



## Access To Justice: In Considering Losses Of Giving The Right Of Exploitation (Studies in Mesuji Lampung)

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### ABSTRACT

Conflict in Mesuji can indeed be categorized as a chronic agrarian conflict. This chronic condition can't be separated from the complex dynamics of conflict, involving various parties with different interests. Case of indemnification Barat Selatan Makmur Investindo Company with the community in Mesuji is also at the same time a fact that shows that forests do not merely present ecological facts, but a landscape that is socially constructed to fulfill some functions, namely as a region of life, a place to grow the collective identity of a community group, developing the culture of society.

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## 1. Introduction

Forestry is one of the most conflict-affected areas. The issue of forest area and land or natural resources / agrarian in the broad sense can occur on this day or last year because it accumulated long before Indonesia became independent. Manifestations can be seen in various forms, such as conflict between various parties, mining, and gardens throughout the functions of the forest (conservation, protection and production), the exchange of forest areas, misplaced licensing or loss of state assets and the high cost of licensing transactions, as well as human rights abuses.

Unilateral appointment of forest areas in the past by the government has been one of the factors driving the rise of conflicts in forest areas during the economic crisis in the late 1990s into an important period in Indonesia's forestry history. This period is the period leading up to and after the New Order regime change.

Achmad Sodiki explains the period is a period in which the authority of the security apparatus and law enforcement dropped sharply. Political events in Jakarta accompanied by riots of arson, looting spread to the regions. Political turmoil at that time according to him also triggered the pattern of

courage of the people to enter the plantation land, forestry and others. This happens because the people desperately need land to connect their lives. On the other hand, there is also the neglect of land in times of crisis with various reasons holder rights affected by the crisis so as not to have working capital to cultivate the land. Or plants that do not generate profits because they are not maintained properly, prices are declining in the market, or in disputes with the people, the period of HGU has expired so it is not clear who the manager of the land.

One of the longest forest management conflicts in Lampung is compensation conflict by PT. Barat Selatan Makmur Investindo in the Production Forest area of Sri Tanjung Village, Nipah Kuning Village and Kagungan Dalam Village is an area already occupied by a group of indigenous and tribal peoples whose existence is already very long. Communities occupy cultivate and cultivate the land area is long enough and decreases. Problems began to occur when the plantation company applying for right of exploitation and also the Industrial Plantation Rights permit, the company is Barat Selatan Makmur Investindo (BSMI) in Mesuji Lampung.

In the context of the welfare state, one of the most fundamental interests for every human being is the protection of his rights as a human being. Act No. 51 / Prp / 1960 Concerning Prohibitions on the Use of Land Without the Authorization of License or Authorization of Article 5 paragraph 4 that: "In the use of its authority as intended in this Article, then regarding the settlement of the use of plantation and forest land the Minister of Agrarian must pay attention to the interests of the people of the land users concerned, the interests of other residents in the area where the plantation company and the area of land the company requires to organize, provided that, that in the first place, efforts must be made to reach the settlement by way of deliberation with the parties concerned".

This result is most felt by indigenous peoples and local communities who have settled down from generation to generation and are actively using forests for daily needs and earning a living, in accordance with indigenous knowledge and traditions. Often, the owner of this real right is not talked to or given (enough) information related to their land conversion project to plantation land by the government or investors. When job promises or economic benefits are given to local communities, this is often not prioritized or realized. In addition, the treatment of indigenous peoples' land is considered empty, "Sleeping land" or degraded are often misleading: in fact, most of the areas targeted for oil palm development are agricultural lands and indigenous peoples lands, which have customary rights and are vital to the livelihoods of local communities and their socio-cultural identity.

The lack of recognition of the rights of these communities under the framework of national law only further undermines their capacity to react against their land acquisition. Land acquisitions are allowed to occur officially secretly can also take advantage of legal and business-oriented

policies that are above the interests and local rights. The eviction, marginalization, impoverishment, and food insecurity of local communities resulting from land grabs have increased protests and (often violent) conflicts in plantations.

Based on the background description of the above issues, then the discussion of access to justice in obtaining compensation for the rights of exploitation of plantation then it can be formulated with legal issues how access to justice, strategies and solutions accommodate the rights of citizens who demand compensation to the company?

## **2. Method**

Based on the type of research, then in this dissertation used type qualitative research. The data obtained include interview transcripts, field notes, personal documents and other materials. The critical paradigm used in this study considers that theories containing the truths are not always absolutely true, because in fact practical, these truths are different from real life.

The approach in this study is socio-legal. Socio-legal studies is another name of the term law and society studies. Socio-legal studies is a generic term for mentioning all the social sciences that study the law. Tamanaha explained that in its development, the study of science and society (law and society) changed its name to social studies about the law or socio-legal studies. However, according to Tamanaha the term socio-legal studies is synonymous with law and society studies.

The research location was conducted in Lampung Province, focusing on the areas with the highest investment in oil palm plantations and the distribution of cases: In Desa Kagungan Dalam, Desa Nipah Kuning and Desa Tanjung Tanjung, Mesuji Regency.

Primary data sources are sources of data taken directly from the source, in the form of informant interviews and observations made in the location of research. Secondary data sources are obtained from previous data in the form of notes, newspapers, documents, reports and other sources related to the research theme.

- a) Act No. 51 / Prp / Year in the year of 1960 Regarding Prohibition of Land Use Without Permission of Authority or its Attorney
- b) Emergency Act No. 8 in the year of 1954 on the Settlement of Land Use by the People
- c) Emergency Act No. 1 in the year of 1956 on Amendment and Supplement of Emergency
- d) Act No. 8 Year in the year of 1954 Concerning Completion of Plantation Land Utilization by the People.
- e) Act No. 39 in the year of 2014 on Plantations
- f) Act No.41 in the year of 1999 concerning Forestry (State Gazette of 1999 Number 167)

- g) Decision Letter of Land Affairs Office of North Lampung Regency No. BPN 460/01 / IL-4/1996 on extension of location permit No: PLU.22 / 460-IL / 94 dated October 18, 1994 on behalf company of Barat Selatan Makmur Investindo (BSMI) for the purposes of Oil Palm Plantation

Informants in the study will begin with the rest on the key informant (key informant), that is taken by way of purposive and criteria determined based on his deep knowledge about the object of research. The key informants are: (1) Expert Staff of Regent Mesuji Lampung Mr. Kodri, (2) Head of Administration Mr. Gunarso (3) Former Member of Joint Team of Fact Finding Mr. Tisnanta is also a lecturer of UNILA (4) Young Leaders of Traditional Institution Megou Pak , Mr. Andi, (5) Heirs great-grandchild of Prince Sertawisa, (6) Respondent, Rusli Hamzah, Junaidi, and Hamid.

Data analysis was done by qualitative method because it felt more appropriate to study human life in limited cases, casuistic in character, but deep (indepth) and holistic. The data analysis method chosen in this study is based on the consideration that the qualitative research is based on the strategy of induction-conceptualization approach, which is based on the facts / empirical information (data) to build the concept or theory. The effort to build a concept or theory starts from the information to the concept as a step move across to a high level of abstraction. The results of this data abstraction obtained "meaning" as a result of interrelation in a more natural category system of its nature.

Validation of data in this study itself using data source triangulation methods that try to dig the truth of certain information through various methods and sources of data acquisition. For example, other than through interviews and observations, researchers may use participant observation, written documents, archives, historical documents, official records, personal notes or writings and videos, pictures or photographs.

### **3. Main Heading of the Analysis or Results**

This conflict of disputes in Mesuji concerns structural agrarian conflicts, namely agrarian conflicts resulting from policies or decisions of public officials, involving many victims and causing widespread impacts including social, economic and political dimensions. This is a problem that is closely related to the central issue of injustice. The inequality or uncertainty of the entrepreneurs and the management of the land and all its natural potentials are key factors that encourage unfair structures for society. The demand for justice immediately arises when community communities perceive the existing resources are not beneficial to their lives.

This conflict is a problem that is closely related to the main issue of injustice. The impartiality or uncertainty of land tenure and management along with all of its natural potentials are key factors that encourage unfair structures for society. The demand for justice immediately arises when the

community feels the existing resources are not beneficial to their lives In the context of agrarian conflict that occurred in the area of Production Forest in Nipah Kuning Village, Kagungan Dalam and Sri Tanjung Village. Mesuji District Lampung became interesting as a laboratory access to justice.

This section intends to discuss the idea of access to justice in agrarian conflict from the socio-legal side. The involvement of political struggles, as expressed by Berenschot and Bedner, implies the need for an approach appropriate to that purpose in the efforts to fulfill access to justice, for that, the ROLAX framework developed by Bedner and Vel as the framework of access to justice analysts based on the criteria of the rule of law.

The interesting thing about this model of analysis framework is its ability not only to describe the best processes, but also to the public in real access to justice. The strength of this analytical framework lies in the evaluation, which is to monitor the sustainability of implementative and implemented injustice recovery, sustainability of the goals of recovery itself, and assess whether the results of the recovery meet the quality of the rule of law.

The framework of access to justice offered by Bedner et al (2012) is becoming a new hall in fighting for access to justice. Access to justice is fundamentally a process: an analytical framework for justice departs from the perspective of marginalized indigenous peoples and analyze the choices they take 'through the legal tool' in order to get the desired justice. As revealed Oki Hajiansyah wahab in Bandar Lampung:

"The Mesuji Regency Government is asked to prioritize the settlement of oil palm land dispute in Barat Selatan Makmur Investindo Company (BSMI) area in Mesuji Regency, Lampung. The protracted settlement of agrarian cases makes this area continues to be overshadowed by violence ".

"The series of violence that occurred there is the result of the unresolved root of the problem (land conflict). Conflict continues to be prolonged because they feel unfairly treated, "said Oki Hajiansyah Wahab, an activist from the Agrarian Reform Movement Alliance Lampung on Monday (23/4)

This in turn gave birth to innovative, courageous, tireless and sometimes stubborn ways of obtaining justice. Furthermore, this assessment will describe the various forms of process and dynamics of the struggle of the Nipah Kuning Village Community, Kagungan Dalam and Village Sri Tanjung to fight for access to justice for the past tens.

#### a. Legal Empowerment

Legal empowerment for the community is an effort to improve the dignity of the society which in its present condition is unable to escape poverty and backwardness, in other words is to enable or establish society Where efforts to create / improve the capacity of the community, both individually and in groups, in solving various problems related to efforts to improve the quality of life, independence, and welfare.

One form of empowerment for oppressed groups is legal empowerment. Legal empowerment is to strengthen the capacity of all people to fight for their rights, both individually and as members of the community. Legal empowerment is about grassroots justice the law is not only written in books or in the courtroom, but is accessible and meaningful to ordinary people.

In the context of agrarian conflict related to compensation by BSMI Company, legal empowerment is even more important than merely suing or winning a court case. Empowerment should not be blindfolded that there is a lame structure and must be changed. We must have confidence that the people are able to stand up for their rights. Legal empowerment should be able to make people who have suffered injustice become independent to do advocacy change and get structural justice. Hence law enforcement often extends beyond the law itself, penetrating the social sciences, economics, politics and other sciences.

Efforts made within the framework of legal empowerment for the residents of Sri Tanjung Village, Nipah Kuning and Kagungan Dalam Village are legal assistance (non litigation), critical legal education. Encourage the growth of initiatives and participation of the community and various parties in legal empowerment through mentoring and organizing, training, study and research and other activities related to the context of the problems faced.

Return to the ROLAX template the author has previously described. There are three characteristics of the ROLAX framework expressed by Bedner and Vel. Law empowerment itself is included in the first characteristic as part of an effort to build a public understanding of how to 'define what is injustice' (naming) as well as 'awareness'. 'Categorizing', 'formulating complaints' (defining grievances).

On the other hand, legal empowerment that builds understanding and judgment on the legal position of justice seekers "before" faces the forum (chosen) "after" he defines injustice. This process in turn gives rise to choices about what 'tools' (in a broad sense) offer to justice seekers, how far they know the law, and whether the various elements in the law are in harmony with the elements of the state law.

Furthermore, based on the ROLAX framework after the two processes are done through legal empowerment then the next is how the strategy used by the seekers of justice amid the complexity of rules and institutions that play an important role in their case.

#### b. Action and Mediation

The struggle of Sri Tanjung Village, Kagungan Dalam and Desa Nipah Kuning with various strategies emerged because they were forced to be separated from their relationship with the land and forest resources of their living space. With a variety of policy walks from Mesuji Regency that will look natural, so the structural injustices that occur appear on the surface just like fair.

Resistance action is born when the government authority covers the policy so that, in the eyes of society, it is natural. Whereas in fact it has neglected the rights of citizens living in the region which also must be respected, as act number 51 / Prp / 1960 Article 5 paragraph 4 that in the use of its authority as intended in this Article, then regarding the settlement of the use of plantation and forest land the Minister of Agrarian must pay attention to the interests of the land users concerned, the interests of other residents in the area where the plantation company and the land area required by the company to organize, provided that the first dilebuh must be endeavored to achieve the settlement by way of deliberation with the parties concerned ".

It can be said that the case of marginalization of farmers that occurred in the community around and within the plantation area of BSMI Company is one example of what Hall, Philip, Li (2011) put forward as a form of ecosystem farming process.

Empirically and the theory of important points that could be contributed in the case of PT. BSMI in Mesuji is tracing and explaining the efforts of rural farmer communities, especially in the socio-economic BSMI plantation, to build their resistance action gradually, and then be able to offer concepts and arguments to build ongoing multi-stakeholder negotiation processes to district and enterprise governments.

The struggle to overcome injustice is the use of protests and rallies and the use of political contacts to balance the mediation process and negotiations between the community and the authorities. Advocating access to justice is a systematic and organized effort to influence and push for change in public policy to gradually advance policy makers to resolve the issue, and build a support base on public policy taken to resolve the issue.

Before a protest action in the form of demonstrations and some other forms of resistance, people began to realize the importance of uniting themselves better and more solidly, so after that they immediately formed a peasant organization by name Unity of Mesuji Poor Farmers.

The establishment of this organization marks a new era for the struggle of the villagers. They began to propagate and campaign a more systematic period including conducting educational campaigns to strengthen the members' understanding, many good things and strengthen the struggle that has been done. Among them repeatedly doing good deeds in Jakarta, Lampung and Tulang Bawang.

Besides conducting actions and campaigns in various forms, the use of lobbying, negotiation strategy, mediation and collaboration. This requires a strong and wide network. The development of political contacts is carried out to strengthen advocacy, access to information and access to the development of these political contacts as well as to serve as spokesmen, negotiations, lobbyists, and engage in support efforts.

The forms of the campaign against their existence, among others, are through actions to commemorate certain days. By conducting ceremonies,

parades, and rallies on the anniversary of Human Rights Day. Farmer's Day, Labor Day, Independence Day and so on, they try to appear to the public. Through the network of journalists who then raised their activities into news, used by them as a form of campaign struggle and show themselves as an active, compact and educated community.

Visible through the organization, there are things that are trying to be fought for the Government by the village community that is demanding payment of compensation and demands of their customary land rights..

#### **4. Conclusion**

One form of empowerment for oppressed groups is legal empowerment. Legal empowerment is to strengthen the capacity of all people to fight for their rights, both individually and as members of the community. Legal empowerment is about grassroots justice the law is not only written in books or in the courtroom, but is accessible and meaningful to ordinary people.

The struggle of Sri Tanjung Village, Kagungan Dalam and Desa Nipah Kuning with various strategies emerged because they were forced to be separated from their relationship with the land and forest resources of their living space. With a variety of policy walks from Mesuji Regency that will look natural. So the structural injustices that occur appear on the surface just like fair.

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