# POSITION OF FREEDOM OF CONTRACT PRINCIPLE IN FORESTRY PARTNERSHIP POLICY

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## ABSTRACT

*Purpose-This study aims to provide an analysis related to forestry partnership policies in the principle of freedom of contract in Indonesia. The focus of freedom of contract guarantees the release of the parties to enter into a contract or agreement regarding the subject and the object and material to be promised.*

*Design/methodology/approach–This is normative research with a legal approach. Data were collected through a literature study and analyzed using the legal norm method.*

*Findings-The forestry partnership policy is one way to solve inequality inland in the community by providing land access to the community. The principle of freedom of contract is implemented in the partnership between Besar Gunung Leuser National Park (BBTNGL) and the people of ADB's PIR Village (Langkat Regency, North Sumatra Province) because BBTNGL, the community, is given the freedom to agree or disagree on the Cooperation Agreement Text (NKK). Meanwhile, the principle of freedom of contract can also be implemented in the partnership between the Gularaya Production Forest Management Unit (KPHP) and the KTH Wanagiri Lestari Cooperative (Konawe Selatan Regency and Kendari City, Southeast Sulawesi Province), both parties agree and sign a Cooperation Agreement (NKK). Both parties also have good faith to build a forestry partnership.*

*Research limitations/implications-This research only examines the position of freedom of contract principle in forestry partnership policy in Indonesia. The approach method used is normative legal research.*

*Originality/value-The Partnership Policy in Indonesian law is intended to provide legal certainty and legal protection for landowners, seeing that there were 208 land conflicts in 2020 (32%), while the property sector took second place with 199 conflicts (30%), the industry occupied the third position. Infrastructure with 94 conflicts (14%), followed by the agricultural sector with 78 (12%) conflict incidents. Furthermore, the forestry sector with 30 (5%) conflicts, the coastal and marine sectors with 28 (4%) conflicts, and finally the mining sector with 22 (3%).*

**Keywords:** Forestry Partnership, Freedom of Contract, Social Forestry.

## INTRODUCTION

The forestry partnership policy was born as a form of cooperation between the community and forestry permit holders. The approach that regulates forestry partnerships for the first time is related to Collaborative Community Forest Management (PHBM) in Java with the Decree of the Forestry Company Supervisory Board No. 136/2001 regarding Collaborative Forest Management (PHBM).(Akhmaddhian et al., 2017) In 2007, the Indonesian government issued a policy through Government Regulation No. 6/2007 *jo* Government Regulation No. 3/2008 concerning Forest Management and Formulation of Forest Management Plans and Forest Utilization intended for Social Forestry management areas which consist of Community Forests, Village Forests, and Forestry Partnerships. As a follow-up to the above policy, the Ministry of Forestry issued a Minister of Forestry Regulation Number P.39/Menhut-II/2013 in July 2013 concerning forestry empowerment through forestry partnerships. The issuance confirms the existence of a forestry partnership scheme (Sudarwanto & Handayani, 2019).

The policy was revised at the end of 2016 by the Minister of Environment and Forestry Regulation Number P.83/Men-Set-Jen/2016 concerning Social Forestry (Regulation of the Minister of Environment and Forestry Number P83/2016). This policy is included explicitly in the National Medium-Term Development Plan (RPJMN). This policy generally discusses forest management by involving communities with the Community Forestry schemes, Village Forests, Community Plantation Forests, and Partnerships. The projects are divided into a permit and cooperation scheme. The system used in the three management schemes is a permit scheme issued by the Minister of Environment and Forestry or the Governor. He has received the delegation of authority from the Minister of Environment and Forestry. The partnership system is a cooperation pattern between the community and the forestry permit holder or forestry manager. This partnership agreement is in the form of a contract stating the rights and obligations of each party, both the community and the forestry permit holder (Erina & Yanis, 2020)

The development of a forest partnership strategy should, like an agreement, also pay attention to the principles of contract law, one of which is the concept of consensus. An arrangement between the two parties must be an agreement. Therefore, one of the conditions for a contract to be valid is that an agreement must be reached between those who have negotiated (Article 1320 of the Civil Code). Article 1321 of the Civil Code provides that, where there is dwang, dwaling, and bedrog, there is no majority in the agreement or that it can be removed. The theory of freedom of contract grants the contracting parties the freedom to agree on the purpose of the contract to be carried out. In order to accomplish this purpose, the parties must have the same negotiating stance (egalitarian) in order to discourage one of the parties from dwanging. In order to establish an agreement between the parties, the concept of freedom of contract is the essential thing to remember in an arrangement. This theory grants the parties freedom to join or agree not to, agree with someone, determine the content of the contract, execution, and specifications (Sudarwanto & Handayani, 2019)

Determine the deal's shape (written or oral agreement). Regulation P.83/2016 on social forestry Article 40(1) requires that community empowerment by forestry collaborations be carried out by forestry managers or forestry permit holders. Article 41(1) provides that the forest partnership area shall be carried out under the following conditions: (a) the position of the forest partnership in the forest management work area is 2 (two) hectares for each head of the family; and (b) the location of the forest partnership in the forest management work area is 5 (five)

hectares for each head of the family. They must comply with the business that owns the license or the forestry manager when performing community partnerships. According to Trihastuti, the agreement is made by legal entities to satisfy their daily needs by establishing relationships with other parties, especially in the creation of economic traffic relationships (Ismiyanto et al., 2020)

The forestry partnership strategy allows the parties to draw up the text of the agreement, which ensures that the text of the agreement is a document of the agreement containing rights and obligations. On the basis of Article 46(3) of Regulation No P.83/2016 of the Minister of the Environment and Forestry, the text of the Agreement shall include at least the context, the identity of the parties to the Agreement, the position and map of the activities, the schedule of the partnership activities, the objects of the operation, the expense of the activity, the rights and obligations of the parties, the time of partnership, the distribution of outcomes in accordance with the terms of the Agreement, This forest collaboration is a kind of agreement to undertake joint projects between forestry managers and the community. What is interesting about this law, though, is that if the holder of the forestry permit does not want to make a forestry partnership deal with the community, the business will be subject to government sanctions. Article 47 stipulates that, in compliance with the provisions of the statutory regulation, forestry managers or forestry permit holders who do not enforce the provisions of this Ministerial Regulation shall be subject to sanctions (Soediro et al., 2020)

One of the government strategies is to enforce penalties on forestry managers or forestry permit holders who do not carry out forestry partnerships as mentioned above so that the related parties can implement the regulation's mandate. Based on the Jure Imperi principle, in its capacity as a sovereign body, the state has the right to take official action in the public sector, including making particular policies. Sanctions, on the other hand, restrict the concept of freedom of contract, which is accepted in civil law. The issuance of this policy for a forestry relationship does not mean that it has no fair objectives. Equitable access to community forest land and the management of land tenure disputes in the spirit of this policy have occurred. There were 208 agrarian conflicts (32%), followed by the property sector with 199 conflicts (30%), the infrastructure sector with 94 conflicts (14%), and the agricultural sector with 78 (12%) conflicts in 2017, based on the records of the Agrarian Reform Consortium (KPA). It was also followed by the forestry sector with 30 (5 percent) disputes, the coastal and marine industries with 28 (4 percent) disputes, and finally the mining industry with 222 percent (3 percent) (Karjoko et al., 2020).

So far, their status is very unequal when faced with forestry managers. The group was asked in many instances to agree on a draft that was made arbitrarily by the holders/managers of the forestry permit. When making a forestry partnership agreement, the issuance of this policy should be capable of raising the status of the group equal to that of forest permit holders/forestry managers. This paper offers an overview of the role of forest partnership policy in the concept of contractual independence, which guarantees the parties' freedom to enter into a contract/agreement either on the subject matter or on the object and material to be pledged.

## METHOD

This is normative legal research (Kharisma, 2020) This research found its juridical footing in:

1. The 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945);
2. Law 18 of 2013 concerning Prevention and Eradication of Forest Destruction
3. Law Number 41 of 1999 concerning Forestry
4. Minister of Forestry Regulation No P.39/Menhut-II/2013 as a follow-up to Government Regulation No 3/2008 on empowering communities around forests through a forest partnership.
5. Regulation of Minister of Environment and Forestry Number P.83/Menlhk/Setjen/KUM.1/10/2016 concerning Social Forestry.

Data were collected through literature study and document observation. This descriptive research aims to provide a systematic, factual and accurate description of certain features, characteristics, or factors in a particular population or region. It uses a qualitative juridical analysis based on legal interpretation, reasoning and argumentation (Prasetio et al., 2020)

## RESULT AND DISCUSSION

### Indonesian Forestry Partnership Policy Framework

The history of Indonesian society's social development cannot be separated from the relationship between the organization and the available sources of livelihood. The community's need for a source of livelihood is one aspect that causes many problems, mainly if there is a depreciation of the origins of livelihood in communities around the forest. The first problem that may be faced is poverty. Suppose the government cannot resolve this poverty through relevant and appropriate policies. In that case, the community will undoubtedly find their nets by illegally controlling land, occupying land forests, cutting down forest trees, and encroaching forests causing forest destruction, even forest tenure conflicts. Forest village communities can be defined as people who live and depend on forest products for their livelihoods. One of the areas with the number of forest village communities in Lombok (out of 203 villages in Lombok, there are at least 77 villages around the forest that are poor). The problem of poverty among forest communities is a multidimensional problem related to rural development and precisely that related to forest management. The community's source of livelihood around the forest depends on the forest products and agricultural sector (i.e., food crop cultivation). The provision of community rights/access to forest land becomes one way to achieve social equity as mandated by Pancasila in the fifth principle, Social Justice for All Indonesian People (Subekti et al., 2017)

Based on the Forestry Survey 2014, Indonesia’s population living around forest areas is around 32,447,851 people. The forest area is so far used as a place for people to live, especially those who live in rural areas. The number of villages in the forest area is around 2,037 villages and 19,247 villages around the forest area. Also, having compared to Statistics Indonesia data 2004 and 2014, the number of households in forest areas continued to increase. Referring to data from the Ministry of Forestry - BPS 2007, the percentage of low households around forest areas was 18.5%, so it is estimated that there are 1,720,384.77 low-income families (equivalent to 6,881,539.06 people) living in all forest villages in Indonesia. An increase in the population that is not followed by the provision of adequate sources of livelihood will impact the rise in the poverty rate in Indonesia see Table 1 (Ramadhan et al., 2020).

**Table 1**
**HOUSEHOLDS AROUND FOREST AREAS IN INDONESIA IN 2004 AND 2014**

| Description | 2004 | 2014 |
|---|---|---|
| Number of Households around Forest Areas in Indonesia | 7,804,970 | 8,643,228 |
| Number of Households around Forest Areas Undertaking Shifting Cultivation | 259,959 | 242,866 |
| Percentage of Households around Forest Areas Undertaking Swiveling | 3.331 | 2.810 |

Source: Indonesian Statistics Publication

Poverty has created many social problems in forest-linked village communities, one of which is disputes over land tenure. Based on the research results of the Center for International Forestry Research (CIFOR), 359 forestry disputes were reported in Indonesia prior to the reformation period (1997-2003). In Commercial Plantation Forest areas, 39 percent of the total conflicts were identified, 27 percent in Forest Management Rights areas, and 34 percent in conservation areas. In 2015, there were a lot of agrarian disputes. Data from the Agrarian Reform Consortium indicate that during 2015, 252 agricultural conflicts covered an area of 400,430 hectares and involved 108,714 heads of families. Agrarian conflicts occurred mainly in the plantation sector in the same year, i.e. 127 conflicts (50 percent), 70 conflicts (28 percent) in the infrastructure development sector, 24 conflicts (9.60 percent) in the forestry sector, 14 conflicts (5.2 percent) in the mining sector, nine conflicts (4 percent) in other sectors, and the agriculture and coastal/marine sector came in fifth (2 percent) (Ishak et al., 2020).

Meanwhile, in 2017, there were 208 agrarian conflicts based on the latest KPA data, 199 conflicts (30%) in the property sector, and 94 conflicts (14%) in the infrastructure sector, followed by 78 (12%) conflict incidents in the agricultural sector. In addition, there were 30 conflicts (5 percent) in the forestry sector, 28 conflicts (4 percent) in the coastal and marine industries, and 22 conflicts (3 percent) in the mining sector. The KPA data above confirms that there were 1,361 agrarian conflicts during the three years of the Jokowi-JK government era (2015-2017). This fact implies that a strategy is needed to resolve the serious problems of poverty in forest-linked village communities. In addition, it turns out that forest land tenure imbalances have created forestry disputes over the years and their numbers are rising. Forestry Law Number 41/1999 of the Republic of Indonesia (hereinafter referred to as the Forestry Law) is the beginning of government policies in Indonesia to control and manage forests. Procedures for enforcing the law were also issued after the Forestry Law was implemented and took effect in Indonesia, one of which was the forestry partnership regulation (Ivnaini, 2019).

The Forestry Relationship is collaboration between local communities and forestry managers, land use or forest company forestry permit holders, forest lease-to-use permits, or primary industry permits for forest products. The partnership forestry scheme was first developed in Java in 2001. By Decree of the Company Supervisory Board (PERUM) of Forestry No. 136/2001 concerning Collaborative Forest Management, the forestry partnership scheme was called Collaborative Forest Management (PHBM). The community forest management program in the government's policies was restricted to an empowerment program before the issuance of the above decree. PHBM and collaborations were not specifically governed. In Article 8 of

Decree No 136/2001 of the Supervisory Board of Perum Perhutani, it is specified that 'Group forest management activities are carried out in the spirit of sharing, which includes sharing the use of land and/or space, sharing the use of time, sharing the use of results in forest management activities with the concept of mutual benefit, mutual reinforcement, mutual reinforcement' What is meant by the collaboration is the Public Company (PERUM) of Forestry with communities located in the working areas of the company or generally known as forest-linked village communities in this first forest partnership policy. People who cooperate with the Forestry Public Company (PERUM) must create a Community Forest Village Institution (LMDH). The establishment will promote cooperation with the Forestry Public Enterprise (PERUM) (i.e., a collaboration made not with the community one by one or individually, but collectively through the LMDH) (Karjoko & Winarno, 2020).

The PHBM activities initiated by the Forestry Public Company (PERUM) have been ongoing since 2001. The software was introduced in approximately 5,386 forest villages situated around the forest area of the Public Company (PERUM) of Forestry in Java and Madura. As a result, from 2001 to 2012, 5,278 forest villages, or about 97 percent of the total forest villages in Java and Madura, collaborated with the Public Forest Company (PERUM) through the PHBM scheme. 2,216,225 ha of co-operated forest areas are (joined in 5,278 Forest Village Community Institutions and 995 Forest Village Cooperatives). In 2007, the government issued Government Regulation Number 6/2007 in accordance with Government Regulation Number 3/2008 on Forest Governance and Forest Management Plan Formulation, as well as Forest Utili, in view of the forest partnership scheme that is progressively having a good impact on the community economy, mainly supporting the livelihoods of rural communities around the forest (Wibowo et al., 2019)

The degree of forest management planning is governed by Government Regulation Number 3/2008. As the holder of the forestry permit, this regulation mandates that each community/group must develop a long-term forest management planning document as well as a one-year comprehensive management plan. The Forest Management Unit would later validate the planning paper (KPH). In carrying out forest management operations, such as planting, maintenance, harvesting and other activities related to forest management, this planning document will become a guide for forest management farming groups. In July 2013, the Ministry of Forestry released Minister of Forestry Regulation No P.39/Menhut-II/2013 as a follow-up to Government Regulation No 3/2008 on empowering communities around forests through a forest partnership. The issuance of this regulation confirms the existence of a cooperation scheme for forestry. The empowerment of local communities through the Forestry Partnership in this strategy is a way of increasing the ability and freedom of local communities through the Forestry Partnership to obtain the maximum and equitable benefits of forest resources to enhance their welfare (Leonard et al., 2020).

The establishment of the forestry partnership policy in 2013 turned out to have quite specific objectives, i.e., the realization of local communities to get direct benefits by strengthening capacity and providing access, implementing sustainable forest management, and gradually developing into economic actors who are tough, independent, responsible, and professional. The policy has had many shortcomings during three years, especially regarding its poor implementation. Therefore, many parties, academics, and civil society called for a revision of this policy. In the era of President Joko Widodo and Jusuf Kalla, the government launched the Social Forestry program. The program is stipulated in the 2016-2019 RPJMN as one of the

government's priority programs of the Republic of Indonesia. At the end of 2016, the Ministry of Environment and Forestry followed up by issuing a Regulation of the Minister of Environment and Forestry Number P83/2016 concerning Social Forestry. This policy regulates forest management that involves the community through various schemes, including the Community Forestry (HKm) scheme, Village Forest (HD), Community Plantation Forest (HTR), and Partnership (Jaelani et al., 2020).

The scheme set out in the policy is divided into permit and cooperation schemes. *First*, the permit scheme includes people who wish to manage forests through a permit application to the Ministry of Environment and Forestry, including permit schemes in this policy (e.g., HKm, HD, and HTR). In this policy, the minister of Environment and Forestry or the Governor can be issued the permit, who has received the delegation of authority from the Minister of Environment and Forestry. *Second*, the cooperation scheme is different from that of the permit scheme. It is carried out in forest areas that already have prior permits, or areas of land for other uses (APL) which are managed at the Forest Management Unit (KPH), or in conservation areas collected at the National Park Center. In social forestry policies, forestry partnership is included in the cooperation scheme. Therefore, a forestry partnership can be carried out between the community and the forestry permit holder (private/Perhutani/Inhutani), the community and the Forest Management Unit (KPH), and the community the National Park Center. Forestry partnership is one of the cooperation agreement forms, which includes each party's rights and obligations, both the organization and the forestry permit holder, the Forest Management Unit (KPH), and the National Park Center

**Position of Freedom of Contract Principle in Forestry Partnership Policy**

The forestry partnership policy was initially regulated in the Regulation of the Minister of Forestry Number P.39/MenhutII/2013 concerning Community Empowerment through Forestry Partnership (State Gazette of the Republic of Indonesia Number 958/2013). However, the policy was replaced in 2016 with the Regulation of Minister of Environment and Forestry Number P.83/Menlhk/Setjen/KUM.1/10/2016 concerning Social Forestry (Regulation of the Minister of Environment and Forestry Number P.83/2016). In general, the substance of the two policies is the same. The difference is that the new approach combines community forestry permit schemes, community plantation forest permits, village forest permits, customary forests, and forestry partnerships. Forestry partnership is a government policy, especially in the Ministry of Environment and Forestry. This policy is designed with a forest management cooperation scheme on forest land locations that already have previous permits and forest lands under Forest Management Units (FMUs). The results of this management collaboration will later be determined regarding the rights and obligations of the parties, both the community and forestry permit holders and FMUs (Jaelani et al., 2020)

Based on the cooperation scheme format specified in this policy, which in the Cooperation Agreement draft is required to include rights and obligations, it can be ascertained that the partnership scheme format in the procedure is part of the agreement scheme or contract. In the context of contract law in Indonesia, one principle is essential to pay attention to, especially when stakeholders are drafting regulations whose body, either in whole or in part, regulates contract law. The principle is freedom of contract. The release of contract principle is one of the principles that must be fulfilled in performing a contract. A guide is also a form of

protecting personal rights in a deal (to do or not enter into an agreement). A contract can fulfill the freedom of contract principle if the parties do not have dwang, dwaling, and bedrog (Karjoko & Winarno, 2020).

A contract, to reach an agreement, requires the parties' free will to do or not. This is commonplace since the parties' free intention can lead both parties to make agreements between them. Therefore, *dwang* in contracting becomes an indication that the agreement can be null and void. Public policy may regulate or set aside matters relating to civilization in performing a government program. Forestry partnership is held in the Regulation of the Minister of Environment and Forestry P.83/2016 policy on the concept of community empowerment through forestry partnership. As stated in Article 40 paragraph (1), forestry managers or forestry permit holders shall be obliged to carry out local communities' charge through forestry partnership. This provision requires them to empower communities at management/permit locations close to the local communities (Sudarwanto & Pujiyono, 2020).

Meanwhile, what is meant forest areas managed by forestry managers according to Article 40 paragraph (2) are (a) Forest Management Units (FMUs); (b) National Park Office; (c) Natural Resource Conservation Office; (d) forest area managers with particular objectives; (e) technical implementation unit for significant forest park areas; or (f) state-owned or regional-owned enterprises of state forestry managers. Moreover, what is meant forest permits owned by forestry permit holders according to Article 40 paragraph (3) are (a) business permit for forest use; (b) business permit for environmental service use; (c) business permit for timber products use in natural forests; (d) business permit for timber products use in plantation forests; (e) business permit for non-timber products use in natural forests; (f) business permits for non-timber products use in plantation forests; (g) business permit for water use; (h) business permit for water energy; (i) business permit for natural tourism services; (j) business permit for natural tourism objects; (k) business permits for carbon sequestration using in production forests and protection forests; (l) business permit for carbon storage use in production forests and protection forests; (m) business permit for forest area; or (n) business permit for immediate product industries (Kharisma, 2020)

Freedom of contract means that everyone is free to or not to enter into a contract. It includes the space for everyone to determine the content or substance of the contract. The freedom to contract aims to ensure that the parties' will can be entirely contained in the agreement, whether oral or written. The freedom to make a contract will keep the parties from being intimidated or pressured by one of the parties to agree on only one party's will. If the freedom of contract is violated, what happens is that the deal made by the parties will be flawed, and this can be proposed for revocation in the judiciary. Agreeing must ideally accommodate the wishes or will of the two parties so that both parties' interests can be mutually regulated in the contract. The importance of the freedom of contract principle should be obeyed by everyone who wants or will enter into a contract. Even when the government enters into an agreement or contract, they must pay attention to contract law principles. In short, the freedom of contract principle places the same rights on both parties who will enter into a contract/agreement, both individuals and legal entities. The release of contract principle is recognized and used within the scope of contract law in Indonesia. Several court decisions shall revoke the contracts that are not made by following the freedom of contract principle (Karjoko et al., 2020)

Policy Number P.83/2016, which regulates forestry partnership, provides freedom for both parties to agree. This can be seen in the provision of Article 48 paragraph (4) "*The text of*

*agreement shall be signed by the forestry manager/forestry permit holder and the partnering party and known by the head of village/sub-district/local institution."* The article states that a signature is required as a form of agreement/free will of the parties to agree. The P.83/2016 policy in several articles limits freedom of contract in encouraging the forestry partnership program's implementation. This is stipulated in Article 47 paragraph (2), which obliges forestry managers/forestry permit holders to accept forestry partnership offers. If they do not receive them, they will be put with sanctions. "*Forestry managers or Forestry permit holders who do not perform the provision in this regulation will be sanctioned pursuant to the law*" (Soediro et al., 2020)

The limitation on freedom of contract is also stated in the provision of Article 41 paragraph (1), which is related to the regulation of the object of the agreement, i.e., the maximum land of 2 (two) hectares in the area of forest management and 5 (five) hectares in the size of the forestry permit holder. The land area of forestry partnership is carried out with the following conditions: a) The land of forestry partnership in the area of forest management is 2 (two) hectares for each family head; and/or b) the land of the forestry partnership in the area of forestry permit holder is 5 (five) hectares for each family". In line with the public interest, by looking at the problems found in the field, the regulation is needed to elevate the community to have an equal position to the forestry permit holder or forestry manager in undertaking a contract. On the other hand, the limitation of two hectares and five hectares of land is needed to reach an equal distribution of land tenure and not be controlled by only one or two persons (Ismoyo, 2020)

However, this is legally possible since the government can issue policies as an official action of the state. According to the contract, article 1339 of the Civil Code emphasizes that a contract is binding on matters expressly stated in them and for everything required by virtue, "*custom*" or "*law*." Therefore, the implementation of the freedom of contract principle must not conflict with the applicable regulations. As a public entity with authority, the government has the right to regulate and make policies or even set aside private law based on reasons to accommodate public interests. The program can thus be implemented in the field. The limitation on the freedom of contract principle is also based on the concept of legal causation, which is one of the contract's standard conditions. In this case, the agreement is considered valid and legally enforceable if the 4 (four) practical needs of a deal are fulfilled, including: (Sudarwanto & Handayani, 2019)

1. Agreeing with those who bind themselves.
2. The ability to make an engagement.
3. A particular thing.
4. A cause that is lawful or not forbidden.

The requirement for a legal cause is one of the essential prerequisites for undertaking a contract. A lawful reason can be interpreted as a cause that has been regulated in law or does not conflict with the law or related regulations. The affirmation of the legal cause is stipulated in Article 1320 of the Civil Code and stated in more detail in Article 1335 of the Civil Code and Article 1337 of the Civil Code. Article 1335 of the Civil Code states, "*Any agreement without a cause, or concluded pursuant to a fraudulent or implausible cause, shall not be enforceable*." This is highlighted by Article 1337 of the Civil Code that, "*A cause is not permissible if it is prohibited by law, or if it violates good conduct, or public order*." In the provisions of Article

1338 of the Civil Code, it states that an agreement that is according to the law shall legally be executed for those who enter into it. If both parties have concluded them by law, the contract cannot be revoked otherwise than by mutual agreement or according to reasons by law. Therefore, it can be said that executing an agreement is bound by the provisions of the rules and regulations as a form of legal cause (Harimurti et al., 2019)

An agreement that does not fulfill the legal terms has the following consequences: 1) Non-existence (if there is no agreement, the contract is non-existent) and 2) *vernietigbaar* (the contract shall be revoked if there is a defect of will or incompetence). It is stipulated in the provision of Article 1320 of Civil Code number 1 and number 2, If the two conditions above are not fulfilled (subjective conditions), the contract can be revoked. Third, the meeting means that the warranty shall be null and void if the contract has no object or the object cannot be determined. An agreement shall be null and void if it has prohibited causes. According to Munir Fuadi, the freedom to contract in the Indonesian Civil Code is limited by the matters, such as fulfilling the requirements as a contract, not being prohibited by law, being executed according to the applicable customs, and managing the contract good faith (Jaelani et al., 2020)

Furthermore, according to Article 1339 of the Civil Code, "*Agreements shall bind the parties not only to that which is expressly stipulated, but also to that which, pursuant to the nature of the agreements, shall be imposed by propriety, customs, or the law*." Therefore, in agreeing, the parties shall comply with all the provisions stipulated in the Republic of Indonesia's laws and regulations, including entering into forestry partnership agreements. The parties shall be obliged to comply with the requirements specified in the policy of Regulation of the Minister of Environment and Forestry Number P.83/Men-Set.Jen/2016 concerning Social Forestry.

## CONCLUSION

Based on the jure imperi principle, the state can take official action in the public sector through its capacity as a sovereign state, including policy-making to solve problems in society, even though it somehow ignores the private law. The presence of several provisions in the forestry partnership policy, such as limiting the object of the contract as stipulated in Article 41 paragraph (1) Regulation of the Ministry of Environment and Forestry Number P.83/2016 regarding the maximum area of 2 hectares in forest management areas, is a form of limiting the freedom of contract principle. However, this is legally possible since the government can issue policies as an official action of the state. Article 1339 of the Civil Code emphasizes that a contract is binding on matters expressly stated in them and for everything required by virtue, "*custom*" or "*law*" according to the contract. Therefore, the implementation of the freedom of contract principle must not conflict with the applicable regulations.

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