sense).

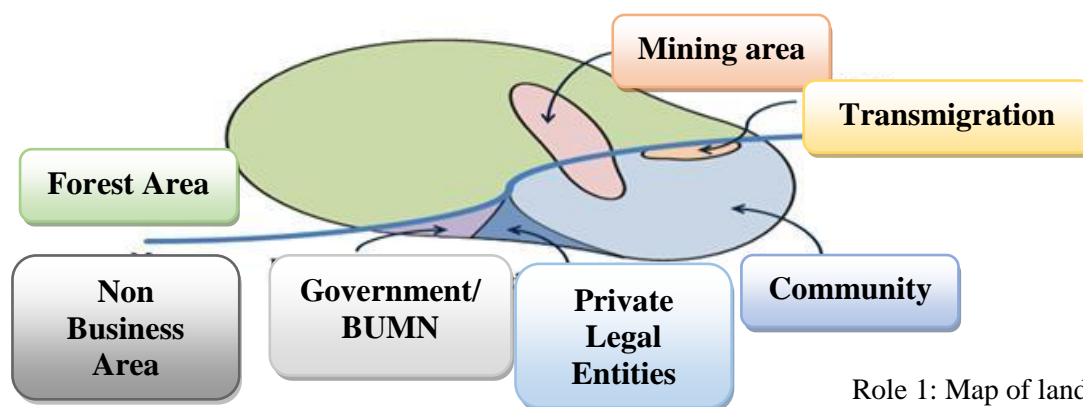
Although 2/3 of Indonesia is claimed as a forest area, the reality is that not all of them are cover forests. That is, quite a lot of forest areas, which in fact is no longer forest, because it has become a settlement or grassland or forest without stand. So that the regulation of access to forest resources, both for forested and non-forested areas, obedient with the forestry law regime and can not be confused with

the land law regime. Although politically legal and legal system may actually be collaboration of legal regime, so there is no chaos chaos, for example related to result of partnership.

Political law in access to forest resources, obtaining constitutional basis in Article 33 Paragraph (3) of the 1945 Constitution-NRI, that: the earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. As long as forest resources are used for the welfare of the people, although the regulatory regime is different, but by referring to the national legal system, everything gets its way out. Just as Sudikno Mertokusumo puts it, the legal system is an essential unity and fragmented in sections, in which each issue or problem finds its answer or its solution. The answer lies within the system or the legal system itself.⁸

Sudikno's opinion is based on a legal notion of a seemingly jumbled set of rules, a chaos. Legislation is spelled out a lot and growing every year. That is, for law science is not really a chaos, but as a structured whole or system. The law is not just a collection or sum of rules, each of which stands alone.⁹

Law as a system is a order or a unified whole consisting of parts or elements that are closely related to each other. In other words, the legal system is a unity consisting of elements that have interaction with each other and work together to achieve the purpose of the unity, if there is a problem or trouble will find its own answer or solving.¹⁰



tenure and land conflict map in Indonesia¹¹

Table 1. Area of Forest Area Based on Function¹²

Area	Large (± ha)	%
CONSERVATION FOREST (LAND AND PARK RUSH)	21.780.626,14	11,44
PROTECTED FOREST (HL)	30.539.822,36	16,03
LIMITED PRODUCTION FOREST (HPT)	27.967.604,50	14,68
PRODUCTION FORESTS (HP)	30.810.790,34	16,18
PRODUCTION FORESTS CAN BE CONVERTED (HPK)	17.924.534,81	9,41
LARGE OF FOREST AREA	129.023.378,15	67,74

⁸ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar, edisi II, Cet.keempat*, Yogyakarta: Liberty, 2006, p. 103.

⁹ *Ibid.*, hlm. 102.

¹⁰ *Ibid.*

¹¹ BPN-RI, International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11, 2012

¹² Director General of Forestry Planning at the Ministry of Forestry, Paper: Forest Area Use Solution for Non Forestry Activities, in the International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11,

AREAL THE OTHER USES (APL)	61.433.521,85	32,26
TOTAL AREA REGIONS OF NKRI	190.456.900,00	100,00

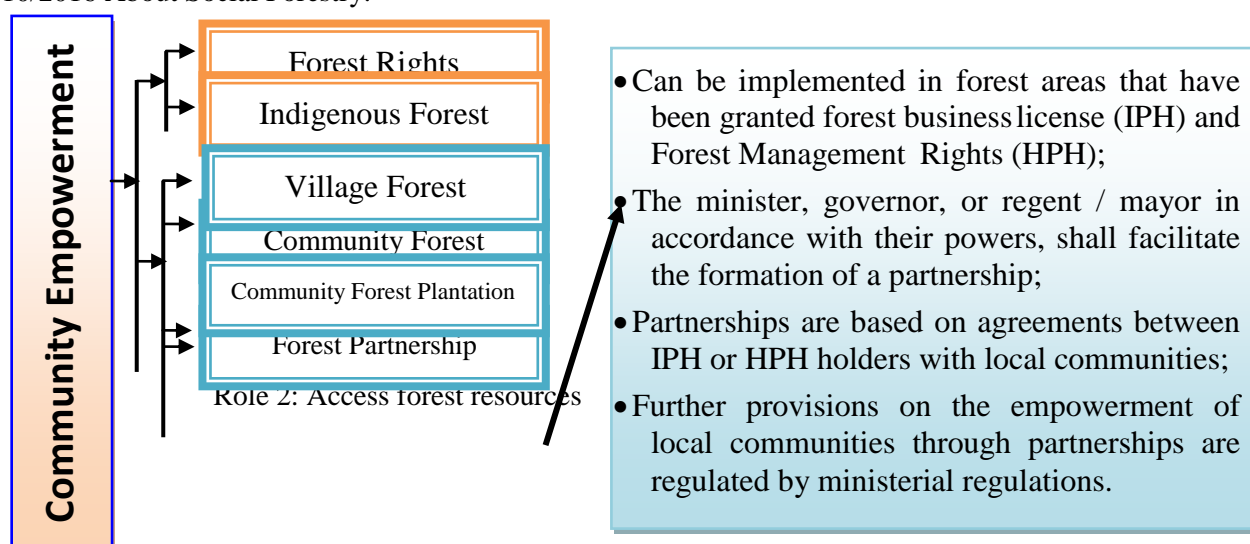
Source: Directorate General of Forestry Planning of the Ministry of Forestry, in 2012.

All this time, forest resource access policies are regulated in various regulations and schemes. Forest resource access schemes are divided into two: forest rights schemes and forest permit / partnership schemes. Forest rights schemes include individual / legal entity rights, and customary forests. For this scheme the forest area is removed from the forest area, then becomes state land. After becoming a state land, land rights can be submitted to the National Land Agency, and the function of the forest remains unchanged. Forestry licensing / partnership schemes include: village forests, community forests, community plantations, and forestry partnerships.

In general, access to forest resources is regulated in various regulations, namely:

1. Law Number 41 of 1999 regarding Forestry, as amended by Act Number 19 of 2004;
2. Government Regulation Number 6 Of 2007 regarding Forest Management and Preparation of Forest Management and Forest Utilization Plan, as amended by Government Regulation Number 3 Of 2008;
3. Regulation of the Minister of Forestry Number: P.01 / Menhut-II / 2004 regarding Local Community Empowerment In and Or Around Forest For Social Forestry;
4. Regulation of the Minister of Forestry of the Republic of Indonesia Number P.49 / Menhut-II / 2008 on Village Forests;
5. Permenhut No P.55 / Menhut-II / 2011 regarding Procedure of IUPHHK-HTR Application in Plantation Forest;
6. Regulation of the Minister of Forestry of the Republic of Indonesia Number: P.88 / Menhut-II / 2014 regarding Community Forests;
7. Regulation of the Minister of Forestry Number P.89 / Menhut-II / 2014 regarding Village Forest;
8. Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 regarding Social Forestry.

In particular, the forest resource access policy with the rights forest scheme is regulated in the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.32 / Menlhk-Secretariat / 2015 on Right Forests. While forestry permits / partnerships are regulated in the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 About Social Forestry.



The Moro-Moro community's struggle for legally accessing forest resources in Rigester 45 Lampung gets a bright spot with the issuance of Forestry Minister's Regulation No. : P.39 / Menhut-II

/ 2013 on Local Community Empowerment through Forestry Partnership. During the socialization of the forestry partnership between the Moro-Moro community and PT SIL, facilitated by the Ministry of Forestry in early 2017, Permenhut 39/2013 has been revoked by the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry. Meanwhile, the socialization substance is still using the old Permenhut.

There is an important regulation difference for the Moro-Moro community, namely in Permenhut 39/2013 partnership with PT SIL maximum 2 hectare, while in the new regulation, the area of arable land can reach 5 hectare. So for the people who have been working on the land more than 2 hectares refused the offer of partnership agreement with PT SIL, considering that in the draft of partnership agreement, the public is only allowed to work on forest land of maximum 2 hectares. In line with the legal doctrine of *lex posterior derogat legi priori*,¹³ then the applicable law shall be the provision regulating the area of 5 hectares of land.

In addition to the extent of land which is claimed to be a problem in the partnership offered to Moro-Moro farmers is a profit-sharing system and financing. Two ministerial regulations concerning forestry partnership as a whole, the system for results is determined on the basis of consensus deliberation, but in the draft partnership agreement has been determined unilaterally by PT SIL. In other words using the standard agreement scheme.¹⁴ Sharing system; 1) for timber plants, 25% farmers and 75% PT SIL; 2) for food crops / seasonal 50% farmers and 50% PT SIL, and no more bargaining.

Balance-sharing offerings mentioned above, can be interpreted if it does not agree with the amount of profit sharing, the community there is no other choice, other than accept or reject. If it refuses, PT SIL has prepared a blank / letter of statement refusing the partnership to be signed. If they accept a partnership, have also prepared a letter of partnership agreement to be signed. Whereas in relation to the results of the cultivation of land, in Permenhut on forestry partnership is determined on the basis of deliberation to consensus. Even if a consensus agreement can not be reached, there are rules as a reference.

Regulations that can be used as a reference or guidance are Law no. 2 Of 1960 on Profit Sharing jo. Presidential Instruction no. 13 of 1980.¹⁵ Elucidation of Article 7 of the Production Sharing Law states that the balance of profit sharing between the tenants with the land owner or the owner of the land is: 1) for rice crops in paddy fields, 50% farmers, and 50% landowners; 2) for polowijo plant crops and for dryland crops, 2/3 farmers and 1/3 landowners. The profit sharing balance after deducting the production cost. Each region can be set differently about the share of the revenue share by the regent / mayor. This means that in a regency / city for each region can differ the amount of profit sharing, adjusted with economic factors in each region. In principle, the revenue-sharing ratio should not harm the farmer.

The above thought is in line with the doctrine, that the legal structure in Indonesia is like a cobwebs.¹⁶ Regularity can be created with many laws and regulations. Between regulation one with the other rules are intertwined and forming a legal system such as cobwebs. Every legal system will face the question of contradictions, legal vacuum, and vague norms. Conflicting legal rules (contradictions) need

¹³ B. Arief Sidharta, *Asas Hukum, Kaidah Hukum, Sistem Hukum dan Penemuan Hukum*, dalam Susi Dwi Harjanti (ed.), *Negara Hukum yang Berkeadilan, kumpulan pemikiran dalam rangka purnabakti Prof. Dr. H. Bagir Manan, S.H., M.CL.* Bandung: PSKN FH UNPAD, 2011, hlm. 9.

¹⁴ The standard agreement is a written contract made solely by one of the parties to the contract, often the contract has been printed in the form of certain forms by one of the parties, in which case when the contract is signed generally the parties only fill in the informative data certain with little or no change in its clauses, in which the other party in the contract has no opportunity or little chance to negotiate or amend the clauses already made by either party.

¹⁵ Presidential Instruction No. 13 of 1980 on Guidelines for the Implementation of Law no. 2 of 1960 concerning Production Sharing Agreement.

¹⁶ Whitehead, using the term "law as a network", interpreted a holistic process consisting of actual units, see HR Otje Salman S and Anthon F. Susanto, *Teori Hukum, Mengingat, Mengumpulkan, dan Membuka Kembali*, Bandung: PT Refika Aditama, 2009, p. 10-11.

consistency effort (synchronization and harmonization), legal vacuum need formation, and vague norms need legal discovery / interpretation.

The problem of balance of forestry partnership results there is obscurity / obscurity of the rule of law. Therefore, legal discovery is required. The law that can be used as a reference guide for the results of forestry partnership is Law no. 2 Of 1960 on Profit Sharing.

At the level of forestry partnership practices between PT SIL and Moro-Moro farmers, it turns out far from the existing regulations and very detrimental to the cultivators. This can be seen clearly in table 2 below:

Table 2. Comparison of Profit Sharing Among Forestry Partnership with Production Sharing Law

Types of Plants	PT SIL Partnership Offer with Moro-Moro Farmers	Law No. 2 Of 1960
Food/ Seasonal	PT SIL (which controls the land): 50%	Landlord / owner : 25%
	Peasant Moro-Moro (tiller) : 50%	Cultivators : 75%
Timber	PT SIL (which controls the land): 75%	Landlord / owner : 25%
	Peasant Moro-Moro (tiller) : 25%	Cultivators : 75%

The condition above is very apprehensive, considering the spirit of forest resource access rules issued by the government did not materialize in people's lives, especially Moro-Moro farmers. In accordance with the spirit of forest resource access policy by the community in the forest area or around the forest area, the balance should be equal to: 75% of Moro-Moro farmers and 25% PT SIL, both for food / seasonal and timber. Actually not only that, the reason for the rejection of forestry partnership by the Moro-Moro, for example transparency of financing partnership for profit sharing provided by PT SIL.

4. Conclusion

Based on the discussion, it can be concluded:

1. Regulations on access to forest resources for Moro-Moro residents that can be done is to use a forestry partnership scheme in accordance with Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83 / Menlhk / Setjen / Kum.1 / 10/2016 on Social Forestry.
2. Access to Moro-Moro peasant forest resources has been legally illegal, considering they have not agreed on the partnership system offered by PT SIL. The reasons for the rejection proposed by the residents are related to the area of cultivated land and the balance for the result is not in accordance with the wishes of the citizens.

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